

Northern Ireland

Consultation Response on the Elective Home Education (EHE) Policy Document (March 2014 version)

Dear Sir or Madam,

With reference to the consultation on the draft Elective Home Education Policy being conducted by the Board, I would like to make a response which comprises:

- A written submission (13 pages in length)
- A questionnaire response (8 pages in length)

and I trust this is acceptable. The contents of this written submission are as follows:

- Status of the policy document
- Unstated assumptions
- Interpretation of the law in Northern Ireland
 - As it relates to Elective Home Education
 - Education Supervision Orders
 - Department for Education (DE) Circulars
- Safeguarding, welfare and child protection
- Unreasonable demands not supported in Northern Ireland law
 - Minimum standards
 - Requirement for a programme
 - De-registration from school appears conditional on the approval of a programme
 - A registration scheme in all but name
 - Access to the home on educational grounds
 - Solicitation of the views of children
- Summary of the Elective Home Education policy document
- Matters Influencing Policy in Northern Ireland
- Conduct of the consultation
- A Summary of What People Need to Know

I am responding to the consultation because I believe elective home education should remain a viable option for parents and children who may need it and/or choose to avail themselves of it.

Written Submission
as part of a
Consultation Response on the Elective Home Education (EHE)
Policy Document (Northern Ireland), March 2014 version

Status of the Policy Document

The document is a Northern Ireland Education and Library Board (ELB) policy document. Within the document it also three times describes itself as guidance; in the "Purpose" section at the beginning of the document and later in sections 1 and 3(ii). So how can it be described both as a policy document and as guidance? Firstly, as a policy document it will probably show how the Board interprets the law, deals with its responsibilities, what procedures its staff will follow, and the Board and its staff behave towards parents, children and others. And secondly, the document is guidance in the sense that it communicates all of the above to the outside world; and, as such, it should do this clearly.

Because it is also a guidance document, the status of the document needs to be made explicit. Ordinary people who are not public servants need to be able to understand "where it is coming from". At the moment this is lacking.

Unstated Assumptions

The heavy emphasis of safeguarding, welfare and "safe and well" checks within the policy and at more-or-less every stage of the detailed procedures would suggest there is an assumption of there being a significant problem with parents routinely having care of their own children. This is, when one thinks about it, an assumption that does not stand up to close scrutiny at all (parents, of course, do constantly have care of their children). In addition to this, there also seems to be an assumption that home education is, in and of itself, a safeguarding, welfare or child protection concern - and I find this illogical and unjustified (as it is not borne out by research), extremely worrying (in terms of the great damage it could do to families) and a clear bias against home education and families wishing to home educate.

In reading the document I have asked myself whether these measures are proportionate to the situation where a child is de-registering from school for the first time, or for a home educated child continuing home education from year to year, and for whom there are no great concerns (which will be typical of the vast majority of home educated children most of the time). I have to conclude these measures are not proportionate, and the document does not in any way explain why they are necessary in such circumstances.

Moreover, the undue repeated emphasis on safeguarding, welfare and "safe and well" issues interspersed throughout a document which is primarily about home education serves to conflate the two things, produce mixed-up thinking and cause confusion.

All of the above make it difficult for the reader to understand the policy, how it's intended to work, or why many things are included in the procedures in the way that they are. The unstated assumptions concerning safeguarding, welfare and child protection need to be made explicit if this is to be remedied.

Interpretation of the Law in Northern Ireland

I am not legally trained or qualified, so what I write in this consultation response should not be taken as legal advice or relevant to individual circumstances. It is simply that in order to make a full response to the consultation I am expressing, as well as I am able, my understanding of the law in Northern Ireland.

As it Relates to Elective Home Education

The law relating to education in Northern Ireland is "duty based". Basically, the duty imposed on the parent is defined in Article 45(1) of the Education and Libraries (Northern Ireland) Order 1986; and the duty imposed on the board is defined in Article 45(2) and Schedule 13 of the same. Elective home education is allowed for in the words "or otherwise".

