

**Y Pwyllgor Deddfwriaeth,
Cyfiawnder a'r Cyfansoddiad**

**Legislation, Justice and
Constitution Committee**

Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN
SeneddDCC@senedd.cymru
senedd.cymru/SeneddDCC
0300 200 6565

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN
SeneddLJC@senedd.wales
senedd.wales/SeneddLJC
0300 200 6565

Jeremy Miles AS

Gweinidog y Gymraeg a Addysg

2 Tachwedd 2022

Annwyl Jeremy

Gohebiaeth a dderbyniwyd gan Education Otherwise

Atodaf gopi o e-bost a ddaeth i law gan Education Otherwise ynghylch canllawiau ar addysg gartref.

Byddwn yn ddiolchgar pe gallech sicrhau ei fod yn cael ei ystyried wrth ddatblygu'ch cynigion yn y maes polisi hwn.

Rhowch wybod i mi os oes unrhyw faterion o fewn cylch gwaith fy Mhwyllgor y credwch y byddai'n briodol tynnu fy sylw atynt wrth ichi ddatblygu'ch cynigion.

Yn gywir,

Huw Irranca-Davies

Huw Irranca-Davies

Cadeirydd



E-bost a dderbyniwyd gan Education Otherwise

Dear Mr Irranca Davies,

Ref: Proposals for statutory home education guidance

I am writing to you as Char of Education Otherwise and in your capacity of chair of the Legislation, Justice and Constitution Committee. Education Otherwise is the home education charity, established 45 years ago and working to promote choices in education.

You will be aware of proposals to introduce statutory guidance for home educating families, a draft of which was issued for consultation in 2019. You will not be aware that your colleague and Education Minister Mr Jeremy Miles has confirmed his intention to issue statutory guidance which mandates meetings between education staff and home educated children. The purpose of this communication is to raise concerns in respect of that intention which relate to the legal position.

The first concern is an obvious one: Government cannot create legislation through guidance and statutory guidance which mandates meetings between children and public servants would be doing just that. There is simply no legislative basis to create such a mandate.

The draft guidance relies in part at least, on the United Nations Convention on the Rights of the Child (UNCRC) to justify mandatory interviews with children. However, the UNCRC does not support such a mandate:

- Article 5: 'States parties shall respect the responsibilities, rights and duties of parents.....to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of their rights recognised in the present convention'. It is the duty and responsibility of the parent to mediate the rights of the child and to guide the child in exercising those rights, it is not the duty of the State to do so. This proposal puts the duty on the State, which is contra to the UNCRC Art.5.
- Article 12: 'States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child...the child shall in particular be given the opportunity to be heard in any administrative proceedings affecting the child..' This is a duty to assure the child the right to express their views, not to mandate that the child must express those views, as is proposed. The child should not be forced to express their views in interview with any official, as to force such a requirement would be contra to the UNCRC art. 12.
- Article 13: ' The child shall have the right to freedom of expression; this right shall include the right to seek, receive and impart information and ideas of all kind.....through any other media of the child's choice'. Again, this is a right and not a mandate. The proposal seeks to mandate that the child give their views which is contra to the UNCRC Art. 13.

•Article 14: 'States parties shall respect the right and duties of the parents....to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child'. Again, this right and duty is the parent's and not the State's.

•Article 16: 'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour and reputation'. This proposal inherently causes stigmatisation to the child, which damages their honour and reputation. In cases where the parent is prosecuted, which prosecutions are public record, this stigmatisation would increase exponentially. This is contra to the UNCRC article 16. Further, the proposal interferes with the child's privacy and family in a manner contra to the UNCRC article 16.

•Article 19: refers to protection of children from abuse and neglect whilst in the care of the parent and 'Such protective measures should as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and those who have care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow up of instances of child maltreatment'.

It is important to note that such investigations as proposed by this draft must be appropriate and necessary. There is no evidence whatsoever to suggest that home educated children are subject to 'maltreatment' and there is evidence to suggest that those children are less vulnerable to such maltreatment than are schooled children and under 5 year olds. Consequently, it is not possible to suggest that the proposed measures of mandatory interviews are either necessary or proportionate.

•Article 37: 'States parties shall ensure that no child be subjected to.....or degrading treatment'. The proposals would subject home educated children to degrading treatment, in that those children would be stigmatised, belittled and face possible emotional psychological and financial abuse.

•Article 40: 'States parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity' and s2 (b) (iv) goes on to state that the child should 'not be compelled to give testimony'.

Even where the child is being dealt with under the penal system, that child may not be compelled to give evidence and yet this draft proposes that the child will be so compelled. This is contra to the UNCRC article 40.

The intention to mandate meetings between home educated children and education staff also fails to take account of extant precedent which states that LAs should not as a matter of policy insist on inspection of the home in order to ensure that education is suitable (Regina v Surrey Quarter Sessions Appeals Committee, ex parte Tweedie [QPR] 61 LGR 464). This was a case where there were exceptional circumstances. To mandate such meetings as a matter of course would be neither reasonable nor proportionate. Although the guidance states that 'Such a meeting does not have to

take place in the home; it can take place in a mutually agreed location,' the Tweedie case centred around an undertaking to allow meetings 'in the home' and remains valid precedent to support my point.

The Welsh Ministers intend to make regulations that will require local health boards to disclose to a local authority non medical information to assist them in identifying children in their locality' (Extract from draft guidance). All patient information attracts the common law duty of confidentiality and a medical professional cannot disclose data of any form other than under very distinct circumstances including by consent or where legislation (not guidance) sets aside the common law duty of confidentiality.

The draft guidance states that if professionals come across a home educated child during truancy sweeps, they will need to notify the relevant local authority and that parents may need to verify any information given to them in such cases. Those involved in truancy sweeps have no legal right to require a child to provide their personal details, nor to detain a home educated child. There is furthermore no legislative basis for sharing of data provided by a home educated child or parent during such a sweep.

There are several other points that have no basis in legislation and appear to be intended to seek to introduce legislation by way of guidance, which is not legally permissible. However, these points are illustrative of the overarching problem with the draft and the Minister's stated intention to proceed with it.

I ask that you examine the legal situation in respect of this guidance in the light of these concerns. You may wish to refer to advice received from Counsel in respect of some of the points above.