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The Schools Bill: Briefing paper

The Challenges

The Schools' Bill has been introduced and had its first reading in the House of Lords. Home educating families and organisations that have an interest in the development of children are horrified by its content.

Home educating families have been repeatedly assured that this Bill would go no further than mandatory registration of home educated children. The Bill goes considerably further and if enacted, will destroy the very basis of home education: provision of an individualised education to a child, suitable to the child's age, ability and aptitude.

By introducing a compulsory register of all home educated children, the Bill gives Local Authorities near enough unlimited powers to demand any and all information with threats of substantial fines and year-long imprisonment. Experience tells us that whilst some LAs will act reasonably, a sizeable number have demonstrated a continued propensity to abuse their existing powers, causing long lasting distress and harassment to children and parents. With no oversight the extent of abuse of power will only increase.

It is widely known that making a complaint to the LA is ineffective; the Local Government Ombudsman will only investigate whether or not the LA's own policy (which may be illegal) is followed; the Secretary of State does not act on complaints and has not revoked a single School Attendance Order (SAO) for a home educated child and Judicial Review is inaccessible costing upwards of £50,000.

The following points are of the most concern:

1. S 436B Duty to register children not in school, condition 'C' carries an implication of a requirement for consent to remove from the school roll to home educate.
2. 436C Content and maintenance of registers. 436D states that the parent must provide information, creating a duty to do so regardless of circumstances. There must be exceptions to this for domestic abuse victims and where the details of the parents are unknown to the parent with care.



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3. 436C (2) provides for mandatory provision of '*any other information the local authority consider appropriate*'. This provision will increase the post code lottery of LAs who demand information which is unreasonable allowing them carte blanche to make any demands of parents that they see fit.
4. 436D Provision of information to local authorities creates duties on parents which the parent may not reasonably be able to fulfil.
5. 436E Provision of information to local authorities: education providers. This section provides no parameters for the requirement on the LA that its belief is reasonable, or evidenced.
6. The definition of a person providing out-of-school education to a child is far too wide, allowing the LA to apply monetary penalties to far reaching sectors of people.
7. 436F Use of information in the register, gives the LA the right to disclose any information that it wishes, based on its own judgment, without it necessarily having reasonable cause to do so.
8. 436G Support, creates a nonduty on LAs as it does not create a duty to provide support other than that which the LA thinks fit.
9. 436I Preliminary notice for school attendance order provides for too short a notice period to reasonably allow a parent to respond.
10. 436J School attendance orders (SAO) mandates that a child must attend school throughout compulsory school age, because a parent has failed to comply with an administrative requirement. Children will be punished for matters beyond their control.
11. 436P Revocation of school attendance order on request provides no realistic means of obtaining revocation of a SAO in the face of an obdurate LA.



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12. 50 Failure to comply with school attendance order completely overturns the 'double jeopardy' rule which has stood for over 800 years and which is an important protection for individuals against the abuse of state power. This is by introducing a provision that a person '*may be found guilty of an offence under this section again if the failure continues*'.
13. Penalties introduced are extreme and they will harm children and families.
14. Exceptions to the scope of regulation of educational institutions do not go far enough and could bring in individual tutors, tutoring services, childminders, relatives or even some families. Tutoring facilities currently available to home educated children will be lost to them as businesses will not accept the administrative burden.

Full Response

Schools Bill Part 3 Analysis

S48 Registration

436B Duty to register children not in school

(2) A child is eligible to be registered by a local authority under this section if Conditions A to C are met.

Condition C carries an implication of a requirement for consent to remove from the school roll to home educate. This is unacceptable as permission should not be required and in any event, a school is not in a position to take a view from other than a school based pedagogy.

Registration would be required for any child who is absent with consent from a school, regardless of length of absence. For example a child sick at home, in hospital, children with anxiety based school attendance difficulties, or children with any consensual period of time off school.



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C (b) the child is a registered pupil at a relevant school but the proprietor of the school has arranged or agreed that—

- (i) the child will receive education otherwise than at that or any other relevant school, and
- (ii) the child will be absent for some or all of the time when the child would normally be expected to attend the relevant school.

436C Content and maintenance of registers

- (1) A register under section 436B must contain the following information in respect of a child registered in it—

b) the name and home address of each parent of the child.

S 436 D states that the parent must provide this information. Creating a duty to do so regardless of circumstances. There must be exceptions to this for domestic abuse victims and where the details of the parents are unknown to the parent with care.

