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## The law on home-education

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**Home-schooling is growing in popularity. However, although it is legal for children to be educated at home, there are difficulties associated with defining what constitutes home-education, and who falls within the category of the 'home-educated'.**

**S.7 Education Act 1996 provides that:**

**The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable:**

**(a) to his age, ability and aptitude; and**

**(b) to any special educational needs he may have, either by regular attendance at school or otherwise.**

### **Definitions of home-education**

The *United Nations Convention on the Rights of the Child*, Article 29(1) states that an education should be directed to:

(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and

(e) the development of respect for the natural environment.

Article 26(2) of the *United Nations Universal Declaration of Human Rights* also offers some indication, if not clarification, of what an education should entail:

*'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace'*.

With confusion over what constitutes an **education**, deciding what constitutes a 'home-education' is inevitably complex.

Petrie, Windrass and Thomas have defined home-education as:

*'the full-time education of children in and around the home by their parents or guardians or by tutors appointed by the parents or guardians'.<sup>1</sup>*

Petrie has expanded and modified this explanation:

*'[home-education is] where the parents are committed to their [children's] education and home-educating'.<sup>2</sup>*

The latter statement narrows the definition in that it requires that parents educating or arranging home-education are fully committed to that education. This begs the question as to what constitutes commitment in this context. The DfES has confirmed that travellers who are not registered either with schools or with their LEA, whilst viewed with suspicion by some officials, often view themselves as committed home-educators, apprenticing the children to their trade and viewing the input from the children as integral to the family's social and economic fabric.<sup>3</sup>

There are home-educators who neither 'school' nor 'teach' their children, preferring to leave the children free to follow their own inclinations, whether or not that involves any formal learning, and whether or not such incidental learning would be determined as 'educational' by official bodies.

The term home-education may suggest that the education takes place at home, when in fact the home is more often a base, rather than the actual full-time locus. 'Children educated at home may meet up regularly with other home-educated children for activities and outings (often arranged as educational visits with schools discount), as well as joining school friends for a variety of out of school activities and clubs.'

Education is compulsory despite there being no clear definition of what constitutes an education. Clearly, this creates problems. At a local level, LEAs must determine what constitutes an education for themselves, resulting in a lack of uniformity. Thus, a family may be deemed to be home-educating by one LEA, but not by another.

#### **The law concerning home-education<sup>4</sup> : The role of LEAs**

S.7 *Education Act 1996* provides parents with a choice for their child to receive their education either at school or 'otherwise' and, whilst the school option involves formal assessment and inspection, the 'otherwise' alternative involves neither.

*'LEAs ... have no automatic right of access to the parent's home. Parents may refuse a meeting in the home, if they can offer an alternative way of demonstrating that they are providing a suitable education, for example, through showing examples of work and agreeing to a meeting at another venue'.<sup>5</sup>*

Local Education Authorities (LEAs) can, however, apply for a compulsory attendance order if they can show that education is not taking place. In *R v Surrey Quarter Sessions Appeals Committee, ex parte Tweedie (1963) 61 LGR 464*, the court held that the particular circumstances of the case meant that it was perfectly proper to insist on a visit to the home. In the light of the parents' repeated refusal to agree to

such a visit, the LEA was justified in serving school attendance orders in relation to the children. Thus, the onus is on the LEA, rather than the family involved.

'Parents choose home-education for a variety of reasons; for many it is a lifestyle choice, occasionally parents have ideological reasons and occasionally they make the decision to home educate under extreme duress, for example, as a result of many years of school related problems:

*'The pressure schools are under to meet Government exam and discipline targets was underlined by the case of Firfield school ... The fresh start school has admitted removing 'five or six' persistent truants from its rolls by persuading their parents to educate them at home'.<sup>6</sup>*

Parents who do make the decision to educate their child at home are under no obligation to seek permission to do so, unless their child has a statement of Special Educational Needs. Where a child has been in school however, they must deregister the child by writing to the school and informing them of their decision to remove the child and educate him or her at home (*Education (Pupil Registration) Regulations 1995*, Regulation 9(1)(C)). On receiving such notification, the school is under a duty, according to Regulation 13(3), to inform the LEA that the child's name has been removed.

