



Department
for Education

Children not in school: proposed legislation

Government consultation

Launch date 2 April 2019

Respond by 24 June 2019

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Introduction

The Department for Education (DfE) is consulting on a number of related proposals for legislation which would affect local authorities, parents of children who are not attending state-funded schools or registered independent schools, and proprietors of some education settings.

Who this is for

- Local authorities
- Parents, especially those who educate their children at home, and/or in school hours use education settings for their children which are not state-funded schools or registered independent schools
- Children who are deemed to be educated at home or, during school hours, at settings which are not state-funded schools or registered independent schools (or adults who have been so educated);
- Education settings which provide education in school hours but are not state-funded schools or registered independent schools
- Examining bodies concerned with KS4 and KS5 qualifications
- Other organisations concerned with education

Issue date

The consultation was issued on 2 April 2019 and closes after a period of 12 weeks at the end of 24 June 2019.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by email at:

NotInSchool.consultation@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

Consultation events

The Department for Education intends to hold meetings with local authorities and relevant stakeholder groups within the consultation period.

The response

The results of the consultation and the department's response will be [published on GOV.UK](#).

About this consultation

This consultation document seeks views on a number of proposals for legislation and the way in which those proposals would be implemented:

- the introduction of a duty on local authorities to maintain a register of children of compulsory school age who are not registered at schools of a specified type;
- the introduction of a duty on parents to provide information to their home local authority if their children are within the scope of such a register;
- the introduction of a duty on education settings attended by the children on the register to respond to enquiries from local authorities about the education provided to individual children. The settings in scope would not include those providing supplementary education outside school hours;
- the introduction of a duty on local authorities to provide support to home educating families - if it is requested by such families.

The first part of the document sets out the background and context for the consultation.

The subsequent part(s) of the document set out the details of each proposal, the considerations which arise and the questions to which responses are sought.

We would like to hear your views.

Respond online

To help us analyse the responses in the most effective way, please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response or direct to the consultation at:

<https://consult.education.gov.uk/school-frameworks/children-not-in-school>

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may request a copy of the response form from the addresses below and either email it or post it back to the department. A full list of questions is at the end of the document

By email

NotinSchool.consultation@education.gov.uk

By post

Children Not in School Consultation
Independent Education and Boarding Team
Department for Education
Bishopsgate House
Feethams
Darlington
DL1 5QE

Deadline

The consultation closes on 24 June 2019.

Background and context

1.1 Last year, the department launched a consultation and call for evidence to better understand how oversight of children educated outside of state or independent schools could be carried out as effectively and proportionately as possible. This was in recognition of the fact that local authorities need to be supported to be able to conduct their duty to ensure all children in their area are receiving a suitable education - particularly given the increasing numbers of children receiving their principal education outside of state or independent schools and instead deemed to be educated in the home and/or other settings – or not at all.

1.2 Most children of compulsory school age in England attend either a state-funded school, or a registered independent school. However, it is known that increasing numbers of children are receiving their principal education outside of mainstream schools. Some of those children are being educated at home very well by dedicated parents, who deserve support. However, others are deemed to be 'home educated' but in reality such education as they get is mainly or entirely through attendance at unsuitable settings such as unregistered independent schools or multiple part-time settings. There is also likely to be a number of children for whom the education being provided is unsuitable, because their parents cannot educate them effectively at home, or the children are simply not being educated. It is mainly in the interests of such vulnerable children that the proposals in this consultation paper are brought forward. The government intends to ensure that any proposals do not impede those families who are successfully, and through choice, educating their children at home.

1.3 The department's consultation and call for evidence closed in July 2018 and had two parts:

- a. consultation on revised versions of the department's guidance on the existing legal basis for the oversight of home education; and
- b. a call for evidence on the issues of registration, monitoring, and also support for the families of children educated at home.

1.4 The first part has resulted in the publication of finalised local authority and parents' versions of guidance on 2 April 2019.

1.5. A document which sets out the government's response to material received in the call for evidence is being published alongside this consultation paper. It concludes that there is a strong case for consulting on proposals for the registration by local authorities of children who are not attending a mainstream school. It explains that the government is not proceeding with any proposals relating to increased powers for local authorities in the monitoring and assessment of suitability of education provided to children at home.

Finally, it sets out why, although there are disparate views on the matter - as shown by responses to the call for evidence - there is good reason to consult on possible legislation relating to support for families which educate their children at home.

1.6 In July 2017, Lord Soley introduced the Home Education (Duties of Local Authorities) Bill. That private member's bill did not have formal government support. However, the debates on the Bill at Second Reading and Committee stages in the House of Lords provided some valuable discussion of home education and related issues, and the government is grateful to Lord Soley for his initiative in bringing forward the bill.

