

Written evidence submitted by Mark Kelly to The Children's Wellbeing and Schools Bill Committee (CWSB234).

7 flaws in the Children's wellbeing and schools bill

1. Infringement of the Human Right of Parents

The provisions in clauses 24-29 of the Children's Wellbeing and Schools Bill represent a significant infringement on the fundamental human rights of parents. Under international human rights law, parents are granted the primary right to guide and educate their children. Article 26(3) of the Universal Declaration of Human Rights (UDHR) states that "parents have a prior right to choose the kind of education that shall be given to their children." Similarly, the European Convention on Human Rights (ECHR) under Article 2 of Protocol No. 1 requires the state to respect the rights of parents to ensure education in line with their religious and philosophical beliefs.

Clauses 24-29 appear to undermine these rights by granting the state significant control over decisions that traditionally fall within the purview of parents. For instance:

- **Clause 24** requires parents to obtain local authority consent to withdraw a child from school for alternative education, which may be withheld if the local authority believes that the child's best interests are served by regular school attendance or if suitable educational arrangements have not been made (Clause 24(6)).
- The Bill empowers local authorities to maintain a register of children not in school and stipulates detailed requirements for information parents must provide, including educational arrangements, addresses, and time spent in tuition without parental involvement (Clauses 25-27).
- **Clause 28** requires local authorities to act according to government-issued guidance on the education of children not in school, centralizing oversight and reducing flexibility for local decision-making.
- **Clause 29** introduces additional regulatory powers and amendments that further consolidate state control over educational options outside traditional schools.

These provisions effectively shift decision-making power away from parents and toward state authorities, limiting parental autonomy over their children's education. By mandating local authority approval and imposing detailed reporting requirements, the Bill risks treating parents as secondary decision-makers rather than primary educators.

Such provisions encroach on established legal principles in English law. The Children Act 1989 affirms the primacy of parental responsibility, granting parents the authority to make decisions affecting their children's upbringing, including their education. The state's role is intended to be subsidiary, intervening only in cases where parents fail to fulfil their responsibilities. By requiring state approval for educational choices, these clauses risk normalizing unwarranted state interference in family life.

The Bill should instead prioritise parental autonomy, supporting parents in their educational decisions rather than subjecting them to undue state control. Safeguards must be in place to

ensure that intervention occurs only when absolutely necessary to protect the child's welfare, upholding both parental rights and the best interests of the child while not stretching the definition of "interests of the child" to apply political, ideological, religious, social, cultural or financially driven biases of the ruling party to such decisions, which it has no right to do.

2. Implied State Ownership of Children and Reversal of Established Legal Principles:

Clauses 24-29 also carry an implicit danger of state ownership or control over children. The bill's language, particularly in its direction of educational mandates, effectively positions the state as the primary authority over a child's development and well-being, effectively rendering parents as conditional delegates of the state, and diminishing the role and responsibility of parents in these areas.

UK law has long recognized parents as the primary educators of their children, rooted in the principle that the family is the fundamental unit of society. This principle is enshrined in common law and reflected in statutory provisions such as Section 7 of the Education Act 1996, which places the duty to ensure a suitable education primarily on parents, not the state (though this legal duty is not understood by the populace). By requiring local authority oversight of parents' decisions regarding education, the above-mentioned clauses implicitly shift the role of primary educator from parents to the state, undermining family autonomy without any real evidence that such a radical shift would improve educational outcomes or child welfare, or society as a whole. Worse still, it does so not through reasoned argument or demonstrable need but simply through the assertion of power. The recognition of children as autonomous individuals with rights that must be respected, rather than as mere subjects of state control, should not be an excuse for the state to slide into the role of parent in the name of protecting the children. Critical to the wellbeing of children is support of the family unit, not the overriding agenda of the impersonal state. History has shown that policies and legal frameworks that allow for excessive state involvement in family matters often lead to the marginalization of individual rights. Allowing the government to assume increasing authority over parental decisions sets a precedent that risks undermining not only educational freedom but also broader personal liberties in the long term.

The Children's Wellbeing and Schools Bill shares significant parallels with Scotland's previously proposed Named Person scheme, which was ultimately deemed unlawful by the UK Supreme Court. Both initiatives, while ostensibly designed to safeguard children's welfare, raise substantial concerns regarding state overreach into family life and the erosion of parental rights.

The Named Person scheme, introduced under the Children and Young People (Scotland) Act 2014, sought to assign a specific state-appointed individual to every child in Scotland. This individual would be responsible for overseeing the child's "wellbeing," a term so broadly defined it could encompass almost all aspects of a child's life if the state saw fit. Critics at the

time argued that this scheme granted the state excessive authority to intervene in family matters, potentially infringing upon the right to private and family life as protected by Article 8 of the European Convention on Human Rights. In 2016, the UK Supreme Court ruled that certain provisions of the Named Person scheme were incompatible with Article 8, leading to its abandonment.

