

Government consultation on children not in school: proposed legislation

Response of the Association of School and College Leaders

A. Introduction

- 1 The Association of School and College Leaders (ASCL) represents over 19,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
- 2 The legislation proposed in this consultation document could have a significant impact on some of the most vulnerable children in society. We welcome the government's desire to ensure all children receive both the education and the protection to which they are entitled.
- 3 Many of the detailed questions in the consultation document are outwith the direct remit and experience of ASCL members. However, school and college leaders do have a direct interest in children who are flexi-schooled – as well, of course, as a broader concern for the education and wellbeing of all children and young people in their local area.
- 4 In this response, we have therefore provided our broad view on the four proposed new duties, touching on some of the specific questions as appropriate.

B. Views on new proposed duties

Proposal 1: creation of a duty on local authorities to maintain a register of children not registered at specified types of school

- 5 We agree that local authorities need to be supported in their duty both to identify children of compulsory school age who may not be receiving a suitable education and to carry out their statutory safeguarding obligations in respect of all children.
- 6 We recognise that parents have the right to home-educate their children, and that many parents do so extremely successfully. However, we are concerned about the increasing numbers of reports about children being educated in unregistered and/or illegal settings, and the quality of education and care they may receive in those settings.
- 7 We agree that local authorities are best placed to seek and hold information about where all children and young people of school age in their locality are being educated. A duty requiring LAs to maintain a register of children not registered at a school

maintained by a local authority, a non-maintained special school, an alternative provision academy, or a registered independent school appears to be a sensible formalisation of this key aspect of their role.

- 8 We suggest that children who are flexi-schooled (i.e. registered at a school but educated at home or in an unregistered setting for a large part of the week) should be in scope of the new register. The school with which they are formally registered has no jurisdiction over how they spend the rest of their time, meaning they remain vulnerable to poor or unscrupulous provision elsewhere. It is important that this aspect of their education is visible to scrutiny.
- 9 We recognise that this new duty would impose an additional financial and administrative burden on LAs. We welcome the opportunity in the consultation for LAs to indicate the likely extent of this, and the implication that this would be funded from central government. LAs are already struggling to provide the essential services schools and communities need to support children and young people; these new duties must not add to that burden.

Proposal 2: creation of a duty on parents to register their child with local authority if not registered at specified types of school

- 10 Further to our point in Paragraph 9 above, we would welcome mechanisms to enable LAs to have clearer oversight of the education of all young people in their area, without increasing the financial burden on local government. The imposition of a statutory duty on parents to proactively provide details of their child to the LA, if they fall within the scope of the new register, would appear to support this aim by reducing the time and effort LAs would need to spend identifying, and seeking information on, such children. Careful thought would need to be given to how LAs would be expected to monitor parents' compliance with this duty, again in a way which minimises the burden on LAs.
- 11 We agree that the most appropriate consequence for non-compliance with this new duty is that it should trigger the school attendance order process. Criminalising parents is likely to be counter-productive, and the introduction of a separate, parallel process could be costly and burdensome. This is clearly an extremely sensitive area, which needs to be carefully handled. It may be that a more nuanced, stepped approach is required, recognising that, in some cases, support rather than punishment could be a better way to achieve the desired aim.

Proposal 3: creation of a duty on proprietors of certain education settings to respond to enquiries from local authorities

- 12 We agree that proprietors of any education setting operating during normal school hours should be legally required to respond to enquiries from local authorities about children who may be in scope of the register.
- 13 We support the proposal that this duty would not extend to settings which provide supplementary education outside normal school hours. We would, however, question the proposal that it would not apply to any child who attends a setting but is also registered at a state-funded or registered independent school. As highlighted in Paragraph 8 above, flexi-schooled children may attend both a state-funded or registered independent school *and* an unregistered setting during school hours. Settings should, we believe, be required to inform LAs, on request, about such children's attendance at their setting.

- 14 We agree that sanctions should exist for proprietors who fail to respond to enquires of this nature from their LA. We will leave it to others more knowledgeable in this area to propose what those sanctions might be.

Proposal 4: creation of a duty on local authorities to provide support to parents who educate children at home

- 15 We are less convinced of the need for, and likely efficacy of, this proposal than we are of the previous three.
- 16 Undoubtedly some parents who choose to home-educate their children would benefit hugely from some or all of the types of support proposed. However, this needs to be balanced against the cost of providing such support, particularly at a time when LA budgets are increasingly constrained. The vast majority of children are educated collectively for good reasons, including those relating to cost-effectiveness. It would be inappropriate to siphon off a disproportionate amount of funding for families who choose to opt out of collective education in this way.
- 17 We would, of course, support LAs being able to provide an appropriate degree of support to home-educating families, at their own discretion. We would also support the Department for Education providing more support for such families. This, while inevitably less targeted than locally provided support, would be more cost-effective. It could include guidance on how home-schooled children can access public examinations, which appears to be the most pressing concern in this area.
- 18 We would not, however, support the creation of a duty on LAs to provide either generic or specific support to parents who educate children at home.
- 19 Finally the consultation mentions the question asked in the call for evidence as to whether there should be financial consequences for schools if children were withdrawn into home education, with the resulting income used to support home education. We note that this is not covered in this consultation, but would take the opportunity to repeat our strong opposition, expressed in our response to the previous call for evidence, to this proposal.
- 20 There may be rare occasions on which parents feel pressured to remove their child from a school and to home educate them, and we would condemn any school undertaking such behaviour unreservedly. However, it is a parent's legal and moral right to withdraw their child a school, and such decisions are taken for a myriad of reasons. It is entirely inappropriate to penalise a school, financially or otherwise, as a result of parents taking such decisions, providing the school has acted legally throughout the process.

C. Conclusion

- 21 We are grateful for the opportunity to respond to this consultation.
- 22 I hope that this response is of value to the process. ASCL is willing to be further consulted and to assist in any way that it can.

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Association of School and College Leaders
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