

1. Name/Name of Organisation/Other Body (optional)

Home Education Northern Ireland (HEdNI)

This response has been drafted on behalf of Home Education Northern Ireland (HEdNI). HEdNI is an active community network for home educating families, providing peer to peer support and a forum for organising social and educational activities. HEdNI is an inclusive group, welcoming those of all backgrounds, religious beliefs, races and cultures. We do not promote any one method of home-educating; rather we support the right of all families to choose for themselves what suits them best. All documents published by members on behalf of HEdNI are circulated widely for comment, and we attempt to reach consensus – however HEdNI never claims to represent the views of all its members or to speak for all home educators.

2. Please select the category that best describes you as a respondent (Please tick one box only)

- ~~Parent/Guardian~~
- ~~Pupil~~
- ~~Home Educating Parent/Guardian~~
- ~~Home Educated Young Person~~
- ~~Member of School Staff (Teaching)~~
- ~~Member of School Staff (Non-Teaching)~~
- ~~Governor (individual)~~
- ~~Board of Governors (Please insert name of school below)~~
- ~~Education/Sectoral Support~~
- ~~Political Representative~~
- ~~Local Government Representative~~
- ~~General Public~~
- Community/Peer Support Group

3. Having read the Education Authority Guidelines for Elective Home Education, I consider that the guidelines: (for each choose: Agree Uncertain Disagree Not Applicable)

1. Provide helpful information on the range of issues that parents should consider when deciding to home educate - Agree
2. Outlines the procedure to be followed should parents decide to home educate their children - Agree
3. Clearly sets out the legal responsibilities of all parties relating to elective home education, and respects the duty of parents as educator - Agree
4. Clarifies the process of deregistration for schools/school principals and clearly explains their duties when a child is deregistered - Agree
5. Highlights that there are many valid approaches to home education and what EA may reasonably expect - Agree
6. Provides information and clarifies the role of the Elective Home Education (EHE) Team as agreed by the Education Authority - Agree
7. Signposts education resources/information that may be useful for parents who are home educating - Disagree
8. Signposts family support resources/information that may be useful to parents eg family support hubs, community use of schools- Disagree
9. Provides information about Special Educational Needs for parents who wish to home educate their children with identified Special Needs - Agree
10. Explains how any safeguarding concerns should be dealt with if they relate to home educated children - Agree
11. Overall, I consider that these draft guidelines provides a clear understanding of the legal and practical framework relating to elective home education In Northern Ireland - Agree

4. Please use the space below to comment further

HEdNI **supports** the adoption of these Guidelines.

In summary:

- The process (part 12, pages 23-30) at the heart of the guidelines is clear and legally accurate. The 'process' dictates how the EA should act if they need to contact a family. The accuracy and clarity of this is paramount for home educating families because it will empower them to insist on fair treatment.
- A fair and legally grounded process will protect children's rights and their access to a suitable education.
- Some areas remain a concern – especially the implied encouragement to misuse elements of International Law and a lack of clarity on the place of home education within the SEN Framework.

These comments discuss the positive and negative aspects of this Draft, before going on to comment on specific sections.

**At the heart of these guidelines is a legally accurate and clear process for dealing with families** (part 12, pages 23-30). Historically many home educating families have not felt able to trust EA officials. This is because many families have experience of EA staff with a lack of knowledge about home education, or worse have faced intrusion based on apparently deliberate misrepresentations of the law. This has sadly been especially true for families whose children have special educational needs.

Therefore, the single most important question for home educating families regarding these guidelines is this:

“Will families be able to use these guidelines to support them in insisting on fair treatment?”

We believe that on the whole they will, and it is on this basis that we support their adoption.

The process as described in the draft for interacting with families is clear and legally accurate (part 12, pages 23-30). The EA official is supported in meeting their duties (which are clearly stated) whilst families are given the information that they need at every stage to understand what is required of them and how they should be treated.

Specifically, the emphasis on the provision to families of written records detailing any concerns or interactions is very important. It has often been difficult for parents to induce EA officers to be specific about their concerns, or to agree on what has taken place at meetings. This has caused a great deal of unnecessary worry and administrative burden on home educating families, which should be alleviated if these Guidelines are adopted.

The process set out here, properly implemented and supported with appropriate training, will protect the rights of home educated children and their access to a suitable education.

#### *Special Educational Needs*

This clarity will benefit families whose children have SEN. In the past these children have tended to suffer the most from poor practice and the lack of legal or procedural clarity, and because they need services from the EA they have often been unable to insist on fair treatment. This has had a direct and sometimes catastrophic effect on the wellbeing of vulnerable children; the adoption of these Guidelines should therefore have a significant positive impact.

In particular it is very welcome that the Draft Guidance makes it clear that the duties of the parents and EA regarding home education are exactly the same whether or not the child has SEN, and that deregistration from a Special School is the same as from any other school.

#### **However there remain serious concerns about these guidelines**

There are aspects which undermine the both clarity and accuracy of the Draft Guidelines, as well as the promotion of good practice. This threatens the ability of the home educating parent to provide a suitable education and undermines the *effectiveness* of the child's right to an education. If confusion created by

these Guidelines over the law has this effect then the EA may find themselves in breach of their UNCRC and ECHR obligations.

