

# Northern Ireland Consultation

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### April 2015 Update

[New Single Education Authority](#) April 2015 [Hedni comment](#) on abolition boards and creation of regions. No further news on the possible revised policy. [Proposed briefing postponed](#) (April 2015)

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In Northern Ireland the policy for home education was under review in 2014. Consultation took place at the regional level, and it was [the 5 Education and Library Boards](#) who put forward the same draft policy.

### [MY 2014 CONSULTATION RESPONSE](#)

[The petition against the changes](#) closed with over 3,000 signatures and [was handed to the Chair of the government Education Committee](#) in August 2014.

### [Graham Stuart to Minister for Education](#)

### [Questions at Stormont](#) 2014

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## Summary of 2014 Proposals

1. If parents mention home education to the school, the school will advise that the child continue to attend until a programme of home education is in place
  2. The school welfare officer will be informed that the parent is considering home education and there will be a check to see if the child or family is known to other agencies
  3. Paperwork will be passed to the named officer
  4. Parents will be asked to send their home education programme to the named officer
  5. The named officer will assess the learning environment and the suitability of the programme
  6. In cases where a parent fails to demonstrate that the child is receiving suitable education, the Board/ESA may take steps to issue a School Attendance Order or apply for an Education Supervision Order
  7. The annual monitoring assessment will cover "minimum standards" (to be determined by the named officer) regarding physical, social, emotional health and wellbeing
  8. Home education will be monitored on an annual basis
  9. As part of the annual monitoring, a designated officer will visit the family and will ask for the child's opinion
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## Questions at Stormont May-June 2014

MLAs from the following political parties asked the Minister about home education: **SDLP, DUP, UUP and TUV**. MLAs from the following areas have asked questions about home education: **West Belfast, North Antrim, South Antrim, Upper Bann, East Londonderry**. Three members of the Education Committee have questioned the Minister about this policy, including the Chair and the Deputy Chair. **Topics covered by MLAs:** what is the reasoning behind the draft policy; why does it go beyond the law/gold-plate the law; why go further than other countries in UK; has the Minister looked at what happens in other countries; where did this idea come from; will it curtail the freedom of families who home educate for religious reasons; will the Education Committee look at it; will the Minister check it before it is finalised; what engagement has there been with families over the draft policy; what is the role and responsibility of the Education and Library Boards. [More](#)

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## Summary of The Law NI

The parent of every child of compulsory school age shall cause him to receive 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 a school or otherwise**. [Article 45, Education and Libraries (Northern Ireland) Order 1986]

**Elective home education** by parents is one type of "education otherwise".

The State shall respect **the right of parents** to ensure such education and teaching in conformity with their own religions and philosophical convictions. [Article 2 of the First Protocol, European Convention on Human Rights]

Parents do **not** have to seek permission to home educate. Where a child is a registered pupil at a school and parents notify the school that they wish to take the child out in order to home educate, the school **must** delete the child's name from the school register.[Regulation 6(2) of- The Registration and Attendance of Pupils Regulations (NI) 1974 [No. 78]]

The right to be home educated applies equally where the child has a **statement of special educational needs**. The statement must continue to be reviewed annually.[Article 10, Education Order (Northern Ireland) 1996 + Parts IV and VI of the SEN Code of Practice.]

**If it appears** to the board that any parent is **failing** to cause his/her child to receive full-time education suitable to age, ability and aptitude and any special educational needs, the board shall **serve a notice** in writing on the parent requiring him to satisfy the board that the child **is** receiving suitable education. **If** the parent subsequently **fails** to satisfy the board, **and** in the opinion of the board it is expedient that the child should attend school, the board shall serve a **school attendance order**. [Schedule 13, Education and Libraries (Northern Ireland) Order 1986]

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## Comparison NI and England

In England and Wales, parents can fulfil their legal duty via "education otherwise" as outlined in [Section 7 of the Education Act 1996](#)

"The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable— (1) to his age, ability and aptitude, and (2) to any special educational needs he may have either by regular attendance at school or otherwise."

