

## **Suggestions for completing the consultation on the draft Home Education Guidelines**

We have included some draft responses which we hope you will find helpful when making your own individual response to the consultation. Please forward this freely to local groups and consider making your response as soon as possible since we are informed that the DfES Consultation Unit are collating all the responses as soon as they are received.

We are aware that Local Authorities are already making their views known to the DfES both separately and collectively on a regional basis so please don't wait till the deadline approaches before you make your individual response. The pro-monitoring local authority view is already being heard LOUD AND CLEAR at the DfES.

Another useful thing you can do is to make a response on behalf of your local group because we can respond once as parents and again as members of the voluntary and community sector.

The questions on the consultation response form ask you to comment on various paragraphs in the draft guidelines. Ideally you would have a hard copy of the draft Guidelines for reference, either by printing out a copy from the link on the website <http://www.dfes.gov.uk/consultations/downloadableDocs/Elective%20Home%20Education%20Guidelines%201.doc>

### **Or by keeping a second window open as you answer the questions**

**Or by requesting a paper copy of the Guidelines from** the Department's distribution centre Prolog on 0845 6022260 quoting the publication reference number 1479 CONSULTATION ON HOME EDUCATION GUIDELINES LAUNCHED 8 MAY.

In addition we have reproduced the relevant paragraphs from the Guidelines below.

But it is worth getting a look at the complete Guidelines because the Consultation misses out questions on some paragraphs eg there are no Consultation questions on the SEN paragraphs and you can make comments on that fact in your Consultation response. The EO Campaign website has a page of useful links on SEN [<http://www.freedomforchildrentogrow.org/sen.htm>]

Some home educators have already produced draft responses and general comments on the Guidelines Consultation. You can find links to these from the EO Campaign website LATEST page Saturday 9 June <http://www.freedomforchildrentogrow.org/update.htm> and they are also reproduced here :

<http://www.freewebs.com/hedline/HEdline%20News%204.pdf>  
<http://daretoknowblog.blogspot.com/2007/05/consultation-on-elective-home-education.html> ( and further updates from this blog )  
[http://www.freedomforchildrentogrow.org/Government\\_consultation\\_launched.doc](http://www.freedomforchildrentogrow.org/Government_consultation_launched.doc)

PLEASE USE YOUR OWN WORDS WHEN YOU REPLY TO THE CONSULTATION. THE FOLLOWING ARE ONLY SUGGESTIONS. OUR COLLECTIVE RESPONSE WILL BE GREATLY WEAKENED IF EVERYONE USES THE SAME FORM OF WORDS.

Consultation Questions On Draft Guidelines For Elective Home Education.

<http://www.dfes.gov.uk/consultations/conRespond.cfm?consultationId=1479> Respond online or download paper copies of the consultation

<http://www.dfes.gov.uk/consultations/downloadableDocs/Consultation%20on%20Home%20Education%20Guidelines%20Response%20Form.doc>

1 Do you agree that it is helpful for the DfES to issue guidelines to local authorities?

Yes.

There was a need for clarification. I hope the consultation process will improve the guidelines and make it clearer what the local authority should and should not be doing. The draft guidelines are quite out of date ( eg no reference to the Children Act 2004 and out of date reference to the Guidance on deregistering. ) It is good that we are seeing a full public consultation on the draft Guidelines. I am pleased that the draft Guidelines acknowledges the legal right of the family to choose home education. The draft Guidelines don't include any complaints or grievance procedure. It does not seem as though the Guidelines will be legally enforceable, which makes me wonder whether it will really make a difference to my Local Authority.

2. . Do you agree that the description of the law [paragraphs 2.1-2.3] relating to elective home education is accurate and clear.

2.1 **The responsibility for a child's education rests with their parents.** In England, education is compulsory, but schooling is not.

