

# Elective home education call for evidence consultation: NSS consultation response

1. The National Secular Society works for the separation of religion and state and equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs.
2. Our interest in elective home education (EHE) relates to our work:
  - a. Challenging abuses of children's rights in the unregistered (illegal) faith school sector.
  - b. 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 (or only undersubscribed) 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) How effective are the current voluntary registration schemes run by some local authorities? What are the advantages and disadvantages associated with these local voluntary arrangements, and what would be the advantages and disadvantages of mandatory registration of children educated at home, with duties on both local authorities and parents in this regard?

6. We do not believe that inconsistent involuntary registration schemes allow local authorities (LAs) to fulfil their Education Act 1996 duties. 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.

2) What information is needed for registration purposes, and what information is actually gathered by local authorities? Would it help the efficacy of these schemes, and the sharing of information between authorities, if there were a nationally agreed dataset or if data could be shared by national agencies, such as DWP or the NHS?

7. For registration purposes the data set should include:
  - a. The names and address of those involved in delivering the EHE
  - b. The names of the children receiving EHE
  - c. The dates that EHE started/ended
  - d. The dates of any visits/inspections
8. Properly anonymised data should be useful for national policymakers and researchers.
9. Individual LAs may wish to deviate from the nationally agreed dataset. LAs should share data if/when EHE families move.
10. Parents must have confidence in the security and confidentiality of their private information. Data sharing agreement should be specific, justified and transparent.

3) Does experience of flexi-schooling and similar arrangements suggest that it would be better if the scope of registration schemes included any children who do not attend a state-funded or registered independent school full-time? If so, do you think that local authorities should be able to confirm with both state-funded and independent schools whether a named child is attending that school full-time?

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

4) Would the sanction of issuing a school attendance order for parental non-compliance with registration be effective, or is there another sanction which would be more useful?

12. In the vast majority of cases such orders should be effective. Particularly as they can be time limited, for example a school attendance order can be flexible specifying that it will take effect not immediately but within a reasonable period and will lapse if registration has been completed.
13. In extreme cases where non-compliance with registration is coupled with other safeguarding concerns then LAs can exercise other appropriate powers.
14. The 1983 case of Family H, in the European Court of Human Rights, established that requiring a parent to co-operate in the assessment of the child's education does not threaten the parent's rights. Even Germany's complete prohibition on home education has been found to be compatible with parental rights, to the extent that it is a means of ensuring compulsory school attendance.<sup>1</sup>

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<sup>1</sup> [https://hslida.org/content/hs/international/Germany/KONRAD\\_Decision.pdf](https://hslida.org/content/hs/international/Germany/KONRAD_Decision.pdf)

## 5) What steps might help reduce the incidence of schools reportedly pressuring parents to remove children to educate them at home?

15. The guidance for local authorities and parents should make clear such pressure is unacceptable, and provide a mechanism for reporting.
16. If there is evidence of specific vulnerable groups being targeted by such pressure, the DfE should work with appropriate third sector organisations to develop support and guidance.
17. A registration scheme, coupled with a routine 'touching base' with new EHE families, would allow LAs to identify such cases and take appropriate actions.
18. Dependent on the findings of this call for evidence, it may be appropriate for the EHRC to investigate whether the prevalence of such pressures amount to direct or indirect discrimination - on the grounds of either disability, religion or belief, or pregnancy and maternity.
19. The rise in off rolling (and its disproportionate effect on pupils from minority backgrounds and those with special educational needs) is concerning. As is that this practice appears to be focussed in a small number of areas<sup>2</sup> and often in academies.
20. Ofsted analysis of school census data shows that more than 19,000 pupils who were in year 10 in 2016 did not progress to year 11 in the same school. Of these around 50% did not progress to any state school and Jason Bradbury, Ofsted's deputy director for data and insight has warned that while some of these numbers may have left for independent schools or EHE, some may have "ended up in an unregistered school, or dropped out of education entirely".<sup>3</sup>
21. Schools must keep a record of pupils which leave their roll. This duty could be expanded to require the school to record what form of education they then go on to.

## 6) Is there an argument for some provision which allows a child to return to the same school within a specified interval if suitable home education does not prove possible?

22. We believe this is a matter best left to schools. However LAs may have a role in sharing best practice.

## 7) How effective is local authority monitoring of provision made for children educated at home? Which current approaches by local authorities represent best practice?

