

## Written evidence submitted by Scottish Home Education Forum

### **WRITTEN EVIDENCE SUBMITTED BY THE SCOTTISH HOME EDUCATION FORUM**

1. The Scottish Home Education Forum<sup>1</sup>, founded in 1999, is a peer support network with 4000 members, whose collective knowledge, experience and expertise ensures that families who have opted for, or are considering, home education in Scotland have access to accurate information, reliable support, and signposting to local groups and specialist resources.
2. In recent years we have expanded our scope to provide advocacy, training and consultancy services, as well as conducting and publishing research and briefings on issues that affect the home educating community, often in co-operation with the national charity Home Education Scotland.<sup>2</sup>
3. The Forum monitors policy and legislation which affects, or may affect, home education in Scotland, including developments in other parts of the UK, and takes a proactive stance in defending children's rights and parents' responsibilities in relation to education, care and welfare issues.
4. We have a positive relationship and regular dialogue with the Scottish Government, which is especially important in anticipation of the upcoming review of Scottish home education guidance. We also engage with LA officers, local councillors and MSPs, some of whom have highlighted specific issues on behalf of our community.
5. Although the law differs between England and Scotland, we believe our contribution should still be relevant to the Committee's inquiry. Similar concerns, several of which engage overarching ECHR and GDPR rights, have arisen in Scotland and have been the subject of dedicated research by our Forum.

### **The duties of local authorities with regards to home education, including safeguarding and assuring the quality of home education**

6. Across the UK, the duty to educate in the compulsory years lies with the parent, not the state, and the duty of the LA is to intervene in the event of parental failure, for which existing powers are entirely adequate, albeit poorly understood.
7. The Standards in Scotland's Schools Act 2000 introduced both a right to school education for every child and a duty on education authorities to provide a school education (or equivalent) that is 'directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential'.<sup>3</sup> However, these provisions were explicitly without prejudice to the parental choice to educate 'by other means'.
8. When a similar 'right to education' proposal for England and Wales was debated in the House of Lords in 2006, Lord Adonis concluded that

---

<sup>1</sup> <https://scothomeed.co.uk>

<sup>2</sup> <https://homeeducationscotland.org.uk>

<sup>3</sup> <https://www.legislation.gov.uk/asp/2000/6/crossheading/provision-of-school-education-right-of-child-and-duty-of-education-authority>

*...it might—for me, this is the decisive argument—have the perverse effect of requiring the state to make available types of education which we do not favour on grounds of equity, values or standards.<sup>4</sup>*

9. With regard to safeguarding, home education presents no more of a risk, and arguably much less of a risk, to children than school attendance, especially for those with special needs and disabilities whose safety has been compromised in schools.<sup>5</sup>

10. The small number of serious case reviews where children have been home educated or otherwise removed from school have been consistent in exposing the relevant authorities' failures to exercise existing child protection powers in order to effect timely interventions. Correlation does not imply causation, yet home educators have had to dissect and regularly rebut spurious claims and home-edophobic 'spin' disseminated by public bodies and powerful vested interests.<sup>6</sup>

11. As we highlighted in our 2019 report on home educators' experiences of the health visiting service<sup>7</sup> and our 2020 'Home Truths' report on relationships with LAs<sup>8</sup>, home educators feel stigmatised by references to 'unseen children' and 'non-engaging parents', and believe that 'baked-in bias' has contributed to an overtly hostile environment that has been responsible for increasing incidences of 'home-edophobia' (hateful conduct towards home educating families). We strongly advocate that 'unconscious bias' training is made compulsory for all personnel who come into contact with home educators.

12. In 2019, in response to a public petition calling for the compulsory registration and monitoring of home educated children, Scotland's Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney, helpfully separated and re-stated the relevant thresholds for state intervention on education and/or 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."***<sup>9</sup> [our emphasis]

### **Whether a statutory register of home-educated children is required**

13. Given that the provision of education is a parental duty and elective home education has equal status to schooling, any such register would surely amount to a parent licensing scheme to stigmatise a minority group. No pressing need has been shown to warrant the targeting of home educators and no such 'registration' proposals have (yet) been mooted for other law-abiding minorities, such as vegans or vegetarians.<sup>10</sup>

14. Legal opinions obtained by home educators from different UK jurisdictions have concluded that compulsory registration of home educated children whose parents are

<sup>4</sup> <https://scothomeed.co.uk/house-of-lords-debate-on-right-to-education>

