

Suggestions for Response to EHE Consultation

This document can be downloaded from The HE Byte - [English Consultations](#) page

Introduction

Most parents of home educated children in England are aware that the Department for Education [DfE] are currently consulting on revisions to the Guidance for EHE. The closing date for responses is 2nd July. The DfE published three documents in connection with the consultation, which are linked to below. They prefer responses to be made [on-line](#), but for those who cannot do this they offer (but do not provide a link to) a Word document as an alternative. What is not clear from the PDF documents is that there are a further seventeen questions in the on-line portal, making thirty-eight in all (excluding the seven at the start about respondents' identity and contact details).

The Call for Evidence and both sets of Draft Guidance combine to make responding to this consultation a daunting and time-consuming task, not only due to their length, but also because they involve complex issues on how existing laws may be reinterpreted. One has to wonder if civil servants considered how difficult a task they were asking parents to undertake when they devised such a long and complex consultation. It would be futile to speculate whether they did so on purpose or simply through incompetence.

Why this document?

The HE Byte team want to help the EHE community to respond to the consultation. We are not the only ones to have done this, but we hope you will find our efforts helpful. We provide below comments on key points to consider, but you don't have to follow our suggestions. Whatever you decide, we strongly encourage you **not to copy and paste** our or anyone else's comments into your answers. Use your own words, as "campaign answers" are easily spotted by civil servants and are often discounted when assessing responses. See our [Responding to Consultations](#) page for further comment and other pointers on how to contribute effectively. Other documents which you may find useful are also available on that page, such as a parallel arrangement of the two sets of guidance.

It is important to stress here that we have no legal experts on our team, so please do not assume our comments are authoritative on points of law. You may be aware that some families crowd-funded a legal opinion from David Wolfe QC, and notes on this have been circulating amongst the wider EHE community. **Where we quote from the QC's comments, we have identified them clearly.** Key people from within the group which commissioned this have recently published their own [Suggestions as to how to Complete the EHE Call for Evidence](#) which we encourage you to read if you have time. Whilst each has highlighted a few issues that the other hasn't mentioned, there is a significant amount of overlap between the two sets of suggestions, which is just what one would hope.

Practical pointers

- Don't think you have to comment on every point listed in this document - they are there to inspire and encourage you - select the ones you feel most concerned about;
- Don't leave it too late to start your response; begin to draft it as soon as possible;
- You can save your answers on the submission portal and return later, but we recommend you write them on a word processor then copy and paste each one into the relevant box;
- Don't leave it until the last few hours to respond on-line, the website may get overloaded.

Feeling overwhelmed!

You are not alone, we all feel the same. Whilst we'd encourage all members of the EHE community to respond to all the questions, we quite understand that for a variety of reasons many people will find this very difficult to do. If you are in that category, we suggest you respond to the questions you feel are most important, the ones where you feel you have something to say - but please don't simply write "No way!", do your best to explain why you feel as you do.

If you feel you can only respond to a limited number of questions and you are involved with other families in a HE group, another option would be to answer a few questions each. Submit *your* answers as *your* personal response, but perhaps someone in the group could then collate all members' answers and submit them as a united response, putting the name of the group in Q4.

Finally, for those who want to say something to the DfE, but don't have the time, energy or emotion to process much of the detail, we have a suggestion. Rather than signing an on-line petition - we explain on our [Responding to Consultations](#) page why we do not consider them to be an effective way of communicating with government - a better alternative would be **to respond to just one consultation question** which is so wide that it invites contributors to say anything they want in answering it. If you want to make the DfE aware of how you feel about this whole debate and the way the consultation has been conducted, we suggest you do so by answering this one question.

See this Byte for more information, [Question 26 - Are there any other comments you wish to make...](#)

Please note: On-line questions 1 to 7 have been omitted as these ask for personal information.

Page 2 [13]	<p>Information about home educated children This section is about current and possible future arrangements for registration of children who are being educated at home</p>
8 [1]	<p>How effective are the current voluntary registration schemes run by some local authorities? [What are the advantages and disadvantages associated with these local voluntary arrangements, and] What would be the advantages and disadvantages of mandatory registration of children educated at home, with duties on both local authorities and parents in this regard? <i>Additional text in [] is from pdf version of questions. It is missing from on line response form.</i></p>
	<p>Current schemes' negatives:</p> <ul style="list-style-type: none"> • Often run by CME teams or similar • Staff often have little or no respect for EHE parents • Staff understanding of the law relevant to EHE is often wrong <p>Illustrate with any experiences you have had.</p> <p>Current positives: If you know of good examples, please describe them.</p> <p><i>You may want to suggest that LA staff should include people with personal experience of EHE</i></p> <p>Mandatory registration:</p> <ul style="list-style-type: none"> • Probably illegal under Human Rights Legislation • Sends out wrong message that the state is responsible for education • Unaffordable if includes monitoring/assessment <p><i>Given the duty of LA's to "know" where children are being educated, it is very probable that there will be some form of registration/notification in place. Decide if you want to argue for no requirement to inform the LA (as now) or for an alternative to registration.</i> <i>Relevant Byte: <u>Notification or Registration – What is the Difference?</u></i></p>
9 [2]	<p>What information is needed for registration purposes, and what information is actually gathered by local authorities? Would it help the efficacy of these schemes, and the sharing of information between authorities, if there were a nationally agreed dataset or if data could be shared by national agencies, such as DWP or the NHS?</p>
	<p>Registration</p> <ul style="list-style-type: none"> • Not required by law • <i>If the state needs know where children are being educated, a notification scheme would be the better option</i> • Notification could apply in every case where parents do not opt in to the state's provision <p>Data Sharing</p> <ul style="list-style-type: none"> • A contentious and complicated issue • Advice from David Wolfe QC - such data sharing between agencies, just because a child is home educated, would not be lawful • Scottish Named Person scheme was ruled unlawful by the Supreme Court in July 2016, because of its data sharing arrangements <p><i>The Named Person scheme was judged to be at risk of disproportionate interference with ECHR Article 8 rights. See: Scottish plan for every child to have 'named person' breaches rights - The Guardian http://tinyurl.com/jbvrda4</i></p>

