



Educational  
Services

**Appendix 2**

**HOME EDUCATION POLICY**

DOCUMENT HISTORY

AUTHORISATION 20 August 2008

REVIEW DATE August 2011 (or sooner if there are changes in relevant legislation)

## 1. INTRODUCTION/BACKGROUND

Every child has a right to an education, and it is the duty of the parent of every school age child to provide an efficient education, suitable to the age, ability and aptitude of the child, either by sending the child to school, or by other means, which can include educating a child at home. 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 small minority of parents make. This policy should be read in conjunction with Section 14 of the Standards in Scotland's Schools etc. Act 2000, the Education (Scotland) Act 1980 and the Home Education Guidance issued by the Scottish Government in January 2008. This policy applies to home education provided by parents, not to education being provided outwith school by the education authority.

## 2. RATIONALE

Each individual enquiry about home education, request to withdraw a child from school, or contact between the authority and a home educating family should be dealt with as fairly, consistently, timeously and accurately as possible, in accordance with the procedures described in this policy.

## 3. AIMS/OUTCOMES

This policy aims to set out the legislative position, provide advice on the roles and responsibilities of the education authority and parents in relation to children who are home educated, and to encourage the authority and home educating families to work together to develop trust, mutual respect and a positive relationship that functions in the best educational interests of the child.

## 4. IMPLEMENTATION PROCEDURES

### 4.1 Reasons for home educating

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

### 4.2 Consent to withdraw a child from school

Under Section 35 of the Education (Scotland) Act 1980, parents of a child who has been attending a public school (any school under the management of the local authority) 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 within the Moray Council education authority 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.

Although there is no statutory duty upon parents to inform the authority that they are home educating if they do not require consent, the Moray Council Educational Services has a preference that home educators in Moray, or moving into the area, contact them to advise that they are home educating.

### **4.3 The process for withdrawing a child from school**

Home education is a key aspect of parental choice, and consent to withdraw a child from school should not be unreasonably withheld. On the other hand, sufficient time must be allowed for the authority to take an informed decision on an important matter which will have an effect on the child's future learning.

#### *Guidelines for parents*

- Establish whether consent is needed.
- If consent is needed, write to the 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. Parents can obtain a template for outline home education proposals from the education authority if required.
- You are not required to indicate the reasons for your decision, but may choose to do so.

#### *Guidelines for authority officers*

- On receipt of a request from a parent, you should consider quickly whether there is any existing evidence, either in the 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.
- 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 he or she chooses to do so.
- 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 4 weeks of the receipt of the original application.
- The majority of applications can and will be dealt with 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 4 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.
- The authority 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.

#### *Considerations*

- The 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 (see paragraph 4.7). However, 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.
- The authority 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.

#### **4.4 Appeals by parents against the authority's decision**

There is no statutory right to appeal against the authority's decision to withhold consent to withdraw a child from school. However, all decisions to withhold consent should be reviewed by the Children and Young People's Services General Purposes Sub-Committee on request from the parents. Decisions made by the authority under its statutory powers are also generally subject to external review by the Court of Session through the judicial review process. Parents may also choose to pursue the matter with the Scottish Public Services Commissioner (Ombudsman).

#### **4.5 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.

#### **4.6 Flexi schooling**

Parents may occasionally make 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 will be considered on its own merit; however, it will be a decision for the authority and school as to whether they can support such an arrangement, having taken account of individual circumstances and operational arrangements.

#### **4.7 Suggested characteristics of efficient and suitable education**

There is no definition of suitable and efficient education set out in primary legislation.

In their consideration of parents' provision of home education, the authority expects 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.
- Opportunities to support the child's literacies and their numerical skills
- 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.

Parents' educational provision will reflect a diversity of approaches and interests. 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. Progress, over the long term, may take a variety of forms.

## 5. ROLES/RESPONSIBILITIES

### 5.1 The role and responsibilities of parents

It is 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, which could include educating at home.

### 5.2 The role and responsibility of the education authority

Section 37 of the Education (Scotland) Act 1980 requires the education authority to take action where it is not satisfied that an efficient and suitable education is being provided for a child. A report will be submitted annually to the Children and Young People's Services Committee detailing:

- Number of requests to educate at home approved during the year and, in relation to 'notified' children:
- Number of children home educated where no consent from the education authority is required
- Number of home educated children reaching age 16
- Number of home educated children re-enrolling in school
- Number of home educated children leaving the area
- Current number of children being educated at home.

### 5.3 The right to home educate children with additional support needs

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 the 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.

### 5.4 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. The education authority is 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 authority can choose to agree with the request, and provide the necessary support, but it is under no legal duty to do so.

## 6. SUPPORT AND RESOURCES

The authority will provide clear and accurate information on home education. The authority will 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. This will be the Quality Improvement Officer for the area in which

the child resides. The authority may wish to invite the parents to meet with the officer to discuss their proposals or provision. Any such meeting should be mutually agreed and take place at a mutually acceptable location. The child should be given the opportunity to attend any mutually agreed meeting, or otherwise to express his or her views, but the child is not obliged to do so. Either during such a meeting, or otherwise, the parents and the authority should consider and agree what future contact there will be between them. Contact should take place on an annual basis as stated in section 8.

The authority will keep a written record setting out any discussions, recommendations or agreements made with parents, and where relevant the reasons for them. Any written report will 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 may be given to withholding that part of it. The authority will ensure compliance with data protection and freedom of information principles.

The education authority has no statutory obligation to provide financial or other support for the education of children whose parents elect to home educate including those with additional support needs. Neither is the authority required to meet any costs associated with external candidates taking examinations or other qualifications. However, the education authority may consider individual circumstances, particularly when there are minimal resource implications.

Home Educated children are eligible for Education Maintenance Allowances (EMAs), subject to the same criteria as set out for school educated children. Parents should refer to the latest Government guidance for details.

## 7. LEGAL REQUIREMENTS

This section sets out the legislation relevant to home education

### ***Standards in Scotland's Schools etc Act 2000 – Section 14*** **Guidance to education authorities as to home education.**

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.

### ***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.*

### ***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. (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).

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

*In the exercise and performance of their powers and duties under this Act, Scottish Ministers 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. (Reference: Strategy for Supporting Pupil attendance SS/011)*

**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 12**

*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.

## **8. QUALITY IMPROVEMENT, MONITORING AND EVALUATION**

### **8.1 Legal duty on local authorities**

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. If the 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.

### **8.2 Contact**

The authority 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. Contact should be made in writing initially to the family, seeking a meeting or requesting an update. The primary purpose of the contact should be for the authority to satisfy itself 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. The authority 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 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 authority should make the exact nature of these concerns clear to the parent. If, from whatever source, the 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.

### **8.3 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 the 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 principle set out in section 8.6 should apply. Although it is recognised that the learning environment can have a bearing on the effectiveness of learning, the authority 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.

### **8.4 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.

### **8.5 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. Once an attendance order has been served, the parent has two weeks to appeal to the sheriff, who may confirm, change or annul it.

### **8.6 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, are of paramount concern and are 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.

## **9. STAFF DEVELOPMENT**

Educational Services will periodically provide advice and training for those Officers involved in processing home education requests and in liaising with home educating families.

## **10. CONSULTATIONS**

The following have been consulted in formulating this revision of the policy:

- Senior Officers within Educational Services
- Moray Council Legal Services
- Known home educating families
- Members of North Scotland Home Educators
- Schoolhouse