

May 2019

Children not in school (elective home education register): NSS consultation response

Submitted by email to: NotInSchool.consultation@education.gov.uk

1. This submission is made by the National Secular Society (NSS). The NSS is a not-for-profit non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual Human Rights, which should never be overridden on the grounds of religion, tradition or culture.
2. Our interest in elective home education (EHE) relates to our work:
 - Challenging abuses of children's rights in the unregistered (illegal) faith school sector.
 - Ensuring that children's rights to an education are not undermined on grounds of religion or belief.
3. Through our casework, we have also encountered a small number of cases where parents have felt pressured into EHE because a lack of religiously neutral school provision - this is exacerbated in areas where faith schools are the only available option.
4. Our response is focussed on these areas, and we take no position either for or against EHE. We share the government's expressed aim that "all young people receive world-class education which allows them to realise their full potential, regardless of background, in a safe environment" and that the rights of children need to be balanced with the rights of parents choosing EHE.
5. Any references to parents should be interpreted to apply to parents or guardians, singular or plural.

1. Do you agree that local authorities should be obliged to maintain a register of children who are not registered at specified schools (those listed at paragraph 2.2) or being educated under s.19 arrangements?

6. Yes.
7. Local authorities have significant statutory duties related to safeguarding children's welfare and ensuring they are receiving a suitable education. Accurate information on the education children are receiving is essential to exercising these duties, ensuring vulnerable children do slip through the net, ensuring EHE families are supported and tackling abuses.
8. Simply put if an LA does not know whether or not a child is receiving EHE they cannot determine whether it is suitable. The fact that no source can definitively say how many pupils are receiving

EHE is worrying. As the government's analysis and consultation response makes clear: "*Local authorities and other respondent organisations were strongly in favour of a statutory system of registering children deemed to be educated at home, citing the reasons why voluntary registration was thought to be inadequate*".

9. Registration is a minimal imposition in order to ensure legitimate EHE (as well as supplemental/flexible) education is not used as a cover for or gateway to unregistered (illegal) schools, and to safeguard EHE children. Registration should cover all educational settings, state funded and registered independent schools, which already have statutory duties to maintain a school roll.

2. And should such a register specify whether they are attending an educational setting (other than their own home) during school hours?

10. Yes.

11. This is essential to identify intentional or unintentional use of both lawfully and unlawfully unregistered independent school settings. Registration should seek to establish the primary means by which a child is receiving "suitable education".

3. Should the register be widened still further to also include children who are being educated under s.19 arrangements?

12. This should be strongly considered.

13. Children receiving EHE under section 19 are particularly vulnerable and such families are more likely to need additional support. Registration should be seen as a routine part of such support rather than a burden. Registering children educated under s.19 arrangements makes it easier to maintain a continuous record should they re-enter or have the option of re-entering mainstream education.

4. Should the register include flexi-schooled children (ie those who are educated at home or elsewhere for some of the week during school hours but are also on the admission register of a state-funded or registered independent school

14. Yes.

15. Children should be registered accurately wherever they are receiving a significant part of their education, including where that is a mix of independent and EHE.

16. Inaccurate and incomplete registers are a cause of concern at some independent schools delivering flexi schooling.¹

17. We are deeply concerned by some registered independent schools failing to offer adequate provision beyond religious instruction when operating full or almost full-time and claiming that secular studies are delivered through EHE.²

18. Alternatively, the requirement to register should apply if the child is receiving a significant portion of their full-time education (e.g. 25%+) through EHE.

¹ E.g. <https://www.secularism.org.uk/news/2019/02/failing-faith-school-harming-pupils-wellbeing-says-ofsted>

² E.g. <https://www.secularism.org.uk/news/2018/11/government-warnings-for-five-failing-independent-faith-schools>

5. What information do you think the register should contain about each child and its parents?

19. For questions 5, 6, 7, 8 and 9, we are content to be led by opinions of those organisations with more direct expertise. We feel these decisions should be led by the needs of local authorities and whether they would prefer a DfE designed register or their own systems. At a minimum, the DfE should issue model registration documents and share best practice.
20. We believe that a consensus on what data should be gathered should emerge through consultation with local authorities. EHE families - including those both well and poorly prepared - may understandably be worried about excessive data collection. However, where there is a well justified reason for the data to be gathered, such concerns should be met with reassurance rather than concession. Excessive data gathering may also place an undue burden on those local authorities less equipped or experienced in relationships with EHE families.

10. Do you agree that local authorities should have to make annual returns of collated data from the register to DfE for statistical purposes?

21. Yes.
22. There are currently multiple estimates of the extent of EHE in England, with inconsistent methodologies and all presumed to be underestimates. This is at a time when the number of EHE families (both those providing suitable and unsuitable education) is widely understood to be growing. Reliable, comparable data is essential for the DfE to make and for others to advocate public policy responses to support suitable and address unsuitable EHE.
23. There are significant variations in the quantity and quality of data gathered by different local authorities. It is not clear whether this is a result of differing levels of EHE families, or indicative of better/worse approaches developed by different local authorities.³

12. Do you have any other comments on either the principle of registration or practical issues related to registration on the basis proposed?

