A sample response to the Welsh Assembly Government's Elective Home Education Consultation

Published: 29 July 2019

Closing: 21 October 2019

In mid-September The HE Byte team was sent the following copy of a draft submission prepared by someone with a working knowledge of human rights legislation, along with permission to share it with our readers.

We are very pleased to be able to do so as a guide to the many issues raised by the proposed changes to EHE guidance in Wales.

We remind readers that in responding to this consultation they should not seek to copy and paste the answers given into their own reply. Identical responses are usually dismissed as part of a "campaign". Instead, please use your own words to express any of the points in this document which you agree with.

You do not have to be a resident of Wales to respond to this consultation.

Links:

Welsh Government's Consultation Page:

Home education: statutory guidance for local authorities and handbook for home educators | GOV.WALES
https://gov.wales/home-education-statutory-guidance-local-authorities-and-handbook-home-educators

The HE Byte Welsh Consultation Page:

Welsh Consultations – The HE Byte
https://he-byte.uk/welsh-consultations

Published: 24 September 2019

Question 1 - Does the draft statutory guidance provide suitable information to enable local authorities to assess the suitability of the education received by home educated children?

The draft guidance cherry picks from legislation, precedent and the UNCRC, at times subtly misquoting these, in order to present the position inaccurately. It is of particular note that the impact assessment identifies only five negative impacts:

1. More school attendance orders: these should only be issued in compliance with the Education Act 1996 s437, that is if 'it appears' that the education is not suitable and as a last resort. They should not be issued as a form of punishment for a parent who does not agree to LA staff meeting them and their child.
2. That the child may find prosecution of their parent 'unsettling'. Any child would find the prospect of their parent facing criminal conviction terrifying, 'unsettling' understates the impact on the child in order to minimise that consideration. It is incongruous to suggest that this draft is about children's rights, when it is manifestly obvious that it would lead to emotional abuse of children.
3. That some parents could lose their jobs if prosecuted. Any parent working in a Government role, the armed forces, the Police, medical services, social services, legal services and other sectors risks losing their job and their income, at the behest of a LA employee. This would not simply have a 'negative impact', another term used to minimise the actual impact, but would be emotionally, financially, psychologically abusive of children. Again, it is incongruous to suggest that such a measure, which carries such a devastating inherent risk, could be in a child's best interests.
4. Criticism from some that it is not the parent's duty to register. It is doubtful that many parents would criticise such a position.
5. That this guidance carries a risk of judicial review, but that officials are working to mitigate this: It is inconceivable that the Welsh Assembly Government is unaware that this proposal is unreasonable, disproportionate, outwith legislation and damaging to families, as otherwise judicial review would not be a consideration. It is wholly unacceptable to publish a policy without taking expert legal advice on its content, which has clearly happened in this case.

No examination has been made of the impact on children of being forced to give evidence whether they wish to do so or not. This runs contra to the UNCRC and would undermine the rights of children.

No examination has been made of the impact on families of being disempowered by placing parents in a 'child' position in respect of the 'parent' position of state representatives. By disempowering parents in this way, the WAG risks creating safeguarding risks within families where previously there were none, as parents lose confidence in their abilities to make responsible adult choices.

The impact assessment goes on to say that the Welsh Government consider it reasonable to legislate for an intrusion into family life. I would point out, as does the Rights of Children and Young Persons (Wales) Measure 2011 s6 (3), that

> ***'Welsh Ministers may not make an order under subsection** (2) **unless the provision made by the order would be within the legislative competence for the time being of the Assembly'.***

The WAG does not have the legislative competence to overturn the Human Rights Act 1998, as this would do.

Question 2 - Chapter 1: legal responsibilities

Does this chapter clearly set out the rights of parents to home educate their children and the duty on local authorities to identify children and make enquiries about their educational provision?

