

OTHER CONTRIBUTIONS

Danger Sign: Authorities Act Outside the Law to Seize Control of Home Education in Northern Ireland?

Sarah Dickinson

Home Education in Northern Ireland

In an atmosphere of increasing state interest in the private lives of children, a draft home education policy now under consultation in Northern Ireland represents a significant shift in the relationship between state, parent and child.

The law on home education in Northern Irish law is the same as in England but the titles are different. The provision of education is a parental duty: “The parent of every child... [must provide an education] ...either by regular attendance at school or otherwise.” (Section 45 Education and Libraries Northern Ireland Order 1986) and “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”... then the Boards have a duty to make enquiries (Schedule 13 of the same Order).

Instead of Local Authorities Northern Ireland currently has five Education and Library Boards (ELBs or Boards). These were due to be replaced by the Education and Skills Authority (ESA) but a lack of agreement in the Assembly has led to the Authority being scrapped before it came into existence. It has been announced that one Authority of some description will

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replace the five Boards. In preparation for the launch of the ESA, the Boards have drawn up a draft Policy on Home Education intended to cover all five Boards. The conduct of the Boards has been calculated to imply that the five consultations are separate, minor, local matters.

In fact if such a policy were applied throughout the region it could have quasi-legal force, particularly in the absence of case law or guidance. The Boards appear to take the view that the interpretation of the law is up for grabs and with the weight of every Board behind their view, and a notably conservative judiciary, they might indeed be able to twist the law enough to make life very difficult. Nobody wants to be the test case that proves them wrong in the higher courts.

The Boards take the view that their role is pro-active. A reactive duty to act only “*if it appears*” there may be a problem is transmuted into a duty:

- To access the home and assess the learning environment for safeguarding concerns.

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- To interview the child to ascertain their “opinion.”
- To require that a “programme” of education is submitted and evaluated before de-registration from school is permitted.
- To ensure that parents meet “minimum standards” which would be judged subjectively by the visiting education officers, and include the child’s “physical, social, emotional health and wellbeing needs.”
- To subject children with special educational needs to assessment by an educational psychologist: to check that “reasonable progress” has been made.

In support of these welfare-related powers the Boards offer the United Nations Convention on the Rights of the Child and The Children (Northern Ireland) Order 1995. The UNCRC is quoted selectively and could just as easily be used to argue against the proposed scheme. In any case this Convention has not been incorporated into Law and cannot create such draconian powers. The Children Order, on the other hand, relates to matters to be taken into consideration by the Courts; to apply court procedures to families about whom there are no concerns is to turn the presumption of innocence on its head.

The policy uses references to “safeguarding” to remove education from the sphere of parental control. The overall tone is one of threat. Constant references to welfare and safety create the impression that parents who do not comply educationally are liable to be evaluated as a danger to their children—and ultimately risk having their children removed.

Under this threat, parents are permitted to make only those judgements which are authorised, monitored and regulated by the authorities. The universal imposition of a state philosophy of education would have a profound effect; one that would reach beyond the scope of this policy and beyond Northern Ireland.

Home education represents the most flexible and personalised form of learning. As home education is co-constructed within families it cannot be planned, measured or evaluated according to the systems operating within schools. Were the state to intrude into the private sphere to take control of education, it would impact children’s agency, their privacy and their development. It would also fundamentally alter the relationship between parents, children and the state.

In responding to this consultation we hope to create political pressure on the Boards to act within their legal powers. Graham Stuart, Chair of the All Party Committee on Home Education in Westminster has written to the Northern Irish Minister for Education to say that

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.

Stemming from this, I also have concerns regarding Sections 3(viii) and (ix) of the draft Policy, which would require families to submit their home education programmes for Boards to rule on

their “appropriateness or otherwise.” Again, the law neither permits nor requires such a system.”

<http://www.grahamstuart.com/wp-content/uploads/2014/05/Letter-to-John-ODowd-RE-Draft-Northern-Ireland-Elective-Home-Educating.pdf>

Those within Northern Ireland are encouraged to contact and meet with their Members of the Legislative Assembly,

others are encouraged to get in contact with the Northern Irish Department of Education to express their concerns <http://www.deni.gov.uk/contact-us.htm>

The consultation has closed and responses have been submitted but conclusions have not yet been drawn and Ministerial approval has not been given. The future of home education in Northern Ireland remains in the balance and what happens next will depend on political pressure and scrutiny.

Author Details

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