### *Children's Rights*

Home educators would say that they are actively and passionately engaged in promoting and protecting their children's rights, specifically their right to education. Home educators would enthusiastically endorse the many aspirations of the International Treaties mentioned in the Draft Guidance, and yet we have strong and valid objections to the way they are referenced in this Draft.

There are three key interlinked problems with the inclusion of the aspirations on children's rights in this Draft. They do not illuminate the responsibilities of parents and EA which are the subject of this document, their inclusion encourages their inappropriate use, and if they are wrongly used then they have the potential to harm families and children as well as undermining the effectiveness of their right to an education.

#### *1. They are legally irrelevant in the context of this Guidance.*

International Treaties only place obligations on States, they cannot place obligations on individual citizens. **This Guidance primarily dictates how individual citizens should be treated by the EA, and therefore it is essential that the respective duties of individual citizens and members of EA staff are clearly understood.** The UNCRC and ECHR are not directly relevant to understanding the exercise of these duties, and to imply that they are tends to muddy the water.

Statutes are enacted under the treaty obligations of the State, and then interpreted by the Courts in the light of International Treaty obligations. The role of the EA, and specifically the staff who will use this Guidance, is not to add their own interpretation but to correctly apply domestic law.

There is a sense that it is considered an end in itself to quote or reference children's rights in official documents. The aim should be to actually promote effective access to the child's rights- and that is not best done by creating legal confusion.

Simply dropping quotes from these Treaties without sufficient context does not promote children's rights, and indeed may undermine them. Without clear Guidance EA staff may be positively encouraged to measure families against their own idiosyncratic idea of what constitutes (for example) an 'empowering' education. Doing this could undermine the effectiveness of the child's right to an education and may also have implications for their privacy and family life.

The Draft Guidance should be amended to make the legal context and application of the UNCRC and ECHR clear, or references which could be misunderstood should be removed. The duty of the EA to promote the rights enshrined in the UNCRC and ECHR is met by their scrupulous application and understanding of domestic law.

#### *2. Their inclusion implies that they **do** have a legal effect on families*

Including these aspirations positively encourages EA staff to overreach their powers, it needs to be made very clear at every mention that these are not obligations on home educating families.

This internal document will dictate the way that families are treated by EA staff. Though it cannot directly dictate the duties of parents **it should be clear on what those duties are.**

Many families have experience of EA officials attempting to assess home education against whatever the official personally feels is important: progress, closeness to the national curriculum, the use of specific types of resources, how the child's work is recorded or if it is formally marked...

In fact the only legal requirements are that the education should be 'efficient', 'full time' and 'suitable to his or her age, ability, aptitude and any special educational needs they may have'.

To include a list of aspirations with a weighty International Law pedigree, is to imply that they are markers against which the EA can measure an education in this country. This encourages officials (who may understandably be unclear on the principles and application of international law) to measure a

family's provision against irrelevant and ill-defined standards and this will have a direct effect on the wellbeing of home educated children. This leads us to the third point...

### *3. Undefined requirements encourage potentially unlawful or harmful improvisation by officials*

Parent's obligations under domestic law have been through the Courts many times and have been the subject of much debate and discussion. Whilst it is clear what 'suitable' 'efficient' and so on mean, other terms such as 'child-centred' or 'human dignity' are not defined in domestic home education case law. The inclusion of ill-defined terms may place families in the hands of officials with little understanding of home education, and far too much power of interpretation.

It is not appropriate for an official to evaluate how 'empowering' a child's education is for example – however much both the official and the family feel that empowerment is desirable. Nor is it conducive to the promotion of children's wellbeing if (in the absence of parental fault) officials are encouraged to usurp the parent's role in shaping their education or defending their rights.

If the references to International Law cannot be removed or contextualised then the training which EA officials receive must make their application clear.

HEdNI will produce information for parents on this matter, to mitigate the negative consequences of any misunderstanding. However these are sticking-plaster solutions, it would be better if the confusion did not arise.

#### *Special Educational Needs.*

While the clarity of the process section will have considerable benefit for children with SEN, there are legal inaccuracies in the SEN specific section of the Draft Guidance. For example, parents are not required to engage with the Statementing Officer regarding home education, as the Draft claims.

It is unacceptable for SEN families to have the additional burden of educating professionals on their responsibilities, or for them be impeded in this by the Guidance which should do that job. Families whose children have SEN have always suffered the most from confusion and ignorance around home education law. They deserve Guidance which empowers them to insist on fair treatment.

There is no possible way that a few paragraphs in general Guidance can give adequate information on the interpretation of the whole SEN Framework in the context of Elective Home Education. **It will be essential for SEN-EHE specific Guidance to be drafted** – this is a legally complex and highly sensitive area. Families with children who have SEN have always been the most likely to suffer from overreaching by EA officials, and very little of the SEN Framework has been drafted with any thought of environments other than school. Sensitive and intelligent interpretation of applicable law will be necessary to avoid discrimination and harm to vulnerable children.

Notably the Draft Guidance references the implementation of the Special Educational Needs and Disability (N.I.) Act 2016 which calls for 'the voice of the child' to be heard, this is a reference to Children's Rights in International Law, the use of which has problems which have been discussed in more detail elsewhere.