1.3: This refers to the rights of all children in Wales, but in fact the proposal would treat home educated children differently to their schooled peers, leading to unwarranted stigmatisation of home educated children. Home educated children are already subject to negative inference as a result of recent publications denigrating their education and lifestyle. These publications have emanated not only from the media, but also from the Children's Commissioner, who appears intent on using institutional confirmation bias to present those children negatively. Children themselves have told me that this has resulted in stigmatisation and that other children treat them as somehow inferior. The Children's Commissioner has confirmed that school children have only been asked their views by way of a survey, not through personal interviews as proposed for home educated children. Those surveys were completed by 9,202 school children in March 2019 ('what now?') and 6,392 children in 2018 ('The Right Way Education Survey 2018'), out of a total of 433,695 school pupils in Wales present on census day. Only 2% of school children have been asked their views on their education, compared to a proposal to force 100% of home educated children to give their views and the former [school children] at a distance. It would be reasonable and proportionate to make survey documents available to home educated children, as they are for school children, but it is not reasonable and proportionate to mandate personal interviews with those children.

The UNCRC Art. 2 states that the State ***'shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, activities, expressed opinions of, or beliefs of the child's parents'.***

This proposal would result in the child being liable to be discriminated against by being punished for the parent's views: by being forced to attend school; suffer emotional, financial and psychological abuse; face stigmatisation from peers and members of the public and risk the loss of their parents and home.

1.4. This paragraph refers only to the UNCRC articles 2,3, 6 and 12. It completely omitted some of the crucial articles which affect this proposal and parts of others:

- Article 5: ***'States parties shall respect the responsibilities, rights and duties of parents.....to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of their rights recognised in the present convention'.*** It is the duty and responsibility of the parent to mediate the rights of the child and to guide the child in exercising those rights, it is not the duty of the State to do so. This proposal puts the duty on the State, which is contra to the UNCRC Art.5.
- Article 12: ***'States parties shall assure to the child who is capable of forming his or her own views the <u>right</u> to express those views freely in all matters affecting the child ... the child shall in particular be given the <u>opportunity</u> to be heard in any administrative proceedings affecting the child..'*** This is a duty to assure the child the <u>right</u> to express their views, <u>not to mandate</u> that the child must express those views, as is proposed. The child should not be forced to express their views in interview with any official, as to force such a requirement would be contra to the UNCRC Art. 12.
- Article 13: ***'The child shall have the <u>right</u> to freedom of expression; this right shall include the right to seek, receive and impart information and ideas of all kind..... through any other media of the child's choice'.*** Again, this is a right and not a mandate. The proposal seeks to mandate that the child give their views which is contra to the UNCRC Art. 13.

- Article 14: ***'States parties shall respect the right and duties of the parents... .to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child'.*** Again, this right and duty is the parent's and not the State's.
- Article 16: ***'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour and reputation'.*** This proposal inherently causes stigmatisation to the child, which damages their honour and reputation. In cases where the parent is prosecuted, which prosecutions are on public record, this stigmatisation would increase exponentially. This is contra to the UNCRC article 16. Further, the proposal interferes with the child's privacy and family in a manner contra to the UNCRC article 16.
- Article 19: refers to protection of children from abuse and neglect whilst in the care of the parent and ***'Such protective measures should <u>as appropriate</u>, include effective procedures for the establishment of social programmes to provide <u>necessary support</u> for the child and those who have care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow up of <u>instances of child maltreatment</u>'.***

  It is important to note that such investigations as proposed by this draft must be appropriate and necessary. There is no evidence whatsoever to suggest that home educated children are subject to 'maltreatment' and there is evidence to suggest that those children are less vulnerable to such maltreatment than are schooled children and under 5 year olds. Consequently, it is not possible to suggest that the proposed measures of mandatory interviews are either necessary or proportionate.
- Article 37: ***'States parties shall ensure that no child be subjected to.....or degrading treatment'.*** The proposals would subject home educated children to degrading treatment, in that those children would be stigmatised, belittled and face possible emotional psychological and financial abuse.
- Article 40: ***'States parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity'*** and s2 (b) (iv) goes on to state that the child should ***'not be compelled to give testimony'.***

  Even where the child is being dealt with under the penal system, that child may not be compelled to give evidence and yet this draft proposes that the child will be so compelled. This is contra to the UNCRC article 19.

