

# CHILDREN NOT IN SCHOOL (REGISTERS, SUPPORT AND ORDERS) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Children Not in School (Registers, Support and Orders) Bill as introduced in the House of Commons on 11 December 2023 (Bill 50).

- These Explanatory Notes have been prepared by the Department for Education, on behalf of Flick Drummond MP, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 This Bill introduces a duty on local authorities in England to maintain registers of children of compulsory school age who are not educated full-time at schools, as well as a duty on local authorities to provide support to home educating families, should they request it. The legislation makes changes to the school attendance order regime in England, widening the scope of such orders and their efficiency as a tool to secure a suitable education. The Bill will amend the existing provisions of the Education Act 1996 concerning school attendance orders in England and Wales so that they apply only in relation to local authorities in Wales. Finally, the measures will enable the Secretary of State to issue statutory guidance concerning the exercise of local authorities' duties in relation to their children not in school register and school attendance order process functions.

## Policy background

- 2 The Government supports the right of parents to elect to home educate. Many parents who educate their children at home provide a high-quality education and do so in the best interests of their child.
- 3 Local authorities have expressed concerns that not all children educated at home are being educated properly or having their needs met. This local authority feedback, backed up with elective home education data,<sup>1</sup> suggests increasing numbers of parents feel that they have no choice but to home educate as their child's needs are not being met in mainstream education and some parents may not be providing the required level of education. There is a greater need for local authorities to be able to better identify and help those children missing education to ensure that suitable education is being provided,<sup>2</sup> and to provide support to home educating parents that would like it, to do this well.
- 4 Between April and June 2019, the Department for Education's Children Not in School consultation sought views on proposals for creating a local authority register of children not attending school and a duty on local authorities to provide support to home-educating families.
- 5 The Department formally responded to the consultation on 3 February 2022 and reasserted its commitment to a form of local authority administered register for children not in school.<sup>3</sup>
- 6 The consultation response outlined the Department for Education's intentions to implement a duty on:
  - a. local authorities to:

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<sup>1</sup> [Elective home education, Academic year 2022/23 – https://explore-education-statistics.service.gov.uk/find-statistics/elective-home-education](https://explore-education-statistics.service.gov.uk/find-statistics/elective-home-education)

<sup>2</sup> Children missing education are children of compulsory school age who are not registered pupils at a school and are not receiving suitable education otherwise than at a school.

<sup>3</sup> 'Children Not in School Government response to consultation' 3 February 2022 <https://www.gov.uk/government/consultations/children-not-in-school>

- i. keep a register of all children of compulsory school age in their area who are not registered pupils at a state or fee-paying school or who are registered but arrangements have been made for them not to attend school full time.
    - ii. provide support to home educating families where it is requested.
  - b. parents of eligible children to supply information to populate such a register.
  - c. certain providers of out of school settings to supply information on relevant children when requested.
- 7 Following consideration of responses to the Children Not in School consultation, the Department for Education committed to take forward the proposals when a suitable legislative opportunity arose. The Children Not in School measures did feature in the 2022-2023 session Schools Bill, but this Bill was discontinued in December 2022. The Children Not in School (Registers, Support and Orders) Bill puts forward the proposals, previously outlined in the consultation and set out in the Schools Bill, to introduce a new registration framework for children not in school in England and make changes to the School Attendance Order process (see below).
- 8 The Bill will enable local authorities, at their discretion, to use the School Attendance Order process when parents of eligible children fail to provide, or provide inaccurate, information for inclusion on the registers within required timeframes; and also contains provisions designed to reform and strengthen this process and the efficiency of School Attendance Orders.
- 9 The proposed changes to strengthen and increase efficiency are:
  - a. To align academy schools and alternative provision academies with maintained schools for the purpose of naming such schools in a School Attendance Order.
  - b. To tighten up the timeframes for actions by local authorities and responses by parents and schools.
  - c. To create a criminal offence for a parent who causes any ongoing failure to comply with a School Attendance Order that is in force.
  - d. To create a criminal offence for a parent who causes their child's name to be deleted from the register when they are enrolled as part of the terms of a School Attendance Order.
  - e. To increase the maximum sentence upon conviction for breach of a School Attendance Order to a fine not exceeding £2,500, in line with level four fines for knowingly causing non-attendance at school, or up to 6 months' imprisonment.

