

Advice on the Education Authority's Revised Guidelines for Elective Home Education.

23rd August 2019

1.0 Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in NI. Under Articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of the Office is children and young people up to 18 years, or 21 years of age if the young person is disabled or in the care of social services. In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the opportunity to comment on the revised 'Moving Forward Guidelines for Elective Home Education' (hereafter referred to as Revised Guidelines'). We note that the legislative basis for home education is being reviewed across the different UK jurisdictions, and the Children's Commissioners in each are providing consistent advice in relation to the rights of children to education, to care and safety and to having a say in decisions affecting them.

The Children's Commissioner for Wales has recently outlined three tests that any home education policy must meet:

1. All children can be accounted for and none are invisible
2. Every child receives a suitable education, and other rights are realised, including health, care and safety
3. Every child is seen and their views and experiences are listened to.¹

This submission applies these tests to the Revised Guidelines, and the relevant legislation, policy and practice relating to elective home education in Northern Ireland.

¹ See <https://www.childcomwales.org.uk/our-work/policy-positions/home-education/>

Our advice in relation to meeting these three tests is set out in two parts below. Firstly, we make some comments on the Revised Guidelines in light of attempting to clarify the current legal context along with ensuring better and more timely support is in place for parent/carers who opt to home educate their children including those with special educational needs. We also raise some issues about the ‘reactive duty’ placed on the Education Authority (EA) in relation to investigating ‘where a concern is raised’ as to whether a child educated at home is receiving an effective education. Secondly, in the absence of compulsory registration of home educated children, we note it is not currently possible for the state to know if it is meeting its obligations of ensuring ALL school-aged children are receiving an effective education in Northern Ireland without a legal requirement for the registration of home educated children. We therefore raise some key issues about the need to reform the law to ensure the state can effectively meet its obligations in this area.

2.0 General comments on the Revised Guidelines

NICCY broadly welcomes these guidelines as they begin to more clearly define the role of EA and the staff and the support services available should parents wish to access them. Proper implementation of the Guidelines may go some to building trust between EA and home-educating parents and carers.

It is appropriate that the document starts by articulating children’s fundamental right to education, making reference to both Article 28 (the right to free education) and 29 of the UNCRC. In trying to summarise these articles the EA has lost some of the core elements. Article 29 of the UNCRC states the following;

1. *States Parties agree that the education of the child shall be directed to:*
 - (a) *The development of the child’s personality, talents and mental and physical abilities to their fullest potential;*
 - (b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
 - (c) *The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*

- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- (e) The development of respect for the natural environment.*

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

The requirements outlined above added to Article 2 of the First Protocol to the European Convention on Human Rights as incorporated by the Human Rights Act 1998, which provides that no one should be denied the right to education provides a robust framework for the education of the children of Northern Ireland.

It is important that these rights are articulated at the start of this document, but it would be helpful to clarify at this point that the duty bearer in respect of these rights is the state. Thus the responsibility for ensuring that all children are provided a quality education falls on government. However, as it also points out, 'In Northern Ireland each parent has a legal duty to ensure that their child receives an education' while recognising that attendance at school is not a legal requirement.

Part 2 of the Revised Guidelines outlines the requirement in Article 45 of the Education and Libraries (Northern Ireland) Order 1986 for parents to ensure that their child receives an 'efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise', and provides information on how this has been interpreted in case law. This demonstrates that whilst the education standards parents must meet 'at school or otherwise' are comparable with those required of schools, the content may differ. NICCY does not believe that parents must teach the NI curriculum to be compliant with Article 45 of the Education and Libraries Order or the UNCRC or ECHR. It is important that the criteria regarding what an "efficient" education that meets the requirements of Article 29 when a child is home educated can only be developed in full consultation with children and young people and their parents.

NICCY is generally supportive of the key principles and the purpose of the Revised Guidelines as articulated on p6 of the document, although these could be simplified. For example the last two aims appear to be addressed in the second. The document helpfully outlines the legislative context as it currently relates to Northern Ireland, and sets out information for parents and carers considering elective home education. It also outlines the roles and responsibilities of parent/carers, schools and the EA and provides useful information on family support, community use of schools, public examinations and safeguarding.

2.1 De-registration of children from school

The Revised Guidelines helpfully outlines a number of reasons for choosing to home educated children, including 'dissatisfaction with the system'. Indeed, it is our understanding that many parents home educate their children because they believe that they can provide a better quality education, in keeping with their culture and values. However, as referred to later in section 3.9, others are de-registered because of a dissatisfaction with how the specific provision meets the needs of their child, often with regard to special educational needs. It is appropriate that the Revised Guidelines outlines ways of addressing complaints against schools, but note that the complaints may also be with the EA with respect to specialist services.

Where parents are considering deregistering a child from school and home educating them, they should be encouraged to notify the EA of this at an early stage. The EA should then take a 'proactive and constructive role' when engaging with parents on this in a timely way which will help explore the reasons why a parent or carer may be considering withdrawing their child from school. Where parents are considering this due to unhappiness with the education provided, they are unlikely to make a 'quick' decision to home educate. The EA should use every opportunity to engage constructively with parents in trying to address and resolve any problems to ensure effective and timely support is put in place for the child to remain in school-based education, where this is the preference of the parents and child.

Recommendations :

- 1. The EA should seek to make contact with parents considering de-registration as early as possible to determine whether the decision is being precipitated by failures in the provision to their children. In these cases the EA should seek to address any complaints and compile**

information on the reasons for de-registration.