It is always more precise to refer back to the wording of the original Order, than to paraphrase or interpret, if meaning is not to be lost. Or to refer to case law, to clarify matters, if that exists. The policy document makes reference to Article 44, so I include the wording of this also. Reading Article 44 reveals that it (Article 44) is not concerned with provision of education per se, but with establishing the general principle that the wishes of parents be taken into consideration with regard to the education provided for pupils under the Education Orders. Article 44 is thus not relevant to elective home education. It is Article 45(1) which confers the duty on parents to secure an efficient full-time education for their children by regular attendance at school or otherwise, and it is Article 45(1) that relates to elective home education. In full, Article 44 states:

"Pupils to be educated in accordance with wishes of their parents

44. In the exercise and performance of all powers and duties conferred or imposed on them by the Education Orders, the Department and boards shall have regard to the general principle that, so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils shall be educated in accordance with the wishes of their parents."

In full, Article 45 states:

"Duties of parents to secure a full-time education for their children

45. (1) The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at a school or otherwise.

(2) The provisions of Schedule 13 shall apply to the enforcement of the provisions of paragraph (1) and a parent who contravenes the provisions of that Schedule shall be guilty of an offence and liable to the penalties provided by paragraph 4 of that Schedule."

Thus, parents have the option of fulfilling this duty through "regular attendance at school" or "otherwise" and, of note, is that these are of equal status in law.

Article 45(2) calls up Schedule 13, and the beginning of Schedule 13 reads as follows:

SCHEDULE 13

ENFORCEMENT OF DUTY IMPOSED BY ARTICLE 45 AS TO EDUCATION OF CHILDREN OF COMPULSORY SCHOOL AGE

PART 1

SCHOOL ATTENDANCE ORDERS

1. (1) If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by Article 45, it shall serve a notice in writing on the parent requiring him to satisfy the board, within such period (not being less than fourteen days beginning with the day on which the notice is served) as is specified in the notice, that the child is, by regular attendance at school or otherwise, receiving suitable education."

Moreover, Article 2 of Protocol 1 of the European Convention on Human Rights (ECHR) is also concerned with educational choice:

"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."

The ECHR is incorporated into UK law through the Human Rights Act 1998. So choice, with regard to the form that education can take, is indeed provided for and can be exercised by the parents.

So what does the Board policy document say? The first paragraph of the stated purpose is as follows:

"Purpose

The aim of this guidance is to provide information about the arrangements to be made by the Northern Ireland Education and Library Board (the Board)/Education and Skills Authority (ESA) for ensuring that the parents of children and young people who are electively home educated provide an efficient full time education for their children appropriate to their age, ability, aptitude and any special educational needs they may have."

This appears to be only a small difference, but it is significantly different. If the Board interpret their role in this way it implies control over the parents in the performance of their duty. The law in the original wording is more limited than this, and the interpretation of the Board exceeds the scope of the original legislation.

Similarly, the Board exceeds the scope of the original legislation in Section 3(v) of the document where it is stated:

(v) Boards have a statutory duty under Schedule 13 of the Education and Libraries (Northern Ireland) Order 1986 to ensure that children in their area are receiving efficient full time education appropriate to his or her age, ability and aptitude, and to any special educational needs that he or she may have, and that parents fulfil their duty in this regard.

Lastly as regards legislation, in the Consultation Response document (April 2014) the "Board Position" is described as follows:

"The Board recognises the right of parents to make provision for the education of their child through Elective Home Education. Current legislation places a duty on Boards to ensure that every child of compulsory school age has access to a suitable education, including children who are educated at home. "

It is unclear whether "current legislation" refers to the law discussed above or some other legislation. It would be helpful if the document revealed what this legislation is so it is possible to properly understand the duty placed upon the board and how it relates to all of the foregoing. I ask because the duty placed on the Board by Article 6 of the Education and Libraries (Northern Ireland) Order 1986 is somewhat different, and so Article 6 is unlikely to be the duty referred to.

Education Supervision Orders

Although paragraph 3(x) of the policy document states:

"3. Procedures for Elective Home Education

(x) In cases where a parent fails to demonstrate that the child is receiving efficient full time education, appropriate to his or her age, ability and aptitude, and to any special educational needs he or she may have, the Board/ESA may take legal action in accordance with the Education and Libraries (Northern Ireland) Order 1986, Schedule 13 or Article 55 of the Children (Northern Ireland) Order 1995."