1.7 This consultation is seeking views about the primary legislation - which would be high level in nature. It also seeks views on the practical ways in which the system would operate, which the government would put in place through secondary legislation. It also seeks views on the likely costs.

1.8 The proposals set out in this consultation paper would depend on gaining suitable Parliamentary time for the primary legislation which is envisaged. In consequence, no detailed timescale can be given for the implementation of the proposed measures. At a minimum, there would need to be an implementation period for local authorities following Royal Assent to any successful legislation. This means that full roll-out might be two to three years away.

Proposal: creation of a duty on local authorities to maintain a register of children not registered at specified types of school

Background

2.1 Local authorities have a duty to make arrangements, so far as possible, to identify children of compulsory school age who may not be receiving a suitable education. They also have safeguarding duties in respect of all children whether or not they are attending school. The government wishes to support local authorities in these roles, particularly in relation to those children who are vulnerable. The increasing numbers of children being educated outside schools suggests that local authorities need to be able to assure themselves about the education being provided, and greater powers to enable them to do this. The main need at present is a greater ability for local authorities to identify children who, during school hours, are not receiving an education in state-funded or registered independent schools. The government believes this is best tackled by registering with the LA all children who fall into that category. This would include children who are educated full-time at home, as well as those who may be receiving education during school hours from a variety of unregistered settings – although the government recognises that of course many children deemed to be educated at home are receiving a suitable education.

Proposal

2.2 The basic proposition is to create in primary legislation a duty on every local authority in England with responsibility for education, a duty to maintain a register of all children of compulsory school age¹ in its area who are not a registered pupil at a school maintained by a local authority, a non-maintained special school, an alternative provision academy, or a registered independent school².

2.3 There is a subsidiary issue as to whether children receiving education under section 19 of the Education Act 1996 (that is, receiving education arranged by the local authority) although otherwise in scope of such a register, should be excluded because the LA knows about their education, and the consultation questions include this point. – There is also a subsidiary issue as to whether, despite what is set out above, children

¹ A child is of compulsory school age from the beginning of the term following his or her fifth birthday until a specified date (currently the last Friday of June) in the academic year in which he or she becomes 16.

² Academies and free schools are in legal terms registered independent schools.

who are flexi-schooled (ie registered at a school but educated at home for a large part of the week) should also be in scope of the new register.

Technical detail of proposal

2.4 The operational details of the way in which local authorities would be required to maintain the register would be specified in secondary legislation, through the making of regulations - not in primary legislation. This would be to allow changes to the scheme in the light of experience. If the proposal is taken forward following this consultation, the draft regulations would be available alongside the draft bill (which would be published before being introduced into Parliament), but these would deal with the following issues:

- a. the information about each child and the parents to be contained within the register. Responses to the call for evidence demonstrated a range of opinion on how much detail should be contained (for example, about settings attended as well as or instead of home education);
- b. the issuing by the Secretary of State of a standard electronic specification for registration, for use by local authorities, if the government decided to do that. This would be an alternative to a simple listing in the regulations of the information required. In any case, it is clearly desirable that there is a specified dataset for each child so that interchange of data between local authorities can be effective;
- c. the extent to which data on the register about children can or must be shared with:
 - i. other local authorities; and
 - ii. other agencies.
- d. the extent to which the duty to maintain a register authorises a local authority to obtain and record data obtained from other agencies. The purpose of this would be to increase the accuracy and completeness of the register, for example by including children where there is no data from parents but a health professional has drawn attention to a child who is apparently not attending school and shows signs of not receiving a suitable education. This was an issue which caused a significant amount of comment in response to the call for evidence, and the regulations would need to be consistent with general data protection principles, even though the regulations by their existence would provide the lawful basis for processing of registration data in accordance with the Data Protection Act 2018;
- e. the processes by which names are added to the register, removed from the register and amendments are made – for example, if the local authority is notified

by a school that a child has been removed from its admission register, or a family moves to another local authority area;

f. provision for the inspection of registers by other bodies (for example by Ofsted, albeit only in relation to Ofsted's inspection of a local authority's fulfilment of its duties in relation to vulnerable children, not in relation to the education of individual children);

g. provision for the supply of data by each local authority from its register to the Secretary of State, for the purpose of collating national statistics on children who are educated at home and/or educated in non-school settings – at present there is no national availability of such data except in relation to children in alternative provision;

h. provision for the local authority to check with a state or registered independent school whether a child is in fact registered there. If he or she was found to be, the child would be outside the scope of the register.