2.2 Article 2 of Protocol 1 of the European Convention on Human Rights states that:

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

This right is enshrined in English law. Section 7 of the Education Act 1996 provides that:

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

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

*(b) to any special educational needs he may have,*

*either by regular attendance at school or otherwise."*

2.3 The responsibility for a child's education rests with their parents. An "efficient" and "suitable" education is not defined in the Education Act 1996 but "efficient" has been broadly described as an education that "achieves that which it sets out to achieve", and a "suitable" education is one that "primarily equips a child for life within the community of which he is a member, rather than the way of life in the 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>1</sup>.

Not sure.

Comments :

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<sup>1</sup> Mr Justice Woolf in the case of R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust (12 April 1985)

The Guidelines should give a direct link to Section 7 of the 1996 Education Act because this is the statute law referring to home education. :

<http://www.opsi.gov.uk/acts/acts1996/96056--a.htm>

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

a/ to his age, ability and aptitude and

b/ to any special educational needs he may have, either by regular attendance at school or otherwise "

The right of parents to educate their children according to their own philosophical convictions is also stated in the British Human Rights Act 1998.

<http://www.opsi.gov.uk/ACTS/acts1998/19980042.htm>

This section could do with a much better introduction to the whole area of Elective Home Education for professionals who may be new to this area. This job is done by a few Local Authorities such as Staffordshire on their Home Education Website

<http://education.staffordshire.gov.uk/Curriculum/Services/HomeEducation/>

<http://education.staffordshire.gov.uk/Curriculum/Services/HomeEducation/FAQs/>

Statute law does not define "efficient" "suitable" "full-time" or "education", although we have some clarification from the case law on education which is quoted in the draft Guidelines. The point about home education is that the education has to be suitable to the home educated child's age ability and aptitude. It is personalised learning, and school standards do not apply. Nor is there any obligation for the home educated child or young person to follow a broad and balanced curriculum since this legal requirement .only applies to registered pupils in the maintained sector. (Introduced by the Education Reform Act 1988 [http://www.opsi.gov.uk/acts/acts1988/Ukpga\\_19880040\\_en\\_2.htm#mdiv1](http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880040_en_2.htm#mdiv1) ) #

3/ Do you agree that the description of local authorities' responsibilities [paragraphs 2.5-2.11] is accurate and helpful?

### **Local authorities' responsibilities**

2.5 Local authorities should provide written information about home education that is clear, accurate and sets out the legal position, roles and responsibilities. This information should be made available on local authority websites and in local community languages on request. Local authorities should recognise that there are many approaches to educational provision, not just a "school at home" model. What is suitable for one child may not be for another, but all children should make reasonable progress.

2.6 Local authorities have a new duty under the Education and Inspections Act 2006 to identify, as far as is possible, children who are missing, or in danger of missing, education. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than being at school (for example, at home, privately, or in alternative provision). The guidance issued makes it clear that the duty does not apply to children who are being educated at home.<sup>2</sup>

2.7 Local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis. However, under Section 437(1) of the Education Act 1996, local authorities can intervene **if they have good reason** to believe that parents are not providing a suitable education. This section states that:

*"If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular*

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<sup>2</sup> Statutory Guidance for Local Authorities in England to Identify Children not Receiving Education available at <http://www.everychildmatters.gov.uk/ete/childrenmissingeducation/>.

*attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education."*

Section 437(2) of the Act provides that the period shall not be less than 15 days beginning with the day on which the notice is served.

2.8 The most obvious course of action if such a concern were raised would be to ask parents for information about the education they are providing. Such a request is not the same as a notice under s 437(1). Parents are under no duty to comply, but it would be sensible for them to do so.<sup>3</sup>

2.9 Section 437(3) refers to the serving of School Attendance Orders:

*"If –*

*(a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and*

*(b) in the opinion of the authority it is expedient that the child should attend school,*

*the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order."*

2.10 A School Attendance Order should be served as a last resort; after all reasonable steps have been taken to try to resolve the situation. At any stage following the issue of the Order, parents may present evidence to the local authority, or the court, that they are now providing an appropriate education and apply to have the Order revoked. It will be for a court to decide whether or not the education being provided is suitable and efficient. Detailed information about School Attendance Orders is contained in *Ensuring Regular School Attendance* paragraphs 6 to 16.<sup>4</sup>