Similarly, the Children's Wellbeing and Schools Bill proposes measures that could significantly increase state involvement in children's lives. Notably, it includes provisions for compulsory registration of children not in school and grants local authorities the power to mandate school attendance under certain, very broadly defined conditions. While the bill aims to enhance child protection, it also implies a shift in authority from parents to the state regarding decisions about what constitutes education, welfare, and safety. This shift mirrors the centralization of oversight inherent in the Named Person scheme, but with the added dangers of laws now in place which categorize mere words which cause offense as illegal. Parents using words which government regulators find offensive (offensive being defined exclusively by any hearer who is offended) will likely find themselves issued with a mandatory attendance order.

Both pieces of legislation operate on the presumption that the state is better positioned than parents to determine a child's best interests. This assumption is problematic, as it undermines the fundamental role of parents and the family unit in child-rearing. The broad definitions of "wellbeing" and the discretionary powers granted to state officials in both the Named Person scheme and the Children's Wellbeing and Schools Bill risk unjustified intrusions into family life.

The rejection of the Named Person scheme by the UK Supreme Court underscores the importance of safeguarding individual rights against excessive state intervention. As the Children's Wellbeing and Schools Bill progresses through Parliament, it is crucial to carefully consider these parallels.

3. The Lower Quality of Mass Education Compared with Tailored Education

One of the most concerning outcomes of the provisions in these clauses is the potential for a reduction in the quality of education that home educated children receive. Mass education systems, when overly standardized and state-controlled, often fail to address the specific needs and talents of individual students. This is a feature of mass education. Tailored education, in contrast, takes into account the unique needs, abilities, and learning styles of each child, fostering more meaningful academic growth and development.

The imposition of state-mandated curricula and educational structures under these clauses could stifle creativity, innovation, and critical thinking by limiting the capacity of educators and parents to customize a child's educational journey. It is well-established that children's learning outcomes are enhanced when they are provided with individualized attention and education that aligns with their unique needs. The standardization encouraged by these clauses threatens to create a one-size-fits-all approach that will likely lower the overall quality of education across the board.

Research indicates that home educated students often outperform their peers in traditional public schools. A review in *Psychology Today* found that homeschooled students tend to score higher on tests of academic skills compared to children in public schools. Additionally, a report from the National Home Education Research Institute (NHERI) states that 78% of peer-reviewed studies on academic achievement show homeschool students performing statistically significantly better than those in institutional schools. These findings suggest that tailored education approaches, such as home education, can be more effective in catering to individual learning styles and requirements.

A fundamental flaw in allowing regulators of mass education to oversee elective home education is the assumption that the needs of one system apply equally to the other. Mass education is designed to manage large groups of children within a rigid, standardized framework, where uniformity is necessary for logistical and administrative efficiency. It must account for a broad spectrum of abilities and backgrounds, often prioritizing standardized testing and curriculum consistency over individual adaptability.

Elective home education, by contrast, is inherently flexible, personalized, and responsive to the unique needs of the child. It does not require the same mechanisms of mass oversight, classroom management, or standardized curricula to function effectively. If the regulatory framework developed for mass schooling is imposed on elective home education, it is likely to be misapplied—forcing home educators to conform to unsuitable bureaucratic demands rather than allowing them to cultivate a high-quality, individualized learning environment.

Furthermore, the idea that only "qualified experts" should teach children or assess their progress is based on a misunderstanding of expertise itself. Teachers in the public education system are trained specifically for mass education—they are specialists in managing large groups, delivering standardized curricula, and maintaining classroom discipline. Their qualifications do not inherently make them experts in all forms of education, particularly in the one-on-one, customized approach of home education. The assumption that only formally trained teachers are competent educators ignores the substantial evidence that home-educated children often achieve superior academic and social outcomes without state-certified instruction. This misconception fuels unnecessary regulatory interference in home education, to the detriment of families who successfully educate their children outside of the state system.

The danger of this regulatory approach is that it measures success by the wrong metrics. Regulators accustomed to assessing mass education may impose inappropriate benchmarks—such as rigid adherence to a national curriculum or standardized assessment methods—despite evidence that alternative educational approaches can yield superior outcomes for individual learners. Instead of recognizing the strengths of elective home education, such oversight risks undermining its effectiveness by forcing it into an unsuitable mold, ultimately harming the very children the legislation purports to support.

4. The Dangers of Authoritarian Control of Education:

The language and intent behind clauses 24-29 evoke strong historical parallels to systems of education controlled by authoritarian regimes. Historical examples from countries such as the Soviet Union, Communist China, and North Korea show that state control over education often leads to ideological indoctrination rather than the promotion of critical thought and independent learning. Collectivist policies prioritize state control and unity over individual freedoms, and education becomes a tool of social engineering rather than a means of fostering intellectual growth.