Although guidance from the DfES does state that it is helpful if parents inform the LEA of their intention to educate their child at home, they are under no legal obligation to do this either. As a result, many children are taught at home quite legally, without the knowledge of the LEA.

Parents who decide to home-educate their child do not have to apply the national curriculum or ensure that the child receives formal lessons and observes school hours. LEAs may seek information from parents about the education they are providing to their child, and they may request to visit the home to look at examples of work and talk to the parents and the child. If information about the education the child is receiving is not forthcoming, or the information provided suggests to the LEA that the education is inadequate, under s.437(1) *Education Act 1996*, the LEA may seek further information:

*'If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school **or otherwise**, they shall serve a notice in writing on the parent requiring him to satisfy them within a period specified in the notice that the child is receiving such education'.*

The LEA should make clear what matters the parents should cover in order to satisfy the LEA.

In *Phillips v Brown* (20 June 1980, unreported), the LEA had sought information from the parents as to the educational programme being provided to the child. The child, although of school age, was not registered at a school. The parents told the LEA that they were providing a suitable education, but did not provide any further detail. The

LEA served notice under s.437(2) *Education Act 1996* requiring the parents to satisfy them that the child was receiving a suitable education. The parents argued that the LEA could only serve a notice where something positive had come to their attention which led them to believe that the parents were failing to perform their duty to educate the child. The court held that it was reasonable for the LEA to request information from the parents about their child's education.

Although there is no duty on the parent to reply, if they failed to do so, the LEA might conclude that the parents were in breach of their duty to educate the child and issue a notice.

### **Public expenditure**

Decisions concerning how and where children are educated, and of what that education should consist, lie ultimately with parents, as detailed in Protocol 1, Article 2 *European Convention on Human Rights*, which was incorporated into UK law by the *Human Rights Act 1998*:

*'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'*

However, s.9 *Education Act 1996* reads:

*'In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State, LEAs and the funding authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.'*

This implies that parents' choice has priority only insofar as it does not conflict with the public purse. When the UK signed up to the *European Convention on Human Rights* in 1952, the stipulation regarding unreasonable public expenditure was noted as a reservation and remains the case today.

With the implementation of the *Care Standards Act 2000*, OFSTED is now responsible for the regulation of early years education provision (day care, crèches, out of school care and childminding). This means that the education of most pre-school children will be brought under national inspection. Were inspections to be made compulsory for home-educators, questions might well be raised as to whether such inspections would involve 'unreasonable public expenditure'. By stating that the authorities should 'have regard' to the 'principle' of parents wishes, S. 9, of The *Education Act (1996)* ambiguously avoids making a commitment that the Authorities *must* adhere to them. This is not to suggest any government might wish to outlaw home-education but one might foresee a situation where it could happen inadvertently, as has occurred in some other countries (Petrie 2000).

### **Conclusion**

It would appear that whilst the legislation uses some ambiguous wording, growing numbers of children learning outside school might contribute towards making any tightening up procedures difficult to implement. The best way forward might be for educationalists and the Government to accept and embrace the increasing numbers of home-educated children, and thus give due credit to the learning that takes place within families.

**FOOTNOTES**

<sup>1</sup> Petrie, A. J, Windrass, G and Thomas, A (1999) *The Prevalence of Home Education in England: a feasibility study*, p.6.

<sup>2</sup> Petrie, A (1999) personal correspondence, 11 October 1999.

<sup>3</sup> DfES (2000) telephone conversation with the Traveller Section, Department for Education and Skills, 5 January 2000.

<sup>4</sup> Butterworths Education Law Manual (2000).

<sup>5</sup> DfES (1998) *England and Wales Educating Children at Home*'.

<sup>6</sup> Slater, J 'Week in perspective', *The Times*, 17 December 1999.