

Public Document Pack



SCRUTINY COMMITTEE THURSDAY, 20TH AUGUST, 2015

A MEETING of the SCRUTINY COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS on THURSDAY, 20TH AUGUST, 2015 at 10.00 AM

J J WILKINSON,
Clerk to the Council.

14 August 2015

BUSINESS		
1.	Apologies for Absence	
2.	Order of Business	
3.	Declarations of Interest	
4.	Minute (Pages 1 - 4) Minute of the meeting of 11 June 2015 to be approved and signed by the Chairman. (Copy attached).	2 mins
5.	Non Schooling and Home Schooling (Pages 5 - 34) Presentation by the Service Director Children and Young People. (Copy of Government Guidance on Home Education attached.)	45 mins
6.	Scrutiny Reviews - Update on Subjects included in the Future Scrutiny Review Programme <ul style="list-style-type: none">• Religious Observance Policy;• Faith Schools;• Attainment Levels in Schools in Deprived Areas;• Mainstream Schools and Children with Severe Learning Difficulties.	5 mins
7.	Date of Next Meeting The next meeting is scheduled to be held on Thursday, 24 September 2015.	
8.	Any other Items Previously Circulated	
9.	Any Other Items which the Chairman Decides are Urgent	

NOTES

- 1. Timings given above are only indicative and not intended to inhibit Members' discussions.**
- 2. Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

Membership of Committee:- Councillors G Logan (Chairman), W Archibald, K Cockburn, A Cranston, I Gillespie, S Mountford, A J Nicol, R Stewart and J Torrance.

Please direct any enquiries to Pauline Bolson, 01835 826503
pbolson@scotborders.gov.uk

SCOTTISH BORDERS COUNCIL
SCRUTINY COMMITTEE

MINUTE of MEETING of the SCRUTINY
COMMITTEE held in the Council Chamber,
Council Headquarters, Newtown St. Boswells
on 11 June 2015 at 10.00 a.m.

Present: - Councillors G Logan (Chairman), W Archibald, A Cranston, K Cockburn, S
Mountford, A Nicol, J Torrance.
Apology: - Councillors I Gillespie, R Stewart.
In Attendance:- Clerk to the Council, Democratic Services Officer (J Turnbull).

Members of the Public – One.

MINUTE

1. There had been circulated copies of the Minute of Meeting of 28 May 2015.

DECISION

APPROVED for signature by the Chairman.

FUNDING AVAILABLE TO COMMUNITY COUNCILS

2. With reference to paragraph 2 of the Minute of 26 March 2015, there had been circulated copies of a Briefing Note for consideration on 'Support available to Community Councils from Scottish Borders Council'. The paper was presented to the Committee by Ms Malster, Strategic Community Engagement Officer, and gave details of the internal funding available to Community Councils from Scottish Borders Council. There were 69 community council areas in the Scottish Borders, all of which had operational Community Councils. All received some level of financial support from the Council, with many receiving support to access funding through the Council's internal grant schemes. Direct funding sources from Scottish Borders Council detailed in the report included annual core grant, hall hire reimbursement and local community path maintenance grant. Indirect support provided by the Council was provision of insurance and Data Protection registration. Funding accessible to Community Councils included the Scottish Landfill Communities Fund (SCLF), Community Grant Scheme, Small Schemes, Quality of Life and Common Good. The Committee welcomed the paper, however, requested an additional paragraph be added, advising that there were other external funds available and that the Council's Funding and Projects Officer, Mrs Jean Robertson, would be pleased to advise on these. The Briefing Note should then be circulated to Community Councils via email. Democratic Services Officers would also distribute to Community Council representatives in attendance at Area Forums.

DECISION

AGREED:-

- (a) to add a paragraph to the Briefing Note stating that advice on other funding sources was available from the Council's Funding and Project Officer;
- (b) to circulate the Briefing Note to all Community Councils via email; and
- (c) that Democratic Services Officers distribute copies of the Briefing Note to Community Councils' representatives at Area Forum meetings.