This brings with it enormous risk to those parents who are victims of domestic abuse and interferes with the remit of the family court. We are aware of numerous cases where Local Authority (LA) staff have disclosed information to abusive partners which identifies the whereabouts of the victim. In Adelaide, where this is a requirement there is a significant movement against it because of harm already caused to victims of abuse.

This section gives no recourse for children or parents who consider the data to be inappropriate to have it removed. One parent described this as a paedophile's charter.

c) such details of the means by which the child is being educated as may be prescribed, and

d) any other information that may be prescribed.

This is far too wide as it opens up the door for mandatory provision of any form of information that the LA decides that it wants. Parents may not have that information and the LA could effectively dictate the content and form of home education changing it irrevocably.

- 2) A register under section 436B may also contain any other information the local authority consider appropriate.



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This provision will increase the post code lottery of LAs who demand information which is unreasonable. LAs simply should not have discretion to decide what a register should contain. An LA might for example demand details of the parent's education, health, medical procedures, religion, ethnicity, income, expenditure, or personal relationships. All of these are things that we are aware of parents being asked for by LAs and this provides an open door for discrimination.

436D Provision of information to local authorities: parents

- (1) A parent of a child who becomes eligible to be registered by a local authority in England under section 436B must—
 - b) provide the authority with the information referred to in section 436C(1)(a) to (c), and
 - c) provide the authority with any information prescribed under section 436C(1)(d) that the parent has.
- (2) A parent of a child who is registered by a local authority in England under section 436B must—
 - (c) inform the authority of a change to any of the information required to be included in the register under section 436C(1)(a)

This creates a duty on the parent which the parent may not be able to fulfil.

This also creates an enormous burden on home educating parents as they commonly use a wide and changing selection of education providers, both individuals and establishments and to keep the LA apprised of changes as they happen would mean weekly updates for many. GRT families will be especially affected, as will world schoolers and other home educating families who frequently move (between two or more homes). This also requires that parents share data about tutors and other education providers which may violate the rights of those individuals.

436E Provision of information to local authorities: education providers

- (1) This section applies where a local authority in England reasonably believe that—

This goes too far. It provides no parameters for requirement on the LA that the belief is reasonable, or evidenced. We are aware of many LAs which currently use wholly unreasonable bases for stating a belief that education is unsuitable.



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- (a) a person is providing out-of-school education to a child for more than the prescribed amount of time without any parent of the child being present, and

This is far too wide. It allows the LA to apply monetary penalties (see 7) to far too wide a sector of people. It could encompass people who should not be under a requirement such as a childminder, a relative who cares for a child, tutors and home education groups where parents share care of the children. The settings in scope could be changed in future without proper scrutiny.

- (2) In subsection (1)(a)—

- (a) “out-of-school education” means any programme or course of education, or any other kind of structured education, that is provided otherwise than as part of the education provided by a relevant school (within the meaning of section 436B);

- (b) “prescribed amount of time” means an amount of time prescribed—
- (i) by reference to a number of hours in, or a proportion of, a week or other period;
 - (ii) by reference to a proportion of the time a child spends receiving education;
in any other way.

- (7) Where a local authority in England are satisfied that a person on whom a notice under subsection (3) is served has—

- (a) failed to comply with their duty under subsection (5), or
- (b) provided incorrect information in response to the notice, the authority may require the person to pay a monetary penalty to the authority in accordance with Schedule 31A.

This provision can result in people who provide education in non-school settings being open to being fined if the families using them give incorrect information, or for a clerical error. This will either result in providers being unjustly fined, or facilities serving home educating parents refusing access to those families.

436F Use of information in the register



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- 2) A local authority in England may provide information from their register under section 436B which relates to a child to a prescribed person if the authority consider it appropriate to do so for the purposes of promoting or safeguarding the education, safety or welfare of—
- (a) the child, or
 - (b) any other person under the age of 18.

This gives the LA the right to disclose any information that it wishes, based on its own judgment, without it necessarily having reasonable cause to do so. It could, for example, state that disclosure of information of all home educated children to a commercial entity, wanting to sell educational materials to families which the LA 'considers' will 'promote' the education of children, is within its right.

We are aware of numerous recent breaches of Data Protection rights in respect of information about home educated children, including release of names, addresses and medical information. This clause will exacerbate that concern leaving children at risk.

