

PE1730/F

Scottish Home Education Forum submission of 13 May 2020

The Scottish Home Education Forum¹ was established as an online peer support network in 1999, and in recent years has expanded its scope to conduct research and offer advocacy, training and consultancy services. Its current membership stands at around 3,500.

In the absence of reliable statistical and demographic data on home education in Scotland, the Forum has published several research reports, including *Reasons for school-age children being in home education* (2018)², [Home educators' experiences of the health visiting service in Scotland \(2019\)](#), and most recently, [Home Truths: an investigation into home educators' relationships with local authorities in Scotland \(March 2020\)](#), which is the most comprehensive study ever undertaken of home education in Scotland.

Home educators have consistently found themselves excluded from policy discussions and adversely affected as a result of the near-universal failure to acknowledge the existence of 'education by other means' as a lawful and equal alternative to council schooling. Despite statutory guidance having been in place for two decades and the current version for 12 years, the same problems are still being reported by families on a regular basis.

As home educator numbers have grown, driven disproportionately by the cohort of children with ASNs, tensions have increased due to underlying hostility towards parents opting for non-school education. Forum members have shared myriad concerns about poor treatment by local authorities and other services, and we have raised some of the most serious examples directly with the Scottish Government.

When our attention was drawn to the [SPICe briefing](#) in respect of this petition in August 2019, we pointed out several omissions and inaccuracies, asking that it be amended and our concerns relayed to the Committee.³

Although the Convener made reference, on 19 September 2019, to our reminder of the framing of the relevant primary legislation (namely Section 30 of the Education (Scotland) Act 1980), the original briefing was not corrected.

We therefore remain concerned that the legislative framework surrounding elective home education⁴ (often mis-termed 'home schooling') is likely to remain subject to misinterpretation or misrepresentation, especially in relation to the parental duty to provide education in the compulsory years, which may or may not be delegated to council schools.

Contrary to 'lay' interpretations we have encountered, the duty placed on education authorities by the Standards in Scotland's Schools (Scotland) Act 2000 to provide school education expressly does not interfere with the parental choice afforded by the 1980 Act, as affirmed in [Schedule 2](#) of that statute:

¹ <https://scothomeed.co.uk/>

² <https://scothomeed.co.uk/reasons-for-school-age-children-being-in-home-education>

³ <https://scothomeed.co.uk/the-spice-is-not-always-right-questions-over-home-education-briefing>

⁴ <https://scothomeed.co.uk/legal/legislative-framework>

“(2) Section 1 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6) (right of child to be provided with school education by, or by virtue of arrangements made by, an education authority) is without prejudice to the choice afforded a parent by subsection (1) above.”

Returning to the petition, repeated calls for the compulsory registration of electively home educated children have been made - all unsuccessfully - over the past 20 years. As key stakeholders, we have extensive knowledge of the arguments, both for and against, as well as direct experience of resisting unjustified interference by the state, up to and including pursuing judicial review.

We can advise the Committee that counsels’ opinions obtained by home educators over the past two years have all concluded that compulsory registration of home educated children whose parents are exercising an equal lawful choice (and remain subject to legislation that already permits necessary state intervention in the event of parental failure) would constitute arbitrary interference with Article 8 and other rights under the ECHR (given effect by the Human Rights Act 1998), GDPR (Data Protection Act 2018) and the Equality Act 2010.

In his [written submission to the Committee dated 19 October 2019](#), John Swinney, Cabinet Secretary for Education and Skills, helpfully separated and re-stated the relevant thresholds for state intervention on education and child protection grounds:

*“It is important to emphasise that **these provisions on education are separate from any wellbeing concerns regarding the child or young person that is being home educated**. Local Authorities have a duty to safeguard and promote the welfare of children in their area regardless of where there are educated. It is **always the case that if a child is considered to be at risk of significant harm, then practitioners have a duty to take necessary and proportionate actions to address those concerns through child protection procedures**.”* [our bold]

The Cabinet Secretary also intimated that the [statutory guidance on home education](#), issued in January 2008, is scheduled to be revised this year, although this is now likely to be delayed due to Covid-19.

Our Forum members agree that the guidance urgently needs to be updated in order to ensure compliance with ECHR and GDPR (as definitively interpreted by the UK Supreme Court and CJEU), and to this end, we have engaged in constructive dialogue with the Scottish Government over the past two years.