24. Registration should not be seen as a burden or expression of suspicion on good EHE families, but as an essential routine part of support for all EHE families and the protection of children's rights.

13. Do you agree that parents should be under a legal duty to provide information to their local authority about a child who is within scope of the proposed registration requirement?

25. Yes.
26. The legal duty to ensure that children are receiving suitable education applies to parents. Registration in support of this aim should be seen as routine. Unless this legal duty is seen as routine, registration schemes are likely to be frustrated and inaccurate. The legal duty is essential to ensure that children educated in illegal unregistered schools are not inaccurately recorded as receiving EHE, and that children who are receiving suitable/unsuitable EHE can be identified.
27. A situation where well prepared and effective EHE families take part in the register, but ill prepared (often ideological motivated) EHE families do not, is likely to leave the most vulnerable children most in need of the register to fall through the cracks.

³ <https://www.secularism.org.uk/uploads/elective-home-education-call-for-evidence---nss-response-1.pdf>

14. Whether or not you agree with the imposition of a legal duty, if one was created what data should parents have to provide about their child?

28. As with our response to questions 5 to 9, we believe that a consensus on what data should be legally required should emerge from what local authorities can demonstrate necessary for their statutory safeguarding duties.

29. It would be extremely useful for the making and advocacy of public policy surrounding EHE to have good data on why parents choose to home educate; including where it is for ideological reasons, personal preferences, concerns over educational quality etc. However, requiring parents to provide such information would be likely to cause significant difficulties.

15. Do you agree that there should be a consequence for parents for failing to register details of a child for the purposes of registration?

30. Yes.

31. Legal duties cannot exist without consequences for failing them. Though such consequences need not be onerous and must be proportionate. Local authorities should work positively with parents to address gaps in registration as soon as they are identified. In many cases failure to register may be addressed informally.

32. Failure to register as legally required would in many circumstances act as a trigger for further safeguarding actions. A failure to register could be a simple oversight or result from a lack of information. However, it may also be indicative of efforts to evade suitable oversight.

16. Whether or not your response to 15 was 'yes', do you think that the most effective consequence for non-compliance with the registration process is that it authorises the local authority to begin the school attendance order process by serving a s.437(1) notice on the parents, which begins the formal process of considering suitability of education and whether a child should attend school?

33. It depends on circumstances. Failure to register may be a red flag which raises safeguarding concerns and concerns about the suitability of EHE. However, in other circumstances the local authority may be able to resolve the issue informally through discussion with the parents and the lack of registration being rectified swiftly.

34. Local authorities should serve a s.437(1) notice where they have credible concerns over children's welfare or a lack of suitable EHE and such concerns cannot be informally addressed. A s.437(1) notice can be served and subsequently suspended where an EHE family is taking steps to ensure education is suitable going forward.

18. Do you have any other comments about the concept of a legal duty on parents to supply information for the purposes of the proposed register?

35. Such a legal duty should be perceived by EHE families as routine as any other registration duty and a minimal imposition. That this has been presented by some minority of EHE advocates as a radical departure is unfortunate.

19. Do you agree with the general approach that the proprietors of settings providing education in school hours - other than specified types of school - should be under a duty to supply information to local authorities about any child in scope of the proposed register?

36. Yes.

37. Many such settings - whether inadvertently or by design - risk operating as unregistered illegal independent schools. Registration will help identify prevent this.

38. Many out-of-school settings provide valuable support to EHE families and can help provide advice on registration as well as identifying children who should be registered.⁴ Many out-of-school settings will already have established safeguarding procedures which would require them to report concerns over children to local authorities in a range of circumstances.

20. Which settings do you think should be included in the scope of the duty?

39. Any service providing a significant element (25% or more) of the education of an EHE child. This would likely not cover study centres etc. which are merely supporting EHE or other out-of-school settings they are simply attending. Such services may however wish to opt in.

40. This will help address where children are inaccurately being recorded as receiving EHE but are in fact attending unregistered schools. The lack of a clear definition of what constitutes “full-time education” makes this more difficult. Although the DfE have set out which factors they will consider. We recommend moving towards a definition which captures whether a setting is a primary provider of the child’s education, this could include greater emphasis on the fourth of the DfE’s criteria, i.e. whether the education provision in practice precludes the possibility that fulltime education could be provided elsewhere.

24. Do you have any other comments about the concept of a duty on the proprietors of settings to provide information about children who attend their setting and fall within scope of the registration requirement?

41. All settings where children are receiving a significant portion of their main education should be involved in safeguarding.

25. Do you agree that there should be a statutory duty on local authorities to provide support on request to parents who educate children at home, of a type to be prescribed by the Secretary of State in regulations?

