



Department  
for Education

# **Elective home education**

**Departmental guidance for local  
authorities**

**April 2019**

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# Summary

## About this departmental guidance

This is departmental guidance from the Department for Education. It is non-statutory, and has been produced to help local authorities understand their role in relation to elective home education.

## Expiry or review date

This guidance will next be reviewed by December 2020.

## Who is this guidance for?

This guidance is for:

- Local authorities
- Schools
- Organisations concerned with elective home education
- Parents, although a separate and parallel document for parents is published alongside this one

## Introduction

The government's aim is to ensure all young people receive world-class education which allows them to reach their potential and live a more fulfilled life, regardless of background. That education should be provided in a safe environment, whether at school or at home.

Parents have a right to educate their children at home, and the government wants the many parents who do it well to be supported. They devote time, financial resources and dedication to the education of their children. Most parents who take up the weighty responsibility of home education do a great job, and many children benefit from being educated at home.

Educating children at home works well when it is a positive, informed and dedicated choice. However, the past few years have seen a very significant increase in the number of children being educated at home, and there is considerable evidence that many of these children are not receiving a suitable education. There is a less well evidenced but increasing concern that some children educated at home may not be in safe environments.

The department believes that although the primary responsibility for ensuring that children are properly educated belongs to parents, a local authority has a moral and social obligation to ensure that a child is safe and being suitably educated. If it is not clear that that is the case, the authority should act to remedy the position.

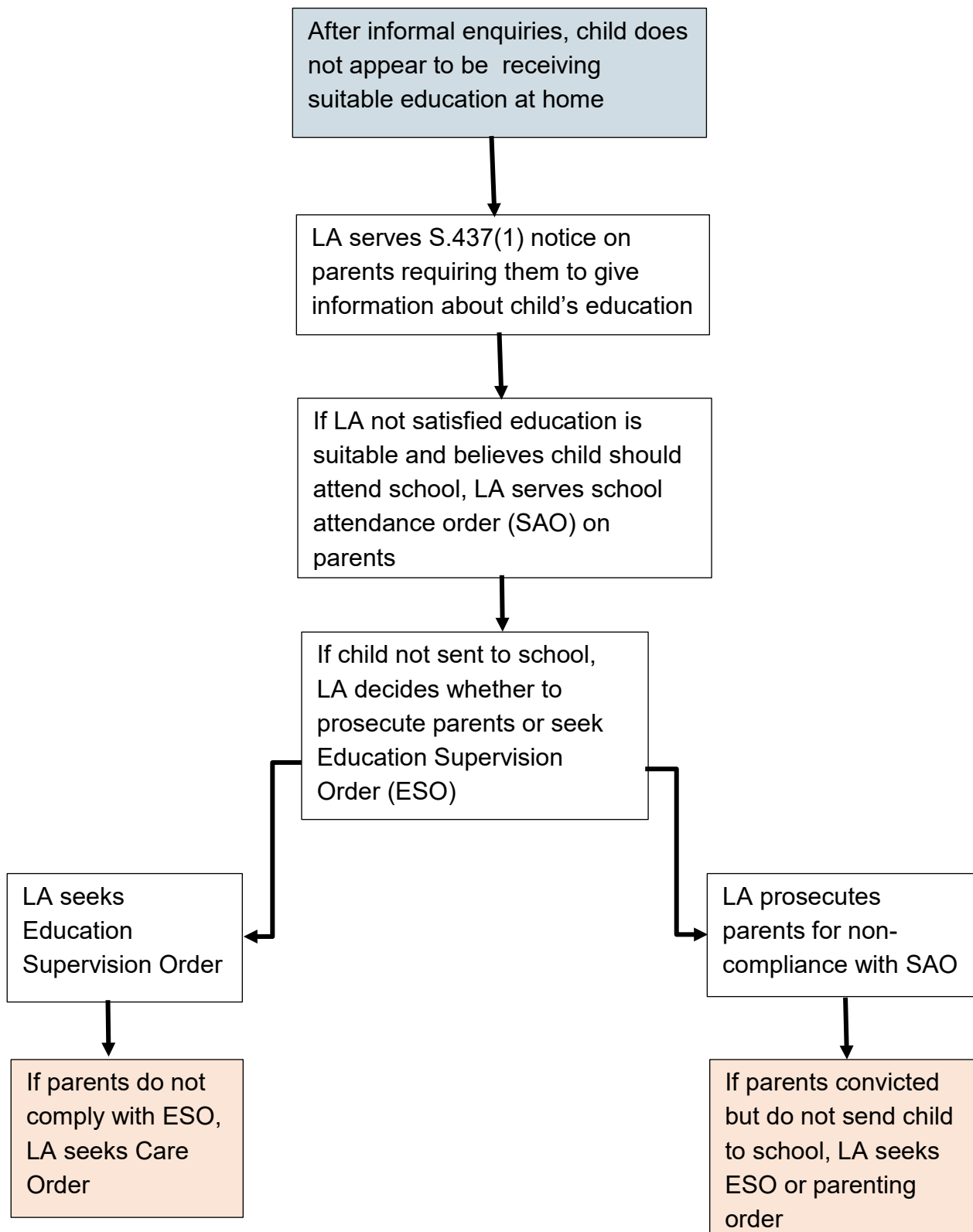
This guidance is intended to help local authorities understand their existing powers, and their duties in relation to children who are being educated at home, and how those relate to the obligations of parents. It aims to enable local authorities to identify children not receiving a suitable education, and do something about it. The end result should be that every child is receiving a suitable education in a safe and appropriate setting, whether at home or in school.

**Where necessary - because it is evident that a child is simply not receiving suitable education at home and the use of school attendance powers is not achieving a change in that situation - the local authority should be ready to use its safeguarding powers as explained in this guidance. The overriding objective in these cases is to ensure that the child's development is protected from significant harm.**

Our initial step is to ensure that LAs understand the powers at their disposal and when they can be used to intervene if it appears that a child is not receiving an adequate, safe, or appropriate education. However, where it is clear that parents are educating a child well at home, the need for contact should be minimal and not made more onerous than is required by the parents' own needs.

## Summary flow chart

*This chart summarises the more detailed flow charts inserted at the end of this guidance document by showing the main features of the legal options open to a local authority if it is satisfied that a child is not receiving a suitable education at home*



# 1. What is elective home education?

1.1 Elective home education is a term used to describe a choice by parents to provide education for their children at home - or at home and in some other way which they choose - instead of sending them to school full-time. This is different to education provided by a local authority otherwise than at a school - for example, tuition for children who are too ill to attend school. Throughout this guidance, 'parents' should be taken to include all those with parental responsibility, including guardians (and foster carers, although in this case the local authority may be the corporate parent).

1.2 Educating a child (or children) full-time at home is a rewarding but challenging task. Parents may choose to engage private tutors or other adults to assist in providing a suitable education, but there is no requirement to do so. There are other settings which may be used, for example parental support groups which offer tuition, and companies which give part-time tuition. This can also include provision made at further education colleges for children aged 14 and over.

1.3 Although children being home-educated are not normally registered at any school, parents sometimes choose to make arrangements for a child to receive part of the total provision at a school - the purpose of this will often be to provide education in specific subjects more easily than is possible at home. Such arrangements are sometimes known as 'flexi-schooling'. Schools are under no obligation to agree to such arrangements, but some are happy to do so. When a child is flexi-schooled, the parents must still ensure that the child receives a suitable full-time education but the element received at school must be taken into account in considering whether that duty is met, just as it should be when a child attends other settings on a part-time basis as described above. Bearing that in mind, this guidance applies as much to children who are flexi-schooled as it does to others who are educated at home.

1.4 Parents who choose to educate a child in these ways rather than sending the child to school full-time take on financial responsibility for the cost of doing so, including the cost of any external assistance used such as tutors, parent groups or part-time alternative provision. If the child attends state-funded school or FE college for part of the week, that will have no cost to the parents. Examination costs are also the responsibility of parents if a child does not attend school full-time, although some schools or colleges attended part-time may meet the costs, or the local authority may have a policy of assisting with such costs for children educated at home.

## 2. Reasons for elective home education - why do parents choose to provide it?

2.1 Home education is not the only alternative to school attendance - in any circumstances where a child cannot attend school the local authority should be offering alternative provision to reduce the likelihood that a child will end up without suitable education. Notwithstanding that, there are many reasons why parents do choose to educate children at home, including those set out below:

- Ideological or philosophical views which favour home education, or wishing to provide education which has a different basis to that normally found in schools
- Religious or cultural beliefs, and a wish to ensure that the child's education is aligned with these
- Dissatisfaction with the school system, or the school(s) at which a place is available
- Bullying of the child at school
- Health reasons, particularly mental health of the child
- As a short term intervention for a particular reason
- A child's unwillingness or inability to go to school, including school phobia
- Special educational needs, or a perceived lack of suitable provision in the school system for those needs
- Disputes with a school over the education, special needs or behaviour of the child, in some cases resulting in 'off-rolling'<sup>1</sup> or exclusion
- Familial reasons which have nothing to do with schools or education (eg using older children educated at home as carers)
- As a stop-gap whilst awaiting a place at a school other than the one allocated

2.2 These various reasons for undertaking home education are not mutually exclusive. For some children, several of these factors might apply. When local authorities engage with home-educating families they should take into account the context of individual situations. Often home education will be undertaken as a positive choice which is expected to lead to a better outcome. However in some cases home education may be attempted as a last resort. This appears to be occurring more frequently, and is likely to have implications for the quality of home education provided. Such families may require more support and guidance.

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<sup>1</sup> Used in this document to refer to instances where a child is withdrawn from a school by the parent as a result of pressure from the school rather than it being a purely voluntary decision.

2.3 Local authorities should bear in mind that whatever the reasons, in the majority of cases parents have undertaken home education in what they perceive as the best interests of the child even if they require additional support to undertake home education properly. However, it may be the case that if the local authority discusses home education with parents, the reason initially given for adopting it may not reflect what parents actually do by way of making provision. Whenever possible, local authorities should encourage parents to discuss an intention to home educate children before putting it into effect. They should offer support and advice based on the individual family's motivations, for example by explaining the very substantial time commitments involved in delivering home education properly and suggesting potential alternatives to home education. This is likely to reduce the number of children who receive unsuitable education at home. Many parents considering the prospect of home education may not understand the extent of the time commitment involved or the costs, such as exam fees.