1.6: This misstates Article 28, as that article does not refer to the child having a right to fulfil their potential.

1.10: Omits the very real concern that many home educating parents cite for electing to home educate their child, which is dissatisfaction with the State education system and schools in Wales. It is an important criterion which should not be glossed over.

2.8: This paragraph does not make clear and it should make clear, that a parent who home educates 5 or more children, or one child with SEN, this does not require registration as a school.

2.10: This paragraph requires the parent to write to the school to advise that they wish to home educate a child with SEN. More properly, the parent is required to seek consent of the LA, not the school and should write to the LA.

2.14: This paragraph should make clear that children have a right to be heard and that they cannot be compelled to express their views. Furthermore, it should make clear that it is the parent who mediates and guides the child, not the State.

2.19: This paragraph cherry picks part of the precedent set by 'Phillips v Brown' omitting the important finding of the Court that 'the most obvious step is to ask the parent for information'. That precedent clearly allows the LA to make an enquiry of the parents, it does not support mandatory meetings with either parents or children.

This paragraph also omits extant precedent which states that LAs should not as a matter of policy insist on inspection of the home in order to ensure that education is suitable (Regina v Surrey Quarter Sessions Appeals Committee, ex parte Tweedie {QPR} 61 LGR 464). Senior counsel has advised that meetings can only be mandated where there are exceptional circumstances, as was the case in Tweedie, as to mandate such meetings as a matter of course would be neither reasonable or proportionate.

2.23: 'Where a child has been deregistered, the local authority should meet with the family as soon as possible to determine the reasons for home education', There is no legislative basis for this requirement, as families are not required to provide a reason for deciding to home educate their children.

2.31: 'Where they can identify early signs of intention to de-register, local authorities should contact parents to discuss their reasons'. The Education Act 1996 s436a provides no duty, nor indeed right to the LA to make enquiries prior to the de facto home education commencing. There is no right at any point for that LA to require the parent to give reasons for home educating, although they may of course be offered the opportunity to do so.

2.35: The requirement to share information only pertains where the LA has reasonable concerns that a child may be at significant risk of harm, or suffering from significant harm (Children Act 1989 s47). Any data sharing without such reasonable concerns would contravene the Data Protection Act 2018 and the GDPR.

Question 3 - Chapter 2: identifying children not known to the local authority

a) Does this chapter clearly outline the requirement under Section 436A of the Education Act 1996 for local authorities to make arrangements to enable it to identify, so far as it is possible to do so, the identities of children in its area who are not receiving a suitable education?

3.5: *'The Welsh Ministers intend to make regulations that will require local health boards to disclose to a local authority non medical information to assist them in identifying children in their locality'.*

This is a statement of intent to legislation without consultation, a decision having been made in advance of such consultation and where consultation is required. Furthermore, please note the comments of Dr Catherine Wills, Medical Defence Union (MDU) deputy head of advisory services in respect of data sharing by medical professionals: (https://www.gponline.com/confidentialitv-when-gps-disclose-information-police/article/430705)

> ***'(medical staff will need to judge whether failure to disclose this information 'may expose others to a risk of death or serious harm' paragraph 64. One example of when such disclosure is likely to be appropriate arises when a patient has confessed to a serious crime such as child abuse.***
>
> ***The GMC does not define serious crime in its guidance but refers to examples given in the NHS's Confidentiality Code of Practice. These include murder, manslaughter, rape, kidnapping, and child abuse or neglect causing significant harm'.***

Clearly, in order for data sharing to be lawful, it would require that the Children Act 1989 s47 1(b) is met, which makes clear that the threshold that the LA must ***'have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm'.*** The mere fact of home education, is not reasonable cause to suspect in terms of s47 and no lesser barrier may be used for data protection purposes.