10 [3]	Does experience of flexi-schooling and similar arrangements suggest that it would be better if the scope of registration schemes included any children who do not attend a state-funded or registered independent school full-time? If so, do you think that local authorities should be able to confirm with both state-funded and independent schools whether a named child is attending that school full-time?
	<p>Registration</p> <ul style="list-style-type: none"> Flexi-schooled children are known to the authorities, therefore do not need to be included in any registration scheme A notification scheme could possibly apply to the portion of time they are educated outside a state school <p>Data Sharing</p> <ul style="list-style-type: none"> As with the previous answer, any scheme which singles out EHE children is probably unlawful Legal clarification would be necessary if schools were to be required to notify the state of the basic details of <i>all</i> registered pupils
11 [4]	Would the sanction of issuing a school attendance order for parental non-compliance with registration be effective, or is there another sanction which would be more useful?
	<p><i>If you do not agree with there being a registration scheme, make this clear at the start of your answer.</i></p> <p><i>This is also a place where you could mention the negative attitude some LA officers have towards EHE families, if you have concerns about that. If you feel this is either because LA staff don't understand EHE, lack training or because they have been influenced by the hostile environment towards EHE, make that clear.</i></p> <p>School Attendance Orders</p> <ul style="list-style-type: none"> These should be only issued where officers are confident that a child is not receiving a suitable education - there are occasions when this might be the case Are there other reasonable steps which should be offered to families? Would a properly established mediation scheme safeguard against poor attitudes in LA officers? <p><i>Relevant Byte: <u>Could Mediation Help?</u></i></p>
12 [5]	What steps might help reduce the incidence of schools reportedly pressuring parents to remove children to educate them at home?
{24}	<p>Suitable measures - you could suggest one or more of the following</p> <ul style="list-style-type: none"> Abandoning league tables Abandoning SATs Better support for SEND children Better support for children with "School phobia" or similar Better support for children who exhibit "Persistent disruptive behaviour" Increased availability of good quality "Alternative Provision" Sanctions against individual members of a school's staff who engage in off-rolling in any form A higher level of notification by schools when pupils are deregistered, together with a carefully considered set of criteria (e.g. exclusions or frequent absences) in a pupil's record, which would trigger the parents being asked whether they came under pressure from the school to deregister the child <p>Unsuitable measures</p> <ul style="list-style-type: none"> Fining schools - this could lead to schools putting unreasonable pressure on parents who were genuinely motivated to EHE

13 [6]	Is there an argument for some provision which allows a child to return to the same school within a specified interval if suitable home education does not prove possible?
	<p><i>A matter of opinion really, but some points to ponder:</i></p> <ul style="list-style-type: none">• <i>Parents should not be pressured by the school to return the child to school as the end of trial period approaches</i>• <i>There can be few good reasons for continually switching a child between EHE and school education, therefore any such scheme should have built-in safeguards which recognise when a parent is really not coping with life not just with EHE. When this is the case, supportive not punitive involvement should then be offered.</i>

*We are sorry about blank spaces but we thought it would best to keep the questions and our notes on them together.
We suggest that you use these blank areas for your personal notes.*

<p>Page 3 [15]</p>	<p>Monitoring educational provision made at home or for home-educated children The questions in this section are about ways in which oversight of children who are being home educated would be best arranged so that it helps to ensure the education provided is suitable, but also so that the oversight is proportionate to need.</p>
<p>14 [7]</p>	<p>How effective is local authority monitoring of provision made for children educated at home? Which current approaches by local authorities represent best practice?</p>
	<p>There is no legal reason why regular monitoring of all EHE children has to be conducted, and doing so may be disproportionate and therefore illegal. Whilst it asks for <i>good practice</i>, this is also an opportunity to recount any instances of <i>bad practice</i> you have experienced.</p>
<p>15 [8]</p>	<p>If monitoring of suitability is not always effective, what changes should be made in the powers and duties of local authorities in this regard, and how could they best ensure that monitoring of suitability is proportionate?</p>
	<p>Advice from David Wolfe QC - Proposed section 5.1 (Draft LA Guidelines) makes clear that LAs are not under a duty to monitor on a “routine basis”. Section 5.2 then contemplates a system which is "proportionate and therefore light touch where that is appropriate, but that can act in the interests of the child, particularly if a change in circumstances occurs". And section 5.3 adds to that "it is for each local authority to decide what is necessary and proportionate". That is all very well, but what those paragraphs need also to make clear is that routine and frequent blanket monitoring is not proportionate or light touch.</p> <p>You may want to highlight some of the problems with any current arrangements you are familiar with. These may include:</p> <ul style="list-style-type: none"> • Most LA staff do not understand EHE • Some LA staff have negative attitudes towards EHE • LA staff responsible for EHE are often part of the CME/EWO team and therefore consider any child not in school a problem * • LA staff rarely have any personal experience of EHE • Too often the implementation of a particular LA's policy changes when there is a change in key officers responsible for EHE • There appears to be no training for LA staff which helps them understand the benefit many children receive from being EHE - there is evidence that some who offer training for LA staff are opposed to EHE ** <p>You may also want to discuss whether the formation of a LA's EHE policy should be the responsibility of staff who are not legally trained, who have no experience of EHE, and who have been heavily influenced by the hostile environment created in recent years.</p> <p><i>Relevant Bytes: * Living Wisely in a Hostile Environment & ** Freedom of Information Request – Lord Soley and Daniel Monk</i></p>

