

1. Purpose

- a. The purpose of this policy is to provide guidance on the legal position regarding parents who choose to educate their children at home; to clarify our responsibilities as an Education Authority; and to provide guidance and information for parents and staff.
- b. The legal framework for home education is covered in both the Education (Scotland) Act 1980 and the Standards in Scotland's Schools Etc Act 2000. Relevant extracts from these Acts are attached as appendix 1.

2. Corporate context

- a. This policy supports an aspect of the Council's vision and values to: "provide equality of opportunities"
- b. Delivering and improving 'Learning for Everyone' is also identified as a key priority in the Council's Corporate Plan.

3. Accessibility statement

- a. This policy can be made available in large print, on tape or in other languages.

4. Background

- a. The Scottish Government has issued new guidelines on home education under Section 14 of the Standards in Scotland's Schools etc Act 2000. This emphasises the right of every child to an education and that 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 a valid choice alongside the option to send a child to school, subject to the parents providing an education suitable to the age, ability and aptitude of the child.

5. Key principles

- a. We acknowledge the rights of parents to home educate and will support this unless there are very specific concerns that home education would not be in the child's best interest.
- b. A parent's right to educate their child at home applies equally to children with additional support needs. The fact that a child has additional support needs will not in itself be a reason to refuse an application.
- c. Each individual contact (whether it is a general enquiry about home education; a request to withdraw a child from school, or providing support for a home educating family) will be dealt with fairly, consistently and accurately.

- d. Unless there are exceptional circumstances a decision on home education will be provided within six weeks from receiving a parent's request to home educate.
- e. We recognise that potential home educators come from all social, economic, racial and religious backgrounds, and that this will have no bearing on our decision.
- f. Parents are not required to have any qualifications or training to home educate their children, nor is there any obligation to seek or recruit tutors to support their child's learning at home.
- g. There is no legal definition of the "efficient and suitable education" that must be provided when home educating but the characteristics we will be looking for in the proposals from parents seeking consent to withdraw their child from school include those shown below. (Two examples of definitions from English case law are also included within Appendix 1)
 - 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
 - opportunity for the child to be stimulated by their learning experiences
 - involvement in a broad spectrum of activities appropriate the child's stage of development
 - details of educational objectives and access to appropriate resources and materials
 - opportunity for an appropriate level of physical activity
 - opportunity to interact with other children and adults
 - recognition of any additional support needs the child may have
 - proposals for catering for any additional support needs in the home.

These characteristics are consistent with changes to school education arising from the introduction of A Curriculum for Excellence (ACE) which moves away from a rigid approach and is focused on the outcomes that learning and teaching will achieve for young people.

In summary these principles are that every child

- has the opportunity to develop as a successful learner, effective contributor, confident individual and responsible citizen
- knows they are valued and supported
- has the 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

6. Consent to home educate

- a. Consent **is not required** to home educate in the following circumstances
 - i. The child has never attended a public school in the Borders
 - ii. The child is being withdrawn from an independent school
- b. Consent **is not required** but parents **should notify** us if they intend to home educate in the following circumstances
 - i. The child attended a local authority primary school up until P7 (completion of primary education) but does not intend to start at a local authority secondary school in the Borders
 - ii. The school the child has been attending has closed and the parent decides to home educate, rather than sending their child to another local authority school
- c. Consent **is required** if parents wish to withdraw a child from a local authority school to home educate
- d. **A parent wanting to home educate their child must**
 - i. check if consent is required and if consent is required, the parent must write to the Director of Education and Lifelong Learning at Council Headquarters, Newtown St Boswells, TD6 0SA, to seek permission to home educate
 - ii. prepare initial proposals (to accompany the letter requesting consent) as to how they intend to provide an efficient and suitable education for their child. These proposals should include the broad education objectives for their child and the resources they will use to deliver home education
 - iii. there is no requirement to indicate the reasons for the parent's decision but it may be helpful for the authority if this is included
 - iv. If the child has additional support needs, the parent should indicate how they intend to cater for their child's additional support needs at home.
- e. **On receipt of request from a parent to home educate**
 - i. we will acknowledge the request and take steps to respond to the parent within six weeks. If the child is suffering distress or experiencing some kind of problem as a result of continued attendance at school, steps will be taken to try and speed up a decision
 - ii. seek evidence from our own records and check with social work and other agencies, to see if there are any indications that suggest there may be a reason to refuse consent. Previous irregular attendance is not in itself a reason for refusing consent

specific concerns would include:
 - o 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
- iii. where the child has additional support needs, with the agreement of the parents, request the involvement of an education psychologist in assessing the proposed provision
 - iv. in all applications the parent's initial proposal will be reviewed to satisfy ourselves that there is an intention to provide an efficient and suitable education
 - v. if the intention is not evident in the parent's initial proposals, further information will be sought from the parents, giving them the opportunity to address any specific concerns that we have
 - vi. the child will also be given the opportunity to express his or her views but until the child reaches 16 years of age, it is the parents who decide whether to proceed with a request for home education
 - vii. if there are no specific grounds to refuse consent and the parents have provided a satisfactory indication of their education objectives and proposed resources, etc, consent will be granted immediately
 - viii. if we have specific concerns and need to investigate further before making a decision, we will advise the parent of the reason for delay and the steps we are taking.
 - ix. in reaching our decision we will understand that the initial proposals from the parent may not be detailed and may not demonstrate all the characteristics (see paragraph 5.f) of an efficient and suitable education but there must be a clear intention and evidence of a capacity to develop.
 - x. A chart that illustrates the consent process is attached as Appendix 3.