23. In a May 2018 FoI request, 78% of 73<sup>4</sup> LEAs told us they ran voluntary registration schemes for pupils receiving EHE. LEAs such as Brighton & Hove say "All known EHE families are contacted in order to ensure the children are receiving a full time education suitable to their age and ability." Others such as Hertfordshire County Council do not operate formal (voluntary) registration schemes but keep records of all children they know to be receiving EHE. The vast majority of LEAs record data on pupils leaving school rolls for EHE. However data is less commonly kept when pupils have never entered the school roll. For example: "Pupils who have never been on school roll in Cornwall can register with the Local Authority." Cornwall is among those that automatically record a child of compulsory school age as

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<sup>2</sup> <http://www.kentadvice.co.uk/peters-blog/news-a-comments/item/1077-permanent-exclusion-home-education-and-children-missing-fro-education-in-kent-2016-17.html>

<sup>3</sup> <https://schoolsweek.co.uk/ofsted-half-of-pupils-who-leave-before-their-gcses-dont-end-up-in-another-state-school/>

<sup>4</sup> Research is ongoing.

receiving EHE when they leave the school roll. While this offers some efficiency, it does potentially lead to children in the independent or unregistered school sector being incorrectly recorded as receiving EHE.

24. Local authorities some LEAs such as Halton and Tower Hamlets follow up notifications that a child is receiving EHE to “establish what arrangements are in place and whether they offer the child an efficient and suitable full-time education.” (Tower Hamlets)
25. LEAs vary widely in what steps they take to ensure EHE is suitable. Although it is not clear whether this variance is a result of differing EHE communities or inconsistencies between LEAs. Bath and North East Somerset would only investigate if “evidence is clear that a compulsory school age child is not in receipt of an education” - carrying out 14 such investigations over the last five years. Others such as Manchester aim to meet with families when they start EHE. Others such as Suffolk conduct annual, semi-annual or key stage based assessments. LEAs buried in how many investigations they undertook within a given year - some as low zero others over one thousand - and whether these were undertaken by consultants specific EHE departments or other staff. More information on the specific monitoring by LEAs is available in Appendix 1<sup>5</sup>.
26. We investigated whether LEAs were effectively using school attendance orders to address unsuitable EHE. All LEAs were asked how many school attendance orders they’d issued with regards to children found to be receiving unsuitable EHE in the last five years. This uncovered at least 569 such orders - although LEAs vary in how they record these - some do not record whether school attendance orders relate to EHE. Derbyshire, Luton and Redbridge issued the most, with 82, 56 and 48 respectively. Of the 97 LEAs that responded 36% were not able to provide data.
27. Of the 95 LEAs that provide information only Somerset confirmed they had issued school attendance orders with regards children found to be attending illegal (unregistered) schools in the last five years. Somerset had issued six.

8) If monitoring of suitability is not always effective, what changes should be made in the powers and duties of local authorities in this regard, and how could they best ensure that monitoring of suitability is proportionate?

28. We address this in response to proposed guidance for local authorities below.

9) Should there be specific duties on parents to comply with local authorities carrying out monitoring if such LA powers and duties were created, and what sanctions should attach to non-compliance?

29. We remain agnostic on this and would be extremely reticent to criminalise parents in any but the most extreme cases of bad EHE, such as those which amount to “harm” as defined by the Children Act 1989.
30. In the vast majority of cases LAs can work with parents to fulfil their statutory duties in this area. In the few cases where parents frustrate such efforts, this is likely to lead to the EHE being deemed unsuitable and ultimately a school attendance order being issued.

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<sup>5</sup> <https://www.secularism.org.uk/uploads/appendix-1-elective-home-education-research-june-2018-snapshot.pdf>

31. However, we do believe a duty to register EHE pupils should extend to parents. This places a minimal burden while supporting LAs' duties. This is consistent with the existing statutory duty on parents to ensure their children are receiving suitable education. Given the possible sanction of a school attendance order, it is unclear whether further penalties would be necessary or proportionate.

10) Is it necessary to see the child and/or the education setting (whether that is the home or some other place), in order to assess fully the suitability of education, and if so, what level of interaction or observation is required to make this useful in assessing suitability?

32. We believe this is a matter best left to LAs. Although best practice is likely to be identified for the course of this consultation. The overriding principle that LAs must take their duties seriously but act proportionately should apply.
33. There will be some cases where an LA will require access to the EHE setting to make a determination. Where access is refused LAs' may take this as evidence of unsuitability and leverage the possibility of a school attendance order to gain the necessary access. This would not require introduction of any new powers - although many LAs would feel more confident with guidance supporting such an approach.
34. If LAs through this call for evidence strongly suggest that they do need new powers to ensure access in order to make assessments then this should be considered.