2.11 Local authorities also have a duty under Section 175(1) of the Education Act 2002 to safeguard and promote the welfare of children. This section states:

*"A local education authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children."*

Section 175(1) does not extend local authorities' functions. It does not, for example, give local authorities powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education. "

Answer :

NO

Comments :

There is no requirement in law for the child or young person to make "reasonable progress" and this sentence should be removed.. The law with regard to home education states that it must be suitable to the age ability and aptitude of the child and to any special educational

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<sup>3</sup> Phillips v Brown (1980)

<sup>4</sup> Available at [www.dfes.gov.uk/schoolattendance/prosecutions/index.cfm](http://www.dfes.gov.uk/schoolattendance/prosecutions/index.cfm)

needs he may have. By law the educational provision for a child at home will be suitable to the child and will be in accordance with the parents' philosophical convictions. There is no legal requirement for the local authority to engage in continual or ongoing monitoring of a family's home education provision and any DfES Guidelines for Local Authorities should make this quite clear. Section 437 of the 1996 Education Act which is quoted in this part of the draft Guidelines sets out the end of the road for the Local Authority and as such it has no place here in a discussion of the ordinary responsibilities of the local authority. This information should be included in the Guidelines but this is not the appropriate place to include this. It would be better if this went to the end of the Guidelines in a reference section for local authorities. Section 2.11 is out of date since the local authority will have regard to the more recent legislation contained in the 2004 Children Act with reference to Safeguarding Children. It is however true that neither S.175 ( 1) of the 2002 Act or the 2004 Act give any additional powers to the local authority to enter the private homes of home educating families for the purpose of monitoring the educational provision. Nor does the 2004 Act give additional powers to the local authority in terms of access to the home educated child.

4/ Do you agree that the section on contact with the local authority [paragraphs 3.4 -3.7] is accurate and helpful?

### **Contact with the local authority**

3.4 Many home educating parents welcome regular contact with the local authority as an opportunity to reaffirm their provision. However, where parents do not want any involvement with the local authority, the LA should not automatically assume that there is a problem which needs investigating. Instead, the LA should take a risk-based approach, taking into consideration the individual and community's circumstances. As one example, recent research shows that "few Gypsy/Roma and Traveller parents have the knowledge, skills and resources to provide or deliver a full-time education that is efficient and suitable".<sup>5</sup> We do know that there will be Gypsy, Roma and Traveller children who do receive a good education at home. Those monitoring elective home education should seek advice from Traveller Education Support Services before engaging with parents from these communities

3.5 **If information exists** which may cast doubt on whether an "efficient and suitable education" can be provided, the local authority should seek to gather any relevant information that will assist them in reaching a properly informed judgement. This should include seeking from the parents any further information that they wish to provide explaining how they are providing a suitable education. Parents should be given the opportunity to address any specific concerns that the authority has. The child should also be given the opportunity, but not required, to attend any meeting that may be arranged or express his or her views in some other way.

3.6 If there are any reasonable concerns, a local authority may wish to contact parents to discuss their ongoing home education provision. Contact should normally be made by writing to the parents to request an updated report or seek a meeting. A written report should be made after such contact and copied to the parents stating whether the authority has any concerns about the education provision. Where there are concerns about the efficiency or suitability of the education being provided for the child, more frequent contact may be required. Where concerns merit frequent contact, the authority should discuss these concerns with the child's parents, with a view to helping them improve their provision in the best interests of the child.

3.7 Many parents welcome the opportunity to discuss the provision that they are making for the child's education during a home visit but parents are not legally required to give the local authority access to their home. They may, choose to meet a local authority

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<sup>5</sup> *The situation regarding the current policy, provision and practice in Elective Home Education for Gypsy, Roma and Traveller Children*, Ivatts, 2006.

representative at a mutually convenient and neutral location instead or choose not to meet at all. If they choose not to meet, they will need to provide evidence that they are providing an efficient and suitable education. Parents might, for example:

- write a report;
- provide samples of work;
- invite a local authority advisor/consultant to their home, with or without the child being present; or
- meet a local authority advisor/consultant elsewhere, with or without the child.