## Legal background

- 10 This Bill makes amendments to the existing provisions of the Education Act 1996 to provide for the registration by local authorities in England of children of compulsory school age in their area, who are not educated full time at school and to provide or secure the provision of support to those children, further to a parent making a request for such support. It will place a duty on parents to provide local authorities with information for the register; failure to do so can trigger the process for making a school attendance order. It will also make changes to the current school attendance order regime in England, which concerns the process for local authorities to make, vary and revoke orders requiring parents of children of compulsory school age to cause such children to become registered pupils at specified schools if they are not receiving suitable education.

## Territorial extent and application

- 11 This Bill will extend to England and Wales and will apply to England and to a limited extent Wales.
- 12 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

# Commentary on provisions of Bill

## Children Not in School

### Clause 1: Registration

- 13 Clause 1 inserts after section 436A of the Education Act 1996, new sections 436B to 436G and new Schedule 31A, which cover: a duty on local authorities to register children not in school; the contents and maintenance of those registers; a duty on parents (which includes carers or legal guardians by virtue of section 576 of the Education Act 1996) of children within scope of the duty to register to provide information to a local authority for inclusion on their register; a duty on persons that a local authority reasonably believes to be providing out-of-school education above a prescribed amount of time, to children within the scope of the register, to supply certain information on request to a local authority (including sanctions for failing to provide requested information); a duty on local authorities to provide support to parents of children on the register; and provision about use of information on the register.
- 14 Section 436B(1) imposes a duty on a local authority to maintain a register of eligible children. Section 436B(2) to (5) sets out that a child is eligible if they are of compulsory school age, living in the authority's area, and are either not registered at a "relevant school" (defined in subsection (7)), or they are registered as a pupil at a relevant school but it has been agreed by that school's proprietor that they can be absent for some or all of the time and receive some or all of their education otherwise than at a relevant school. This would include, for instance children who are flexi-schooled or who attend alternative provision otherwise than at a relevant school while remaining registered at such a school. Subsection (6) sets out that regulations may be used to clarify whether a child registered as a pupil at a relevant school is in scope or not, and if so, the cases when they are or are not eligible for registration on a local authority's Children not in School register.
- 15 Section 436C(1) sets out the information that must be contained in the registers. This includes in subsection (1)(c) details of how the child is being educated that may be prescribed. This provision will enable the Secretary of State to prescribe in regulations further details to be provided, such as whether the child is taught entirely at home or attends education settings, which settings they are and how much of their time the child spends there. It is not intended to include the content of the education itself.
- 16 Section 436C(2) sets out a targeted list of additional types of information that can be prescribed for inclusion in a local authority's register, provided the local authority has the information or can reasonably obtain it. Subsection (2)(a) to (j) list the types of information that can be prescribed for inclusion in local authority registers, which consists of information related to: the child's protected characteristics; their special educational needs; local authority actions related to safeguarding enquiries and children in need, (for example whether the child has a Child Protection Plan or is a Child in Need); whether the child is a Looked After Child; reasons for the child being eligible for registration; whether the child has been identified as a 'child missing education'; schools attended by the child previously; the nature of any support

- being provided by the local authority under section 436G (described in paragraphs 31 to 34 below); and whether any actions related to School Attendance Orders have been taken. Section 436C(2)(k) allows for the Secretary of State to stipulate further information to be collected, but this information must be of similar kind as listed in subsections (2)(a) to (j), and included for the purpose of promoting or safeguarding the education, welfare or safety of children. Section 436C(3) allows a local authority to also include any additional information they consider appropriate within the register that has not been stipulated in legislation.
- 17 Section 436C(4) sets out that regulations may be used to specify how a local authority must maintain their register, the form it should take, access to and publication of registers, and how local authorities should publicise how their registers operate, in order for parents to know what they are required to do and the timelines they are to work to.
  - 18 Section 436C(5) prohibits information from a register being published or being made accessible to the public that would include the name or address of a child eligible for registration or their parent, or information from which identities of an eligible child or their parent can be deduced.
  - 19 Section 436D(1) requires a parent of a child that becomes eligible for registration to inform the local authority that their child is eligible and provide specified information mentioned in section 436C(1)(a) and (b) – child’s name, date of birth, home address, name and home address of each parent of the child – if the parent has this. Subsection (2) sets out that parents whose children are already registered with their local authority must provide specified information set out in 436C(1)(a) to (c) – which includes the means by which the education is being provided – that the parent has, to their local authority on request. Parents of an eligible child must inform the local authority of any changes to information in 436C(1)(a) to (c), of which they are aware, that is required for the register, such as changes to the home address of the child, and when the child ceases to be eligible for registration by that authority, for example if they move outside of the local authority area.
  - 20 Section 436D(3) and (4) sets out the timeframes that parents have to comply with their duties to provide relevant information to the local authority. This is 15 days, except where a local authority makes a request of parents for information mentioned in section 436C(1)(a) to (c). In such cases, subsection (4)(b) allows local authorities to give more time to parents to provide information requested by the local authority beyond 15 days, should they consider it appropriate to do so; and requires a local authority to specify the timeframe for response when making the request.
  - 21 Section 436D(5) provides that this requirement on parents to provide information to their local authority does not apply when the children are receiving full-time education by a combination of attendance at a relevant school, arrangements made under section 19 of the Education Act 1996 by the local authority and/or similar arrangements made by a relevant school. In practice, this would exempt those children from registration who have been placed in alternative provision (otherwise than at a relevant school) full-time, or where they are placed in alternative provision for part of the time and receive the remainder of their