This proposal also raises a significant safeguarding risk for children. Ministers previously required medical staff to alert authorities to patients attending medical services who may be illegal immigrants. This requirement led to several cases of significant harm to immigrants who avoided medical services in order to avoid such mandatory reporting and the requirement was revoked. A great many home educating parents are fearful of their LA and others do not want their, or their family's privacy invaded. Some of those parents will cease using medical services if notification as proposed, is made mandatory. This is already the case in one LA area in England where medical services operate a notification system, notwithstanding that those services apologised after the event for breaching the Data Protection regulations. In that LA area I am aware of 8 families who avoid NHS services in order to avoid such referral, which exposes the children to possible risk of medical neglect or harm, if the parent is concerned about budgeting for private medical care. This would also stigmatise home educated children who would be treated as 'at risk' simply because they are home educated.

3.9: This paragraph does not make clear that information sharing is only lawful where a child is at risk of, or suffering from significant harm and it should make that clear. Home education is not of itself a risk factor for significant harm and is insufficient basis for data sharing.

3.10: ***'The Wales Accord on Sharing of Personal Information).. .is a common set of principles and standards, which support the sharing of personal information to deliver services'.*** This accord can not override the Data Protection Act 2018, nor the GDPR, neither of which support the sharing of data simply on the basis that a child is home educated. Home educating families who wish to receive a service are free to share their data should they wish to do so, but that data sharing may not be mandated.

3.11: See 3.9 above.

3.15: Those involved in truancy sweeps have no right to require a child to provide their personal details. Once the child states that they are home educated, the child should be allowed to go on their way without interference. If the officer has reasonable cause to believe that the child is not home educated, the child should be given opportunity to contact their parent direct, who can confirm that the child is home educated. Furthermore, the Crime and Disorder Act 1998 provides that **'a constable** (has the power) **to remove truants and excluded pupils and return them to school or designated premises under paragraph 4C of Schedule 4 to the Police Reform Act 2002'**. This power is not a power of arrest and does not make truancy a criminal offence. The guidance in R (ex p W) states that there is no power to use force to remove the pupil to school. As the young person has not committed an offence, powers under PACE do not exist. There is no legislative basis for detaining a home educated child, nor requiring them to give their details. There is consequently no legislative basis for mandating that information be provided to the LA, in respect of that child.

b) Do you think that the development of a database is a reasonable and proportionate approach?

It is a matter for each LA to maintain internal records, but there is no legislative basis for developing a central database of home educated children. The only circumstance in which a mandatory database is maintained is for sex offenders, this has quite justifiably moved some home educated children to express chagrin at being treated as sex offenders are.

c) Do you think there should be a system in place requiring independent schools and local health boards to share limited specified information with local authorities, to enable them to identify children who are not known to them, in order to make arrangements to ensure that these children are receiving a suitable education?

The consultation questions do not marry well with the actual consultation document. Please see Question 3, chapter 2 above: (This is a statement of intent to legislation without consultation, a decision having been made in advance of such consultation and where consultation is required. Furthermore, please note the comments of Dr Catherine Wills, Medical Defence Union (MDU) deputy head of advisory services in respect of data sharing by medical professionals: (https://www.gponline.com/confidentiality-when-gps-disclose-information-police/article/1430705)

> ***'(medical staff) will need to judge whether failure to disclose this information 'may expose others to a risk of death or serious harm' (paragraph 64). One example of when such disclosure is likely to be appropriate arises when a patient has confessed to a serious crime such as child abuse.***
>
> ***The GMC does not define serious crime in its guidance but refers to examples given in the NHS's Confidentiality Code of Practice. These include murder, manslaughter, rape, kidnapping, and child abuse or neglect causing significant harm'.***

Clearly, in order for data sharing to be lawful, it would require that the Children Act 1989 s47 1(b) is met, which makes clear that the threshold that the LA must ***'have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm'.*** The mere fact of home education, is not reasonable cause to suspect in terms of s47 and no lesser barrier may be used for data protection purposes.