PRESENTATIONS ON PLANNING ENFORCEMENT AND THE BUILDING INSPECTION REGIME

3. With reference to paragraph 6(a)(iii), (v) and (viii) of the Minute of 26 March 2015, the Chairman welcomed the Lead Officer Enforcement, Mr Alan Gueldner and Lead Building Standards Surveyor, Mr James Whiteford, who were in attendance to give presentations on planning enforcement and the building inspection regime respectively. Mr Gueldner began by referring to the legislation the Enforcement Team was governed by: Town and Country Planning (Scotland) Act 1997; Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; Town and Country Planning (Control of Advertisements) (Scotland) Regulations and Building (Scotland) Act 2003. The Enforcement Team's duties covered: unauthorised development, non-compliance with approved plans or conditions, Tree Preservation Orders (TROs), Listed Buildings, Compulsory Purchaser Orders, advertisement control and the proper maintenance of land. The majority of their time (57%) was spent dealing with unauthorised development. Mr Gueldner explained that the guidance encouraged resolution by negotiation and this had resulted in only 14 Notices being issued out of 156 cases referred in 2014. Complaints were received from various sources - online, from Councillors or planning officers. Mr Gueldner explained the procedure when dealing with a dangerous building was to initially request Building Services to assess. If Building Services deemed the building was in a dangerous condition the Enforcement Team would then take immediate action. However, if the building was not immediately dangerous they were required to go through the Notice procedure. Contracts were appointed to undertake the necessary works and a Clerk of Works was appointed on site to oversee the works. Mr Gueldner referred to a listed building located on Jedburgh High Street, which had been structurally unsound. The Council had to compulsorily purchase the building and demolish entirely. It was now owned by the Council and on the market as a development site. Mr Gueldner went on to give an example of a planning enforcement case of an unauthorised development at Craik Forest. The development had progressed to the Notice stage but the owner of the building had carried out the demolition work. Another example was a tenement building in Hawick with water ingress, where the Council had to repair the roof of the building as the owner had not been able to afford the costs. The bank had repossessed the building and sold it on. The bank had recouped their costs as they had first charge on the property. The Council were now pursuing the new owner to recover their costs. The Team also dealt with emergency call outs, for example, recently they had been called out to a fire at Kingsmeadow in Peebles. They had liaised with the Fire Service and erected fencing around the building for public safety. In answer to Members' questions Mr Gueldner clarified that dangerous walls near a public road or footpath would be passed to the Roads section and was not the responsibility of the Enforcement Team. The Council was able to recoup contractors' costs from owners of buildings, but chasing payment often proved difficult.
4. Mr Whiteford, Lead Building Standards Surveyor, reported on inspections for buildings under construction. Two pieces of legislation regulated the building inspection regime: The Building (Scotland) Act 2003 and The Building (Procedures) (Scotland) Regulations 2004. The Construction Compliance and Notification Plan (CCNP) indicated what inspections were required and placed responsibility on the applicant and verifier. Mr Whiteford highlighted that obligation and compliance lay with the applicant/builders. Enforcement Officers were only able to ensure the works had been carried out in accordance with the Building Warrant and complied with building standards. Building Warrant inspections were to protect the public interest and could only cover compliance of works in terms of the building regulations, and did not provide the applicants with a monitoring service in terms of quality of the work they might be expecting from their builder. Mr Whiteford went on to explain that calculating the number of inspections required was risk based, whereby a minor alteration to a building might only receive two inspections, a new house could receive seven to eight inspections. New commercial properties could receive inspections two to three times a week. In 2015/15, 1,489 Completion Certificates had been accepted; once the Completion Certificate had been issued a property was not revisited, any future problems were dealt with by the guarantor e.g. NHBC. It was acknowledged that anyone could become a builder and the lack of an accreditation scheme was a problem. The Federation of Master Builders covered smaller firms. There was also government certified schemes for electricians and plumbers. The Team did get to know

builders but would ask for destructive work to be undertaken if something had already been covered prior to inspection. Mr Whiteford confirmed that once a Building Completion Certificate had been issued, the only powers available to the Team to use were Section 27 (Dangerous Buildings) and to pursue the current owner of the property. The NHBC had an obligation to uphold a warranty but that only applied to those who had taken this out. In response to a question, Mr Gueldner also advised that the Council itself was not above the law and, if required, notices would also be served on SBC, although this would be very unusual.

5. There followed a discussion on private water supplies and treatment plants. It was explained that private treatment plants were now covered by Controlled Activity Regulations (CAR), but older properties may have a septic tank below current standards or it may be undersized. When alterations or an extension was made to the property the septic tank had to be inspected to gauge suitability and it could mean that a new tank was required. The Team had a good relationship with SEPA and it was SEPA who dealt with older properties without a septic tank under control of pollution regulations. If there was not a pollution problem then SEPA would not get involved.
6. The Committee then asked for clarification on overgrown hedges and trees. Overgrown hedges impinging on the highway were referred to the Roads section. High hedges were dealt with by the team and there was an application process with a fee of £400.00. If a tree covered by a Tree Preservation Order (TPO) was felled without the Council's permission, this was a criminal offence and would be prosecuted through court. The removal of overhanging branches also required permission. Trees in a conservation area had the same protection as trees covered by TPOs. Trees not covered by a TPO or located out-with a conservation area did not require permission for felling or pruning, although under common law any branches overhanging a neighbour's property could only be trimmed back to the boundary and then the pruned branches given back to the owner of the tree. As any problems had to be resolved by the owner of a tree, the Council only had responsibilities for trees in its ownership, and could not intervene elsewhere.
7. In terms of building standards, Mr Whiteford explained that they were part of the 2012 Performance Framework and had a response target of 21 working days. There was a direct link between the resource requirements and inspection requirements so if the targets were not met this was sometimes due to a resource issue. They were funded through the building warrant process, and if the economy improved and building works increased then resources would also need to increase. There were plans to recruit a trainee in the summer. Mr Gueldner explained that in terms of planning enforcement, they were a small team of four. They would prefer to be proactive rather than complaint led but this was a resource issue and current resources were at capacity. They held a difficult balance between upholding the law and complying with legislation. Customer service was a priority and they were there to provide assistance and guidance wherever possible. The Committee thanked Mr Gueldner and Mr Whiteford for their informative presentations.

**DECISION
NOTED**

- (a) **in respect of building standards the requirement for additional staff resources if the economy was to improve; and**
- (b) **in respect of planning enforcement that the current resources were at capacity, and that if the service was to become proactive rather than reactive, more resources would be required.**

DATE OF NEXT MEETING

8. The next meeting of the Scrutiny Committee was scheduled to be held on 20 August 2015.

**DECISION
NOTED.**

PRIVATE BUSINESS

9. **DECISION**

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 8 of Part 1 of Schedule 7A to the Act.

SUMMARY OF PRIVATE BUSINESS

MINUTE

1. Members approved the private section of the Minute of 28 May 2015.

The meeting concluded at 11.35 am.

home education guidance



CHOICE



DIVERSITY

FLEXIBILITY

DECISIONS

home education guidance



Cover design and illustrations by Albi Taylor

© Crown copyright 2007

ISBN: 978-0-7559-5624-1

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by RR Donnelley B54226 12/07

Published by the Scottish Government, December, 2007

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

The text pages of this document are printed on recycled paper and are 100% recyclable



contents

Section 1	Introduction	2
Section 2	Legislative position	3
Section 3	Withdrawing a child from school	8
Section 4	Contact between home educating families and local authorities	13
Section 5	Good practice for local authorities	17
Section 6	Efficient and suitable education	19
Section 7	Information for parents	22
Section 8	Children with additional support needs	24
	Useful contacts	25



1. Introduction

Every child has a right to an education, and it is the duty of the parent of every school age child to provide that education, either by sending the child to school, or by other means.