education at a relevant school.

- 22 Section 436E creates a system for local authorities to require certain persons to provide information. Subsection (1) means that the system applies to any person that a local authority in England reasonably believes is a provider of out-of-school education to an eligible child, without a parent being present, for more than a prescribed amount of time. Subsection (2) defines “out-of-school education” and “prescribed amount of time”. The eligible child in question could be a specific child that the local authority knows about, but this also covers a situation where a local authority reasonably believes that there is an eligible child receiving out-of-school education even if it does not know who that child is.
- 23 Section 436E(3) sets out that a local authority may by notice require the person it believes to be a provider of out-of-school education, within scope, to confirm whether they are providing education to children eligible for registration; and, if they are, to provide any information they hold on a specific child or any eligible child to the local authority that is required for inclusion on the register under section 436C(1)(a) and (b) – i.e. the child’s name, date of birth, home address, and the name and home address of each parent of the child. This would assist in ensuring register information is accurate and help identify children eligible for registration who have not been identified.
- 24 Section 436E(4) provides that a notice is deemed served if it is sent or left at the place where the out-of-school education is provided.
- 25 Section 436E(5) sets out that those in receipt of a notice are to respond to the request for information within 15 days, beginning with the day on which the notice is served.
- 26 Section 436E(6) sets out that regulations may provide exceptions so that some out-of-school providers are to be exempt from the duty to provide information. Such providers may include, for example, informal groups of home educating parents or museums that offer extensive educational programmes to children.
- 27 Section 436E(7) and (8) enables a local authority to impose a monetary penalty (of an amount to be set out in regulations) on a person that has failed to provide the correct required information.
- 28 Section 436F(1) requires local authorities to provide prescribed information from their registers to the Secretary of State (in practice the Department for Education), as directed by the Secretary of State.
- 29 Section 436F(2) authorises local authorities to provide information from their registers to prescribed persons (to be set out in regulations) if it is for the purposes of promoting or safeguarding the education, safety or welfare of the child, or any other person under the age of 18.
- 30 Section 436F(3) requires local authorities in England to share with another local authority in England the information set out in section 436C(1)(a) to (c), and any information that they have which has been prescribed under section 436C(2) for inclusion on the registers; and they may also share any information contained in their registers under section 436C(3). A local