2.4 There are no specific legal requirements as to the content of home education, provided the parents are meeting their duty in s.7 of the Education Act 1996. This means that education does not need to include any particular subjects, and does not need to have any reference to the National Curriculum; and there is no requirement to enter children for public examinations. There is no obligation to follow the 'school day' or have holidays which mirror those observed by schools. Many home educating families do follow a clear academic and time structure but it should not be assumed that a different approach which rejects conventional schooling and its patterns is unsatisfactory, or constitutes 'unsuitable' education. Approaches such as autonomous and self-directed learning, undertaken with a very flexible stance as to when education is taking place, should be judged by outcomes, not on the basis that a different way of educating children must be wrong.

2.5 The local authority should also consider trends in home education in a wider strategic context, for example in identifying shortcomings in local school provision and alternative provision settings, or failures by schools to manage attendance and behaviour properly.



### 3. The starting point for local authorities

#### When is a child of concern?

3.1 If a local authority is aware that a child of compulsory school age is not attending a state or registered independent school full-time, and it is unclear how that child's education is being provided, a local authority should consider the possibility that the child is being educated at home by its parents (possibly in combination with part-time attendance at another setting). In such a case, the local authority's task is to find out how he or she is being educated and whether that education satisfies legal requirements.

3.2 Parents have a right to educate their children at home. Section 7 of the Education Act 1996 provides that:

*"The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable -*

*(a) to his age, ability and aptitude, and*

*(b) to any special educational needs he may have,*

*either by regular attendance at school or otherwise."*

3.3 **This means that the responsibility for children's education rests with their parents.** In England, education is compulsory, but – despite the phrase 'child of compulsory school age' quoted above – going to school is not. State-funded education is made available for all children of compulsory school age whose parents request it, and every child should be in school or receiving alternative provision made by the local authority or the child's school, unless parents themselves can make suitable arrangements. If parents do educate children at home, section 7 means that the child should be getting an efficient, suitable full-time education.

3.4 In the case of some children who are home educated, this means that they have never attended school. More commonly, however, perhaps in around 80-90% of the total in most local authority areas<sup>2</sup>, children who are being educated at home have attended school at some previous point.

3.5 The current legal framework is not a system for regulating home education *per se* or forcing parents to educate their children in any particular way. Instead, it is a system for

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<sup>2</sup> See survey report by Association of Directors of Children's Services (ADCS) at [ADCS survey](#)

identifying and dealing with children who, for any reason and in any circumstances, are not receiving an efficient suitable full-time education. If a child is not attending school full-time, the law does not assume that child is not being suitably educated. It does require the local authority to enquire what education is being provided and local authorities have these responsibilities for all children of compulsory school age. Local authorities should ensure that their enquiries are timely and effective. Depending on the results of those enquiries, the law may require further action by the local authority and the department believes that this is the case for an increasing number of children. Local authorities must take such action where it is required, within the constraints of the law. Local authorities have the same safeguarding responsibilities for children educated at home as for other children. They should be ready to use safeguarding powers appropriately, when warranted. This flows from the general responsibilities which local authorities have for the well-being of all children living in their area.

3.6 Because of this, the department recommends that each local authority should, as a minimum:

- have a written policy statement on elective home education which is clear, transparent and easily accessible by using different formats as necessary, is consistent with the current legal framework and preferably drawn up in consultation with local families who educate children at home so that it can reflect both the challenges and rewards of educating children in this way. It should take into account local circumstances and set out how the authority will seek to engage and communicate with parents;
- set aside the resources necessary to implement its policy effectively and consistently. This is not always easy at a time of constrained resources; but effective implementation in conjunction with work in related areas such as education welfare, children missing education and admissions, can reduce spend in the longer term on families where engagement is difficult;
- consider their organisational structures for dealing with home education and the related areas mentioned above. Although parents who educate their children at home sometimes say that home education should be dealt with in isolation, the reality is that it needs a holistic approach to issues of suitability, attendance, welfare and safeguarding. All of these factors need to be in place to ensure a good education outcome;
- seek to offer guidance to all known home-educating families in their area about their rights and obligations, and also provide advice on good practice and available resources for parents who request it;
- make it clear in all documentation that the local authority sees its role in relation to home education as part of its wider responsibilities, including safeguarding, for all children living in its area;
- regularly review its elective home education policies so that they reflect current law and local circumstances, and are compatible with this guidance document;

- provide clear details of their complaints procedure and deal with all complaints in a sensitive and timely manner.

3.7 Local authorities may often choose to go further than this - for example by operating voluntary registration schemes so that support can be given more readily to those who wish to receive it, and by providing more information on home educated children in their locality. Such schemes can also help authorities discharge the responsibilities which they have under ss. 436A and 437 of the 1996 Act (see below) and the department would encourage those authorities which do not operate voluntary registration to consider doing so. However, registration is currently not a legal obligation for either parents or authorities.

3.8 Local authorities should bear in mind that when Ofsted carries out inspections of local authorities<sup>3</sup>, it reports on the way in which local authorities deal with vulnerable children in their areas. Home-educated children are NOT automatically 'vulnerable'; but some children educated at home do fall into that category, and evidence from many local authorities is that the proportion who do is increasing. Unless a local authority uses all the powers at its disposal at an early stage, it is likely that many of these children will need more drastic – and more expensive – intervention later on.

3.9 Therefore Ofsted will look at the way each local authority deals with this issue, in particular the ways in which it identifies children who are not receiving suitable education and what steps the local authority takes to deal with that. Local authorities should keep known home educators and local home education support organisations informed of forthcoming Ofsted inspections and any input they can have, as well as outcomes of inspections – although reports on these are available on the Ofsted website. Ofsted has no responsibility for inspecting the provision of home education, only the way local authorities deal with it in the context of their statutory responsibilities.

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<sup>3</sup> Under s.136 of the Education and Inspections Act 2006.

## 4. How do local authorities know that a child is being educated at home?

### Children who have never attended school

4.1 One of the most significant issues for local authorities in maintaining adequate oversight is the initial identification of children who are being educated at home. There is no legal duty on parents to inform the local authority that a child is being home educated. If a child never attends school, an authority may be unaware that he or she is being home educated.

4.2 Identification of children who have never attended school and may be home educated forms a significant element of fulfilling an authority's statutory duty under s.436A of the Education Act 1996 - to make arrangements to enable the authority to establish, so far as it is possible to do so, the identities of children in its area who are not receiving a suitable education. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than at school (for example, at home, or in alternative provision). Until a local authority is satisfied that a home-educated child is receiving a suitable full-time education, then a child being educated at home is potentially in scope of this duty. The department's [children missing education statutory guidance for local authorities](#) applies. However, this should not be taken as implying that it is the responsibility of parents under s.436A to 'prove' that education at home is suitable. A proportionate approach needs to be taken.

4.3 It should be noted that the caveat in s.436A 'so far as it is possible to do so' should not be interpreted as meaning 'so far as the authority finds it convenient or practical to do so'. It means what it says, and the authority should do whatever is actually possible. If the department receives a complaint that a local authority is not doing enough to meet its duty under s.436A, it will consider whether there is sufficient basis for making a direction under s.496 or s.497 of the Education Act 1996 so that outcomes for children in that local authority's area can be improved.

4.4 In particular, local authorities should explore the scope for using agreements with health bodies, general practitioners and other agencies, to increase their knowledge of children who are not attending school. Some local authorities already actively encourage referrals from doctors and hospitals of children whom there is reason to think may be home educated. Under s.10 of the Children Act 2004, local authorities should have arrangements in place to promote co-operation between the authority and its partners who deal with children, and under section 11, arrangements should be in place to ensure that functions are discharged with regard to the need to safeguard and promote the welfare of children. These arrangements should include information sharing protocols and it is possible for these to allow sharing of data on children who appear to be home educated and about whom there is a concern as to the suitability of that education which amounts to possible neglect causing significant harm. The Data Protection Act 2018 allows for such sharing of data in principle, but local authorities and their partners will of

course need to ensure that their particular arrangements are fully compliant with data protection legislation under the Act, the GDPR and Article 8 of the ECHR<sup>4</sup>. Subject to that caveat, any local authority which does not have such arrangements in place already should consider doing so and seek advice on good practice from other authorities and relevant associations.

## Children who have attended school

4.5 In some respects, fulfilling the s.436A duty in relation to children who may be home educated is easier for local authorities when a child has previously attended a school, but it is not necessarily the case that such children will automatically become known to the local authority.

4.6 Although most local authorities encourage parents who withdraw a child from school for home education to notify the school and/or the authority, (and DfE guidance to parents also encourages this) there is no legal obligation on parents to provide such notification, either in writing or otherwise, or indeed to provide any reason for withdrawal. The only exceptions to this are (a) that a child may not be removed from the roll of a special school without the consent of the local authority if enrolled there under arrangements made by the local authority<sup>5</sup>, and (b) in cases where a child is enrolled at a school in accordance with a school attendance order, when the authority must revoke the order (or amend it to replace the school with a different school) before the child can be removed from the roll<sup>6</sup>. However, it should be noted that until a child is removed from the school roll (which can only be when one of the trigger points specified in the Education (Pupil Registration) (England) Regulations 2006 as amended is reached), the parent is at risk of prosecution for not securing attendance at the school even if suitable home education is being provided. This means that it is in a parent's interests to notify the school in writing of withdrawal for home education.

4.7 It was formerly the case that schools were obliged by the 2006 Pupil Registration Regulations to notify the local authority that a child had been withdrawn for home education only when the school had been notified of this in writing by the parents. From September 2016 the regulations were amended so that the local authority must now be informed of all deletions from the admission register when this takes place at a non-standard transition time. Local authorities should also consider using their power to require schools (including independent schools) to provide information, under

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<sup>4</sup> It is likely to be lawful for a LA to process (i.e. record and/or use) such information, on the basis that the processing would be necessary for the performance of a public task within the meaning of the GDPR and the Data Protection Act 2018; specifically, necessary for 'the exercise of a function conferred on a person by an enactment or rule of law'. The function in question could for example be one of, or a combination of, sections 436A and 437 of the Education Act 1996, section 175 of the Education Act 2002, section 47 of the Children Act 1989, and section 22 of the Children and Families Act 2014. Where the data is 'special category' data within the meaning of the GDPR then the LA will also need to check that a relevant exception applies.

