



[Home](#) » Formal Process in New Guidance

Formal Process in New Guidance

THIS PAGE WAS INITIALLY WRITTEN IN 2023 AND WAS ARCHIVED IN MARCH 2026. ENGLAND ONLY.

This page does not cover SAOs where the child has an EHCP.

After reading **the new draft guidance** LAs may mistakenly believe they are supposed to conduct a full assessment of suitability and “fail” the provision before issuing the Preliminary Notice (the outcome of which they have effectively prejudged) and that they are subsequently meant to reject any information which arrives after the 15 day cut off point.

The new guidance is not ready to be used. It is still at the draft stage. The consultation closed 18.1.24. The current guidance remains in force until such time as a final new version is published. The current guidance can be found here <https://www.gov.uk/government/publications/elective-home-education>

The formal process in relation to home education means the system for issuing School Attendance Orders [SAOs] and the legal implications once the Order is in force. Local authorities cannot issue a School Attendance Order until they have found a school which agrees to be named and sent parents a Notice of Intention, giving parents a chance to register the child voluntarily. **None of this** is even mentioned in **the draft guidance**.

Instead of sending a clear message about taking definitive action via the formal process in a minority of cases which give cause for concern, **the new draft home education guidance** describes – at great length – a much more labour-intensive system that amounts to annual monitoring for every child. (I use the word “describe” because **the draft guidance** is careful **not to prescribe** or dictate what LAs should do; it is all about **creating an impression** of what a “good LA” would want to do)

Does Guidance Achieve Stated Aims?

The consultation document says: “*We have made changes to the guidance that **clarify the formal process** of assessing and establishing suitability of the education provided, **and how it is distinct from the informal process**. We want both parents and local authorities **to be clear** on the system of engagements and enquiries relating to the SAOs process, including preliminary notices (section 437(1) of the Education Act 1996), **to help avoid misunderstandings** during the process.*”

Guidance is supposed to help readers understand **the powers and duties of local authorities**. Non-specialists may not know where to find the legislation so it would be extremely helpful if **the proposed new guidance** signposted to the right bits of the law and provided an accurate summary. **The new draft guidance does not do this.**

It is particularly regrettable that the **new draft** guidance does not do this for **sections 437 – 443** of the Education Act 1996 because the Act requires the reader to do quite a bit of work flipping backwards and forwards between different sections to establish the correct sequence of actions, as demonstrated in the highlights below.

Guidance is also about interpretation; the Department for Education is giving a view on what the law means in practical terms or as the Introduction says “*This guidance represents the Department’s interpretation of how the current legal framework affects the provision of home education.*” There is a lot of interpretation going on in **the new draft**, the issue is whether this will avoid misunderstanding or in fact **create greater misunderstanding**.

Formal Process Summary No EHCP

The School Attendance Order process is set out in sections 437 – 443 of the Education Act 1996. The sequence is set out below with the relevant sections and subsections in square brackets. **NB ss 438 – 440 do not apply if there is an EHCP; for an EHCP, see s 441.**

1. **If it appears** that a child not registered at school is not receiving education otherwise than at school, the local authority has a duty to issue a formal notice [437(1)] This may be called a **Preliminary Notice** or a **notice to satisfy**. The notice will specify a **deadline** for responding which must be not less than 15 days [437(2)] .
2. **If the local authority is not satisfied** by the response to the Preliminary Notice [437(3)(a)] and **if it considers it expedient** that the child should attend school [437(3)(b)], **it has to find a school** which will agree to be named on a possible future School Attendance Order. If the school is already at capacity the LA can still name the school on the Order but **only if it is a maintained school** and not an academy [439].
3. **Having found a school** [439], the LA will send parents a **Notice of Intention** [438(2)] to issue a School Attendance Order specifying **the school it intends to name** and explaining that the Order itself will follow unless the parent voluntarily **either** registers the child at the named school **or** makes a successful application to a different school [438 (3)-(6)].
4. **If the parent does not register the child voluntarily** after receiving the notice of intention, the LA will issue the actual School Attendance Order which will **require the parent to register** the child at school [437(3)].
5. Once the actual School Attendance Order has been issued **it remains in force until it is revoked** [437(4)]. This means that the child cannot subsequently be **deregistered** for home education **unless the SAO is revoked** [Pupil Registration Regulations 2006 Reg 8(1)(a)]. It also means that parents who **do not register the child at school** run the risk of being prosecuted for failing to comply with the SAO [443] **unless the Order is revoked** .
6. **Parents may apply to the LA for the SAO to be revoked** “*on the ground that arrangements have been made for the child to receive suitable education otherwise than at school*” [442 (2)] **If the local authority does not agree** that satisfactory arrangements have been made, the parent may apply to the Department for Education [442 (3)] .

