

# Northern Ireland Consultation Response 2014

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[NI Home Education Consultation](#) closed Friday June 27th 2014. My final consultation response is [here](#)

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### December 2015 Update

A Review Group is now being established by the Education Authority to take forward the development of a final draft Elective Home Education policy, which will involve consultation with a range of key stakeholders."

<http://www.hedni.org/2015/12/education-authority-publishes-summary-consultation-responses>

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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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READ ARCHIVED PAGE [HERE](#) (DECEMBER 2015)

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## Political Interest in Draft Policy 2014

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.

I note that MLAs from four different parties and five different areas have put questions to the Minister about the proposed draft policy, including three members of the Education Committee have questioned the Minister about this policy, including the Chair and Deputy Chair.

The topics covered include 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; and what is the role and responsibility of the Education and Library Boards.

On June 23rd Minister John O'Dowd said "The law has said that the guidance requires to be reviewed...I regret the fact that the boards did not present me with the consultation documents before issuing..."

I also note that Graham Stuart, Chair of the Education Committee at Westminster, has written to the Minister saying that the policy appears to misrepresent the role and responsibilities of Education and Library Boards regarding parents who elect to home educate their children. Mr Stuart goes on to say that the position set out in Schedule 13 is analagous to that in England and Wales, where local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis. Local authorities should intervene if they are alerted to a reason for doing so - but are not obliged, or indeed permitted, pre-emptively to seek reasons to intervene. Mr Stuart also pointed out that the Welsh Government has dropped plans to make home educating families join an official register and stated that it would be better for Education and Library Boards to concentrate on improving the support and resources available for home educating families, in accordance with individual wishes.

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## Introduction

The law is quite straightforward and I can't understand why the draft policy makes such a half-hearted attempt at explaining it. Children have a right to be home educated, including where the child has a statement of SEN. It is parents who are responsible for their child's education, not the board, and it is parents - not the board - who are responsible for the outcome. Schools must delete the child's name from the register following notification from parents. The duty of the

board is reactive not proactive, ie the law provides for the board to step in if and only if it appears that parents are failing in their duty. Any welfare or safeguarding concerns should be referred to the appropriate agencies for follow-up.

The draft policy has cut and pasted various gobbets of law which purport to justify the process set out in the document, including the United Nations Convention on the Rights of the Child, the 1986 Libraries Order and the Children Order 1995. It is hard to single out the most striking error, but **nowhere** does the law say that boards have a statutory duty to ensure that all children in their area are receiving efficient full time education. Furthermore, it is astounding that anyone could believe the UNCRC offers any justification whatsoever for the board's monitoring home education or interviewing home educated children.

The policy seeks to create the impression that boards will be very busy helping home educated children but on closer scrutiny the activity seems restricted to holding on to the parents' programme for a couple of weeks before revealing whether or not it has been accepted, and sending someone out from "welfare" once a year with a list of hoops the family has to jump through in order to be allowed to continue home educating.

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## Actual Law Compared to Law in Draft Policy

### Summary of The Law

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]

### Taking Child Out of School

**The legal process in Northern Ireland for taking a child out of school bears little resemblance to the draft policy.**

Circular 2013/13 - Attendance Guidance and Absence Recording By Schools 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."

Regrettably, **the board's draft policy departs from the law** and seeks to persuade schools and parents 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 draft policy also attempts to convince schools that parents must submit a home education "programme", although there is **no basis in law** for this. The draft policy then goes even further, asking schools to collude in presenting the programme as a bona fide requirement, and wanting schools to wait until parents confirm that the programme is ready, before taking the child's name off the school register.

The draft policy **gives extremely bad legal advice to schools**, implying 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) and is not condoned by DE Circulars. The DE Circular says that the school should send a copy of the SA1 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.

The draft policy **entirely misrepresents Code 3** to imply - wrongly - that the law obliges schools to keep prospective home educated children on roll pending consideration by the board. In fact, Code 3 appears to have been first introduced in 2010 via Circular 2010/07 as a way to mark 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 supplied 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.

