

**CHRISTIAN CONCERN FOR OUR NATION
& THE CHRISTIAN LEGAL CENTRE
RESPONSE TO THE DEPARTMENT OF
CHILDREN, SCHOOLS AND FAMILIES’
“HOME EDUCATION—REGISTRATION
AND MONITORING PROPOSALS”
CONSULTATION**

OCTOBER 2009



*Changing Society to put the
Hope of Christ at its Centre*



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The Consultation can be found here:

<http://www.dcsf.gov.uk/consultations/index.cfm?action=consultationDetails&consultationId=1643&external=no&menu=1>.

The Closing Date is the 19 October 2009

How to Respond

Completed questionnaires and other responses should be sent to the address shown below by 19 October 2009.

Send by e-mail to: homeeducation.consultation@dcsf.gsi.gov.uk

Consultation responses can be completed online at:
www.dcsf.gov.uk/consultations.

Executive Summary

1. In January 2009, the Government commissioned Graham Badman to assess whether or not the current system of supporting and monitoring home education is the right approach.¹ In June 2009, Graham Badman's independent Report, *Review of Elective Home Education in England*,² was published.
2. The present consultation came about because of the recommendations of that report. The Government's immediate response was to accept the Badman recommendations to improve safeguarding for home education, and to introduce them as soon as possible, subject to funding and workable delivery arrangements.³
3. The Department for Children, Schools and Families ("DCSF") have now published a Response to the *Review of Elective Home Education in England* dated 9th October 2009, which is a most inopportune time. Respondents who have already submitted their responses to the present Consultation will not be able to take the DCSF's Response into account and those who have not yet submitted their responses must suddenly review their responses in a short time. Members of the public are bound to wonder whether the responses to the present consultation are actually going to be taken into account in the formulation of policy on home education, or whether the Response of 9th October is likely to be conclusive.
4. Additionally, the proposal in the Response to clarify what a "suitable" and "efficient" education means, threatens the flexibility of parents to devise a tailored educational approach for their children without a formula being dictated to them by the Government.
5. The law accepts that it is a parent's responsibility to ensure the education of children, not the Government's. In England, education is compulsory, but school is not. The present recommendations seek fundamentally to undermine and usurp that parental responsibility and family choice, either to send their children to school, or to educate them at home by imposing intrusive and disproportionate registering and monitoring procedures.
6. There is a biblical position⁴ reflected in the current law,⁵ that it is parents who have the responsibility to teach their children. Teachers are *in loco parentis*—their authority to educate and discipline children comes from parents, not from the State. Christians may choose not to delegate that responsibility to teachers and to educate their children at home. This may be to ensure that their children are educated according to Christian values, which may not be provided in non-

¹ See:

<http://www.dcsf.gov.uk/everychildmatters/ete/independentreviewofhomeeducation/irhomeeducation>.

² The Badman Report can be accessed at:

<http://www.dcsf.gov.uk/consultations/downloadableDocs/PDF%20FINAL%20HOME%20ED.pdf>.

³ See the letter from Ed Balls to Graham Badman June 2009 at:

http://publications.everychildmatters.gov.uk/eOrderingDownload/HC-610_Letter.pdf.

⁴ See the *Holy Bible*, Deuteronomy 6:7, Proverbs 22:6 and Ephesians 6:4.

⁵ See section 7 of the Education Act 1996.

- Christian schools. Parents have the duty to provide their children with a suitable education and those rights should not be taken away from them.
7. The Badman recommendations should be rejected in full and should not be acted upon, because the priorities in the recommendations are the wrong way around: parents may delegate their responsibility to provide a suitable education to the school and the teacher then acts *in loco parentis*. If parents choose not to delegate their authority to the State, it should still respect their internationally-recognised human right⁶ to ensure such education and teaching is in conformity with their own religious and philosophical convictions.
 8. Parents educate their children at home for a variety of reasons, including religious or cultural beliefs; distance or access to a local school; philosophical or ideological reasons; dissatisfaction with the system; bullying; as a short-term intervention for a particular reason; because of a child's unwillingness or inability to go to school; due to special educational needs; and parents' desire for a closer relationship with their children.⁷
 9. There are international legal rights to ensure that the Nation State respects the right of parents to ensure that the education and teaching of their children is in conformity with their own religious and philosophical convictions.⁸
 10. In our opinion, the Badman Report proposes sweeping changes for compulsory registration, and intrusive monitoring procedures without the necessary documentary evidence to back up the need for such measures.⁹ The Report confuses education with child protection measures that are equally applicable to children, whether or not home-educated.¹⁰

⁶ See further, fn. 8 below, in addition to Article 18 of the International Covenant on Civil and Political Rights 1966, (a General Assembly Resolution of the United Nations that was ratified by the UK on 20th August 1976 <http://www.unhchr.ch/pdf/report.pdf>), which places on national Governments the responsibility to respect "the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions" (see: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).