7. Flexi schooling

- a. We will consider requests for flexi schooling which would enable a child to be withdrawn from school on a part time basis but attend for certain days or for certain subjects. Consideration of these requests will follow the procedures for requesting home education (see paragraph 6).

8. Children moving between Local Authority areas

- a. Some families have lifestyle choices which mean they move or travel, perhaps seasonally, between local authority areas – for example gypsies or travellers. The Council's Attendance and Absence Policy makes provision for granting extended period of absence to these families. This policy allows for the child to remain on the roll of their 'home' school and to temporarily attend a school in another authority's area.

- b. Only where a child does not attend any school, and where the education is provided predominantly by the parent, is the arrangement considered as home education. If this is the case the normal arrangement for annual contact and support would apply (see paragraph 10).

9. Child Protection Issues for the Council and parent

- a. The welfare and protection of all children is of paramount concern and is the responsibility of the whole community. If any child protection concerns come to light in the course of engagement with home educated children and families, these concerns will immediately be referred to Scottish Borders Council Child Protection Team using established protocols.
- b. If a parent chooses to employ other people (perhaps as a specialist subject tutor) to educate their child, they are responsible for ensuring that the person is a suitable individual to have access to children. The parent should take up appropriate references or request that a Disclosure check is carried out. Information on Disclosure Scotland is contained within Appendix 2.

10. On – going contact with home educators

- a. While there is no statutory duty on the authority to monitor home education provision, there is a legal requirement for the authority to serve notice under Section 37 of the Education (Scotland) Act 1980 on any parent whom we believe is not providing efficient education suitable to their child's age, ability and aptitude, requiring them to provide information regarding the means adopted for providing education.
- b. If we believe that efficient education is not being provided for a child then we have a duty to intervene, even if the child has never attended a local authority school in the Borders.
- c. Contact will be made every year with each family in the Borders who is known to be home educating. The process will comprise:
 - A senior officer within the Education Authority will write to each family to seek a meeting to discuss the child's learning
 - If the family does not wish to meet they can instead submit a report on the child's progress, which could be recorded, written or electronic in format, with perhaps some examples of the child's work. But a meeting is always preferable and due attention will be paid to building trust with home educators so that a meeting does become acceptable.
 - Where acceptable to the home educating family the meeting will be at their home but the parent can if they prefer nominate another location
 - The child does not need to be present at this meeting but we would much prefer to meet with both parent and child
- d. If after the meeting or submission of a progress report, we are satisfied that the education meets the requirements of suitable and efficient we will write to the family and confirm that the next contact will be in 12 months.

- e. If we have concerns we will write to the family, stating the exact nature of our concerns and seek further dialogue and opportunities for the family to satisfy our concerns.
- f. If we become aware of concerns, at any time, relating to home education, from whatever source, we will gather information from the family, and possibly the child, to form a view on whether the concerns are justified.
- g. As part of our commitment to respect a parent's wish to home educate their child, we will work to resolve issues through on-going dialogue. However in extreme circumstances we may find no alternative but to serve notice under Section 37 of the Education (Scotland) Act 1980. Extreme circumstances would include
 - o where education is clearly not efficient and suited to the age, ability and aptitude of the child and this situation is unlikely to be resolved through further on-going dialogue, and
 - o when we have made every effort to secure the information required from the parent to enable us to fulfil our duty and satisfy ourselves that the education is efficient and suited to the age, ability and aptitude of the child, but the parent has not provided this..
- h. The Section 37 notice will allow between 7 and 14 days for the parent to provide us with whatever information we require to be satisfied on the suitability of the child's education.
- i. the parent may choose to provide the information in person (with or without the child) or in writing.
- j. If we are still not satisfied that the parent is providing efficient education , suitable to the child's age, ability and aptitude, or that there is reasonable excuse for failure to do so then we must make an attendance order requiring the child to attend school.
- k. If an attendance order is served the parent has 14 days from the date of service to appeal to the sheriff, who may confirm, vary or annul the order.

11. Appeal and complaints

- a. While there is no statutory right to appeal against a decision to refuse consent to home educate, we will always provide parents with the reasons for our refusal.
- b. If appropriate we will provide support to parents to enable them to develop their proposals and resubmit their proposals in the future.
- c. Parents can also use our complaints services to raise concerns on the way their request has been handled.
- d. The route of appeal for a parent would be to seek a judicial review through the Court of Sessions.