- authority's duty to share this information arises if they become aware that a child included on their register will move, or has moved, to the other local authority area.
- 31 Section 436G(1) requires a local authority to provide, or secure provision of, support to promote the education of children that are included in their register, if requested by the parent of a child on the register.
  - 32 Section 436G(2) gives discretion to the local authority to decide what they feel is most appropriate having regard to meeting the parent's request, as well as having regard to the age, ability, aptitude and any special educational needs of the child for whom the request is being made. They must consider what the parent has asked for, but the local authority can decide to offer a different kind of support instead.
  - 33 Section 436G(3) gives examples of the support that a local authority may wish to consider and offer to children eligible for registration and parents, which could include signposting parents to resources, information or curriculum material online (such as those from Oak National Academy) or offering discounted meeting spaces. A local authority could choose to provide or arrange support in a form not listed.
  - 34 Section 436G(4) provides that the local authority support duty does not apply to children registered at a relevant school (which would include flexi-schooled children and those who are in alternative provision arranged by their school) or to children for whom the Local Authority has a duty to make arrangements under section 19 of the Education Act 1996 and / or section 42 of Children and Families Act 2014 (i.e. those who have been placed by the local authority in alternative provision or have an education, health and care plan).
  - 35 Subsection (3) of clause 1 amends section 569 of the 1996 Act, which details various procedural aspects of regulations made under the Act. Section 569(2A) lists the regulations that are subject to the affirmative procedure. This amendment adds to that list so that the first sets of regulations made under new sections 436B(6), 436C (4), 436E(8), 436F(1) or paragraph 5 of Schedule 31A must be approved using the affirmative procedure. Regulations made under new section 436C(1)(c), 436C(2), 436E(1)(a), 436E(6) or 436F(2) must be approved using the affirmative procedure each time. The amendment also preserves existing provision for the affirmative procedure to apply to regulations made under sections 550ZA(3)(f) and 550ZC(7) of the 1996 Act, which relate to searching for and seizing items from pupils in schools.
  - 36 Subsection (4) of clause 1 inserts a new Schedule 31A, after Schedule 31 of the Education Act 1996, which sets out details relating to the imposition of monetary penalties relating to the failure to provide information under section 436E (provision of information to local authorities: education providers).
  - 37 Paragraph 1 of the inserted Schedule 31A sets out that the local authority must first give a warning notice setting out the reasons for the proposed penalty, the amount of the penalty, and the person's right to make representations, (the process for which, including the timings by which representations must be made, is then detailed in paragraph 2 of the inserted Schedule 31A).
  - 38 Paragraph 3 of the inserted Schedule 31A provides that if written representations have been

received or the period for making representations has passed, the local authority must decide whether the person is to pay the prescribed monetary penalty. This paragraph also sets out that the local authority must determine not to give a monetary penalty, if they are no longer satisfied that the information requested was not in fact supplied or incorrect in response to the initial notice for information served. It also provides that the local authority must inform the person that they no longer intend to impose the penalty, if they reach this decision.

- 39 Paragraph 4 of the inserted Schedule 31A details the formalities needed for a local authority to impose a monetary penalty. This is done by giving the person a penalty notice that sets out the information listed in paragraph 4(2). This notice can be withdrawn at any time by the local authority if it decides to do so.
- 40 Paragraph 5 of the inserted Schedule 31A sets out that a penalty amount would be increased by a prescribed percentage, if the penalty is not paid within the specified timeframe.
- 41 Paragraph 6 of the inserted Schedule 31A sets out the grounds on which a person can appeal to a First-tier Tribunal and the options available to the First-tier Tribunal on hearing an appeal. Where an appeal is made the requirement to pay the monetary penalty is also suspended until the final determination by the Tribunal (including any onward appeal to the Upper Tribunal), or until the point at which the appeal is withdrawn.
- 42 Paragraph 7 of the inserted Schedule 31A sets out that, in case of non-payment, the penalty would be recoverable as if the person had been ordered by the county court to pay it.

## Clause 2: School attendance orders

- 43 Clause 2 inserts new sections 436H, 436I, 436J, 436K, 436L, 436M, 436N, 436O, and 436P into the Education Act 1996 following section 436G, setting out the requirements for local authorities in England to issue School Attendance Orders (including preliminary notices), choice and nomination of schools in the notice, amendment and revocation of an Order, and creates an offence of failing to comply with a School Attendance Order served by a local authority in England. (The existing sections 437, 438, 439, 440, 442 and 443 in the Act, related to School Attendance Orders, are amended by clause 4 and the Schedule so that they are applicable to local authorities in Wales only.)
- 44 Subsection (2) inserts the new section 436H. Section 436H(1) defines a “preliminary notice” as a notice served to a person requiring them to satisfy their local authority that a suitable education is being received by the child named in the notice. Section 436H(2) states that the recipient is required to respond to the notice within a specified period, which must not be less than 15 days (this timeframe commences from the day on which the notice is served).
- 45 Sections 436H(3), (4) require a local authority in England to issue a preliminary notice for a School Attendance Order. This notice is to be issued to a person who appears to be the parent of a child, if it appears that child is of compulsory school age and living in the local authority’s area, and is not receiving suitable education (defined in section 436A(3) of the Education Act 1996), whether regularly attending a school or being educated otherwise than at a school. Section 436H(4) states that this notice must be served without delay and in any event within