⁷ See *Elective Home Education: Guidelines for Local Authorities*, Department of Children, Schools and Families, 2007, at page 3: <http://www.education-otherwise.org/Legal/7373-DCSF-Elective%20Home%20Education.pdf>,

⁸ Article 2, Protocol 1 of the European Convention on Human Rights:

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 in conformity with their own religious and philosophical convictions.

⁹ For example at point 8.12, Graham Badman said, "...on the basis of local authority evidence and case studies presented, even acknowledging the variation between authorities, the number of children known to children's social care in some local authorities is disproportionately high relative to the size of their home educating population...". No evidence or references whatsoever were provided in the report for such a statement, see:

<http://www.dcsf.gov.uk/consultations/downloadableDocs/PDF%20FINAL%20HOME%20ED.pdf>. Requests for information to back up such assertions have not been provided. See also: <http://www.home-education.biz/forum/england/8449-badman-review-press-complaints-commission.html> and http://www.whatdotheyknow.com/request/evidence_in_support_of_badmans_r.

¹⁰ See *Elective Home Education: Guidelines for Local Authorities*, Department of Children, Schools and Families, 2007, at page 14: <http://www.education-otherwise.org/Legal/7373-DCSF-Elective%20Home%20Education.pdf>.

11. The history of the consultation process, especially the gathering of evidence for the Badman Report, seems to have been rushed,¹¹ so that even known home education organisations¹² such as Christian Home Education¹³ and Home Service were not directly consulted.¹⁴
12. Amongst the recommendations, is a proposal that there should be a national register of children who are educated at home. Failure to register would constitute a criminal offence.
13. The recommendations would result in monitoring of what is taught¹⁵ and monitoring by means of intrusive and frequent home visits. This monitoring would even include the interviewing of the child alone without the parent present, which breaches parental responsibility and rights.
14. "Education Otherwise", a home education organisation, rejected the Badman Report's recommendations for home education, stating that it made "disproportionate and unreasonable recommendations...for compulsory registration and invasive monitoring".¹⁶
15. The present powers in legislation are sufficient, and the local authority can pursue a school attendance order where it appears that a child is not receiving a "suitable" education. It is of real concern that there is already a draft legislative proposal for 2009/10 that may consider this matter, called the *Improving Schools and Safeguarding Children Bill*. A Select Committee Inquiry has been set up to consider the conduct of the Review, related consultations and the recommendations made by the Review on elective home education.¹⁷
16. A recent press release dated 9th October 2009, announced supportive measures for home educators including access to music lessons, school libraries, work experience, sports and other specialist facilities in schools and colleges. This is a welcome development, but the confusion of the ideas of safeguarding and education has not been dropped.¹⁸ The DCSF's fuller response of 9th October 2009¹⁹ shows little change from the original proposals, retaining as it does the right to interview a child alone (in certain circumstances),²⁰ together with the registering and monitoring proposals. There should be an absolute prohibition on interviewing a child without the parent being present, because it would be

¹¹ See: <http://www.freedomforchildrentogrow.org/heconsult.htm>.

¹² See Appendix B of the Badman Report with a list of Consultees at fn. 2, above.

¹³ See: <http://www.homeschool.co.uk>.

¹⁴ See: <http://home-service.org>.

¹⁵ For example, see the question on the local authority asking for achievement and future attainment data.

¹⁶ See: <http://www.home-education.biz/forum/england/8449-badman-review-press-complaints-commission.html>.

¹⁷ See: http://www.parliament.uk/parliamentary_committees/csf/csfn220709.cfm.

¹⁸ See press release of 9th October 2009 at: <http://www.dcsf.gov.uk/everychildmatters/ete/independentreviewofhomeeducation/irhomeeducation>.

¹⁹ See the DCSF's Response to the *Review of Elective Home Education in England* dated 9th October 2009: <http://www.dcsf.gov.uk/everychildmatters/ete/independentreviewofhomeeducation/irhomeeducation>.