The document makes no attempt to explain that "Article 55" in the last part of this paragraph refers to Education Supervision Orders. Nor does it attempt to explain what they are or how they work. Considering the seriousness of a situation where the Board is about to launch legal action in this manner it would seem obvious, I think, that they should do so. It would do no harm to explain the background of Education Supervision Orders and the circumstances in which they apply. The latter being the circumstances detailed in Article 55(4) of the Children (NI) Order 1995 as:

"(4) Where a child is —

(a) the subject of a school attendance order which is in force under Part I of Schedule 13 to the Education and Libraries (Northern Ireland) Order 1986 and which has not been complied with; or

(b) a registered pupil at a school which he is not attending regularly within the meaning of Part II of that Schedule,"

Department for Education (DE) Circulars

Although DE circulars are not statutory instruments and do not, of themselves, contain the force of law, they are administrative instruments and are a useful source of information and guidance.

There are two current DE Circulars which need to be read and used in conjunction with one another; only the first of which is referenced in the policy document. These are:

DE Circular 2013/13 "Attendance Guidance and Absence Recording by Schools"

DE Circular 2010 /08 "Guidance on the Enrolment Status of Pupils, including those subject to SEN Referral, using Dual Registration"

As mentioned, the first of these is referenced - in relation to home education in general, which is understandable. It details the removal of pupils' names from the register under paragraph 6(2) of statutory Regulation 1974 No.78 and the use of temporary Registration Code 3 for Elective Home Education until this is done.

Statutory Regulation 1974 No.78 needs to be referenced explicitly in relation to home education in general; which it currently isn't as it is only referenced in relation to children with Special Educational Needs (SEN). This is important as the contents of the statutory regulation are required in order to understand how a child is withdrawn from school and/or whether a child has been de-registered or not.

DE Circular 2010/18 "Every School a Good School - The Governor's Role" gives notice that the named guidance is available on the Department's website. Chapter 16 "Pupil Registration and Attendance" covers the withdrawal of children from school in paragraph 16.4 and the removal of pupils from the school's register in paragraph 16.5. If Statutory Regulation 1974 No.78 is still extant, which I assume it is as it's quoted within the "Every School a Good School" (ESAGS) guidance and in Circular 2013/13 as above, then paragraph 16.5 is incorrect in stating the

Principal can remove pupils from the school's register only in the circumstances it describes.

DE Circular 2010/07 "Pupil Attendance: Absence Recording by Schools" is referenced in relation to children with SEN, but the reason for doing so is not obvious.

Nor does the policy document explain the legal basis of, or the procedure for, the withdrawal from school of children with a statement of SEN which one might expect to be a little more involved.

Safeguarding, Welfare and Child Protection

Parents who electively home educate only have care of their own children; who they know very well, and for whom they already have responsibility. It does not seem to me there is an additional risk posed to children as a result of being home educated. Indeed, I suspect there is somewhat less risk. I do not believe that home education is, in and of itself, a safeguarding, welfare or child protection concern. Or that it should it be treated as such.

But equally, where there is evidence in an individual case which results in cause for concern or an allegation made, those must always be properly investigated by those with full training to do so, whatever the educational arrangements in place might be. I am sure the Board will have submissions from home educators making both of these points in the strongest terms possible.

From the Department of Health, Social Services and Public Safety (DHSSPS) document "Co-operating to Safeguard Children" I would like to quote two sections that I think are particularly relevant to how the Board should approach elective home education. Firstly, in the introduction:

"1.9 The approach set out in this guidance is intended to ensure that:

- (i) child protection services are targeted at children most in need of protection from serious forms of abuse;*
- (ii) when the provision of other services would more appropriately meet their needs; that families are not exposed to the stress of being the subject of child protection investigations;*
- (iii) resources are targeted appropriately by the agencies involved."*

And in Chapter 3, Roles and Responsibilities, with regard to Education Services:

"CO-OPERATION WITH SOCIAL SERVICES

3.47 *The education service itself **does not have an investigative responsibility** in child protection work. However, schools and Education Welfare staff have a role in assisting social services by referring concerns and providing information which will contribute to child protection investigations. Social services may on occasions ask staff working in education for information about a child where there are concerns about abuse or neglect."*

It seems clear from the statement above that concerns about education and welfare ought to be treated in a disciplined manner. Concerns about education should be addressed by the Education Welfare Service (or other service whose role it is to have contact with home-educating families) and culminate in a School Attendance Order (SAO) or Education Supervision Order (ESO) if not resolved. Concerns about welfare, if they arise, should be referred onwards to Children's Social Services.

Accordingly, the elective home education policy should not involve itself in the routine collection of welfare data on all home-educating children and families for no reason. Treating home education as, in and of itself, a safeguarding, welfare or child protection concern is erroneously acting from a presumption of guilt and will divert resources away from children in more serious need.

