2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
KEYfrom > to +	added - removed mo	oved to»/»from another section,	location, re-ordered
Home-educated children with special educational needs (SEN)	9. Home-educated children with special educational needs or a disability (SEND)		
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 astatement 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.	9.1 The parents' right to educate their child at home applies equally where a child has SEND. This right is irrespective of whether a child has an Education, Health and Care (EHC) plan.	SEN > SEND Education, Health and Care Plan (EHC plan) > Education, Health and Care (EHC) plan	
It can, of course, be the case that a local authority has no knowledge of a child's special educational needs if the	It may be the case that a local authority has no knowledge of a child's SEND.	can, of course, > may special educational needs > SEND	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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.	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 SEND. This includes home educated children.	SEN > SEND	
9.2 Moved to 3.6→ →Moved from 8.2			
Local authorities must have regard to the statutory guidance in the Special Educational Needs Code of Practice when carrying out SEN functions.	9.2 Local authorities and their statutory partners must have regard to the statutory guidance, the SEND code of practice: 0 to 25 years, when carrying out their functions under Part 3 of the Children and Families Act 2014.	+ and their statutory partners Special Educational Needs > SEND +: 0 to 25 years SEN > their + under Part 3 of the Children and Families Act 2014	
The Code provides			

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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.	The Code emphasises the importance of local authorities and their partners working closely with parents and provides specific information about SEN in relation to EHE and EOTAS under s.61 of the 2014 Act.	other providers > their partners + Specific home education > EHE + and EOTAS under s.61 of the 2014 Act.	
9.3 Moved to 3.6→ →Moved from 8.3			
Some parents educate, or attempt to educate, children at home because of dissatisfaction with local SEN provision.	9.3 Some parents decide to educate their child at home because of dissatisfaction with local provision for meeting SEN or needs relating to disability.	children > their child local SEN provision > local provision for meeting SEN or needs relating to disability.	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
However, educating at home a child who has special needs is often more difficult than for other children.	However, educating a child at home who has SEND can bring challenges which are different and/or additional to those involved in home educating children without SEND.	special needs > SEND is often more difficult than for other children > can bring challenges which are different and/or additional to those involved in home educating children without SEND.	
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 theeducation is suitable and remains so; and that their assessment of this is properly linked with the process of keeping special needs provision under review.	Local authorities should give reasonable consideration to requests for support from parents who are home educating children who have SEND to help toward ensuring that education is suitable and remains so. The decision to offer support remains at the discretion of local authorities.	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 >give reasonable consideration to requests for support from parents who are home educating children who have SEND to help toward ensuring + The decision to offer support remains at the discretion of local authorities.	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
	Local authorities should be ready to discharge their duty to serve a preliminary notice should the education appear to be unsuitable.	+ Local authorities should be ready to discharge their duty to serve a preliminary notice should the education appear to be unsuitable.	
9.4 Moved to 3.9→ →Moved from 8.?	9.4 If a child currently on a school roll has an EHC plan and parents are considering EHE, parents should contact the local authority at an early stage to discuss amendment of the plan. In relation to children and young people with SEN (whether or not they have an EHC plan), a local authority should explore with parents and the educational setting the extent to which additional support can be put in place to keep the child in that educational setting, providing this is what the parents ultimately want.	+ 9.4 If a child currently on a school roll has an EHC plan and parents are considering EHE, parents should contact the local authority at an early stage to discuss amendment of the plan. In relation to children and young people with SEN (whether or not they have an EHC plan), a local authority should explore with parents and the educational setting the extent to which additional support can be put in place to keep the child in that educational setting, providing this is what the parents ultimately want.	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
9.5 Moved to 3.7 → →Moved from 8.4, 8.12			
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.	9.5 When a child has a EHC plan, it is the local authority's duty to secure that the special educational provision, specified in the plan, is made available to the child (s.42(2)). However, "secure" does not mean to force the family to receive this provision.	ensure > secure + special + (s.42(2)). + However, "secure" does not mean to force the family to receive this provision.	