2.5 The inclusion of a child on the register would not form in any way some kind of licence to educate a child outside the school system; that right already exists under s.7 of the Education Act 1996, and it would be left intact under the proposed registration regime. The register would mainly function as a list of children about whose education the authority must satisfy itself as to suitability in terms of s.7, or consider a school attendance order. The register would not change LAs' powers regarding assuring themselves of suitability of education or its safeguarding duties. These powers remain unchanged. The register would serve only to assist LAs' in the discharging of these responsibilities. The newly published DfE guidance for local authorities on home education explains in detail the circumstances in which safeguarding law may be relevant to unsuitable education.

2.6 If a duty on local authorities was created in primary legislation as proposed above, that duty would fall within scope of the Secretary of State's power under s.496, 497 and 497A of the Education Act 1996 to make a direction to an authority relating to the performance of that duty. This would be the means of enforcing the duty to keep a register.

Costs to local authorities

2.7 Clearly the creation of the proposed duty would cause additional costs to local authorities. There is a formal process, known as 'New Burdens' for establishing the scale of such costs and making appropriate provision for them in local authority funding. More detail on the New Burdens process is included at the Annex of this consultation paper, and that process would be followed if legislation proceeds. However, as a

preliminary, this consultation includes a question directed mainly to local authorities as to the likely cost of establishing and maintaining the proposed register and responses will be considered as part of the process for deciding whether to go ahead with legislation. We wish to work with local authorities and others to minimise additional costs and maximise the effectiveness of the proposals – bearing in mind that registration should enable local authorities to act more quickly when intervention is required, and thereby reduce the cost of that intervention.

Questions for consultation (nb questions on the on-line survey allow for comments and selection of options, please use that for response if possible)

- 1. Do you agree that local authorities should be obliged to maintain a register of children who are not registered at specified schools (those listed at paragraph 2.2) or being educated under s.19 arrangements?**
- 2. And should such a register specify whether they are attending an educational setting (other than their own home) during school hours?**
- 3. Should the register be widened still further to also include children who are being educated under s.19 arrangements?**
- 4. Should the register include flexi-schooled children (ie those who are educated at home or elsewhere for some of the week during school hours but are also on the admission register of a state-funded or registered independent school**
- 5. What information do you think the register should contain about each child and its parents?**
- 6. Do you think that the DfE should prescribe a national format for a register?**
- 7. What views do you have on the sharing of data on an authority's register with other local authorities and other agencies?**
- 8. Do you think that a local authority should include any information about a child on its register which has been legally obtained from other agencies?**
- 9. Do you agree that a register held by a local authority should be open to inspection by other bodies as prescribed by the Secretary of State, in order to check whether the local authority is carrying out its obligations to maintain the register?**
- 10. Do you agree that local authorities should have to make annual returns of collated data from the register to DfE for statistical purposes?**

11. [for local authorities only] What does the local authority believe would be the approximate additional annual cost of maintaining a register for its area? This should so far as possible include any costs already incurred on voluntary registration, but exclude other costs incurred by the authority in relation to home education and children missing education. It would be helpful to set out the basis for the estimates.

12. Do you have any other comments on either the principle of registration or practical issues related to registration on the basis proposed?

Proposal: creation of a duty on parents to register their child with local authority if not registered at specified types of school

Background

3.1 It would be possible to operate the mandatory register proposed in the previous section without any duty on parents to supply details of their child to be entered on the register. In such a scenario some information would in any case come from some parents, but the local authority would be largely responsible for gathering information and compiling as complete a register as possible. If so, that would mirror the situation at present whereby some local authorities maintain a non-statutory register of home-educated children but parents choose for themselves whether to register their child.

Proposal

3.2 However, the initial proposal is that there should be a statutory duty on parents to provide details of their child to the local authority if their child falls within scope of the register. Although there is no guarantee that parents would comply with such a duty, the government believes that it would help to ensure that the register maintained by a local authority is as complete as possible. It is worth noting that – contrary to the impression held in some quarters, including some local authorities – there is no current legal obligation on parents to inform a school or local authority that a child is deemed to be educated at home, nor to provide any reason before withdrawing a child from a school³. Compliance with the new duty would not need to be onerous – unless a child's circumstances (address or mode of education, for example) changed, then parents might have to inform the local authority only once in many years, and as noted above many parents do already register on a voluntary basis in some local authorities. In order to ensure that this remained the case, local authorities would not be allowed to legally require more information than that specified in regulations.

³ A parent will, however, require the co-operation of the local authority in order to withdraw a child from school if the child attends a special school under arrangements made by the local authority, or the child is registered at a school pursuant to a school attendance order.

Technical detail of proposal

3.3 As with the provision relating to maintenance of the register by a local authority, the basic duty and the overall circumstances in which it would apply to parents would be contained within primary legislation, but more detailed aspects would be contained within regulations. These would need to cover:

- a. the information to be supplied by parents (this would be a sub-set of the overall information requirements for the register and could include parental reasons for the arrangements made); and
- b. details as to the circumstances in which the duty would operate (for example specifying the types of school used in the qualifying criteria) and provisions for parents to seek amendments, deletions, etc in the register entry for their child. Additionally there would be an issue as to the operation of the duty if parents were separated or divorced.