- five days beginning with the day on which the local authority establishes that the notice should be served.
- 46 Section 436H(5) allows a local authority to serve a preliminary notice if it appears the person is a parent of the child and where either Condition A or Condition B (set out in section 436H(6) to (7)) are met:
- a. Condition A is that the child is, or may be, eligible to be registered by the local authority in their register of children not in school, and the local authority has requested information from the parent (or suspected parent) for the purpose of determining if the child should be registered and/or if the person really is the child's parent, but the person has either not provided that information within 15 days beginning with the day on which the request was made, or has not provided the correct information.
  - b. Condition B is that the person who is under a duty to provide information has failed to proactively provide the required or correct information under section 436D(1)(b), within a period of 15 days or failed, on request, to provide the required information, or provided incorrect information, under Section 436D(2)(a), within a period of no less than 15 days specified by the local authority, as described in paragraph 20 above.
- 47 The new section 436I sets out the process for the issue of School Attendance Orders by local authorities in England.
- 48 Section 436I(1) and (2) set out that a local authority must, following a preliminary notice, issue a School Attendance Order (which requires the parent to ensure their child is registered at a school named in that order) if the recipient of the notice has failed to satisfy them within the specified period in the notice that the child is receiving a suitable education, or the person is not a parent of the child and the local authority believes that it is expedient that the child should attend school. Subsection (3) states that a School Attendance Order must be served in the prescribed form and be served without delay, and in any event within the period of five days beginning with the day on which the authority determines which school is to be named in the order.
- 49 Section 436I(4) states that a School Attendance Order will remain in force as long as the child named in it is of compulsory school age, unless the order is either revoked by the local authority, or a court gives a direction that the order ceases to be in force under either section 436P(6) or 447(5) of the Education Act 1996.
- 50 Section 436I(5) sets out that where the school named in a School Attendance Order is a maintained school (other than a special school established in a hospital – see new section 447A), the local authority must inform the governing body and headteacher of the order without delay, and in any event within five days of determining that the school is to be named in the order, and the governing body and headteacher must admit the child to the school. Subsection (6) sets out that if an academy school or alternative provision academy is named in a School Attendance Order then the same process must apply as with subsection (5), except

the proprietor and principal must be informed instead of the governing body and headteacher.

- 51 Section 436I(7) provides that the requirements of section 436I(5) and (6) do not affect any power of a headteacher or principal to exclude from the school a pupil who is already registered there.
- 52 The new section 436J sets out the process for the issue of a School Attendance Order for a child with an education, health and care plan in England.
- 53 Section 436J(2) provides that when an education, health and care plan specifies a named school, that school must be named in the School Attendance Order.
- 54 Section 436J(3) provides that when an education, health and care plan does not specify a school, the local authority must amend the plan so that it names a school and that school must subsequently be named in the School Attendance Order.
- 55 Section 436J(4) provides that when subsection (3) applies and a school must be added to the education, health and care plan, the local authority must make that amendment as if it were being made under section 44 of the Children and Families Act 2014, which governs the review and re-assessments of education, health and care plans. The rules of that section and regulations made under it apply to the process of making the amendment.
- 56 Section 436J(5) sets out that when a School Attendance Order is in force in relation to a child with an education, health and care plan and the school named in the plan is changed, the local authority must amend the order to reflect that change of school.
- 57 Section 436K sets out that, prior to serving a School Attendance Order under section 436I, a local authority in England must serve a notice on a person (if they are the parent of a child who does not have an education, health and care plan). This notice is referred to as a “school nomination notice”.
- 58 Section 436K(2) provides that the written school nomination notice must inform the person of the local authority’s intention to serve the Order and the school that they intend to name in the Order, along with one or more suitable alternative schools if they think fit.
- 59 Section 436K(3) sets out that if the notice lists multiple schools, the person in receipt of the notice may choose one of them for their child to attend and notify the local authority of that choice within 15 days (which will begin from the day the notice is served). If they do so, the local authority must name that school in the Order.
- 60 Section 436K(4) sets out that if the person in receipt of the school nomination notice applies for their child to be admitted to an academy school or alternative provision academy within the 15 day period (set out in subsection (3)) of receiving the school nomination notice, notifying the local authority which served notice of application, and their child is offered a place at that school, that school must be named in the Order. The same applies if the school applied to is a school maintained by a local authority. If the local authority that maintains the school is not