Therefore if the home	There is a parallel duty on a health commissioner to arrange any health care provision, set out in the plan, in these circumstances (s.42(3)).	+ There is a parallel duty on a health commissioner to arrange any health care provision, set out in the plan, in these circumstances (s.42(3)).	
education is suitable, the local authority has no duty to arrange any special educational provision for the child;	Neither body is subject to these duties if the child's parents have made suitable alternative arrangements	Therefore if the home education is suitable, the local authority has no duty to arrange any special educational provision for the	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
	(s.42(5)), which will be the case when the parent is home educating and those arrangements are suitable.	child; > Neither body is subject to these duties if the child's parents have made suitable alternative arrangements (s.42(5)), which will be the case when the parent is home educating and those arrangements are suitable.	
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 plan should simply set out, in Section F, the educational setting of the special educational provision that the authority thinks the child requires.	+ in Section F, type > the educational setting	
the Education Act 1996.	It should amend Section I of the plan so that it just names the type of school that would be suitable.	+ It should amend Section I of the plan so that it just names the type of school that would be suitable	
The authority will of course continue to check the suitability of the home education as required by sections 436A and 437 of the	The authority will continue to check the suitability of the EHE as required by ss. 436A	sections > ss	
1996 Act,	and 437 of the 1996 Act and	the local authority is still	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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.	s.42(5) of the Children and Families Act 2014, and it also has a separate duty under s.44 of the 2014 Act to continue to review an EHC plan at least annually for as long as the plan is maintained by the local authority.	under an obligation to conduct an annual review of the EHC plan, and s.42(5) of the Children and Families Act 2014, and it also has a separate duty under s.44 of the 2014 Act to continue to review an EHC plan at least annually for as long as the plan is maintained by the local authority.	
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.	If, at any point, the local authority considers that the EHE is no longer suitable, it must take appropriate action including considering conducting an early review of the EHC plan.	it> the local authority ensure > take appropriate action that the special educational provision specified in the EHC plan is made available.> including considering	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
		conducting an early review of the EHC plan.	
9.6 Moved to 3.8≯ →Moved from 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.	9.6 Under s.19 of the 2014 Act, a local authority must have regard to the views, wishes and feelings of the child and parents when exercising its functions under Part 3 of that Act.	SEN functions > functions under Part 3 of that Act.	
Where parents feel strongly that their child with SEN (with or without an EHC plan) should be educated at homebut cannot undertake this	Where parents feel strongly that their child with SEND (with or without an EHC plan)	SEN > SEND	
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,	should be educated at home and the local authority is satisfied that it would be inappropriate for the special educational provision to be made in a school, post-16 institution, or state-funded early years setting, the authority may, under s.61 of	agrees > is satisfied child to receive the necessary > to be made	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
arrange for the special educational provision that the child requires to be made in the child's home.	special educational provision that it has decided is necessary to be made otherwise than in a school, post-16 institution or relevant early years setting (often referred to as 'EOTAS').	the child requires > it has decided is necessary in the child's home > otherwise than in a school, post-16 institution or relevant	
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.	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 special education provision specified in the plan	early years setting (often referred to as 'EOTAS'). + special	
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	is provided. It is important to distinguish between a situation like this, in which a local authority itself arranges the special educational provision, it has decided is necessary, in a place such as a child's home	+ it has decided is necessary	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
in which a child's parents arrange their own home education as described in the paragraph above. The former is not 'elective home education'.	because it considers it would be inappropriate for the provision to be made in a school, post-16 institution or a place where relevant early years education is provided, and a situation in which a child's parents arrange their own EHE as described in the paragraph above. EOTAS under s.61 of the 2014 Act is not 'EHE'.	+ a place such as education in a school or other institution inappropriate, > it would be inappropriate for the provision to be made in a school, post-16 institution or a place where relevant early years education is provided, home education > EHE The former is not 'elective home education'. > EOTAS under s.61 of the 2014 Act is not 'EHE'.	
'Efficient'			
9.7 moved to 3.2 → →Moved from 8.6			
If a school already attended by a child is a special school and the child is attending it under arrangements made by	9.7 If a school already attended by a child is a special school, and the child is attending it under		