<sup>5</sup> Regulation 8(2), Education (Pupil Registration) (England) Regulations 2006.

<sup>6</sup> Regulation 8(1)(a) of the same regulations

arrangements set out by the authority concerned, about children who leave at the school's standard transition times, to help ensure that there is knowledge at local authority level of a child's schooling status. Ofsted is likely to ask local authorities about withdrawal rates at schools and whether action has been taken to identify patterns and a suitable strategic response. Local authorities are entitled to ask schools whether there is any further information available which would suggest that a child may be now home educated, but a school may genuinely not know the reason for withdrawal. A state-funded school must respond reasonably to any request from the local authority for any information it has about the reasons for withdrawal.

4.8 As set out in the statutory guidance on Children Missing Education referenced above, local authorities should also be working with each other to identify children, and share data about those who have left a school in one local authority area but have moved to another.

4.9 These changes mean that a local authority should be more readily able to identify and record children in its area who are being home educated or may be home educated and for whom the suitability of education being provided has not yet been firmly established or is due for review. LAs should use all sources of information available to them, such as that supplied by NHS sources and their own social services departments, to compile and maintain records of all children of compulsory school age who are not registered at schools. They can then find out, and keep under review, whether each of those children is being suitably educated or not. Such a record need not be based wholly or even partly on parental registration of such children, although it must of course be compliant with the GDPR and the Data Protection Act 2018 (see footnote above).

## 5. Local authorities' responsibilities for children who are, or appear to be, educated at home

5.1 The duty under s.436A dealt with above means that local authorities must make arrangements to find out so far as possible whether home educated children are receiving suitable full-time education.

5.2 Discussion of local authority responsibilities in relation to home education tends to centre on those families where the education is unsatisfactory - or at least potentially so - and an authority's home education policies need to be clear about the processes used in such cases - which as noted previously, are increasing in number. However, local authorities' policies should also make clear how the authority interacts with those families where a suitable full-time education is being provided and both parties wish to maintain a suitable level of contact and assurance. Children in these families where children do receive a suitable education at home form a large part of the total number of home educated children in England. It is important that the authority's arrangements are proportionate and do not seek to exert more oversight than is actually needed where parents are successfully taking on this task. Often, having in place a system which is based on a presumption that it will be parents who initiate contact with the authority if necessary will yield good results when the parents are known to be providing good education. However, it is also necessary that the local authority is able to act in the interests of the child, particularly if a change in his or her circumstances occurs. Local authorities should be clear that maintaining such oversight is a legitimate part of their overall responsibilities towards the children living in their area (for example as set out in s.13A of the Education Act 1996 shown below) and act accordingly:

A local authority in England must ensure that their relevant education functions and their relevant training functions are (so far as they are capable of being so exercised) exercised by the authority with a view to—

- (a) promoting high standards,
- (b) ensuring fair access to opportunity for education and training, and
- (c) promoting the fulfilment of learning potential by every person to whom this subsection applies.

In this context, relevant education functions include those under sections 436A to 447 of the Education Act 1996 and the authority should act accordingly.

5.3 There are no detailed legal requirements as to how such a system of oversight should work, and it is for each local authority to decide what it sees as necessary and proportionate to assure itself that every child is receiving a suitable education, or action is being taken to secure that outcome. Establishing a positive relationship between the local authority and the home-educating parent – where that is possible - will allow authorities to better understand parents' educational provision and preferences and offer them appropriate support. A positive relationship will also provide a sound basis for investigation if the authority receives information that a suitable education is not being

provided.

5.4 In any event, the department recommends that each local authority:

- should provide parents with a named contact who is familiar with home education policy and practice and has an understanding of a range of educational philosophies;
- ordinarily makes contact with home educated parents on at least an annual basis so the authority may reasonably inform itself of the current suitability of the education provided. In cases where there were no previous concerns about the education provided and no reason to think that has changed because the parents are continuing to do a good job, such contact would often be very brief;
- has a named senior officer with responsibility for elective home education policy and procedures, and the interaction with other work on issues such as children missing education, unregistered settings, vulnerable children, and welfare;
- organises training on the law and the diversity of home education methods for all officers who have contact with home-educating families, possibly in conjunction with other authorities;
- ensures that those LA staff who may be the first point of contact for a potential home-educating parent understand the right of the parent to choose home education. It is very important that parents are provided with accurate information from the outset to establish a positive foundation for the relationship. However, parents are under no obligation to accept support or advice from a local authority, and refusal to do so is not in itself evidence that the education provided is unsuitable;
- works co-operatively with other relevant agencies such as health services to identify and support children who are being home educated, within the boundaries established by data protection and other legislation.



## 6. What should local authorities do when it is not clear that home education is suitable?

6.1 Questions as to the suitability of home education provision most often arise either when a child is first being home educated, or alternatively when there is a change in the circumstances of a child whose education was previously satisfactory. In the latter case, this change may not be a specific event; it can simply be that as a child grows older, the provision of education is becoming beyond the resources of the parents.

6.2 Families beginning home education sometimes state that they are entitled to a period during which the home education provided for the child may not meet the requirements in s.7 because they are still, as it were, building up the provision to a satisfactory level. Some parents may go further and describe this period as being necessary for 'de-schooling'. There is no legal basis for such a position. Any statement along these lines could be an indication that the child is not being properly educated. It is not unreasonable that good home education develops with experience as a child becomes used to being in a different learning environment and parents 'find their feet', and it would be unrealistic to make a judgement about the suitability of home education provision only a few days after it is started. However, families should be aiming to offer satisfactory home education from the outset, and to have made preparations with that aim in view, as time lost in educating a child is difficult to recover. In such cases, a reasonable timescale should be agreed for the parents to develop their provision; it is easier to do this if the parents are engaging constructively with the local authority but in any event, there should be no significant period in which a child is not receiving suitable education, other than reasonable holiday periods at appropriate points.

6.3. This section of the guidance deals with the sequence of action which may have to be undertaken when educational provision for a child of compulsory school age appears to be unsuitable.

6.4 The department's advice is that in all cases where it is not clear as to whether home education is suitable (including situations where there is no information available at all), the authority should initially attempt to resolve those doubts through informal contact and enquiries. This is likely to be the most productive initial approach even when a child is not being suitably educated. An authority's s.436A duty (and that under s.437, see below) forms sufficient basis for informal enquiries. Furthermore, s.436A creates a duty to adopt a system for making such enquiries. Local authorities should be in no doubt about the necessity for doing this in order to make an early move to formal procedures under s.437 if necessary, thus avoiding delay in securing a suitable education when it is not being provided.

6.5 The most obvious course of action is to ask parents for detailed information about the education they are providing. Parents are under no duty to respond to such enquiries, but if a parent does not respond, or responds without providing any information about the child's education, then it will normally be justifiable for the authority to conclude that the child does not appear to be receiving suitable education and it should not hesitate to do

so and take the necessary consequent steps. This is confirmed by relevant case law.<sup>7</sup> In many cases, making such informal enquiries will allow the situation to be resolved, either by evidence being provided that the home education is suitable or by agreement on alternative approaches to educating the child based on the local authority's initial assessment (for example, by catering for special needs in a different way).

6.6 Informal enquiries can include a request to see the child, either in the home or in another location. But the parent is under no legal obligation to agree to this simply in order to satisfy the local authority as to the suitability of home education, although a refusal to allow a visit can in some circumstances justify service of a notice under s.437(1).<sup>8</sup> The question of access to the child in relation to safeguarding powers is dealt with in a later section of this guidance.

6.7 It should be borne in mind that there are alternatives which fulfil the parents' s.7 duty other than full-time education at home: these include flexi-schooling, which is described in a later section.

6.8 If informal contacts do not resolve the position, then the 1996 Act provides a framework for formal action to ensure that a child does receive suitable education.

6.9 Under s.437(1) of the Education Act 1996, local authorities must act if it appears that parents are not providing a suitable education. This section states that:

*"If it appears to a local authority that a child of compulsory school age in their area is not receiving suitable<sup>9</sup> education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education."*

Section 437(2) of the Act provides that the period specified for a response shall not be less than 15 days beginning with the day on which the notice is served.

6.10 Local authorities considering whether they should serve a s.437(1) notice in a specific case should note that current case law means that a refusal by parents to provide any information in response to informal enquiries will in most cases mean that the authority has a duty to serve a notice under s.437(1). This is because where no other information suggests that the child is being suitably educated, and where the parents have refused to answer, the only conclusion which an authority can reasonably come to, if it has no information about the home education provision being made, is that the home education does not appear to be suitable. Local authorities should take care to ensure that the family has received any enquiries, and is not simply absent.

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<sup>7</sup> *Phillips v Brown* [1980] Lexis Citation 1003

<sup>8</sup> *Tweedie v Pritchard* [1963] Crim LR 270; *R v Surrey Quarter Sessions Appeals Committee ex parte Tweedie* [1963] Crim LR 639.

<sup>9</sup> 'suitable' means efficient, full-time, and suitable to the child's age, ability, and aptitude, and to any special educational needs they may have (section 436A(3) of Education Act 1996))

6.11 The local authority must consider any response made by the parent to the s.437(1) notice, in the light of s.437(3). Section 437(3) refers to the serving of school attendance orders:

*"If –*

*(a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local authority, within the period specified in the notice, that the child is receiving suitable education, **and***

*(b) in the opinion of the authority it is expedient that the child should attend school,*

*the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order."*

Nb. If the school in question is an academy, the authority should seek its agreement to that school being named in the order. If an academy is then named in an order which is made, and the academy does not agree with this, a direction may be sought from the Secretary of State.

6.12 In considering whether it is satisfied by the parent's response to the s.437(1) notice, it is open to the authority to consider any other relevant information available to it – not only through its own contacts with the family, but also information provided by other agencies and other sources and the child's former school (if any), as to the child's circumstances and needs. The authority should make arrangements to gather and record as much information as possible from these alternative sources. Of course, the local authority should give reasonable weight to information provided by parents, on its own merits. For example, an authority should not dismiss information provided by parents simply because it is not in a particular form preferred by the authority (eg, a report by a qualified teacher). On the other hand the information provided by parents should demonstrate that the education actually being provided is suitable and address issues such as progression expected and (unless the home education has only just started) achieved. It should not be simply a statement of intent about what will be provided, or a description of the pedagogical approach taken – this would not enable the authority to reach a legitimate conclusion that a suitable education is actually being provided. This is often a key point in separating out families which are genuinely providing a suitable education at home from those who are not, because the latter often cannot demonstrate satisfactory content or measurement of progress.

