

Written evidence submitted by UNICEF UK

EDUCATION SELECT COMMITTEE - HOME EDUCATION CALL FOR EVIDENCE

UNICEF UK SUBMISSION

UNICEF UK

UNICEF, the United Nations Children’s Fund, is mandated by the UN General Assembly to uphold the UN Convention on the Rights of the Child (UNCRC) and promote the rights and wellbeing of every child. Together with partners, UNICEF works in over 190 countries and territories around the world, including here in the UK, focusing special effort on reaching the most vulnerable and excluded children, to the benefit of children everywhere. UNICEF has a specific role in providing advice and assistance to governments around the world in matters relating to children’s rights. Here in the UK, we work over two million children through our programmatic work with local authorities, hospitals and around 5,000 schools taking part in our Rights Respecting Schools Award (RRSA) network.

SUMMARY

Unicef UK is submitting evidence to the Education Select Committee with the aim of highlighting the role the Government can, and must, play in delivering every child’s right to education, including in the case of elective home education. This submission focusses in particular on the rights of the child and how they relate to the choice, regulation, inspection, delivery, and safety of home education, including in the context of the Coronavirus pandemic. Unicef UK recommends that the Department for Education take a child rights approach to home education, ensuring that it is upholding its obligation as a duty bearer of the United Nations Convention on the Rights of the Child (UNCRC). This, in turn, requires strengthened guidance for Local Authorities (LAs) that recognises the rights impacted by home education.

EDUCATION AND CHILD RIGHTS

1. All children have the right to a quality education, enshrined in Articles 28 and 29 of the United Nations Convention on the Rights of the Child (UNCRC). As a duty-bearer of the UNCRC, the UK Government – and in this instance, the Department for Education (DfE) – is required to uphold and deliver the right to education for all children, including home education. This must include the holistic aims of education as set out in Article 29, which articulates that education should deliver:
 - (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;
 - (e) The development of respect for the natural environment.’¹

2. This is further clarified in General Comment 1 of the UNCRC, which notes that education ‘goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.’²
3. Thus, all children have the right to a quality, holistic education, regardless of how and where they are educated. And while parents have the right to choose their child’s education (articulated in Article 26 of the Universal Declaration of Human Rights), it is the Government’s responsibility to ensure this right is realised for every child. Local Authorities (LAs) similarly have a responsibility to assess the on-the-ground implementation of this right.
4. Children also have a right to be heard in the decision on their method of education, articulated in Article 12 of the UNCRC. While children do not have a right to decide over their parent or guardian, it is expected that parents and guardians provide guidance ‘in a manner consistent with the evolving capacities of the child.’³
5. Home education also interacts with numerous other rights, including the best interests of the child (Article 3); freedoms of expression and thought (Articles 13 and 14); protection from violence (Article 19); health (Article 24); social security (Article 26); standard of living (Article 27); leisure, play, and culture (Article 31); and the knowledge of their rights (Article 42). All these rights must be equally recognised and realised in instances of home education.

MEANINGFUL CHOICE IN HOME EDUCATION

6. It is critical that children and their families have a meaningful choice in their method of education. Home education should not be a last resort and should be elected, not forced upon, any family or child. However, several factors may challenge this choice.

OFF-ROLLING OR EXCLUSIONS

7. Off-rolling is described by the DfE as ‘the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil.’⁴ This type of action removes the ‘elective’ element of home education.
8. While the DfE states that ‘Schools should not seek to persuade parents to educate their children at home as a way of avoiding an exclusion or because the child has a poor attendance record’, concerns remain.⁵ Indeed, one quarter of teachers have seen off-rolling happen in their school and 62% reported that ‘schools pressure parents to accept their child being off-rolled’.⁶ Furthermore, in 2017 over 49,000 children disappeared from data rolls, equating to 8.1% of students in the 2017 cohort ‘experiencing at least one unexplained exit during secondary schooling.’⁷ The number of unexplained disappearances from schools is worrying and could indicate a significant degree of off-rolling.

¹ United Nations Convention on the Rights of the Child, <https://www.refworld.org/docid/3ae6b38f0.html>.

² United Nations Convention on the Rights of the Child General comment no. 1, <https://www.refworld.org/docid/4538834d2.html>.

³ United Nations Convention on the Rights of the Child, <https://www.refworld.org/docid/3ae6b38f0.html>.

⁴ Ofsted, <https://www.gov.uk/government/publications/off-rolling-exploring-the-issue>.

⁵ Department for Education,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2_0.pdf.

⁶ Ofsted and YouGov,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800582/Ofsted_offrolling_report_YouGov_090519.pdf.

