

Written evidence submitted by Katie Finlayson to The Children's Wellbeing and Schools Bill Committee (CWSB32)

1 Background

1.1 I am a current home educator, and have home educated my four children throughout their compulsory school years, including through GCSE exams. I have organised social groups for local home educating families for 15 years, and administrate a number of both local, national and subject focused online support groups; the largest has a membership of 64,000 current or seriously considering home educators, and 1000 posts a week. I am a trustee of the Home Educators' Qualifications Association, and an advisory board member of the OCR equalities board, and Finding the Flex. I have conducted personal survey based research into home educators' reasons for home educating, approaches, and exams experiences, including collecting over 1200 responses to an in-depth survey in 2024; I have presented on these findings at conferences including ResearchEd. I am also Chair of Governors of a small rural primary school.

1.2 This is my personal submission and does not represent any other organisation.

1.3 My submission focuses on the Children Not In School measures within the Bill (Clauses 24 to 29), and proposes a number of amendments to reflect the reality of home education provision. It does not challenge (or support) the core principles. Only aspects within my area of expertise and experience are considered.

2 Recommendations

2.1 *Exams access should be included:* Section 436G Support (2) [p55 line 6] should be amended to explicitly include the provision of services and financial assistance, including the provision of exam centre access and access arrangement assessment.

2.2 *The 'time spent' criteria should be moved to guidance:* Section 436C 1 (d) and (e) [p49 line 20-36] should be removed.

2.3 *Minimum criteria to come under the education provider duty should be specified in the primary legislation:* Section 436E (2) (b) [p52 line 34-30] should specify a minimum period, for example 6 hours a week for any individual child.

2.4 *The 'best interests' test should be amended to a 'risk of harm' test:* Section 434A 6 (b) (i) [page 46 line 34-35] should be replaced with "that the child would be at risk of significant harm if they were to receive education otherwise than by regular attendance at school". (This should also apply to all other similar references throughout clauses 24 to 29.)

2.5 *SAO considerations should remain as an individual judgement based on section 7 of the Education Act:* Sections 436I 2 and 3 [page 59, line 31 to page 60, line 2] should be removed, and replaced with a reference to section 7 of the Education Act 1996.

2.6 *The penalty for not complying with an SAO should not be more severe than the penalty for not ensuring regular attendance at school:* Section 436P (8) and (9) [page 67 line 18-25] should be replaced with "A person guilty of an offence under subsection (1A) is liable on summary conviction— (a) to a fine not exceeding level 4 on the standard scale, or (b) to imprisonment for a term not exceeding three months, or both." to match Education Act 1996, Section 444 8A.

2.7 Further consideration should be given to the following areas, which are not discussed in detail in this submission:

- Data privacy and proportionality.
- The impact on separated parents, with particular references to situations where domestic abuse or coercive control may be present.
- The impact on flexischooling arrangements.
- The intersection with EHCP arrangements.
- How provisions will work for families who travel regularly, for example living on a mobile canal boat.
- Whether any provisions in this section create a situation where home educating families are subject to significantly lower levels of privacy than parents of, for example, preschool children.
- Whether 15 days is an appropriate timescale for providing information.
- Opportunities for appeals to an independent body in respect of decisions made, rather than relying on supplying a defence through the courts.
- Whether it is possible to include a support offer for home educating families which is independent of any judgement of suitability, and is predicated on respect for the parental decision to home educate and to choose their approach to providing education.

3 Discussion and rationale

3.1 Exams Access

3.1.1 The currently worded support duty refers only to information and advice. All LAs say that they offer this already ^[6] (although home educators do not usually agree). This precludes mandated provision of services and/or financial assistance (which could include exam centre provision, exam fees, or for example group subscriptions). LAs may choose to offer these services, but they are not funded to do so and currently the vast majority do not. ^[6]

3.1.2 An expanded support offer including exam centre access would increase voluntary engagement of home educators with LA services, and would support children to access important examinations that impact on their future options. It may reduce the level of provision required within the post-16 sector, when the majority of home educators join the mainstream system. ^[16] Exam centre provision could also support adult learners, students taking resits, and schooled children studying subjects outside of their school setting.

3.1.3 Home educators must pay for their own exam entries, and find an examination centre that allows private candidate entries for the subjects and boards they wish to use. ^[8] ^[11] This may be a commercial centre or a school or college that supports external candidates. While this is possible, availability of centres varies significantly, especially if access arrangements are required. This has an impact on direct and indirect costs (such as travel and accommodation).

3.1.4 Exam centre availability fluctuates, and may have limited offers (such as an inability to support access arrangements, a limited subject offer, or few available spaces). Only 49 centres appeared on all of the JCQ private candidate lists for 2021, 2022 and 2024 summer exams. ^[1] ^[3] This compares to 3,500 secondary schools.

