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## Revised guidance on safeguarding children in education

### Consultation response form

Your name: FIONA NICHOLSON

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Responses should be returned by **25 October 2013** to:

Diverse Learners and Safeguarding Branch  
Support for Learners Division  
Department for Education and Skills  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

or completed electronically and sent to:

[SafeguardingChildreninEducation@wales.gsi.gov.uk](mailto:SafeguardingChildreninEducation@wales.gsi.gov.uk)

Please mark the category which best describes you as a respondent.

Headteacher/principal  
Teacher  
Governor  
School/college support staff

Local authority  
Local Safeguarding Children Board  
Social worker  
Supply agency  
Union  
Charity  
Voluntary group  
Parent/carer  
Child/young person  
Other – please specify:

**Question 1** – Does the glossary in the **Preface** provide clear, useful definitions of relevant key terms? If not, what could be improved and how?

Yes	No x	Not sure
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### Comments

My response focuses on the subject of elective home education.

The definition of "**Harm**" is a partial quote from **the Children Act 1989** and should be reinstated in full. In addition "**Significant harm**" must be prefaced by the caveat that there is no statutory definition of significant harm and care must be taken to ensure there is no implication that "**significant harm**" simply means a child whose development is delayed, as otherwise this would have a profound impact on children with learning difficulties and physical disabilities.

**"Harm"** would then read as follows:

*In section 31(9) of the Children Act 1989 harm is defined as "ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another; "**development**" means **physical, intellectual, emotional, social or behavioural development**; "**health**" means **physical or mental health**; and "**ill-treatment**" includes **sexual abuse and forms of ill-treatment which are not physical.**"*

**"Significant harm"** would read as follows:

***"There is no statutory definition of significant harm. See above for a definition of harm. Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.***

**Reference: Children Act 1989**

<http://www.legislation.gov.uk/ukpga/1989/41/section/31>

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**Question 2** – Does **Chapter 1** make clear the statutory duties and guidance that apply to education providers in relation to safeguarding? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.
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**Question 3** – Does **Chapter 1** explain clearly the multi-agency safeguarding structures in Wales? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.
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**Question 4** – Is the guidance in **Chapter 2** on the roles and responsibilities of different agencies clear, accurate and helpful? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

My response focuses on the subject of elective home education. Firstly, it is not helpful to repeat a meaningless phrase from an English guidance
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document dating from 2004. Secondly, there should be a reference to children with special needs, making it clear that this is not in itself a reason to question parents' decision to educate at home.

**2.7** states that: *"responsibility for safeguarding the welfare of children who are educated at home by parents or carers, or who are employed, are multi-agency responsibilities that should be addressed in locally agreed inter-agency procedures in accordance with the principles set out in Safeguarding Children: Working Together Under the Children Act 2004."* This is taken **directly** from [DfES Safeguarding Children in Education 2004](#) paragraph 26.2. It is not particularly clear. The phrase "safeguarding the welfare" is confusing; does it mean safeguarding **OR** promoting welfare? Moreover, simply signposting the reader in a general way towards a 340 page document is not helpful. I assume - insofar as it means anything - it means that education professionals dealing with home education should know when to refer to other agencies, but this isn't what it actually says.

[Chapter 6 of Welsh Government Circular 47/2006: Inclusion and Pupil Support](#) states that *"if any child welfare concerns come to light in the course of engagement with children and families, these concerns should immediately be referred to the statutory authorities for consideration."* This would be a more helpful point to include in the new safeguarding guidance.

**2.12** states that *"Local authorities should seek to build effective relationships with home educators that function to safeguard the educational interests and welfare of children and young people. Doing so will provide parents with access to any support that is available and allow authorities to understand the parents' educational provision; for further information refer to Chapter 6 of Welsh Government Circular 47/2006: Inclusion and Pupil Support."* Up to "parents' educational provision" this is taken directly from the [Chapter 6 of Welsh Government Circular 47/2006: Inclusion and Pupil Support](#) paragraph 3.1 and the reader is then directed to the Guidelines themselves.

However, there is no mention of the fact that children with a statement of SEN have an equal right to home education. This should be added to **2.12** by including the relevant paragraph from Part 7 of [Chapter 6 Welsh Government Circular 47/2006: Inclusion and Pupil Support](#)

**2.12** would then read as follows: *"have arrangements in place to safeguard and promote the welfare of children who have not been allocated a school place, or are excluded from school, including those being educated in pupil referral units, or via the home tutor service. **If any child welfare concerns come to light in the course of engagement with children and families, these concerns should immediately be referred to the statutory authorities for consideration.** Local authorities should seek to build effective relationships with home educators that function to safeguard the educational interests and welfare of children and young people. Doing so will provide parents with access to any support that is available and allow authorities to understand the parents' educational provision. **The fact that a child has special educational needs is not, in itself, a reason to question parents' decision to educate at home. Additional considerations do, however, apply;** for further information refer to [Chapter 6 of Welsh Government Circular 47/2006: Inclusion and Pupil Support](#);*

**Reference: Elective Home Education Guidelines**

[http://wales.gov.uk/dcells/publications/policy\\_strategy\\_and\\_planning/schools/inclusion\\_andpupilsupport/guidance/section6/section6inclusionpupilsup1.pdf?lang=en](http://wales.gov.uk/dcells/publications/policy_strategy_and_planning/schools/inclusion_andpupilsupport/guidance/section6/section6inclusionpupilsup1.pdf?lang=en)

Question 5 – Is the information provided in Chapter 3 clear and helpful? If not, how could it be improved?

