

THE CHILDREN'S WELLBEING AND SCHOOLS BILL, AND CHILDREN NOT IN SCHOOL - BENEFITS, THREATS AND CHALLENGES

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CONTEXT

- **Children not in school - a diverse cohort**
- S7 Education Act 1996 duty on **parents** - 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 (in England) or additional learning needs (in Wales) he may have, **either by regular attendance at school or otherwise.**
- s436A duty on **local authorities** - 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'

KEY IMPLICATIONS FOR CHILDREN NOT IN SCHOOL, THEIR FAMILIES, SCHOOLS AND LAS

- **More LA powers/oversight**
 - New requirement for LA consent to withdraw certain categories of children from school
 - Duty on LAs to maintain a register of children not in school
- **Less parental freedom to withdraw certain categories of children from school**
- **More duties on parents / third party providers, in particular re information provision**

CLAUSE 30/S434A EDUCATION ACT 1996: LOCAL AUTHORITY CONSENT FOR WITHDRAWAL OF CERTAIN CHILDREN FROM SCHOOL

(1) A **parent** of a relevant child **must obtain the consent of the relevant local authority to withdraw** the child from school if the parent intends—

- (a) that the child should cease to attend the school at which the child is a registered pupil, and
- (b) to withdraw the child from school for the purpose of causing the child to receive education otherwise than at school.

(2) A child is a “relevant child” for the purposes of this section if—

- (a) the child is of compulsory school age,
- (b) the child is a registered pupil at a school, and
- (c) condition A or condition B is met in respect of the child.

CLAUSE 30/S434A EA 1996:
LA CONSENT FOR WITHDRAWAL OF CERTAIN CHILDREN

- (3) Condition A is that the child became a registered pupil **under arrangements made by a local authority** at—
 - (a) a special school within the meaning of section 337, or
 - (b) an independent school within the meaning of section 463 which— (i) in the case of a school in England, is specially organised to make special educational provision for pupils with special educational needs; (ii) in the case of a school in Wales, is wholly or mainly concerned with providing full-time education to persons for whom an individual development plan is maintained.
- (4) Condition B is that a local authority is—
 - (a) conducting enquiries under section 47 of the Children Act 1989 (duty to investigate) in respect of the child, or
 - (b) taking action under section 47(8) of that Act to safeguard or promote the child's welfare, in a case where the enquiries mentioned in paragraph (a) have led the local authority to conclude that the child is suffering, or is likely to suffer, significant harm (within the meaning of section 31(9) and (10) of that Act).

CLAUSE 30/S434A EA 1996: LA CONSENT FOR WITHDRAWAL OF CERTAIN CHILDREN

Duty on Schools: s434A(5)

Where the **proprietor of a school** is **notified by a parent** of a child who is a registered pupil at the school that the parent **intends to withdraw** the child from school for the purpose of causing the child to receive education otherwise than at school, the proprietor must notify—

- (a) the local authority responsible for the area in which the school is located, and
- (b) the local authority responsible for the child, if different from the local authority mentioned in paragraph (a).

CLAUSE 30/S434A EA 1996: LA CONSENT FOR WITHDRAWAL OF CERTAIN CHILDREN

LA Determination process: s434A(6)-(7)

On an application for consent to withdraw, the authority –

- (a) must decide **without undue delay** whether to grant consent, and
 - (b) must refuse consent **if the local authority considers—**
 - (i) that it would be in the child's **best interests** to receive education by regular attendance at school, or
 - (ii) that no suitable arrangements have been made for the education of the child otherwise than at school,
- but otherwise must grant consent.

CLAUSE 30/S434A EA 1996: LA CONSENT FOR WITHDRAWAL OF CERTAIN CHILDREN

Consequential Duties on Schools re Register: s434A(9)

Regulations under section 434—

- (a) **must** provide that, where consent of the relevant local authority is required under subsection (1) in respect of a relevant child, **the proprietor of a school must not allow the deletion from the school's register of the name of that child unless the proprietor receives notice that the relevant local authority has granted consent** under this section in respect of that child, and
- (b) **may** make provision to require the proprietor of a school to arrange to take, or not to take, **any other steps specified in the regulations** in relation to the registration of a registered pupil at the school where a relevant local authority has granted or refused consent under subsection (6).