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
the local authority, the local authority's consent is necessary for the child's name to be removed from the admission register,	arrangements made by the local authority (which in practice means that they have an EHC plan), the local authority's consent is necessary for the child's name to be removed from the admission register.	+ (which in practice means that they have an EHC plan),	
but this should not be a lengthy or complex process and consent must not be withheld unreasonably.	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	If the child is to be withdrawn to be educated at home, then the local authority, in deciding		
whether the home education to be provided would meet	whether to give consent, should consider whether the	home education > EHE	
the special educational needs of the child, and if it would, should give consent.	EHE to be provided would meet the SEN of the child, and if it would, the local	special educational needs > SEN	
However, that consideration should take into account the additional difficulties of providing education at home	authority should give consent. The local authority should consider the additional difficulties of providing	+ the local authority that consideration should take into account > The local authority should consider	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
to a child whose special educational needs are significant enough to warrant a place at a special school.	education at home to a child whose SEN are significant enough to warrant a place at a special school.	special educational needs > SEN	
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.	If the local authority refuses consent, then the parent can ask the Secretary of State to make a direction. 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. Communication with the local authority allows the plan to be updated and any extra support needed considered,	+ If the local authority refuses consent, then the parent can ask the Secretary of State to make a direction. + Communication with the local authority allows the plan to be updated and any extra	
	and also avoids the child potentially being declared a	support needed considered, and also avoids the child	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
	child missing education.	potentially being declared a child missing education.	
'Full-time'			
9.8 Moved to 3.3>> >> Moved from 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	9.8 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 SEND is suitable.	special educational needs > SEND appropriate > suitable	
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	Parents should be encouraged to see a process of engagement with the child as part of the authority's overall approach to EHE of pupils with SEND, including the provision of appropriate support.	home education > EHE SEN > SEND	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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.	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 unsuitable.		
9.9 Moved to 3.4>> >>Moved from 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			

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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 provide such support, it must give reasonable consideration to any request for assistance - including	9.9 Where a child's parents choose to make their own arrangements, the local authority has no duty to assist the parents with the costs which they incur, and many local authorities do not do so. However, even if a local authority's policy is not to provide such support, it must	but the > Where a	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
considering whether it has any legal power to comply with the request and whether in the circumstances it ought to do so.	give reasonable consideration to any request for assistance to help parents make suitable provision - including considering whether it has any legal power to comply with the request and whether in the circumstances it ought to do so.	+ to help parents make suitable provision	
>>Moved from 8.8			
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,	9.10 The high needs funding block of the Dedicated Schools Grant (DSG) to local authorities is intended to fund special and alternative provision for all relevant children and young people in the authority's area, including home-educated children.	+ (DSG) + to local authorities + special and alternative	
although the majority of the high needs block will inevitably be devoted to the cost of school placements.	The majority of this high needs funding is for those with complex needs, typically those with EHC plans attending schools and colleges, but the local	block > funding will inevitably be devoted to the cost of school placements > is for those with complex	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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	authority can also use their DSG to provide any support services for children who have attained compulsory school age with SEN, whether or not they have an EHC plan, and in relation to education otherwise than at school under section 19 of the 1996 Act. Direct support to the parents, if given at all, should relate only to costs incurred by parents as a result of the SEN of the child, insofar as these can reasonably be identified. Costs which would be incurred anyway by the parents in providing EHE, even if there were no SEN (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	needs, typically those with EHC plans attending schools and colleges, + but the local authority can also use their DSG to provide any support services for children who have attained compulsory school age with SEN, whether or not they have an EHC plan, and in relation to education otherwise than at school under section 19 of the 1996 Act. special needs > SEN home education > EHE, special needs > SEN	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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.	bear the financial responsibility for doing so.		
→Moved from 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.	9.11 In some cases, a local authority will conclude that the EHE 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	In such cases, the procedure to be followed in s.437 of the 1996 Act 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	Education Act 1996 > 1996 Act	

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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.	psychologist reports. Furthermore, the naming of a school in any SAO must conform with the provisions of s.441 of the 1996 Act. Parents who have withdrawn a child from a setting which they regarded as unsatisfactory may cooperate more willingly with this process if the authority is willing to explore options which are different in nature from the previous setting.	the order > any SAO + of the 1996 Act	
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	9.12 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		

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
that the parent is committing an offence if the child does not attend the school.	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.	It is not lawful for a local authority or a school to do this, and create a situation where a parent is committing an offence without their knowledge and bears the burden of trying to remove their child from that school. It is up to the child's parent whether to arrange for the child to be a registered pupil at the school. If the parent does not, the local authority should consider whether a preliminary notice should be issued.	+ a local authority or + and create a situation where a parent is committing an offence without their knowledge and bears the burden of trying to remove their child from that school registered as a > a registered a s.437(1) notice > preliminary notice	
→Moved from 8.11			

2019 Guidance (LA)	2023 Draft (LA)	Changes	Comments
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.	9.13 Information about the right to request an EHC needs assessment should be available to all parents including those who are considering EHE because they feel that the SEND support being provided in the school is insufficient to meet the child's needs.	home education > EHE special educational > SEND	
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.	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. At a minimum, the local authority should help ensure that parents know about their local SEND Information, Advice and Support service.	At a minimum, the local authority should help ensure that parents know about their local SEND Information, Advice and Support service.	

Overview	