



## **CELCIS's response to the Scottish Government's consultation on Home Education guidance**

**June 2022**

CELCIS, the Centre for Excellence for Children's Care and Protection, is based at the University of Strathclyde and is a leading improvement and innovation centre. We improve children's lives by supporting people and organisations to drive long lasting change in the services they need, and the practices used by people responsible for their care. We welcome the opportunity to respond to the Scottish Government's draft updates to the existing [Home Education guidance](#), which was published in 2007.

We support the review of this guidance to ensure that children are aware of their rights, and local authorities and parents and carers are aware of their responsibilities in relation to home education. To meet the needs of all learners and educators, guidance must build on foundations of listening to lived experience.

As corporate parents, Scottish Ministers and other public bodies have a duty to ensure services meet the needs and promote the interests of children and young people with care experience. We recognise that the home education guidance is necessarily broad, and our submission aims to offer a deeper perspective on the potential impact on the needs of children and young people in need of care and protection. Our response is based on research evidence, practice experience and feedback from our long-standing networks, comprising of practitioners and leaders working across children's services in schools, children's houses, and in local authorities.

### **Our Key Messages for Consideration:**

- Children's experiences and views must be listened to and meaningfully taken into account when decisions are made about their education. Lived experience will add significant depth to understanding of the curriculum and what matters to learners.
- There is opportunity within the guidance to make measures around safeguarding more robust to ensure that all children are adequately supported, and have equity of access to educational opportunities.
- Pathways for learners to register for national qualifications and practical advice on finding an SQA centre would be helpful additions to the guidance.

### **Education and children and young people in need of care and protection**

Under Article 28 of the United Nations Convention on the Rights of the Child (UNCRC, 1989) all children, regardless of their circumstances, have a right to an education. With the right support at the right time, children and young people

thrive and can realise their potential. Care experienced learners are no different, although some may require additional support at different times during their educational journey. The 2020 report of the Independent Care Review, *The Promise*, underscored the importance of Scotland being ambitious about the achievement and opportunities of care experienced learners, and the need to recognise the wider role played by schools in providing important places for care experienced children to enjoy stable, nurturing relationships that prepare them for life beyond school.<sup>1</sup>

Based on our knowledge, and conversations with Education Scotland, the circumstances in which children subject to formal child protection measures and 'looked after children'<sup>2</sup> would be home educated are extremely limited. However, we have some concerns that the guidance does not necessarily meet the needs or uphold the rights of children who have care and protection needs, and are not currently part of formal care and protection systems.

## Data

National data providing a picture of home education in Scotland is concerningly limited. The Children's Commissioner in England, Dame Rachel De Souza, recently carried out an 'Attendance Audit' to inform an interim report 'Where are England's Children'.<sup>3</sup> The report notes that nearly 5,000 children were home educated and nearly 2,000 were not at school at all. Whilst some families had made the choice to home educate their children, this survey found that a significant number of children were not at school due to issues such as bullying and mental health. In addition, a survey of local authorities as part of this report found that prior to this work, there was no national picture of where children who were not attending school were, or the reasons for this. The report concludes that without an understanding of where children are, support services are unable to have contact with them and local authorities are therefore unable to ensure their safety, wellbeing and learning.

It would be helpful for Scotland to have national data about children who are home educated, but under the proposed guidance it is difficult to see how this might be done in practice across our 32 local authorities. Without making it a necessary requirement for parents or carers to register children for school, or to make their intentions to home educate known at pre-school age, it remains difficult to see how this data could be captured both locally and nationally. Similarly, there is no requirement to make intentions to home educate a child known when a child transitions between primary and secondary schools, or between different local authority areas, which limits an understanding of who is being home educated, and what their support needs might be.

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<sup>1</sup> Independent Care Review (2020) *The Promise*: <https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf>

<sup>2</sup> 'Looked after' and 'looked after child' are the terms used in current legislation to refer to a child or young person who is cared for under a formal arrangement with a local authority. It has a specific legal meaning, but wherever possible, the more inclusive term 'care experience' is preferred.

<sup>3</sup> The Children's Commissioner (2022) *Where are England's Children*: <https://www.childrenscommissioner.gov.uk/report/where-are-englands-children-interim-findings-from-the-childrens-commissioners-attendance-audit/>

The guidance helpfully sets out the policy context making reference to UNCRC, The Promise and [Getting It Right For Every Child](#) (GIRFEC). In particular, we welcome the stated focus on children's rights to an education and to have their voice heard in relation to this provision. However, within the guidance itself there appears a strong focus on the rights of parents in terms of choice to home educate, as opposed to the child's right to be heard in decisions which affect them, and to reach their full potential. There is little outlined regarding the expectation on parents or carers in terms of demonstration of knowledge, capacity or qualifications to home educate their children, or on the local authority to monitor that this is adequate. From a children's rights perspective, promotion of both the right to be educated and to have their best interests considered would benefit from being more embedded within the guidance (UNCRC Article 3, 23, & 29).