After all, the primary responsibility for safeguarding children rests with their parents, who should ensure children are safe from danger and free from risk from others.

Which brings me to "parental responsibility" which is mentioned twice within the document. With the changes that have taken place in how families are now perceived as a result of the Children (NI) Order 1995, I believe this may well affect withdrawal (de-registration) of children from school and contact with parents about home education. In these instances the school (or Board) needs to know it is dealing with parents or others who have parental responsibility for the child concerned. Parental responsibility is very clearly explained in DE Circular 1999/17 (but Appendix A in which it lists parental rights under the then current legislation unfortunately fails to mention withdrawal from school or that parents may discharge their Article 45(1) duty "or otherwise"). I suspect that in both circumstances the school (or Board) might need to verify a person's parental responsibility for a child if the school (or Board) are not already aware of it.

Unreasonable Demands not Supported in Northern Ireland Law

The policy document, from its unstated assumptions and its interpretation of the law to imply control over the parents in the performance of their Article 45(1) duty, then proceeds, in Sections 2 - 7 and in a flow chart in Appendix 1 to detail the arrangements it deems necessary in order to carry out its perceived role. Apart from the heavy emphasis on safeguarding, welfare and "safe and well" checks already mentioned, those arrangements include unreasonable demands which are not, as far as I can ascertain, supported in law.

Minimum Standards. Paragraph 5 (Minimum Standards) lists a number of items and states:

"Board/ESA decisions will be made as to the suitability or otherwise of Elective Home Education based on these standards."

The list contains a mix of education and welfare items. This enables officials to claim that parents are not meeting minimum standards without having to be specific as to whether a concern relates to education or welfare or how serious it may be. To combine educational and welfare items together as "minimum standards" serves to conflate the two and is unreasonable.

Requirement for a Programme. The problem with this is that it doesn't ask parents what they hope to achieve in respect of educating their child(ren) at home. There is no recognition that parents may have an educational philosophy of their own they might want to implement. There is no recognition of choice. Some parents may want to work to a programme, others may not, but the choice should be down to them. The requirement for a programme is unreasonable as there is no requirement for a programme in law.

De-registration from School Appears Conditional on the Approval of a Programme. The policy document implies that de-registration from school, and thus the commencement of elective home education, is a long and involved procedure that includes the approval of a programme by the named officer for EHE. And there is no indication of what will happen if parents, for their own reasons, choose not to do one or more of the things mentioned.

But according to the ESAGS guidance and DE Circular 2013/13, the law on this is provided by Statutory Regulation 1974 No.78. Moreover, the statutory regulation provides for withdrawal of a child from school on the request of a parent. There is no stipulation placed on the parent.

If Statutory Regulation 1974 No.78 is the only thing in law which can be used for withdrawal of a child from school, if it's existed for 40 years, and if the Boards have been happy to de-register children from school on the basis of notifying the school Principal and by quoting paragraph 6(2) of the regulation for quite some time, why is it suddenly necessary to make de-registration conditional on a raft of extra demands? If the above is true, I would suggest the Boards are being unreasonable.

A Registration Scheme in All But Name. The policy contained within the document is a registration scheme in all but name, with the following characteristics:

- De-registration from school is made difficult.
- De-registration from school appears to have no time-scale.
- Notification of home education to be "expected" of all parents.
- Requirement for a programme to be produced.
- Assessment of that same programme.
- Requirement for home visits and an assessment of the learning environment.
- Minimum standards.
- Annual monitoring.
- Named officer for EHE will "assume responsibility for the case".
- Elective home education will be "managed".
- A decision made "with regard to the appropriateness or otherwise of programme"

Minimum standards, the requirement for a programme and de-registration from school have been covered already.

The expectation of notification appears to be a euphemism for saying "you will all be on our database". The approval needed for the programme can only be interpreted as either the limitation of choice or the imposition of a curriculum (which would have huge implications for society and the power of the state over individuals). I do not believe the requirement for home visits can be legally enforced in relation to education - this would require a right of access to the home, and so far as I am aware this does not exist. The assessment of the learning environment will be dependant upon having home visits (please see previous item). And annual monitoring is referred to in Graham Stuart MP's letter to the Minister of Education, John O'Dowd MLA, dated 8 May where he respectfully points out:

"The situation is analogous to that in England and Wales, where local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis. Local authorities should intervene if they are alerted to a reason for doing so - but are not obliged, or indeed permitted, pre-emptively to seek reasons to intervene. Accordingly, the annual monitoring by Boards prescribed by section 7(iii) of the draft Policy would be inappropriate."