⁷ Education Policy Institute and National Education Union, https://epi.org.uk/wp-content/uploads/2019/04/EPI_Unexplained-pupil-exits_2019.pdf.

Recommendation: the DfE must revisit its approach to off-rolling and strengthen statutory guidance to end this practice.

SPECIAL EDUCATIONAL NEEDS (SEND)

9. General Comment 1 of the UNCRC recognises that ‘Discrimination against children with disabilities is...pervasive in many formal educational systems and in a great many informal educational settings, including in the home.’⁸ This sad reality undermines Article 2 of the UNCRC, the principle of non-discrimination, and the realisation of General Comment 9 which states ‘inclusive education should be the goal of educating children with disabilities’.⁹ Thus, children with disabilities have the right to be educated in mainstream education and they – and their families – must have a meaningful choice with regard to the place of education.
10. The reality, however, is different for some children with special educational needs (SEND). Discrimination, lack of support, or pressure from schools may cause parents or guardians to withdraw their children from the mainstream setting. Every effort should be made to avoid such a situation and provide children with the best possible education within a school setting, if this is preferred.
11. Unicef UK recognises that some parents may wish to home educate their child in order to cater to their child’s needs in terms of learning, care, and pedagogy. General Comment 9 of the UNCRC makes clear the expectations on parents in such a situation; ‘parents, teachers and other specialized professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem-solving which best fit the potential of this child’ and notes ‘education also has to provide the child with empowering experience of control, achievement, and success to the maximum extent possible for the child.’¹⁰ Parents or guardians, local authorities, and the DfE have a responsibility to realise this approach in line with Article 29 of the UNCRC, even and especially for children electively home educated due to SEND.

Recommendation: the DfE should continue to undertake special oversight and increase support for children with SEND, ensuring that any move to home education is a choice and not a result of unsuitable provision in school.

THE RIGHT TO BE HEARD

12. As stated above, Article 12 of the UNCRC recognises that children have the right to be heard in decisions that affect them. However, at present the DfE guidance states ‘This does not give children authority over parents, and a decision to educate a child at home is a matter for parents.’¹¹ Indeed, in instances where ‘the child’s attitude to home education is only negative for reasons which are not directly relevant to the s.7 criteria’, this should not be considered relevant to the suitability of education.¹² However, such an approach is at odds with the Department’s responsibilities under the UNCRC. It is critical that the suitability of home education carefully considers the child’s views, weighted more heavily as the child ages in line with the evolving capacities of the child.

Recommendation: the DfE should revisit its approach to Article 12 of the UNCRC, encouraging Local Authorities to meaningfully consult the views of children in home education decisions, regulation, and inspection.

⁸ United Nations Convention on the Rights of the Child General comment no. 1, <https://www.refworld.org/docid/4538834d2.html>.

⁹ United Nations Convention on the Rights of the Child General comment no. 9, <https://www.refworld.org/docid/461b93f72.html>.

¹⁰ Ibid.

¹¹ Department for Education, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf.

¹² Ibid.

EXPERIENCES FROM OTHER COUNTRIES

13. In order to inform the Committee's approach, we wish to highlight several examples from other OECD countries in relation to home education.

- **Germany:** Home-schooling is only permitted in Germany in exceptional circumstances, such as for health reasons. Either the school or school supervisory authority prepares and organises this form of education, and it is assessed for necessity regularly.¹³
- **Sweden:** Home-schooling in Sweden is allowed only in exceptional circumstances, which does not cover philosophical or religious belief. The aim is to support children back into school as soon as possible.¹⁴
- **United States:** Education is decentralised in the United States, thus regulation of home-schooling differs across states. According to the Home School Legal Defense Association, 11 states require no notice to home school, while five undertake high regulation.¹⁵
- **New Zealand:** parents and guardians may home educate their child, but only with approval from their local Ministry of Education office. The application requires parent/guardian to detail educational goals, approach, resources, and reference materials, and more.¹⁶

Recommendation: The DfE should speak with their counterparts in other OECD countries in order to develop and improve its approach to home education.

APPROVAL, REGISTRATION, AND INSPECTION

14. If families choose to home educate, it follows that the education received must be in line with the realisation of the right to a quality education. As such, the DfE has a duty to ensure that home education is delivering on this right. Notification and approval, inspection, and regulation are the only ways for the Government to satisfy itself that home educated children in England are receiving a quality education.

NOTIFICATION AND APPROVAL

15. Presently, 'there is no legal duty on parents to inform the local authority that a child is being home educated', nor is there a duty to provide notification or reasons for withdrawal from a school.¹⁷ The only exception is if a child is removed from a special school without consent of the LA or in certain circumstance under a school attendance order (SAO).¹⁸ This is challenging as it makes a number of assumptions about the intent, quality, and decision-making process behind home education.