Yes	No x	Not sure
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### Comments

My response focuses on the subject of elective home education.

Firstly, it should be stated that schools are required to notify the authority when a child leaves the school and starts being home educated. Secondly, a crucial phrase has been left out of the quote from Children Missing Education Guidance, namely **"the duty does not apply to children and young people whose parents have chosen to electively home educate them."** Thirdly, the Children Missing Education Guidance has been paraphrased inaccurately to suggest erroneously that home educated children are "a vulnerable group" and that home education is "a risk factor." Fourthly, the draft guidance has missed out an important reference to the School Attendance Order process. Fifthly, the link to supplementary guidance on Fabricated Illness does not work.

**3.121** says *"There is a wide variety of reasons why children and young people fail to engage in or go missing from education; each presenting various degrees of risk; which could include those, who...are withdrawn by their parents who elect to educate at home and both parents and the school fail to notify the local authority"*.

This is taken directly from [the Children Missing Education Guidance 2010](#) paragraph 1.27. It is misleading and should be removed. Parents are under no duty to notify the local authority. It is **the school** which is failing in its legal duty to report that a child has been removed from the school roll in order to be home educated.

**3.121** should as a minimum be corrected to say *"children who...are withdrawn by their parents who elect to educate at home where the school fails to notify the local authority as required by [the Pupil Registration Regulations 2010](#)."*

However it is extremely unfair that child could be deemed "missing from education" in these circumstances and consideration might also be given to removing this bullet point from the guidance altogether.

**Reference: The Education (Pupil Registration) (Wales) Regulations 2010**

<http://www.legislation.gov.uk/wsi/2010/1954/regulation/8/made>

**3.123** signposts to the Elective Home Education Guidelines, which is good. However **3.124** contains a quotation from the [CME Guidance 2010 \(page 5\)](#) but misses out the crucially important phrase *"the duty does not apply to children and young people whose parents have chosen to electively home educate them."* This **must** be reinstated.

**3.124** would then read as follows: *"Section 436A of the Education Act 1996 (inserted by section 4 of the Education and Inspections Act 2006) requires all local authorities to make arrangements to enable them to establish (so far as it is possible to do so) the 'identities of children in their area who are not registered at school and are not receiving a suitable education'. The purpose of the duty is to make sure that children and young people who are not registered pupils are identified and that effective monitoring systems are put in place to ensure that those children or young people are provided with 'suitable education', which may also involve support arrangements. **The***

***duty does not apply to children and young people whose parents have chosen to electively home educate them."***

**Reference: Statutory guidance to help prevent children and young people from missing education 2010**

<http://wales.gov.uk/topics/educationandskills/publications/guidance/missingeducation/?lang=en>

**3.132** deals with "risk factors" as follows:

*"Local and national experience has identified a number of risk factors that may make certain groups of vulnerable children more at risk of going missing from education and who face tougher obstacles to re-engage. This list is not exhaustive, but could include children and young people, who..."*

This is an inaccurate precis of the [CME Guidance 2010](#) which is much more nuanced and which should be reinstated in full.

**3.132** would then read as follows: *Local and national experience has identified a number of risk factors that may hinder or prevent the engagement and tracking of certain vulnerable groups. Although only a relatively small number of children and young people may be at risk, they often have complex needs from the outset due to difficult family dynamics, social or lifestyle factors; all of which may contribute to the withdrawal process and failure to make a successful transition. They may have experienced certain life events that make them more at risk of going missing from education and who face tougher obstacles to re-engage. This list is not exhaustive, but could include children and young people, who... [the list then includes "have been withdrawn by their parents for elective home education but are not receiving a suitable education"*

It is particularly important to reinstate the full extract from the [CME Guidance 2010](#), since the draft safeguarding guidance goes on to talk about "vulnerable groups and individuals who are recognised as being at greater risk". It is an unpardonable leap to move from "risk factors which could include..." to "vulnerable groups and individual who are recognised as being at greater risk" The impression must **not** be given that home education is a "risk factor" nor that home educated children are "a vulnerable group."

