

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
<p>KEY ...<del>from</del> &gt; to    + added    -<del>removed</del>    moved to&gt;&gt;/&gt;&gt;from another section, location, re-ordered</p>			
<p><b>Safeguarding: the interface with home education</b></p> <p>8 Moved to 9&gt;&gt;</p>	<p><b>8. Safeguarding: the interface with EHE</b></p>		
<p>8.1 Moved to 9.1&gt;&gt; &gt;&gt; Moved from 7.2</p> <p><b>Sections</b> 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.</p> <p>This includes children educated at home as well as those attending school. Section 175 of the Education Act 2002 requires</p>	<p>8.1 <b>Ss.</b> 10 and 11 of the Children Act 2004 give local authorities general duties for promoting the wellbeing, and (in relation to their non-education functions) safeguarding and promoting the welfare of children in their areas.</p> <p>This includes children educated at home as well as those attending school. S.175 of the Education Act 2002 requires authorities to make</p>	<p><b>Sections</b> &gt; <b>Ss.</b></p>	

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<p>authorities to make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting children’s welfare.</p> <p>Therefore the general duties of local authorities in relation to safeguarding are the same for all children, however they are educated.</p> <p>Social services teams in local authorities and those dealing with <b>home education</b> should take steps to ensure that relevant information on individual children is shared.</p>	<p>arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting children’s welfare.</p> <p>Therefore, the general duties of local authorities in relation to safeguarding are the same for all children, however they are educated.</p> <p>Social services teams in local authorities and those dealing with <b>EHE</b> should take steps to ensure that relevant information on individual children is shared, <b>complying with relevant data protection legislation.</b></p>	<p><b>home education &gt; EHE</b></p> <p><b>+ complying with relevant data protection legislation.</b></p>	
<p><b>8.2 Moved to 9.2</b>»  <b>» Moved from 7.1</b></p>	<p>8.2 A situation in which a</p>		

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<p>A situation in which a child is not receiving a suitable <del>full-time</del> education requires action by a local authority under education law, as described <del>above</del>.</p> <p><del>But</del> it is important to bear in mind that unsuitable <del>or inadequate</del> education can <del>also</del> impair a child’s intellectual, emotional, social or behavioural development,</p> <p><del>and may therefore bring child protection duties into play.</del></p> <p>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</p>	<p>child is not receiving a suitable education requires action by a local authority under education law, as described in <del>section 7 of this guidance</del>.</p> <p>It is important to bear in mind that unsuitable education can <del>be a form of educational neglect</del> and can impair a child’s intellectual, emotional, social or behavioural development.</p> <p>Therefore, <del>local authority child safeguarding powers may be required to address this neglect</del>.</p> <p>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</p>	<p><del>above &gt; section 7 of this guidance.</del></p> <p>+ be a form of educational neglect</p> <p><del>therefore bring child protection duties into play.</del>  &gt; local authority child safeguarding powers may be required to address this neglect.</p>	

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to a child's welfare	be, sufficient to address a risk to a child's welfare.		
<p><b>8.3 Moved to 9.3</b>  <b>» Moved from 7.3</b>  7.3 There is no <b>proven</b> correlation between <b>home education</b> and safeguarding risk.</p> <p>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 <del>and the child has normally been known anyway to the relevant local authority.</del></p> <p>However, <b>a child</b> being educated at home <b>is</b> not necessarily being seen on a regular basis by professionals such as teachers and this logically increases the chances that <b>any parents who</b></p>	<p>8.3 There is no <b>known</b> correlation between <b>EHE</b> and safeguarding risk.</p> <p>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.</p> <p>However, <b>some children</b> being educated at home <b>are</b> not necessarily being seen on a regular basis by professionals, such as teachers, and this logically increases the chances that <b>neglect and</b></p>	<p><b>proven &gt; known</b>  <b>home education &gt; EHE</b></p> <p><b>a child &gt; some children</b>  <b>is &gt; are</b></p> <p><b>any parents who set out to</b></p>	

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<p>set out to use home education to avoid independent oversight may be more successful by doing so. <del>Several recent Serious Case Reviews have illustrated this.</del> However, safeguarding is not simply a matter which arises in relation to the family.</p> <p>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).</p>	<p>abuse could fail to be identified.</p> <p>It's important to note that safeguarding is not simply a matter which arises in relation to the family.</p> <p>Some parents who educate at home are doing so on the basis of safeguarding the child from risk in the school system (e.g. through serious bullying).</p>	<p>use home education to avoid independent oversight may be more successful by doing so &gt; neglect and abuse could fail to be identified</p> <p>However &gt; It's important to note that</p> <p>believe that by doing so, they are &gt; are doing so on the basis of</p>	
<p><b>8.4 Moved to 9.5</b> <b>» Moved from 7.4</b></p> <p>Local authorities should approach all cases where the suitability of home education is in doubt using their powers in the Education Act 1996, <del>but</del></p>	<p>8.4 Local authorities should approach all cases where the suitability of EHE is in doubt using their powers in the 1996 Act.</p>	<p>home education &gt; EHE</p>	

