Children's Wellbeing and Schools Bill Frequently Asked Questions

What stage is the Bill at?

We need to start by clarifying that the Bill is not law. Before it can become law it has to go back to the House of Commons for the amendments from the House of Lords to be accepted. If they are not accepted it may go backward and forward between the two houses until on the third return to the Lords, by convention, it will be accepted. Once it is accepted and passed by the Commons, it goes to royal assent. The Bill is not law at royal assent and local authorities cannot act on it at that stage. The Bill has to be enacted and the estimated time for this is early 2027. Bills are very often not enacted all at once and some aspects may be enacted sooner than others whereas some may never be enacted.

There has been a lot of misinformation online which has been worrying for parents, however, we cannot at this stage state definitely that the amendment made in the House of Lords will be part of the final legislation. It is likely that the ones made by the minister will be but the most concerning clause to families is amendment 121A which was filed by Baroness Barran.

I have been told that the Government will not allow a School attendance Order to be served if the s47 did not result in action.

This was the government's intention and an amendment made in the House of Commons (clause 33, s40, page 69) makes clear that a school attendance order may not be served if '*condition B was the only condition cited in the preliminary notice'*, 'or '*condition B and another condition were cited in that preliminary notice, but the child's parent has satisfied the local authority',* and the local authority is no longer conducting enquiries or taking action under s47. Because the Barran amendment conflicts with this, if it is accepted in the Commons, the clause which sensibly states that a SAO cannot be served if s47 assessment led to no action will need to be amended.

Will people have to accept local authority visits and how will that affect the rights of the child? Is it compulsory?

The projected meetings are to visit the child within the home and the parent will be asked whether they consent to the local authorities doing so. However, failure to consent allows the local authority to serve a notice to satisfy on the parent. Consequently, this is coerced consent as there is an effective punishment for not agreeing.

Will the meeting have to take place in both homes if parents are separated?

It will depend on whether the parents both provide education to the child in their homes. At present there is no information about how this will be required to be conducted as it is being left to regulation and guidance.

Will the local authority have right of entry to the home?

No, the local authority education officers will not have right of entry to the home. Children's social workers have no right of entry to the home and must request entry or obtain a court order if refused. Even the police cannot enter the home without consent, or good cause, most usually that they are in pursuit of an escaping offender, there is a crime in progress, they hold a warrant, or there is immediate risk to life or property.

Will it be possible to meet elsewhere?

There is no facility on the face of the Bill to do so but it is likely that this will be considered in regulation or statutory guidance.

What about children with SEN for those who cannot communicate verbally?

It is very likely that special needs will be accommodated within guidance or regulation. This is because of equality considerations. In addition, a child can never be compelled to speak and that is protected under the United Nations Convention on the Rights of the Child.

What is the purpose of the meeting?

There are two meetings proposed, one is a meeting at the school as an exit meeting. This will initially be piloted and is intended to apply to all parents wishing to remove their child from the school roll. The parent will be required to participate in the meeting and cannot just attend and not do so. The child cannot be removed from the roll until the parent has participated.

The second proposed meeting is with the child in the home within 15 days of commencing home education. It is difficult to see how local authorities can undertake such meetings for every child and it is likely that regulations or statutory guidance will give an indication of which children the DfE expects to be visited.

Are meetings required for transitions from junior to senior school?

Nothing within the Bill indicates that this will be a requirement as the child is not leaving on the basis of home education. However, it is possible that this will be considered in regulation or guidance.

What is a s47 and can you appeal against it?

The term s47 refers to the Children Act 1989 s47. This is the Act which allows the local authority to assess and consider whether a child is at risk of suffering or is suffering from significant harm. There is no appeal against an S47 per say, although

there is the facility to raise challenges to it during the process. An appeal against its existence for the purposes of home education is not available.

A s17 is about supporting a child and is not the same as a child protection plan.

What if I was previously subject to a malicious S47 with no further action?

This will depend on whether the Barran amendment stands. If it does not stand the government has stated that where no further action has been taken the local authority cannot serve a school attendance order. If it does stand, unfortunately any assessment throughout the child's life will be considered cause to serve a notice to satisfy.

Does the S47 requirement apply to the individual child or any family member?

As things stand, it is the individual child not the family as a whole. However, this may be clarified in regulation or guidance. It is possible that younger siblings of a child subject to s47 may be brought into it, but we do not yet know.

Will school attendance order be automatic?

No, a school attendance order is not automatic. The Bill is clear that in certain cases the local authority must serve a notice to satisfy, however, if it is satisfied it may not serve a school attendance order. We are aware that some local authorities will consider all cases for which a notice must be served as ones in which the child's best interest will be to attend school. This is not the purpose, and we have been assured by the DfE that this will be clarified in regulation and guidance.