This proposal also raises a significant safeguarding risk for children. Ministers previously required medical staff to alert authorities to patients attending medical services who may be illegal immigrants. This requirement led to several cases of significant harm to immigrants who avoided medical services in order to avoid such mandatory reporting and the requirement was revoked. A great many home educating parents are fearful of their LA and others do not want their, or their family's privacy invaded. Some of those parents will cease using medical services if notification as proposed, is made mandatory. This is already the case in one LA area in England where medical services operate a notification system, notwithstanding that those services apologised after the event for breaching the Data Protection regulations. In that LA area I am aware of 8 families who avoid NHS services in order to avoid such referral, which exposes the children to possible risk of medical neglect or harm, if the parent is concerned about budgeting for private medical care. This would also stigmatise home educated children who would be treated as 'at risk' simply because they are home educated.

3.9: This paragraph does not make clear that information sharing is only lawful where a child is at risk of, or suffering from significant harm and it should make that clear. Home education is not of itself a risk factor for significant harm and is insufficient basis for data sharing.

3.10: ***'The Wales Accord on Sharing of Personal Information).. .is a common set of principles and standards, which support the sharing of personal information to deliver services'.*** This accord can not override the Data Protection Act 2018, nor the GDPR, neither of which support the sharing of data simply on the basis that a child is home educated. Home educating families who wish to receive a service are free to share their data should they wish to do so, but that data sharing may not be mandated.

3.11: See 3.9 above.)

If 'no', how would you suggest the local authority complies with the requirement to identify children who are not known to them in order to make arrangements to ensure that these children are receiving a suitable education?

This misstates the Education Act 1996 s436a, which requires LAs to make arrangements to establish whether children of compulsory school age are registered at school, or receiving suitable education otherwise than at school. It does not require that LAs ***'identify children who are not known to them'.*** Whilst this may be a minor difference, it is this nuanced misrepresentation which is used to cherry pick from legislation.

LAs can access various sources of information lawfully, such as school leaver information, birth records and school admissions records.

Question 4 - Chapter 3: efficient and suitable education

a) Families opting to home educate should be able to offer a suitable education from the outset and have made preparations with that aim in view. That said, do you think there should be a reasonable period of adjustment for families before the local authority considers whether a suitable education is being provided? If 'yes', please note what would be considered reasonable in your opinion?

R v Gwent County Council Court of Appeal (civil div) 129 sj *737* 10 makes clear that the LA should allow the parent 'sufficient time to set in motion their arrangements for home education'. Clearly, this is legal precedent which must be followed by the WAG. A period of three months should be sufficient for most families and roughly equivalent to a school term. This period can not cover summer holidays, when home educating families are likely to be enjoying holidays, as are other families.

b) Section 4.15-4.18 of the statutory guidance refers to the suggested characteristics of a suitable and efficient education for local authorities to consider. Is there anything else you think should be included?

4.15 ***'A suitable education would include provision in numeracy, literacy and language'.*** There is no legislative basis and no basis in precedent, to require provision of 'language' for home educated children. Precedent does allow for provision of numeracy and literacy. 'Language', should be removed from this paragraph.

4.17: Whilst 4.16 outlines what literacy skills are, this paragraph gives no similar outline and it could be argued that it should do so.

4.18: ***'ensure the child has opportunity to engage in a reasonably broad range of learning experiences.....Involvement in a broad spectrum of learning opportunities'.*** Neither of these requirements has a basis in legislation, or precedent. Education is required to be suited to the child's age, ability, aptitude and special needs. If the child has no ability, or aptitude in more than one or two areas, education in those areas would meet the requirements of the Education Act 1996 s7. This requirement should be omitted.