²⁰ See *ibid* under recommendation 7: the child could be seen alone where there is no tangible evidence of the child's work, or where the parent's claims are not backed up by evidence, or where the child is reluctant to volunteer information. Young children and some children with Special Educational Needs may find it daunting, so the Department accepts that another trusted adult may be present in these circumstances.

- unfair on the parents, as all types of false allegations may arise. It also breaches fundamental human rights to question a child alone.
17. Costs for registering and monitoring are estimated at £21m for the first year and additional, ongoing annual costs for the current cohort of £9.7m.
 18. In summary, the present proposals reverse the correct presumption of freedom to educate one's own children as a matter of parental duty, and instead make it one of Governmental duty. The Government should not seek to erode parents' freedom of choice over education and increase Government control over family life. The Badman Report states that, "Few would argue with the assertion that parents are the prime educator within or outside of a schooling system".²¹ The Report then undermines that assertion. The DCSF's response to the Badman Report dated 9th October 2009, published after this consultation began, shows little change in response to the report. It still proposes all of the registration and intrusive monitoring procedures. It is hoped that because of this Consultation and the Select Committee Inquiry, these costly and unwise recommendations will be dropped.

²¹ See point 1.5 in the Badman Report at:
<http://www.dcsf.gov.uk/consultations/downloadableDocs/PDF%20FINAL%20HOME%20ED.pdf>.

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Children, Schools and Families e-consultation website (<http://www.dcsf.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

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Please tick the box that best describes you as a respondent.

<input type="checkbox"/> Home educated child/young person	<input type="checkbox"/> Home educating parent	<input type="checkbox"/> Organisation representing home educating families
<input type="checkbox"/> Local Authorities	<input type="checkbox"/> Other organisation with responsibility for children (please specify in box below)	<input checked="" type="checkbox"/> Other (please specify in box below)

Please Specify:

About Us

Christian Concern for Our Nation (CCFON) is a policy and legal resource centre that identifies changes in policy and law that may affect the Judeo-Christian heritage of this nation. The team of lawyers and advisers at CCFON conduct research into, and campaign on, legislation and policy changes that may affect Christian Freedoms or the moral values of the UK. CCFON reaches a mailing list of 25,000 supporters.

<http://www.ccfon.org>

CCFON is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. <http://www.christianlegalcentre.com>

I Do you agree that these proposals strike the right balance between the rights of parents to home educate and the rights of children to receive a suitable education?

Agree

Disagree

Not sure

Comments:

No, “the responsibility for a child’s education rests with their parents. In England, education is compulsory, but school is not”.²² The Government should not usurp the role of parents and reverse the division of responsibilities between the two.

The proposals fail to recognise that in the vast majority of cases, parental rights and the best interests of children work together in harmony. The current law rightly recognises that it is a parental duty rather than a governmental responsibility to ensure that their children receive a “suitable” education.

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.

Home education falls under the definition of education “otherwise”. Parents may decide to educate their children either by regular attendance at school or “otherwise”.

“The responsibility for a child’s education rests with his or her parents. An ‘efficient’ and ‘suitable’ education is not defined in the Education Act 1996 but ‘efficient’ has been broadly described in case law 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..’ ”.²³

At the present time, the local authority can only lawfully intervene if it appears that parents are not providing a suitable education and issue a school attendance order.²⁴ Parents have a right to ask the local authority to withdraw the order and if this is not done, they can appeal to the Secretary of State or else defend an action for failure to

²² See *Elective Home Education: Guidelines for Local Authorities*, Department of Children, Schools and Families, 2007, at point 2.1, page 4.

²³ See *Elective Home Education: Guidelines for Local Authorities*, Department of Children, Schools and Families, 2007, at point 2.3, page 4.

²⁴ See section 437 of the Education Act 1996.

comply with such an order if they are able to prove they are providing a suitable education outside school.²⁵

The aspects of the proposal that cause most concern are:

- Invading people's privacy by compelling entry into the homes of families.
- Separating the child from his or her parents for questioning.
- Interrogating children either to determine the minor's wishes or to satisfy the interrogator that the child's education is "suitable."

The proposals also ignore the fact that there are already proper guidance and safeguards in place in relation to elective home education.²⁶

2 Do you agree that a register should be kept?

Agree

Disagree

Not sure

Comments:

A register should not be kept. A register does not protect children. A list of names and addresses does not ensure child safety at home any more than does attending school daily.

Instead, registration prepares the way for Government intrusion into the home lives of ordinary families.

The Badman Report misapplies methods to detect child abuse to home education implying that home educators may be subjecting their children to abuse. The safeguarding section of the Badman Report provides no documentary evidence of the alleged disproportionate number of families known to social services amongst home-educated children in some local authorities.

