

Written evidence submitted by Alexander Gluck to The Children's Wellbeing and Schools Bill Committee (CWSB232).

Introduction

I am writing to express serious concerns regarding two key provisions in the Children's Wellbeing and Schools Bill as they relate to home-educated children.

These proposals introduce unprecedented state intervention into parental decision-making and impose disproportionate regulatory burdens on home education.

Firstly, the proposed "best interests" requirement would mark the most significant undermining of parental authority in the history of UK education law. This policy would uniquely apply to home-educating parents, allowing local authorities to override parental choices, even when the education provided at home is deemed suitable. There is no adequate justification for this unprecedented shift in power.

Secondly, the Bill proposes a mandatory register of education providers, requiring individuals and organisations that provide structured learning to home-educated children - including religious groups, family members, friends, and community tutors - to report details to the local authority under threat of financial penalty. This requirement unfairly targets only home-educated children, creating an intrusive and impractical bureaucratic burden.

The Proposed "Best Interests" Requirement

Current education law places the duty to ensure a child's education solely on the parents. The law allows parents to choose between state schooling, private schooling, or home education, provided the education is "suitable" to the child's age, ability, and needs. This fundamental principle has remained unchanged since the Education Act 1870.

The Bill radically departs from this principle by allowing local authorities to enforce school attendance even when home education is deemed suitable. This state intervention introduces a new and significant power shift, allowing authorities to decide what is in the "best interests" of a child, rather than their parents.

Restrictions on Parents Withdrawing Children from School

For the first time, the Bill introduces restrictions on parents removing their children from school to begin home education. The new rules require local authority consent in two situations:

1. When withdrawing a child from a special school who was placed there under an Education, Health, and Care (EHC) Plan.
2. When the local authority is conducting child protection enquiries under Section 47 of the Children Act 1989, even if the enquiry has nothing to do with the child's education.

In both cases, the Bill requires local authorities to refuse consent, even if they agree that home education would be suitable. This creates an unprecedented intrusion into family life and removes the right of parents to make educational decisions for their own children.

Changes to School Attendance Orders (SAOs)

Since 1876, parents of home-educated children have had the right to defend their educational choices by demonstrating that their provision is suitable. The Bill raises the legal threshold, forcing parents not only to prove their home education is suitable, but also that school attendance would not be better.

This shift in burden of proof undermines long-standing legal protections for home educators and gives local authorities the power to impose school attendance even when home education meets all legal requirements. The Bill mandates that local authorities must issue a preliminary SAO if they believe school would be preferable, even in cases where no safeguarding concerns exist.

The Mandatory Register of Education Providers

The Bill proposes a register for children not enrolled in school and imposes new legal requirements on anyone providing structured education to home-educated children. This includes:

- Family members (e.g., grandparents, aunts, uncles) who regularly help with learning.
- Religious groups offering educational activities.
- Community members providing skills-based learning (e.g., music, sports, tutoring).

Parents are required to update the register every time a new educational provider is involved, creating an unmanageable administrative burden. Additionally, those who provide informal learning - such as a neighbour teaching a child to read - could be subject to fines for failing to register. This level of regulation unfairly targets home-educated children, as similar requirements do not apply to extracurricular learning for schoolchildren.

Human Rights Concerns

The Department's European Convention on Human Rights (ECHR) Memorandum fails to justify the Bill's interference with fundamental rights. These provisions infringe on:

- Article 8 (Right to Private and Family Life) by granting local authorities excessive control over family decisions.
- Article 9 (Freedom of Thought, Conscience, and Religion) by disproportionately affecting parents who home educate for religious or philosophical reasons.
- Article 14 (Non-Discrimination) by treating home-educated children differently from their schooled peers.
- Article 2, Protocol 1 (Right to Education) by restricting parental choice and granting the state greater authority over children's education.

If enacted, these provisions would likely be challenged in court for violating parental rights and disproportionately interfering in private family life.