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<p>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.</p> <p>In the light of this, local authorities should also ensure that their published <b>home education</b> 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.</p> <p>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 <b>home</b></p>	<p>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 wellbeing, which includes their suitable education.</p> <p>In the light of this, local authorities should ensure that their published <b>EHE</b> 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.</p> <p>Such clarity will reduce the likelihood of disputes with parents caused by ambiguity over the powers which local authorities have, and how they can be applied to <b>EHE</b> children in certain</p>	<p><b>home education &gt; EHE</b></p>	

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<p>educated children in certain circumstances.</p>	<p>circumstances.</p>	<p>home education&gt; EHE</p>	
<p><b>8.5 Moved to 9.6</b>  <b>» Moved from 7.5</b></p> <p>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. ‘</p> <p>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.</p> <p>The causing of significant</p>	<p>8.5 A failure to provide suitable education can satisfy the threshold requirement contained in s.31 of the Children Act 1989 that the child is suffering or is likely to suffer significant harm.</p> <p>‘Harm’ can include the impairment of health or development, which means physical, intellectual, emotional, social or behavioural development and the provision of unsuitable education clearly can amount to this.</p> <p>The causing of significant harm need not be intentional</p>		

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<p>harm need not be intentional or deliberate, but case law 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 <b>home education</b> of a specific child. <del>However,</del> local authority staff should be clear that when the use of safeguarding powers is justified, they should be used.</p>	<p>or deliberate, but case law 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 <b>EHE</b> of a specific child. Local authority staff should be clear that when the use of safeguarding powers is justified, they should be used.</p>	<p><b>home education &gt; EHE</b></p>	
<p><b>8.6 Moved to 9.7</b>  <b>» Moved from 7.6</b></p> <p>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</p>	<p>8.6 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</p>		



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<p>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. 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.</p>	<p>child’s 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. 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.</p>		
<p><b>8.7 Moved to 9.8»</b>  <b>» Moved from 7.7, 7.8</b></p> <p>Sometimes the local authority may not have been able to obtain sufficient information</p>	<p>8.7 Sometimes the local authority may not have been able to obtain sufficient</p>		

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<p>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.</p> <p>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.437(1) is satisfied, then there will usually be reasonable cause in terms of s.47. These enquiries can include taking</p>	<p>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.</p> <p>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.437(1) is satisfied, then there will usually be reasonable cause in terms of s.47. These</p>		

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steps to gain access to the child.	enquiries can include taking steps to gain access to the child.		
<p><b>8.8 Moved to 9.9 and 9.10</b>  <b>» Moved from 7.9</b></p> <p>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.</p> <p>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</p>	<p>8.8 Such enquiries may yield enough information. If they do not, and in particular because the parents refuse access to the child <b>during the s.47 assessment</b>, then the authority has a number of options available.</p> <p>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</p>	<p>+ during the s.47 assessment,</p>	

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<p>be unlikely that an assessment would be satisfactorily made without such an order.</p>	<p>be unlikely that an assessment would be satisfactorily made without such an order.</p>		
<p><b>Education Supervision Orders</b></p>	<p><b>Education Supervision Orders</b></p>		
<p><b>8.9 Moved to 9.11</b>  <b>» Moved from 7.10</b></p> <p>In <b>many</b> cases the use of an <del>education supervision order</del> (ESO) under s.36 of the <b>1989 Act</b> will in any case be appropriate and sufficient.</p> <p>These orders <del>are made under s.36 of the Children Act 1989</del> and give local authorities a formal supervisory role in the education of children who are subject to them.</p> <p>The High Court or the Family Court can make an order if satisfied that a child of compulsory school age is not</p>	<p>8.9 In <b>some</b> cases, the use of an ESO under s.36 of the <b>Children Act 1989</b> will, in any case, be appropriate and sufficient.</p> <p>These orders give local authorities a formal supervisory role in the education of children who are subject to them.</p> <p>The High Court or the Family Court can make an ESO if</p>	<p><b>many &gt; some</b></p> <p><b>1989 Act &gt; Children Act 1989</b></p>	

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<p>receiving <del>efficient full-time</del> <b>education suitable</b> to the child's age, ability and aptitude and to any <b>special educational needs</b> they may have.</p> <p>Where a <b>school attendance order</b> 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.</p> <p>The advantage of an <b>education supervision order</b> 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 <b>school attendance order</b>.</p>	<p>satisfied that a child of compulsory school age is not receiving <b>a suitable education</b> to the child's age, ability and aptitude and to any <b>SEN</b> they may have.</p> <p>Where a <b>SAO</b> 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.</p> <p>The advantage of an <b>ESO</b> 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', compared to a prosecution for non-compliance with a <b>SAO</b>.</p>	<p><b>education suitable &gt; a suitable education</b></p> <p><b>special educational needs &gt; SEN</b></p> <p><b>school attendance order &gt; SAO</b></p> <p><b>education supervision order &gt; ESO</b></p> <p><b>school attendance order &gt;</b></p>	