3.1.5 Direct costs for exam entry vary by centre and subject, but commonly range from £200-250 per GCSE subject for an exam consisting of 2 written papers. ^[4] Subjects which require non-exam based assessment require purchasing tutor support and costs for these can rise to £500-£1000 ^[12]

3.1.6 Surveys in 2022 and 2023 showed that of 249 home educated candidates, 26% required an overnight stay in order to access a suitable exam centre.^[8] This greatly increases the overall cost of access. Candidates with a need for complex access arrangements find it more difficult to access suitable centres due to difficulties with both assessment and provision.

3.1.7 Latest figures show 26,700 home educated children in England are in year 10 and 11.^[5] Survey data suggests at least 60% of these are planning to access qualifications, if they are able to find provision to do so.^[9]
[2]

3.1.8 Exams access is the only consistent ‘ask’ from home educators, and was a recommendation of the Education select committee in July 2021.^[13] Since then, an increase in demand for exams provision, partly due to a rise in deregistrations in upper secondary years, and a narrowing of centre availability, is leading to a crisis of access, which particularly hits those on low income or with disability needs. Currently, there is no-one with any responsibility to ensure exam provision is available in a given area which leaves home educators in a very vulnerable position. Everyone can just say no. Even if direct costs were still the responsibility of parents, the provision of exam centre infrastructure would reduce indirect costs and assure parents that exam access would be possible.

3.1.9 This is a complex area with interplay between exam requirements, home educator choice, and practicalities of provision, much of which would need to be dealt with in regulations or guidance. However a core offer on the face of the bill would provide an expectation of provision.

3.2 Time spent criteria

3.2.1 The requirements to specify time spent educating by each parent, and by persons other than the parent, are unclear and as written will present an unworkable burden for both parents and the Local Authority. There is also the potential for the provisions to be used as a form of coercive control, or to become the subject of family court disputes.

Practicality

3.2.2 Home education provision is often chosen specifically for the flexibility it offers, and for education to more seamlessly be included in daily life. This may be through explicit pedagogical approaches such as self directed education or unschooling, or through a mix of compressed, focused academic studies with time protected for unstructured approaches. The ability to change provision frequently as it suits the needs of the child is a key aspect. In a survey of 1220 home educating parents, 55% of parents responded that “self-directed learning, including online classes and independent or parent led learning chosen by the child” best described their approach, with only 2.9% using a single online ‘school’ provider.^[10]

3.2.3 Education is also more than learning a curriculum, and informal aspects such as social groups, community projects, or workshops, may form an important part of the overall provision while also not being anything the organiser would consider as formal education provision.^[10] The same resource - for example an online group class, an in-person weekend art workshop, or a martial arts class - may be used by one parent as a key part of provision, while another considers it an optional enrichment. A parent may also use no formal or external provision and still be providing an entirely suitable education for that child.

3.2.4 Dividing such an education into time spent with one parent or another, or with another person, is frequently impossible. One week may involve a lot of time spent with one parent on a particular project, while another week the other parent is more involved; this may vary depending on work patterns, the interests of the child or even the weather. Where the child is following independent interests and both parents are present, who ‘counts’? Similarly other persons who interact with the child may change frequently, and detailed information about them may not be available. If a child attends a youth club a few times to see if they like it, does this need to be notified to the LA and the register updated within 15 days? Who carries the burden of checking this information is accurate and updating the register of changes? Is it reasonable that an omission of

such information - even if unknowingly - is sufficient justification in law to cause an SAO to be served, as in 436H6c or 7b?

Chilling effect

3.2.5 In addition, the expectation of private information being provided to the LA by the parents of a home educated child who attends an activity is likely to result in providers being less willing to offer activities or resources that home educated children may attend. This is further compounded if such provision may fall under the education provider duty. It may also deter parents from offering a new activity to their child for fear of the burden of updating the register, and the risk incurred if the information provided is not fully accurate; or fear that if they decide it isn't suitable after a short period this will be judged negatively by the LA.

Coercive control

3.2.6 As the duty to provide this information falls to each parent of the child, this requirement can be used by one parent to demand an unwarranted level of information from the other. Where parents are estranged due to coercive control or domestic abuse, but still share parental responsibility, this will lead to instances of abuse and family court disputes.

3.2.7 Overall, while some of this information might reasonably be included in the guidance as potentially relevant to the decision of what constitutes a suitable education, the interpretation will necessarily be nuanced and individual and may need to take account of particular circumstances such as estranged parents. However inclusion of the information in this section of the primary legislation brings both parents under a legal duty to notify this information with a 15 day time period with specific processes to follow if the information is incorrect, which does not allow for this nuance, even if covered by regulations.

3.2.8 Ultimately it is the responsibility of the parent to ensure that the totality of the child's life meets the Education Act 1996 Section 7 criteria of a suitable education. The inclusion of 'time spent' criteria supposes a demarcation and delegation of this responsibility that does not match the reality of home educating.

3.3 Education provider duty

3.3.1 Similarly to the time spent criteria, the education provider duty has the potential of a significant chilling effect on activities available or offered to home educated children. It also potentially has an unreasonably wide scope, particularly where online providers are included. As this is a duty which carries a criminal penalty, it is important that the scope is limited to only that which is necessary. This should include a minimum floor within the primary legislation rather than being left to regulations which may change frequently and with little notice or scrutiny.