One of the recommendations refers to a report published in 2006 entitled *Working Together to Safeguard Children*.²⁷ The Elective Home Education guidelines for local authorities already state that this 2006 report is applicable both to school children and to those who are home educated.²⁸

²⁵ See sections 437, 442 and 443 of the Education Act 1996 at:
http://www.opsi.gov.uk/ACTS/acts1996/ukpga_19960056_en_27.

²⁶ See *Elective Home Education: Guidelines for Local Authorities*, Department of Children, Schools and Families, 2007, at page 14.

²⁷ See recommendation 22 of the Badman Report on page 32 at:
<http://www.dcsf.gov.uk/consultations/downloadableDocs/PDF%20FINAL%20HOME%20ED.pdf>.

²⁸ See *Elective Home Education: Guidelines for Local Authorities*, Department of Children, Schools and Families, 2007, at page 14.

Due to the financial costs involved, as well as the risk of governmental intrusion into an area of parental responsibility (to provide suitable education for their children), we oppose compulsory registration of home-educated children.

3 Do you agree with the information to be provided for registration?

Agree

Disagree

Not sure

Comments:

The information to be provided for registration of the child is:

- Child's name
- Date of birth
- Address
- Parents' name
- Parents' date of birth; and in addition,
- Parents' address.

As stated in our answer to question 2, registrations will not safeguard children. They will lead to intrusion into family life, as they will be used as the basis for improper home visits.

4 Do you agree that home educating parents should be required to keep the register up to date?

Agree

Disagree

Not sure

Comments:

Current education law states that educating children is the duty of their parents. It is inappropriate that those who bear ultimate responsibility for the education of their children should report to the Government which should instead be there to protect their rights.

5 Do you agree that it should be a criminal offence to fail to register or to provide inadequate or false information?

Agree

Disagree

Not sure

Comments:

As the responsibility for a child's education rests with the parents and the Government is accountable to parents, the Government would be wrongly reversing this responsibility if they were to prosecute a parent for failing to register. Compulsory registration and the idea of making criminals out of parents who fail to comply are oppressive actions that reverse the correct presumption of family freedom to educate one's own children.

6 a) Do you agree that home educated children should stay on the roll of their former school for 20 days after parents notify that they intend to home educate?

Agree

Disagree

Not sure

Comments:

Parents control the upbringing of their children, not the Government. Parents' wishes to educate their children at home should be respected immediately and the child's name removed from the school roll. This regulatory proposal could lead to schools and local authorities putting undue pressure on families during the 20-day period.

The DCSF's Response of 9th October 2009 to the Badman Report continues to support this anomalous practice, which fails to respect parental wishes by retaining a child's name on the roll for a 20-day period. The current Governmental intention is to bring in regulations (by amending the Education (Pupil Registration) (England) Regulations 2006) before 1st September 2011 (subject to consultation) to ensure this happens.²⁹

6 b) Do you agree that the school should provide the local authority with achievement and future attainment data?

Agree

Disagree

Not sure

²⁹ See the DCSF's response to the *Review of Elective Home Education in England* dated 9th October 2009 at: <http://www.dcsf.gov.uk/everychildmatters/ete/independentreviewofhomeeducation/irhomeeducation>.

Comments:

Parents who educate their children at home should not be required to submit achievement and future attainment data. Parents have the right to control the upbringing of their children. Since parents are the ones who delegate their authority to schools and who ultimately control the upbringing of their children, schools should report to them. Parents should not be required to report to the Government.

Home-educated pupils should not be a part of the system whereby schools provide the local authority with achievement and future attainment data, as they operate autonomously from the state school system.

Home educators may teach children in different ways from schools. For example, a museum trip may spark an enthusiastic and genuine interest in studying Roman Britain. A home educator should not be penalised for facilitating this interest. Such methods arouse and make use of a child's thirst for learning. The proposals raise the prospect of imposing some type of a national curriculum upon home educators; this prospect would be a logical application of their having to provide achievement and future attainment data. The legislation only requires parents to provide a "suitable education". Parents may choose to educate their children at school or at home and parents have the prime responsibility for a child's education, not the Government.

We are concerned about the Government inappropriately controlling what is to be taught in home education, which is heightened by the DCSF's recent Review proposal to clarify what constitutes a "suitable" and "efficient" education for home-educated children. It is proposed that this further review will be commissioned in early 2010.³⁰

7 Do you agree that DCSF should take powers to issue statutory guidance in relation to the registration and monitoring of home education?