6.13 The information needed to satisfy the test in s.437(3)(a) depends on the facts of the case and the judgement of the local authority. However, if the parent refuses to make any substantive response to a notice served under s.437(1) that refusal in itself is likely to satisfy the test in s.437(3)(a) - and such a parent should expect to be served with a school attendance order.

6.14 The other limb of s.437(3) relates to whether the authority considers that it is expedient for the child to attend school. If the home education is not suitable in terms of s.7, then normally it would be expedient<sup>10</sup>. However, there are cases in which the authority might reasonably take the view that it is not expedient. Examples where this position could be justified are:

- a. if the child is within a few weeks of ceasing to be of compulsory school age (especially as there may be a delay in enforcement through the courts);
- b. if the child has physical, medical or educational needs leading to extreme vulnerability in a school setting - and the local authority should then consider alternatives such as tuition provided by the authority itself;
- c. the parent is actively working with the authority to improve the home education and seems likely to achieve suitability within a very short time.

## After a school attendance order is served

6.15 At any stage following the issue of the order, parents may present evidence to the local authority that they have now made satisfactory arrangements for the child's education and apply to have the order revoked. This evidence must be considered, and the order must be revoked unless the authority is of the opinion, having considered that evidence, that the parents have not made satisfactory arrangements.

6.16 If the local authority refuses to revoke the order, parents can choose to refer the matter to the Secretary of State, who may give a direction to the local authority which either requires revocation of the order, or confirms it (s.442 of the Education Act 1996).

6.17 Whether or not the parents have sought revocation and intervention by the Secretary of State, if they do not cause the child to be registered at a school, and regularly attend it, then the authority should consider prosecution, and should proceed with this unless there is very good reason not to do so. An example of that might be because the circumstances point to seeking an Education Supervision Order instead of prosecution (see following section on safeguarding). Under s.447(1) of the 1996 Act, a local authority considering prosecuting a parent for non-compliance with a school attendance order must in any case consider, either as an alternative to prosecution or as well as prosecution, making an application for an Education Supervision Order.

6.18 If the local authority does prosecute the parents for not complying with the school attendance order, then it will be for a court to decide whether or not the education being provided is suitable, full-time and efficient. The court can direct that the order shall cease to be in force if it is satisfied that the parent is fulfilling his or her duty.

6.19 The department is aware that some local authorities have been reluctant to

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<sup>10</sup> In *Phillips v Brown*, 'expedient' was defined as 'advantageous, fit, proper or suitable to the circumstances of the case'

prosecute for non-compliance with a school attendance order, for reasons connected with costs, and the behaviour of some parents who deliberately withhold information about home education provision but are then able to easily satisfy the court that the home education is suitable. This is an understandable concern, but local authorities must bear in mind their public responsibilities as prosecutors; in such cases they may wish to seek legal advice about the prospect of obtaining a costs order against a successful defendant on the basis that the prosecution would have been unnecessary if not for the defendants' unreasonable conduct.

6.20 It should be noted that the offence of not complying with a specific school attendance order is only committed once. Therefore if a parent is convicted and fined, but still does not send the child to school, the process of serving a notice under s.437(1) and if necessary, serving a further order under s.437(3) must be undertaken again. This means that a parent willing and able to be fined repeatedly can continue the unsatisfactory provision of home education indefinitely, if the local authority relies on education law alone. The implication of this is that in such cases the local authority will need to consider using other powers - see the following section on safeguarding.

6.21 Under section 8 of the Crime and Disorder Act 1998, when a person is found guilty of breaching a school attendance order, the court can make a parenting order. A parenting order requires the parent to attend up to three months of a counselling or guidance (which can be specified by the local authority). The court can add other requirements intended to prevent the parent committing the offence again. Such an order can only be made if there is provision for such counselling or guidance. A breach of the order can result in a substantial fine. Local authorities should consider whether there is scope for seeking such an order in appropriate cases.

6.22 The department will be happy to support local authorities to test the boundaries of current case law through discussion with them of potentially difficult home education cases which they are contemplating bringing before the courts, on the basis that the public interest means that local authorities should take this approach in suitable circumstances.

## 7. Safeguarding: the interface with home education

7.1 A situation in which a child is not receiving a suitable full-time education requires action by a local authority under education law, as described above. But it is important to bear in mind that unsuitable or inadequate education can also impair a child's intellectual, emotional, social or behavioural development, and may therefore bring child protection duties into play. This will depend on the facts of the case, but local authorities should consider whether they ought to take action under safeguarding law, especially where the steps described above have not been, or seem unlikely to be, sufficient to address a risk to a child's welfare

7.2 Sections 10 and 11 of the Children Act 2004 give local authorities general duties for promoting the well-being and (in relation to their non-education functions) safeguarding and promoting the welfare of children in their areas. This includes children educated at home as well as those attending school. Section 175 of the Education Act 2002 requires authorities to make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting children's welfare. Therefore the general duties of local authorities in relation to safeguarding are the same for all children, however they are educated. Social services teams in local authorities and those dealing with home education should take steps to ensure that relevant information on individual children is shared.

7.3 There is no proven correlation between home education and safeguarding risk. In some serious cases of neglect or abuse in recent years, the child concerned has been home educated but that has not usually been a causative factor and the child has normally been known anyway to the relevant local authority. However, a child being educated at home is not necessarily being seen on a regular basis by professionals such as teachers and this logically increases the chances that any parents who set out to use home education to avoid independent oversight may be more successful by doing so. Several recent Serious Case Reviews have illustrated this. However, safeguarding is not simply a matter which arises in relation to the family. Some parents who educate at home believe that by doing so, they are safeguarding the child from risk in the school system (eg through serious bullying).

7.4 Local authorities should approach all cases where the suitability of home education is in doubt using their powers in the Education Act 1996, but they should also be ready, if a lack of suitable education appears likely to impair a child's development, to fully exercise their safeguarding powers and duties to protect the child's well-being, which includes their suitable education. In the light of this, local authorities should also ensure that their published home education policies, and their staff, clearly state the circumstances where safeguarding action is likely to be appropriate in cases where a child is not or may not be receiving suitable education. Such clarity will also reduce the likelihood of disputes with parents caused by ambiguity over the powers which local authorities have, and how they can be applied to home educated children in certain circumstances.

7.5 A failure to provide suitable education is capable of satisfying the threshold requirement contained in s.31 of the Children Act 1989 that the child is suffering or is likely to suffer significant harm. 'Harm' can include the impairment of health or development, which means physical, intellectual, emotional, social or behavioural development, so the provision of unsuitable education clearly can amount to this. The causing of significant harm need not be intentional or deliberate, but case law<sup>11</sup> indicates that it must be 'considerable, noteworthy or important'. This is a key point for local authorities in considering whether the use of safeguarding powers is appropriate in a case relating to the home education of a specific child. However, local authority staff should be clear that when the use of safeguarding powers is justified, they should be used.

7.6 Whether the provision of unsuitable education does amount to significant harm must always depend on the particular circumstances of the child, and whether those circumstances mean that the child's intellectual and social development are being, or are likely to be, significantly impaired. Case law does provide examples where lack of suitable education has amounted to significant harm.<sup>12</sup> Although some cases will be relatively clear-cut (for example if a child was being provided with no education at all for months), in other cases a local authority may need expert advice from teachers or educational psychologists, preferably those with some familiarity with educational approaches which are wider than conventional schooling.

7.7 Sometimes the local authority may not have been able to obtain sufficient information to determine whether the significant harm threshold is met and the authority should consider employing its powers under Part 5 of the Children Act 1989.

7.8 The starting point for this would normally be an investigation under s.47 of the 1989 Act, which requires an authority to make enquiries to enable it to decide whether action should be taken to protect the child's welfare, if it has reasonable cause to suspect that the 'significant harm' threshold referred to above is met. Reasonable cause can include the lack of any substantive information about a child's education, so if the 'if it appears' test in s.43(1) is satisfied, then there will usually be reasonable cause in terms of s.47. These enquiries can include taking steps to gain access to the child.

7.9 Such enquiries may yield enough information. If they do not, and in particular because the parents refuse access to the child then the authority has a number of options available. It can apply to a court for a child assessment order under s.43 of the 1989 Act. For such an order to be made there must be reasonable cause to suspect that the significant harm threshold is met, the assessment must be necessary to determine whether the threshold is met, and it must be unlikely that an assessment would be satisfactorily made without such an order.

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<sup>11</sup> *In re B (A Child)(Care proceedings: Threshold Criteria)[2013] 1 WLR 1911*

<sup>12</sup> *Re S(A Minor) (Care Order: Education) [1978] QB 120* and *Re O (A Minor) (Care Proceedings: Education) [1992] 1 WLR 912*

## Education Supervision Orders

7.10 In many cases the use of an education supervision order (ESO) under s.36 of the 1989 Act will in any case be appropriate and sufficient. These orders are made under s.36 of the Children Act 1989 and give local authorities a formal supervisory role in the education of children who are subject to them. The High Court or the Family Court can make an order if satisfied that a child of compulsory school age is not receiving efficient full-time education suitable to the child's age, ability and aptitude and to any special educational needs they may have. Where a school attendance order is in force for the child but has not been complied with, there is a presumption that the child is not receiving a suitable education unless the contrary is demonstrated. The advantage of an education supervision order is that it continues to be in force so long as determined by the court (which may extend it beyond the initial one-year term); it is not a 'one-off' like prosecution for non-compliance with a school attendance order.

7.11 As noted previously, the use of an ESO should in any case be considered as an alternative to, or as well as, prosecution for non-compliance with a school attendance order. Use of an Education Supervision Order does not depend on the 'significant harm' threshold being met, and under s.36(5) of the 1989 Act, unless it is proved that a child who is currently subject to a school attendance order is being properly educated, then it is assumed that he or she is not, for the purposes of deciding whether an ESO should be made. Applying for an ESO will often be the proportionate response when parents are not complying with a school attendance order.