436G Support

- (1) If a parent of a child registered by a local authority in England under section 436B so requests, the local authority must provide, or secure the provision of, support to promote the education of the child.

The support to be provided is whatever the local authority think fit having regard to the parent's request.

This is a nonduty as it does not create a duty to provide support other than what the LA thinks fit. Any LA could simply state that it does not think fit to provide any support for any applicant parent.

S19 children are excluded from support. Thousands of children are currently Children Missing education (CME) due to Education Act 1996 s19 (3) which allows individual LAs to decide how much or little provision a child receives if the child is ill. The lack of requirement to mandate provision for those children is inexcusable.

436I Preliminary notice for school attendance order

- (1) A local authority in England must serve a notice under this subsection on a person in relation to a child if it appears to them that—



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- (a) the person is a parent of the child, and
 - (b) any of Conditions A to C is met.
- (2) A notice under subsection (1) is a notice requiring the person on whom it is served to satisfy the local authority within the period specified in the notice that the child to whom the notice relates is receiving suitable education.
- 4) Condition B is that—
- a. the child is, or may be, eligible to be registered by the local authority under section 436B,
 - b. the authority have asked the person for information for the purpose of ascertaining—
 - i. whether the child is or should be registered by the authority, or
 - ii. whether the person is in fact a parent of the child, and
 - c. the person has not provided that information within the period of 15 days beginning with the day on which the request was made or has provided incorrect information.
- 5) Condition C is that the person is under a duty to provide information to the local authority under section 436D(1)(b) or (c) or (2)(a) or (b) in relation to the child and—
- a. has not provided the information, or
 - b. has provided incorrect information.
- 6) A notice under subsection (1)—
- a. must be served within the period of three days beginning with the day on which it appears to the local authority as specified in subsection (1)(a) and (b), and 5
 - b. may not specify a period of less than ten days.

This provision allows an error by a parent in information provision to result in a SAO. Information can be incorrect due to lack of knowledge of the facts, a clerical error, or a misunderstanding without it being intentionally misleading.

This is too short a notice period. It reduces the time to respond to a notice (effectively the same as under s437 as it is a precursor to a School Attendance Order (SAO)) from 15 days to 10 days. Parents often already struggle to meet 15-day deadlines. They are educating children, often dealing with medical, hospital and other appointments, often want to obtain legal advice and often are simply not at home. It is relatively common for notices to be sent to



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incorrect addresses, during holiday periods, or when a parent is away from home.

LAs can take weeks, even months to respond to a parent sending information. There should be a reciprocal duty on LAs to respond within reasonable time limits.

436J School attendance orders

- (1) A local authority in England must serve an order under this section on a person if—
 - (a) the authority have served a notice on the person under section 436I,
 - (b) the person fails to satisfy the local authority, within the period specified in the notice, that—
 - (i) the child is receiving suitable education, or
 - (ii) the person is not a parent of the child, and
 - (c) in the opinion of the authority it is expedient that the child should attend school.

- 3) A school attendance order under this section continues in force (subject to any amendment made by the local authority) for so long as the child is of compulsory school age, unless—
 - a. it is revoked by the authority, or a direction is made in respect of it under section 436Q(6) or 447(5).

This mandates that a child must attend school throughout compulsory school age, because a parent has failed to comply with an administrative requirement. Children will be punished for matters beyond their control. We know that LAs already serve notices on parents where SEN children are physically or psychologically not able to attend school, or have been removed from the roll because school has not met their needs. These are the parents most likely to be slow to respond and therefore more likely to receive a School Attendance Order (SAO).

436P Revocation of school attendance order on request

- (1) This section applies where a school attendance order made by a local authority under section 436J is in force in respect of a child.



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- (2) The person on whom the order is served may at any time apply to the local authority requesting that it be revoked on the grounds that—
 - (a) arrangements have been made for the child to receive suitable education otherwise than at a school, or
 - (b) the person is not a parent of the child.
- (3) The authority must comply with a request under subsection (2)(a) or
 - (b) unless they are of the opinion that (as the case may be)—
 - (a) arrangements have not been made for the child to receive suitable education otherwise than at a school, or
 - (b) the person is a parent of the child.
- (4) If a person is aggrieved by a refusal of the local authority to comply with a request under subsection (2)(a)—
 - (a) the person may refer the question to the Secretary of State, and
 - (b) the Secretary of State is to give such direction determining the question as the Secretary of State thinks appropriate.