16 [9]	<p>Should there be specific duties on parents to comply with local authorities carrying out monitoring if such LA powers and duties were created, and what sanctions should attach to non-compliance?</p>
	<p>Advice from David Wolfe QC in regard to the previous question is that routine monitoring of EHE children would not be proportionate nor light touch. Similarly, any scheme which empowers LAs to sanction parents would also be anything but proportionate or light touch.</p> <p>In the past, on the few occasions when a LA has taken EHE parents to court over non-compliance with a SAO, the courts have protected parents from bad practice by LA officers. LAs should not be given the role of judge and jury in regard to parents, who need to be confident that they can appeal to the courts to protect them from state interference in their family life.</p> <p><i>You may also want to comment on whether, rather than encouraging confrontation between LAs and EHE families, the government should be motivating LAs to be supportive of parental choices and EHE in particular. If you think that the option of mediation could be helpful, this is a further opportunity to suggest it as an alternative to sanctions.</i></p>
17 [10]	<p>Is it necessary to see the child and/or the education setting (whether that is the home or some other place), in order to assess fully the suitability of education, and if so, what level of interaction or observation is required to make this useful in assessing suitability?</p>
	<p>This question does not state clearly who is assessing the suitability of the education, though it seems from the context to <i>assume</i> that it is a representative of a LA.</p> <p><i>In the light of this you may want to comment that the answer to the question as asked is that the suitability of education can only be assessed by people who spend a lot of time with a child, who know their personality and are dedicated to helping them achieve the best outcome for their lives. For the majority of children, this is obviously their parents, especially when they have elected to home educate them. LA's cannot provide sufficient staff to properly and regularly engage with every EHE child, so they will never be able to assess <u>fully</u> the suitability of EHE children's education. The evidence is that they cannot do that for children in the state education system, so how can they expect to do it for those outside it? Such monitoring would not be light touch nor proportional.</i></p> <p>You could also consider mentioning that when Nick Gibb MP, an Education Minister, appeared before the Education Committee (1 May 2018) he stated, "The commissioner of that provision for that child has a duty to make sure that the children will be safe in that environment and that the quality of provision is of a suitable standard. The commissioner of the provision, the person that pays for that provision, has to take responsibility for ensuring that it is of the right quality." It is parents, not the state, who commission EHE.</p> <p><i>Relevant Byte: <u>The Commissioner of Education is Responsible for Keeping the Child Safe</u></i></p>
18 [11]	<p>What can be done to better ensure that the child's own views on being educated at home, and on the suitability of the education provided, are known to the local authority?</p>
	<p>The draft LA guidelines correctly states, "3.2 This means that the responsibility for children's education rests with their parents." You may want to ask why the government seemingly does not respect its own understanding of the law.</p> <p>The <u>UN Convention on the Rights of the Child</u> is also relevant particularly Articles 5, 18 & 29/1 in regard to a state's respect for the responsibilities of a child's parents.</p> <p>Other points to consider</p> <ul style="list-style-type: none"> • Occasional interviews by a stranger can never guarantee that a child's own views are known • The dangers of the interviewer of children hearing what they want to hear, rather than listening carefully to the child • The inequality of only asking EHE children how they want to be educated, but not seeking and following through on the views of children educated in schools.

19 [12]	<p>What are the advantages and disadvantages of using settings which are not registered independent or state schools, to supplement home education? How can authorities reliably obtain information on the education provided to individual children whose education ‘otherwise than at school’ includes attendance at such settings as well as, or instead of, education at home?</p>
{38 & 44}	<p>Unregistered schools are not a EHE issue and should not be included in the proposed guidance. The government should resist malicious attempts to conflate two separate issues.</p> <p>The proprietors of illegal schools should be prosecuted.</p> <p>Advantages of settings outside the home:</p> <ul style="list-style-type: none"> • EHE groups run by parents, <i>where one or both of a child's parents is normally present</i>, should be excluded from being treated as "unregistered settings" • These provide (select/add your own thoughts) <ul style="list-style-type: none"> ▪ opportunities to learn from the knowledge and experience from a wide circle of other people, children and adults ▪ opportunities to participate in activities which their own parents are less confident to provide ▪ opportunities to socialise ▪ opportunities for group activities ▪ opportunities for group sports ▪ opportunities to meet people from different backgrounds/cultures
20 [13]	<p>What are the advantages and disadvantages of using private tutors to supplement home education? How can authorities best obtain information on the education provided to individual children whose education at home includes private tuition, or whom attend tuition away from home?</p>
	<p><i>We suggest you start with asking why information on the use of private tutors should be sought by LAs? To seek it for individual EHE children and not for schooled children would be inequitable and unjust.</i></p> <p>If the government wishes to create a register of private tutors, then they should do so as an issue separate from EHE. The provisions of any legislation would need very careful drafting in several areas.</p> <p>Advantages of employing private tutors (select/add your own thoughts)</p> <ul style="list-style-type: none"> • Provide support in areas where parents have limited experience • Some are more familiar with requirements of the national exam system • May provides focussed one-to-one tuition for a child <p>Disadvantages</p> <ul style="list-style-type: none"> • Cost

21 [14]	<p>Are there other matters which stakeholders would wish to see taken into account in this area? If so please insert comments below. Yes/No Response box</p>
	<p>YES - This question provides an opportunity for you to emphasise your concerns about LAs monitoring (and registering) EHE.</p> <p><i>We suggest that particular areas of concern include the lack of knowledge and experience in LA officers with regard to EHE. This is equally true about their understanding of the everyday practice of EHE in its many forms and also about their knowledge of the law on EHE.</i></p> <p>Section 5.1 states, "The government also wants to ensure that parents are not subjected to spurious complaints or unwarranted interference by authorities when they are known to be educating their children properly." This is not presently the case. If you have personal experience of " spurious complaints or unwarranted interference by authorities" you could recount them here. If you don't, you could raise the instance of Darlington Police visiting HE families.</p> <p>Safeguards against them could possibly include (select/add your own thoughts)</p> <ul style="list-style-type: none"> • Better training for LA officers (and councillors) responsible for EHE • Mandatory separation of EHE department from CME/EWO staff • Recruiting people with personal experience of EHE to work in EHE departments <p><i>Consider adding something like (do not copy & paste): The state should refrain from seeking to "police" EHE and begin to provide a supportive environment for parents who have seriously considered their options and elected to fulfil their educational responsibilities to their children directly and personally.</i></p> <p><i>Relevant Bytes: <u>Police track hundreds of 'invisible' home-schoolers</u> & <u>The Times, Home Education and Fake News</u></i></p>