7.12 The local authority is under a duty, if an ESO is made, to give 'due consideration' to the 'wishes and feelings' of the child and the parent(s); and this might result in improved home education. However, an ESO imposes a duty on parents to allow the supervisor (the authority) reasonable contact with the child, though this need not necessarily be at the child's home - unless the court imposes a visit at home as a specific condition of the order (paragraph 16 of Schedule 3 to the 1989 Act). Persistent failure to comply with direction given under an ESO is an offence unless the parent can show that he has taken all reasonable steps to comply, or that the direction is unreasonable. But in such cases the authority should be prepared to first make clear to the parents that the result of this may be an application to the court for a care order under s.31 of the Children Act 1989. This makes ESOs potentially very useful in ensuring that a child is suitably educated if one is appropriate.

## Care orders

7.13 Whether or not an ESO is made, if it is concluded that the significant harm threshold is met but the parents continue to refuse to remedy the situation, it is highly unlikely that circumstances would make it appropriate to seek an emergency protection order under s.44 of the 1989 Act. However, it may be necessary in certain cases to apply for a care order under s.31. The effect of such an order is that the local authority is given parental responsibility for the child and has him or her in its care while the order remains in force.



The authority also has power to determine the extent to which a parent may meet his or her parental responsibility for the child. It is not necessarily the case that the child is removed from the parental home; the care plan filed with the court by the local authority would set out where it was proposed the child would live and it is for the court to approve that, or not. If the child did live at home but the parents did not comply by causing the child to attend school - assuming the authority has decided he or she should - then the child could be removed from the home into the local authority's direct care. The use of such an order is of course a last resort, and should only be necessary in a very small minority of cases. But the key point for local authorities to bear in mind – and make clear to parents – is that this could be the end result of continued failure to provide suitable education and a continued obstruction of an authority's efforts to ensure that the child receives suitable education.

7.14 It must be emphasised that resorting to the use of care orders should only arise very rarely, in the most egregious cases of a failure to provide a suitable education, and a persistent refusal by parents to co-operate with the local authority. By demonstrating a determination to use last resort powers when necessary, the likelihood of having to deploy them is generally greatly reduced.

7.15 Statutory guidance on these provisions of the 1989 Act and ss.10 and 11 of the 2004 Act, among other child safeguarding and welfare matters, is set out in [Working Together to Safeguard Children](#).

## 8. Home-educated children with special educational needs (SEN)

8.1 The parents' right to educate their child at home applies equally where a child has SEN. This right is irrespective of whether the child has a statement of special educational needs or an Education, Health and Care Plan (EHC plan), or neither. References hereafter to 'EHC plans' include statements of SEN unless otherwise stated. It can, of course, be the case that a local authority has no knowledge of a child's special educational needs if the family has not sought assessment or support. However, local authorities have a duty under s.22 of the Children and Families Act 2014 to try to identify all children in their areas who have SEN. This includes home-educated children.

8.2 Local authorities must have regard to the statutory guidance in the [Special Educational Needs Code of Practice](#) when carrying out SEN functions. The Code provides information about SEN in relation to home education (paragraphs 10.30 – 10.38). The Code emphasises the importance of local authorities and other providers working in partnership with parents. They must fulfil their statutory duties towards children and young people with SEN or disabilities in the light of the guidance set out in it.

8.3 Some parents educate, or attempt to educate, children at home because of dissatisfaction with local SEN provision. However, educating at home a child who has special needs is often more difficult than for other children. Local authorities should do their best to ensure that when children with special educational needs are being educated at home, the full range of powers available are used to ensure that the education is suitable and remains so; and that their assessment of this is properly linked with the process of keeping special needs provision under review.

8.4 When a child has a EHC plan, it is the local authority's duty to ensure that the educational provision specified in the plan is made available to the child - but only if the child's parents have not arranged for the child to receive a suitable education in some other way. Therefore if the home education is suitable, the local authority has no duty to arrange any special educational provision for the child; the plan should simply set out the type of special educational provision that the authority thinks the child requires but it should state in a suitable place that parents have made their own arrangements under s.7 of the Education Act 1996. The authority will of course continue to check the suitability of the home education as required by sections 436A and 437 of the 1996 Act, and if at any point it considers that the home education is no longer suitable, it must ensure that the special educational provision specified in the EHC plan is made available.

8.5 Under s.19 of the Children and Families Act 2014, a local authority must have regard to the views, wishes and feelings of the child and parents when exercising its SEN functions. Where parents feel strongly that their child with SEN (with or without an EHC plan) should be educated at home but cannot undertake this themselves, and the local authority agrees that it would be inappropriate for the child to receive the necessary special educational provision in a school, post-16 institution, or state-funded early years setting, the authority has the power, under s.61 of the 2014 Act, to arrange for the special

educational provision that the child requires to be made in the child's home. If a local authority does this for a child with an EHC plan, the plan should clearly explain the arrangements, and the authority will have a duty under s.42(2) to ensure that the education specified in the plan is provided. It is important to distinguish between a situation like this, in which a local authority itself arranges special educational provision in a child's home because it considers education in a school or other institution inappropriate, and a situation in which a child's parents arrange their own home education as described in the paragraph above. The former is not 'elective home education'.

8.6 If a school already attended by a child is a special school and the child is attending it under arrangements made by the local authority, the local authority's consent<sup>13</sup> is necessary for the child's name to be removed from the admission register, but this should not be a lengthy or complex process and consent must not be withheld unreasonably. If the child is to be withdrawn to be educated at home then the local authority, in deciding whether to give consent, should consider whether the home education to be provided would meet the special educational needs of the child, and if it would, should give consent. However, that consideration should take into account the additional difficulties of providing education at home to a child whose special educational needs are significant enough to warrant a place at a special school. There is no equivalent requirement for children with an EHC Plan who attend a mainstream school; the parents of a child may withdraw him or her without the local authority's consent, although they should be encouraged to engage with the authority before doing so, whenever possible.

8.7 As with other children educated at home, local authorities do not have a right of entry to the family home to check that the provision being made by the parents for a child with special educational needs is appropriate, and may only enter the home at the invitation of the parents. However, parents should be encouraged to see a process of engagement with the child as part of the authority's overall approach to home education of pupils with SEN, including the provision of appropriate support, rather than an attempt to undermine the parents' right to home educate. Local authorities should not assume that because the provision being made by parents is different from that which was being made or would have been made in school, the provision is necessarily unsuitable.

8.8 Although local authorities have power under s.61 of the Children and Families Act 2014 (as described above) to arrange to make the special educational provision that they consider necessary for a child with special educational needs in the form of education provided at home (eg through tutors), that is not the same as parents deciding to educate the child at home. The latter is not a matter for a local authority to 'arrange'. If a local authority offers the special education provision that it considers necessary and appropriate for a child (whether at a school or other education setting or at home) but the child's parents choose to make their own arrangements rather than taking up that offer, the local authority has no duty to then assist the parents with the costs they incur, and many local authorities do not. However, even if a local authority's general policy is not to

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<sup>13</sup> Regulation 8(2) of the Education (Pupil Registration) (England) Regulations 2006

provide such support, it must give reasonable consideration to any request for assistance - including considering whether it has any legal power to comply with the request and whether in the circumstances it ought to do so. The high needs block of the Dedicated Schools Grant is intended to fund provision for all relevant children and young people in the authority's area, including home-educated children, although the majority of the high needs block will inevitably be devoted to the cost of school placements. Direct support to the parents, if given at all, should relate only to costs incurred by parents as a result of the special needs of the child, insofar as these can reasonably be identified. Costs which would be incurred anyway by the parents in providing home education even if there were no special needs (for example the cost of day-time heating), should not be funded, in line with the general position that parents who choose to educate children at home bear the financial responsibility for doing so, since a state school place (or state-funded place) is available for the child.

8.9 In some cases a local authority will conclude that the home education provision that is being made for a child with a EHC plan is not suitable. In such cases the procedure to be followed in s.437 of the Education Act 1996 is the same as for other children who are educated at home but are not receiving a suitable education, although the consideration of suitability may well be more complex and need to draw on a wider variety of information, for example educational psychologist reports. Furthermore, the naming of a school in the order must conform with the provisions of s.441. Parents who have withdrawn a child from a setting they regarded as unsatisfactory may co-operate more willingly with this process if the authority is willing to explore options which are different in nature from the previous setting.

8.10 When a home-educated child's EHC plan names a school, some local authorities instruct the school to add the child's name to its admission register without the parent's agreement, with the result that the parent is committing an offence if the child does not attend the school. It is not lawful for a school to do this, and local authorities should ensure that both schools and their own staff know that. It is up to the child's parent whether to arrange for the child to be registered as a pupil at the school, and if the parent does not, the local authority should then consider whether a s.437(1) notice, and in due course a school attendance order, should be issued.

8.11 Information about the right to request an EHC needs assessment and the right to appeal should be available to all parents including those who are considering home education because they feel that the special educational support being provided in the school is insufficient to meet the child's needs. The authority should be ready to help explore with parents and the school the extent to which additional support can be put in place at the school even if initial efforts to secure this have not worked.

8.12 Even if the parent is making suitable alternative arrangements by the provision of home education the local authority is still under an obligation to conduct an annual review of the EHC plan, and that should provide an opportunity for parents to seek additional support or discuss alternatives to home education.

8.13 Young people may also be educated at home in order to meet the requirements to participate in education or training until the age of 18. Local authorities should involve parents, as appropriate, in the reviews of EHC plans of home educated young people who are over compulsory school age.

## 9. What do the s.7 requirements mean?

9.1 Section 7 of the 1996 Act requires parents to provide an efficient, full time education suitable to the age, ability and aptitude of the child and any special educational needs which the child may have.

### ‘Suitable’

9.2 Article 2 of Protocol 1 of the European Convention on Human Rights states that:

*"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions."*

9.3 This means that the wishes of parents are relevant. However, it does not mean that parents are the sole arbiters of what constitutes a suitable education. There is no definition of a ‘suitable’ education in English statute law. A court will reach a view of suitability based on the particular circumstances of each child and the education provided.