3.4 There would also need to be provision (probably in the primary legislation) for the consequence of a failure to comply with the duty to provide details. The call for evidence asked questions about the consequences of such a failure, and there was a wide spread of opinion. Some respondents favoured financial penalties, or the creation of a new notice regime parallel to the notice provision in s.437(1) of the Education Act 1996; others agreed that the most effective and relevant sanction for non-compliance would be that this would automatically trigger the school attendance order process. The government agrees with the latter view, because it does not want to introduce parallel notice systems, or financial penalties. Neither does it want to introduce a new criminal offence for parents. Therefore, the proposal is that the legislation would be on the following lines:

- a. failure by a parent to comply with the registration duty would in itself be one of the possible triggers for issue of a notice under s.437(1), which requires the parent to satisfy the within a period specified in the notice that the child is receiving a suitable education (ie this starts the process which may lead to the serving of a school attendance order, unless the parent satisfies the authority that the education is suitable);
- b. if a person fails or refuses to comply with any reasonable request for the purpose of ascertaining whether they are the parent of a child who is eligible for registration or any request that they cause their child to be registered, the authority should be entitled to conclude that the person in question is indeed the parent of an eligible child, and that the child appears not to be receiving suitable education, and can therefore serve a s.437(1) notice on that person. This is intended to cover a number of situations including: where the local authority have identified a child whom they believe to be eligible but need more information from

the parent before being confident that the child is eligible; where the authority have identified a child whom they know to be eligible for registration but are not certain who their parents are; or where the authority believes that an adult has one or more eligible children but are not certain who those children are;

c. if a person provided information for the register which later turned out to be incorrect, that in itself would also be a trigger for issue of a s.437(1) notice, provided the person concerned was a parent of the child.

Questions for consultation (nb questions on the on-line survey allow for comments and selection of options, please use that for response if possible)

13. Do you agree that parents should be under a legal duty to provide information to their local authority about a child who is within scope of the proposed registration requirement?

14. Whether or not you agree with the imposition of a legal duty, if one was created what data should parents have to provide about their child?

15. Do you agree that there should be a consequence for parents for failing to register details of a child for the purposes of registration?

16. Whether or not your response to 15 was 'yes', do you think that the most effective consequence for non-compliance with the registration process is that it authorises the local authority to begin the school attendance order process by serving a s.437(1) notice on the parents, which begins the formal process of considering suitability of education and whether a child should attend school?

17. If your answer to 16 was 'no', what alternative would you favour for a consequence of non-compliance (whether or not your answer to 15 was 'yes');

18. Do you have any other comments about the concept of a legal duty on parents to supply information for the purposes of the proposed register?

Proposal: creation of a duty on proprietors of certain education settings to respond to enquiries from local authorities

Background

4.1 As set out above, it is proposed that the new register should extend to all children not registered at state funded or registered independent schools. The government believes that it would be made more effective if a duty was created on the proprietors of settings which are not those specified types of school but are providing education to children during normal school hours, to respond to enquiries from local authorities about children who may be in scope of the register. Many children who are deemed to be educated at home attend other settings for part of the week. Other children are not in any real sense educated at home at all but attend other settings for part or all of the week – sometimes more than one such setting. Some of these settings are quite legitimate – for example companies which provide tuition in specific subjects to children who are educated at home for the rest of the week – but they are often unregulated, and in a few cases may be operating illegally. This would not amount to a scheme for regulating these settings, only imposing requirements as to the provision of information about specific children. The duty would not extend to settings which provide supplementary education outside normal school hours; and it would not apply where children attend a setting but are also registered at a state-funded or registered independent school, since the children would not be in scope of the local authority register.

Proposal

4.2 The purpose of the duty would only be to enable local authorities to obtain more complete information about where a child's education takes place, for the purposes of that child's entry on the proposed register.

4.3 The proposals do not seek to amend existing monitoring or assessment powers of LAs. Since the proposals do not extend this far, it would not be appropriate for it to do this. If the registration process does reveal that a child does attend such a setting in combination with home education or as the sole source of education then it will be for the parent - if called upon to demonstrate to the local authority that the education a child is receiving is suitable overall - to arrange with the proprietor to provide relevant evidence to that end. If the parent cannot do so, then the authority will not be able to include any evidence on the education in that setting in forming a conclusion under s.437 as to suitability. So a duty on the setting's proprietor may be helpful.