Agree

Disagree

Not sure

Comments:

No, the current system has the necessary safeguards to protect children. Parents, not the Government, bear the ultimate responsibility of educating children. Monitoring and registration by the DCSF fundamentally disregards who it is that controls the upbringing and education of children. Parents who have not been shown to endanger their children should not be treated with suspicion, as if they had, merely because they are home-educators.

³⁰ See the DCSF's Response to the *Review of Elective Home Education in England* dated 9th October 2009 at: <http://www.dcsf.gov.uk/everychildmatters/ete/independentreviewofhomeeducation/irhomeeducation>.

8 Do you agree that children about whom there are substantial safeguarding concerns should not be home educated?

Agree

Disagree

Not sure

Comments:

Parents who have not been proven guilty of wrongdoing should be allowed to educate their children. The Government already has powers in the form of a school attendance order to send a child back to school if it appears that a suitable education is not being given.

9 Do you agree that the local authority should visit the premises where home education is taking place provided 2 weeks notice is given?

Agree

Disagree

Not sure

Comments:

Giving local authorities the power to visit the homes of children violates their human rights. Article 8 of the European Convention on Human Rights protects the right to privacy in a family's home life and recognises the right of parents to control the upbringing of their children:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The UK agreed to these provisions in full. We maintain that allowing local authorities to enter families' homes unnecessarily and without a lawful reason is likely to violate the European Convention on Human Rights.

Providing the local authority with a statutory power to visit the home where education is taking place provided two weeks' notice is given, would be disproportionate.

10 Do you agree that the local authority should have the power to interview the child, alone if this is judged appropriate, or if not in the presence of a trusted person who is not the parent/carer?

Agree

Disagree

Not sure

Comments:

Local authorities must not be given the authority to interview the child alone, as it may result in a violation of human rights.³¹ Even the police are not allowed to interview a child alone when s/he is suspected of a criminal offence. The recommendation to interview the child alone allows the heavy hand of Government to enter the home.

The Badman Report estimates that there may be up to 80,000 home-educated children and it would be a very expensive measure to interview each child—with little result. It is a disproportionate response which may well be distressing for both the parents and the child.

This proposal contrasts sharply with the advice given in the *Elective Home Education Guidelines for Local Authorities* under the heading “Clear policies and procedures”, which states that:³²

Any procedures for dealing with home educating parents and children should be fair, clear, consistent, non-intrusive and timely, in order to provide a good foundation for the development of trusting relationships.

The present proposal will have the opposite effect.

The DCSF’s Response to the Badman Report published on 9th October 2009, now suggests that the child could be seen alone where there is no tangible evidence of the child’s work or where the parent’s claims are not backed by evidence, or where the child is reluctant to volunteer information. The Government’s response fully accepts that young children and some children may find such an interview daunting, so it accepts that another trusted adult may be present in these circumstances.

This modified approach is still entirely unacceptable; it should be an absolute rule that a child is not to be interviewed without the parent being present under any circumstances. There could be unfair repercussions to such a proposal: how would a parent know what suggestions were put to a child when questioning him or her? How would a child know if a question was a leading one? How would a parent know

³¹ Under Article 8 of the European Convention on Human Rights (see above).

³² *Elective Home Education: Guidelines for Local Authorities, Department of Children, Schools and Families, 2007*, at page 8.

what had been asked? Such interviewing could easily result in false allegations being made.

11 Do you agree that the local authority should visit the premises and interview the child within four weeks of home education starting, after 6 months has elapsed, at the anniversary of home education starting, and thereafter at least on an annual basis? This would not preclude more frequent monitoring if the local authority thought that was necessary.

Agree

Disagree

Not sure

Comments:

These proposals for monitoring are over- intrusive and may well violate Article 8 of the European Convention on Human Rights. The present proposals would amount to a unnecessary increase in governmental control and intrusion into family life. Only home-educated children would be subjected to such intrusive visits. Please see the quotation in question 10 from the current guidelines, which state that any procedures should not be intrusive but should be timely in providing a good foundation for the development of trusting relationships.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.



Please acknowledge this reply

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

All DCSF public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DCSF consultations are conducted, please contact Donna Harrison, DCSF Consultation Co-ordinator, tel: 01928 794304 / e-mail: donna.harrison@dcsf.gsi.gov.uk

Thank you for taking time to respond to this consultation.

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Send by e-mail to: homeeducation.consultation@dcsf.gsi.gov.uk