The importance of enabling the voice of the child to be heard is not doubted, and the EA has a duty to facilitate the child's right to be heard. However, many parents are concerned that their SEN children will be required to meet strangers and express an opinion, and that this could be very harmful. This Act was not drafted with home education in mind and assumes that they will be applied in a school environment.

We call on the Education Authority to develop specific Guidance for SEN in EHE in the context of this Act and in consultation and cooperation with those affected.

#### *A note on the Easy Read Guidelines*

These are wholly inadequate. It is very important that people with language or literacy issues are able to fully understand the process which they will go through if there are concerns about the education which is

being provided. We do not believe that the Easy Read Guidelines will provide that clarity or empower families to insist on fair and legal treatment.

### **Other concerns**

#### *“Effective Education”*

The introduction to the Draft Guidelines cites an ‘effective education’ as a requirement deriving from EU case law. No such case law appears to exist, nor does any EU circular or Guidance make this a requirement.

The Belgian Linguistics Case<sup>1</sup> and the Guide to Article 2, Protocol 1 both make it clear that it is the **right** to an education which must be effective, not the education itself, and that the State is required not to impede the exercise of that right.

No parent (indeed no school either) should be measured against ‘effectiveness’ on the basis of EU law. The Guidance should be modified to accurately represent the duty and to instead say that –

*“EU case law makes it clear that States must do nothing to impede the effectiveness of the right to an education”.*

In any case, as noted above, even if this *were* a requirement on States, it would not be a requirement on families. This Guidance cannot directly speak to parents but in order to encourage fair practice it should be clear on what parental duties actually are.

#### *Schools responsibilities on deregistration*

It should be made clear that whatever the Guidance may encourage in terms of ‘discussion about the implications’ or ‘support’, parents are not required to accept what is offered or engage in any discussion whatsoever with the school.

#### *The Guidance directly addresses parents at several points.*

The EA is not able to instruct parents, we are not employees of the Education Authority. Guidance may be issued to employees of the EA, and it should be available to the public to allow them to understand how they should be treated and to hold the EA to account.

The tendency of the old Boards to treat parents as wayward employees was a serious threat to the wellbeing of children, and this Guidance should seek to avoid any suggestion that this could be acceptable. Therefore, while the Guidance should be clear on what parental duties are, it should be equally clear on who it is addressing. Those parts of the Guidance which directly address parents (for example the ‘considerations before deregistering’) should be reworded to address EA employees.

#### *Support, access to school facilities and exam access.*

The EA is not legally required to provide any of these. It is far from clear what support will be available (especially from schools at the point of deregistration) and what the school considers to be ‘support’ may not be welcomed by the parent or beneficial to the child.

The bar for access to school facilities is set so high as to make it useless. It would be better to word it as a general encouragement to schools to consider community engagement with advice on how to do that, or alternatively to leave this section out entirely.

The information on exams is vague and non-specific – again it would be more useful as a general encouragement to schools to consider accepting external candidates, with practical advice on how to do so. Recent information from the Conway Centre suggests that they may cease to offer exam sittings, which would seriously impact opportunities to access exams not only for home educated children but for any person seeking to access qualifications other than through school and on the expected timetable. If we are to lose the Conway Centre as an option, it would be very welcome if the Education Authority would seek to encourage and enable wider access through schools and other appropriate venues. Many schools are

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<sup>1</sup> [https://hudoc.echr.coe.int/eng#{"fulltext":\["belgian linguistics"\],"itemid":\["001-55398"\]}](https://hudoc.echr.coe.int/eng#{)

concerned about insurance, or the impact that results might have on their statistics. Reassurance and information on these points from the EA could be decisive in opening up access to qualifications.

Information and support to schools in allowing access to facilities and exams would be welcomed by many families, but we acknowledge that EA has no legal duty to provide this service and that they must work within budgetary constraints. It is better not to offer services which the EA has no concrete plans to provide.

## Notes, section by section

### 1.1 Defining Elective Home Education

Elective home education is not the practice by which parents “decide” to educate their children outside the school system, it is how they actually deliver the education. It is one of the means parents may employ to fulfil their duty to educate, along with state or private school, or sometimes EOTAS.

### 1.2 Reasons for Choosing Home Education

This section need not be given such prominence. If the list is given then it should be noted that parents do not need to provide their reasons or justify their decision. We suggest:

“Parents chose to home educate for a wide variety of reasons, which they are not required to share with EA staff or the school. Reasons may include, but are not limited to:“

### 1.3 Key Principles Underpinning these guidelines

It would be better if any principles quoted derived from primary legislation, or the basic legal principles on which home education law is founded.

- Why is the ECHR quoted here? It seems superfluous since none of the other principles listed cite law or treaties. It also makes the section longer and less clear.
- It is unclear whether this is talking about a general intention to work with and listen to parents when they make their views known, or a specific intention to contact each individual family and insist on a dialogue with them. This Guidance should avoid any suggestion of the latter.
- It is also unclear with whom and for what purpose the EA would like to “develop effective partnerships”: it suggests a shared responsibility for education and a “partnership” between the parents and the EA, which would be misleading.
- Home education is not required in law to be child-centred. The fact that it *can* be child-centred and that good practice in home education tends to favour a child-centred approach is irrelevant here.
- “parent focussed” suggests a level of respect for the parental duty to home educate which is not evident in the rest of the sentence in which it appears. Many parents legitimately prefer to minimise dialogue with the EA, and it is not clear how coercive the EA’s active promotion of ‘positive dialogue’ will be. Nor are parents required or encouraged in law to see themselves as ‘partners’ of the EA.