CLAUSE 30/S434A EA 1996: LA CONSENT FOR WITHDRAWAL OF CERTAIN CHILDREN

Appeal Process to Secretary of State / Welsh Ministers: s434A(10)-(11)

- (10) If a parent is aggrieved by the relevant LA's decision to **grant** consent under subsection (6)—
- (a) the parent may refer the question to the Secretary of State [re a local authority in England], and (ii) the Welsh Ministers, in Wales, and
 - (b) the Secretary of State / Welsh Ministers may— (i) uphold the decision of the local authority, or (ii) refer the question back to the local authority to determine.
- (11) If a parent is aggrieved by the relevant LA's decision to **refuse** consent under subsection (6)—
- (a) the parent may refer the question to the Secretary of State or Welsh Ministers [as appropriate], and
 - (b) The Secretary of State / Welsh Ministers (as the case may be) may—
 - (i) give such **direction determining the question** as they consider appropriate, or (ii) refer the question back to the local authority to determine.

CLAUSE 31 – THE CHILDREN’S WELLBEING AND SCHOOLS BILL

15 May 2025

Santosh Carvalho

1. KEY PROVISIONS IN CLAUSE 31 – REGISTRATION

THE LOCAL AUTHORITY'S DUTY TO REGISTER CHILDREN NOT IN SCHOOL

Three conditions to trigger the LA's duty to register under section 436B(2).

(3) Child lives in the authority's area (Condition A).

(4) Child is of compulsory school age (Condition B).

...

DUTY TO REGISTER CHILDREN NOT IN SCHOOL – CONDITION C

- (5) (a) Child is not a registered pupil or a student registered at a relevant school,
- (b) Child is a registered pupil or a student registered 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, or
- (c) Child is a student registered at a relevant school falling within subsection (7)(d) but attends that school on a part-time basis, and is not also a registered pupil or a student registered at a different relevant school.

'RELEVANT SCHOOL' – SECTION 436B(7)

- Maintained school
- Academy school
- Non-maintained special school
- Independent school

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THE CONTENT OF THE REGISTER – SECTION 436C(1)

- (1) Register under section 436B must contain...in respect of a child registered -
- (a) the child's name, date of birth and home address;
 - (b) the name and home address of each parent;
 - (c) the name of each parent who is providing education;
 - (d) amount of time child spends receiving education from each parent;

...

THE CONTENT OF THE REGISTER – SECTION 436C(1) – THE MINIMUM

- (e) if the child receives education from a person other than their parent –
- (i) names and addresses of any individuals and organisations involved in providing that education;
 - (ii) a description of the type of each provider named under (i);
 - (iii) postal address if different from (i) or the website or email address of the provider if that education is provided virtually;
 - (iv) the total amount of time that the child spends receiving that education and 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.

THE CONTENT OF THE REGISTER – SECTION 436C(2)

(2) To the extent that the local authority has the information or can reasonably obtain it, a register under section 436B must also contain such information about, or in connection with, the following matters in respect of a child registered in it as may be prescribed—

(a) the child's protected characteristics (within the meaning of the Equality Act 2010)...

(h) Reasons why the child meets condition C in section 436B, including any information provided by a parent as to those reasons or the fact that the parent has not provided reasons.

(3) Register under section 436B may also contain any other information the LA considers appropriate.

HOW IS THE LA TO OBTAIN THIS INFORMATION?



THE PARENT'S DUTY TO PROVIDE INFORMATION PRIOR TO REGISTRATION – SECTION 436D(1)

- (1) A parent of a child who is eligible to be registered by a local authority under section 436B must—
- (a) inform the local authority that the child is eligible for registration, and
 - (b) provide the authority with any of the information referred to in section 436C(1) that the parent has.

THE PARENT'S DUTY TO PROVIDE INFORMATION AFTER REGISTRATION – SECTION 436D(2)

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

PARENT'S TIME FOR COMPLIANCE

(3) A person must comply with a duty under subsection (1) or (2) before the end of the relevant period.