9.4 However, clearly a local authority must have a basis on which to reach the decisions called for in s.437 of the Education Act 1996 as to whether or not the education being provided is suitable. The term ‘suitable’ should be seen in the following light:

a. it should enable a child to participate fully in life in the UK by including sufficient secular education. This means that even if the home education is primarily designed to equip a child for life within a smaller community within this country it should not foreclose the child’s options in later life to adopt some other mode of living, and to be capable of living on an autonomous basis so far as he or she chooses to do so. This view is compatible with the small amount of potentially relevant case law;<sup>14</sup>

b. notwithstanding (a), the home education provision does not need to follow specific examples such as the National Curriculum, or the requirement in academy funding agreements for a ‘broad and balanced’ curriculum, nor the independent school standards prescribed by the Secretary of State<sup>15</sup>. Conversely, however, if the home education does consist of one or more of those, then that would constitute strong evidence that it was ‘suitable’ in terms of s.7;

c. local authorities should interpret ‘suitable’ in the light of their general duties, especially that in s.13 of the Education Act 1996 relating to the development of their community, and that in s.175 of the Education Act 2002 requiring that

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<sup>14</sup> Eg *Harrison & Harrison v Stevenson* (Appeal, 1981, Worcester Crown Court, unreported) and *R v Secretary of State for Education and Science ex parte Talmud Torah Machzikei Hadass School Trust* (April 1985, unreported)

<sup>15</sup> In regulations made under s.94 of the Education and Skills Act 2008

education functions are exercised with a view to safeguarding and promoting the welfare of children. Whilst these duties are very broadly drawn, it will be evident that if home education provided by a family taught children values or behaviour which was in conflict with 'Fundamental British Values' as defined in government guidance<sup>16</sup> (for example by seeking to promote terrorism, or advocating violence towards people on the basis of their race, religion or sex), then it would not be in accordance with the authority's general duties to regard that education as being 'suitable'. However, there is no requirement on parents to actively promote the Fundamental British Values in the same way as there is for schools;

d. the first sentence of ECHR Article 2 of Protocol 1 quoted above confers the fundamental right to an effective education, and relevant case law<sup>17</sup> also confers very broad discretion on the state in how this is to be implemented. For example, a local authority may specify requirements as to effectiveness in such matters as literacy and numeracy, in deciding whether education is suitable, whilst accepting that these must be applied in relation to the individual child's ability and aptitudes;

e. although it may well be a good starting point in assessing suitability to assess whether the curriculum and teaching have produced attainment in line with the national norms for children' of the same age, it must be borne in mind that the s.7 requirement is that the education is suitable to the child's ability and aptitude. If a child's ability is significantly above or below what might be regarded as 'average' then allowances must be made for that; and similarly the home education may legitimately cater specifically for particular aptitudes which a child has, even if that means reducing other content;

f. factors such as very marked isolation from a child's peers can indicate possible unsuitability. Suitable education is not simply a matter of academic learning but should also involve socialisation;

g. any assessment of suitability should take into account the environment in which home education is being provided. Most obviously, home accommodation which is noisy and/or cramped is likely to make it very difficult for a child to learn and make satisfactory progress. Environmental factors such as these may therefore prevent a child receiving suitable education and should be taken into account in assessing suitability in a specific case if present on a significant scale. They may also affect consideration as to whether the education is 'efficient' and indeed whether it is being 'received' at all in s.7 terms. Local authorities should also be alert to any evidence that the home in which education is being provided has defects which, whilst not affecting the education directly, suggest that the child is at risk of harm - for instance because of fire hazards in the home. Any such evidence may be relevant in considering the use of safeguarding powers;

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<sup>16</sup> [Fundamental British Values Government Guidance](#)

<sup>17</sup> Eg *Konrad v Germany* (2006) European Court of Human Rights app. 35504/03

h. local authorities should not set rigid criteria for suitability which have the effect of forcing parents to undertake education in particular ways, for example in terms of the pattern of a typical day, subjects to be followed and so on. Some parents may decide that a very formal approach is necessary; others may decide to make a more informal provision that is more appropriate to the particular child. Whatever the views of the parents, the key focus for the authority should be on suitability for the child in question.

9.5 The department does not believe that it is in the interests of home educated children, parents or local authorities for there to be detailed centralised guidance on what constitutes suitability. This issue should be viewed on a spectrum, and although there will be clear conclusions to be drawn at either end of that spectrum, each case must rest on a balance of relevant factors depending on the circumstances of each child.

9.6 Local authorities should nonetheless attempt to make clear in their home education policies what overall factors they will take into account and how they will go about assessing suitability.

## **‘Efficient’**

9.7 An efficient education, within the meaning of s.7, is one which achieves what it sets out to achieve. It is important this concept is not confused with suitability. A wholly unsuitable education can be efficiently delivered – but would still be unsuitable.

## **‘Full-time’**

9.8 The starting point is that there is currently no legal definition of what constitutes ‘full-time’ education, either at school or in the home. Although there is no need for home education to replicate school timetables, it may nonetheless be useful for it to be borne in mind that in state schools, children of compulsory school age normally receive around 4.5-5.0 hours of education a day, for about 190 days a year. The department’s registration guidance for independent schools sets 18 hours of operation a week as the baseline for registration of the school. However, in home education there is often continual one-to-one contact; education may take place outside normal ‘school hours’ and term time, and the type of educational activity can be varied and flexible.

9.9 Despite this greater flexibility inherent in home education, local authorities should be enabled by parents to assess the overall time devoted to home education of a child on the basis of the number of hours per week, and weeks per year so that this information can be set alongside that relating to suitability to ensure that the home education meets the requirements of section 7. As with suitability, the issue as to whether education is ‘full-time’ should be viewed on a spectrum but education which manifestly is not occupying a significant proportion of a child’s life (making due allowance for holiday periods) will probably not meet the s.7 requirement.



## Further information

### Children's rights and views

10.1 The United Kingdom has ratified the United Nations Convention on the Rights of the Child (UNCRC). Article 12 of the UNCRC requires states to provide a right for children to express their views and for due weight to be given to those views, in accordance with the age and maturity of the child. This does not give children authority over parents, and a decision to educate a child at home is a matter for parents, in the same way as a decision to send a child to school. If information and views provided by the child cast doubt on whether the education provided is actually suitable in terms of the s.7 criteria (for example, the child indicates that the parent is not providing education suitable to his or her age because the parent does not sufficiently understand the subjects in question) then that opinion might be part of the information leading to a conclusion by the authority that the education is not suitable. However, if the child's attitude to home education is only negative for reasons which are not directly relevant to the s.7 criteria (for example, a child's preference for a change from the home environment during the school day) then it should not bear on the authority's conclusions as to suitability. Nonetheless, if it is clear to the local authority that a child does not wish to be educated at home although the education provided meets the s.7 requirement and there are no safeguarding concerns, it should seek to discuss the reasons for this with the parents and encourage them to consider whether home education is ultimately likely to be successful if their child is unhappy to be educated in this way.

10.2 Section 17(4A) of the Children Act 1989 puts a duty on local authorities to, so far as reasonably practicable, take into account a child's wishes and feelings with regard to the provision of services for a child in need. However, s.17(4A) does not extend local authorities' functions. It does not, for example, place an obligation on local authorities to ascertain the child's wishes about elective home education, as that is not a service provided by the local authority. If a young person has an EHC plan, however, then there is a duty on the local authority to consult with the young person about his or her wishes as to education, including any home education currently provided.

### Disputes between parents

10.3 In some cases two parents (usually divorced or separated, but both having parental responsibility) may disagree as to whether home education is desirable, or at least is being provided properly. The local authority should do its best to obtain full details of who has parental responsibility in such cases. The parent with whom the child lives for most of the time, is normally in effective control of the education provided and whether the child attends school. However that can be subject to a specific issue order made by the Family Court. If the local authority believes that the education being provided in the home in these circumstances is not suitable, it should take action and keep both parents

informed of what is happening, unless there is a specific reason (usually arising from safeguarding considerations) to limit this information for one parent.

10.4 If there is no relevant order by the Family Court, the parent who does not agree with the provision of home education may succeed in getting a child's name entered onto the register of a school. If the child then does not attend that school, both parents may be committing an offence. This situation can arise because the law of education generally assumes that parents will agree on the education of their child. Clearly however it is desirable for matters to be resolved without recourse to the courts and local authorities should attempt to help parents reach a common view on what is in their child's best interests, drawing on support from those who know the child - such as staff at any school that he or she attends or has previously attended - although such mediation may not always be possible

## **Pressure exerted by schools on parents**

10.5 Schools should not seek to persuade parents to educate their children at home as a way of avoiding an exclusion or because the child has a poor attendance record. In the case of exclusion, they must follow the relevant legislation and have regard to the statutory guidance. If the pupil has a poor attendance record, the school and, if appropriate, local authority should seek to address the issues behind the absenteeism and use the other remedies available to them.

10.6 The practice of 'off-rolling' pupils through pressure on parents to withdraw them for home education is thought to be a significant contributor to the increase in numbers of home educated children, particularly those aged 14-16, although information on the practice is difficult to obtain. In such cases it is possible that the parent will be unable to provide proper home education, even if willing to attempt this. Local authorities should seek to reach agreements through schools forums which discourage pressure on parents to educate children at home, and address this issue directly in discussion with relevant schools. Local authorities should also consider informing Ofsted of schools where off-rolling appears to be happening on a significant scale so that this can be looked into at the school's next inspection.

## **Flexi-schooling, and college attendance**

10.7 Although most children educated at home have all the provision made at home, or alternatively partly at home and partly in other ways such as attendance at privately-run part-time tuition settings, it is not essential that this be so. Some children who are educated at home most of the time are also registered at school and attend school for part of the week – perhaps one day a week. The purpose of this is usually to ensure the provision in specific subjects is satisfactory, although it can also help in other ways such as socialisation. If a child is of compulsory school age he or she must, overall, be receiving full-time education even if components of it are part-time.

10.8 Schools are not obliged to accept such arrangements if requested by parents. If they do, then time spent by children being educated at home should be authorised as absence in the usual way and marked in attendance registers accordingly. It is not appropriate to mark this time as 'approved off-site activity' as the school has no supervisory role in the child's education at such times and also has no responsibility for the welfare of the child while he or she is at home. The department does not propose to institute a new attendance code specific to flexi-schooling. Some schools have expressed concern that such absence may have a detrimental effect for the purpose of Ofsted inspection, but this is not the case; some schools with significant flexi-schooling numbers have had good outcomes from Ofsted inspections. Schools which have flexi-schooled pupils should be ready to discuss with Ofsted inspectors the arrangements they have in place to deal with the requirements caused by such pupils. Schools are held to account through inspection for the performance of pupils, and that will include any who attend the school as part of a programme of flexi-schooling.