We would assert that the key principles should be:

- Accuracy – the guidelines should accurately portray the legal duties and powers of both parents and the EA
- Clarity – the guidelines should promote good practice by making it clear what powers the EA has and how they are permitted to use them
- Respect – the guidelines should demonstrate respect for the parent’s primary role, and make it clear that any contact additional to that required by law is on the basis of voluntary uptake of services for as long as the parent judges appropriate

### 2.1 The Law in Northern Ireland

This section fails to mention some of the most important provisions and includes some which would be better left out.

The law in NI does not include the ECHR, it does however include Schedule 13 to the Education and Libraries (NI) Order 1986 and the Pupil and Attendance Regulations no 78 1974, neither of which are mentioned.

As previously stated, the inclusion of the ECHR is liable to create confusion and make it difficult for parents to promote their children's right to an education.

## 2.2 Defining efficient full-time education

The reference to the case law mentioning the child's "full potential" is unnecessary and potentially confusing. The Order itself sets out the requirements for a suitable education, and the features it names have been well defined. "Full potential" on the other hand is less well-defined, liable to be subjective and confusing and is rarely referenced in case-law. Again, it tends to encourage value judgements which are unwarranted and unsupported in law.

The section on "full time" states:

"Children normally attend school between 22 and 25 hours a week for 38 weeks of the year, but this measurement of "contact time" **may** not be relevant to elective home education"...

(emphasis added)

Could the EA clarify under what circumstances the hours spent home educating **would** be compared to school 'contact time'?

## 2.3 Compulsory School Age

It would be more appropriate to refer to Compulsory Education Age, given the subject of this document or to explain why the word 'school' is used. School is not actually compulsory at any age.

## Part 3: Considerations for parents and carers contemplating elective home education

It should be made clear that the Guidelines are for the EA and cannot be binding on parents, while these are areas that parents may well wish to consider they are not required to do so and this should be explicit.

Parents are not employees of the EA. A preamble should be added which explains the effect of this section.

For example:

*"Parents are not required to justify their decision to home educate or demonstrate that they have considered any particular factors before deregistering. However, where a parent approaches the EA for advice and support before deregistration, the EHE officer may encourage them to consider some or all of the following points as appropriate to the individual case."*

But it would be better to alter the voice of the section to address the EA Officer rather than the parent.

Again, the references to the "rights of the child" are heavy handed and inappropriate here, no other part of this section cites law, and the first section is already focussed on the desirability of seeking the child's view.

### 3.1 – The Child's View

It should be made clearer that however desirable it is for parents to listen to children, no international treaty can impose individual obligations of this sort. Home educators tend to consider themselves as unusually receptive to their child's voice, and the implication that they need special encouragement to consider their children's wishes is offensive, especially when so many children have experience of their views being disregarded in school.

### 3.2 – Educational Approach

A useful statement. Especially that it acknowledges that a settling in period can often be useful.

### 3.9 – Issues at School

It should be made clear that opting for Home Education is in fact a legally and educationally valid solution to problems at school. Parents are not required to exhaust every avenue before opting for home education and they are not required to interact with the school concerning their decision. Home education is not second best or a last resort, it is equal.

#### 4.1 – Parents

The invitation to contact the EA for advice on curriculum, public examinations and future enrolment at school is peculiar. It suggests a rather limited view of education which we hope that the EA does not hold, and would be liable to discourage rather than encourage parents from making contact. Nor will many parents be convinced that there is more support and advice available from the EA than is readily available on the internet. We have often spoken of the importance of building trust, and this is true not only regarding the EA's good intentions but also their expertise and advice.

**Query-** the Guidance specifies a signed letter. Is there any legal reason why a parent cannot use email? In many cases the insistence on a letter will introduce unnecessary delay and confusion.

#### 4.2 – procedure when the school receives the deregistration letter

- The discussion of parental responsibility here seems redundant - especially the reference to potential parental discord. Surely it is covered by the same school or EA policies (the Guidance referred to in previous drafts - DE Circular 1999/17) as any other decision by a guardian (for example registering with a school or giving permission for an outing).
- We welcome the fact that it is clear that no delay is permissible in removing the child from the school.
- References to a 'transition period' are potentially misleading, suggesting an ongoing role for the school after the point of deregistration.
- If the EA wishes to encourage schools to offer ongoing support then it must be made clear that this is an optional service to be used at the absolute discretion of the parents.

#### 4.3 – procedure when the EA hears of deregistration

- There is no reason for the EA to contact the Principal for an opinion of any sort. Schools should not be invited to give their opinion on the parent's capacity to home educate, they have no training, experience or legal standing to do so. If they have concerns then they should certainly refer them to the EHE team, but especially where there have been 'issues' with the school the Principal should not be positively encouraged to take a 'parting shot'!
- Again, references to a 'transition' may wrongly be taken to mandate or allow an ongoing role for the school after deregistration.
- It should be made clear in this section that no delay on deregistration is possible, references to transition period may suggest otherwise.
- An annual contact is not legally mandated, nor will it be welcome in many cases. EHE parents are highly sensitive to any suggestion of monitoring. Annual contact is bad practice where no concerns exist.
- The statement that the EA 'will' engage with a home educating parent 'whether their child has been registered at school or not' suggests a level of mandatory engagement which is misleading. If a child is never registered with a school, the parent does not seek support or advice and no concern is ever raised, then it is perfectly legitimate if the EA never makes contact of any sort with a family.