Can a family move away if their child is subject to a SAO?

Theoretically, the local authority is required to give consent to remove the child from the school roll if the parent wishes to move away from the area. However, a parent cannot be prevented from moving home and relocating and cannot be obliged to travel long distances in order for the child to attend a specific school. It is likely that the regulation and guidance will specify how a move away from the area should be treated.

Should parents whose child has been subject to a S47 in the last five years deregister now?

There is no advantage to doing so. This is because children who are already home educating will come under the arrangements in any event. We also need to be aware that if the Barran amendment succeeds it will be for the life of the child and not just five years.

Will being subject to a LADO count?

A LADO investigation is when very senior social workers investigate the actions and conduct of a professional who works with children or vulnerable people, in order to ascertain whether they have acted inappropriately. There is nothing in the Bill which indicates that LADO investigations will be considered under the Bill. However, if an individual has been found to have acted inappropriately by a LADO investigation, has anything in their background which prevents them from working with children, and the local authority is aware of that, it may result in more robust local authority action.

What if there is an active child protection plan but the social worker agrees that home education is right for the child?

In this situation there is no right of entry for the local authority. The most likely response will be for the education department to seek input from the social worker and, if they are supportive of the child remaining home educated, it is unlikely that a school attendance order will be served.

If we are referred to children social care but the case is closed is that an S47?

No, if following referral, the case is closed without an assessment that is not an S47. However, the language used in the Bill is not as clear as it might be and the DfE will need to specify that it means a full assessment and not just an initial enquiry.

What will happen if we have a S47 and we move out of the jurisdiction to Scotland or abroad?

If a child is subject to an S47, the concerns about the child are very serious and the local authority becomes aware that you are intending to move, it is likely to apply for an interim care order. If the concerns are less grave, it is less likely to do so. If the parent is relocating without children's social care being aware that they are doing so, the authority is able to make an international referral to the social services in the destination country.

Once issued, does the SAO prohibit emigration?

No, a child being subject to a SAO does not prevent the family from relocating to another country. However, it is possible that the local authority would seek to notify the destination country. At present there is no specific power which allows them to do so.

What difference will the Bill make to children with an EHCP?

Families of children with an EHCP will find little difference to other families if the child attends A mainstream school.

CiN, SGO and adopted children

If the Barran amendment is accepted by the House of Commons historic child protection plans will result in the local authorities serving a notice to satisfy. Lord Crisp specifically raised the issue of adopted children, and that would include children under SGO, but no allowance was made for them.

CiN children who have not been subject to s47 assessment or a child protection plan, will be subject to the same requirement to serve a notice to satisfy if the support is current but not if it is historic.

What if my child is in receipt of disability living allowance?

If a child is in receipt of Disability Living Allowance (DLA) but not subject to a s47 or CiN, the child will be treated as any other child. Receipt of DLA will not make a difference.

Malicious referrals from ex partners

We are aware that many victims of domestic abuse are extremely concerned that this Bill will expose them to further abuse, as malicious referral is a tool commonly used by abusive former partners. An amendment was put forward to require local authorities to inform each parent, but it did not pass. We have raised this with the DfE and Peers. The DfE is aware of this difficulty, and we understand that it intends to make clear in guidance how victims of abuse should be protected.

The fact of domestic abuse being recorded with a GP in the past should not be disclosed to the local authority and should not make a difference.

What about those already home educating?

Most of the provisions apply to currently home educating parents. For parents in school, consent to remove from the register will be introduced. For current home educators the Bill introduces a requirement on the local authority to serve a notice to satisfy if they meet the criteria of having S47 assessment or action. If the Barran amendment is accepted by the Commons, this could be if the criteria applied at any time in the past, although further amendment would be required to introduce that. If the Barran amendment is not accepted it will be within the last five years. Current child in need will also meet the criteria.

What about children with no children social care involvement?

If the parent has no children's social care involvement and has not had any such involvement they will be required to provide data to their local authority. The local

authority can ask them for that data on an annual basis and no more frequently than every three months. This is in addition to the annual request for information which most local authorities currently make

What statutory safeguards will prevent the register being used to justify excessive oversight?

Currently, we are aware that some local authorities already seek excessive information or treat meetings as mandatory. These are in the minority, and the vast majority of local authorities want to have positive relationships with families. The DfE has advised that it will make clear in statutory guidance how local authorities should conduct themselves.

A parent may make a complaint to the local authority and where the local authority is reasonable that should be an effective measure. Where it is not it will not be.