Taken together, the policy and procedures outlined in the document amount to a registration scheme which is not a requirement of legislation.

The imposition of a registration scheme, either in law or more informally through Board policy and procedures, would set a dangerous precedent. At present, as explained above, it is the duty of the parent under Article 45(1) of the Education and Libraries (NI) Order 1986 to secure the education of their children, it is a duty as opposed to a right, and is a duty that can be fulfilled in many ways. At present there is no monopoly, many forms of education are recognised as equally valid, and it is possible and may indeed be highly desirable for parents to exercise choice. If one form of education does not suit a particular child (and the child is struggling to learn) the parents are correctly fulfilling their Article 45(1) duty if they choose to follow another which suits their child better (and arguably they may be in breach of their Article 45(1) duty if they don't do this). If, on the other hand and as it appears in the draft policy document, the state takes it upon itself to dictate the aims, form, content, progress and/or quality of home education it will be restricting choice and creating a situation where certain forms of education and learning are permitted whilst others are effectively prohibited. A registration scheme as proposed is thus a threat to educational diversity and educational freedom.

Access to the Home on Educational Grounds. In paragraph 3(vi) of the policy document it appears to be taken for granted parents will comply with home visits, children will not object to being interviewed, privacy is not an issue and everyone involved will welcome this situation. The justification for home visits seems to be the assessment of the learning environment with regard to being both safe and conducive to learning (paragraphs 3(ix) and 5). The only problem with this is that neither of these things are required of parents by the Education and Libraries (NI) Order 1986, they are not required in law, and are therefore unreasonable. In any case, it would be ridiculous to conduct a safety check of a home educated child in his or her own home when other children are not subject to safety checks in their homes.

In the real world, some parents may well object to the invasion of privacy this entails especially when it concerns a sensitive issue that may not be handled sensitively by the visitor and that it involves their child(ren) who may in turn not actually want to be interviewed and may not co-operate. In the real world it can be problematic. It can, quite rightly, be considered an invasion of privacy, something which Article 8 of the European Convention on Human Rights (ECHR) covers. So, in a nutshell, home visits have always been voluntary and need to remain so.

However, under the new policy home educators will be more likely to receive unannounced visits or visits at short notice. The conflation of education and welfare matters with regard to elective home education will effectively mean that parents will not be able to refuse entry for fear of it being construed as a welfare concern. There will also be the added confusion as to whether the visitor demanding access is a children's social worker asking to see children for some legitimate reason, an educational officer with some vague form of "welfare powers", or indeed someone to whom the parent should be suspicious of and rightly refuse entry for reasons of safety. The above scenario is both dangerous and undesirable.

Solicitation of the Views of Children. The views of the child are to be solicited on at least three occasions (i.e. the school Principal on de-registration, the educational welfare officer on the initial visit, and the named officer for EHE, I believe, on subsequent visits). There are two places in the document that inform us of what this questioning might be for. The first is paragraph 3(iii), which refers to Article 3 of the Children's (NI) Order 1995; but the Children's Order is solely concerned with proceedings in court and is thus not applicable in the context of education at home. The second is paragraph 7(iii) which states "The child's opinion will also be taken into consideration", but it doesn't say what for. The policy document doesn't specify what the questioning is for, or that there are any limits to that questioning. This is unreasonable.

Summary of the Elective Home Education Policy Document

In summary:

- The status of the document needs to be made explicit.
- There are unstated assumptions about safeguarding, welfare and child protection issues in relation to home education and these make it difficult for the reader to understand the policy, how it's intended to work, or why many things are included in the procedures in the way they are.
- It conflates safeguarding, welfare and child protection issues with educational issues when there is no reason to do so.
- In order to avoid conflating safeguarding, welfare and child protection issues with educational issues, the policy and procedures need to follow and be consistent with paragraphs 1.9 and 3.47 of the DHSSPS publication "Co-operating to Safeguard Children".
- The law relating to home education in Northern Ireland is "duty based" and is best understood from this perspective.