<sup>5</sup> <https://www.challengingbehaviour.org.uk/driving-change/restraintandseclusion.html>

<sup>6</sup> <https://scothomeed.co.uk/the-nspcc-report-on-home-education-is-out>

<sup>7</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/05/190623-Home-educators-experience-of-health-visiting-in-Scotland.pdf>

<sup>8</sup> <https://scothomeed.co.uk/home-truths-home-education-research>

<sup>9</sup> [https://www.parliament.scot/S5\\_PublicPetitionsCommittee/Submissions%202019/PE1730\\_B.pdf](https://www.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202019/PE1730_B.pdf)

<sup>10</sup> <https://scothomeed.co.uk/vegetarians-just-dont-get-it>

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.

15. Children also have rights under the UNCRC, which is increasingly referenced by the courts despite not (yet) being incorporated into law. In our consultation response to the Scottish Government's proposed UNCRC incorporation bill that has since been introduced, we noted that

*In order to avoid misinterpretation and misrepresentation by public bodies, there must be an explicit duty to comply with the UNCRC in its totality (including the preamble which underlines the role of the family) within the limitations of devolved powers, not simply a pick-and-mix approach to rights which inevitably results in a hierarchy of rights and rights-holders, as has already become evident due to the selective approach of the Commissioner to upholding Convention rights.<sup>11</sup>*

16. 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 pursuit of judicial review.

17. In our submission<sup>12</sup> to the Scottish Parliament in response to a petition calling for a compulsory home education register, we drew attention to the dangers of interfering with the parental responsibility to determine a child's best interests in the absence of substantiated risk of harm, a principle reaffirmed by the UK Supreme Court in recent rulings.<sup>13 14</sup>

### **The benefits children gain from home education, and the potential disadvantages they may face**

18. International and UK research studies, notably those by Dr Paula Rothermel and Dr Alan Thomas, have consistently pointed to the benefits of home education, especially for children from less advantaged backgrounds.<sup>15</sup>

19. Our co-ordinator home educated her own three children from the early 1990s, all of whom have university degrees and professional careers. Their home educated contemporaries have meanwhile gone on to pursue a variety of occupations, including plumber, poet, blacksmith, IT manager, journalist, social worker, psychologist, translator, doctor, academic, lawyer, commercial pilot, musician and circus performer. Several of them home educate their own children.

20. Academic attainment and highly-paid employment should not be seen as the best indicators of the benefits of home education, which can in some cases be life-saving. In the foreword to our 'Home Truths' report, a previously home educated young woman with a rare genetic syndrome and learning disabilities, reflected on her own experience:

<sup>11</sup> <https://scothomeed.co.uk/wp-content/uploads/2019/08/190824-UNCRC-Consultation-Scottish-HE-Forum-response-converted-1.pdf>

<sup>12</sup> <https://scothomeed.co.uk/registration-petition-our-submission-to-committee>

<sup>13</sup> <https://www.supremecourt.uk/cases/uksc-2015-0216.html>

<sup>14</sup> <https://www.supremecourt.uk/cases/docs/uksc-2016-0220-judgment.pdf>

<sup>15</sup> <https://scothomeed.co.uk/resources/research>

*Mum had a very difficult time with the local authority as a single parent, but she fought back and, in the end, we had a great education advisor and my social worker was very supportive. Nobody could believe the change in me after only a short time out of school. I was happy and relaxed, I could learn at my own pace, and I did well. Books were not so good for me, so we found other ways to learn and concentrated on life skills which were much more important. I honestly don't know what would have happened to me if mum hadn't taken me out of school. People have no idea how bad it can get and how low it can make you feel. You lose any self-confidence you may have had and it can cause serious harm to your mental and physical health.*

21. Potential disadvantages of home education derive mainly from the hostile environment and pervasive culture of home-eduphobia that has been fuelled by vested interests in the schooling system and those wish to erode parental responsibilities and children's rights in favour of imposing state-controlled one-size-fits-all provision.