If a complaint to the local authority has been finalised and the parent is not satisfied, he or she can take the matter to the Secretary of State for education, in practise this means the DfE. However, the DfE has made clear that it can only act formally in respect of quite extreme matters. Education Otherwise meets regularly with DfE senior staff who are open to receiving complaints and who do, at times, try to assist.

An individual parent who has gone through the complaints procedure can choose to refer the matter to the local government ombudsman or take a case in judicial review against the local authority. Judicial review is financially prohibitive for most parents but for those on means tested benefits or very low income, legal aid could be available.

The local government ombudsman has for many years failed to take action, or to investigate complaints made by home educating families. Education Otherwise recently met with senior officials from the service who indicated that they are investigating the situation and we are hopeful that this will lead to an improved service.

Are parents required to actively register or is the onus on the local authority?

The Bill places the duty on the parent to register their child as home educated.

What is the penalty for not registering?

If you do not register your child and the child is subsequently recognised as being home educated, the local authority will serve a notice to satisfy on you.

What about children who do not attend providers such as classes?

There is no obligation on parents to use outside service providers such as tutors, online providers or classes. This is a worry for families who are concerned that the stress on providing data about such classes will lead to local authorities having an expectation that they must be used. We expect this to be clarified in regulations and guidance.

Which providers does it cover?

At present, we do not have this information. However, the DfE has indicated that it will be setting parameters for which providers are included within regulations and guidance. There is no indication that home education groups will be included.

What would a tutor have to do to stay within the law?

If a tutor is providing limited hours of education to a child it is unlikely that they will be subject to the data provision requirement. However, guidance on this is yet to be decided. If a tutor does come within the parameters, they will be expected to provide information that they hold on home educated children at the request of the local authority. Failure to provide information can attract a fine.

What does registration involve?

Registration involves providing set data to the local authority and updating that data when requested. The level of data was excessive but amendments to the Bill have been agreed which will reduce the level of data required.

My child will soon be 5, is it worth me registering now?

No, there is no advantage in registering now.

Will I have to send my local authority copies of work?

Unless it is introduced by regulation and guidance there is no requirement to provide copies of work to the local authority.

Will the Bill affect children receiving EOTAS provision?

As it stands the Bill will not affect EOTAS children.

Will the provisions of the Bill apply to Scotland and Northern Ireland?

As it stands, the Bill does not apply to Scotland or Northern Ireland. However, it is possible that either Scotland or Northern Ireland, or both, may adopt the provisions or similar provisions at a later date.

Can we take legal action as a collective?

It is not legally possible to bring a judicial review against the government in respect of primary legislation. The Bill will be part of primary legislation. However, it is possible to bring judicial review against the government in respect of secondary legislation and guidance. It is also possible to bring judicial review against individual local authorities who act disproportionately or unreasonably.

It may be possible to seek a declaration that the legislation introduced by the Bill is incompatible with the Human Rights Act 1998 s4. These are rare and only 52 such declarations have been issued.

Education Otherwise has continued to take advice from senior counsel. We also have a reputable solicitor ready to proceed with whom we are working in respect of possible judicial review. We are awaiting advice on when would be the most appropriate time to act, should it be necessary to do so.

What is very clear from both the solicitor's advice and counsel's advice, is that parents should not be taking a case forward through any source other than a reputable organisation. This is in order not only to protect those who contribute, but also to maximise the chance of success.

If counsel advises us that judicial review is viable we will, at that stage, launch fundraising in order to take it forward.

It is very important for all parents to understand that judicial review is not a matter of winning or losing a case, it is far more complex. No individual or organisation should ever go into a court case other than accepting that there is no guarantee that it can win. What we can do, however, is to instruct the most competent available barrister in the field. Our instructed barrister is considered one of the most respected and competent in the field of judicial review and education.

What can parents do now?

There is no point at this stage in lobbying peers. Parents can arrange to meet with their MP or, if they cannot meet, to write to their MP and to explain why they are concerned about the Bill and how it affects them personally.

It is important that when parents write they do not use template letters from online. This is because MPs receive huge numbers of letters and, when they are campaign style template letters, they are very often ignored, whereas a personal letter even if only brief, is much more likely to be taken seriously.

The Bill still has to go back to the House of Commons and consequently writing to your MP could be helpful.

When writing your MP, please remember that they know little or nothing about home education and that they have been fed significant rhetoric about how this Bill could have saved the life of a child who died. It could not have done so, but that is the sad event which has been exploited to push this Bill through.

Will my MP share my data?

If you are concerned that your MP might share your details please do mention in your letter that you wish them not to do so. They should legally not share your details without your consent.

Where can I get further advice and support from?

You can call the Education Otherwise help line on 0300 124 5690.

You can also contact us on our Facebook group, Education Otherwise.