- It exceeds the scope of the original legislation in its statement of purpose and again in Section 3(v) of the document.
- It makes unreasonable demands not supported in Northern Ireland law.
- These demands may be of questionable value even if they were to be supported in law (i.e. they may be of questionable merit in assisting with elective home education or in safeguarding children anyway).
- It proposes a registration scheme which will deny educational alternatives to some children who need them and restrict educational choice. This may prevent parents fulfilling their Article 45(1) duty and, in turn, undermine parental responsibility.
- It appears to propose Board officers be given authority to access the home. This could result in serious confusion regarding a visitor's status and whether they have legitimate right of access. If justified on the basis of education alone, and not on the basis of a genuine welfare concern, this would be a privacy issue.
- Solicits the views of children on no less than three occasions for reasons that are not indicated and not adequately explained.
- It makes access to elective home education difficult.
- It does not explain the legal basis of, or the procedures for, the withdrawal from school of children with a statement of SEN.
- It should contain basic information similar to the information included at the end of this response under the title "A Summary of What People Need to Know".

As a first attempt to review elective home education policy for the whole of Northern Ireland, it falls disappointingly short of what is needed and will not be useful as the basis for sound practice and a trusting relationship between the Boards and the home education community. It needs to be re-written in a way that it can be used for these things. As its foundation it needs to recognise that the duty to educate belongs to the parent and the Boards should not attempt to usurp that crucial role.

Moreover, the overall impact of the policy is of vital concern, not just to parents who home educate, but to all parents. A registration scheme such as the one outlined in the draft policy will lead to fewer educational alternatives and a loss of educational freedom. Similar proposals to reduce educational freedom have been rejected in both England and Wales in the past five years, presumably because the politicians in those countries felt that it was in the best interests of children to do so.

Matters Influencing Policy in Northern Ireland

As I write these words on the morning of 1 June 2014, I learn that the Northern Ireland home education support group (HEdNI) have, the previous day, received a letter from the Department of Education. In the letter Anne Tohill, Head of the Participation and Parenting Team, writes:

"Dear HEdNI,

Thank you for your comments in relation to the current consultation on the Education and Library Boards' (ELBs) draft elective home education policy.

The ELBs are consulting on a common process through which they can effectively discharge the responsibilities that legislation places upon them in this area in a manner that puts the education and wellbeing of children and young people to the fore.

I note that the last sentence above does not specify the legislation to which the common process is aimed; it also implies the common process will encompass both education and well-being which is fine so long as it doesn't conflate the two.

As regards well-being I believe the Children (NI) Order 1995 is the the overarching legislation setting out the requirements for professional practice in relation to children and young people. This being supported by the publications "Co-operating to Safeguard Children (2003)" and the Area Child Protection Committees' "Regional Policy and Procedures (2005)" and "Amendments (2008)". It seems to me there is no doubt as to what practice should apply here and I have expanded on that earlier in this response.

As regards education the main piece of legislation is obviously the Education and Libraries (NI) Order 1986 which is supported by the legislation that covers Education Supervision Orders and the legislation that covers de-registration from school. It also seems to me there is no doubt as to what practice should apply here and, again, I have expanded on that earlier in this response.

"The consultation process provides an opportunity for views and ideas to be provided to the Boards on how they best strike the balance between ensuring that the rights and needs of children themselves are appropriately protected and facilitating parental preference for home education. It is timely therefore, for your views to be submitted and the Department will ensure they are passed to the chief executives of the ELBs for their consideration."

Like HEdNI, my first reaction to this is to note how the two important interests in this statement are presented as being opposed to one another, and that in reality they are not so opposed. Over to HEdNI's comment:

HEdNI welcomes the opening of a channel of communication but disputes that there is a tension between parental preference and the rights and needs of children. Parents are acknowledged in National and International Law as, in almost all cases, the best advocates for their children's rights and needs.

Moreover, I note Anne Tohill uses the phrase "strike the balance"; which the Concise Oxford Dictionary and the Wordsworth Dictionary of Idioms give respectively as:

"choose a moderate course of compromise" and,

"find an acceptable and satisfactory compromise between two extremes".

Which prompts me to ask what exactly are being considered as extremes and what criteria will be used to judge whether a compromise has been reached? And also, how will one recognise what is a moderate course? I really would like to know what the Department for Education considers these to be and how it will judge success.

The letter finishes:

"The Minister for Education's focus is always on ensuring the needs of children and young people are met and the Minister will want to review the process following consultation and before the draft policy is finalised."

The policy when finalised also needs to clearly differentiate between matters of education and well-being throughout.