- the authority that issued the notice, then the parent needs to notify the latter authority of the application.
- 61 Section 436K(5) sets out that if within 15 days as set out in subsection (3) the person applies to the local authority who served the notice for education to be provided at a school which is not maintained or an academy school or alternative provision academy, and the local authority are going to pay the fees for the child to attend under section 517, that school must be named in the Order.
- 62 Section 436K(6) states that where the person in receipt of the School Attendance Order applies, within the 15 day period set out in subsection (3), for their child to attend a school, and that is not a school maintained by a local authority, academy school or alternative provision academy, the school must be named in the School Attendance Order if that school has offered a place to the child, and is suitable to the child's age, ability, aptitude and any special educational needs.
- 63 Section 436L sets out certain factors affecting the schools that a local authority may or may not specify in the school nomination notice.
- 64 Section 436L(1) states that a school may not be specified in a school nomination notice if the child is permanently excluded from it.
- 65 Section 436L(2), (3) and (4) provide that a maintained school or academy school may not be named in a school nomination notice if the child's admission to that school would require steps to be taken in order to avoid breaching a legal limit on class sizes (infant class size limit in section 1 of the School Standards and Framework Act 1998) and those steps would prejudice the provision of efficient education, or if the child's admission would cause the number of pupils in their age range at the school to exceed the 'relevant number'. This is the number previously decided as the 'admission number' (also called 'published admission number'), the number of pupils that are intended to be admitted in a normal intake age group during the school year, in accordance with the School Standards and Framework Act 1998 (or, in the case of an academy school, any equivalent legislation or academy funding agreement).
- 66 Section 436L(5) provides that a local authority may name a maintained school in a school attendance order if they are responsible for its admission arrangements. They may do so even if it would cause the number of pupils in the child's age range to exceed the relevant number.
- 67 Section 436L(6) sets out that, even if subsection (3) would otherwise prevent a maintained school or academy school being named in a school nomination notice, it may still be named if
- a. it is a reasonable distance from the child's home, and
  - b. there is no other maintained school or academy school in the area that the local authority could specify that is within a reasonable distance from the child's home.
- 68 Section 436M(1) imposes a requirement for the local authority to consult the school leadership before naming a maintained school, academy school or alternative provision academy in a

- school nomination notice. In the case of a maintained school, consultation must take place with the governing body and the local authority responsible for the school's admission arrangements (unless that is the same local authority making the Order). For academy schools and alternative provision academies, the proprietor of the school must be consulted.
- 69 Section 436M(2) provides that the local authority must notify the relevant school leaders of their decision to name that school in the school nomination notice prior to serving it, and this includes the headteacher in the case of a maintained school and the principal for academy schools and alternative provision academies. Section 436M(3) states that that notice must be served without delay, and in any event within 15 days of the local authority's deadline for serving the Preliminary Notice.
- 70 Section 436M(4) sets out that a governing body, local authority, or proprietor who receives notice that their school has been chosen to be specified in a school nomination notice may apply to the Secretary of State for a direction about whether their school should be specified in the notice. The local authority must be informed if this application is made. Section 436M(5) states that the notice must be served before the end of 10 school days from when the notice is served (unless the notice is served on a non-school day, in which case the time period commences from the subsequent school day).
- 71 Section 436M(6) provides that if the local authority does not receive notice of an application to the Secretary of State within those 10 school days, they must, serve the school nomination notice, without delay, within the next 5 days.
- 72 Section 436M(7) provides that where the Secretary of State gives a direction, the local authority must determine which school or schools to offer to the parent in accordance with that direction. They must then serve the school nomination notice on the parent, specifying the school or schools they are considering naming, without delay, within 5 days of the day after the direction being given.
- 73 Section 436N sets out how a School Attendance Order may be amended, on request, when it is in force in relation to a child without an education, health and care plan.
- 74 Section 436N(2), (3) and (4) stipulate that the local authority must comply with a request when the person on whom the order is served applies for the child to be admitted to a:
- a. maintained school that differs from that named in the order, and the school offers the child a place. If this happens, the parent may ask the local authority to amend the School Attendance Order to name that new school in place of the previous one.
  - b. school that is not maintained by the local authority that differs from that named in the Order. If the school offers a place under arrangements for fees to be paid for the education by the local authority (under section 517), the parent may ask the local authority to amend the School Attendance Order to name that new school in place of the previous one.
  - c. school that is not maintained by the local authority, for which the parent does not

require the local authority to pay fees, and differs from that named in the Order. If the school applied to offers the child a place, and is suitable to the child's age, aptitude, ability, and any special educational needs, the parent may ask the local authority to amend the School Attendance Order to name that new school in place of the previous one.