42. Yes.

43. Additional support for EHE families should be part of a balancing act alongside greater oversight of this largely unregulated area.

44. Such support must be proportionate and not create an unreasonable burden on local authorities given their significant other safeguarding and educational duties. Some families delivering poor quality or incomplete EHE, or experiencing problems with specific issues such as exam registration, may quickly be bought up to a suitable standard with a little support.

⁴ <https://www.secularism.org.uk/uploads/out-of-school-settings-voluntary-safeguarding-code-of-practice---nss-response.pdf>

45. However, where there are serious concerns regarding an EHE family's provision of suitable education local authorities' primary duty may shift from support to enforcement.

46. There may be situations where a refused offer of support raises safeguarding concerns.

26. If such a duty were to be created, which of the following should it encompass:

47. Local authorities must have some flexibility and ability to respond to the differences in EHE uptake and provision in different areas. For example, one local authority may have significant public health concerns over a lack of immunisation within one EHE community which are simply not a concern for another local authority - perhaps based on the demographic background or motivations of their EHE families.

48. Best practice should include an understanding of and tailored information for each local authority's EHE population.

49. The duty should largely focus on what local authorities should be aiming for and the powers they have, rather than specific actions/provisions.

27. What are the potential difficulties in ensuring that such a duty is properly discharged by a local authority?

50. As shown in the government's analysis of the call for evidence consultation, the major barriers are likely to be:

- A lack of resources for local authorities, real or perceived
- A lack of clarity over local authorities' powers, real or perceived
- Hostility or mistrust between local authorities and EHE families, real or perceived

29. Should other mechanisms be explored for enhancing access to public examinations for children educated at home, and if so, what?

51. Yes.

52. This should be led by local authorities. Making information on examination options of schools more widely available is an important step.

53. Consideration should be given to a "right to examination" whereby EHE families should have the right to access examinations within their area. How this is managed should be a question for local authorities and in many cases it will be reasonable to assume EHE families can pay for exam registration as long as additional costs are not unreasonably imposed by schools.

34. Do you have any comments on the conclusions set out in the published equalities log, UNCRC assessment and family impact test document?

54. Safeguarding children's welfare and education through tackling abuses or inadequacies in the EHE sector - though the proportion of the children in the sector is relatively small - contribute positively to UK's UNC responsibilities.

55. We support the findings of the equality log.

56. Better information on EHE families and EHE communities across the country may provide additional insight into groups with protected characteristics that are proportionately affected by support for suitable/action against unsuitable EHE.

35. Do you have any other comments on the government's proposals for legislation relating to registration and support for home education?

57. While overall, we maintain that the proposals strike a suitable balance between the autonomy of EHE families and the safeguarding of EHE children, we have significant concerns in three areas.
58. We find the rejection of “any specific new powers or duties for local authorities to monitor the suitability of home education” to be short-sighted and to send a confusing message. Are local authorities to read from this statement that they have existing powers and duties to monitor the suitability of EHE which they are making insufficient use of? Or are they to read that they should not be monitoring? While we would not wish to see burdens placed on EHE families (particularly those already suspicious of local authorities) or overstretched local authorities, this is an area where there must be clarity. Local authority has reasonable grounds to suspect that a child is not receiving a suitable education (i.e. their fundamental right to education is being abridged) they must have a clear framework for intervening.
59. Monitoring of EHE should never be as intense as the inspection of maintained or independent schools, but it cannot be ad hoc, patchy or non-existent. We would suggest a duty on local authorities to monitor EHE at certain key milestones, alongside non-statutory guidance and advice for local authorities where use of other powers to monitor is advised. Key milestones could be when EHE starts, three months after EHE starts, if/when any concern is raised and three months after any concerns are raised. Some local authorities may wish to continue with regular or informal check-ins.
60. Secondly, we are concerned with the rejection of any legislation or even a “more detailed definition of what constitutes a ‘suitable’ education”. We recognise that any definition must be flexible and not lead to either additional burdens on or an overly narrow view by local authorities. However, this lack of a definition is undermining government and local authorities’ efforts to tackle unsuitable EHE and illegal unregistered schools. A flexible but robust legal definition should provide greater clarity to EHE families and reassure those concerned by a perceived lack of flexibility that they can demonstrate they are providing a suitable education. Such a definition need not necessarily be statutory.
61. Finally, we wish to take this opportunity to draw attention to a potentially worrying development in the EHE landscape caused by current organised opposition (including fear mongering and the promotion of conspiracy theories) by anti-RSE (relationships and sex education) groups encouraging withdrawal from maintained education. This threatens to lead to an increase in poorly prepared EHE families, where the decision to home educate has not been a positive one but driven by mistrust and misinformation. There is a marked difference between groups lobbying for support and understanding for EHE families and those promoting EHE as a means to undermine the public education system.

Consultation response prepared by Alastair Lichten
Education and schools officer
National Secular Society
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For more information please contact:
admin@secularism.org.uk