#### 5.1 Example of Learning (typo? – 'Examples' maybe) and 5.2

The lists given are fine.

It is good:

- To have a list of possible ways of giving information
- To have a clear statement that parents are not required to do the various things listed in 5.2, given that the aspirations given from the ECHR and UNCRC might imply otherwise

However the statement that parents may find “a structure” useful seems redundant. Surely a parent who finds this useful will not be discouraged from using it simply because not every family is required to have one? What would count as “a structure” anyway?

## **SEN**

This section is too long, confused in places and occasionally misrepresents the law. It should be shorter and simpler, and proper detailed Guidance should be drafted to cover this important area in the necessary detail when the relevant legislation can be properly implemented.

### 6.2

Very helpful: “The process for deregistration and the duties of the parent are the same as for all children.”

The following statement wrongly implies that there is a requirement to engage with the statementing officer: “Parents choosing to home educate their child should engage with the relevant statementing officer within EA.”. This is not the case and the claim should be removed from this Guidance.

### 6.3

Promises a training programme. This doesn’t need to be in the Guidance. Either it will come to pass and parents can be offered it, or it will not and then the Guidance will be misleading.

### 6.4

Makes it clear that parents using EHE can still access appropriate support from the EA under the SEN Framework, which is good.

However – there is an implication that parents have to proactively satisfy the EA that their educational provision is suitable. This is not the case, they need only make appropriate response to concerns, the same as any other parents.

- “If the EA has a concern after due consideration that the parents are not making suitable arrangements suitable to the child’s age, ability and aptitude and to the special educational needs as required under Article 45 of the Education and Libraries (NI) Order 1986, then EA will follow the processes outlined in Part 11 of this document and may conclude that their obligation to arrange the provision in the statement must be met. “

The only thing open to the EA to conclude under Schedule 13 is that the education is suitable or not suitable, if not suitable then they may further conclude that it is expedient that the child should be registered with the school and issue an SAO.

The process for considering this is detailed elsewhere and is the same for all children, with or without SEN.

If the child is in school then of course the provision detailed in the Statement must be made, but that is not a matter for Guidance on Elective Home Education.

### 6.5 – Future legislation

It will be absolutely essential to formulate SEN-EHE specific Guidance, taking the “Special Educational Needs and Disability (Northern Ireland) Act 2016” into account. That statute has clearly not been drafted with EHE in mind. If it were applied crudely and without the required level of understanding and nuance, then the effect would be deeply discriminatory and harmful to SEN children’s wellbeing. This would be contrary to the clear intention in the Act to support the rights of those with Special Educational Needs.

## Missing

These aspects should be covered in separate SEN EHE specific Guidance, the section would be too large and complex for general Guidance.

- There is nothing here about access to therapies or support outside the school environment – this is a key concern, not all provision in the Statement is or should be school based
- Information should be provided about access to exams, in particular the process for making special access arrangements
- We need clarity on the annual review. Parents of children with SEN have expressed concern that this might require them to meet with the EA or prove that their approach is valid. Any whiff of monitoring or discrimination is to be avoided, equally any additional administrative burden on parents of SEN children. We are aware that several families have recently been asked to demonstrate the suitability of the education they are providing as part of the Annual Review, this is an inappropriate use of that forum. Monitoring is not a legal requirement, nor does the EA have the power to monitor. Attempting to do so under the guise of the annual review on the basis that that child has SEN is discriminatory. This section will do nothing to protect SEN children from such discrimination.
- The necessity for sensitivity to the home education context will be important as the Special Educational Needs and Disability (N.I.) Act 2016 is implemented. This Act was not drafted with home education in mind and assumes a school environment. It will be essential to develop specific Guidance for SEN in EHE in the context of this act and in consultation and cooperation with those affected, it cannot be argued that the legislation was intended to turn parents of SEN children into state-employees.

We call on the EA to engage with parents who are home educating children with SEN in order to develop clear and targeted Guidance in this area. We note the following issues:

1. Parents are not employees of the EA, even when they home educate, and the implication that they may be required to produce or implement a personal learning plan to the possible detriment of their ability to meet their duties under Article 45 of the Education and Libraries (NI) Order 1986 creates serious concerns.
2. Parents who have deregistered their children with SEN precisely because their voice could not be heard in school will be deeply disturbed by any assumption that their child's voice can only be "heard" by professionals, or that their children must be produced and forced to express an opinion. Provisions designed to give children a voice inside school cannot be applied outside that context in the same way, this would be insensitive and counterproductive.

A parent comments:

*"This Special Educational Needs and Disability Bill: It says it will ensure the views of the child, which I have always done, and school has not. Does that mean they would want to speak to my children, because I know [child's name] would not like some stranger talking/questioning [them]...and as with many special needs children, [they] can be easily led to pick the easiest option that is being offered to [them]... And since when did schools ever ask children if they wanted to be in school, and respect and act on that?"*

## Part 7 - Safeguarding

EA officers are advised to contact CPSSS for advice on safeguarding, and we are told that EA staff will be trained in safeguarding and child protection. Will CPSSS be trained in home education law and practice? It is common for home education to be viewed as a *prima facie* concern and it is important that this prejudice is not entrenched in practice.