11) What can be done to better ensure that the child's own views on being educated at home, and on the suitability of the education provided, are known to the local authority?

35. All decisions involving the welfare of the child must prioritise the best interests of the child. Where LAs can make such a determination without direct access to the children they can do so. Where they cannot, they may leverage the possibility of a school attendance order to gain the necessary access. Where there are safeguarding concerns LAs will have access through alternative means.
36. If a school attendance order, or other LA determination of an EHE's unsuitability were to be considered by a court then the views of the child will be directly sought. However, LAs will always seek to resolve concerns without such escalation.

12) What are the advantages and disadvantages of using settings which are not registered independent or state schools, to supplement home education? How can authorities reliably obtain information on the education provided to individual children whose education 'otherwise than at school' includes attendance at such settings as well as, or instead of, education at home?

37. This is largely a question for EHE families - although LAs may wish to provide advice.
38. The supplementary education sector is extremely varied encompassing everything from Scouts to intensive tuition. At one end of the scale you have small informal clubs and at the other classes that are so organised and regular that they appear almost like schools themselves.

39. Use of such settings combined with EHE creates a grey area. Simply put the more like a school setting appears the more like a school it should be treated.
40. We agree with the DfE that “unnecessary regulatory burdens”<sup>6</sup> should not be placed on out-of-school settings. However proportional measures should be taken to ensure out-of-school settings provide intensive tuition are adequately safeguarding children’s welfare.

13) What are the advantages and disadvantages of using private tutors to supplement home education? How can authorities best obtain information on the education provided to individual children whose education at home includes private tuition, or whom attend tuition away from home?

41. We do not take a view on the specific delivery of EHE. EHE being delivered outside the home or through a tutor is not necessarily a cause for concern, but care should be taken to ensure such legitimate activities do not provide cover for unregistered (illegal) schools.
42. Where EHE is entirely or substantially delivered outside of the home or through a tutor, there may be a case for the Independent School Standards to apply. This may be something for individual LAs or the DfE to take an evidence-based view on.

16) What good practice is there currently in local authority arrangements for supporting home-educating families? Should there be a duty on local authorities to provide advice and support, and if so how should such a duty be framed?

43. We believe this a matter best left to individual LAs. Where best practice is identified, the DfE should encourage LAs to share it.

18) Should there be any changes to the provision in Regulation 8(2) of the Education (Pupil Registration) (England) Regulations 2006 requiring local authority consent to the removal of a child’s name from the roll of a maintained special school if placed there under arrangements made by the local authority?

44. Yes. A perverse cycle would result were a child withdrawn from enrolment from a school where such enrolment resulted from a school attendance order or other determination that attendance at such a school was in the necessary interests of the child.
45. Schools have clear safeguarding responsibilities. In the rare cases where they believe removing a child from the roll is a safeguarding risk they should consult their LA, and their guidance on EHE. For example Luton Borough Council will “usually oppose” EHE of a child who is subject to a Child Protection Plan.

21) Do you have any comments on any of the contents of this call for evidence document in relation to equality issues?

46. We would welcome an equality impact assessment of the proposed guidance. Ongoing equality monitoring may be required to ensure there is no indirect discrimination on grounds of religion or belief.

47. Where the legitimate home schooling sector is used as cover for illegal unregistered schools, the victims are disproportionately likely to be pupils from minority faith backgrounds.

22) Comments are also invited on the revised DfE guidance documents for local authorities and for parents on current arrangements for elective home education (*the online response form allows for comment on separate sections of the documents*).