[Section 7 of the Education Act 1996](#)

The comparable law in Northern Ireland is [Article 45 of the Education and Libraries Order 1986](#)

"The parent of every child of compulsory school age shall cause him to receive 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 a school or otherwise."

[Article 45 of the Education and Libraries Order 1986](#)

In England, local authorities have the power to issue School Attendance Orders under [section 437-443 Education Act 1996](#)

(1) If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.

(2) That period shall not be less than 15 days beginning with the day on which the notice is served.

(3) If (a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and (b) in the opinion of the authority it is expedient that the child should attend school, the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.

[Education Act 1996](#)

The same power is given to Education and Library Boards in Northern Ireland [Schedule 13](#) (updated)

(1) If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by [Article 45](#), it shall serve a notice in writing on the parent requiring him to satisfy the board, within such period (not being less than fourteen days beginning with the day on which the notice is served) as is specified in the notice, that the child is, by regular attendance at school or otherwise, receiving suitable education.

(2) If— (a) a parent on whom a notice has been served under sub-paragraph (1) fails to satisfy the board, within the period specified in the notice, that the child is receiving suitable education, and (b) in the opinion of the board it is expedient that the child should attend school, the board shall serve in the prescribed manner on the parent an order (referred to in this Order as a "school attendance order"), in the prescribed form, requiring him to cause the child to become a registered pupil at a school named in the order.

[Schedule 13 of the Education and Libraries Board \(Northern Ireland Order\) 1986](#) (updated)

In England, schools must take the child's name off the roll following written notification from parents

Parents do not have to ask permission to home educate, and [the Pupil Registration Regulations 2006](#) state that the school must take the child's name off the school roll following receipt of written notification of home education by parents. Read more about deregistration in England [here](#)

In Northern Ireland, the position regarding deregistration is broadly similar.

[Circular 2013/13 - Attendance Guidance & Absence Recording By Schools](#) (available from [this page](#) or [here](#)) states that "a pupil's name may be removed from a school's register after...Parent advises that child is being removed under Regulation 6(2) of- The Registration and Attendance of Pupils Regulations (NI) 1974 [No. 78], for example elective home

education."

Children Order 1995 and Children Act 1989

[The Children Order 1995](#) provides a legal definition "parental responsibility", and includes details of court orders applied for by social services for children in need of services and children at risk of significant harm, comparable to [the Children Act 1989](#) for England and Wales. (The Children Order also sets out family law orders related to residence, contact, and specific issue orders.)

In addition, [Schedule 4 of the Children Order](#) gives details about [education supervision orders](#), which are applied for by the Education and Library Boards, rather than social services. ESOs over-ride Article 44 (educated in accordance with parental wishes) and also replace any school attendance orders served under schedule 13. The original 1989 Children Act was notable for home educators in that it removed education from the list of grounds upon which care orders might be made, and introduced supervision orders for education, whereas under the previous Act from 1969 a child could be taken into care on education grounds. More about ESOs in England [here](#)

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## Background Information

In England the [Department for Education](#) determines the national policy for home education which is implemented by [152 local authorities](#). The Government has also published non-statutory [Elective Home Education Guidelines for Local Authorities](#). Parents can ask their [constituency MPs](#) for help, as hundreds did in the [mass presentation of petitions to parliament](#) in December 2009.

Education and Library Boards were established in 1973 under the [Education and Libraries \(NI\) Order 1972](#) (scanned image pdf), and subsequently integrated into [Part II of the Education and Libraries Order 1986](#). The policies all refer to "the Board" and "the ESA" as interchangeable, but at the end of May 2014 Education Minister John O'Dowd conceded that [the ESA project would be dropped](#). A brief history of education legislation in Northern Ireland can be found [here](#)

There are no Government Guidelines for Home Education in Northern Ireland, nor is there the equivalent legislation to "Children Missing Education" in England. Instead of contacting MPs, Northern Irish parents can get in touch with their [Member of the Legislative Assembly](#)

In 2012 [the Education Minister gave the following numbers for home educated children](#): Belfast Education and Library Board 6; South Eastern Education and Library Board 52; Southern Education and Library Board 39; Western Education and Library Board 35; North Eastern Education and Library Board 47. Total 179.