12 Information for parents

- a. **Children with additional support needs** – parents who home educate have the right to ask the Council to find out whether or not their child has additional support needs and to assess what level of support they need. There is however no legal duty on the Council to agree to this request, or to provide the support required.
- b. **Access to resources** – arrangements can be made for parents educating their children at home to have access to the authority's Education Resource Centre near Galashiels, where they can find more information about learning resources/curriculum material to assist them in home education.
- c. **Examinations** – subject to suitable notice, home educated children will be allowed in school to enable them to sit formal examinations arranged by the Scottish Qualifications Authority. However the examination entry fees must be paid by the parent.

Some courses require teaching assessment of individual course work units by schools and requests by parents for the authority to take on this role will be considered but children can only be accepted if a school has sufficient resources. As the pupil will not be on the school roll then they are not covered under SBC's insurance and it may be necessary for the parent to sign a waiver to accept this position.

- d. **Education Maintenance Allowances (EMAs)** – home educated children are eligible for EMAs and subject to the same criteria as school educated children. Applications should be made to Scottish Borders Council EMA Team at Council Headquarters but the child must have a documented history of home education prior to reaching their official school leaving age.

13. Implementation of the policy

- a. The policy will be implemented by Scottish Borders Council with effect from 12 May 2008.

14. Consultation on development of the policy

- a. In developing the policy the following groups have been consulted :
 - current home educators in the Borders
 - the elected representatives of headteachers on the Schools Strategic Policy Group
 - senior officers within Education
 - Community Learning and Development Manager
 - Children's Services team within Social Work
 - SBC's Child Protection Unit.

15. Policy Monitoring and Review

- a. The implementation of this policy by schools will be monitored.

- b. The policy will be reviewed on a three yearly cycle by a senior education officer nominated by the Director and if appropriate a report will be submitted to the Education Executive to request changes.

16. Assessment

- a. The policy has been impact assessed in line with Council policy to meet the six strands of equality.
- b. It also meets the Council's commitment to support rural communities.

The right to school education

Standards in Scotland's Schools Etc Act 2000 • Sections 1 and 2

Section 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

Section 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.

Section 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

Parents are responsible for providing their child with an education.

Education (Scotland) Act 1980· Section 30

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.

Section 30(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.'

Education authority powers in respect of parental failure to provide suitable and efficient education

Education (Scotland) Act 1980, Sections 37 and 38

Section 37 Power of education authority where not satisfied that parent is providing efficient education for his child.

(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.

(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 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.

Section 38 Making of attendance orders.

(1) References in sections 36 and 37 of this Act, and in the following provisions of this Act, to an attendance order in respect of a child are references to an order in writing requiring the parent of the child to cause the child to attend a school named in the order, being either a public school, or a school (other than a public school) the managers of which are willing to receive the child.

(2) In an attendance order in respect of a child--

(a) a school at which the parent will be required to pay fees shall not be named except at the request of the parent; and

(b) a special school shall not be named unless the child [has additional support needs requiring the education or special facilities normally provided at the school] [FN1].

(3) Before making an attendance order under section 36 or 37 of this Act, the education authority shall consider any views expressed by the parent as to the school which he desires his child to attend.

(4) The authority shall cause a copy of any attendance order made by them under section 36 or 37 of this Act to be served upon the parent, and it shall thereupon be the duty of the parent, subject to an appeal to the sheriff under subsection (5) below, to cause the child to attend regularly at the school named in the order.

(5) A parent aggrieved by the making of an attendance order by an education authority may within fourteen days after the date upon which a copy of the order was served upon him under subsection (4) above appeal against it to the sheriff, who may confirm, vary or annul the order and whose decision shall be final.

English case law examples regarding "suitable education"

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. *Judicia* review 1986, *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.'

HOME EDUCATION ORGANISATIONS

Education Otherwise

PO Box 325, Kings Lynn, PE34 3XW
Tel: 08454786345
Email: eoemailhelpline@education-otherwise.org
website: www.education-otherwise.org

Home Education Advisory Service

P O Box 98, Welwyn Garden City, Herts, AL8 6AN
Tel: 01707 371854
Email: info@schoolhouse.org.uk
website: www.schoolhouse.org.uk

Schoolhouse Home Education Association

Address: PO Box 18044, Glenrothes, Fife, KY7 9AD
Tel: 01307 463120
email: info@schoolhouse.org.uk
website: www.schoolhouse.org.uk

Other useful contacts

Disclosure Scotland, PO Box 250, Glasgow, G51 1YU.
Tel: 0870 609 6006 Fax: 08706096996
Email on fhfo@disclosurescotland.co.uk
Website: www.disclosurescotland.co.uk

Scottish Government Education Directorate

General advice and advice on EMAs
Educational Options Team, Victoria Quay, Edinburgh, EH6 6QQ
Tel: 0131 556 8400
email: ceu@scotland.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.
The Optima, 58 Robertson Avenue, Glasgow, G2 80Q
Tel: Helpdesk: 0845279 1000 on ac ..
email: Customer@saa.org.uk
website: www.saa.org.uk