The bill's provisions, when examined through this lens, could represent the early stages of a similar trend—one where education becomes a vehicle for promoting state-sanctioned ideologies, potentially limiting free thought, expression, and academic inquiry. The danger here lies in the risk of the state controlling not just the education system but also shaping the values and beliefs of future generations in ways that undermine democracy, free thought, and diversity of opinion.

5. Government's Track Record on Child Safety:

The UK government has faced criticism for its handling of known child abuse cases, raising questions about its capacity to ensure child safety effectively. For instance, in the tragic case of Sara Sharif, a 10-year-old girl who was murdered by her father and stepmother, authorities failed to act despite multiple reports of abuse and visible injuries observed by teachers and social workers. Sara being withdrawn from school under the pretense of homeschooling in no way affected the ability of social services to detect or prevent her abuse.

Implementing measures that bring children under government purview, purportedly for safeguarding purposes, will not address the root causes of child endangerment and could divert attention from systemic issues within existing child protection services.

Furthermore, there is substantial reason to be suspicious of a government which wants to bring more children within its purview while refusing to thoroughly investigate the abuse of teen children by rape gangs, which has given rise to the public suspicion that government, or government-controlled persons, may be implicated if thorough enquiries are carried out. The government has engendered mistrust by the populace, but instead of re-acquiring that trust through self-transparency and accountability has instead simply bypassed this effort by making trust in government officials irrelevant. Parents will be forced to hand over their children to the state whether or not trust is present. The bill under scrutiny will actually provide a legal protection for the abuse of children by government representatives, because the right of objection for parents to object to what happens in state schools is also currently in the process of being removed.

6. Declining Standards of the UK School System:

Over the past few decades, there has been a notable decline in educational standards within the UK school system. For example, the UK's performance in international assessments has shown a downward trend. In the Programme for International Student Assessment (PISA), the UK's ranking in reading fell from 7th in 2000 to 25th in 2009, in maths from 8th to 28th, and in science from 4th to 16th during the same period.

Although there was some improvement in the early 2010s, recent data indicates a reversal of these gains. In 2022, UK students achieved an average PISA score of 489 in mathematics, down from 502 in 2018, and 494 in reading, down from 504 in 2018. This decline calls into question the efficacy of the current school system and suggests that education authorities may not be best positioned to regulate elective home education, which can offer more personalized and effective learning experiences. Instead of making provisions to force parents to accept state-run education, education authorities should focus on creating a quality of education which is attractive to parents.

7. The Bill Enables the State to Expediently Remove the Parental Right to Home Educate without objective criteria:

The bill grants state employees the ability to initiate an investigation under Section 47 of the Children Act 1989 merely on the basis of suspicion that a child is not sufficiently visible to state-appointed education regulators. This is an extraordinarily low bar for intervention, as it does not require evidence of harm—only the assumption that a child's lack of state oversight is inherently problematic.

Once an investigation under Section 47 is triggered, authorities gain sweeping powers to intervene in family life, potentially compelling a child into state education regardless of parental wishes or the quality of their existing education. The bill effectively creates a mechanism for the state to strip parents of their right to home educate based purely on bureaucratic suspicion rather than demonstrated harm or educational failure according to objective criteria.

This risk is further exacerbated by the assumption—implicit in the bill—that the state knows best what is good for the child. This assumption, however, is a claim that must be proven, not assumed. Given the declining standards in UK state schools, the evidence does not support the notion that forced enrolment into the system is inherently in a child's best interest. Instead, this provision opens the door to unnecessary and harmful interference in families who are providing their children with a suitable and often superior education outside of state control.

Conclusion

In light of the points outlined above, it is clear that clauses 24-29 of the Children's Wellbeing and Schools Bill offer significant reductions to the rights of parents, the wellbeing of children, and the quality of education. The bill risks undermining individual freedoms, especially those of parents, and sets a dangerous precedent for state control over children's development, education, and personal values. The historical examples of state-run education systems with authoritarian tendencies serve as a cautionary reminder of the dangers inherent in such centralization of power.

We strongly urge that these clauses be reconsidered, and that any future educational reforms prioritize parental rights, the support of the family unit, and the preservation of high-quality, individualized education.

If the government can effectively commandeer the mental, social and physical development children in the way facilitated by this bill, then there is nothing more precious, or more personal, that cannot be taken from UK citizens. The state's ability to dictate how children are raised and educated strikes at the heart of parental rights and personal liberty. This bill represents parents' worst nightmares made possible by the stroke of an authoritative pen—granting officials the power to override parental judgment and enforce conformity to a system that is already failing many children. Even if well-intentioned now, history teaches that such powers will not always be wielded responsibly; once established, they will be open to misuse by future governments with different, more pernicious agendas.

Furthermore, in a country already reproducing at a sub-replacement fertility rate, the expansion of state control over children will further diminish the incentive to have and raise children. When parents feel that they have no real authority over their own offspring—that their role is secondary to the state's dictates—they will naturally become more reluctant to bring children into the world. This bill does not just undermine education; it undermines the very foundations of family life and the long-term sustainability of society itself.

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