<p>Page 4 [17]</p>	<p>Support for home-educating families The questions in this section are about ways in which families who educate children at home could be best supported to do so.</p>
<p>22 [15]</p>	<p>What might be done to improve access to public examinations for children educated at home?</p>
	<p>Two possible improvements:</p> <ul style="list-style-type: none"> • More local exam centres willing to accept EHE external candidates <ul style="list-style-type: none"> ▪ the government should consider requiring LAs to ensure that an appropriate number of such centres are available in their area • Some families, but perhaps not all, would welcome being treated in this respect on par with those whose children attend state-funded schools <ul style="list-style-type: none"> ▪ some parents are concerned that there may be unacceptable conditions attached to such provisions and might not take them up if there were ▪ to be just to all families, should the government decide to cover public examination fees for EHE children, they should make the same provision for all children educated outside the state-funded sector ▪ EHE saves the government a significant amount of funding over a child's years in education (around £50,000 per child between 5 & 16 years); covering public examination fees would be very little by comparison <p><i>Include any other suggestions you think would be helpful. If you have had difficulty arranging examinations for a child, or difficulty in paying for them, share those if you are comfortable to do so. For example, how far you have had to travel to find a co-operative examination centre.</i></p>
<p>23 [16]</p>	<p>What good practice is there currently in local authority arrangements for supporting home-educating families? Should there be a duty on local authorities to provide advice and support, and if so how should such a duty be framed?</p>
	<p><i>You may think there are too few examples of good practice, but if you know of any, please compliment the LA. If you have experienced "support" being offered when this has really been used as a cover for "inspection/monitoring", also give details</i></p> <p>Improvements - you may wish to repeat some of the points you have made above about:</p> <ul style="list-style-type: none"> • Better trained staff who appreciate the hard work of EHE parents • Staff drawn from people with personal experience of EHE • Separating the EHE team from CME/EWO teams • Better understanding of the law regarding EHE • Not seeing EHE as a problem • Support must be support, not a trade-off for monitoring

<p>Page 5 [19-20]</p>	<p>Other matters This section asks questions about some specific issues connected with home education. It also allows for general comments to be made on current arrangements for home education, and possible changes.</p>
<p>24 [17]</p>	<p>Should there be a financial consequence for schools if a parent withdraws a child from the school roll to educate at home? Yes/No Response box</p>
<p>{12}</p>	<p>NO - This would penalise a school even if they have not coerced the parents to deregister a child. Parents who are satisfied with a good/excellent school may still elect to HE because they see that value can be added to their child's educational experience outside of a school environment. It would be unjust to penalise the school in such circumstances and could easily result in pressure being put on parents due to the school's interests rather than the child's.</p> <p>Penalties should only be applied where there has been wrong done. Penalising staff who seek to coerce parents to deregister children for the benefit of the school would be appropriate.</p>
<p>25 [18]</p>	<p>Should there be any changes to the provision in Regulation 8(2) of the Education (Pupil Registration) (England) Regulations 2006 requiring local authority consent to the removal of a child's name from the roll of a maintained special school if placed there under arrangements made by the local authority?</p>
	<p><i>What are your own experiences, especially if you have a child with special needs? Would removing this requirement have been helpful to you?</i></p> <p>If the requirement is retained</p> <ul style="list-style-type: none"> • should LAs have to respond to the request within a fixed period (e.g 28 days) • should parents have a simple and quick appeals process if consent is withheld • should any appeals be heard by an independent arbiter

26 [19]	Are there any other comments you wish to make relating to the effectiveness of current arrangements for elective home education and potential changes?
	<p>If you plan to answer only <u>one</u> question, this is the one we suggest you answer. It is an invitation to discuss anything you feel relevant, because the "potential changes" are wide ranging.</p> <p>Say what you dislike, or perhaps like*, in the Call for Evidence and both draft Guidance documents. You may also wish to explain how the hostile environment which has been generated towards EHE is affecting you and your family. You could highlight the misleading and negative media coverage, Lord Soley's Bill, and the drastic changes being aired in this consultation.</p> <p>Some people are concerned that the consultation process has been very difficult for ordinary families to engage with, given its size, complexity and nuances in reinterpreting existing laws. If that is how you feel, then say so.</p> <p>There has also been a call for the DfE to hold proper discussions with the EHE community before implementing any changes. If you think that would be helpful, say so. Ask that key ministers and leading civil servants involved with this review arrange a number of local meetings with EHE families in every region of the country. These should be at times when EHE families can attend, and in venues where children of all ages will be welcome.</p> <p>If you are answering this question only, there is no need to be quite so brief. If you have a lot on your mind, say it all. However, please express yourself in a constructive way, as this is more likely to influence people than letting off steam.</p> <p><i>If you answer only Q26, we suggest you put something like "Please refer to my answer to question 26" in all the other on-line response boxes.</i></p> <p>N.B. One HE mum, Caroline, who wrote the Home Education Freedom Charter, is encouraging those who don't feel they can answer the questions, to email the DfE via the consultation email address. This is a valid alternative, but as Caroline points out, you will need to ask them to acknowledge receipt of your email and confirm that it will be considered alongside the responses to the online survey. Answering Q26 overcomes that uncertainty. Whichever method you choose, you may find her suggestions helpful. They are available from: headhub.co.uk/government-ehe-guidelines-consultation-help</p>
	<p>* If you are struggling to find positive points in the consultation documents, here are four we noticed, though when read in context it appears the DfE haven't realised their significance!</p> <p>Call for Evidence. Section 2.3f states:</p> <p>"Although it is sometimes said that home education has been a factor in serious injuries or deaths which have led to Serious Case Reviews, in fact the child concerned has normally been known to relevant agencies despite being home educated."</p> <p>Draft Guidance for LA's 7.2</p> <p>"The department's view is that 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."</p> <p>Draft Guidance for LA's 10.2</p> <p>"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." [emphasis added]</p> <p>Draft Guidelines for LA's 10.15</p> <p>"It should be noted that parents from all educational, social, 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."</p>