- 75 Section 436O sets out the procedure for the revocation, on request, of a School Attendance Order made by a local authority in England. (An Order can also be revoked by a local authority on its own initiative under section 570 of the 1996 Act.)
- 76 Section 436O(2) sets out that, when a School Attendance Order is in force, the person concerned can apply at any time to request a revocation on the basis that either arrangements have been made so that suitable education would be provided without the child attending school or the person is not the parent of the child.
- 77 Section 436O(3) provides that the local authority must comply with a request for revocation under either ground outlined in 436O(2), unless they believe that arrangements for suitable education have not been made, or that the person is the parent of the child concerned.
- 78 Section 436O(4) sets out that a person can refer the issue to the Secretary of State should they not be satisfied with the local authority's decision not to comply with a request for revocation, to which the Secretary of State can give such a direction as they think appropriate.
- 79 Section 436O(5) provides that if a child who is subject to a School Attendance Order has an education, health and care plan then this process works differently. If the education, health and care plan names a school or other institution, the Order cannot be revoked on the basis that the parent has arranged suitable education outside school, but only on the basis that the person is not the child's parent. This is because there are procedures in other legislation for resolving disputes about the naming of an institution in an education, health and care plan. If the plan does not name a school or other institution, the process set out in section 442A(2) to (4) applies as normal and if the case is referred to the Secretary of State for decision then the Secretary of State's direction may include directions about changes to the plan.
- 80 Section 436P(1) creates an offence where a person who is served with a School Attendance Order under section 436I fails to comply with that order.
- 81 Section 436P(2) sets out two defences. In both cases the burden of proof is on the person being prosecuted. One applies where the person proves they are providing a suitable education for the child otherwise than at school, the other applies where they prove that they are not the parent of the child named in the order.
- 82 Section 436P(3) sets out that the offence is committed not only if the parent fails to have the child registered at the named school in the first place, but also where the parent causes the child named in the school attendance order to be deregistered at the school named in the order. Subsection (4) provides that the parent does not, however, commit an offence where the school in question is no longer the school named in the school attendance order, because the

parent has successfully applied for the order to be amended under section 436J or 436N or where the order has been revoked under section 436O.

- 83 Section 436P(5) sets out that where a person fails to have their child registered at a school in accordance with a School Attendance Order, and is convicted of an offence under subsection (1), they may be found guilty of the same offence again if their failure to register their child at the named school continues. This reverses the effect of a Divisional Court decision in the case of *Enfield London Borough Council v Forsyth & Forsyth* [1987] 2 FLR, which held that after a parent had been found guilty of breaching a School Attendance Order then they could not be prosecuted for any further breaches of the same Order, and the local authority had to go through the process of making a new Order before prosecuting them again.
- 84 Section 436P(6) sets out that if the parent is acquitted of the offence in subsection (1), the court may direct that the School Attendance Order comes to an end. Subsection (7) clarifies that a court direction under subsection (6) does not affect a local authority's duty to serve a further School Attendance Order under section 436I if they are of the opinion that it is expedient to do so.
- 85 Section 436P(8) sets out the trial method and penalty for an offence of failing to comply with a School Attendance Order, where the School Attendance Order to which the offence relates was served on the person before Section 436P(9) comes into force, which is that the offence is to be tried summarily, and the penalty of the offence of failing to comply with a School Attendance Order will not exceed level 3 on the standard scale. Section 436P(9) sets out that the offence is to be tried summarily, and the penalty is a fine not exceeding level 3 on the standard scale, or imprisonment for a term not exceeding the maximum term for a summary offence, or both. Subsection (10) clarifies that "the maximum term for summary offences" is taken to mean six months if the offence is committed prior to section 281(5) of the Criminal Justice Act 2003 coming into force, or 51 weeks if committed after.
- 86 Subsection (3) of this clause adds a subsection to section 572 of the 1996 Act. Section 572 sets out the valid ways to serve a notice or order under the Education Act 1996. The new subsection ensures that School Attendance Orders in England and related notices may also be served by any other effective method.
- 87 Subsection (4) amends Schedule 1 to the Education Act 1996 (pupil referral units), inserting new paragraph 13A, to set out certain ways in which the new provisions on School Attendance Orders made by local authorities in England apply differently in relation to pupil referral units.

### Clause 3: Guidance on children not in school and school attendance orders

- 88 Clause 3 inserts new section 436Q into the Education Act 1996 which states that, in exercising their functions under sections 436B to 436O, local authorities in England must have regard to guidance issued by the Secretary of State. This will set out the administrative expectations of local authorities related to the Children Not in School measures, and their conduct of the preliminary notice and school attendance order process.