Home education is a key aspect of parental choice, and is an equally valid choice alongside the option to send a child to school. However, it is a choice which only a minority of parents make. Each individual enquiry about home education, request to withdraw a child from school, or contact between a local authority and a home educating family should be dealt with as fairly, consistently, timeously and accurately as possible.

This guidance is issued under Section 14 of the Standards in Scotland's Schools etc. Act 2000 and must be read in conjunction with that Act and the Education (Scotland) Act 1980. Relevant legislation is set out in section 2.

This guidance applies to home education provided by parents, not to education being provided outwith school by local authorities.

The purpose of this guidance is to set out the legislative position, provide advice on the roles and responsibilities of local authorities and parents in relation to children who are home educated, and to encourage local authorities and home educating parents to work together to develop trust, mutual respect and a positive relationship that functions in the best educational interests of the child.

Guidance was first published in 2004. This revised guidance has been developed following consultation with interested parties.



2. Legislative position

This section sets out the legislation relevant to home education. It covers the statutory nature of this guidance, a child's right to an education, the parent's responsibility for providing that education, the need for consent to withdraw from a public school, and a local authority's responsibility to satisfy itself that suitable and efficient education is being provided. It also provides references to case law and international law that are of relevance to home education. Most of the topics covered are expanded upon in later sections of this guidance.

2.1 This guidance

Standards in Scotland's Schools etc Act 2000 – Section 14

Guidance to education authorities as to home education. The Scottish Ministers may issue guidance as to the circumstances in which parents may choose to educate their children at home; and education authorities shall have regard to any such guidance.

This guidance is issued under Section 14 of the Standards in Scotland's Schools etc Act 2000. This means that education authorities must have regard to the guidance.

2.2 The right to an education

Standards in Scotland's Schools etc Act 2000 – Sections 1 and 2

1. It shall be the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into, by, an education authority.

2. (1) Where school education is provided to a child or young person by, or by virtue of arrangements made, or entered into, by, an education authority it shall be the duty of the authority to secure that the education is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

2. (2) In carrying out their duty under this section, an education authority shall have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person's age and maturity.



2.3 Parents are responsible for providing their child with an education

Education (Scotland) Act 1980 – Section 30

(1) It shall be the duty of the parent of every child of school age to provide efficient education for him suitable to his age, ability and aptitude either by causing him to attend a public school regularly or by other means.

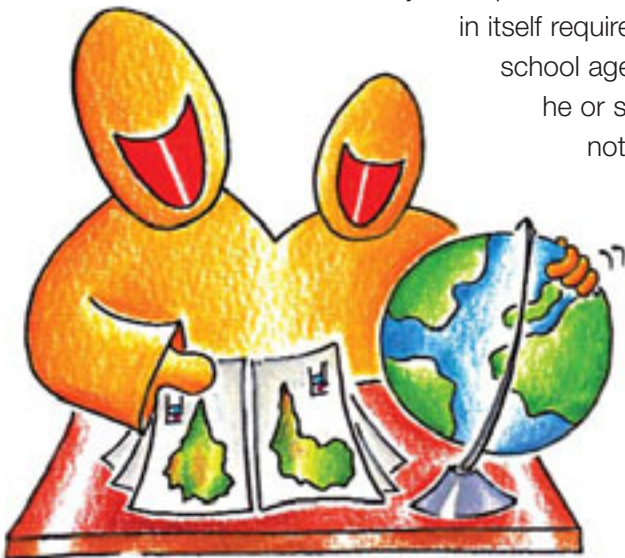
(2) Section 1 of the Standards in Scotland's Schools etc. Act 2000 (right of child to be provided with school education by, or by virtue of arrangements made by, an education authority) is without prejudice to the choice afforded a parent by subsection (1) above.

Education (Scotland) Act 1980 – Section 135 (1)

The definition of a parent 'includes guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of Section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of a child or young person'.

While most parents fulfil their responsibility to provide education by sending their children to school, others choose to provide home-based education. Home education is a right conditional upon the parents providing an efficient education suitable to the age, ability and aptitude of the child, and choosing this option does not

in itself require permission. A child is defined as being of school age (i.e. education must be being provided) if he or she has attained the age of 5 years but has not yet attained the age of 16 years. However, the exact rules surrounding school starting and leaving dates are complex and are set out in sections 32 and 33 respectively of the Education (Scotland) Act 1980. For example, the rules surrounding leaving dates may mean that a child who has already attained the age of sixteen may still require consent to be withdrawn from school.¹



¹ Leaving age: if a child becomes 16 between 1 March and 30 September, compulsory education ends on 31 May between those two dates; if a child becomes 16 between 1 October and 28/29 February compulsory education ends the day before the Christmas holidays between those two dates. Therefore it is possible for a child to have attained the age of 16 and still be of compulsory school age, and consequently require consent to withdraw from school.

2.4 Duties placed on local authorities

Education (Scotland) Act 1980 – Section 28(1)

In the exercise and performance of their powers and duties under this Act, the Secretary of State² and education authorities shall have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.

Education (Scotland) Act 1980 – Section 35

(1) Where a child of school age who has attended a public school on one or more occasions fails without reasonable excuse to attend regularly at the said school, then, unless the education authority have consented to the withdrawal of the child from the school (which consent shall not be unreasonably withheld), his parent shall be guilty of an offence against this section.