27 [20]	<p>What data are currently available on the numbers of children being educated at home in your local authority area?</p>
	<p><i>Include any published information you know about, citing the source. If it is from your LA you may or may not wish to say whether you think it is an accurate number, and choose to add why that is probably the case. Negative attitudes to EHE from LA officers will decrease the number who are known to them, whilst a positive and truly supportive approach is likely to see a greater number of families notifying the LA of their presence.</i></p>
28 [21]	<p>Do you have any comments on any of the contents of the call for evidence document in relation to equality issues?</p>
{45}	<p><i>Equality issues are usually connected with 'relevant protected characteristics' as in Q45.</i></p> <p>There is concern that the requirement to teach Fundamental British Values is an initial step towards imposing a curriculum on EHE children. In particular, given that they relate in part to moral values, such an imposition may contravene Human rights Legislation. The European Convention on Human Rights, Article 2 Protocol 1 states,</p> <p style="padding-left: 40px;"><i>"In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of the parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions."</i></p> <p>Freedom of conscience and freedom of thought are vital if any society is not to become totalitarian in the state's relationship with its citizens. Denying parents the freedom to teach their children according to their own moral convictions is a dangerous first step towards restricting all parents from teaching their children according to their own philosophical convictions.</p> <p><i>We have mentioned elsewhere that EHE children and schooled children (and their families) should be treated equally. Though this is not a 'protected characteristic' as defined in equality law, you could consider restating such concerns here.</i></p>

Questions on draft revised DfE guidance on home education: for local authorities

Page 6	<p>Draft revised DfE guidance on home education: for local authorities This section invites comments on different sections of the draft revised guidance document about the current framework for home education, which DfE proposes to publish for local authority use. Copies of the draft document can be downloaded from the Overview page.</p>
29	Comments on Section 1: What is elective home education?
{39}	<p>This section is sparse at best. It would be helpful to have a paragraph or more stating that the majority of EHE children benefit from being educated in this way, and go on to achieve an outcome which is suitable for them. Something like this comment from later in this document would be helpful as the opening statement here:</p> <p style="padding-left: 40px;">10:15 "It should be noted that parents from all educational, social, 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."</p> <p><i>If you have your own examples of EHE children who have achieved, list them here. Alternatively, this article highlights some encouraging evidence: Home Education: A successful educational experiment?</i></p>
30	Comments on Section 2: Reasons for elective home education - why do parents choose to provide it?
{41}	<p>2.2 speaks of "negative reasons" which masks the fact that this is usually because of failures in the state education system. If you want to comment on this, list some or all of the following school-induced reasons:</p> <ul style="list-style-type: none"> • failure to resolve bullying • coercing parents to off-roll a child because they have challenging behaviour or are expected to get low examination results • failure to provide suitable SEN support • A child with school-phobia/refusal which has not been recognised • disputes with school or LA over other issues <p><i>Again, include any personal examples you have.</i></p>
31	Comments on Section 3: The starting point for local authorities
	<p>3.4 is not a sound basis for seeking to reinterpret existing legislation:</p> <p style="padding-left: 40px;">"However, few people would argue today that parents should be able to exercise their right to home educate children with absolutely no independent oversight, despite their having the legal responsibility set out above."</p> <p>There is also the state's responsibility not to interfere in the private lives of its citizens. This section is a major cause of concern; presumably the government have taken advice on how they are seeking to reinterpret legislation, but do make them aware that this change will be contested.</p> <p>3.5 does not make clear that a LA's EHE policy is required to be in accordance with current legal requirements <i>and</i> in line with the DfE's own guidance. This should be emphasised here. Many HE parents are aware that this is currently not the case in multiple LAs - if you have examples refer to them.</p>

32	Comments on Section 4: How do local authorities know that a child is being educated at home?
{42}	<p>This section is a major concern because it proposes an apparent <i>reinterpretation</i> of existing law. Much of what follows in other sections is then based upon it.</p> <p>4.2 cites s.436A of the Education Act 1996 adding, "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."</p> <p>This is proposing a significant change from the existing guidance, where the current guidelines state: 2.7 Local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis. However, under Section 437(1) of the Education Act 1996, local authorities shall intervene if it appears that parents are not providing a suitable education. This section states that: "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." [emphasis original]</p> <p>Currently, an LA has to have reason to investigate whether a suitable education is being provided to a EHE child. The absence of any suggestion that there is a problem means that they are not required to investigate the provision of education (though many LAs have been acting otherwise). The proposed change in interpretation implies that a LA must assume that parents are not providing a suitable education until they can ascertain that they are. This is therefore a shift from 'innocent until proved guilty' to 'guilty until proved innocent'.</p> <p>This proposed change is badly thought through and lacks any safeguards for parents - and their children - when they are wrongfully accused of failing to provide a suitable education.</p> <hr/> <p>4.4 is a concern because of its data sharing implications.</p> <p>David Wolfe QC has advised that the seeking or the making of a referral between agencies as contemplated by this section, simply by virtue of the mere fact that a child is being home educated would not meet data protection requirements. The correct position is set out in the fourth sentence, namely that such arrangements should only be in place if there is a "specific concern as to the adequacy of that education".</p> <p>This restriction must be emphasised in the revised guidance, and should not be based on the expectation in section 4.2 of this draft.</p> <p>4.6 is confusing because it states "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) <u>there is no legal obligation on parents to provide such notification</u>, either in writing or otherwise, or indeed to provide any reason for withdrawal." This seems to conflict with current understanding and in particular The Pupil Registration Regulations (England), section 8.1.d.</p>