'The opportunity to develop digital literacy'. This requirement is not supported in legislation, or precedent. Further, there are some families who have religious, or philosophical views which cause them to eschew all digital equipment, or indeed all electronic equipment. To mandate this requirement would discriminate against those families.

c) Article 12 of the UN Convention on the Rights of the Child (UNCRC) states that children have the right to have opinions and for these opinions to be considered when people make decisions

about things that involve them. The statutory guidance states that in order for a local authority to satisfy itself of the suitability of education provided, the local authority should see and speak with the child. Do you agree with this statement? If 'Yes' what would be the best way to gather the views of the home educated child?

This statement completely ignores several aspects of the UNCRC legislation. For example:

- Article 5: ***'States parties shall respect the responsibilities, rights and duties of parents.....to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of their rights recognised in the present convention'.*** It is the duty and responsibility of the parent to mediate the rights of the child and to guide the child in exercising those rights, it is not the duty of the State to do so. This proposal puts the duty on the State, which is contra to the UNCRC Art.5.
- Article 12: ***'States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.., the child shall in particular be given the opportunity to be heard in any administrative proceedings affecting the child..'*** This is a duty to assure the child the right to express their views, not to mandate that the child must express those views, as is proposed. The child should not be forced to express their views in interview with any official, as to force such a requirement would be contra to the UNCRC Art. 12.
- Article 13: **'The child shall have the right to freedom of expression; this right shall include the right to seek, receive and impart information and ideas of all kind..... through any other media of the child's choice'.** Again, this is a right and not a mandate. The proposal seeks to mandate that the child give their views which is contra to the UNCRC Art. 13.
- Article 14: ***'States parties shall respect the right and duties of the parents... to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child'.*** Again, this right and duty is the parent's and not the State's.
- Article 16: ***'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour and reputation'.*** This proposal inherently causes stigmatisation to the child, which damages their honour and reputation. In cases where the parent is prosecuted, which prosecutions are on? public record, this stigmatisation would increase exponentially. This is contra to the UNCRC article 16. Further, the proposal interferes with the child's privacy and family in a manner contra to the UNCRC article 16.
- Article 37: ***'States parties shall ensure that no child be subjected to.....or degrading treatment'.*** The proposals would subject home educated children to degrading treatment, in that those children would be stigmatised, belittled and face possible emotional psychological and financial abuse.
- Article 40: ***'States parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity'*** and s2 (b) (iv) goes on to state that the child should ***'not be compelled to give testimony'.***

  Even where the child is being dealt with under the penal system, that child may not be compelled to give evidence and yet this draft proposes that the child will be so compelled. This is contra to the UNCRC article 19.

In addition, for such a proposal to be equitable, every school child would need to be seen and their views listened to and acted upon, by the same agency charged with interviewing home educated

children, not by teachers. Only 2% of school children have had their views sought in the last year and that by survey, not by mandatory interview. This is inequitable.

4.24 states: ***'If it is clear that a child does not wish to be educated at home although the provision is satisfactory, the local authority should discuss the reasons for this with the parents and encourage them to consider whether home education is in the best interests of the child'.*** This cannot be implemented unless an arrangement is made for every school child to be asked if they wish to continue to be schooled, or to be home educated and the parents of any school child wishing to be home educated, encouraged to home educate that child. Otherwise, the home educated child is being treated differently as a result of the parent's philosophical beliefs which breaches the Equality Act 2010.

4.28 requires that such meetings should include examples of the child's work, again this undermines the child's right to privacy and is consequently in breach of the UNCRC Article 16.

I can do no better than to quote Lady Hale:

> ***'The spectre of the totalitarian state which tried to separate children from the subversive influence of their families loomed large. The Supreme court recognised this in Christian Institute v Lord Advocate f20161 UKSC 51, the case which challenged the Scottish Named Person scheme: 'The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers' view of the world. Within limits, families must be*** *left* ***to bring up their children in their own way".***

An expert panel established to write a workable code of practice to enable the controversial Named Person legislation to be implemented. This was on the basis of information sharing contained within the proposals being in breach of data protection legislation. A panel was tasked with finding a means to implement the scheme in the light of the Supreme Court finding and was unable to do so. Clearly, it is not possible for mandatory interviews of children to be implemented within legislation.

