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Consultation Questions

1 Based on your experience of local authorities implementing this duty since it was introduced in 2007, does the guidance make clear the actions which local authorities are expected to take to help them comply with the duty?

NO

The guidance is not clear. Moreover, the guidance is fundamentally flawed with respect to the law. There is no duty to identify children not receiving suitable education. We have written to the Consultation Unit separately on this issue.

2 Does the guidance make clear the role that implementation of this duty has in the wider programme of work led by local authorities to improve outcomes for children and young people, including promoting their safety and well-being?

NO.

The guidance is not clear. Local authority duties under s.175 of the 2002 Education Act and 2004 Children Act are not adequately explained in terms of the parameters of these duties. s.175(1) Education Act 2002 "A local education authority shall make arrangements for ensuring that the functions conferred on them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children." This does not confer new duties on local authorities, but simply states that within the functions the local authority already performs, care must be given to safeguarding and promoting the welfare of children.

3 Does the guidance accurately describe the range of circumstances that put children's safety at risk and puts them at risk of not receiving a suitable education?

NO.

The suggested risk assessment criteria are wrong. Home educated children are not at risk of being at risk. The guidance is not accurate or helpful in its current draft form.

4 Does the guidance show effectively what steps local authorities should take when children are living in difficult circumstances that put them at more risk of not receiving a suitable education?

No

The guidance is not effective on this point.

5 What are the key challenges local authorities could face to implementing these guidelines effectively?

The fact that the draft guidance does not reflect the law would be a challenge. The home education community would also be extremely uncooperative towards ultra vires guidance.

6 Does the guidance make clear the duties and powers that local authorities have in relation to home educated children when parents are not providing them with a suitable education?

No.

We have addressed this issue at some length in the Overview attached to Education Otherwise submission to the consultation unit sent via email. We will mount a sustained legal challenge to the following paragraph if it is published in statutory guidance. "1.2.7 Local authorities have a duty to make arrangements to enable them to establish whether a child who is being educated at home (under section 7 of the Education Act 1997) is not receiving suitable education".

7 Does the guidance contain all the 'signposts' to other relevant guidance; sources of support and advice for local authorities that will enable them to implement this duty effectively?

Under separate cover, we have made suggestions about amending the wording of the guidance to reflect the law more accurately. We have also recommended that legislation and guidance enacted and introduced since the publication of the current guidance should be added to any updated version of the guidance, notably the DCSF Elective Home Education Guidelines published after lengthy consultation in November 2007. However we feel that there is a critical but inevitable flaw in publishing any statutory guidance the fulfilment of which depends so entirely on the introduction of ContactPoint national children's database. Education Otherwise cannot be the only organisation which has asked repeatedly how ContactPoint will work with the "children missing education" database. At the time of writing, we have two contradictory pieces of information about the data

field for educational setting, one answer from the civil servant policy lead and a different answer from the Parliamentary UnderSecretary of State. We feel that the basic question "how will this work with ContactPoint" has not, and perhaps cannot be addressed in any revised guidance at this point.

8 Beyond the publication of the guidance, what would be the most effective means of communicating the importance of implementing the new duty, and the processes that will help its implementation, to professionals working with children?

Publication of clear accurate guidance would be very useful. The guidance could then be signposted on the relevant Government websites. Information could be sent to Directors of Local Safeguarding Boards, Directors of Children's Services, Children Missing Education teams, Education Welfare Services, Regional Contacts for Police Forces, Social Services, SENCOs, Elective Home Education Officers, the Children's Workforce Development Council, Traveller Education Support Services, Local Government Offices in the regions, Primary Care Trusts, Trade Unions and Professional Associations for teachers, social workers, public sector workers such as Unison, Directors of Children's Services and so on. Education Otherwise would be happy to link to accurate statutory guidance on our website. <http://www.education-otherwise.org/legal.htm>

9 Have you any details of good practice that would be useful to include in the final version of the 'guidance'?

Please contact Education Otherwise separately for examples of good practice since we are unable to recommend unreservedly.

10 Did you find the draft guidance clear, unambiguous and easy to follow?

Our Group has spent upwards of 100 hours attempting to make sense of this guidance. We understand from our meeting with the Department in August that the DCSF intended to use feedback from the consultation process to inform and refine the draft guidance material. We have also spent a great deal of time as an organisation attempting to unpick the draft guidance for our members who are hugely concerned that they are being singled out and victimised.

11 a) We have developed standard data definitions at Appendix 1 of the guidance. These were developed in consultation with several local authorities. Do you agree with these definitions?

We feel it is unhelpful to have data definitions which require subjective judgement. In particular, we believe the word "suitable" must be removed. Section 436A of the 1996 Education Act is entitled "Duty to make arrangements to identify children not receiving education" and we feel it is better to stick to the wording of the law. We agree that nationally agreed subsets of "children not receiving education" could potentially be useful. As we have set out earlier, a duty to identify ALL children not receiving suitable education would bring scrutiny to bear on pupils attending failing schools and attending low-rated alternative provision. A duty to identify "children not receiving suitable education" would also bring enormous complications in the wake of stipulations

concerning special educational needs in the 1996 Education Act. Many parents remove children from school to be home educated because of unmet special educational needs. These parents would be up in arms at the suggestion that the duty should not apply to children in school. EITHER there is a duty to identify children outside any form of educational provision OR there is a duty to identify "children not receiving suitable education" which would include any child in the state or independent sector who is not receiving efficient full time education suitable to age aptitude ability and special educational needs.

11 b) If not, what amendments would you suggest and why?

Section 436A of the 1996 Education Act is entitled "Duty to make arrangements to identify children not receiving education" and we feel it is better to stick to the wording of the law. We therefore recommend that the key question for database entry should be : is the whereabouts of the child's educational setting known ? if yes then the child is not "missing education" if no then the child is "potentially missing education" . At which point further risk assessment should be undertaken in conjunction with the statutory guidance.