Otherwise, we welcome the clear statement that EA will "respond to safeguarding concerns in the same way as they would for any child attending school". Home education in itself is not a safeguarding concern.

## Part 8 – family support

The EA should note within this section that the issues mentioned do not necessarily rule out home education, and that home education can be a valuable constant at difficult times in a family. Families may worry that seeking support will lead to their children being put in school against their wishes and best interest.

## Part 9 - Community Use of Schools

While we applaud the intention to open facilities up to community use, it must be recognised that it is highly unusual as well as expensive for parents to hold commercial insurance. If efforts are not made to facilitate access to reasonably priced cover on an ad hoc basis then the access discussed will be entirely theoretical.

The paragraph as it currently reads is less an offer of facilities and more an emphatic rejection of the possibility of engagement. If it cannot be improved it would be better removed.

## Part 10 – public examinations

- An encouragement for schools to offer access to external candidates, and support for them in doing so, would be appropriate and warmly welcomed here. This will be especially important if the Conway Centre does indeed cease offering examinations.
- This section gives some general information on examinations which may become outdated, but does not give practical assistance to support schools in accepting external candidates. We suggest that a general encouragement to schools to consider external candidates (with practical advice) and to parents to ask the EA about current qualifications is included.
- Advice on how to apply for special concessions would also be appropriate.
- It is not true that “In all cases parents should investigate thoroughly whether, and how easily, their child will be able to access examinations”. Parents should only do this if exams form a part of their home education provision. While we do not suggest that the EA seeks to imply otherwise, it is important to use clear language.
- The specific information on IGCSEs seems superfluous and liable to go out of date. This information is readily available online. A separate leaflet might be more appropriate.

## Part 12 –process

- The three-step model seems unnecessarily complex and the basis for the division into steps is not clear
- Otherwise the process is clear and useful.
- This is a key positive point for this Guidance.

Some concerns regarding part 12.

- Best interests of the child (introduction). This is not the place for a general exhortation to consider the best interests of the child – this is a technical section dealing with the procedure under Schedule 13 of the primary legislation. The EA is required to consider the suitability of the child’s education and not their overall best interests, in deciding how to meet their duties under Schedule 13.
- We feel that the timeframes in the informal section are unnecessary and that the inclusion of anything without a clear legal basis is undesirable. There is a risk in any implication that the timelines can be enforced or that the professional judgement of the EA officer involved is constrained by them. If the EA wishes to give parents an indication of usual timeframes, then this may be useful but the current wording suggests that these timeframes have some legal force, which is misleading.
- It should be explicitly stated that all consideration of the suitability of the education being provided to a home educated child must respect the duty provided to parents under Article 45 of the Education and Libraries (NI) Order 1986.

- It should be explicitly stated that this process only addresses concerns regarding the suitability of the education being provided to the child. The EA has no duty or power to investigate any matters outside of this domain (for example safeguarding issues); if any other serious concerns become apparent then they should be referred to the appropriate agency and should not automatically be considered as educationally relevant.
- Some key parts of the process are not represented in the flow-charts, for example the importance of providing written information to parents. It will be important for training to discourage oversimplification of the process based on the flow-charts rather than the detailed text.

## Appendix 2

- “Since September 2010, parents have had the right to request complete deregistration of their child from school for the purposes of providing elective home education (EHE).”

It is not a ‘request’ and the requirement to keep the child on the register of the school in previous circulars was removed from previous Departmental Circulars because it was without legal basis. There was never any legal requirement for a child to remain on the roll after deregistration, the paragraph making that claim should be removed. The paragraph has no purpose, does not affect any part of the Guidance or future practice and only serves to highlight previous errors in the interpretation of the law.

- This is not an appropriate forum to discuss school attendance issues. They are (by definition) irrelevant to home education.

### **Additional appendix?**

It may be useful to include a sample deregistration letter for the parent’s use. It should be clear that other forms of words are acceptable. For example:

“A deregistration letter should address the principal of the school, should state an intention to home educate and should provide sufficient identifying information about the child concerned. Any wording which gives the essential information is acceptable, but here is a template which parents are welcome to use if they wish:

*Mr/Mrs <insert principal’s name>*

*Principal*

*<insert school name>*

*<insert school’s full address and post code>*

*Dear <insert principal’s name>,*

*Re - <insert child’s name - date of birth>*

*I am writing to inform you that <I/we> have decided to withdraw our son/daughter from school from <insert date / with immediate effect> in order to home educate <him/her>. Please delete <his/her> name from the register in accordance with DENI Circular 2017/15 and The Registration and Attendance of Pupils Regulations (Northern Ireland) 1974 (S.R. 1974 No. 78), as <he/she> is now receiving education otherwise than at school. Yours etc...”*

### **Necessity for effective training.**

If the hope of a better relationship between the EA and home educating parents is to be realised, and if the Guidance is to be properly implemented then effective training will be essential for all officials involved.

All too often we are told of EA officials disregarding the law and operating with reference to their own priorities. We have already been contacted by a concerned parent who has received advice from a respected NGO that is wildly inaccurate and which references this draft Guidance as support. Clearly there is scope for misinterpretation.