As Scotland's national approach to improving the wellbeing of children and young people, GIRFEC is rights and strengths-based, and centres around working in partnership with children and families to support and enhance wellbeing. The multi-agency nature of the GIRFEC approach is crucial, and systems and processes in education must be developed which systematically pay attention to children's holistic wellbeing, rather than focussing purely on their educational attainment. This focus on children's wider needs applies equally to home educated children and young people. Therefore, we suggest that the section on GIRFEC at paragraph 5.10 is moved to the beginning of the document to highlight the importance of children's holistic wellbeing and how children can be supported to achieve the best outcomes in their individual context.

While the guidance highlights that home educated children and their families can access the 'named person' service where this exists locally, it remains unclear who would undertake this role and how families would ascertain who this is. Similarly, where a more integrated response is necessary to respond to a child's wellbeing needs and a 'lead professional' may be required, it is uncertain how this would be managed in a home education context. These issues must be clearly set out in the guidance in order to provide children and families with clarity on where to access support, and for professionals who require unambiguous information about their roles and responsibilities.

### **Home Education: children's wellbeing and safeguarding.**

We do not suggest that home educated children and young people are necessarily at increased risk of safeguarding issues, but we have concerns that there are gaps in the guidance regarding assessment of wellbeing for those educated in a home setting. This is out of step with the current principles of the GIRFEC approach which are to keep the wellbeing needs of every child at the centre of all considerations.

Paragraph 2.9 states "Choosing to home educate a child does not require consent from the local authority if the child has not commenced attending a school at the point when they would have commenced a school education." This

is concerning, as there is no way of capturing data on children who are not registered to attend school in order to assess adequate educational provision is in place. This effectively means that some children (albeit very small numbers) may not ever be known to education authorities, and nothing known about the standard of their education or their wider needs. This differs from older children already attending school whose parents or carers need the consent of the local authority to withdraw their child from formal education. This significant and concerning gap is also the case where a child is transitioning from primary to secondary school or has moved to another area without enrolling. As consent is not required to begin home education, once again these children may not be known to the local authority either. The suggestion that educational support in these situations might be provided via a local authority's website seems wholly inadequate, and lacks robust procedures for education authorities to follow to identify and support these children and families.

Paragraph 2.13 states, "There is no statutory duty upon local authorities to 'monitor' ongoing home education provision", and goes on to state that there is a duty to serve a notice where there are concerns about efficient education as set out in section 30(1) of the Education (Scotland) Act. This is problematic as, when resources are at a premium, attention to non-statutory duties may become less of a priority, leading to local authorities not knowing that some children are receiving an inadequate education.

Article 29 of the UNCRC sets out that children's education should help their mind, body and talents to thrive. The recent report<sup>4</sup> on Education Reform in Scotland by Professor Ken Muir also stated that education must be viewed in the widest sense, ensuring that children's holistic needs are met within education. Without an understanding and oversight of the adequacy of education being provided to home educated children, it is not possible to ensure that children's rights in this regard are being upheld.

Aligned to this is ensuring that young people are supported in their transitions to positive post school destinations to achieve their full potential. Home educated children may inadvertently be excluded from the opportunity to access national qualifications too. The guidance allows for that and there is no legal responsibility on local authority, independent schools or other settings to accept an application for home educated young people to register with them to sit qualifications or exams. Without being registered at an approved SQA centre, young people cannot access qualifications and are therefore at a significant disadvantage when they leave school.

Paragraph 3.19 details the circumstances where permission to home educate may not be granted immediately. This relates to child protection situations or where a child is in need of compulsory measure of care. However, within universal services there are often wellbeing concerns about children and young

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<sup>4</sup> Putting Learners at the Centre: Towards a Future Vision for Scottish Education; Scottish Government (2022): <https://www.gov.scot/publications/putting-learners-centre-towards-future-vision-scottish-education/>

people who do not meet the threshold for referral to social work/police or a referral to the Children's Reporter. It would be beneficial to refer to situations where concerns have been raised via a GIRFEC child's planning meeting, and what this means in the context of a request to withdraw the child from school.

Regarding contact between local authorities and home educating families, we would suggest that contact only once a year is insufficient and would suggest that this is increased, and aligned with local arrangements for monitoring children's wellbeing within schools (e.g. every term). This section would also benefit from a statement highlighting the general duty to consider any wellbeing and safeguarding concerns, and how lower-level concerns for wellbeing might be addressed. Education and wellbeing are intrinsically linked, children's education should not be assessed in isolation to their overall health and wellbeing. There is also the potential for the context in which home education begins is a positive one but for the child and/or family to encounter difficulties which mean that the situation deteriorates quickly either in terms of educational needs or wider needs. In this context, yearly visits would represent a considerable time lapse in highlighting any concerns and in the child or family accessing the right support they need.