Education (Scotland) Act 1980 – Section 37(1)

(1) Where a child of school age has not attended a public school in the area in which his parent is residing, or has attended such a school and has been withdrawn therefrom with the consent of, or excluded by, the education authority, then, if the authority are not satisfied that the parent is providing efficient education for him suitable to his age, ability and aptitude, it shall be the duty of the authority to serve a notice on the parent requiring him within such time as may be specified in the notice (not being less than seven or more than fourteen days from the service thereof) either -

(a) to appear (with or without the child) before the authority and give such information as the authority may require regarding the means, if any, he has adopted for providing education, or

(b) in the option of the parent, to give such information to the authority in writing.

Education (Scotland) Act 1980 – Section 37(2)

If a parent on whom a notice has been served in pursuance of subsection (1) above fails to satisfy the authority that he is providing efficient education for the child suitable to his age, ability and aptitude or that there is a reasonable excuse for his failure to do so, the authority shall make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act.

² Since the advent of the Scottish Parliament references to the Secretary of State have been replaced by Scottish Ministers



In all their educational responsibilities, local authorities should have regard to the views of parents and the decisions that they make in relation to their child's education. Authorities should seek to support parents in the choices that they make by offering advice, clear and accurate information and resources where feasible.

Section 35 and Section 37 of the Education (Scotland) Act 1980 are relevant in relation to home education. Section 35 stipulates that the consent of the authority is required for a child to be withdrawn from a public school. Section 37 requires an authority to take action where they are not satisfied that an efficient and suitable education is being provided.

2.5 Efficient and suitable education

There is no definition of efficient and suitable education in statute law, however, there are two examples of case law from England and Wales which may be of assistance in the interpretation of this:

Harrison & Harrison v Stevenson. Appeal 1981 Worcester Crown Court (unreported)

The Judge defined the outcomes of a suitable education as

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

R v Secretary of State for Education, ex parte Talmud Torah Machzikei Hadass School Trust. Judicial review 1985, *The Times*, 12 April 1985

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

2.6 International Law

European Convention on Human Rights – Article 2 of Protocol 1

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.

UN Convention on the Rights of the Child – Article 12³

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 views of the child being given due weight in accordance with the age and maturity of the child.

UN Convention on the Rights of the Child – Article 28

Parties recognise the right of the child to education.

International law gives children a right to education. This right is enshrined in Scots law in Sections 1 and 2 of the Standards in Scotland's Schools etc Act 2000 and qualified by Section 30 (2) of the Education Scotland Act 1980.

³ The UNCRC has not been directly incorporated into Scots law and its provisions are not directly enforceable. It can, however, be used as an interpretative tool by the courts where a provision in Scots law is ambiguous. The Convention is indicative of international standards and it is the policy of the Scottish Government to reflect the provisions of the Convention wherever possible in the development of policy and legislation.



3. Withdrawing a child from school

3.1 Why parents choose to home educate

Parents choose to home educate their children for many different reasons. Parents do not have to give a reason for choosing home education when requesting to withdraw their child from school. Any reason given should have no bearing on whether or not consent is given, as the authority's interest lies in how the parents intend to educate their children not their reason for doing so. The following reasons are common, but not exhaustive:

- › The wish to follow a particular educational or ideological philosophy.
- › Religious or cultural beliefs.
- › Dissatisfaction with the system.
- › A child's reluctance to go to school.
- › A child's problems when at school, e.g. bullying.
- › Geographical – due to remoteness, or mobility for work or cultural reasons.
- › The wish to deal with a child's additional support needs in a particular way.
- › As a short term intervention for a particular reason.

It may be helpful for the local authority to know if the reason is dissatisfaction with the school, or problems, such as bullying, being faced by the child at school.

3.2 Who needs consent?

Under Section 35 of the Education (Scotland) Act 1980, parents of a child who has been attending a public school⁴ must seek the local authority's consent before withdrawing their child from that school, and the authority must not unreasonably withhold consent. It should be noted that while consent is needed for withdrawal from school, consent is not needed to home educate in itself.

Consent is not needed in the following situations:

- › The child has never attended a public school.
- › The child has never attended a public school in that authority's area.
- › The child is being withdrawn from an independent school.
- › The child has finished primary education in one school but has not started secondary education in another.
- › The school the child has been attending has closed.

⁴ Public school means any school under the management of a local authority.



Although there is no statutory duty upon parents to inform the local authority that they are home educating if they do not require consent, many authorities would prefer home educators in their area, or moving into their area, to contact them.

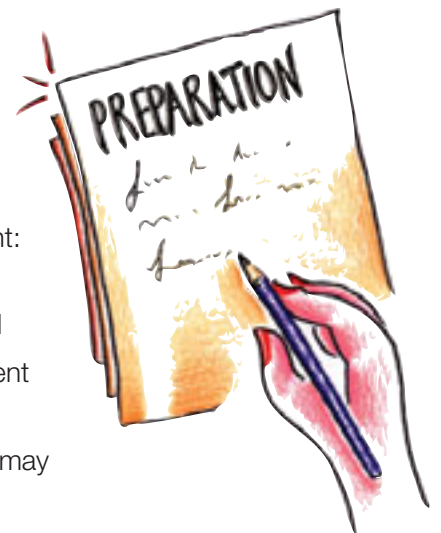
3.3 Withdrawing the child from school – the process

Procedures for considering a parent's request to withdraw a child from school should be fair, clear, consistent and without delay. Local authorities should remember that home education is a key aspect of parental choice, and that consent to withdraw a child from school should not be unreasonably withheld. On the other hand, sufficient time must be allowed for local authorities to take an informed decision on an important matter which will have an effect on the child's future learning.

The following checklists are suggested as good practice:

For parents

- › Establish whether consent is needed.
- › If consent is needed, write to the local authority to request their consent:
 - › as early as possible and, where reasonably practical, well in advance of the date you wish to withdraw your child from school
 - › include initial proposals as to how you intend to provide an efficient and suitable education for your child
 - › you are not required to indicate the reasons for your decision, but may choose to do so.



For local authorities

Is there anything in the child's record to cause concern?

