

Home Education and the Law <http://edyourself.org/law.pdf>

The legal references for home education are section 7 of the Education Act 1996¹ and sections 436A² to 443³ of the same Act.

Section 7 of the Education Act 1996 sets out the parents' duty to cause their child to receive efficient full-time education suitable to age, ability, aptitude and special needs.

Section 436A of the Education Act 1996 relates to Children Missing Education; while sections 437 to 443 deal with school attendance orders.

The Government has also issued statutory guidance on Children Missing Education⁴ which includes guidance on local authority responsibilities with regard to home education.

The rules on what must happen if a pupil is to be taken off the school roll in order to be home educated are covered by the Education (Pupil Registration) (England) Regulations 2006⁵.

The Government has also issued non-statutory Advice on School Attendance⁶ which summarises the Pupil Registration Regulations with reference to children who “*have been taken out of school by their parents and are being educated outside the school system eg home education*”.

Schools are required to delete a pupil's name from the school roll if the pupil has *ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school*.⁷

As soon as the school receives such notification from parents, it must inform the local authority. The law refers to “*making a return*”⁸ to the local authority ie the school's legal duty is to tell the authority, not to ask the local authority whether it should obey the law or not.

Unless the school is a special school, there is no provision in law for the school to keep the pupil on roll once the relevant written notification has been received from parents.

The law is clear that it is parents who are responsible for education. Parents can carry out the responsibility themselves or delegate the responsibility to a school.

The local authority has a duty to take action if it appears that a child is not receiving education, for example by serving notice on parents requiring them to satisfy the LA that their child is receiving suitable education when it comes to the local authority's attention that a child might not be receiving such education.⁹

The “notice” referred to above is a formal notice under section 437¹⁰. Prior to the formal notice, the law does not require the LA to “be satisfied”.

The LA is not required to ascertain suitability in all cases, only to act where there is an appearance of problem or failure.

There is no statutory duty to do anything at the outset, but if the LA chose to be proactive, it could take a general look (sometimes described as “informal enquiries”) to see whether there seemed to be a problem which might require further enquiry.

The Department for Education has repeatedly stated that there is no overarching duty to investigate all home educated children or to pass judgement on the education of each child or to insist on seeing all home educated children.¹¹

Where a home educated child has a statement of SEN – or in future an Education Health and Care Plan - the local authority remains under a duty to maintain the child's statement and to review it annually.¹²

1 <http://www.legislation.gov.uk/ukpga/1996/56/section/7>

2 <http://www.legislation.gov.uk/ukpga/2006/40/section/4>

3 <http://www.legislation.gov.uk/ukpga/1996/56/part/VI/chapter/II/crossheading/school-attendance-orders>

4 <https://www.gov.uk/government/publications/children-missing-education>

5 <http://www.legislation.gov.uk/uksi/2006/1751/made>

6 <https://www.gov.uk/government/publications/school-attendance>

7 <http://www.legislation.gov.uk/uksi/2006/1751/regulation/8/made>

8 <http://www.legislation.gov.uk/uksi/2006/1751/regulation/12/made>

9 <https://www.gov.uk/government/publications/children-missing-education>

10 <http://www.legislation.gov.uk/ukpga/1996/56/part/VI/chapter/II/crossheading/school-attendance-orders>

11 <http://edyourself.org/articles/LAletters.php>

12 <https://www.gov.uk/government/publications/special-educational-needs-sen-code-of-practice>