Technical detail of proposal

4.4. Once again it is likely that the basic duty on the proprietor would be contained in primary legislation with details set out in regulations. The primary legislation would need to define the settings which were in scope of the duty (with the ability to prescribe in regulations categories which were not), and who the proprietors are of such settings. The duty would need to include a requirement to keep a register with details which might be required by a local authority on any of the children attending the setting, as well as an obligation to confirm that a specified child was included on that register. The regulations would need to:

- a. specify categories of setting not in scope (for example, those which did not operate in normal school hours)
- b. specify the format and contents of a register to be kept by the setting for the purpose of recording information which might be required by a local authority;
- c. specify the information which the proprietor would be obliged to provide to the local authority (this might or might not be identical to that required under (b) – it might, for example, include the hours normally attended by the child in question).

4.5. An issue arising from the imposition of such a duty is whether there should be any sanction for non-compliance. It seems likely that without a sanction in some form, the duty would be difficult to enforce. The government has not taken a view on what that sanction might be – the main objective being to get the required information rather than punishment for non-compliance - and the consultation questions ask for responses on this point.

4.6 It should be noted here that it would be possible to include this proposal in the legislation package but provide for it to not come into force until a later date, through a commencement order and the making of the relevant regulations. Reasons for delaying this element could include wider changes to the regulation of settings which are not schools.

Questions for consultation (nb questions on the on-line survey allow for comments and selection of options, please use that for response if possible)

19. Do you agree with the general approach that the proprietors of settings providing education in school hours - other than specified types of school -

should be under a duty to supply information to local authorities about any child in scope of the proposed register?

20. Which settings do you think should be included in the scope of the duty?

21. Which information should proprietors of the settings in scope be required to (a) keep in the setting's own register and (b) supply on request to the local authority about a child in scope of the registration requirement?

22. Do you agree that there should be a sanction on the proprietor for non-compliance with a duty to supply information about a child in scope of the registration requirement?

23. If your answer to 22 was 'yes', which type of sanction would you favour? For example should there be an offence which carries a fine, or should enforcement be via a court order requiring release of information?

24. Do you have any other comments about the concept of a duty on the proprietors of settings to provide information about children who attend their setting and fall within scope of the registration requirement?

Proposal: creation of a duty on local authorities to provide support to parents who educate children at home

Background

5.1 The issue of support for home educating parents formed the third part of the department's call for evidence. As the government's response document shows, there was a wide spread of opinion about both the principle of this and how such support might be most effectively given. The government's view is that despite doubts expressed by many respondents about the efficacy of having a statutory duty in this area (even if the prospect of such support is welcome), it is in fact worth creating such a duty. However, it is certainly the case that more consideration needs to be given as to how it would operate, and what its scope would be.

5.2 Some respondents to the call for evidence viewed such a duty with suspicion and saw it as providing an excuse for increased interference by local authorities with the process of home education. The government does not accept this view, but does believe that such a duty, if created, should be one which is to provide support and assistance only on request. That would enable those families which wish to minimise their contact with the local authority to do so.

5.3 One subject tends to dominate discussion of support for home educators and that is access to public examinations. Although this section of the consultation paper does cover that issue, it needs to be noted that creating change on this is not necessarily straightforward because there are bodies other than local authorities involved.

5.4 There are also considerable financial implications of creating a duty to provide support to parents who home educate their children. As noted in the section on a new register, there is a specific process for assessing the financial costs to local authorities of new statutory duties. However this consultation asks for information on costs of support, to begin the process of establishing the financial implications.

5.5 The call for evidence asked about financial consequences for schools if children were withdrawn into home education with the implication that there should be penalties, with the resulting income to local authorities used to support home education. However, this aspect is not covered in this consultation and will be dealt with elsewhere.

5.6 The government wishes to make it clear that it does not propose to make funding, which would otherwise be spent on a school place for a child, available to parents to meet the costs incurred by those parents in providing home education. The basic policy position remains that parents choosing home education take on the financial

responsibility for this. The issue for this consultation is how parents might be best supported in other ways, which might include financial assistance for specific costs.

5.7 The department's recently published guidance on elective home education deals with the issue of local authority consideration of financial or other support for parents who incur additional costs through educating at home children who have special educational needs.

Proposal

5.8 Again, the proposal is to create a basic duty on local authorities in primary legislation, with the more detailed requirements being specified in regulations. There are various ways in which such a duty might be drafted for the primary legislation, but it would almost certainly be drafted in as wide terms as possible so that the regulations could potentially include a wide spread of forms of support – and be changed at a later date if circumstances alter.