- › On receipt of a request from a parent, you should consider quickly whether there is any existing evidence, either in an authority's own records or from other services or agencies, indicating that there may be good reason to refuse consent. Previous irregular attendance is not of itself a sufficient reason for refusing consent. Specific instances where consent may not be able to be granted immediately are:
 - › where a child has been referred to social work or the police for child protection reasons, and the matter is being investigated
 - › where a child is on the child protection register
 - › where a child has been referred to the reporter on care and protection grounds, and the referral is being considered
 - › where the child is the subject of a supervision requirement.



Is there evidence of the intention to provide efficient and suitable education?

- › If information exists casting doubt on whether an efficient and suitable education can be provided, or if the parent has failed to provide outline proposals on the proposed educational provision, the authority should seek to gather any relevant information that will assist them in reaching a decision. This should include seeking further information from the parents about their plans for education provision. Parents should be given the opportunity to address any specific concerns that the authority has. The child should also be given the opportunity to express his or her views.
- › If no evidence exists of reasonable grounds to withhold consent, and parents have provided some indication of their educational objectives and proposed resources, consent can be granted immediately.

Timescales

- › **The aim should be to issue a decision within 6 weeks of the receipt of the original application.**
- › The majority of applications can and will be dealt with well within this timescale.
- › In a small minority of cases, where information has to be sought from various sources, it may not be possible for a decision to be issued within 6 weeks. The parent should be kept informed of the progress of the application, the reason for any delay, and the likely timescale to reach a decision. The authority should seek to issue a decision as soon as possible.
- › Authorities should have regard to any problems a child is experiencing at school, and should endeavour to issue as quick a response as possible in those cases where a child may be suffering distress or experiencing some kind of problem as a result of continued attendance at school.

Points to bear in mind

- › The local authority may not unreasonably withhold consent. The authority should notify the parents in writing of their decision, setting out reasons and the grounds for refusal if consent is withheld.
- › If consent is withheld, the parents should be given the opportunity, within a reasonably practicable period, to address the grounds for refusal and resubmit their request for reconsideration.
- › In reaching a decision the authority may wish to have regard to the suggested characteristics of an efficient and suitable education set out in Section 6 of this guidance. However, authorities should bear in mind that, in these early stages, parents' proposals may not be detailed and they may not yet be in a position to demonstrate all of the characteristics suggested.

- › In the period between receipt of an application to withdraw the child and a decision being issued, the authority should take a reasonable approach to attendance procedures. In most cases it would be inappropriate to initiate or pursue attendance procedures in respect of a child awaiting consent to be withdrawn from school.
- › Local authorities should acknowledge that potential home educators come from all social, economic, racial and religious backgrounds, and that these factors should not bear upon the authority's decision.
- › Parents are not required to have any qualifications or training to home educate their children.

3.4 Appeals by parents against a local authority's decision

There is no statutory right to appeal against an authority's decision to withhold consent to withdraw a child from school. However, all decisions should be reviewed internally by local authorities on request. Local authorities should provide parents with details about their complaints procedure. Decisions made by authorities under their statutory powers are also generally subject to external review by the Court of Session through the judicial review process. Some local authorities have mediation services and the existence of these should be made known to home educating families. Parents may also choose to pursue the matter with the Scottish Public Services Commissioner (Ombudsman).

3.5 Movement between local authority areas

Some families may have lifestyles which mean they move or travel, sometimes seasonally, between local authority areas, sometimes for work or cultural reasons, for example Gypsies and Travellers. The same considerations for consent to withdraw from school, and for ongoing contact, apply to these families. Some Traveller families have arrangements in place whereby children are on a school roll and attend for part of the year, using means other than home education to maintain continuity in learning while travelling. Only where children do not attend any school, and where the education is provided predominantly by the parents, should the arrangement be considered to be home education.

3.6 Flexi schooling

Local authorities may occasionally receive a request to withdraw a child part time from school, e.g. for the child to attend school only on certain days, or for certain subjects. The feasibility of each request should be considered on its own merit, while taking into consideration that under Section 28 of the Education (Scotland) Act 1980 '*so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents*'. Ultimately, however, it is a decision for each local authority and school as to whether they can support such an arrangement.



WITHDRAWING A CHILD FROM SCHOOL

FLOWCHART FOR PARENTS



FLOWCHART FOR LOCAL AUTHORITY



4. Contact between home educating families and local authorities

4.1 Legal duty on local authorities

It is worth repeating here the relevant legislation which relates to ongoing contact between home educating families and local authorities.

Education (Scotland) Act 1980 – Section 37(1)

(1) Where a child of school age has not attended a public school in the area in which his parent is residing, or has attended such a school and has been withdrawn therefrom with the consent of, or excluded by, the education authority, then, if the authority are not satisfied that the parent is providing efficient education for him suitable to his age, ability and aptitude, it shall be the duty of the authority to serve a notice on the parent requiring him within such time as may be specified in the notice (not being less than seven or more than fourteen days from the service thereof) either -

(a) to appear (with or without the child) before the authority and give such information as the authority may require regarding the means, if any, he has adopted for providing education, or

(b) in the option of the parent, to give such information to the authority in writing.

Education (Scotland) Act 1980 – Section 37(2)

If a parent on whom a notice has been served in pursuance of subsection (1) above fails to satisfy the authority that he is providing efficient education for the child suitable to his age, ability and aptitude or that there is a reasonable excuse for his failure to do so, the authority shall make an attendance order in respect of the child in accordance with the provisions of section 38 of this Act.

There is no statutory duty upon local authorities to ‘monitor’ ongoing home education provision. However, in law they have a duty to serve a notice on any parent who they are not satisfied is providing efficient education suitable to their child’s age, ability and aptitude. The law does not specify how, and to what extent, local authorities should actively seek the information that will inform them on whether home educating parents’ educational provision is suitable and efficient. Section 4.2 overleaf sets out recommendations on this.