22. The Supreme Court's reference, in its 'named person' judgment, to the need to guarantee respect for individual differences was welcomed by home educators and other minority groups, in particular the reminder that:

*The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers' view of the world.<sup>16</sup>*

23. We would also point to the postcode *and* postholder lottery that we identified in Scotland, which equally affects home educators in England who have reported glaring inconsistencies in approaches between authorities and officers. As we noted in our 'Home Truths' report:

*It was clear from parents' reports on their councils' approaches that the postcode and postholder lottery will not be eliminated by guidance alone, and that home educators must be fully involved and engaged in identifying and implementing solutions if the culture of home-eduphobia is to be successfully tackled and trusting relationships with families rebuilt.<sup>17</sup>*

### **The quality and accessibility of support (including financial support) available for home educators and their children, including those with special educational needs, disabilities, mental health issues, or caring responsibilities, and those making the transition to further and higher education**

24. Very little meaningful LA support has been forthcoming for home educators anywhere in the UK; rather there has been a relentless assault on families who educate outwith the school system, with serial consultations, calls for evidence and legislative proposals that threaten home educating families' choices and the best interests of home educated children.

25. Some young people have become anxious and distressed by the negative and biased depiction of home education by politicians and the media, while others have been traumatised by the prospect of being forcibly returned to school, most notably following high-profile attacks on home education by the Children's Commissioner for England<sup>18</sup> who

<sup>16</sup> <https://www.bailii.org/uk/cases/UKSC/2016/51.html#para73>

<sup>17</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/08/200821-HOME-TRUTHS-FULL-RESEARCH-REPORT-updated.pdf> (page 9)

<sup>18</sup> <https://www.childrenscommissioner.gov.uk/2019/02/04/huge-increase-in-children-disappearing-from-schools-to-be-educated-at-home-childrens-commissioner-for-england-calls-for-a-compulsory-register-of-off-the-grid-children/>

appears unable (or unwilling) to use correct terminology and refers to ‘home schooling’ which many elective home educators find offensive.

26. The most effective support for home educators is now largely delivered via local groups, peer support networks and advocacy services that have become well established over the past 10-15 years and often have access to associates with specialist expertise.

27. There has been a significant increase in home educator numbers across the UK in recent years. Mirroring findings from England, the majority of respondents to our 2018 ‘Reasons for Home Education’ survey<sup>19</sup> cited disability, chronic illness, unmet support needs – especially severe school anxiety and ASD – as key drivers. Many highlighted lack of access to, or poor experiences of CAMHS, and others were highly critical of schools’ unwillingness or inability to address their children’s support needs, with strict gatekeeping or denial of access to specialist services upon a child’s removal from school.

28. Despite the dearth of meaningful support by LAs across the UK, access to higher education has proved relatively straightforward for home educated young people who have taken a variety of routes to university, although 2020 dealt some serious blows for home educated independent exam candidates due to Covid-19 related cancellations and their exclusion from alternative grading arrangements.<sup>20</sup>

**Whether the current regulatory framework is sufficient to ensure that the wellbeing and academic achievement of home educated children is safeguarded, including where they may attend unregistered schools, have been formally excluded from school, or have been subject to ‘off-rolling’**

29. The current legislative framework is entirely sufficient given that the provision of education in the compulsory years is a parental responsibility and the LA has a duty to intervene in the event of parental failure.

30. Academic achievement is not guaranteed for schooled children and is, besides, only one measure of educational ‘success’. English case law has helped broadly defining ‘suitable education’ as one which

*prepares children for life in a modern, civilised society’ and ‘enables them to achieve their full potential’<sup>21</sup>*

and which

*primarily equips a child for life within the community of which he is a member, rather than the way of life in the wider country as a whole, as long as it does not foreclose the child’s options in later years to adopt some other form of life if he wishes to do so.<sup>22</sup>*

31. Children with disabilities and other additional support needs are highly represented in the home educated community where they benefit from individualised provision and one-to-one support that cannot be matched by schools where suitable adjustments are rarely implemented and some children have suffered traumatic physical interventions.

---

<sup>19</sup> <https://scothomeed.co.uk/reasons-for-school-age-children-being-in-home-education>

<sup>20</sup> <https://scothomeed.co.uk/home-educated-candidates-to-be-cancelled-along-with-2021-exams>

<sup>21</sup> Harrison and Harrison v Stevenson, 1981

<sup>22</sup> <https://swarb.co.uk/regina-v-secretary-of-state-for-education-ex-parte-talmud-torah-machzikei-hadass-12-apr-1985-2/>

32. It is up to parents to determine and meet their children's wellbeing needs, and the long-established legal threshold for intervention by the state (risk of significant harm) was upheld by the UK Supreme Court in its 2016 'named person' ruling, which held that

*Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be **their** basic concern.* <sup>23</sup> [emphasis in judgment]

33. The same judgment further affirmed that nothing in Article 3 of the UNCRC (acting in the best interests of children and young people when making choices that affect them) could extend the state's powers to interfere with the negative rights in Article 8 of the ECHR.<sup>24</sup>

34. We are disturbed by the deliberate conflation of home education with unregistered schooling that appears to be rooted in the prevailing culture of home-eduphobia highlighted in our research. Home educated children do not attend unregistered, illegal schools, and the implication that they do is both insulting and disingenuous when powers already exist to close such establishments.