3.6

3.7 Answer :

3.8 No.

Comments:

3.4 Gives the impression that regular contact is approved .This should be removed. It is irrelevant and misleading. Ethnic minorities who home educate have the same rights and responsibilities in law as any other home educators and therefore 3.4 on the GRT community is irrelevant and should be removed. The Lead Professional for GRT home educating families, as with any other home educating families, is the Elective Home Education Advisor. The Traveller Education Service deals with inclusion and not with Elective Home Education. Section 3.5 is unclear and prejudicial since it says: "**If information exists** which may cast doubt on whether an "efficient and suitable education" can be provided". This seems to cast doubt on certain types of parents and their ability to provide education. 3.6 There can be no legal definition of "reasonable concerns" or "concerns". This can only ever be a subjective judgement and should be amended to "serious concerns about educational provision" and these serious concerns must be justified by evidence. Moreover the local authority has no responsibility in law to engage in ongoing monitoring of elective home education provision. Nor is there any local authority funding available to "support" home educating families. 3.7 is not a fair and accurate statement of the law. Some local authorities may press for this but it is not a legal requirement. It is irrelevant anecdotal evidence to say that this is welcomed by parents. This is not a statement of the law.

5/ Do you agree that the section on providing a full time education [paragraphs 3.11 -3.14] and in particular, the characteristics of provision [paragraph 3.13] is accurate and helpful?

3.11 Parents are required to provide an efficient education suitable to the age, ability and aptitude of the child. There is currently no legal definition of "full-time". Children normally attend school for between 22 and 25 hours a week for 39 weeks of the year, but this measurement of 'contact time' is not relevant to home education where there is often almost continuous one-to-one contact and education may take place outside normal 'school hours'. The type of educational activity can be varied and flexible. Home-educating parents are not required to:

- teach the National Curriculum
- have a timetable
- have premises equipped to any particular standard
- set hours during which education will take place
- have any specific qualifications
- make detailed plans in advance
- observe school hours, days or terms
- give formal lessons
- reproduce school type peer group socialisation
- match school, age-specific standards.

However, local authorities should offer advice and support to parents on these matters if requested.

3.12 It is important to recognise that there are many, equally valid, approaches to educational provision. Local authorities should therefore consider a wide range of information from home educating parents, in a range of formats. The information may be in the form of specific examples of learning e.g. pictures/paintings/models, diaries of work, projects, assessments, samples of work, books, educational visits etc.

3.13 In their consideration of parents' provision of education at home, local authorities may reasonably expect the provision to include the following characteristics:

- consistent involvement of parents or other significant carers – it is expected that parents or significant carers would play a substantial role, although not necessarily constantly or actively involved in providing education
- recognition of the child's needs, attitudes and aspirations
- opportunities for the child to be stimulated by their learning experiences
- access to resources/materials required to provide home education for the child – such as paper and pens, books and libraries, arts and crafts materials, physical activity, ICT and the opportunity for appropriate interaction with other children and other adults.

3.14 If, on considering the educational provision, one or more of the above characteristics appear to be lacking, local authorities may choose to further investigate whether or not an efficient and suitable education is, in fact, being provided. A full written report of the findings should be made and copied to the parents promptly, specifying the grounds for concern and any reasons for concluding that provision is unsuitable. If the authority is not satisfied that efficient education is being provided, and the parents, having been given a reasonable opportunity to improve their provision and report back to the authority, have not done so, the authority should consider serving a School Attendance Order (see section 2.7).

Not sure.