If the local authority has reason to believe that an efficient education is not being provided for a home educated child, they have a duty to intervene. This duty applies equally in relation to all children, regardless of whether or not they have previously attended a local authority school in the area.





4.2 Contact

We recommend that authorities should ordinarily make contact on an annual basis with those families they know to be home educating in their area. This annual contact is not a statutory requirement. However, it is a suggestion as to how authorities may reasonably inform themselves in order to fulfil their duty to serve a notice on any parent who is not providing efficient and suitable education.

We recommend that contact is made in writing initially to the family, seeking a meeting or requesting an updated report. The primary purpose of the contact should be for the authority to satisfy themselves that suitable and efficient education is being provided. This can be done either through a meeting, at a mutually agreed location, or through other means, e.g. the submission by the family of written, recorded or electronic material. Authorities should not be prescriptive about the format in which information can be submitted. The important factor is whether the information can demonstrate that suitable and efficient education is being provided.

Following this contact, the local authority should write to the family letting them know the outcome, i.e. whether or not the educational provision was seen to be suitable and efficient. If there was no problem with the educational provision, there will be no need for further contact until the following year. Where there are concerns about the efficiency or suitability of the education being provided, the local authority should make the exact nature of these concerns clear to the parent.

If, from whatever source, an authority becomes aware of concerns about the home education of any child, outwith the normal contact time, they will need to gather the necessary information in order to form a view on whether those concerns are justified or whether the parents are providing an efficient education suitable to the age, ability and aptitude of the child.

4.3 Access to the child and home

It is important to acknowledge that learning takes place in a wide variety of environments and not simply in the home. Where the education is taking place in the home, it may be thought desirable for a local authority to have the opportunity to see the child in that learning environment, to enable them to see the provision at first hand, and thus determine whether suitable and efficient education is being provided. The authority does not, however, have a right of access to the home and the child. Trusting relationships may need time to develop before a parent is willing to invite an officer to visit. Where a parent elects not to allow access to their home or their child, this does not of itself constitute a ground for concern about the education provision. Depending upon the circumstances, there may be occasions when a denial of access raises child protection concerns, in which case the general principal set out in section 4.6 should apply.

Although it is recognised that the learning environment can have a bearing on the effectiveness of learning, local authorities should, in the vast majority of cases, be able to discuss and evaluate the parents' educational provision by alternative means. Parents might prefer, for example, to write a report, provide samples of work, either in hard copy or electronically, or provide evidence in some other appropriate form.

4.4 Exceptional circumstances

Where the authority has concerns about the education provision which are not allayed by the presentation of written or alternative forms of evidence, and ongoing dialogue, and the only way the authority can clarify whether suitable and efficient education is being provided is to seek access to the home environment, then they may request to do so. However, the authority must have demonstrable grounds for concern and must outline those grounds to the parent when requesting access to the home. If, in these circumstances, the parent refuses to allow access to the home, the authority might reasonably conclude that they have insufficient information to satisfy themselves as to the efficiency and suitability of education provision, and serve a notice on the parent under Section 37 of the 1980 Act.



4.5 Making an attendance order

A parent's wish to educate a child at home should be respected and, where possible, effort should be made to resolve issues about provision by a process of ongoing dialogue before Section 37 is invoked. Only in extreme cases should notice be served, i.e. where

- The education is clearly not efficient and suited to the age, ability and aptitude of the child, and this situation is unlikely to be resolved by further ongoing dialogue, or
- The authority has made every effort to secure the information required to enable it to satisfy itself that the education is efficient and suited to the age, ability and aptitude of the child, and that information has not been provided by the parent.

Under Section 37, notice will allow between 7 and 14 days for the parent to provide the education authority with whatever information they require to satisfy themselves about the suitability of the education. The parent may choose to do this by meeting with the authority in person, or by supplying the information in writing. The authority should make an attendance order where the parent, on whom notice has been served, fails to satisfy the authority that efficient education is being provided, suitable to the age, ability and aptitude of the child, or that there is reasonable excuse for his or her failure to do so.

4.6 Child protection concerns by local authority officers

The welfare and protection of all children, both those who attend school and those who are educated by other means, is of paramount concern and is the responsibility of the whole community. As with school educated children, child protection issues may arise in relation to home educated children. It should not be assumed that child protection issues are more likely to arise for children who are home educated. If any child protection concerns come to light in the course of engagement with children and families, these concerns should immediately be referred to the appropriate authorities using established protocols.



5. Good practice for local authorities

5.1 Clear information

Local authorities should provide clear and accurate written information and website information on home education. Contact details for home education support organisations should also be provided (see end of this guidance). All written information should be made available to parents in community languages and alternative formats on request.

Local authorities should provide parents who are, or who are considering, home educating with a named contact within the authority who is familiar with home education policy and practice and has an understanding of a range of educational philosophies. The authority may wish to invite the parents to meet with a named officer to discuss their proposals or provision. Any such meeting should take place at a mutually acceptable location. The child should be given the opportunity to attend that meeting, or otherwise to express his or her views, but the child's attendance should not be seen as compulsory. Either during such a meeting, or otherwise, the parents and the authority should consider and agree what future contact there will be between them. In some cases, where parents have a clear idea of what home education entails and where there are no other concerns, such a meeting may not be necessary.

Local authorities should, as far as practicable, ensure that staff who may be the first point of contact for a potential home educating parent, e.g. answering telephone enquiries, understand the right of a parent to choose home education. Authorities generally should aim to ensure that parents are provided with accurate information from the outset.

5.2 Record keeping

Local authorities should keep a written record setting out any discussions, recommendations or agreements made with parents, and where relevant the reasons for them. Any written report should be copied to the parents, and where appropriate, the child. In exceptional cases, where there is a reasonable concern that a passage in any written record might cause serious harm to the physical or mental health or condition of any person concerned, consideration should be given to withholding that part of it. The authority will be aware of the need to comply with data protection and freedom of information principles.