35. Illegal exclusions and off-rolling should be similarly dealt with by the authorities' use of existing powers. Home educators must not be held responsible for the unlawful actions of schools or LAs, and victims of such practices should be assisted in obtaining redress.

36. Through our work with campaigners for the rights of disabled children, we are aware of illegal physical restraint and seclusion practices by schools across the UK, which has led some parents to home educate for health and safety reasons. Until these schools' failures to safeguard children are resolved, home education is by far the safer option.

### **The role that inspection should play in future regulation of home education**

37. We do not believe there is any role for 'inspection' since the provision of education is a parental responsibility and schools are inspected on behalf of parents to ensure minimum standards are met.

38. Moreover, the law does not permit arbitrary interference with Convention rights, which mandate respect for parents' religious or philosophical convictions<sup>25</sup> in relation to compulsory education.

39. As Katarina Tomasevski, former UN Special Rapporteur on the Right to Education, observed:

*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.*<sup>26</sup>

40. In the absence of a precise legal definition of education, or indeed wellbeing, any regulatory regime that were to rely on school-centric criteria and a 'schooled' inspectorate

<sup>23</sup> <https://www.bailii.org/uk/cases/UKSC/2016/51.html#para72>

<sup>24</sup> <https://www.bailii.org/uk/cases/UKSC/2016/51.html#para89>

<sup>25</sup> <https://fra.europa.eu/en/law-reference/1st-additional-protocol-european-convention-human-rights-echr>

<sup>26</sup> <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2185>

would be inherently discriminatory as home education has equal status to, but is not synonymous with, schooling.

41. Home education is essentially individualised for each child whose learning needs have been identified and addressed by the parent, but would be completely unknown to a state-appointed stranger with limited or no experience outside the school system.

### **Improvements made to support home educators since the 2010-15 Education Committee published their report on 'Support for Home Education' in 2012**

42. We only offer a brief comment on this particular aspect as our focus is on home education in Scotland, but colleagues in England have expressed disappointment that the 2012 report has not lived up to expectations; indeed there has been a marked deterioration in relationships with LAs, as exemplified by Leicester City Council's treatment of a home educating parent which was roundly criticised by the Local Government and Social Care Ombudsman<sup>27</sup> last year.

### **The impact COVID-19 on home educated children, and what additional measures might need to be taken in order to mitigate any negative impacts**

43. Home educated children and their parents experienced unprecedented disruption to their community-based activities due to Covid-19. When schools closed, our online support networks saw an influx of new members, many of whom were surprised to learn that elective home education differs fundamentally from the school-at-home they had envisioned.

44. In our experience, the home educating community was better equipped to deal with the many new adversities presented by the pandemic as they were already adept at overcoming barriers, finding solutions and sharing knowledge and skills via dedicated networks built up over many years. They were also willing to support those parents who decided to make the transition permanent post-lockdown.<sup>28</sup>

45. The most negative impact has undoubtedly been on home educated exam candidates, who were not only denied access to the 2020 exams they had been working towards, but were also excluded from the alternative arrangements made for their schooled counterparts to receive predicted grade assessments by teachers or tutors. Many incurred significant financial losses, as well as missing out on qualifications and university places they had worked hard for.<sup>29</sup>

46. The collective failure of Ofqual, the SQA, the UK government and devolved administrations to facilitate alternative grading arrangements for home educated candidates exemplifies the wilful blindness of policy-makers to home education as an equally valid option to schooling and needs to be urgently addressed.

October 2020

---

<sup>27</sup> <https://www.lgo.org.uk/information-centre/news/2019/jul/be-clear-about-visits-to-home-schooled-children-says-ombudsman>

<sup>28</sup> <https://scothomeed.co.uk/more-parents-opt-for-home-education-post-lockdown>

<sup>29</sup> <https://scothomeed.co.uk/home-educated-candidates-to-be-cancelled-along-with-2021-exams>