

# School is not Compulsory

## A Summary of the Law Relating to Home Education in England and Wales (4th Edition)

In England and Wales parents have the primary responsibility for ensuring that their children receive an effective education. Although this responsibility is usually delegated to schools some parents choose to exercise it directly by providing an education based at home.

The following summarises the legal responsibilities of parents and local authorities in relation to elective home education of children of compulsory school age. It may also be useful to refer to the written guidelines on elective home education produced by the Department for Children Schools and Families in November 2007 for local authorities which may be found [here](#).

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### Responsibility of Parents

The responsibility of parents is clearly established in section 7 of the Education Act 1996 (previously section 36 of the Education Act 1944):

#### *Compulsory education*

#### 7 Duty of parents to secure education of children of compulsory school age

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.

### Definition of Suitable Education

An interpretation of some terminology used in the Education Act 1944 (replaced by the 1996 Act) was provided by an appeal case which was brought at Worcester Crown Court in 1981 (Harrison & Harrison v Stevenson). In this case, the judge defined a 'suitable education' as one which was such as:

1. to prepare the children for life in modern civilised society, and
2. to enable them to achieve their full potential.

The diversity of modern society and styles of education give parents considerable freedom of choice in enabling children to achieve their potential. In the case of R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust (1985) (Times, 12 April 1985) Mr Justice Woolf held that:

education is 'suitable' if it primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so.

Examining the meaning of the expression full-time shows the hours spent on teaching in schools are not relevant to home education, which generally takes place on a one-to-one basis, or in small groups, in very different conditions.

Provided the child is not a registered pupil at a school, the parent is not required to provide any particular type of education, and is under no obligation to:

- have premises equipped to any particular standard
- have any specific qualifications
- cover the same syllabus as any school
- adopt the National Curriculum
- make detailed plans in advance

- observe school hours, days or terms
- have a fixed timetable
- give formal lessons
- reproduce school type peer group socialisation
- match school, age-specific standards
- seek permission to educate 'otherwise'
- take the initiative in informing the local authority
- have regular contact with the local authority

More information about this may be found on page 10 of the Government's 2007 [Home Education Guidelines](#).

### Duty of Local Authorities

Sections 437 to 443 of the Education Act 1996 place a duty upon local education authorities to take certain actions if it appears that a child is not being properly educated.

If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable 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. (s 437 (1))

The local authority's legal duty is concerned solely with children who appear not to be receiving suitable education. Beyond this, nothing in the Act requires a local authority to carry out regular monitoring of provision where a child is receiving education otherwise than at school.

However, case law (Phillips v Brown, Divisional Court [20 June 1980, unreported]) has established that a local authority may initially ask parents who are educating their children at home for information in order to assess whether it appears to the local authority that no suitable education is being provided.

In Phillips v Brown, Lord Donaldson said:

Of course such a request is not the same as a notice under s 37 (1) of the Education Act 1944 [now s 437 (1) of the Education Act 1996] and the parents will be under no duty to comply. However it would be sensible for them to do so. If parents give no information or adopt the course ... of merely stating that they are discharging their duty without giving any details of how they are doing so, the LEA will have to consider and decide whether it 'appears' to it that the parents are in breach of s 36 [now s 7 of the Education Act 1996].

If a local authority chooses to approach a family and informally ask for information, parents may establish that a child is receiving an efficient and suitable education in a number of ways. Parents might, for example, offer either:

- a written report,
- samples of work,
- a meeting at their home, with or without the child being present,
- a meeting elsewhere, with or without the child,
- an endorsement of the educational provision by a recognised third party, or
- information in any other appropriate form

The DfES make it clear that parents have a choice about how they provide information about their educational provision:

LAs have no automatic right of access to parents' homes. Parents may wish to offer an alternative way of demonstrating that they are providing suitable education, for example through showing examples of work and agreeing to a meeting at another venue.

Occasionally, after examining all the information provided by the parents, a local authority may have genuine concerns about a child's education, but the way that information is presented should not form the basis for these concerns. Parents need only present information that would, on the balance of probabilities, convince a reasonable person that a suitable education was being provided.

### Disputes Between Parents and Local Authorities

It should be possible to resolve most disputes without recourse to formal statutory procedures. However, where children of compulsory school age are not being educated at school and the local authority has serious doubts about the parents' educational provision, the following scenario will apply.

Initially, the local authority asks informally for information and gives the parents reasonable time to provide it.

Then in the light of any response it considers whether it appears that the child is not receiving suitable education. Unless at this point the answer is 'Yes, it does appear that the child is not receiving suitable education,' no further steps should be taken.

If, after considering all the information provided by the parents, the local authority is concerned that the child may not be receiving suitable education, it should explain this to the family and give them further time and opportunity to explain or improve their arrangements.

Only after this, if it still appears to the local authority that the child is not receiving suitable education, should it take the first step towards a school attendance order. This step will be to serve a formal notice giving the parents two weeks to satisfy it about the suitability of their provision.

The local authority should bear in mind, however, that should the case proceed to court the action will fail if the parents can satisfy the court that they are providing a suitable education. The court will accept evidence in a number of forms and will be looking for evidence that would convince a reasonable person on the balance of probabilities (rather than beyond all reasonable doubt) that a suitable education is being provided.

At any stage during this process the parents may present evidence that they are now providing a suitable education and apply to have the order revoked.

### Deregistration in England

In England the Education (Pupil Registration) (England) Regulations 2006 set out the conditions under which a pupil's name must be removed from the admission register of a school. Under Regulation 8(1)(d), the name of a school-age pupil is to be deleted from the admission register if:

he has ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school.