48. Overall the guidance does an excellent job of balancing protections for the autonomy of EHE families, the interests of LAs and the rights of children. We agree with the need for a proportionate (in the vast majority of cases 'light-touch') evidence-based approach. Comments on some specific aspects follow, with paragraph numbers from the proposed guidance used for reference. However, much of the guidance falls outside our limited purview related to EHE.
49. **Para 2.1** Though a primary concern of ours is that EHE (or indeed any full-time education sector) does not undermine children's rights on the grounds of religion or belief, we are clear that EHE motivated by religion/belief is not necessarily a problem. In exercising its secular function of ensuring children are receiving suitable education, the state should be concerned with the outcomes not motivations of EHE. A situation where those choosing EHE were subject to increased scrutiny based on their religious/worldview motivation, would be as concerning as a situation where authorities are hesitant to take proper safeguarding action due to misplaced religious sensitivities.
50. **Para 2.3** While we take no position on whether specific legal requirements are necessary in this area, this should be open to review subject to evidence. The object should be not to prescribe specific forms or curricula to EHE which mirror the national curriculum, but to ensure broadly similar standards. LAs may look to the Independent School Standards Framework to help assess whether education is "suitable".
51. **Para 3.4** Local authorities have at times felt unable or un-resourced to fulfil their responsibilities regarding s.436A and EHE.
52. **Para 3.5** We suggest that the DfE append model policy statements to the guidance, drawing on best practice for LAs identified following this call for evidence.
53. **Para 4.3** Without proper resourcing or support, and unclear of their authority, it is little wonder that some LAs feel compelled to take an overly broad interpretation of this caveat. The model policy statements which we advise under para 3.5 of the guidance should help create clarity. But LAs will also have to balance this against not creating an overly intrusive system.
54. **Para 4.7** Confusion can be reduced for schools and LAs by setting standards on what information is required to be held, and for how long, on children withdrawn from the rolls and why.
55. **Para 6.4** Model policy documents can help share best practice on such approaches. However, without compulsory registration - notwithstanding the arguments for against such an approach - it is not clear how s.436A can be seen as a positive duty.
56. **Para 6.5** We suggest that best practice may include parental self-assessments to be completed upon commencement of EHE and/or other appropriate intervals. It should then be

up to LAs to take a sensible case-by-case approach to concerns raised by the completion/noncompletion of these assessments.

57. **Para 7.2** A situation where EHE families were presumed to be a safeguarding risk would likely create mistrust between them and LAs, damaging relationships with good practice EHE families. However, all relevant LA services should be aware of the particular safeguarding risks related to bad practice EHE families. We suggest therefore that guidance makes clear that LAs must exercise their s.436A duty through their social services when such services are involved with EHE families.
58. **Para 9.4** We - and likely many LAs - would welcome greater clarity on what the DfE considers to constitute this “minimum standard”. An EHE which only prepares children for life within a specific community (distinct from EHE which merely includes this as one of multiple aims) is by definition unsuitable, as it fails to prepare the child to make future life choices. Rather than a duty to “not foreclose the child’s options in later life”, suitable education must at least some minimal extent open options for later life. We do not advocate for a duty on EHE comparable to that on state and registered independent schools to promote ‘Fundamental British Values’. However, EHE cannot be deemed “suitable” where it undermines fundamental human rights. We therefore note with concern the recent report by the Metropolitan Police that half of the known extremists in London had pulled their children from mainstream schools for EHE - in some cases being used as cover for unregistered (illegal) schools.<sup>7</sup>
59. **Para 9.5** We agree that detailed centralised standards may be disproportionate, however the DfE should in consultation with LAs, keep this under review, and consider at least minimal centralised standards. LAs can draw on the Independent School Standards if they feel it is appropriate.
60. **Para 10.6** We hope that this call for evidence will establish the extent of this illegitimate practice. All LAs’ policies should set out complaints procedures for such activities - especially as they may particularly disadvantage those with protected characteristics related to disability. Through our casework it is common to hear from parents/pupils either explicitly or implicitly made to feel unwelcome in faith schools where they are attempting to exercise their statutory right to withdraw from religious activities. How often this amounts to ‘off-rolling’ is unclear.
61. **Para 10.10** LAs would benefit from specific guidance in developing policies to ensure that legitimate EHE does not give cover to the unregistered (illegal) schools sector. Regarding **10.10 b**, there is a potential discrepancy with other government policy. Where an independent school is registered and hence subject to the Independent School Standards, we are unclear on what legal basis it can fail to offer appropriate secular studies. In a recent case involving Getters Talmud Torah - a registered independent school in north London - OFSTED inspectors found no legal basis for the schools systematic downgrading of secular studies, despite an agreement between the parents and school that the shortfall would be addressed through EHE.<sup>8</sup> The ADCS survey referenced by the call for evidence found that 37% of local authorities were aware of children who were supposedly home schooled, but actually

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<sup>7</sup> <https://www.secularism.org.uk/news/2018/03/lax-home-schooling-laws-being-exploited-by-extremists>

<sup>8</sup> <https://www.secularism.org.uk/news/2018/05/ofsted-curriculum-at-jewish-school-restricted-pupils-development>

attending unregistered (illegal) schools or 'tuition centres', many of them religious, where "children appear in many cases to be receiving the majority of their education".

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