3.11 is reasonable statement of the law. 3.12 does not specify that there is no ongoing duty for the local authority to monitor educational provision or for parents to provide information on ongoing basis. Is this discussion of forms "evidence" relating to an initial enquiry by the LA? It is equally the case that information may NOT be in those forms specified in 3.12. 3.13 There is nothing in law about what the LA may "reasonably expect" and this phrase should be replaced by a phrase such as "may find it useful to consider some of the following". There is no need to specify a list of resources here because absence of any of these resources does not indicate that an efficient suitable fulltime education is not taking place. ."Consistent involvement of parents or other significant carers " may be a criterion for the Local Authority to bear in mind, but it is not derived from any statute on home education. The other items in the list are from the Scottish Guidance and it is misleading to itemise them here as though they were a checklist for education being "suitable", whereas in law education has to be suitable to the age, aptitude and ability of the child. 3.14 is not an accurate statement of the law. . The list in 3.13 is not a checklist and therefore absence of an item from the list cannot be declared to be grounds for concern.

We are not asked to comment on Section 3.15 Special Educational Needs. This section needs more input from experts in case law and experienced people in the field of SEN and Elective Home Education. The Home Education Advisor must have proper training in SEN. The statement of SEN for the home educated child may legally be ceased by the Local Authority and this is not mentioned in the draft Guidelines.

6/ Do you agree that the section on developing relationships (section 4) is useful?

### **Developing relationships**

4.1 As noted in the Introduction to these guidelines, the central aim of this document is to assist local authorities and home educators to build effective relationships that function to safeguard the educational interests of children and young people; relationships that are rooted in mutual understanding, trust and respect. The guidelines outline a number of recommendations that are geared towards the promotion of such relationships.

4.2 Whilst there is no current legal obligation on education authorities or home educators to develop such relationships, doing so will often provide parents with access to any support that is available and allow authorities to better understand parents' educational provision and preferences. A positive relationship will also provide a sound basis if the authority is required to investigate assertions from any source that an efficient and suitable education is not being provided. This will be true whether or not parents are required to demonstrate that suitable home-education provision is being made available.

### **Acknowledging diversity**

4.3 Parents' educational provision will reflect a diversity of approaches and interests. Some parents, especially those who have other children attending school, may wish to provide education in a formal and structured manner, following a traditional curriculum and using a fixed timetable that keeps to school hours and terms. Other parents may decide to make more informal provision that is responsive to the developing interests of their child. One approach is not necessarily any more efficient or effective than another. Although some parents may welcome general advice and suggestions about resources, methods and materials, LAs should not specify a curriculum which parents must follow.

4.4 Children learn in different ways and at different times and speeds. It should be appreciated that parents and their children might require a period of adjustment before finding their preferred mode of learning. Parents are not required to have any qualifications or training to provide their children with an appropriate education. Their commitment to providing an efficient education that is suitable for their child may be demonstrated by them providing some indication of their objectives and resources (see paragraphs 3.12 to 3.15).

### **Providing information for parents**

4.5 The provision of clear information has an important role to play in the promotion of positive relationships. LAs should provide written information and website links for home-educating parents that is clear and accurate and which sets out the legal position, and roles and responsibilities, in an unambiguous way. We also recommend that contact details for home education support organisations should be provided. A selection of these is included in Part 5. All written information should be made available to parents in community languages and alternative formats on request.

4.6 As noted as paragraph 3.3 we recommend that LAs should, if the parents wish, provide parents who are, or who are considering, home-educating with a named contact within the authority who is familiar with home education policy and practice and has an understanding of a range of educational philosophies. If the authority has cause to invite the parents to meet with a named education authority, any such meeting should take place at a mutually acceptable location and the child concerned should also be given the opportunity to attend that meeting, or otherwise to express his or her views. Either during such a meeting, or otherwise, the parents and the authority should consider and agree what future contact there will be between them.

### **Contact with parents and children**

4.7 Local authorities should acknowledge that learning takes place in a wide variety of environments and not only in the home. Some parents are happy for the local authority to have the opportunity to see the child in their learning environment, to enable them to see the provision at first hand. Seeing the child responding to the educational provision of the



parents may provide a strong indication that an efficient and suitable education is indeed being provided. The authority does not, however, have a legal right of access to the home and the matter should not be forced.