## No Duty on Board To Ensure Child Receives Education

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". (In passing I note that the draft policy quotes from an out-of-date version of Schedule 13. This is puzzling, as the old version is only available on the Government website as a scanned image pdf which someone would have download, open and then type out the relevant paragraphs by hand, in contrast to the up-to-date version which is prominently displayed and can simply be copied and pasted. This suggests that the authors of the draft policy have not actually sourced the legislation from the Government website, but instead have taken the information from a secondary document.)

## School Attendance Orders

Education and Library Boards in Northern Ireland are given the power to issue School Attendance Orders by virtue of Schedule 13 of the Education and Libraries Order 1986.

The duty to ensure that the child receives education is clearly placed on the **parent**, not on the board. Should the board seek to go beyond its remit by taking over responsibility for the child's education, a corresponding **legal liability** would come into play, which I can only imagine is **not** what the board intends. The word "**appears**" in Schedule 13 means that the board is **only** required to take action **after** a problem has come to light. It is only after this stage that the parent is required to "satisfy" the board that a suitable education is being provided. At the outset, the board should **not** be asking parents for evidence. There is **no requirement in law** for parents to supply a "**programme**"

## Article 44

Notes from the Focus Group meetings suggest that the boards are erroneously interpreting Article 44 of the Education and Libraries Order 1986 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. In fact, Article 44 is equivalent to section 9 of the Education Act 1996 in England.

## Safeguarding and Promoting Welfare

The draft policy says "the designated officers for child protection in the CPSSS will be contacted on the same day that any concerns are noted" [about "existing and/or potential safeguarding issues"]. However, there is no information any thresholds for "concern" and there is a massive risk that the lines between "education" and "welfare" and "potential safeguarding issues" will become hopelessly blurred since the draft policy goes on to talk about "minimum standards" which includes reference to nebulous areas such as the child's "social needs". Families in Northern Ireland are justifiably concerned that they will be pursued through legal channels to get the children back into school on grounds other than education.

## Children Order 1995 Education Supervision Orders

The relevance of the Children Order 1995 to home education is not explained. I am guessing it refers to Education Supervision Orders but the policy has no information on the ESO process.

## UNCRC

The UNCRC offers no justification whatsoever for the board's monitoring home education or interviewing home educated children. At all stages the convention affirms the primacy of parents in children's lives.

The context for the child's right to express his/her views is in "**judicial and administrative proceedings affecting the child.**" The UNCRC is of course **not** suggesting that the state should bypass the parent in order to speak directly to the child in day-to-day family life.

It should be remembered that the "**minimum standards**" referred to in Article 29 are applied specifically to "**educational institutions**" and **not** to arrangements made by parents at home.

## SEN

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.

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## Recommendations

As members of the Education Committee have already taken an interest in the draft policy, it could make sense for the Committee to look into this further.

I also note that while MLAs refer - correctly - to "policy", the Minister tends to say "guidance." This is perhaps the source of some of the current difficulties. If the Department were to issue guidance, then the boards' policy could simply be to follow Government guidance.

It would be easier to start from scratch than attempt to salvage this particular policy, and as a starting point the Education Committee could consider the guidelines in England, and possibly talk to local authorities in England which are regarded as a model of good practice such as Lancashire.

Any future consultation must enable home educated children and young people to participate at whatever level they feel comfortable, including - but not limited to - providing Easy Read or Young Person's version of any consultation documents at the outset, and also respecting children and young people's wishes as to whether they prefer their own separate consultation meetings or would rather join in group discussions at a family level.

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## Link Reference

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

1. here <http://edyourself.org/articles/NI2014.php>
2. <http://www.hedni.org/2015/12/education-authority-publishes-summary-consultation-responses>  
<http://www.hedni.org/2015/12/education-authority-publishes-summary-consultation-responses>
3. Proposed briefing postponed <http://www.eani.org.uk/latest-news/welcome-from-the-chief-executive/>
4. HERE <http://edyourself.org/niconsult.pdf>
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