33	Comments on Section 5: Local authorities' responsibilities for children who are, or appear to be, educated at home
{43}	<p>This is a clear example of further bricks being laid on the bad foundation of section 4.2.</p> <p>5.1 states that once a LA has established that a child is receiving a suitable education, they "have no specific statutory duty to monitor the quality of home education on a routine basis." The ambiguity of this statement is illustrated by the confusion in the following sections which include a departmental recommendation in 5.4 that LAs, "ordinarily make 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."</p> <p><i>You may wish to say that given the internal confusion, this section needs deleting and the new guidance drafting in accordance with the law as reflected in the current guidance.</i></p> <p>The following is a useful quotation from a supporter of Lord Soley's Bil. In the Second Reading debate on 24 Nov 17, Baroness Morris of Yardley stated, "In truth, though, while the state is very good at inspecting within a very regulated framework, it is less good at exercising judgment and discretion where people are not absolutely following that framework and regulation but are nevertheless doing a decent job. Most of us have talked to teachers and head teachers who have complained about the present inspection framework, and I can well imagine how nervous some parents are that they are going to have that conversation with some sort of regulator." [emphasis added]</p> <p>Such fears would be multiplied in a post-code lottery if, as suggested in 5.3, it was left to every LA to decide on its own criteria and methodology for assessing EHE. Identifying EHE children and supporting them are objectives which should not be conflated. Unless LA staff are properly trained, they will continue to relate to EHE parents as "problems in need of oversight" rather than essentially, committed parents wanting the very best for their children.</p> <p><i>If you have an example of bad policies and practices in regard to EHE amongst LA staff, consider mentioning it/them here.</i></p>

34	Comments on Section 6: What should local authorities do when it is not clear that home education is suitable?
	<p>This is another section which relies on the disputed interpretation in 4.2.</p> <p>6.4 is incorrect in suggesting that s.436A forms a basis for informal enquiries, beyond asking the parent for their child's educational status. At this stage, the parent's decision about suitability must be trusted and not tested. The local authority should only try to make a judgement about the suitability of the provision in the event of an appearance arising in Section 437(1). This position is supported by the current EHE Guidelines in section 2.8 which encourage LAs to make further informal enquiries of the parents before issuing a s.437(1) notice.</p> <p><i>The new Guidance should reflect the present understanding, not change it.</i></p> <p>In 6.5 no clarity is provided on what level of information a parent can be reasonably expected to provide. This will leave practice in individual areas open to too much variation and excessive demands by LA officers. LAs needs more clarity than is provided here.</p> <p>Similarly, 6.6 correctly states with regard to requests to see a child, "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," but then suggests, "although a refusal to allow a visit can in some circumstances justify service of a notice under s.437(1) or even a school attendance order." However, it does not clarify the circumstances which might justify this action. Again such lack of clarity will be open to misunderstanding by LA staff, who are now very aware of the straw-man concerns raised over EHE.</p> <p><i>Consider stressing that the guidance needs to be balanced by encouragements to LAs to respect parents' decisions to EHE, unless they have specific reasons for concerns. As drafted, the guidance is in danger of encouraging them to assume that there are reasons for concern and therefore to relate to EHE families in an attitude of mistrust.</i></p>

35	Comments on Section 7: Safeguarding: the interface with home education
{43}	<p>The current understanding of Section 175 of the Education Act 2002 is the very opposite to what is expressed in 7.1. The key phrase is at present determined to be "the functions conferred on them in their capacity as a local education authority", because EHE is not a provision of that capacity.</p> <p>Section 10(3) of the Children Act 2002 states that in exercising their general duties, "In making arrangements under this section a local authority in England must have regard to the importance of parents and other persons caring for children in improving the well-being of children." Subsequently parents and guardians are <i>not</i> listed in sub-section (4) as a "relevant partner" with the LEA, further emphasising that <i>parental provisions are not part of the functions conferred on a LEA</i>. Similarly parents and guardians are not listed in S.11(1) amongst those to whom this section applies.</p> <p><i>If you are confident in pointing out this discrepancy, we encourage you to do so.</i></p> <p>The statement in the first part of 7.2 is very welcome, "The department's view is that 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." Why therefore does the rest of this section completely undermine the DfE's own view and consequently contribute to a negative attitude towards parents?</p> <p>This double-mindedness is also reflected in 7.4 which initially states, "As already noted, the local authority has no express statutory powers in the Education Acts to enter the home to enquire into the education being provided without the agreement of the parents, nor can it impose any legal obligation on parents to let its officers see or talk to children for the purposes of monitoring the provision of elective home education." However, it then adds, "But there may be cases where the parents' refusal would be sufficient, taken together with other evidence and circumstances, to justify the making of a school attendance order." Again, there is no clarification of what level of concern would be required to justify making a SAO.</p> <p><i>Consider pointing out these examples of duplicity, which will confuse poorly trained LA staff, especially in the light of the hostile environment created towards EHE.</i></p> <p>Other issues of concern in this section in regard to "significant harm":</p> <ul style="list-style-type: none"> • 7.6 cites s.31 of the Children Act 1989 in this respect, but a failure to safeguard children in schools is causing far too many to be significantly harmed - often mentally and/or emotionally - and no one takes any meaningful action. Where should a LA's priorities be? • 7.7 says that "in other cases a local authority may need expert advice from teachers or educational psychologists". Certainly most teachers will not have enough experience of EHE to advise. The need for experience of EHE should be emphasised. • 7.9 says that "Reasonable cause [for section 47 purposes] can include the lack of any substantive information about a child's education." Nowhere in the guidance is there unqualified recognition that at present the law deems that the word of the parent is acceptable, and can therefore be taken as substantive evidence. • 7.10 adds that if not satisfied with the information provided, an LA "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. Whilst 7.11 states, "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." In respect to both these sections, and elsewhere, given EHE families' past experiences of over officious LA staff, it should be stressed in the Guidance for LAs, that these options <i>should not be used to threaten EHE parents</i>. <p><i>You may want to mention an independent mediation scheme in response to these sections.</i></p>