A new home educator is understandably less well informed on the law, may not have made contact with other home educators, and may be worried about their child and their decision to home educate - particularly where there have been problems with schooling and especially where the child has SEN. It is all too easy for these parents to be misinformed and bullied into providing more access to their homes and children than they feel comfortable with. This places undue stress on the family and may put the education and wellbeing of children at risk.

The experience of home educators indicates how important training will be – not only of the EHE team but also of SEN officers, school principals and any other professionals who might offer advice or support.

#### Part 4: Consideration of a Register of Children who are Home Educated

The Framework for Elective Home Education, issued by the Department of Education and on which these guidelines are based, included the consideration of a register of children who are home educated, however this is not currently required by law in Northern Ireland. We would welcome your views on whether all children who are educated at home should be required to be registered by the Education Authority.

##### 1. Please use the space below to comment in relation to Part 4 of this consultation

The inclusion of this question is in itself a serious concern. It is likely that many professionals responding to the consultation, and most new home educators will reflexively support a register, with little idea of the implications, the legal context and the potential harm to children.

**We object in the strongest possible terms to any form of register.** Home education is not a problem to be monitored or solved; we are not a danger, we are not exercising a privilege, we are meeting a legal duty.

In brief the objections are:

1. Registration in this country exists for those who are dangerous (sex offenders), in danger (child protection) or exercising a privilege (drivers). Home education falls into none of those categories.
2. Registration, even the lightest touch version, will involve the processing and storage of the most highly sensitive information – data protection issues, effects on the child and family's right to privacy.
3. This information may be used without consent. It is known that information on school children has at times been shared, lost or unlawfully used.
4. Voluntary registration is unlikely to offer any benefit to families, as a minimum it creates an administrative burden, and it may be treated as suspicious if a family does not wish to register.
5. Voluntary registration has no legal basis. This would mean there are no legal safeguards for parents or children, and no redress or remedies for misuse of the register.
6. Mandatory registration is impossible under current law. No penalties against parents can be created without legislation. Legislation, if pursued, would be an ineffective response to an unproven concern, and would harm children.
7. Procedural questions: by what process would a family join a mandatory register, would they need to apply? Could their registration be refused, and on what grounds? What appeal process would be available? Would it be possible to home educate if registration was refused? Could an SAO be issued purely on the grounds of registration issues, with no suggestion of any concerns about the education? This would be to punish the child for administrative errors or principled disobedience by the parent.
8. What control would families have over the data held on them? GDPR issues.
9. Registration in itself has no protective function against families failing to meet their legal duties. Indeed the administrative overheads are more likely to increase the size of the haystack than to help identify the needle.
10. Budgetary constraints – why should limited resources be diverted to this? The problem is unproven, the register unlikely to address it even if it exists, and the attempt liable to undermine the EA's ability to carry out its actual duties.
11. Unpopular. Without the consent and support of the home educating community such as scheme will be impossible to implement. Many families are so worried about this that many are unwilling to respond to

this consultation. They feel that to bring themselves to the attention of the EA in any way is to risk their children's education and wellbeing.

12. Trust. Parents do not trust that registration would be the end of it, it is widely believed that it would develop into some form of monitoring and that 'voluntary' would swiftly develop into a *de facto* or even legal requirement. Parents therefore feel that any scheme puts their children's welfare and education at risk, this is the top of a very slippery slope. They feel a justifiable concern that the end result of a registration scheme will be to put their child's education and wellbeing in the hands of a stranger with too much power and too little understanding.

**Registration would be unpopular, ineffective, unlawful.**

Over the last five years HEdNI has been engaging in good faith with the Education Authority, in the interests of promoting children's right to an education and developing the trust between home educators and the EA which has been so sorely lacking. If this positive process continues then the EA will continue to make connections and develop a real knowledge and understanding of home education in Northern Ireland. Such connections will support the child's right to an education and help the EA to meet their legal duties. The creation of any form of register would set the process back immeasurably. Even the inclusion of this question in the consultation has caused considerable worry and reluctance to engage, since it seems to indicate a desire to impose a register on the community.

**With trust, engagement and understanding a register will be unnecessary, without those things a register will be impossible to implement effectively.**

HEdNI will not support any form of registration and will campaign against any form of registration scheme if proposed or created.

Part 5: Equality Consideration, Good Relations Duty and Rural Proofing

Under Section 75 of the Northern Ireland Act 1998 all public bodies are obliged to consider the implications of any decisions on nine different groupings before decisions are implemented.

The two duties within this Equality legislation include promoting equality of opportunity and promoting good relations between all communities.

The equality of opportunity duty requires that the Boards shall, in carrying out all their functions, powers and duties, have due regard to the need to promote equality of opportunity:

- Between persons of different religious belief.
- Between persons of different political opinion.
- Between persons of different racial groups.
- Between persons of different age.
- Between persons of different marital status.
- Between persons of different sexual orientation.
- Between men and women generally.
- Between persons with a disability and persons without.
- Between persons with dependants and persons without.

The Good Relations Duty requires that the Boards shall, without prejudice to their equality obligations, have regard to the desirability of promoting good relations:

- Between persons of different religious belief.
- Between persons of different political opinions. Between persons of different racial groups.