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## Commentary on 2014 Draft Policy

***Consultation asks whether the policy provides relevant information about the Board's responsibility for Elective Home Education; whether it provides parents with a greater understanding of the Board's statutory role/responsibilities for Elective Home Education; and whether it clarifies the role of the Education Welfare Service/Officer in relation to children who are home educated***

The proposed draft policy **wrongly** says "(v) Boards have a statutory duty under [Schedule 13 of the Education and Libraries \(Northern Ireland\) Order 1986](#) to ensure that children in their area are receiving efficient full time education appropriate to his or her age, ability and aptitude, and to any special educational needs that he or she may have, and that parents fulfil their duty in this regard". The proposed draft policy also refers to [Article 45 of the Education and Libraries Order 1986](#) which states that "The parent of every child of compulsory school age shall cause him to receive 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 a school or otherwise."

Worryingly, the draft policy quotes from [the original Order as made](#), and not [the current Schedule 13, as amended in 2007](#) although the latter is readily available online. This does not inspire confidence in legal accuracy of the document! The draft policy also makes reference to The Children Order 1995. It is not clear whether the policy intends to refer to the original as made or the current version as amended by [Family Law Act \(Northern Ireland\) 2001](#)

[Notes from the Focus Group meetings](#) suggest that the Boards are interpreting [Article 44](#) to mean that while parents do have a certain amount of freedom to choose how their children are educated, the Board has a duty to check whether children are in fact receiving efficient instruction. This is looking at Article 44 from completely the wrong angle, since it is actually about protecting the state from parents' demands, rather than imposing a duty on the state to interfere with what parents are doing.

Article 44 is equivalent to [section 9 of the Education Act 1996](#) in England and Wales, which [as education lawyer David Wolfe points out](#) *doesn't force the local authority or special needs tribunal to give parents what they want, merely requires them to have regard to the general principle of "accordance with parents' wishes."* In England, the Minister [made reference](#) to [The Belgian Linguistics case](#) in rejecting calls for a free-standing "right to education", explaining that it might have perverse or unintended consequences particularly with regard to extending rights to minority forms of schooling which the state would then be obliged to fund.

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## Approval Not Required

***One of the consultation questions asks whether the policy clarifies the role of the School/School Principal in relation to children who are home educated***

Thanks to the publicity surrounding the draft policy in Northern Ireland, the proposals couldn't possibly work as parents will now be aware of what the law actually is - as opposed to what the boards would like it to be. The draft policy might not be so very different from current practice but it was fatally greedy of the boards to seek to enshrine it in a formal document.

The legal process in Northern Ireland for parents taking children out of school in order to home educate them derives from the 1974 Pupil Registration Regulations, supplemented by advice from the Department for Education published in [regular Circulars](#).

The [latest Circular from the Department of Education](#) confirms that the school is allowed to take the child's name off the register if parents tell the school they are removing the child.

The board's draft policy hinges on the delusion that home education has to be approved by the board, despite the fact that the law does not provide any justification for the board to approve or deny permission to home educate.

The board also seeks to convince schools that parents must submit a home education "programme" to the board.

There is no basis in law for insisting that parents must have a "programme".

The draft policy asks schools to collude in presenting the programme as a bona fide requirement, and for schools to wait until parents confirm that the programme is ready, before taking the child's name off the school register.

The draft policy also gives the mistaken impression that it is in some way up to the school to decide when a child's name can be deleted from the school register. This contradicts the 1974 Regulations 6. (2).

The DE Circular says that the school should send a copy of the SAI form to the board at the same time as it gives the original to parents. In other words, form SA1 becomes de facto notification of home education.