The Secretary of State has not, for at least 8 years (in so far as information provided by the DfE can confirm), revoked a SAO for a home educated child. Consequently, there is no effective redress for parents against an unfairly, or wrongly served SAO.

50 Failure to comply with school attendance order

- 5) A person who—
 - (a) fails to comply with the requirements of a school attendance order under section 436J by not causing a child to become a registered pupil at the school named in the order, and
 - (b) is convicted of an offence under this section in respect of the failure, may be found guilty of an offence under this section again if the failure continues.

This completely overturns the 'double jeopardy' rule which has stood for over 800 years and which is a very basic tenet of law. The rule is an important protection for individuals against the abuse of state power. It stops police and prosecutors from repeatedly investigating and prosecuting the same individual for the same crime. This clause is simply an abuse of state power.



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SAO enforcement is a criminal case and criminal law is very clear: Where the individual has previously been convicted and the same offence in fact and in law is alleged in the second indictment. In this situation the defendant enters a plea of 'autrefois convict'. If the court rules that the plea is correct, the indictment or charge is invalid and is dismissed.

Where a person is prosecuted for an offence arising out of the same or substantially the same facts as a previous prosecution, this is not an example of the above doctrine, which gives the accused an absolute right to relief. It may constitute an abuse of process, which entitles a judge to exercise his/her discretion to stay the proceedings. That discretion should be exercised in favour of an accused unless the prosecution establishes that there are special circumstances particular to the case for not doing so.

Qualified exceptions to the doctrine have been introduced: see the Criminal Procedure and Investigations Act 1996, sections 55 to 57: acquittals tainted by intimidation; see also the Criminal Justice Act (CJA) 2003, sections 75 to 97: retrial of persons acquitted of the serious qualifying offences set out in schedule 5. These exemptions are for extreme cases and would not apply to enforcement of an SAO.

- 8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to a term of imprisonment not exceeding 51 weeks, or to both.

A fine of £2,500 will harm children. A great many home educating families are low income families. It is simply not justifiable to imprison a parent for a year for what is effectively an administrative offence of failing to register a child as home educated. This would leave children bereft, taken from their families and with their parents losing employment, income and possibly the family home, for what is nothing more than (in the prescribed circumstances) an administrative serving of a SAO.

56. Expanding the scope of regulation



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- (1) Section 92 of the Education and Skills Act 2008 (independent educational institutions) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) For the purposes of this Chapter, an institution is an independent educational institution if—
- (a) it provides full-time education for—
- (i) at least five children of compulsory school age, or
- (ii) at least one child of compulsory school age who is looked after by a local authority or who has special educational needs, and
- (b) it is not an excepted institution.
- (1A) For the purposes of this section, an institution provides full-time education for a child if the child could be expected to receive all or a majority of their education at the institution.
- 5) In subsection (4)—
- i. after the definition of “an academic year” insert “excepted institution”: the following are excepted institutions—
- (a) an institution that provides only early years provision;
- (b) a school maintained by a local authority;
- (c) a school approved under section 342 of the Education Act 1996 (approval of non-maintained special schools);
- (d) a hospital (within the meaning of section 275 of the National Health Service Act 2006) that is not an independent school;
- (e) a 16 to 19 Academy;
- an institution that is within the further education sector or the wider higher education sector;
- (f) a secure college, secure training centre or young offender institution;
- (g) an institution of a description specified in regulations; “special educational needs”: a child has special educational needs

These exceptions do not go far enough. There should be exception for independent tutors, tutorial groups, a relative who looks after and home educates children, for childminders and in strict terms, for a home educating parent.

The Education and Skills Act 2008 s92 would be amended by the Bill. This defines what constitutes an independent Education Establishment and s95



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requires that all such establishments must register. The Bill extends this regulation requirement with no exemption being provided which would keep numerous groups and individuals outside the requirement to register as an educational establishment. Potentially, groups which could be required to register would include: individual tutors, tutoring services, church groups delivering classes, home education groups, or home educating parents who have a child with SEN or five or more children.

Failure to register could result in any of these groups being suspended and unable to continue to provide education: 118C Offence of conducting institution when its registration is suspended. Powers of entry of premises is also provided for any educational institution: 127A Powers of entry.

Tutors will withdraw their services from home educated children in order to avoid the administrative burden of reporting and the inherent risk of fines or closure. This will reduce the efficacy of education for many of those children.

Ms Wendy Charles-Warner

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Co-chair

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