36	Comments on Section 8: Home-educated children with special educational needs (SEN)
{43}	<p><i>The HE Byte team do not have personal experience of raising children with special educational needs, so feel limited in what we can advise. We therefore encourage parents with first-hand experience to comment from that journey.</i></p> <p>Points you may wish to include:</p> <ul style="list-style-type: none"> • The majority of SEN children do not have a EHCP, and the inability to obtain one is often a cause of frustration as it means their child's needs are not recognised by schools • Children with special educational needs be treated in the same way as those who don't • Families with a SEN child will feel especially vulnerable if LAs are able to define their own curriculum requirements especially when LAs are being encouraged to enforce them through care orders and asking courts to order parents to cover the costs of proceedings. <p><i>Relevant Byte: Breaking Up with School – the Hardest Decision of our Lives</i></p>
37	Comments on Section 9: What do the s.7 requirements mean?
{40}	<p>In 9.2 the DfE rightly quotes Article 2 of Protocol 1 of the European Convention on Human Rights, where it is clear that the state's responsibility is to <i>respect</i> the rights of parents that the education their child receives "is in conformity with their own [the parents'] religious and philosophical convictions." The guidance however then goes on to make assumptions which are contrary to those responsibilities. The key one is in 9.3, "However, it does not mean that parents are the sole arbiters of what constitutes a suitable education." Whilst it correctly acknowledges that the courts will decide, in 9.4 it proposes criteria by which LAs should assess education. As with any arbitrary scheme, these have potential flaws.</p> <p>Examples are:</p> <p>4a: The reference to "secular education" is ambiguous - to groups such as Humanists UK and the National Secular Society, this means without reference to any deity. Insisting on such a definition would infringe the ECHR as quoted above.</p> <p>4b: This seems to impose a minimum requirement on a curriculum by stealth. If this paragraph leads to LAs putting in place rigid requirements for deciding what is suitable education, advice given by David Wolfe QC is that they would be acting unlawfully. The guidance for LAs needs to make this clear.</p> <p>4c: 'Fundamental British Values' have been used by Ofsted to close faith schools. Guidance in respect to EHE needs to make clear for the benefits of all that there is no requirement that parents must teach contrary to "their religious and philosophical convictions."</p> <p>4d: States "a local authority may specify minimum requirements as to effectiveness in such matters as literacy and numeracy, in deciding whether education is suitable". According to David Wolfe QC, if these requirements were more than general guidance, i.e. applied as minimum standards, then the LA would be acting unlawfully.</p> <p><i>You may want to refer to the current guidance section 3.15 as a reasonable basis on which to assess the education being provided. Download PDF: http://tinyurl.com/lrvnz37</i></p> <p>9.5 & 9.6 are confusing. LA staff are not familiar with their legal responsibilities in regard to EHE. Rather than clarifying their legal responsibilities, this guidance confuses the legal position and will therefore result in LA policies which are even more confused than the current range across LA's.</p> <p>9.9 will also cause significant confusion, by suggesting to LA staff that they should be counting the hours which a child spends being educated. Education is a process which can only be assessed by its outcome, not by the time spent travelling. LA officers are generally more comfortable with check lists than with appreciating a process. This section needs to be removed from the guidance before it is published.</p>

38	Comments on Section 10: Further information
{19, 40 & 44}	<p><i>There are a number of items worth commenting on in this section. Select one or more of the following which are of particular interest to you.</i></p> <p>Children’s rights and views: 10.2 is very welcome in that it recognises, "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." [emphasis added]</p> <p>Pressure exerted by schools on parents: 10.5 & 6 - Both are welcome statements. If you have answered Q12 (5) about financial penalties on schools which off-roll children, consider referring back to it here.</p> <p>Flexi-schooling: There are different opinions within the EHE community on this matter. In 10.8 the guidance is that EHE children should not be entered in the school's register as "approved off-site activity", but as an authorised absence. Certainly schools should not be expected either to approve or to authorise what parents do with their children on the days when they are not in school. Either mistakenly puts the emphasis on the state having the oversight of a EHE child's education. Perhaps the DfE should discuss with the heads of schools which practise flexi-schooling arrangements what would work best for them.</p> <p>Unregistered settings: Unregistered independent schools - 10.10a - These schools are illegal and the proprietors should be prosecuted. They should not however be confused with EHE, and this section should be deleted from this guidance. Yeshivas - 10.10b - The government seems to have a problem with the legal status of these Jewish religious schools. It should clarify that law and not confuse them with EHE by including them in this guidance. Madrassahs, sports clubs, etc. - 10.11 - On the whole these should be of no relevance to the education of a EHE child provided they operate at a time of day when it is possible for school-educated children to attend. See answer to Q19 (12). Again, this section needs deleting. Tutors - 10.11 - See answer to Q20 (13) pointing out that any requirements re tutors must apply to all children, not just EHE ones. Whilst the comment is welcome that such provision "may be marginal to the conclusion as to whether the child’s education meets the s.7 requirement", it is questionable if this topic (inc. 10.12 & 13) needs to be covered by the guidance.</p> <p>Acknowledging diversity This statement in 10.15 is very welcome, "It should be noted that parents from all educational, social, 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." It is a pity that it has been left until the end of these guidelines. It would be far better if a statement similar to this was the headline in the very first section of both sets of guidance, <i>What is elective home education?</i> 10.16 should also reference Article 2 of Protocol 1 of the European Convention on Human Rights.</p> <p><i>If you have any comments relevant to the remaining sections, also include them. These are: Support for home educators, National Careers Service, Gypsy, Roma and Traveller Children, and Looked-after children.</i></p>