Of concern to myself and others is the implication that the two important interests highlighted by Anne Tohill need to be rebalanced in some way; it is of concern to us because we believe there is no need for any rebalancing, the law is sufficient as it stands, and the Boards need to act within the law and not draft policy to act outside of it. I believe Northern Ireland, in terms of legislation, already has in place an eminently sensible system that takes into account the different and complementary roles of all of those involved in the education of children. It also allows for freedom of choice in education. This being the case, there is no need for legislative change.

As I see it the Boards are under no duty or obligation to encourage or discourage elective home education; they are under no duty or obligation to support home educators in an educational role, other than where "common sense" might indicate to them it is helpful to do so; but Boards do have an Article 45(2) /Schedule 13 duty and an obligation to act within the law. Boards are probably under no obligation to train staff to have an appreciation of the different approaches to learning possible with elective home education, but their staff will have difficulty in understanding elective home education from a policy perspective and in carrying out their Article 45(2) /Schedule 13 duty if they don't do so.

From HEdNI's reports of the consultation focus group meetings on their site, it is clear that parents are very concerned that Northern Ireland and UK policy-making guidance may not have been followed with regard to the draft policy document. There appears to be no identification of a problem to be solved, no research, no impact analysis and no cost analysis. And at variance to the UK policy-making guidance there appears to have been a failure to make the data and reasoning behind the policy easily available to those who may counter it. If the established policy-making guidance has not been followed, the draft policy is unlikely to be sound.

As I suggested at the beginning of this consultation response there are unstated assumptions with regard to:

- Parents routinely having care of their own children.
- Elective home education, in and of itself, being a safeguarding, welfare or child protection concern.

And I further suggested that for anything about the policy to make sense these assumptions need to be made explicit. It would thus be helpful, even at this late stage, for the Boards make their data and reasoning on these matters available to consultees. I thus request that they do so.

Conduct of the Consultation

My first comment is to question why the Boards are consulting on this document in the first place. The policy exceeds the scope of the legislation and, as such, without a change in the law is not legitimate. The consultation is nugatory.

And if parents' concerns about lack of research during policy-making are correct, the consultees are being asked to express views and opinions on something which may already include bias and inaccuracies. The policy also appears to be based on unstated assumptions that may be taken as fact - if not at some stage openly questioned and challenged. The consultation may be nugatory for these reasons also.

Another concern is the status of the consultation; whether it is in fact five individual consultations or one for the whole of Northern Ireland. This has just added to the confusion. Respondents will probably assume they have to respond to all five boards, but if they don't there may be a lack of representation.

The number of home educators in Northern Ireland is relatively small. The number of other consultees is relatively large. The danger here is that, no matter what response they give and how valid a case they present, the voice of home educators is likely to be drowned out by those without first-hand experience of elective home education. Caution needs to be exercised by those evaluating the responses as the headline number of respondents is unlikely to reflect the real issues involved.

A registration scheme such as the one outlined in the draft policy will lead to fewer educational alternatives and a loss of educational freedom. The policy is of vital concern, not just to parents who currently home educate, but to all parents at any time considering home education as an option. Parents in the latter category have not been considered as stakeholders.

A Summary of What People Need to Know

In Northern Ireland the duty to educate children is defined in legislation in Article 45(1) of the Education and Libraries (NI) Order 1986.

The duty to educate children belongs to the parent; even for those children who attend school.

Parents who elect to home educate their children do so by fulfilling their Article 45(1) parental duty "otherwise" than by their children attending school.

There is also a duty on the Education and Library Boards to act if it appears to them that a parent is failing to perform their Article 45(1) duty.

Elective home education is not a loophole in the law; the law allows for education in this way.

If children are already registered pupils of a school they will need to be de-registered from school by their parents in order to become electively home educated.

Thus, home educated children are not registered pupils of a school unless the parents have entered into some form of flexi-schooling agreement with a school where the children are educated partly at school and partly at home.

Home educated children should not be regarded in the same way as truants; they are not registered pupils of a school and truancy is a school issue (i.e. it is non-attendance at school).

Education is not the same thing as schooling; and elective home education is not necessarily "school at home".

There are different philosophies of education and it is possible to fulfil the duty to educate one's children in many ways.

There is extensive experience of elective home education in the world; particularly in North America where it is misleadingly known as "homeschooling". In Canada and the USA there are an estimated 2 million children educated in this way.