### **Withholding Consent**

Paragraph 3.19 makes it clear that where there are existing concerns resulting in a referral to social work, police and health or the involvement of the Children's Hearings System, that this is a ground for refusing consent to home educate immediately. We remain concerned that there may be wellbeing concerns which do not merit a child protection response but nevertheless may mean a family requires a multi-agency response. Every child's situation will be unique and even in this type of situation, home education for some may assist. However, for others this may exacerbate the problems, and this section of the guidance could be strengthened by widening the scenarios in which it may be more appropriate to withhold consent. For this reason, we would also suggest that further consideration be given to the child's educational needs in the time between a parent/carer making an application to home educate and a decision being made.

### **Access to the child and home or learning environment**

While the guidance makes it clear that it is important to see a child in the learning environment, there is no statutory basis to seek access to the child and the parent or carer might refuse this. Paragraph 4.7 goes on to state that "Depending upon the circumstances, there may be occasions when a denial of access raises child protection concerns." Denial of access alone would not necessarily be grounds for concern without additional information to support that conclusion i.e. other contact with the child in another situation such as universal health services. For this reason, we remain concerned that this contact may be yearly, and that no assessment of educational needs or wider wellbeing needs would be undertaken in between this contact. In the absence of other wider concerns within the community or other universal services such as health this may mean that a child effectively could remain unseen, and any concerns hidden. As a past serious case review noted "...within current legislation, the assessment requirement for home education is weak and there is no mandate to

monitor, assess or inspect the quality of home education provision, once approval to home educate has occurred. Consequently, there is no effective method to ensure that home education remains suitable, developmentally appropriate and safe, without the explicit consent and active participation of parents, or carers.<sup>5</sup>

### **Listening to children and young people**

In a rights-respecting nation, children's views must be sought, heard, and considered for any and all policies affecting their rights yet it is unclear whether the views of children have been sought about either the original guidance or this draft update.

Paragraph 2.4 states "Local Authorities should consider how the individual and collective voices of home educated children can be heard." We recognise that the consultation is asking about views on how best this can be achieved. The guidance is suggesting that during initial assessment of the parent or carer's request to home educate, Local Authorities should seek to hear the child's views. However, we have some concern that within the current guidance the focus is on the views and rights of parents, perhaps to the detriment of children and young people. Once permission has been granted there is little reference to seeking the child's views on an ongoing basis to ascertain if this has changed in any way and if so, what steps might be taken if the parent or carer/s have a differing view. This is highlighted in a Serious Case Review in England where it asserted that "the lack of any prescribed opportunities for children to formally express their views, or to actively participate within the assessment or decision-making process of home education, or to have any independent access to external processes, represents a direct contradiction to the aspirations of safeguarding and human rights legislation and guidance. Given the tragic outcomes identified within this review, it also represents a major safeguarding flaw."<sup>6</sup>

Indeed, a significant gap remains for children whom permission to home educate is not required as per paragraph 3.8. This means that there is no way to capture the educational, wellbeing needs or views of these children and young people as no data is captured about them currently.

There is little data available on the prevalence of care experienced young people and their families exercising their rights to recourse when they do not agree with decisions made about their education or care. However, information from the Additional Support Needs Tribunals system indicates that it is rare for cases relating to 'looked after' children to be referred.

The very low rate of representation of 'looked after' children's cases within the ASN Tribunal service highlights the risk that exists of this group of children and families not making use of reparation or appeals processes. We would strongly encourage local authorities and Scottish Government to be cognisant of this risk

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<sup>5</sup> Radford, J (2010) [SERIOUS CASE REVIEW Under Chapter VIII 'Working Together to Safeguard Children' In respect of the Death of a Child Case Number 14](#). Birmingham Safeguarding Children Board

<sup>6</sup> Radford, J (2010) [SERIOUS CASE REVIEW Under Chapter VIII 'Working Together to Safeguard Children' In respect of the Death of a Child Case Number 14](#). Birmingham Safeguarding Children Board

when considering applications for home education. What must be avoided at all costs, is any case where a care experienced child, who has un-assessed (and therefore unmet) additional support needs, is firstly not being provided with the additional support they are entitled to in order to benefit from their education; and secondly, does not feel confident or receive support and empowerment to exercise their right of appeal.

### **Consideration of the language, terminology and design of the guidance**

We would also suggest that the following matters are considered for any revision of the draft of the guidance.

- There is interchangeable use of the words 'child', 'children' and 'young person' throughout the document. It would be helpful for the guidance to state that that, in line with the UNCRC, a child is anyone under the age of 18.
- We recognise the use of the term 'parent' is used intentionally and in relation to a set legal definition relating to a person who has parental responsibilities in relation to, or care of, a child. However, not all those with such responsibilities are the parents of the child, identify themselves as such and crucially not all children will identify these people as their 'parent'. We support the use of more inclusive language, as generally used elsewhere in Scottish Government guidance, i.e. parents and/or carers.
- The term 'flexi-schooling' is used at times within this document. This is not a term that is common in Scotland, or used within national education policy documents and could therefore confuse those intended to use the guidance or be misinterpreted if used without definition.
- The flowcharts at the end of the document are difficult to understand and contain no arrows or yes/no qualifiers which would aid people to navigate the flow. We would encourage piloting these with stakeholders and making adjustments based on their feedback.

Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.

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