5.3 Practical support and resources

Authorities are not legally obliged to provide any resources for home educated children. However, they may choose to do so, particularly where there are minimal resource implications.

Some of the ways in which authorities might choose to support home educating families include:

- › Providing general advice.
- › Allowing access to learning centre resources.
- › Allowing access to school resources where feasible.
- › Allowing access to examination centres where feasible.
- › Facilitating access to any discounted rates for educational materials.
- › Providing access to local authority owned community and sports facilities on the same basis as for school children.
- › Informing home educating families of any projects or programmes which might reasonably be accessed by home educated children.



5.4 Review

As a matter of good practice, authorities should regularly review all of their procedures and practices, including in relation to home education. This could focus on whether improvements could be made in the processing of requests to withdraw a child from school, and contact with home educating families, and generally to meet the needs of children and parents. Home education organisations and home educating parents should be involved in this process of review. Effective reviews, together with the sensitive handling of any complaints, will help to secure effective partnership.

6. Efficient and suitable education

6.1 Acknowledging diversity

Parents' educational provision will reflect a diversity of approaches and interests. Some parents may wish to provide education in a formal and structured manner, following a traditional curriculum and using a fixed timetable that keeps to school hours and terms. Other parents may decide to make more informal provisions that are responsive to the developing interests of their child. One approach is not necessarily any more valid than another. Although some parents may welcome general advice and suggestions about resources, methods and materials, local authorities should not specify a curriculum which parents must follow.

Children learn in different ways and at different times and speeds. It should be appreciated that parents and children embarking on home education for the first time might require a period of adjustment before finding their preferred mode of learning. Parents are not required to have any qualifications or training to provide their children with an appropriate education. Their commitment to providing an efficient education that is suitable for their child may be demonstrated by them providing some indication of their objectives and resources.

The approach home educating parents take to assessing their child's progress is likely to be dictated by their own philosophy or views, and in many cases, the absence of formal assessment may be a feature of the education provision. Progress, over the long term, may take a variety of forms.



6.2 Suggested characteristics of efficient and suitable education

There is no definition of suitable and efficient education set out in primary legislation. However, as set out in section 2, the following examples of case law may be helpful in forming definitions:

Harrison & Harrison v Stevenson. Appeal 1981 Worcester Crown Court (unreported)

The Judge defined the outcomes of a suitable education as

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

R v Secretary of State for Education, ex parte Talmud Torah Machzikei Hadass School Trust. Judicial review 1985, *The Times*, 12th April 1985

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

In their consideration of parents' provision of home education, authorities may reasonably expect the provision to include the following characteristics:

- › Consistent involvement of parents or other significant carers.
- › Presence of a philosophy or ethos (not necessarily a recognised philosophy), with parents showing commitment, enthusiasm, and recognition of the child's needs, attitudes and aspirations.
- › The opportunity for the child to be stimulated by their learning experiences.
- › Involvement in a broad spectrum of activities appropriate to the child's stage of development.
- › Access to appropriate resources and materials.
- › The opportunity for an appropriate level of physical activity.
- › The opportunity to interact with other children and adults.

School education is changing with the introduction of the Curriculum for Excellence, which is not primarily about prescriptive curriculum content or structures. Rather it is about focussing on the outcomes that learning and teaching will achieve for young people. This chimes well with the philosophy of many home educating parents, and local authorities may also find it useful to consider the principles which govern Curriculum for Excellence as characteristics of suitable and efficient education.

To summarise, these principles are that every child:

- Has opportunity to develop as a successful learner, effective contributor, confident individual and responsible citizen.
- Knows they are valued and supported.
- Has opportunity to develop skills for learning, vocational skills and skills for life.
- Has opportunity to develop a range of knowledge and skills that adds up to a general education.
- Finds learning relevant and meaningful.
- Is challenged and engaged by their learning.



7. Information for parents

7.1 Education Maintenance Allowances (EMAs)

Home educated children are eligible for EMAs, subject to the same criteria as set out for school educated children. EMAs are available to eligible young people who are undertaking full-time non-advanced level study by home education. The EMA programme is administered by the local authority in which the home education is based. Applications should be made to the local authority. Students applying for an EMA as a home educated student must have a history of home education prior to reaching their official school leaving date. The Scottish Government publish updated guidance annually in March. Parents should refer to the latest guidance for more details.

7.2 Examinations for home educated children

There is no legal requirement for children to sit a particular set of examinations. If parents want a child to take a particular qualification, they should investigate thoroughly whether, and how easily, their child will be able to access examination and assessment arrangements. The internal assessment component of many qualifications such as Standard Grades, National Qualifications, GCSEs and A Levels can restrict the certification of external candidates. For instance, many National Qualifications courses at Intermediate 1 and 2, Higher and Advanced Higher require candidates to pass unit assessments as well as an external assessment to achieve a course award. These are not, however, the only types of qualification available and parents may wish to investigate alternative options which may be better suited to home education. Some study options are set out below.

Authorities are not required to meet any costs associated with home educated candidates taking examinations or other qualifications. Authorities should, however, where circumstances allow, take a reasonable approach and make available any resources or support that they can offer, and give information about alternative qualifications and the arrangements needed for children to take them, where applicable.

7.3 Study options for educational qualifications

Enrolment at a Further Education College

Home educated young people are eligible to be considered for further education college courses. As with school pupils, it is a matter for the college concerned whether to enrol a home educated young person. Courses are usually part-time, though colleges may in exceptional circumstances enrol young people under the age of 16 on to full-time programmes.