On being notified that a child is to be home educated, the draft policy states that education welfare will commence background checks and the board's office will ask parents to submit the supposedly mandatory programme for approval.

In the draft policy, Code 3 is introduced in a very misleading way to suggest that the law obliges schools to keep prospective home educated children on roll pending consideration by the board.

However, the DE Circular suggests Code 3 for marking the register in the event that the school knows the child is to be home educated and the child has ceased attending but where the school hasn't yet produced the SA1 form.

There is nothing in the Circular to indicate that Code 3 should be used as a way of delaying taking the child's name off the school register. Code 3 seems designed for use in similar circumstances to Code C in the 2008 DCSF Guidance on Keeping Pupil Registers in England, ie for a very short period of time between the school's being made aware of home education and the information reaching the local authority.

Code 3 appears to have been first introduced in 2010 via [Circular 2010/07](#)

Encouraging the school to keep the child on the register is not an item in the flowchart

## Scenario

***One of the consultation questions asks whether the draft policy clearly and concisely outlines the procedure to be followed should parents decide to home educate their children***

This is what could happen if the school followed the advice in the draft policy: the parent decides to home educate and tells the school to take the child's name off the roll. The school - following advice from the board - tells the parent there should be a programme in place because this is what the board will ask for. According to the draft policy, the child would remain a pupil but the school would mark the register Code 3 attendance not required. After this point, the board couldn't issue a School Attendance Order since the child was already a registered pupil and couldn't prosecute for failure to ensure attendance since the register was being marked with a permission code for absence.

If the school were to follow the law as opposed to the board's advice, it would heed Regulation 6(2) of The Registration and Attendance of Pupils Regulations (NI) 1974 [No. 78] and remove the child's name off the roll on the day following last attendance.

Schools would receive conflicting messages because of **(ii) draft policy** the Board saying the school is expected to advise the parent that the child or young person should continue to attend school until the programme is in place; and **(vii) draft policy** the school's being advised to use Code 3 (temporary code) to record the period of absence between

when the parent informs the school that they intend to educate at home until the issuing of the certificate of attendance (S.A.1); combined with the fact that the parent would know that it is not a legal requirement to wait for permission once they have asked the school to take the child's name off the register, therefore the parent would stop sending the child to school expecting the name to be removed from the register as per 6. (2) of the 1974 Regulations.

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## SEN

***One of the consultation questions asks whether the policy clarifies the role of the School/School Principal in relation to children who are home educated, and another asks whether the policy provides information about the process to be followed to facilitate children with identified Special Educational Needs***

The draft policy implies that it will require an Annual Review and special permission from the Department of Education before a child with a statement of SEN can be home educated. This is not the case. Firstly, an Annual Review is not required by law before a child becomes home educated, although the board may wish to bring forward the Review. Secondly, where a child is home educated, it is the Board rather than the school which organises the Review, whereas by implication if the child were still to be treated as a pupil it would be up to the school, therefore the draft policy misleads the school. Thirdly, it is not necessary for home education to be "named" in the statement, unless the Board has agreed to pay for the provision. Fourthly, the draft policy signposts to the 1974 Regulations and the 2010 circular but neither of these documents make any reference to SEN statements. Fifthly, the relevant legislation is [Article 10 of the 1996 Education Order](#) and [Parts IV and VI of the SEN Code of Practice](#) More on SEN legislation in NI [here](#)

## Safeguarding and Promoting Welfare

The draft policy talks about safeguarding but makes no reference to the Safeguarding Board Act. "Each person and body to whom this section applies must make arrangements for ensuring that— (a) their functions are exercised having due regard to the need to safeguard and promote the welfare of children" [s.12 Safeguarding Board Act \(Northern Ireland\) 2011](#) (Equivalent to [s.175 Education Act 2002](#) England and Wales.) See [Government Elective Home Education Guidelines England, 2.12](#) '2.12 Local authorities also have a duty under section 175(1) of the Education Act 2002 to safeguard and promote the welfare of children. This section states: "A local education authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children." Section 175(1) does not extend local authorities' functions. It does not, for example, give local authorities powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education.'