10.9 Another form of provision available to home educated children aged 14-16 is part-time attendance at further education colleges, sixth form colleges and 16-19 academies or free schools. Again, this is normally to help with specific subjects and/or socialisation. When children who are educated at home attend such college settings part-time then the provision made should be taken into account by the local authority in deciding whether the education provided as a whole for the child meets the s.7 requirement.

## Unregistered settings

10.10 Local authorities may encounter children who are said to be educated at home but in practice spend large amounts of time at various types of unregistered settings. These are distinct from the part-time settings mentioned previously which are genuinely supplementary to home education; the unregistered settings normally provide most if not all the education received by the child. Such settings fall into two main groups:

a. unregistered independent schools. These settings often serve specific communities, whose members may not always understand the legal obligations of parents to ensure a full time suitable education for their children, although in other cases the settings form a type of alternative provision. As unregistered independent schools meeting the criteria for registration, such settings are operating illegally. The department works with Ofsted and local authorities to have them shut down whenever they are found and, where necessary or appropriate, to bring prosecutions. If investigations into home education of children suggest the existence of an unregistered independent school, the department would be grateful to receive relevant information. It is not illegal for parents to send their children to such settings simply because the setting itself is operating unlawfully; but such a setting may not be meeting the educational standards required of registered independent schools and so by sending the child there, a parent may be failing to ensure the child is receiving a suitable education. The local authority

must consider whether the education received by the child taken as a whole, at the setting and at home, is suitable, and take action as required. The authority may also need to consider whether any safeguarding issues arise from the child's attendance at the setting if it is not safe;

b. yeshivas, which provide religious education to males, some of them still of compulsory school age, in certain Jewish communities. These settings are not regulated, although the department has recently announced its intention to consult on a requirement that all settings providing a full-time education to children of compulsory school age must register, and that would encompass these settings. The boys aged 13-16 attending yeshivas are normally said to be educated at home for secular subjects. When a local authority is considering whether home education provided is suitable, it should take into consideration the education provided both at home and at the yeshiva, and also the hours attended at the yeshiva.

10.11 Home educated children sometimes attend settings which operate part-time with a specific purpose. An example of these would be madrassahs, which teach children Arabic and about the Koran; but this category of setting would also encompass sports clubs and dance/drama schools. Parents may say that such attendance constitutes part of the child's overall home education package; and in assessing whether education is suitable and full-time, local authorities should be prepared to take account of such attendance - although if the attendance is for only a short period each week and is of a specialised nature, it may in practice be marginal to the conclusion as to whether the child's education meets the s.7 requirement.

## **Safeguarding – use of tutors by parents providing home education**

10.12 Parents may choose to employ other people to educate their child, though they themselves will continue to be responsible for the education provided. As in all situations where parents themselves employ tutors, the suitability of those tutors in terms of access to children is for the parents to ascertain. Parents should be advised to satisfy themselves on this point by taking up appropriate references and ensuring that the tutor has a reasonably recent Disclosure and Barring Service (DBS) disclosure certificate. A small number of local authorities choose to assist home-educating parents in this task by undertaking DBS checks free of charge on independent home tutors, and the DfE endorses this helpful practice while recognising that for many local authorities with large numbers of home-educated children living in their areas, it may not be practicable to do this.

10.13 Tutors employed by a local authority, a school, or an agency may also undertake work for home-educating parents, in which case DBS checks ought to have been made already and parents should confirm whether this is so with the body supplying the tutor.

## Acknowledging diversity

10.14 Parents' education provision will reflect a diversity of approaches and interests. Some parents may wish to provide education in a formal and structured manner, following a traditional curriculum and using a fixed timetable that keeps to school hours and terms. Other parents may decide to make more informal provision that is responsive to the developing interests of their child. One approach is not necessarily any more efficient or effective than another. Although some parents may welcome general advice and suggestions about resources, methods and materials, local authorities should not specify a curriculum or approach which parents must follow.

10.15 Children learn in different ways and at different times and speeds. It should be appreciated that parents and their children may require a period of adjustment before finding their preferred mode of learning and that families may change their approach over time. Parents are not required to have any qualifications or training to provide their children with a suitable education. It should be noted that parents from all educational, social, linguistic, religious and ethnic backgrounds successfully educate children outside the school setting and these factors should not in themselves raise a concern about the suitability of the education being provided.

10.16 In discharging their responsibilities in relation to home education, local authorities should bear in mind that they are subject to the Public Sector Equality Duty contained in s.149 of the Equality Act 2010, and should ensure that their policy and practice in relation to home education is consistent with that duty. For example, a local authority should not assume that home education is any less likely to be successful when carried out by people with a particular protected characteristic; but equally the fact that a family has particular protected characteristics should not deter the local authority from taking action to secure a suitable education for a child who is not receiving suitable education at home.

## Support for home educators

10.17 When parents choose to home educate their children they assume financial responsibility for their children's education. This, and the time involved in educating a child properly at home, form an onerous challenge for many parents.

10.18 Local authorities do not receive funding to support home-educating families (except in relation to high needs SEN as described above), and the level and type of support will therefore vary between one local authority and another. However, DfE recommends that all local authorities should adopt a consistent, reasonable and flexible approach in this respect, particularly where there are minimal resource implications. As a minimum, local authorities should provide written information (which is also available through the internet) on elective home education that is clear and accurate and which sets out the legal position. Some local authorities may be able to offer additional support to home-educating parents, but this will vary depending on their resources. Examples of additional support include:

- provision of a reading or lending library with resources for use with home educated children
- free, or discounted, admission into community programmes (including local authority owned community and sports facilities)
- access to resource centres (including local school resources where feasible)
- National Curriculum materials and curricula offered by other educational institutions
- information about educational visits and work experience
- providing assistance with identifying exam centres willing to accept external candidates

## National Careers Service

10.19 The [National Careers Service](#) is a free careers service for adults and young people aged 13 and over in England. Advice and guidance can be accessed via the telephone and online. The National Careers Service provides confidential advice and guidance to help children make decisions on learning, training and work opportunities.

## Work experience

10.20 Work experience is not a statutory requirement for children. If a work experience placement is secured for a home educated child via arrangements made by the local authority, the employer should contact the local authority's education department or education welfare service to find out if a child permit is required.

## 16 to 19 bursary fund

10.21 The [16 to 19 bursary fund](#) is not payable to young people whose parents elect to home educate them after the age of 16.

## Gypsy, Roma and Traveller Children

10.22 Local authorities should have an understanding of and be sensitive to the distinct ethos and needs of Gypsy, Roma and Traveller communities. It is important that these families who are educating their children at home are treated in the same way as any other families in that position. Home education should not be regarded as less appropriate than in other communities. When a Gypsy, Roma and Traveller family with children of school age move into an area, they should be strongly encouraged to contact the local Traveller Education Support Service for advice if one is in place, or the

authority's admissions team for help to access local educational settings if school places are desired. Further guidance can be obtained from the DfE's report: [Improving the outcomes for Gypsy, Roma and Traveller's pupils](#). The [Advisory Council for the Education of Romany and other Travellers](#) is another source of information.

## Looked-after children

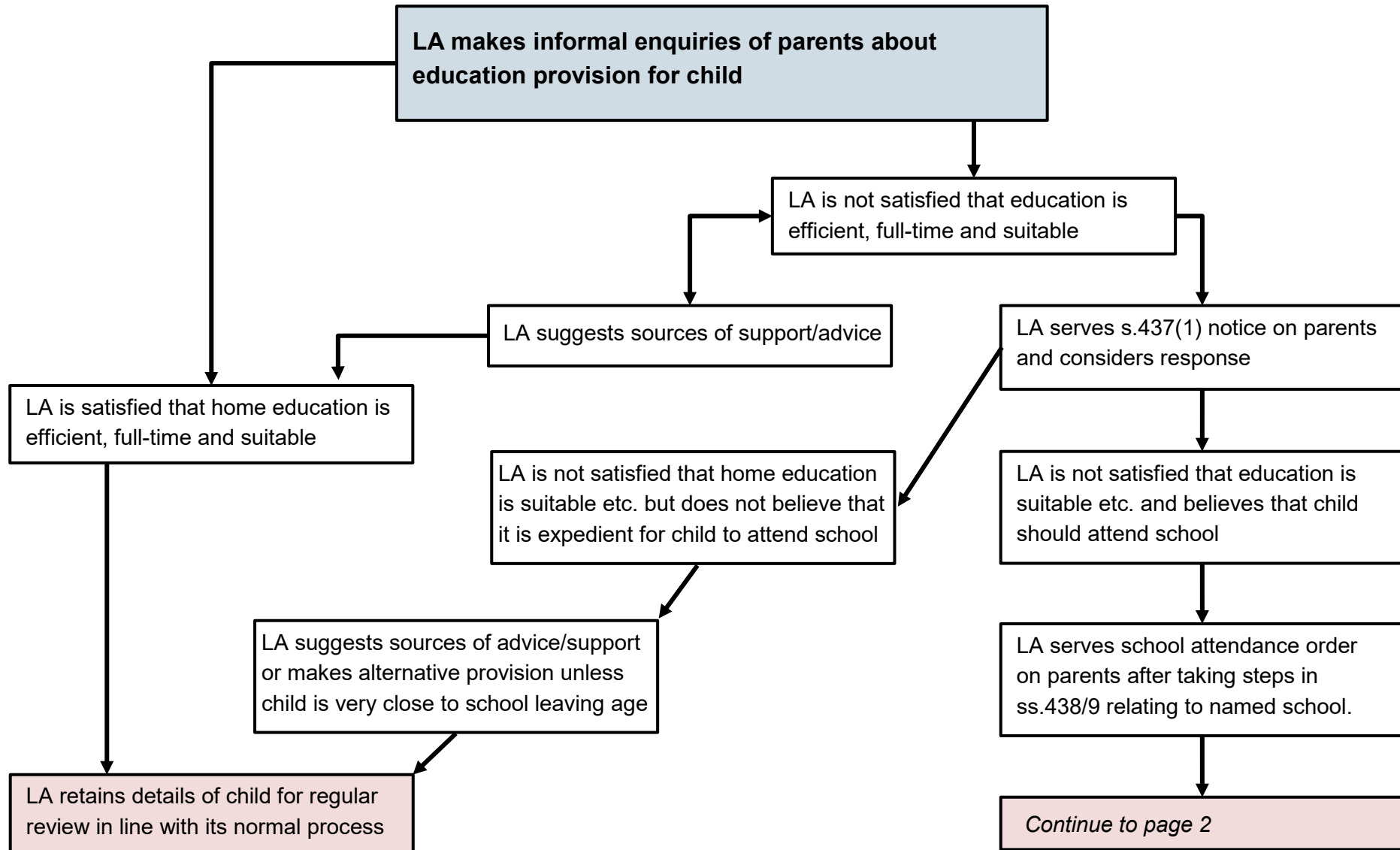
10.23 Local authorities acting as corporate parents of looked-after children should bear in mind that they assume the duties of parents under s.7 of the 1996 Education Act to ensure that the child receives a suitable full-time education; and local authorities in whose areas such children are placed by other authorities should take the same steps to ensure that the child is not missing education as they would for any other child resident in their area. It is legally possible for a looked-after child to be educated at home (for example by foster carers) if the local authority as corporate parent decides this is appropriate after discussion with the carers.