Questions on draft revised DfE guidance on home education: for parents

Page 7	<p>Draft revised DfE guidance on home education: for parents This section invites comments on different sections of the draft revised guidance document about the current framework for home education, which DfE proposes to publish for parents. Copies of the draft document can be downloaded from the Overview page.</p>
39	Comments on Section 1: What is elective home education (EHE)?
{29}	<i>You may want to comment that (as stated in response to Q29) it would be very helpful to have a paragraph early in this document recognising that for many children EHE is a positive experience which enhances their learning, and produces outcomes which enable them to live adult lives which make valuable contributions to society.</i>
40	Comments on Section 2: What is the legal position of parents who wish to home educate children?
{37 & 38}	<p>The first sentence is very important and should be made clear to every parent and not just those who decided to EHE: "2.1 As parents, you - not the state - are responsible for ensuring that a child of compulsory school age is properly educated." [emphasis added]</p> <p><i>You may want to comment on some of the following:</i></p> <p>2.10b Fundamental British Values: concerns as listed in response to Q28 & 37(4c) above.</p> <p>2.10c Use of literacy and numeracy in assessing suitability: concerns as listed in response to Q37(4d) above.</p> <p>2.11 Provides welcome clarity, but</p> <p>2.12 Wrongly assumes that parents have to <i>demonstrate</i> to a LA that "attention has been paid to the breadth of the curriculum and its content, and the concepts of progress and assessment in relation to your child's ability."</p> <p>2.13 What about children's rights? Correctly states, "This does not give children authority over parents, and a decision to educate a child at home is a matter for you as parents." [emphasis added] This principle also applies in the relationship between the state and the parents of every child - it is the parents who decide how/where a child shall be educated. This means that the state has no authority to deny any parent the ability to make that decision unless it has been shown that the parents have failed to ensure their child has been receiving an efficient and suitable education.</p>
41	Comments on Section 3: So what do I need to think about before deciding to educate my child at home?
	<i>This section is reasonable, but you may want to consider if sections 3.3, 3.4, 3.5 & 3.7, would be more appropriate if they were grouped under a sub heading "Problems with a School" and placed after 3.8.</i>
42	Comments on Section 4: If I choose to educate my child at home, what must I do before I start?
	<p><i>Section 4.2 seems to be misleading, you may wish to comment on it.</i></p> <p>4.2 reads "you are not obliged to inform the school that he or she is being withdrawn for home education".</p> <p>The current guidelines for LAs state, "3.8 The school must delete the child's name from their admissions register <i>upon receipt of written notification from the parents that the pupil is receiving education otherwise than at school.</i>" (NB These guidelines reference "Regulation 8(1)(a) of the Education (Pupil Registration) (England) Regulations 2006" but in most cases it seems that 1.d is the relevant clause "in a case not falling within sub-paragraph (a) of this paragraph, that he has ceased to attend the school and the proprietor <i>has received written notification from the parent that the pupil is receiving education otherwise than at school;</i>". [emphasis added in both cases]</p>

43	Comments on Section 5: What are the responsibilities of your local authority?
{33, 35, & 36}	<p>As pointed out in suggestions for answering previous questions {listed in braces} there is a question about whether the interpretation of LA's section 436A duty in 5.2 is correct. If a LA has been <i>notified</i> by parents that their child is being EHE, the LA should assume that the education being provided is efficient and suitable, unless they have reason to think otherwise.</p> <p>5.3 & 5.4 are based on this particular interpretation of an LA's section 436A duty, and are equally problematic. In regard to seeing a child at home (5.4), the draft guidelines for LAs correctly state in regard to SEN children, "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 is appropriate and may only enter the home at the invitation of the parents."</p> <p>5.5 LA officers do not have sufficient understanding of the law for them to be charged with formulating guidelines for their own LA. They have also been influenced by the hostile environment which has been created around EHE in recent years. The DfE should not leave it to LAs to draft its own guidelines. Many do not consult with EHE families in drawing up their policies, unless they are pressed to do so.</p> <p>5.6 is problematic because currently there is no legal requirement for parents to notify their LA that they are EHE a child. If they deregister a child from a school, it is the duty of the <i>school</i> to notify the LA. Should the government choose to establish a <i>notification</i> scheme (rather than impose a <i>register</i> of EHE children) then, unless there are specific reasons to question the parent's integrity, that notification should constitute "sufficient information". Registration and requiring positive "proof" of a child's education would almost certainly both be beyond the scope of the state's responsibilities.</p> <p>5.11 & 12 (see Q.35) section 175 of the Education Act 2002 does not apply to EHE children as the provision of EHE is not part of a LA's educational remit as a local authority.</p> <p>5.13 to 5.18 are unnecessarily threatening and over officious, even with the mitigation in 5.19. Most of the detail should be removed and replaced with the simple statement that, in the event of significant concerns being unresolved, a LA may have no option but to take the matter further by applying to a court for an education supervision order or, in certain cases, a care order.</p>
44	Comments on Section 6: Further information
{19 & 38}	<p>This sections covers similar areas to Section 10 in the Draft LA Guidelines. Sub-sections to note are:</p> <p>6.8 Madrassahs, sports clubs, dance schools, etc. These should be of no relevance to the education of a EHE child provided they operate at a time of day when it is possible for school-educated children to attend.</p> <p>6.14 Faith communities: this section is ambiguous and therefore meaningless. There needs to be a clear statement committing LAs to respecting the parents' faith rather than approaching it as a problem.</p>

Question on draft guidance documents: equality issues

Page 8 [20]	Question on draft guidance documents: equality issues
45 [23]	Do you think that anything in the revised guidance documents could have a disproportionate impact, positive or negative, on those with 'relevant protected characteristics' (including disability, gender, race and religion or belief) - and if so, how?
{28}	<i>See response to Q28</i>