The government has confirmed it has no plans to amend primary legislation, which effectively rules out any question of a ‘registration’ or ‘licensing’ scheme, and we have already [responded in detail](#) to an initial discussion paper.

It was in anticipation of the planned review that we embarked on our investigation into home educators’ relationships with local authorities in Scotland. We found widespread ignorance of the law and institutional prejudice on the part of services, which we describe as ‘home-eduphobia’.

In our *Home Truths* report, we reported up-to-date home education statistics, obtained via FOI requests, including the number of school attendance orders issued by each LA, appeals and outcomes over the past three years. Notably, South Ayrshire Council, whose alleged

'concerns' over the home education of 21 children were cited by the petitioner, reported no SAOs over that period.

We also made 16 evidence-based recommendations to address omissions and anomalies within the current guidance, with a view to clarifying the parameters of local authority responsibilities and alleviating the problems that are routinely reported by home educators.

With specific reference to the current petition, we understand that the petitioner is especially concerned over the provision of compulsory education for those children whose parents live apart following separation or divorce, and/or who may disagree over the 'means' employed to educate them in accordance with their age, aptitude and ability. This is a situation in which several of our members have found themselves, and one which is mostly resolved through amicable discussion and compromise by parents.

Where this has not been possible, and in the absence of a court order, the parent with whom the children ordinarily reside is expected and entrusted to make practical day-to-day decisions in the children's best interests, which includes how and where they are educated in the absence of compulsory measures or evidence of harm. Just as vegetarianism is a permitted choice that is afforded equal respect, education by other means, including home education, has equal status to council schooling.

It is our view that both parents should respect and have regard to their children's views on their own education and other decisions that affect them, in keeping with their maturity and evolving capacities; but ultimately, the provision of education (and fulfilment of the child's right to education) is a parental function which involves the exercise of choice (albeit this is not well understood). Legally, children and young people have no say in whether or not they attend school, despite significant numbers of pupils voting with their feet.

We would draw the committee's notice to the observations of Katarina Tomasevski, former UN Special Rapporteur on the Right to Education, who wrote:

"The objective of getting all school-aged children to school and keeping them there till they attain the minimum defined in compulsory education is routinely used in the sector of education, but this objective does not necessarily conform to human rights requirements. In a country where all school-aged children are in school, free of charge, for the full duration of compulsory education, the right to education may be denied or violated."⁵

In our experience, where non-resident parents are positively and proactively engaged with their children's lives through regular contact, they have ample opportunity to hear directly from the children about their home- and community-based learning experiences and progress, even where the relationship between parents has irretrievably broken down.

⁵ [Statement by Special Rapporteur on the right to education, Commission on Human Rights, Geneva, 22 March - 30 April 1999, 8 April 1999](#)

However, we have encountered a minority of cases where ‘absent’ parents have sought to disrupt rather than support the best interests of their children, many of whom have already experienced difficulties in schools and/or the trauma of domestic abuse.

Presumably because the issue has been visited regularly on our forum, 52% of our recent survey respondents believed that home educated children need better protection from non-resident parents seeking to exert coercive control over former partners by undermining home education as a valid choice (and, in some cases, a necessity).

Several examples were cited of absent parents seeking to undermine and manipulate parents with day-to-day care of children, sometimes in collusion with local authorities who were said to ‘side’ unreservedly with the pro-school parent without exercising due diligence.

“After a steady stream of complaints from my ex, it was a relief for a few months to be free to live our lives, but now we are thrown back into it again as he has found a new way [weaponising home education] to control us.”

“My vindictive coercive ex tried to control the withdrawal process and the home education officer said his ‘permission’ would be needed. I’m preparing for the fact he might try to retract it to assert control over us.”

“The LA colluded with my coercive ex-partner to test the children without consent, ignoring their objections.”

The use of children as pawns in parental power struggles following separation is unquestionably damaging and can lead to alienation, with some older children refusing to see the non-resident parent due to real or perceived interference in their home-based education, and/or protracted legal wrangles.

One of the recommendations we have made to the government is that revised guidance should address the issue of former partners ‘leveraging’ local authorities and ‘weaponising’ home education, especially where children have already experienced trauma in schools or as a result of domestic violence.

We trust the committee will give due consideration to our submission, which is intended to be a constructive contribution to its ongoing consideration of this petition. We would meanwhile be happy to respond to queries on any matter relating to elective home education in Scotland.