16. The issues of off-rolling, lack of support, and informal exclusion have already been noted above. If parents or guardians were required to not only inform local authorities about their intent to home educate, but in fact seek approval to do so (such as in New Zealand), they would have the opportunity to articulate these challenges and could be offered another opportunity for their child. This would also alleviate the significant¹⁹ difficulty of identifying children who have only ever been home educated.

¹³ Eurydice (Education, Audiovisual and Culture Executive Agency), <https://op.europa.eu/en/publication-detail/-/publication/ea077239-e244-11e8-b690-01aa75ed71a1/language-en/format-PDF>.

¹⁴ Ibid.

¹⁵ HSLDA, <https://hsllda.org/legal>.

¹⁶ Ministry of Education (New Zealand), <https://parents.education.govt.nz/primary-school/schooling-in-nz/home-education/>.

¹⁷ Department for Education, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf.

¹⁸ Ibid.

¹⁹ Department for Education, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf (see page 12).

17. Furthermore, seeking approval should include the voices of children, ensuring their opinions are heard in the decision to home educate. This would support their right under Article 12 of the UNCRC. Without this, it is difficult, if not impossible, for the DfE to be satisfied that children have been heard in their decision to be home educated, and are indeed likely to receive an education that is in line with their rights.

Recommendation: the DfE should revisit its approach to notification and approval of elective home education, recognising the challenges the current approach creates in identifying, supporting, and considering the views of children.

REGISTRATION

18. Though some LAs may have voluntary registration schemes, 'registration is currently not a legal obligation for either parents or authorities.'²⁰ Unicef UK finds this approach challenging. As a duty bearer of Article 28 of the UNCRC, the Government should satisfy itself that all children within its jurisdiction are receiving a quality education. Without comprehensive knowledge of how children are being educated, it is difficult to see how the Government can be confident it is fulfilling this obligation. If parents or guardians should choose to remove their children from mainstream education, these children must not disappear from records. If they do, their education, health, and other rights are at risk.

Recommendation: the DfE should explore compulsory registration for home educating families.

19. When developing the compulsory registration process, the right to privacy must be considered. Article 16 of the UNCRC states 'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence'. The registration process and any subsequent database must be designed in such a way that this right is balanced with the right to education.

INSPECTION

20. While registration of home education is important, it is insufficient in identifying the full realisation of the right to education. Recognising s.13A of the Education Act 1996, the DfE could provide stronger guidance to LAs to support the inspection of education delivered in the home.²¹
21. Currently, the DfE recommends that a LA 'ordinarily makes contact with home educated parents on at least an annual basis so the authority may reasonably inform itself of the current suitability of the education provided.'²² However, this allows for significant gaps in adequate education for children, if the home education they are receiving is not fit for purpose.

Recommendation: the DfE should change the guidance to encourage LAs to undertake six-monthly inspections of education delivered in the home.

22. The DfE guidance recommends that LA staff who are the first point of call for potential home-educating families should understand the right of parents to choose home education.²³ While this is true, it is also

²⁰ Department for Education, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf.

²¹ S.13A of the Education Act 1996 states: "A local authority in England must ensure that their relevant education functions and their relevant training functions are (so far as they are capable of being so exercised) exercised by the authority with a view to— (a)promoting high standards, (b)ensuring fair access to opportunity for education and training, and (c)promoting the fulfilment of learning potential by every person to whom this subsection applies." See <https://www.legislation.gov.uk/ukpga/1996/56/section/13A>.

²² Department for Education, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf.

²³ Ibid.

important that these staff, and any staff working with home educating families, understand and are trained in the rights of children.

Recommendation: the DfE should update its guidance to encourage LA staff working with home educating families to receive training on the rights of children enshrined in the UNCRC.

23. While there may be concerns about too much oversight or interference in home education, this concern is unfounded. It is recognised in the guidance that ‘A failure to provide suitable education is capable of satisfying the threshold requirement contained in s.31 of the Children Act 1989 that the child is suffering or is likely to suffer significant harm.’²⁴ Therefore it follows that a requirement to uphold a suitable education, such as set out in Article 29 of the UNCRC, would not be disproportionate. While noting that there is no legal requirement on home education content, Unicef UK believes there is a case for providing statutory guidance that details the expectation that home educators uphold Article 29 of the UNCRC.

Recommendation: the DfE should revisit its guidance in relation to the content of home education and how it delivers Article 29 of the UNCRC.