3.3.2 The specification that the duty only applies where parents are not present is an important feature, but it needs to be clarified that for remote provision, this means the parent considers themselves to be supervising, but may not be present in the room for the duration of every lesson. A child attending a lesson from a laptop in one room while the parent works with a sibling in another should not be considered as falling within scope. This is important from the parent point of view; but also from a provider point of view, as in most cases they have no realistic way of knowing whether a parent is there or not and therefore whether they might potentially come into scope of the duty.

3.3.3 There also needs to be a minimum number of hours specified so that only substantial providers come into scope (with regulations able to, and expected to, increase this, but not decrease it below a minimum level). Currently regulations could bring this as low as an hour a week which would bring into scope huge numbers of providers, including many who do not consider themselves home education providers such as sports groups, music lessons, or workshops. Education providers should also only be required to provide information for those children who meet the minimum hours requirement, and not any child that may at one point have signed up for a class. Again, this needs careful consideration in the remote provision case, where a parent may sign up to

a number of classes to give their child options, and therefore appear to come into scope of the duty, even if the child then subsequently chooses not to attend the majority.

3.4 Best interests test

3.4.1 The 'best interests' test is subjective and tips the balance of decision making towards the Local Authority rather than the parent, even in cases where education provision is expected or found to be suitable and there is no evidence that the child would come to harm if home educated, simply because a child currently attends a special school - as worded, it rests only on the LA's belief that school attendance would be preferable.

3.4.2 Note that 95% of SEND tribunals find in favour of the parent ^[14] - providing substantial evidence that the LA's view of best interests of the child is not always better than a parent's.

3.4.3 This should be amended to a test for risk of harm; this is in keeping with other cases where the state overrides parental decision making, and matches the current expectation that consent to deregister from special school will be granted unless there is a good reason why not. ^[11] ^[15]

3.4.4 In the case of a Section 47 investigation or Child Protection Plan, the test for risk of harm has already been applied and therefore it should be possible to decide whether it also applies to the child's educational setting. There is a range of reasons why a Section 47 investigation may be in place - the majority of which do not lead to Child Protection Plans - and also why Child Protection Plans may be necessary. Some of these reasons may be nothing to do with the parent who is home educating, or their home environment, and there should not be an automatic assumption that home education is not suitable.

3.5 Requirement to consider the setting and to request a home visit when considering an SAO

3.5.1 This section introduces a de facto requirement for a home educating parent to allow entry to their home, or risk having a family life built around home education be significantly disrupted by the issuing of an SAO largely on the basis of refusal. A visit from a stranger to the family home may be significantly distressing for a child. In other circumstances a requirement to allow entry to the home is significantly restricted; in cases of child protection or police proceedings a bar of need must be passed. Section 436I 2 bypasses this expectation solely because of a parent's educational choice.

3.5.2 Parents opt for home education for a variety of reasons, but a high proportion of home educated children have some form of additional needs, or have deregistered following a distressing experience of school, ^[9] and so expecting a home visit is not a neutral act.

3.5.3 Education that meets the overriding definition of suitability in section 7 of the Education Act can take a wide range of day-to-day forms and it is extremely difficult to pin this down in a set of criteria that fits the needs of every child. While it is short, section 7 does a very good job of specifying the important aspects. Anything beyond that is part of a wide range of evidence, where the home setting is no more significant than any other, and a home visit is no more likely to provide reliable evidence than other forms of communication and evidence. While in some circumstances - where a bar of evidence suggesting unsuitability is present - the home environment may be a factor, this should be considered in guidance, which can discuss the individual factors in more detail. Therefore Section 7 should continue to be the primary legislative test in whether it appears a suitable education is being received.

3.6 References

[1] [Private candidate exam centres: state of the nation Autumn 24](#), K Finlayson, Nov 2024

[2] [How many home educated children take GCSEs?](#), K Finlayson, Nov 2024

[3] [JCQ private candidate exams list](#), linked Jan 2025

- [4] [Tutors and Exams Fees 2024/25](#), September 2024
- [5] [Elective home education statistics Autumn term 2024/25](#)
- [6] [Local authority support to EHE children and their families](#), Autumn 2024
- [7] [Why do families choose home education?](#), K Finlayson, Jun 2024
- [8] [Exam Access Outside The Mainstream](#), K Finlayson, ResearchEd Cambridge, Apr 2024
- [9] [What is driving the rise in home education?](#), K Finlayson, ResearchEd National, Sep 2024
- [10] Unpublished statistics from the survey referenced in [7]
- [11] [Elective home education: Departmental guidance for local authorities](#), April 2019
- [12] Unpublished survey data from HEQA Exams Access Survey, March 2024
- [13] [Strengthening Home Education](#), House of Commons Education Committee, July 2021
- [14] [SEND tribunals soar by 55%, and almost all still side with families](#), SchoolsWeek, Dec 2024
- [15] [Special education needs and disability code of practice: 0 to 25 years](#)
- [16] [HEQA Post-Result Survey 2024](#), Oct 2024.

January 2025