The Rural Needs Act (NI) 2016 provides a statutory duty on public authorities to have due regard to rural needs when developing, adopting, implementing or revising policies, strategies and plans, and when designing and delivering public services.

EA will comply with the aims of the EA Rural Needs Policy to ensure that:

EA complies with its statutory duties under the Rural Needs Act (Northern Ireland) 2016; due regard is given to the needs of people in rural areas;

evidence of the consideration of rural implications by EA is produced and made publicly available; and to spell out the screening process, roles and responsibilities in relation to screening for the benefit of staff and service users.

The Education Authority has completed an equality and rural impact assessment for the Elective Home Education Guidelines and has identified that it would have some minor impacts that have been mitigated within the guidelines. A full Equality Impact Assessment is not required.

Specifically EA recognises from the current information it holds and research that:

There are more post primary pupils home educated compared to Primary pupils

There are more males than females being home educated

A small number of home educated pupils have an identified special educational need

That families from a range of religious background may educate at home because of their faith

Young people from different ethnic background may be home educated

Sexual orientation may also be a factor for choosing to home educate

To mitigate against these potential factors, EA has included in the guidelines the following:

That the views of young people will be considered

A dedicated section on special educational need has been included

A dedicated section in family support and safeguarding is included

Additionally the document provides a number of positive impacts as it fulfills the following functions:

Clearly outlines the legislation in Northern Ireland

Clarifies parents, schools and EA roles and responsibilities

Identifies considerations for parents when home educating

Provides advice on how to resolve difficulties which may be a factor in part for choosing to home educate

Clearly defines how EA will respond to issues of concern

Provides information on resources and support

In considering EA equality and rural impact assessment please consider the following questions:

1. Has EA adequately considered potential positive and negative impacts?

The key positive impact of this Draft will be to clearly define how the EA will respond to issues of concern, and how families should be treated. Because we believe that the Draft will have this effect HEdNI supports its adoption.

While HEdNI supports the Draft overall we have concerns regarding the lack of clarity in some places on the application of international law, and on the duties of the EA and parents respectively.

We assume that the issue being addressed is that there is no current EA Guidance to inform EA employees of the law on home education; that EA employees do not fully understand the requirements or limitations of their role.

The aims stated in the Impact Assessment should reflect statutory responsibilities. We would suggest the following:

1. The EA should know and implement the law around home education;
2. EA employees should be supported to know and implement the law;
3. The EA should promote good practice within the EA by establishing adequate systems of training, monitoring and evaluation to ensure that the law in relation to home education is implemented and that the rights of home educating families and home educated children are not infringed upon;

4. The EA should consider, through its legal department, how other legislation impacts on EA responsibilities (equality, data protection, child protection) and ensure that home educating families are not unlawfully treated.
5. The EA should do so with due regard to their duty not to impede effective access to treaty rights.

The EA's duties under the UNCRC and ECHR cannot modify their statutory duties under domestic law, and have a limited application in any context where domestic law gives such a small role to the State. Without a full understanding of the relative legal weight and significance of domestic and international law on this subject, the confusion which has ironically so undermined the rights of children and families will continue. This negative impact will fall more on families whose children have SEN or disabilities, or where the parents have SEN or disabilities.

Neither domestic statute nor international law gives the EA a role in informing parents of their education responsibilities or permits the assumption of a supporting role in home education. Assuming these duties undermines the clarity and potential positive impact of this document.

Further concerns:

1. Equality - The Equality Impact Assessment for this consultation did not include local statistics, reports and relevant information. The EIA is an essential part of the consultation process to ensure that those protected under Section 75 of NI Act are not discriminated against. This is of concern given the impact on SEN families of the misuse of international law, and particularly with regard to the consideration of any form of register (as suggested in the part 4 of the consultation questionnaire) which would have a disproportionate impact on these families.
2. Data protection - The EA currently has legal duties, according to legislation, regarding the processing of any individual's information. As some home educating families were contacted about this consultation using their private information, can the EA explain what information it currently retains on families, where and for what legal purpose, under what legal duty, how this information was requested and disclosed and whether appropriate parental permission or consent was sought for its use? In the context of the highly contentious consideration of a form of register (again, part four of the consultation questionnaire), it is essential that families feel confident that their data will not be used inappropriately.

## 2. Is there anything additional that EA should consider in terms of equality and rurality?

The impact of the misuse of international treaties in parts of this document will impact disproportionately on children with special educational needs, particularly if upcoming SEN legislation is not sensitively interpreted for application in the context of home education.

## Data Privacy

Consultation responses will be used in the preparation of a Consultation Summary Report and to inform development of final Guidelines. Responses will be held securely for a period of 5 years from the date of the consultation closure.

A Consultation Summary Report will be produced and published. This Report will include a summary of responses received.

### \* 1. Consent Tick

one:

I consent to my name being published in the summary of responses.

~~I do not consent to my name being published in the summary of responses.~~

Where consent for publication of name has not been given, only consultation response will be published. Where the response contains any other personal identifiers these will also be removed.

Where consent for publication of name has been given and the individual wants to withdraw their consent prior to publication, please email [ehe@eani.org.uk](mailto:ehe@eani.org.uk)

Full details of how EA handles personal data are available at: <https://www.eani.org.uk/about-us/privacy/eaprivacy-notices>

Thank you for completing this survey, I acknowledge receipt of your response.