4.8 Where a parent elects not to allow access to their home or their child, this does not of itself constitute a ground for concern about the education provision being made. Although it is recognised that the learning environment can have a bearing on the effectiveness of learning, LAs should, in the vast majority of cases, be able to discuss and evaluate the parents' educational provision by alternative means. Parents might prefer, for example, to write a report, provide samples of work, have their educational provision endorsed by a third party (such as an independent home tutor) or provide evidence in some other appropriate form.

### **Child protection**

4.9 The welfare and protection of all children, both those who attend school and those who are educated by other means, are of paramount concern and the responsibility of the whole community. As with school-educated children, child protection issues may arise in relation to home-educated children. If any child protection concerns come to light in the course of engagement with children and families, or otherwise, these concerns should immediately be referred to the appropriate authorities using established protocols.<sup>6</sup>

4.10 Parents may choose to employ other people to educate their child, though they themselves will continue to be responsible for the education provided. They will also be responsible for ensuring that those whom they engage are suitable persons to have access to children. Parents will therefore wish to satisfy themselves by taking up appropriate references. A small number of LAs choose to assist home-educating parents in this task by undertaking Criminal Records Bureau (CRB) checks free of charge, for example, on independent home tutors. Tutors employed by an LA may also undertake work for home-educating parents, in which case, CRB checks ought to have been made already.

### **Reviewing policies and procedures**

4.11 Authorities will wish to review all of their procedures and practices in relation to home education on a regular basis to see if improvements can be made to further develop relationships and meet the needs of children and parents. Home education organisations and home-educating parents should be involved in this process of review. Effective reviews, together with the sensitive handling of any complaints, will help to secure effective partnership.

4.12 Local authorities will also wish to bear in mind that Ofsted will report on the way local authorities cater for home-educating families within their areas.

Answer:

Not sure

Comments:

Section 4.1 should be in the introduction or should be removed. . The second sentence in 4.2. should be removed. 4.3 Should read: "Parents' educational provision will reflect a diversity of approaches and interests. The education provided at home must be suitable to the child's age ability and aptitude and any special educational needs he may have. " The rest of 4.3. is speculative misleading and unnecessary. . It would be possible to retain the

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<sup>6</sup> *Working Together to Safeguard Children*, Home Office, Department of Health, DfES & Welsh Office, 1999.

sentence "Some parents may welcome general advice and suggestions about resources, methods and materials" as long as it is made clear that the ultimate legal responsibility for decisions about educational provision rest with the family and are based on the family's philosophical convictions. The Local Authority currently has no funding to support any "suggestions." 4.4.refers to paragraphs 3.12 -3.15 which formed the basis for a previous question in the consultation and confirms our fear that the list in paragraph 3.13 WILL be used as a checklist to determine whether education is "suitable" , whereas in law education has to be suitable to the child's age, ability and aptitude. 4.5. is helpful. There should be something about a complaint procedure and how you can resolve problems with officers in the authority. 4.6 the designated home education person must have proper training in Elective Home Education, as must anyone from the authority who answers enquiries on the subject from the general public or the media. 4.6 The last sentence is misleading since there is no obligation in law for ongoing monitoring, so the sentence about "future contact" should be taken out. 4.7 Most of this is misleading and could support prejudice. It doesn't state the law. The first sentence repeats what has been said elsewhere and the rest should be taken out. The same is true of 4.8., it is unhelpful to discriminate between better and worse forms of "evidence". 4.9 The person who is responsible for home education at the local authority should have training in Safeguarding Children procedures established following the 2004 Children Act. 4.10 The last sentence could be kept but the rest should be taken out since the local authority has no legal responsibility in this area of home education so it is misleading to retain it . . 4.11 we agree with 4.11 and it should be made stronger to include reference to the 2004 Children Act and the fact that parents and families are stakeholders and partners in any decision-making processes which affect them. 4.12 With reference to Ofsted how would home educators feed into any Ofsted customer satisfaction process if they were to rate their local authority ?

The remainder of the questions are:

7a . Are the suggested resources in section 5 and appendix 2 useful?

7b . Should any other contacts be included?

and "Please use this space for any other comments you wish to make about the guidance".