## Clause 4 and Schedule: School attendance orders: consequential amendments

- 89 Clause 4 introduces a Schedule, which makes consequential amendments relating to clause 2.
- 90 Paragraph 1 of the Schedule sets out the amendments to the Children Act 1989, which bring sections 36 and 91 of, and Schedule 3 to, that Act in line with changes related to School Attendance Orders served by local authorities in England by inserting “436I or” in relevant places. (436I is the new section in the Education Act 1996 for School Attendance Orders as outlined from paragraph 47 to 51).
- 91 Paragraph 2 amends the Education Act 1996 to ensure existing provisions on School Attendance Orders continue to apply in relation to local authorities in Wales, unaffected by the changes made to the process for authorities in England. Sections 437, 438, 439, 440, 442 and 443 are made applicable to local authorities in Wales only, and cross-references are updated.
- 92 Subparagraph (13) of paragraph 2 of this Schedule inserts a new section 447A after section 447 of the Education Act 1996, which defines “maintained school” and “school nomination notice” for the purpose of Chapter 2 of Part 6 of the Education Act 1996. Paragraph 3 sets out the amendments to the School Standards and Framework Act 1998 to ensure cross-references regarding School Attendance Order process changes for local authorities in England are updated.
- 93 Paragraph 4 sets out the amendments to the Sentencing Act 2020 to ensure cross-references regarding School Attendance Order process changes for local authorities in England are updated.

## Clause 5: Extent, commencement and short title

- 94 Clause 5 sets out the territorial extent, commencement and short title of the Act.
- 95 Paragraph 1 states the territorial extent of the Bill (i.e. the parts of the United Kingdom in which it would become law), which is England and Wales.
- 96 Paragraph 2 to 5 state when and how the provisions in the Bill would come into force.
- 97 Paragraph 6 states that, once enacted, the Act may be cited as the Children Not in School (Registers, Support and Orders) Act 2024

## Commencement

98 The Bill comes into force (a) for the purposes of making regulations, on the day on which this Act is passed; and (b) for all remaining purposes, on such day as the Secretary of State may by regulations made by statutory instrument appoint.

## Financial implications of the Bill

99 The Bill does not have any significant financial implications. There would be implementation and running costs for the necessary policy and procedural changes. These costs would be funded from within the Department for Education budget in the usual way.

100 Further information about the financial costs and benefits of the provisions in the Bill can be found in the accompanying impact assessment which has been published alongside the Bill.

## Parliamentary approval for financial costs or for charges imposed

101 A money resolution will be needed in respect of the Bill. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure.

102 This Bill requires a money resolution because the Bill confers new functions on local authorities (see, for example, a local authority's duty to maintain a register under new section 436B, or a local authority's duty to provide support under new section 436G (both of these new sections are being inserted into the Education Act 1996 by clause 1(2)), and a local authority's functions in relation to school attendance orders in the provisions being inserted into the Education Act 1996 by clause 2(2)). These new functions will lead to an increase in local authorities' costs (which could lead to an increase in the grants payable out of money provided by Parliament, for example under section 31 of the Local Government Act 2003). The House of Commons will be asked to agree that such expenditure may be paid out of money provided by Parliament.

## Compatibility with the European Convention on Human Rights

103 The Government considers that the Bill is compatible with the European Convention on Human Rights. Accordingly, a statement under section 19(1)(a) of the Human Rights Act 1998 will be made to this effect.

## Environment Act 2021: section 20

104 The Secretary of State for Education is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the

purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been necessary to make.

## Related documents

105 The following documents are relevant to the Children Not in School (Registers, Support and Orders) Bill and can be read at the stated locations:

- ['Children Not in School Government response to consultation' 3 February 2022](#)
- [Children Act 1989](#)
- [Children and Families Act 2014](#)
- [Education Act 1996](#)
- [School Standards and Framework Act 1998](#)
- [Criminal Justice Act 2003](#)
- [Sentencing Act 2020](#)

## Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	No	No	No	No	No	No
Clause 2	Yes	No	No	No	No	No	No
Clause 3	Yes	No	No	No	No	No	No
Clause 4	Yes	Yes	No	No	No	No	No
Clause 5	Yes	Yes	No	No	N/A	No	No
Schedule 1	Yes	Yes	No	No	N/A	No	No

### Subject matter and legislative competence of devolved legislatures

Corresponding provision could be made by a devolved legislature on the subject matter of all provisions in the Bill.

# CHILDREN NOT IN SCHOOL (REGISTERS, SUPPORT AND ORDERS) BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Children Not in School (Registers, Support and Orders) Bill introduced in the House of Commons on 11 December 2023 (Bill 50).

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