Technical detail of proposal

5.9 Regulations specifying forms of support which should be made available to parents would need to deal with:

- a. defining eligibility for support – which would almost certainly be linked to registration;
- b. the forms of support to be made available, which could include such things as:
 - i. advice on home education and sources of support - whether provided directly by the authority or available elsewhere;
 - ii. assistance with the cost of examination fees incurred by private entrants (possibly with specified minimum levels);
 - iii. local authority support (either financial or through facilitation) for local home education groups and forums which would provide both collective and individual help to families;
 - iv. negotiation of free or discounted admission for home educated children to facilities and other destinations which school children attend on an organised basis;
 - v. Carrying out, and publicising the results of, checks on private tutors;
 - vi. providing regular information and contacts for home educating families through newsletters; and

vii. making local arrangements for home educated children to participate in programmes normally conducted through schools, eg immunisation, sight and hearing tests, etc

c. conditions which could (or could not) be attached to the provision of support given and had to be met for that support to continue;

5.10 This duty, if created, would also be subject to the Secretary of State's powers to make directions under s.496, 497 and 497A of the Education Act 1996. However, the main incentive for local authorities to operate such a duty seriously would be to ensure that the education provided at home for a child was suitable, and thereby reduce future expenditure incurred on children where this was not the case.

5.11 The department is considering further what scope there is for the legislation to cover other forms of assistance with public examinations, for example obliging local authorities to operate examination centres for private candidates.

Costs to local authorities

5.12 Clearly, the cost of implementing such a duty depends on a large number of variables - most especially the forms of support available, and take-up rates amongst families. The latter might vary considerably between local authorities (which in any case, across the country, have very different levels of home education participation in their areas). Some forms of support (eg advice) could be treated as a marginal cost which would be incurred alongside normal contact between the local authority and home educators (and might even result in a net saving if it reduces the incidence of cases which have to be pursued to school attendance order stage). Other forms of support, most especially financial assistance towards examination entry fees, would have a tangible cost which would impact directly on a local authority's budget.

5.13 The government accepts that at a time of constrained public resources and continuing pressure on local authority budgets there can be no expectation of substantially increased expenditure in this area even if the new burden involved receives formal recognition. Although home educators responding to the call for evidence sometimes pointed to a saving to the public purse through parents opting to educate children at home, in reality the numbers involved are too small for this to be more than marginal - given that even though school funding is basically per-pupil, school expenditure is largely driven by staff costs which alter little if there are one or two fewer children per school because they are being educated at home.

Direct support for home educating families by the Department for Education

5.14 Although support for home educating families, if available at all, has been given by local authorities, the government is aware that it would be possible for some forms of such support to be given direct by the Department for Education. These might include, for example, an online guidance facility, curriculum resources and financial support for examination fees. The government has not taken a view on whether this is desirable, but the consultation questions below include this issue.

Questions for consultation (nb questions on the on-line survey allow for comments and selection of options, please use that for response if possible)

25. Do you agree that there should be a statutory duty on local authorities to provide support on request to parents who educate children at home, of a type to be prescribed by the Secretary of State in regulations?

26. If such a duty were to be created, which of the following should it encompass:

- a. advice on home education and sources of support - whether provided directly by the authority or available elsewhere;**
- b. assistance with the cost of examination fees incurred by private entrants (possibly with specified minimum levels);**
- c. local authority support for local home education groups and forums which would provide both collective and individual help to families;**
- d. negotiation of free or discounted admission for home educated children to facilities and other destinations which school children attend on an organised basis;**
- e. Carrying out, and publicising the results of, checks on private tutors;**
- f. providing regular information and contacts for home educating families through newsletters; and**
- g. making local arrangements for home educated children to participate in programmes normally conducted through schools, eg immunisation, sight and hearing tests, etc**

- 27. What are the potential difficulties in ensuring that such a duty is properly discharged by a local authority?**
- 28. Should the duty to provide support on request be limited to children whose details are included on the proposed register?**
- 29. Should other mechanisms be explored for enhancing access to public examinations for children educated at home, and if so, what?**
- 30. [for local authorities only]. What expenditure does the authority already incur on support for home educated families, what types of support does this cover and approximately how many children are in scope of the support?**
- 31. Do you have any further comments on the issue of local authority support for home-educating families?**
- 32. Do you consider that support for home-educating parents should be provided by the Department for Education?**
- 33. If your answer to 32 was 'yes', what forms of support do you believe are particularly suited to being provided on a national rather than local basis?**

Other matters

6.1 An equalities log, UNCRC assessment and family impact test document are being published alongside this consultation paper.

Questions for consultation

34. Do you have any comments on the conclusions set out in the published equalities log, UNCRC assessment and family impact test document?

35. Do you have any other comments on the government's proposals for legislation relating to registration and support for home education?