24. When assessing the suitability of home education, it is critical that the view of the child is heard and considered. Seeking the views of children can happen in many forms, but should ideally happen through a home visit, away from parents, and with a known contact (see paragraph 28 below). This process may not always be suitable for every child, and the best interests of the child must be paramount when seeking their views.

Recommendation: the DfE should require LAs to gather and consider the views of the child when assessing the suitability of home education.

25. While inspection of home education should not necessarily take place within days of its implementation, Unicef UK welcomes the recognition that families should not be given a grace period in which to deliver adequate education. The guidance from the DfE states that ‘there is no legal basis’ for some families stating that they are ‘entitled to a period during which the home education provided for the child may not meet the requirements in s.7.’²⁵ Children have a constant right to education; this should not be affected by the move to home education.

SAFETY AND SAFEGUARDING

26. In addition to the suitability, efficiency, and full-time equivalency of education, safeguarding is of concern when a child is home educated. The DfE guidance rightly notes that ‘the general duties of local authorities in relation to safeguarding are the same for all children, however they are educated.’²⁶
27. Most families who choose to home educate do so as they feel this is in the best interests of their child and with the intent to deliver a quality education in a safe and supportive environment. This is recognised by the Department and should in turn be supported by LAs. However, there can be safeguarding concerns associated with home education that should be dealt with as a matter of urgency.
28. In order to support children to feel safe coming forward with safeguarding concerns, the Department should consider requiring LAs to have a named point of contact for all home educated children in their jurisdiction. The DfE guidance already suggests that LAs should ‘should provide parents with a named contact who is familiar with home education policy and practice and has an understanding of a range of educational philosophies’ – this should be expanded to children. The named contact should be well

²⁴ Ibid.

²⁵ Department for Education, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf.

²⁶ Ibid.

versed in the UNCRC and able to clearly articulate to children their rights in the context of home education. They should also be trained to identify and support safeguarding concerns.

Recommendation: the DfE should require LAs to provide home educated children with a confidential point of contact within the LA of whom they can ask support and to whom they can report safeguarding concerns.

29. While home educated children may receive ample support from their family, above and beyond that which their school educated peers receive, there are key elements that can be missed by learning at home. Mental health interventions are largely school based in England, and schools often serve as the first port of call for social services interventions. These interventions are not necessarily readily accessible to home educated children.
30. The DfE guidance also rightly recognises that ‘very marked isolation from a child’s peers can indicate possible unsuitability’ of home education, noting the important role that school plays in developing a child’s social skills and network.²⁷ This should be considered when assessing and identifying any safeguarding concerns associated with home education.
31. In order to strengthen and justify these interventions, the DfE could refer back to the UNCRC. Questions for assessment could relate to the best interests of the child (Article 3), respect for their views (Article 12), freedoms of expression and thought (Articles 13 and 14), protection from violence (Article 19), health (Article 24), social security (Article 26), standard of living (Article 27), the full realisation of the purpose of education (Articles 28 and 29), leisure, play, and culture (Article 31), and the knowledge of their rights (Article 42).

Recommendation: the DfE should encourage LAs to take a child rights approach when assessing the suitability and safety of home education. This should be detailed in guidance provided to LAs.

THE IMPACT OF COVID-19

32. Concerns have been reported regarding an increase in home education following the lockdown measures implemented as a result of the outbreak of the Coronavirus pandemic.²⁸ Increases in home education necessarily require careful consideration and assessment in order to understand the reasons and motivations behind the move. As highlighted in paragraph 16 above, requiring parents to register and apply for home education could help shed light on the move to home education and enable schools and LAs to support families in the best way possible. Home education should never be a last resort.
33. The DfE guidance states that LAs ‘should regularly review its elective home education policies so that they reflect current law and local circumstances, and are compatible with this guidance document’.²⁹ With the review of the guidance coming in December 2020 and the recent reported increase in home education, revisiting LA policies is more urgent than ever.
34. Reviews should ideally be undertaken with the views of children, in particular those who are home educated. Seeking children’s views is a good way to ensure that all guidance and procedures reflect the best interests of children.
35. Covid-19 represents one of the greatest threats to child rights in a lifetime. If it leads to more unelected or unsatisfactory home education, undertaken only in the absence of perceived lack of safety or support at school, this could have even further long-term repercussions. It is critical, therefore, that child rights are

²⁷ Ibid.

²⁸ As reported in The Guardian, <https://www.theguardian.com/education/2020/sep/30/rise-in-home-schooling-is-partly-down-to-misinformation-says-ofsted-chief>.

²⁹ Department for Education, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf.

embedded in the updated guidance and used to strengthen and support children and their families through this difficult time.

Recommendation: the DfE should embed child rights in its review of its home education guidance and encourage LAs to take a child rights approach to home education policy and procedures.

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