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		SAO.	
<p><b>8.10 Moved to 9.12</b>▶▶  <b>▶▶ Moved from 7.11</b></p> <p><del>As noted previously,</del> the use of an ESO should <del>in any case</del> be considered as an alternative to, or as well as, prosecution for non-compliance with a <b>school attendance order</b>.</p> <p>Use of an <b>Education Supervision Order</b> 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 <b>school attendance order</b> is being properly educated, then it is assumed that <b>he or she</b> is not, for the purposes of deciding whether an ESO should be made. Applying for an ESO <b>will often</b> be the proportionate response when</p>	<p>8.10 The use of an ESO should be considered as an alternative to, or as well as, prosecution for non-compliance with a <b>SAO</b>.</p> <p>Use of an <b>ESO</b> 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 <b>SAO</b> is being properly educated, then it is assumed that <b>they</b> are not, for the purposes of deciding whether an ESO should be made. Applying for an ESO <b>may</b> be the proportionate response when parents are not complying with a <b>SAO</b>.</p>	<p><b>school attendance order &gt; SAO.</b></p> <p><b>Education Supervision Order &gt; ESO</b></p> <p><b>school attendance order &gt; SAO.</b></p> <p><b>he or she &gt; they</b></p> <p><b>will often &gt; may</b></p>	

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<p>parents are not complying with a <b>school attendance order</b>.</p>		<p><b>school attendance order &gt; SAO.</b></p>	
<p><b>8.11 Moved to 9.13 ▶▶ ▶▶ Moved from 7.12</b></p> <p>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 <b>home education</b>. 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</p>	<p>8.11 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 <b>EHE</b>. 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 <b>a</b> direction given under an ESO is an offence unless the</p>	<p><b>home education &gt; EHE</b></p> <p><b>+ a</b></p>	

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<p>parent can show that he has taken all reasonable steps to comply, or that the direction is unreasonable.</p> <p><del>But</del> in such cases the authority should <del>be prepared to first</del> make clear to the parents that <del>the result of this may be</del> an application to the court for a care order under s.31 of the Children Act 1989.</p> <p>This makes ESOs potentially <del>very</del> useful in ensuring that a child is suitably educated <del>if one is appropriate</del>.</p>	<p>parent can show that they have taken all reasonable steps to comply, or that the direction is unreasonable.</p> <p>In such cases <del>of persistent failure</del>, the authority should make clear to the parents that <del>failure to comply with an ESO may result in</del> an application to the court for a care order under s.31 of the 1989 Act.</p> <p>This makes ESOs, <del>if appropriate</del>, potentially useful in ensuring that a child is suitably educated.</p>	<p>+ of persistent failure</p> <p><del>the result of this may be &gt; failure to comply with an ESO may result in</del></p> <p><del>if one is appropriate &gt; if appropriate,</del></p>	
<p>Care orders</p>	<p>Care orders</p>		
<p>8.12 Moved to 9.5 ▶▶ ▶▶ Moved from 7.13</p> <p>7.13 Whether or not an ESO is made, if it is concluded that the significant harm threshold</p>	<p>8.12 Whether or not an ESO is made, if it is concluded that the significant harm threshold</p>		



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<p>is met but the parents continue to refuse to remedy the situation, it <del>is highly unlikely that circumstances would make it appropriate to seek an emergency protection order under s.44 of the 1989 Act.</del> However, it may be necessary in certain cases to apply for a care order under s.31.</p> <p>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.</p> <p>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</p>	<p>is met but the parents continue to refuse to remedy the situation, it may be necessary in certain cases to apply for a care order under s.31.</p> <p>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.</p> <p>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</p>		

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<p>local authority would set out where it was proposed the child would live and it is for the court to approve that, or not.</p> <p>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 <b>he or she</b> should - then the child could be removed from the home into the local authority's direct care.</p>	<p>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.</p> <p>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 <b>they</b> should - then the child could be removed from the home into the local authority's direct care.</p>	<p><b>he or she &gt; they</b></p>	
<p><b>8.13</b>  <b>» Moved from 7.13, 7.14</b></p> <p>The use of such an order is of course a last resort, <del>and should only be necessary in a very small minority of cases.</del> <del>But</del> the key point for local</p>	<p>8.13 The use of such an order is of course a last resort, but the key point for local authorities to bear in mind - and make clear to parents - is</p>		

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<p>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.</p> <p><del>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.</del> By demonstrating a determination to use last resort powers when necessary, the likelihood of having to deploy them is generally greatly reduced.</p>	<p>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.</p> <p>By demonstrating a determination to use last resort powers when necessary, the likelihood of having to deploy them is generally greatly reduced.</p>		

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<p>▶ <b>Moved from 7.15</b></p> <p>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.</p>	<p>8.14 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.</p>		

<p>Overview</p>
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