Parents of children who have been registered at a school and who begin home education need to inform the school that they are providing education otherwise than at school so that the child's name can be removed from the register. Parents do not need to ask permission from the local authority to begin home education and they are under no obligation to inform the local authority of their intention. Under Regulation 12(3), however, the proprietor of the school must report the deletion of the pupil's name from the admission register to the local authority immediately. Guidance on the Regulations allows schools to delay the removal of the child's name from the register for a maximum of two days to allow notification to reach the local authority.

Parents seeking to home educate children registered at a special school, however, must obtain the consent of the local authority to withdraw their child from the school (Education (Pupil Registration) (England) Regulation 8(2), 2006). Consent is required in these cases only to smooth the transition to home education for children with complex special needs. The regulations are not intended to be a hindrance to these children being educated at home and any such suggestion would be discriminatory.

### Deregistration in Wales

In Wales the Education (Pupil Registration) Regulations, 1995 set out the conditions under which a pupil's name must be removed from the admission register of a school. Under Regulation 9(1)(c), the name of a school-age pupil is to be deleted immediately from the admission register if:

he has ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school.

Parents of children who have been registered at a school and who begin home education need to inform the school that they are providing education otherwise than at school so that the child's name can be removed from the register. Parents do not need to ask permission from the local authority to begin home education and, they are under no obligation to inform the local authority of their intention. Under Regulation 13(3), however, the proprietor of the school must report the deletion of the pupil's name from the admission register to the local authority within ten school days.

Parents seeking to home educate children registered at a special school, however, must obtain the consent of the local authority to withdraw their child from the school (Education (Pupil Registration) Regulation 9(2), 1995). Consent is required in these cases only to smooth the transition to home education for children with complex special needs. The regulations are not intended to be a hindrance to these children being educated at home and any such suggestion would be discriminatory.

### Flexi-Schooling

An increasing number of parents are requesting a more flexible use of schools, and head teachers have the authority to agree flexi-schooling to accommodate their wishes. In a flexi-schooling arrangement children are registered as pupils at the school and attend part-time, but spend other parts of the week being educated off site by their parents. This arrangement is a matter for the head teacher, rather than the local authority, to negotiate with parents.

In England flexi-schooling is covered by the Education (Pupil Registration) (England) Regulations 2006. Regulation 6(1)(a)(iii) instructs schools to indicate on the register when children are attending an approved educational activity off site. Regulation 6(4) defines an approved educational activity as an activity which takes place outside the school premises and which is approved by a person authorised by the proprietor of the school. It must be of an educational nature, including work experience and sporting activities, and must be supervised by a person authorised by the proprietor or the head teacher of the school. Part time education provided at home in agreement with the head teacher of the school meets these criteria.

The Department of Children Schools and Families has set out the Government's views about flexi-schooling on page 17 of the 2007 [guidelines on home education](#).

In Wales flexi-schooling is covered by the Education (Pupil Registration) Regulations 1995 as amended by the Education (Pupil Registration) (Amendment) Regulations 1997. Regulation 7(1)(a) instructs schools to indicate on the register when children are attending an approved educational activity. Regulation 7(4A)(a) defines an approved educational activity as an activity which takes place outside the school premises and which is approved by a person authorised by the proprietor of the school. It must be of an educational nature, including work experience and sporting activities, and must be supervised by a person authorised by the proprietor or the head teacher of the school. Part time education provided at home in agreement with the head teacher of the school meets these criteria.

Children being educated within a flexi-schooling arrangement are in the same position as any registered pupil as regards insurance coverage and also attract full funding for the school.

## Home Educating Children with Special Educational Needs

The right to home educate a child with special educational needs (SEN) is stated in section 7 of the Education Act 1996:

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.

You can find more information about home education and SEN on pages 11-12 of the 2007 [Government Guidelines on Home Education](#).

The responsibilities of parents who are home educating a child with special educational needs are the same as those of any other parents, whether or not the child has a statement. The government has made it clear that parents of children with statements do not need to arrange the provision specified in the statement but need only make suitable provision under s 7 of the Act, and it encourages local authorities to recognise that provision at home will be different from provision at school. Baroness Ashton of Upholland stated in the Lords on October 29th 2001 (Hansard Column 1261):

However, we do not suggest that parents must carry out exactly what is written within the statement. It is for the LEAs and the parents to work together to ensure that the child receives suitable provision, recognising that provision within a school is different to that provided at home.

Where a child does have a statement of special educational needs and begins home education, the local authority's statutory duty to undertake an annual review continues. This review includes assessing whether the statement is still appropriate and it may be possible to alter or even cease to maintain the statement depending on the child's current circumstances. Should it be necessary for the statement to remain in force, the parents continue to have responsibility for the education provided and the local authority has a duty to act if it appears that the child is not receiving a suitable education under s 7.

At times there may be disagreements between parents and the local authority about how a child's special educational needs should be met. There are some situations in which parents can appeal to the independent Special Educational Needs Tribunal. However where this is the case, then the local authority would have a legal duty to inform the parent of their right of appeal.

Parents of children with special educational needs do not need to have any special qualifications or training to assume direct responsibility for their children's education. Furthermore, they do not need to inform the local authority of their intention to home-educate unless the child is registered at a special school when the consent of the local authority is necessary to withdraw the child from the school. Consent is required in these cases only to smooth the transition to home education for children with complex special needs and it would be discriminatory for a local authority to withhold consent where a parent wishes to home educate a child who is registered at a special school.