## Flow Charts

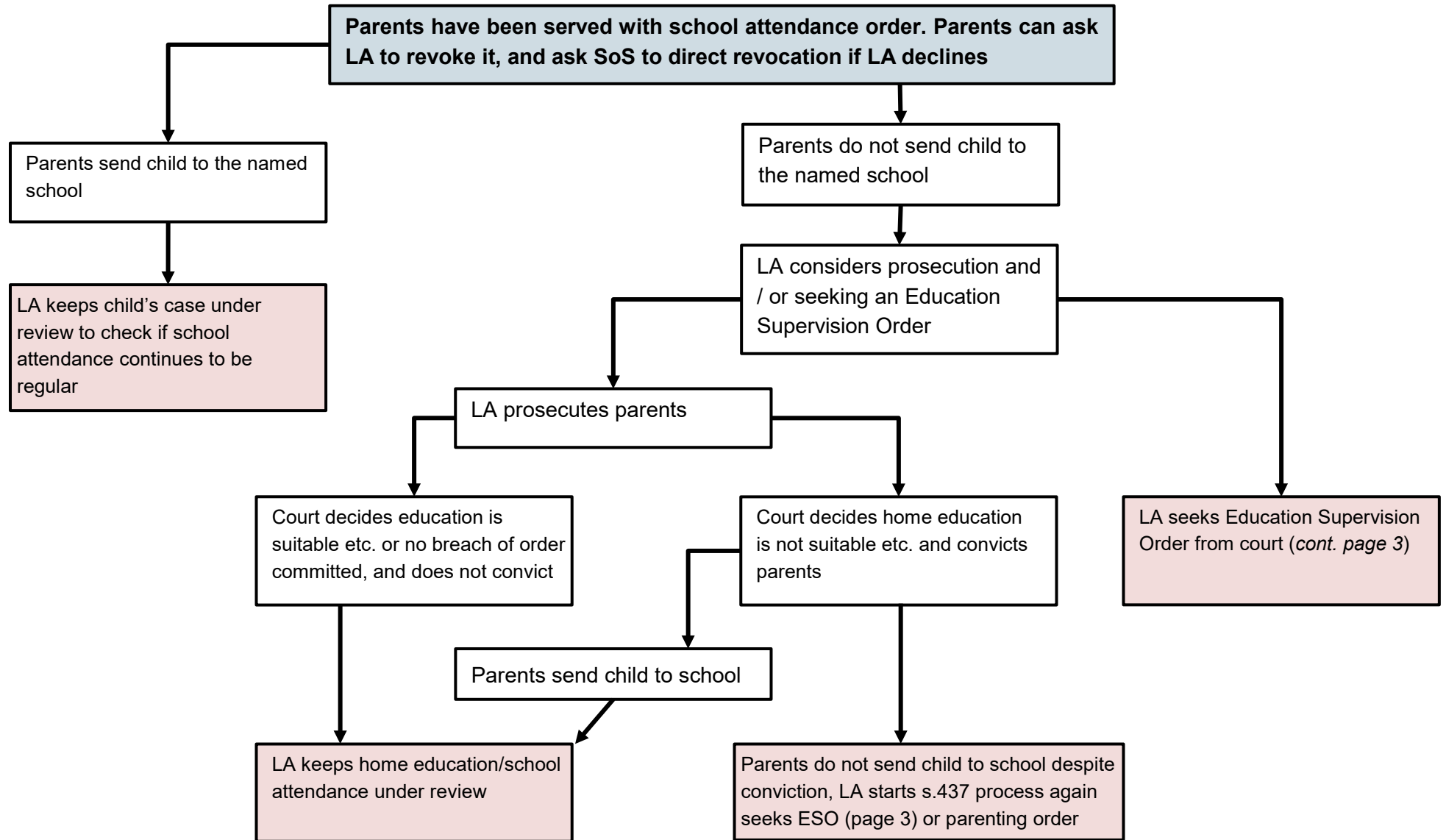
The flow charts on the following three pages are intended to show in diagrammatic form the main steps which can be taken once it is apparent that there is a question as to whether a child is receiving suitable home education. Not all the steps shown will be applicable in all cases.



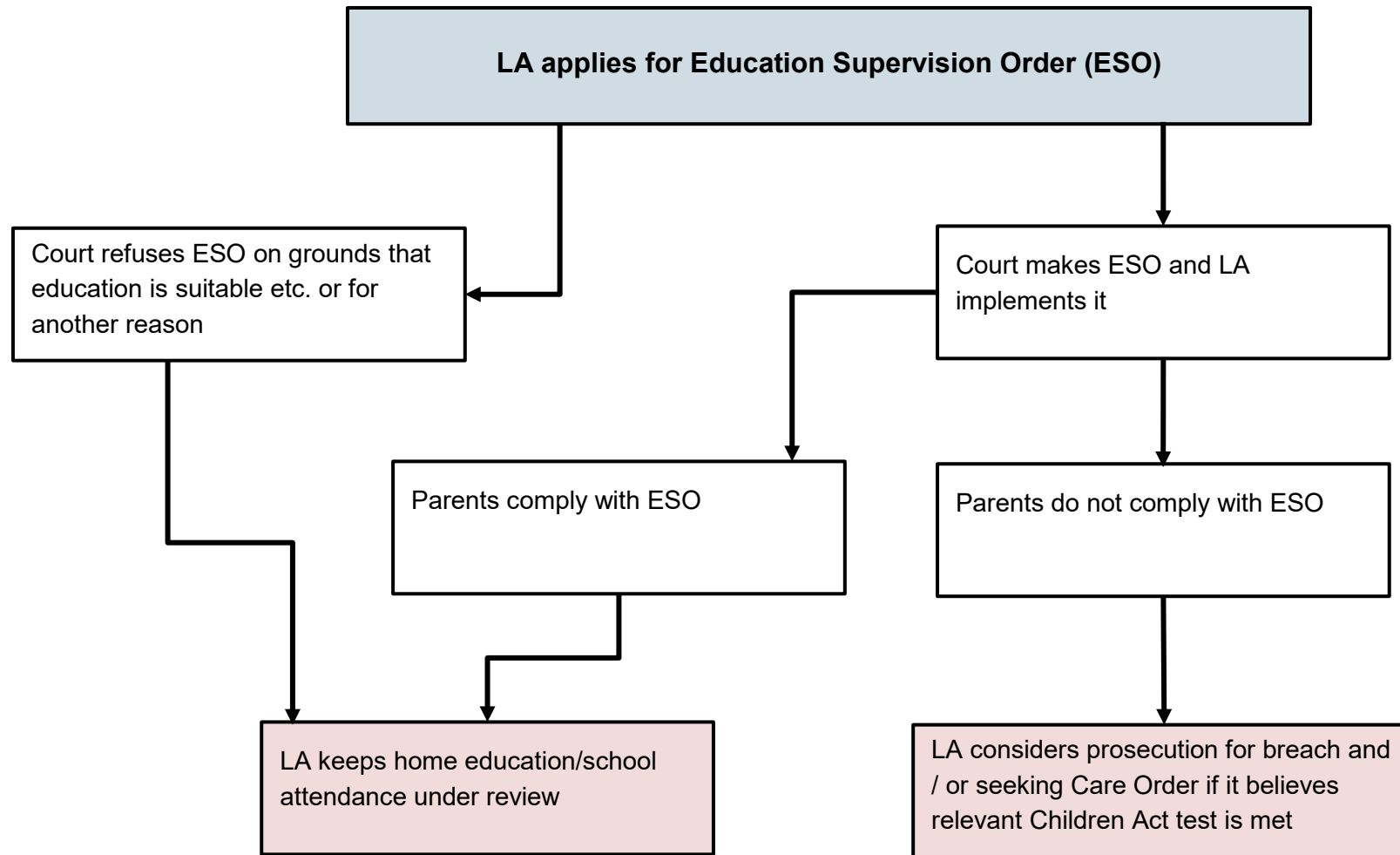
## Flow chart 1



## Flow chart 2



### Flow chart 3



## Other relevant departmental advice and statutory guidance

1. Children Missing Education: DfE guidance - this is available at:

[Children Missing Education DfE Guidance](#)

2. School attendance: DfE guidance for schools

[School Attendance DfE Guidance](#)

[Parental Responsibility and Behaviour and attendance DfE Guidance](#)

3. Education Act 1996:

[Education Act 1996](#)

4. Pupil Registration Regulations

These can be found at:

[Pupil Registration Regulations 2006](#)

The regulations have been amended several times - see especially:

[Pupil Registration Regulations 2016 amendments](#)

*Examples of local authority guidance on home education at March 2019*

[Norfolk LA home education guidance](#)

[Lancashire LA home education guidance](#)

[Darlington LA home education guidance](#)

[North Yorkshire LA home education guidance](#)

*Enquiries to DfE about home education matters can be sent by email to:*

[Registration.enquiries@education.gov.uk](mailto:Registration.enquiries@education.gov.uk)

*Please put 'home education' in the title line of the email*



Department  
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