It is crucial to note in this respect, that when carrying out any child protection enquiries or assessments, a social worker should obtain consent from the parent before speaking to a child. Consent must be true consent and not coerced consent. This proposal seeks to mandate a meeting with a child, regardless of the wishes and feelings of the parent.

Only in exceptional circumstances may children's services speak to a child without the knowledge and consent of a parent. Where a parent does not provide consent, the social worker cannot mandate an interview with a child, but must make an application to the Court for an assessment order under the Children Act 1989 s43. It is risible to suggest that a home educated child should be compelled to be interviewed by the LA, when a child considered to be at significant risk of harm, or suffering significant harm, may not be interviewed without consent save for in exceptional circumstances, or with a Court order.

d) In your view, how often would it be reasonable for the local authority to meet with the home educating family to assess the suitability of education provided? Please explain your views.

When the parent wishes to meet with the local authority, or where a Court has made an Education Supervision order.

e) In your view, who would be best placed to conduct the visits and assess the suitability of the education provision and why? For example, this could include (but is not limited to):

local authority home education officers
an independent panel of education professionals
a qualified teacher
a teaching assistant
other.

This question is predicated on an assumption that visits would be mandated, which they should not be. Where a parent requests a visit, that visit should be from an education officer, unless that parent requests otherwise. The very suggestion that a 'panel' should meet with a parent and child is indicative of the lack of respect for the privacy and autonomy of parents.

f) In your view, who else should input be sought from when the local authority is assessing the suitability of the education provision and why? For example, this could include (but is not limited to):
educational psychologists
a speech and language therapist
other specialist professionals

A competent education officer should be able to assess suitability of education without the input of other agencies, or individuals. That competent officer should be well able to do so based on an education report from the parent.

g) Do you have any other comments on this chapter?

Yes. 4.26 states in respect of meetings that ***'they will also provide an opportunity for the local authority to develop a positive relationship with families'.*** I am at a complete loss to understand this comment, given that the proposal is to mandate meetings, under threat of serving a SAO against parents and putting the education officer in the position of 'parent' to the 'child' status of the actual parent. The whole impetus is to disempower parents, undermine their parenting and use threats to do so. Such a situation cannot possibly develop positive relationships.

Question 5: Chapter 4: school attendance orders (SAOs) and education supervision orders (ESOs)

a) local authority responsibilities to issue SAOs and ESOs?

53: ***'The most obvious course of action is for local authorities to meet with the parents and home educated child regarding the education they are providing for their child'.*** This is a blatant misquotation of Phillips v Brown', which states: ***'the most obvious step is to ask the parent for information'.*** In light of the Education Act 1996 s436a and extant precedent, it is reasonable for the LA to ask the parent for information, it is neither reasonable, nor proportionate to mandate a meeting with parent or child.

b) clear about the process to follow when issuing SAOs and ESOs?

5.15: ***'If local authorities are reluctant to prosecute for reasons connected with costs, they may wish to seek legal advice about the prospect of obtaining a cost order against a successful defendant on the basis that the prosecution would have been unnecessary if not for the defendants' unreasonable conduct'.*** Where a litigant succeeds in their case, it is they who are entitled to seek a costs order, not the failed litigant. Clearly, if a Court finds in favour of the parent, it is the parent who should and could obtain a costs order against the LA.

5.18: ***'A local authority must under section 447 of the Education Act 1996 consider applying for an ESO before a decision to prosecute parents for poor attendance or failure to comply with an SAO is made'.*** Again, this misquotes the legislation in order to give subtle inference to the statement. The actual legislation states: ***'Before instituting proceedings for an offence under section 443 or 444, a local authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child'.*** This misquotation is designed to coerce LAs into seeking ESOs where they might otherwise choose not to do so.

Question 6: Chapter 5: educational support

This chapter considers the advice, information and support local authorities could make available to home educating families. Do you think this chapter is useful?