Full List of consultation questions (nb questions on the on-line survey allow for comments and selection of options, please use that for response if possible)

- 1. Do you agree that local authorities should be obliged to maintain a register of children who are not registered at specified schools (those listed at paragraph 2.2) or being educated under s.19 arrangements?**
- 2. And should such a register specify whether they are attending an educational setting (other than their own home) during school hours?**
- 3. Should the register be widened still further to also include children who are being educated under s.19 arrangements?**
- 4. Should the register include flexi-schooled children (ie those who are educated at home or elsewhere for some of the week during school hours but are also on the admission register of a state-funded or registered independent school**
- 5. What information do you think the register should contain about each child and its parents?**
- 6. Do you think that the DfE should prescribe a national format for a register?**
- 7. What views do you have on the sharing of data on an authority's register with other local authorities and other agencies?**
- 8. Do you think that a local authority should include any information about a child on its register which has been legally obtained from other agencies?**
- 9. Do you agree that a register held by a local authority should be open to inspection by other bodies as prescribed by the Secretary of State, in order to check whether the local authority is carrying out its obligations to maintain the register?**
- 10. Do you agree that local authorities should have to make annual returns of collated data from the register to DfE for statistical purposes?**
- 11. [for local authorities only] What does the local authority believe would be the approximate additional annual cost of maintaining a register for its area? This should so far as possible include any costs already incurred on voluntary registration, but exclude other costs incurred by the authority in relation to home education and children missing education. It would be helpful to set out the basis for the estimates.**
- 12. Do you have any other comments on either the principle of registration or practical issues related to registration on the basis proposed?**

13. Do you agree that parents should be under a legal duty to provide information to their local authority about a child who is within scope of the proposed registration requirement?

14. Whether or not you agree with the imposition of a legal duty, if one was created what data should parents have to provide about their child?

15. Do you agree that there should be a consequence for parents for failing to register details of a child for the purposes of registration?

16. Whether or not your response to 15 was 'yes', do you think that the most effective consequence for non-compliance with the registration process is that it authorises the local authority to begin the school attendance order process by serving a s.437(1) notice on the parents, which begins the formal process of considering suitability of education and whether a child should attend school?

17. If your answer to 16 was 'no', what alternative would you favour for a consequence of non-compliance (whether or not your answer to 15 was 'yes');

18. Do you have any other comments about the concept of a legal duty on parents to supply information for the purposes of the proposed register?

19. Do you agree with the general approach that the proprietors of settings providing education in school hours - other than specified types of school - should be under a duty to supply information to local authorities about any child in scope of the proposed register?

20. Which settings do you think should be included in the scope of the duty?

21. Which information should proprietors of the settings in scope be required to (a) keep in the setting's own register and (b) supply on request to the local authority about a child in scope of the registration requirement?

22. Do you agree that there should be a sanction on the proprietor for non-compliance with a duty to supply information about a child in scope of the registration requirement?

23. If your answer to 22 was 'yes', which type of sanction would you favour? For example should there be an offence which carries a fine, or should enforcement be via a court order requiring release of information?

24. Do you have any other comments about the concept of a duty on the proprietors of settings to provide information about children who attend their setting and fall within scope of the registration requirement?

25. Do you agree that there should be a statutory duty on local authorities to provide support on request to parents who educate children at home, of a type to be prescribed by the Secretary of State in regulations?

26. If such a duty were to be created, which of the following should it encompass:

a. advice on home education and sources of support - whether provided directly by the authority or available elsewhere;

b. assistance with the cost of examination fees incurred by private entrants (possibly with specified minimum levels);

c. local authority support for local home education groups and forums which would provide both collective and individual help to families;

d. negotiation of free or discounted admission for home educated children to facilities and other destinations which school children attend on an organised basis;

e. Carrying out, and publicising the results of, checks on private tutors;

f. providing regular information and contacts for home educating families through newsletters; and

g. making local arrangements for home educated children to participate in programmes normally conducted through schools, eg immunisation, sight and hearing tests, etc

27. What are the potential difficulties in ensuring that such a duty is properly discharged by a local authority?

28. Should the duty to provide support on request be limited to children whose details are included on the proposed register?

29. Should other mechanisms be explored for enhancing access to public examinations for children educated at home, and if so, what?

30. [for local authorities only]. What expenditure does the authority already incur on support for home educated families, what types of support does this cover and approximately how many children are in scope of the support?

31. Do you have any further comments on the issue of local authority support for home-educating families?

32. Do you consider that support for home-educating parents should be provided by the Department for Education?

33. If your answer to 32 was 'yes', what forms of support do you believe are particularly suited to being provided on a national rather than local basis?

34. Do you have any comments on the conclusions set out in the published equalities log, UNCRC assessment and family impact test document?

35. Do you have any other comments on the government's proposals for legislation relating to registration and support for home education?