Conclusion

The Children's Wellbeing and Schools Bill introduces the most significant restrictions on parental educational choice in over 150 years. By allowing local authorities to override parental decisions, imposing rigid bureaucratic controls on informal education, and shifting the burden of proof onto parents, the Bill represents a fundamental shift in the relationship between the state and families.

These measures are disproportionate, unjustified, and legally questionable. If passed in its current form, they will likely face legal challenges for violating human rights protections.

I urge policymakers to reconsider these proposals and to ensure that any changes to education law respect parental rights, maintain legal consistency, and uphold fundamental freedoms.

Submitted by:

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Annex 1: Suitable Home Education

The Elementary Education Act 1870 introduced a requirement for children between the ages of 5 and 13 to attend school unless they were receiving efficient education elsewhere. This provision allowed parents to educate their children at home, provided they could demonstrate, if challenged, that the education was sufficient. As long as this standard was met, neither public officials nor the courts had the authority to enforce school attendance.

In 1876, the law was refined further, explicitly requiring parents to ensure that their children received efficient elementary education in reading, writing, and arithmetic. However, as long as parents fulfilled this obligation, they retained the right to educate their children outside of formal schooling.

The modern framework of this principle was established in the Education Act 1944, which remains largely unchanged today. Section 36 of that Act mandated that parents must ensure their children receive full-time education suited to their age, ability, and aptitude - either through school attendance or through other means, such as home education. Additionally, Section 76 emphasised that public authorities must respect parental preferences in education, provided this does not compromise educational quality or impose unreasonable public costs. This legal foundation reinforced the right of parents to choose home education, with a presumption in favour of their decision unless evidence suggested otherwise.

The Education Act 1996, which remains the primary statute today, retained this principle under Sections 7 and 9. Section 7 restates the parental duty to ensure suitable education, while Section 9 confirms that public authorities must, wherever possible, uphold parental wishes in education. These provisions have safeguarded parental autonomy in education for over 150 years, ensuring that parents retain the freedom to decide how their children are educated, provided the education is suitable and effective.

Annex 2: European Convention on Human Rights (ECHR) Memorandum

The government's ECHR Memorandum claims that the Children's Wellbeing and Schools Bill does not increase state control over home education or interfere with the content of home education. It asserts that while failure to provide information may trigger a School Attendance Order (SAO), parents still have the opportunity to prove that their education is suitable and avoid prosecution.

However, this analysis overlooks a key issue. The government memorandum only addresses cases where home education is deemed unsuitable. It fails to consider situations where home education is suitable but local authorities still insist that school attendance is in the child's "best interests". This is a fundamental departure from established legal principles.

The memorandum acknowledges that the Bill disproportionately impacts home-educated children, engaging Article 14 of the European Convention on Human Rights (prohibition of discrimination) alongside Article 8 (right to private and family life). However, it attempts to justify this interference by claiming that it is necessary and proportionate to uphold Article 2, Protocol 1 (right to education). This argument is flawed.

Article 2, Protocol 1 states that *no person shall be denied the right to education*. This does not justify denying a child home education simply because the state believes school might be preferable. Furthermore, the same article obliges the state to respect parental convictions regarding education, a right that many home-educating parents exercise for philosophical or religious reasons. The memorandum ignores this key protection.

The government further argues that restrictions on home education are necessary to protect children from neglect or harmful socialisation. However, the threshold for intervention under this Bill is extraordinarily low. A parent's decision to remove their child from a special school or the mere existence of a Section 47 safeguarding inquiry (even if unrelated to education) would be enough to allow authorities to override parental wishes. This undermines long-standing legal protections for parents and sets a dangerous precedent.

The memorandum provides no clear justification for why home-educated children should be subjected to a higher level of state scrutiny than schoolchildren. The government's reliance on the existence of compulsory schooling laws in other countries ignores the fact that the UK has never had compulsory schooling, only compulsory education. For over 150 years, home education has been a fully accepted and legally protected choice.

Given these significant issues, it is highly likely that these provisions, if enacted, would be found to be incompatible with Convention rights. The Bill represents a substantial overreach by the state, eroding parental rights, imposing discriminatory restrictions on home-educated children, and failing to provide adequate legal justification for such measures.

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