- 2. The EA should also inform parents of independent mechanisms that will support them to make complaints.**

2.2 Support for parents educating children at home

The Revised Guidelines are helpful in outlining the roles and responsibilities of parents, schools and the EA in relation to elective home education, listing some of the supports/services that schools and the EA may provide. In Section 3.4 it outlines the current position re financial assistance: *'Home educators do not receive financial assistance to fund the education they provide.'* Restricting the allocation of public funds solely to children who are educated at school is arguably discriminatory against children who are educated at home, as they should receive comparable resources and supports from government as those educated in schools.

If parents are resolved to educate their children at home, the EA should engage with them and the school in a constructive way to ensure parents receive ongoing advice and support. Sections 8 to 11 of the Revised Guidelines include some useful information and resources for parents and carers about family support, community use of schools, public examinations and careers guidance. The EHE team in the EA should consult with parents who choose to educate their children at home, as well as the children themselves, to develop more practical information, services and advice to these families. In keeping with the statutory duties under the Children's Services Cooperation Act 2015, this should involve cooperating with other agencies to ensure that children's needs are met.

Recommendations:

- 3. The EA should consult parents and children who are being home educated to design and provide appropriate services and information.**
- 4. EHE teams should be allocated a budget for each child being home educated, as a minimum equal to the 'pupil element' of schools budgets, ie the element of the schools budget provided for each child attending that school. This should be made available to parents should they wish to access it.**

2.3 Children with Special Educational Needs

Part 6 of the Revised Guidelines usefully sets out particular issues involved in the home education of children with Special Educational Needs, particularly where a statutory assessment exercise is required or where a child has a statement of special educational needs. It is not clear, however, when a statement identifies the need for particular services, and if the parents are unable to provide these, whether the EA will provide these to the home educated child or move to their formal procedures for issuing a School Attendance Notice.

Recommendation:

- 5. When children with Special Educational Needs are being educated at home, whether statemented or not, EHE teams should work constructively with parents to ensure that children are provided with the services required, including directly to the child in the home.**

2.4 Process for resolving concerns regarding suitability of education provided.

Section 12 of the Revised Guidelines helpfully outlines the three step model for resolving concerns about the suitability of a child's education. NICCY welcomes the reference at this point that the EHE Team will aim to do this in a constructive way and in collaboration with parents taking into account the views of the child. NICCY agrees that the best interests of the child should always be the most important consideration.

We welcome the three step approach which offers opportunities to resolve concerns at an early stage (Steps 1 and 2) where parents and the EA can engage in a constructive dialogue and exchange information, to support parents in providing a quality education suitable to their child's needs. Engagement in the statutory process through the third step should only occur where parents are deliberately neglecting their children's education, and where all attempts to provide support have been rejected.

There is an inherent weakness in the processes outlined in this section. It is that the duty on the EA to resolve concerns can only happen if a concern is reported on them. This does not allow for the cases where there are no reports because the child has not been seen or, as is more likely, few people are qualified to make an assessment of the efficiency of the education a child is receiving.

2.5 Respect for the right of the child to be heard (Article 12 of the UNCRC)

NICCY is pleased to see that the Revised Guidelines encourage parents to involve their children in the decision as to whether they are home educated, and references article 12 of the UNCRC in talking about the importance of children and young people developing their own perspectives and opinions.

3.0 Requirements for Legislative changes in respect of elective home education

This advice paper has focussed on the content of the Revised Guidelines which is wholly concerned with existing legislation. However, as has been mentioned above, a change to legislation is required to fully meet the duty on government to ensure that all children are provided with a quality education. It is impossible for the state to discharge it's responsibility to implement the rights of the child

Clearly, if statutory agencies are not aware of children being educated at home, they cannot provide this assurance. It is important that a lack engagement with and awareness of child should not lead to the assumption that there are no problems.

Even where children are registered as being home educated, there is no requirement on parents to demonstrate that their children are receiving a suitable education. The EA has only a 'reactive duty' to confirm that children are receiving a suitable education when a concern is raised with them.

It is NICCY's intention to advise a Minister and Assembly (or any alternative legislative authority) of the requirement for the state introduce legislation and supporting procedures to meet the 3 tests identified by the Children's Commissioner for Wales

Recommendations:

6. Legislation should be introduced which includes:

- **a legal requirement that all children who are home education are registered with the EA; and**
- **a statutory duty placed on the EA to confirm on an annual basis that all home educated children are receiving an effective education, and parents should be required to provide information to support this assessment.**

8.0 Conclusion

NICCY appreciates the opportunity to provide advice on how issues relating to elective home education affect children's rights and best interests. As has been outlined, Article 29 of the UNCRC underlines the freedom of individuals and bodies to 'establish and direct educational institutions' which includes parents choosing to home educate their children. However, they also have a duty to ensure that children experience a quality education, and have a say in decisions regarding the nature of their own education. The following recommendations outline the steps required to ensure that the Education Authority can meet this duty.

Recommendations:

- 1. The EA should seek to make contact with parents considering de-registration as early as possible to determine whether the decision is being precipitated by failures in the provision to their children. In these cases the EA should seek to address any complaints and compile information on the reasons for de-registration.**
- 2. The EA should also inform parents of independent mechanisms that will support them to make complaints.**
- 3. The EA should consult parents and children who are being home educated to design and provide appropriate services and information.**
- 4. EHE teams should be allocated a budget for each child being home educated, as a minimum equal to the 'pupil element' of schools budgets, ie the element of the schools budget provided for each child attending that school. This should be made available to parents should they wish to access it.**
- 5. When children with Special Educational Needs are being educated at home, whether statemented or not, EHE teams should work constructively with parents to ensure that children are provided with the services required, including directly to the child in the home.**
- 6. Legislation should be introduced which includes:**

- a legal requirement that all children who are home education are registered with the EA; and
- a statutory duty placed on the EA to confirm on an annual basis that all home educated children are receiving an effective education, and parents should be required to provide information to support this assessment.