6.1 ***'Local authorities are expected to assist home educating parents..'*** this should be qualified by 'upon request' as such assistance should not be mandatory.

6.13: ***'We welcome the fact that of the 19 local authorities with pupil referral units (PRUs) in Wales, 16 are registered as exam centres. Further education colleges should also be encouraged to open up their facilities to home educated children for exams'.*** PRUs are not usually appropriate venues for home educated children to take exams and it would be preferable for ordinary schools to be encouraged to offer this facility, not PRUs.

Question 7 - Chapter 6: Safeguarding

This chapter outlines existing safeguarding duties that apply to local authorities. Whilst there is no proven correlation between home education and safeguarding, specific safeguarding duties apply to all children regardless of how they receive their education. Do you think this chapter is useful?

7.14: ***'Home education is a positive experience for many children. However, schools and education settings play an important role in safeguarding children. They are places where children can be routinely seen and heard'.*** This implies that home educated children are neither seen nor heard, whereas research finds those children to be at least as well socialised as school children. Further, home educated children are uniquely visible, coming into daily contact with a broad range of adults and children. In fact, Government sponsored research when compared to research in respect of home educated children in Wales, found that the proportion of teaching staff abusing children was greater than the proportion of home educated children found to be at risk of, or suffering significant harm. This comment is stigmatising home educated children and is irresponsible.

7.17: ***'These enquiries can include taking steps to gain access to the child'.*** This is factually inaccurate, as the enquiries may not include steps to gain access to a child in the face of lack of consent by a parent, only a court application can do so, as the test for seeking to access the child without consent would not be met.

Question 8 - Handbook for home educators

This handbook provides information for those who are or are considering educating their child at home. Is there anything else you think should be included?

The Handbook was described to home educating families prior to publication, as a useful book of resources and welcomed as such. Instead, it is a patronising document

which gives some information about some services, but is very far from being what it was described as. In particular, it includes a watered down and patronising description of the draft guidance, which is insulting to families.

Question 9 - Whilst we acknowledge that flexi-schooling is not home education, we are aware that some home educators would welcome information on what it is. Do you think this information (see sections 6.15-6.19 in the statutory guidance and 1.20-1.21 in the handbook) is useful?

Flexi schooling is not home education and should not be included in home education guidance. I do however welcome the modestly improved stance this section demonstrates.

Question 10 - We would like to know your views on the effects that statutory guidance for local authorities regarding home education would have on the Welsh language, specifically on:

i) opportunities for people to use Welsh
ii) treating the Welsh language no less favourably than the English language.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Whilst I welcome provision of Welsh language learning access for home educated families, any change will be an individual one.

Question 11 - Please also explain how you believe the proposed policy could be formulated or changed so as to have:

iii) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.
iv) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment made.

Question 12 - We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

The flow charts included with the documentation are badly constructed and inaccurate. By way of example:

'LA prosecutes parents..... Court decides education is suitable and therefore does not convict.....You can: - Restart the s437 process again. - Apply for an Education Supervision Order (ESO)'.

And:

'LA applies for an ESO.....Court decides education is suitable and refuses ESO Parents do not comply with ESO.....You can prosecute for breach of an ESO'.

Neither of these could be followed and both give rise to confusion.

Draft letters and forms are unacceptable and inappropriate in many ways, the most stark example to my mind being the requirement to ask children as young as 5 what their future education tasks will be. 5 year olds simply cannot articulate a proper response to this.

The whole tenet of this document is based on stigmatising home educating families and their children, whilst treating them as somehow 'lesser' than families who elect to school their children. It assumes powers and duties that are not supported in legislation under threat of punitive action against both parents and children.

I had hoped that the WAG would take a more modern and equitable stance to new guidance and am astonished by the draconian and heavy handed draft document.

In addition, this seeks to tie the hands of competent education officers by hampering their discretion to treat families with respect and courtesy, who they know to be providing a suitable education. This at significantly increased cost in both time and monetary terms to those cash strapped LAs.