Children's Wellbeing and Schools Bill, Second Reading, 8 January 2025

RUSHED PROCESS

The 128-page Bill was published on 17 December 2024. The Commons adjourned on 19 December, returning on 6 January – with Second Reading scheduled for 8 January. Giving MPs just a handful of sitting days to consider the Bill before debating it for the first time hampers effective scrutiny. Interested parties affected by the legislation have had very little opportunity – particularly during the busy Christmas period – to consider the potential impact on them and contact their elected representatives. It is not conducive to healthy democracy to have such limited time between publication and debating the principles of important legislation.

CHILDREN NOT IN SCHOOL

Compulsory register imposes onerous and unnecessary burdens on hard-working parents

Clause 25 of the Bill amends the Education Act 1996 to require local authorities (LAs) to have a register of children in their area who are of compulsory school age but are receiving their education otherwise than in school (new **436B** to be added to the 1996 Act).

According to 436C(1), the register will have to contain:

- the child's name, date of birth and home address;
- the name and home address of each parent of the child;
- the name of each parent who is providing education to that child;
- the amount of time that the child spends receiving education from each parent of the child;
- the names and addresses of any individuals and organisations other than the parents involved in providing education to the child, and the total amount of time the child spends receiving that education. The amount of time the child spends receiving that education without any parent of the child being actively involved in the tuition or supervision of the child will also have to be stated.

Under **436D**, parents "must" supply the LA with any of the above information they have and notify the LA of any changes in that information within 15 days.

A compulsory register risks undermining parents. They are ultimately responsible for their child's education. Parents should not have to register with the State to educate their own children. **The State educates children on behalf of their parents. Parents do not educate their children on behalf of the State**. A register is also a step towards Ofsted-style inspection of home education.

As the Supreme Court has stated:

> *"Individual differences are the product of the interplay between the individual person and his upbringing and environment. Different upbringings produce different people. The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers' view of the world. Within limits, families must be left to bring up their children in their own way."*[1]

Disproportionate, discriminatory and intrusive data collection

The extensive information to be included on the register constitutes an unwarranted intrusion into the day-to-day arrangements of home-educating families. Insufficient regard is being given to the right of these families to a private and family life under Article 8 of the European Convention on Human Rights. There can be no doubt that Article 8 rights are engaged. The very fact that home education is covered makes this self-evident.

Home-educating parents are being required to reveal to the State, for inclusion on a register, a level of information that is not held on school-attending children:

- If a school-attending child has private music, maths or sports tuition in an evening or at a weekend, there is no requirement for the child's school or the LA to be aware of this. If a home-educated child was to attend the same tuition, the parents would have to inform the LA of the name and address of the tutor and the amount of time spent in tuition. This is clearly discriminatory.
- There is nothing in the Bill to exclude religious instruction from "education". It appears home-educating parents will have to report to the LA that their child attends Sunday School, including the postal address of the church and names and addresses of the Sunday School teachers. This has echoes of totalitarian states.
- Parents would also have to notify the LA of any changes to these arrangements within 15 days, i.e. if the tuition stops or any new tuition is started. This would be an ongoing burden of reporting changes in family routine to the State, which is not expected of school-attending children.

All this is remarkably intrusive. Why should home-educating parents have to give the LA such detailed information about their family lives? It treats them as a suspect category and the State will hold a high level of sensitive personal data about home-educated children compared to school-attending children.

436C(2) sets out an extensive list of other categories of information that may be prescribed, including "any other information about the child's… circumstances… that the Secretary of State considers should be included… for the purposes of promoting or safeguarding the education or welfare of children". This is extremely broad. Parents would not be legally required to supply this additional information, but LAs must include it on the register if they have it or "can reasonably obtain it". This inevitably means they will ask parents for this information and parents are likely to feel obliged to provide it. It is unclear how relevant some of this information, such as a child's protected characteristics, is to the purpose of the register.

436C(2)(f) potentially adds 'reasons for home educating' to the register, which will lead to LAs asking parents.[2] If parents do not provide their reasons, this fact will be recorded – suggesting a negative inference will be drawn. Parents who send their children to private schools are not asked to explain their decision to the State. It would be intrusive and discriminatory to prompt LAs to seek such an explanation from home educators. It could involve particularly sensitive information that GDPR calls 'special category data', for example relating to religious or philosophical beliefs. It also means the State is no longer impartial on the question as to what parents should do to educate their children. If they do not send their children to school, they will be asked to explain why to an official. This is a fundamental shift.

These information provisions need to be constrained. A key argument for a register is that LAs cannot fulfil their existing duty under Section 436A of the Education Act 1996[3] if they do not know all the children in their area. But to know who the children are, they simply need name, date of birth and address.

Wasting resources that would be better targeted elsewhere

The collation, recording and updating of so much information on all home-educating families will inevitably absorb significant resources. This time and effort would be better utilised supporting families that need it, rather than needlessly monitoring the overwhelming majority of home educators who are happily and effectively bringing up their own children.

Reducing opportunities for home-educated children

Proposed **436E** allows for providers of "out-of-school education" to be served notice requiring them to give the LA information about any home-educated children they have taught in the previous three months. LAs would be able to serve such notice if they have reasonable grounds for believing that out-of-school education is being provided to a child for more than a "prescribed amount of time" – which is not yet specified. Failure to respond, or giving incorrect information, could trigger a "monetary penalty".

Such providers will therefore, as a matter of course, have to find out whether they are teaching any home-educated children. This obliges them to intrude into the lives of their clients.

Without knowing what the de minimis "prescribed amount of time" is, it is impossible to say how far-reaching this requirement will be. However, some providers of "out-of-school education", to avoid the bureaucratic burden, will only offer their services to school-attending children. This discrimination will reduce options and opportunities for home-educated children.

Severe enforcement

Not providing the specified information can trigger a 'Preliminary notice for school attendance order' (proposed new **436H** to the 1996 Act, see Clause 26 of the Bill). It gives a minimum of 15 days for parents to satisfy the LA that the child in question is receiving suitable education, otherwise a school attendance order (SAO) can be issued (**436I**).

Currently, breaching an SAO means a fine. The Bill adds a potential prison term.

Negative attitude towards the family

Paragraph 149 of the human rights memorandum says: "School is considered a protective environment for most children." It does not say the same about the home.

The explanatory notes to the Bill say: "For many children who may be at risk of harm, education settings are a protective factor." (para. 37) This approach suggests that all home-educated children are at risk of harm, simply because they are home-educated. It engenders suspicion of home-educating parents merely on the basis of the legitimate, lawful choice they have made.

Home-educating parents have long suffered from this kind of unjustified discrimination. During lockdown, when most families experienced a form of home education, this negative attitude dissipated. The Bill risks undoing the progress made, to the detriment of home-educated children and their families.

REFERENCES

1. *The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)* [2016] UKSC 51, para. 73
2. See proposed 436C(2)(f): "the reasons why the child meets condition C in section 436B, including any information provided by a parent of the child as to those reasons or, in a case where a parent has not provided that information, the fact that they have not done so". NB "condition C" includes "the child is not a registered pupil or a student registered at a relevant school".
3. This requires them to "make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but (a) are not registered pupils at a school, and (b) are not receiving suitable education otherwise than at a school."