School Attendance Orders

The Children’s Wellbeing and Schools Bill – if enacted – will change the law on school attendance orders, read more here <https://edyourself.org/childrens-wellbeing-schools-bill/> (For example, the “best interests” test outlined in the bill is not current law) Key points about School Attendance Orders: in most cases the SAO is threatened but doesn’t actually go ahead; before ... [Continue reading](#)



Ed Yourself

When to Switch to Formal Investigation?

Since the local authority has a duty to take formal action if it appears a child is not receiving education, it has come to be understood that the LA is required to make some informal enquiries rather than just waiting until something is brought to its attention. Hence the first thing to clarify in relation to the formal process is **how to approach the informal enquiry and when to escalate to the formal investigation.**

The **draft guidance** has a variety of recommendations on this point. The informal enquiry is presented as an “*assessment of suitability*” with a number of suggestions as to how to LAs may wish to interpret “*suitability*”. LAs should escalate to the formal investigation if **i/** there is information suggesting the education is **inadequate**, or **ii/** insufficient information to demonstrate **any significant education** at all, or **iii/** if they feel parents are not providing **sufficient information.**

The third point precisely illustrates the difficulty with **the proposed new guidance**. Instead of sending a clear message about taking definitive action in a minority of cases which give cause for concern, **the draft guidance** describes – at great length – a much more labour-intensive system that amounts to annual monitoring for every child.

Explaining Why Education is Not Suitable?

Should LAs explain why home education appears unsuitable so that parents have an opportunity to explain further or to make some changes, and if so, at what stage should this happen? The **proposed new guidance** does not have a clear message on this point.

The consultation document says *“At the **informal enquiries stage**, we encourage local authorities to let parents know what concerns they have about the home education”*. I can’t find this advice stated in **the draft guidance** at the informal stage. However **paragraph 3.8** of **the draft** does say *“In individual cases, authorities should set out, in writing, the reasons why EHE does not appear to be suitable **at the point of serving a s.437(1) notice**, hereafter referred to as a ‘preliminary notice’, so parents respond constructively to the notice.”*

Preliminary Notice Cut-Off Date?

Can local authorities legally refuse to consider any information arriving after the 15 day cut-off even though the LA still has to find a school, and notify parents of its intention to serve a School Attendance Order thereby allowing time for parents to register the child voluntarily. Is this the Department’s interpretation of 437-439? ? **The draft guidance** is not clear on this point.

7.3 of **the draft LA guidance** correctly identifies that parents have a MINIMUM time to respond to the Preliminary Notice (“not less than 15 days”) Meanwhile **the draft parents guidance** says “You will have at least 15 days to respond so that you have time to gather suitable material and/or get necessary advice”

How Soon Can School Attendance Order Be Issued?

As per the formal process summarised above, local authorities cannot issue a School Attendance Order until they have found a school which agrees to be named and sent parents a **Notice of Intention**, giving parents a chance to register the child **voluntarily**. Unfortunately – whether by accident or design – **none of this is explained or even mentioned** in **the draft guidance**. (I say by design because conceivably it might be intentional, giving parents the impression that they only have 2 weeks to overturn a negative assessment before the School Attendance Order arrives)

What Happens After SAO is Issued?

After reading **the new draft guidance** LAs may believe they are supposed to conduct a full assessment of suitability and **“fail” the provision before issuing the Preliminary Notice** (the outcome of which they have effectively **prejudged**) and that they are subsequently meant to reject any information which arrives after the 15 day cut off point.

However, the law does provide for School Attendance Orders to be revoked and **the new draft** does include this, although it has nothing to say about how to interpret *“satisfactory arrangements”* which is a significant omission unless we are to read it as going through the full assessment of suitability for the third time (after the informal and formal process) while hoping for different results.

Moreover the formal process chapter only seems to cover the situation where the parent has NOT complied with the Order and the child has NOT been registered at a school. The scenario where a parent has obeyed the Order and registered a child at school, but subsequently wants to home educate is only mentioned in passing elsewhere

at paragraph 5.4. On the face of it this is a surprising omission because it is difficult to envisage how the **proposed new** “*suitability assessment*” system might work in practice before the child is actually being home educated.

Current Guidance

Guidance

The current version of home education guidance for local authorities was published in April 2019. The emphasis is on ensuring LAs are fully aware of existing powers and duties. The Home Education Guidance does not introduce any new powers or duties for local authorities to monitor the suitability of home education nor any new definition

... [Continue reading](#)



Ed Yourself