ANNEX : New Burdens process

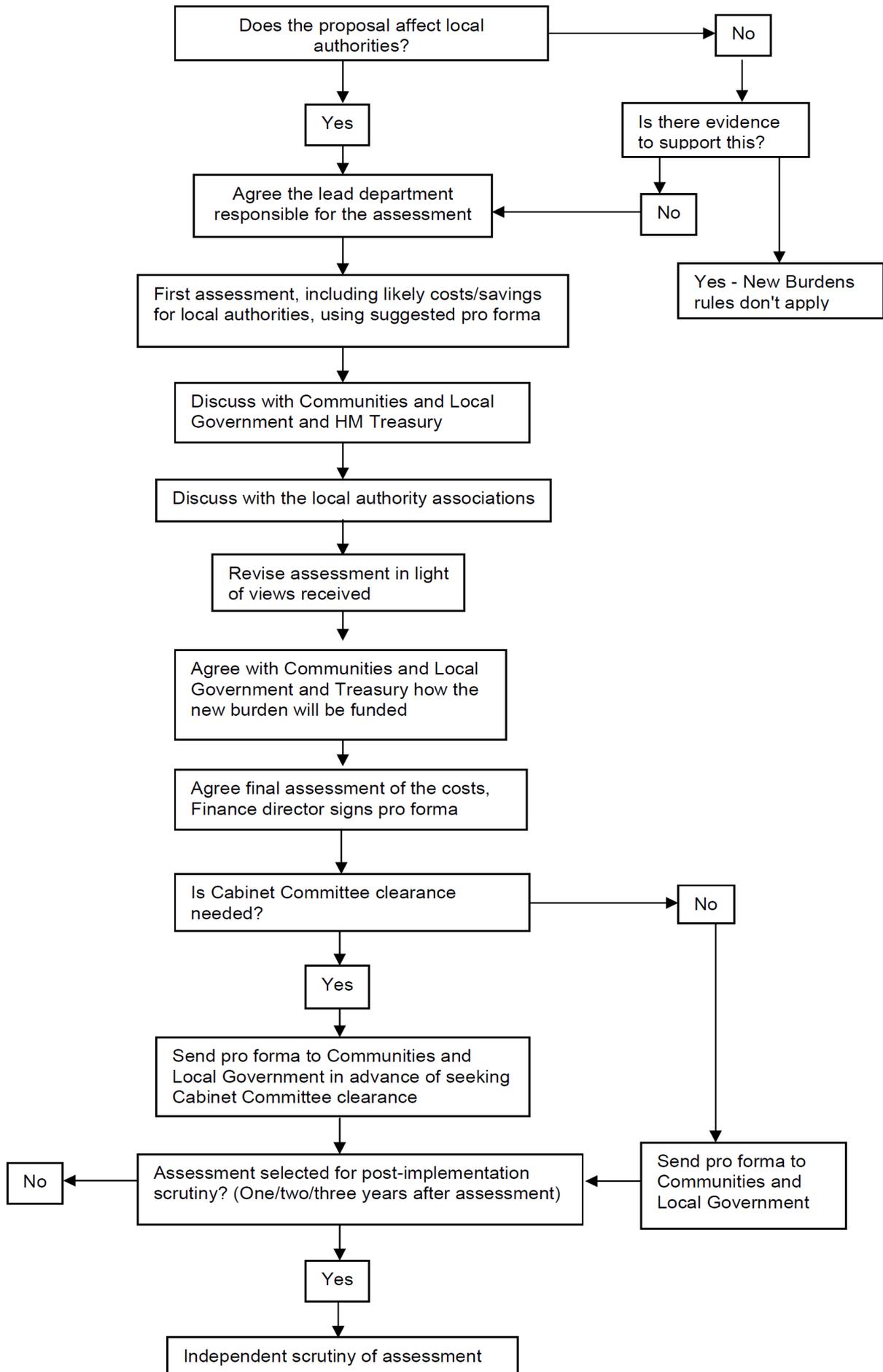
The 'New Burdens' process is a formal system for establishing the cost of additional tasks imposed upon local government, and then agreeing the basis on which those costs will be fully funded. There are a number of reasons why such a process is needed: to enable proper control of increases in council tax rates; to ensure that local authority spending on existing statutory obligations is not threatened; and to produce transparency in the way that local authorities are expected to undertake new statutory duties.

A new burden is any policy or initiative which increases the cost of providing local authority services. The requirement must be new; action to ensure that tasks for which authorities are already funded is not a new burden and for that reason there is no new burdens issue arising from the issue of revised DfE guidance on the current legal framework for home education.

The full guidance on the process can be found at:

<https://www.gov.uk/government/publications/new-burdens-doctrine-guidance-for-government-departments>

However, a chart illustrating the main stages in the process appears below.





Department
for Education

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