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## Previous Consultations in England and Wales

[Campaign in England 2003-2010](#)  
[Wales 2012](#)

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## Link Reference

This article is <http://edyourself.org/articles/NI2014.php>. The following links to other websites are contained in the article, displayed as citations to aid you in printing the document.

1. Proposed briefing postponed <http://www.eani.org.uk/latest-news/welcome-from-the-chief-executive/>
2. the 5 Education and Library Boards [http://www.deni.gov.uk/index/7-special\\_educational\\_needs\\_pg/7-special\\_needs-a\\_guide\\_for\\_parents\\_pg/7-special\\_educational\\_needs\\_-\\_a\\_guide\\_for\\_parents-contents\\_pg/7-special\\_educational\\_needs\\_a\\_guide\\_for\\_parents-addresses\\_of\\_elbs\\_pg.htm](http://www.deni.gov.uk/index/7-special_educational_needs_pg/7-special_needs-a_guide_for_parents_pg/7-special_educational_needs_-_a_guide_for_parents-contents_pg/7-special_educational_needs_a_guide_for_parents-addresses_of_elbs_pg.htm)
3. MY 2014 CONSULTATION RESPONSE <http://edyourself.org/articles/niconsult.php>
4. <http://www.hedni.org/files/imagecache/small/HEdNIPetitionStormont-1.jpg>
5. was handed to the Chair of the government Education Committee <http://tinyurl.com/Nihomeedpetition>
6. Graham Stuart to Minister for Education <http://www.grahamstuart.com/wp-content/uploads/2014/05/Letter-to-John-ODowd-RE-Draft-Northern-Ireland-Elective-Home-Educate.pdf>
7. Questions at Stormont <http://edyourself.org/articles/answersni.php>
8. More <http://edyourself.org/articles/answersni.php>
9. here <http://www.deni.gov.uk/index/facts-and-figures-new/departamental-circulars.htm?formsend=1&show=20&year=2013&page=2>
10. the Children Act 1989 <http://www.legislation.gov.uk/nisi/1995/755/contents>
11. here <http://www.legislation.gov.uk/nisi/1995/755/schedule/4>
12. here <http://uk.practicallaw.com/uklegislation/uksi/1972/1263/contents>
13. Member of the Legislative Assembly <http://www.hedni.org/2014/04/please-write-your-m-las>
14. the Education Minister gave the following numbers for home educated children <http://aims.niassembly.gov.uk/terms/printquestionsummary.aspx?docid=128564>

15. Article 44 <http://www.hedni.org/2014/05/focus-groups>
16. The Belgian Linguistics case <http://www.legislation.gov.uk/ukpga/1996/56/section/9>
17. latest Circular from the Department of Education [http://www.deni.gov.uk/circular\\_2013\\_13\\_-\\_attendance\\_guidance\\_english\\_version\\_-\\_effective\\_from\\_start\\_of\\_academic\\_year\\_2013\\_14.pdf](http://www.deni.gov.uk/circular_2013_13_-_attendance_guidance_english_version_-_effective_from_start_of_academic_year_2013_14.pdf)
18. Circular 2010/07 [http://www.deni.gov.uk/circular\\_2010\\_07\\_-\\_pupil\\_attendance\\_-\\_absence\\_recording\\_by\\_schools.pdf](http://www.deni.gov.uk/circular_2010_07_-_pupil_attendance_-_absence_recording_by_schools.pdf)
19. here <http://www.legislation.gov.uk/nisi/1996/274/part/II/crossheading/special-educational-provision-other-wise-than-in-a-grantaided-school/made>
20. Government Elective Home Education Guidelines England, 2.12 <http://www.legislation.gov.uk/nia/2011/7/section/12>
21. Campaign in England 2003-2010 <http://edyourself.org/articles/badman.php#timeline>
22. Wales 2012 <http://edyourself.org/articles/walesregistration.php>