Enrolment at college has the advantage that all the work and entry for qualifications is organised by the college, but it does require at least some attendance at classes which will not appeal to all home educating families. If a student enrolls at a college, their parents will be liable

to pay all of the course fees themselves unless the education authority is willing to provide funding. Colleges also have the discretion to waive fees, which they tend to do for low income families in accordance with Scottish Funding Council's fee-waiver policy.

Self-Study

Many home educating families choose to work independently towards qualifications. Because of compulsory internal assessment components, there are many subjects and qualifications which are not available to external candidates unless an appropriate arrangement can be made with an approved centre which meets with the examining board's requirements. Some centres and examining boards may be willing to accept coursework which has been marked and authenticated by a private tutor.

Families who study for qualifications from home will need to:

- › Contact the relevant examination board to find out about their requirements.
- › Register with an approved centre for their child to be presented for the qualification.
- › Pay a registration fee for each subject their child will take.

It may also be possible for a group of home educators to consider seeking approved status in their own right. Further information on this can be obtained from the Scottish Qualifications Authority (contact details at end of guidance).

Correspondence Courses

Correspondence courses can be an option for students who prefer to work independently, though they will be required in most cases to follow a structured curriculum and programme of work. Correspondence courses offer a wide range of qualifications at different levels and the organisations offering these courses will advise about arrangements which need to be made for registering with an examination centre and for marking and authenticating coursework. The cost of this option varies depending on the organisation and the qualification chosen, but can prove expensive.



7.4 Child protection assurances for parents

Parents may choose to employ other people to educate their child, though they themselves will continue to be responsible for the education provided. They will also be responsible for ensuring that those they engage are suitable persons to have access to children. They will therefore wish to satisfy themselves, for example, by taking up appropriate references, or requesting that a Disclosure check is carried out. Further information about Disclosure checks is available from Disclosure Scotland (contact details at end of guidance).



8. Children with additional support needs

8.1 The right to home educate

A parent's right to educate a child at home applies equally where that child has additional support needs. The fact that a child has additional support needs should not, in itself, be a reason to refuse consent to withdraw a child from school. Additional considerations do, however, apply. It is reasonable for an education authority to ask parents to indicate how they propose to cater for their child's additional support needs at home.

When considering a request for consent, or considering whether the education is suitable, taking account the age, ability and aptitude of the child, the authority may need to consider the environment in which a child with additional support needs is to be educated and its appropriateness for the individual child. With the agreement of the parents, an educational psychologist might be involved in assessing the proposed provision for a child with additional support needs.

Local authorities have no statutory obligation to provide financial or other support for the education of children with additional support needs whose parents elect to home educate.

8.2 The law and children with additional support needs

The Education (Additional Support for Learning) (Scotland) Act 2004 came into force in November 2005. It replaced the system of assessment and recording of children and young people with 'special educational needs' with a new framework for additional support needs. This term applies to any child or young person who, for whatever reason, requires additional support, to benefit from education. Education authorities are required to identify, meet and keep under review the additional support needs of all pupils for whose education they are responsible. Appropriate agencies such as NHS Boards and social work services also have duties placed on them to help education authorities when asked to do so.

While education authorities are not responsible for the education of children or young people who are home educated, parents of home educated children have the right to ask their local authority to find out whether or not their child has additional support needs, and to assess what level of support they might need. A young person also has similar rights. The local authority can choose to agree with the request, and provide the necessary support, but it is under no legal duty to do so.



Useful contacts

Home Education Organisations – Scotland

Schoolhouse Home Education Association

Contact:

Address: PO Box 18044, Glenrothes, Fife KY7 9AD

Tel: 01307 463 120

Email: info@schoolhouse.org.uk

Website: www.schoolhouse.org.uk

North of Scotland Home Educators

Contact:

Email: norscothe@hotmail.co.uk

Home Education Organisations – UK wide

Education Otherwise

Contact:

PO Box 325, Kings Lynn PE34 3XW

Tel: 0845 478 6345

Email: eoemailhelpline@education-otherwise.org

Website: www.education-otherwise.org

Home Education Advisory Service

Contact:

PO Box 98, Welwyn Garden City, Herts AL8 6AN

Tel: 01707 371 854

Email: enquiries@heas.org.uk

Website: www.heas.org.uk

Home education organisations also have local branches affiliated to them. Further information available from the individual organisations.



Other useful contacts

Disclosure Scotland

Contact:

Disclosure Scotland, PO Box 250, Glasgow G51 1YU

Tel: 0141 282 5000 Fax: 0141 282 5050

Email: info@disclosurescotland.co.uk

Website: www.disclosurescotland.co.uk

Learning and Teaching Scotland

The national body in Scotland providing advice and support for all matters on the curriculum, and providing a wide range of online services and resources.

Contact:

The Optima, 58 Robertson Street, Glasgow G2 8DU

Tel: 0870 609 6006 Fax: 0870 609 6996

Email: enquiries@ltscotland.org.uk

Website: www.ltscotland.org.uk

Scottish Government Education Directorate

Contact:

Educational Options Team, Victoria Quay, Edinburgh EH6 6QQ

Tel: 0131 556 8400

Email: ceu@scotland.gsi.gov.uk

Website: www.scotland.gov.uk

The Scottish Qualifications Authority (SQA)

The national body in Scotland responsible for the development, accreditation, assessment, and certification of qualifications other than degrees.

Contact:

The Optima, 58 Robertson Street, Glasgow G2 8DQ

Telephone Helpdesk: 0845 279 1000

Email: Customer@sqa.org.uk

Website: www.sqa.org.uk



The Scottish
Government

© Crown copyright 2007

This document is also available on the Scottish Government website:
www.scotland.gov.uk

RR Donnelley B54226 12/07

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

Telephone orders and enquiries
0131 622 8283 or 0131 622 8258

Fax orders
0131 557 8149

Email orders
business.edinburgh@blackwell.co.uk



ISBN 978-0-7559-5624-1



9 780755 956241