PARENT'S TIME FOR COMPLIANCE

(4) ...'relevant period' means –

(a) in the case of the duty in subsection (1)(a) or (b), the period of 15 days beginning with the date on which the child becomes eligible for registration by the local authority;

(b) in the case of the duty in subsection (2)(a), such period of not less than 15 days as the local authority specify in the request;

(c) in the case of the duty in subsection (2)(b), the period of 15 days beginning with the date on which the parent becomes aware of the change;

(d) in the case of the duty in subsection (2)(c), the period of 15 days beginning with the date on which the child ceases to be eligible to be registered by the local authority under section 436B.

CONSEQUENCES OF PARENT'S NON-COMPLIANCE

- Clause 31 itself does not provide for any consequences of non-compliance by parents.
- Indirect consequences?

EDUCATION PROVIDER'S DUTY TO PROVIDE INFORMATION – SECTION 436E

- (1) This section applies where a local authority reasonably believes that—
- (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 actively involved in the tuition or supervision of the child, and
 - (b) the child is, or is eligible to be, registered by the authority under section 436B.

THE INFORMATION TO PROVIDED UNDER THIS DUTY – SECTION 436E(3)

- (a) to confirm whether or not the person is providing out-of-school education to any child as mentioned in subsection (1)(a), or has done so at any time during the period of 3 months ending with the date of the notice, and
- (b) to provide the authority with the following information in relation to any child (whether or not that child lives in the authority's area) to whom they are providing such education, or to whom they have provided such education during that 3-month period— (i) the child's name, date of birth and home address, (ii) the total amount of time that they provide such education to the child, and (iii) the amount of time that they provide such education to the child without any parent of the child being actively involved in the tuition or supervision of the child.

USE OF INFORMATION IN THE REGISTER – SECTION 436F

- LA must (if asked) provide information of a prescribed description from the register to the Secretary of State.
- Can relate to an individual child or aggregated information.
- The Secretary of State can pass this information to a prescribed person for the purposes of promoting, or safeguarding, the education or welfare of the child to whom the information relates, or any other person under 18.
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SUPPORT FOR PARENTS – SECTION 436G

- If a parent of a child registered under section 436B so requests, the local authority must provide support to the parent by securing the provision of advice and information relating to the education of the child.
- The advice to be provided is whatever the local authority considers fit having regard to the parent's request. It may include (a) advice about the education of the child, and (b) information about sources of assistance for the education of the child.
- Duty on the LA does not apply *inter alia* where the LA is required to make SEND provision pursuant to an EHCP nor where the LA is required to make exceptional provision of education in pupil referral units or elsewhere (e.g. children excluded from school).

2. THE SCAFFOLDING OF A CHALLENGE TO CLAUSE 31

COMPATIBILITY CHALLENGE TO PRIMARY LEGISLATION

- Section 4 of the HRA 1998 gives the court the power to issue a declaration of incompatibility to an Act of Parliament where it is incompatible with 1 or more ECHR rights.
- This is a high bar. Made out by the statistics.
- *Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32 at [14]* - "incapable of being applied in a way which is compatible with the Convention rights, whatever the facts may be."

WHICH ECHR RIGHTS MIGHT BE ENGAGED?

- **Article 8** – Parents duty to disclose information about their child under section 436C(1) and section 436D. Substantial alteration of the relationship between parent and state *vis a vis* the child.
- **Article 14** – Are home-schooled children, home-educating parents a particular 'status'? Does the Bill create this 'status'?
- **Article 9** – Sunday school, madrasa etc. being attended.
- **Article 2 of Protocol 1** – Disclosing parent's philosophical choices.

1. DOES THE STATE HAVE A LEGITIMATE AIM?

- Policy justifications for the clause
 - Protecting children from harm
 - Improving educational (and, therefore, life) outcomes for children.

2. IS THERE A RATIONAL NEXUS BETWEEN THE MEASURE AND THE AIM?

- Does clause 31 promote child safety and improved educational outcomes?

3. ARE THERE LESS RESTRICTIVE METHODS AVAILABLE TO ACHIEVE THE AIM?

- Blanket duty on parents under section 436D. The LA need not (reasonably or subjectively) believe any eligible child is at risk of harm or unsuitable education to demand information from a parent.
- Contrast the trigger for a third-party provider's duty of disclosure when they are educating an eligible child.

4. WEIGHING THE RESTRICTION OF THE RIGHT AGAINST CLAUSE 31

- The (likely) crux of the challenge.
- Reasonable minds may disagree. Value judgement?
- Deference to Parliament on areas of social/moral controversy.

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