**Reference: Statutory guidance to help prevent children and young people from missing education 2010**

<http://wales.gov.uk/topics/educationandskills/publications/guidance/missingeducation/?lang=en>

**3.137** talks about "significant grounds for believing that satisfactory home education is not being provided by parents". This is not an accurate summary of the legal position. Where it appears to the authority that a child is not receiving education, the procedure which should be followed is set out in [Chapter 6 of Welsh Government Circular 47/2006: Inclusion and Pupil Support](#) as follows:

*"It may be necessary for the LEA to serve a notice on the parents. Under Section 437(1) of the Education Act 1996, LEAs can intervene if they have good reason to believe that parents are not providing a suitable education by serving a School Attendance Order. This will allow a period of at least 15 days for the parent to provide the education authority with whatever information they require to satisfy themselves about the suitability of the education."*

It must be made clear that tracking/monitoring etc could only start to apply **after** parents have failed to comply with a School Attendance Order.

**3.137** would then read as follows: *In some instances the whereabouts of children and young people will be known to the authority but they are not yet in provision. It is imperative that children and young people in these groups are tracked and monitored*

*to ensure that suitable provision is made for them. This group includes, for example, those:  
for whom a school place has been offered and refused, and an appeals process is taking place;  
who have been permanently excluded and are awaiting placement;  
who are newly arrived in the county or country; are seeking school places and they are known to admissions; or  
where parents fail to comply with a School Attendance Order and do not provide satisfactory evidence that the child is being educated otherwise than at school.*

**Reference: Elective Home Education Guidelines**

[http://wales.gov.uk/dcells/publications/policy\\_strategy\\_and\\_planning/schools/inclusionandpupilsupport/guidance/section6/section6inclusionpupilsup1.pdf?lang=en](http://wales.gov.uk/dcells/publications/policy_strategy_and_planning/schools/inclusionandpupilsupport/guidance/section6/section6inclusionpupilsup1.pdf?lang=en)

The Department of Health link given in **3.269** for "supplementary guidance on Safeguarding Children in Whom Illness is Fabricated or Induced" is broken and should be replaced by the following <https://www.gov.uk/government/publications/safeguarding-children-in-whom-illness-is-fabricated-or-induced>

The relevant links in the draft guidance are as follows:

**Elective Home Education Guidelines 2006**

[http://wales.gov.uk/dcells/publications/policy\\_strategy\\_and\\_planning/schools/inclusionandpupilsupport/guidance/section6/section6inclusionpupilsup1.pdf?lang=en](http://wales.gov.uk/dcells/publications/policy_strategy_and_planning/schools/inclusionandpupilsupport/guidance/section6/section6inclusionpupilsup1.pdf?lang=en) via

<http://wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/inclusionpupilsupportguidance/section6/?lang=en>

**Statutory guidance to help prevent children and young people from missing education 2010. (Sometimes referred to as CME Guidance)**

<http://wales.gov.uk/topics/educationandskills/publications/guidance/missingeducation/?lang=en>

**The Education (Pupil Registration) (Wales) Regulations 2010**

<http://legislation.data.gov.uk/wsi/2010/1954/made/data.htm?wrap=true>

or

<http://www.legislation.gov.uk/wsi/2010/1954/regulation/8/made>

**Safeguarding Children: Working Together Under the Children Act 2004. Last updated 2007**

<http://wales.gov.uk/topics/childrenyoungpeople/publications/safeguardingunder2004act/?lang=en>

**Question 6** – Are there any other safeguarding issues that should be included in **Chapter 3**?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.

**Question 7** – Is the guidance in **Chapter 4** on recruitment processes, pre-appointment checks and post-appointment induction and monitoring clear and helpful? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.

**Question 8** – Does **Chapter 5** provide clear, useful guidance on the new disclosure and barring arrangements and how these apply to staff and volunteers working in education services? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.

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**Question 9** – Does **Chapter 6** explain clearly the process for handling allegations of abuse against teachers and other staff or volunteers in the education service? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.
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**Question 10** – Does **Chapter 7** explain clearly the process for making referrals to the Disclosure and Barring Service? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.
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**Question 11** – Are the model notes for staff, parents/carers and learners and the child protection policy included in the **Appendices** useful? If not, how could they be improved?

Yes	No	Not sure
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**Comments**

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Not answered. My response focuses on the subject of elective home education.

**Question 12** – Does the structure, style and tone of the **document as a whole** aid ease of understanding, access and reference? If not, how could it be improved?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.

**Question 13** – The Equality Act 2010 prescribes the following ‘protected characteristics’: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex; and sexual orientation. Do you have any views on potential impacts that this guidance may have on people in Wales with protected characteristics?

Yes	No	Not sure
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**Comments**

Not answered. My response focuses on the subject of elective home education.

**Question 14** – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

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My response focuses on the subject of elective home education. I also responded to the previous consultation on registration and monitoring of home education, and undertook extensive research last year on the policies and practice of local authorities in Wales regarding elective home education which can be read here <http://edyourself.org/articles/FOIwales2012.php>

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

**Please acknowledge this reply**

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: