



Department  
for Education

# Children not in School

**Schools Bill Factsheet**

**May 2022**

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# Schools Bill Factsheet: Children not in School

## What is the government's policy objective?

All children are entitled to receive a world-class education that allows them to reach their potential and live a fulfilled life, regardless of their background. This may be achieved through attendance at school or otherwise, by parents' exercising their right to elective home education (EHE). To help achieve this objective, it is necessary for local authorities to be able to identify children who are not registered pupils at a school and who may be children missing education (CME) if they are not receiving an education suitable to their age, ability and aptitude and any special educational needs. The government's plan to place a duty on local authorities to provide support to home educating families who request it will help toward ensuring that all children of compulsory school age, regardless of where they are educated, are well supported and as many as possible receive a high standard of education.

While we know that many parents who home educate do so well, often to a high standard, this is not the case for all. Some may be deemed to be 'home educated' but in reality are educated mainly or entirely through attendance at unsuitable settings, such as unregistered independent schools; and there is a risk for a number of other children that their education is simply unsuitable, because their parents are not able to educate them effectively at home, or the children are not being educated at all.

The government's objective therefore is to ensure that all parents who decide to educate their child at home are supported to provide them with a suitable education, and that local authorities have the tools at their disposal to help them to carry out their duties in relation to education and safeguarding.

The government takes safeguarding seriously. Schools, colleges, and local authorities have a number of responsibilities, duties and guidance that are there to keep children safe from harm (e.g. [Keeping Children Safe In Education](#)). However, further work needs to be done to ensure *all* children are safeguarded, regardless of how they are being educated.

## What does this measure do?

This measure will place a duty on local authorities in England to establish and maintain Children Not In School (CNIS) registers, and to provide support to home educators. The registers will record eligible children of compulsory school age that are: electively home educated, flexi-schooled, or receive alternative provision in an unregistered setting (unless an exception applies, to be set out in regulations, such as where the proprietor of a school has made such arrangements). The registers will help ensure local authorities are aware of the children not in school in their area so that they can undertake their existing responsibilities more effectively, which include trying to identify CME. Parents, and certain providers of out-of-school education (meeting a prescribed threshold to be set out in regulations), will be required to provide information for this register. As part of

this measure, changes are to be made to School Attendance Order (SAO) legislation for England to help increase efficiency of the process. Furthermore, where local authorities will be required to commence the SAO process where parents fail to comply with certain duties to provide information for a local authority's register (in these cases apparent non-compliance becomes a trigger for action in the same way as a situation where it appears the child is not receiving suitable education).

## Why is legislation needed?

There are increased concerns about the rising numbers of children not on a school roll (either due to being home educated, attending full-time non-school alternative provision, or missing education completely), and how some of these children may not be receiving a suitable education or not be known to the local authority at all. Whilst some local authorities maintain voluntary EHE and/or CME registers, there is little consistency or centralised analysis. The Association of Directors of Children's Services survey and local authorities report increasing numbers of home-educating children year-on-year, particularly during the Covid-19 pandemic where estimated numbers increased by 38% between 2019 and 2020<sup>1</sup>. While we know many parents who choose to home educate are very committed and do so in the best interests of their child, in some cases the reasons for home educating are not for the best education of the child and the education being provided is unsuitable. There is therefore a greater need for local authorities to be able to identify these children to assure themselves about the education being provided. It is also important that parents who make the choice to home educate their children are supported to help promote a suitable education; and that it is available to all those who want or need it.

Registers, and the new accompanying duties (such as the duty to provide support to those home educating families who request it) will ensure consistency across local authorities; and will provide local authorities with valuable tools to support them with their existing duties, including ensuring all children receive a suitable education and are safeguarded.

Currently there is no requirement for local authorities to maintain registers, nor is there a requirement on parents to inform anyone of their decision to home educate. Every local authority has a statutory duty to satisfy themselves that every child of compulsory school age is receiving a suitable education, however this duty cannot be fulfilled when an authority is unable to accurately identify where and how a child is receiving their education. Alongside the duty on parents to provide necessary information to the local authority on their child's education should they not be in school, a duty on certain out-of-school education providers to reactively provide information to the local authority will help ensure that as many children as possible that should be on a register are.

We want each local authority's register to include all children of compulsory school in its area who are not a registered pupil at a school maintained by a local authority, a non-

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<sup>1</sup> [www.adcs.org.uk/assets/documentation/ADCS\\_EHE\\_Survey\\_2020\\_FINALweb.pdf](http://www.adcs.org.uk/assets/documentation/ADCS_EHE_Survey_2020_FINALweb.pdf)

maintained special school, an alternative provision academy, or a registered independent school. This means it will include children who have their education arranged by the local authority via section 19 of the Education Act 1996 in settings that are not state-funded schools or registered independent schools. This education is commonly referred to as unregistered alternative provision.

We are aware of instances where CME are receiving part or all of their education in unregistered, and sometimes illegal, education settings. There may be times when a parent of a child tells their local authority that the child is being educated at such a setting and the authority need to check whether this is true. However, the setting may refuse to provide any information and under current law cannot be compelled to do so. There may also be times when a child is attending a setting full-time, but the child's parent conceals this fact from the local authority to avoid the setting being identified as an unregistered independent school. Legislation is therefore needed to ensure that settings in scope share important information with local authorities. Where we know the majority of home educating families are doing so with good intentions and wish to ensure their child is receiving the best education possible, it is also vital that we change the current system, where local authority support to home educating is discretionary and can vary significantly depending on where families live. We want to ensure that all families who home educate and whose children are not registered at a school are able to access the necessary support to help them promote a suitable education for their child. Introducing a new statutory duty for local authorities to provide support to home educating families that request it, will therefore help ensure those home educating families that want or need support are able to access this.

In those cases where local authorities must use the SAO process when a parent does not provide necessary information for a local authority's register, there is also a need to bring the sanctions for not complying with SAOs into line with sanctions for children who are registered at school not attending their school. There is also a need to ensure the SAO<sup>2</sup> processes which currently apply only to maintained schools and pupil referral units are extended to apply to academy schools and alternative provision academies to bring consistency of approach. A breach of a SAO is punishable by a fine of up to £1,000, compared to a fine of £2,500 for the offence of knowingly failing to cause a child to attend the school at which they are registered.

In relation to the enforcement of SAOs, the government intends to tighten up the process and remove the existing need to create a new SAO every time a breach occurs. Currently, if a parent is convicted of failure to comply with a SAO and continues to breach the order by not sending their child to school, the local authority can take no further action to enforce that order. They must go through the process of assessing whether a suitable education is being provided and making a new order and prosecuting the parent for breach of that new order if it is not complied with. It is also not an offence for a parent to comply with an SAO by sending their child to the named school for a single day, and

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<sup>2</sup> SAOs are the measure available to local authorities where they cannot be satisfied that a parent is ensuring their child receives a suitable education.

then withdraw again.

The government is of the view that this is not appropriate and is unduly burdensome for local authorities. Where a parent is not suitably educating their child after conviction for breach of an SAO, it should not be necessary for the local authority go through the entire process again to ensure a child is suitably educated. This adds up to a lengthy timeframe, during which a local authority cannot be certain that the child is receiving a suitable education.

## What is the effect of the legislation?

The government is establishing a local authority administered registration system for children not in school i.e. children not registered at a relevant school (e.g. due to being electively home educated), children who are flexi-schooled, or children placed partly or exclusively in unregistered alternative provision (with exceptions in regulations). This registration system and its associated duties were confirmed in the government's [CNIS consultation response](#) in February 2022. As set out in that response, the introduction of the registration system will create the following duties on:

- local authorities to maintain registers of Children Not in School
- parents to provide necessary information to local authorities for inclusion on their registers; local authorities will be required to start SAO proceedings should parents not comply with providing this information
- providers of out-of-school education to provide information to the local authority, on request, in cases where they are providing education to an eligible child above a prescribed threshold (which will likely represent a substantial proportion of a child's education), or where the local authority reasonably believes them to be – this includes local authorities being able to impose a civil penalty should providers not comply with such a request
- local authorities to provide support to registered home-educating families where it is requested
- local authorities to share information from their registers
- local authorities to have regard to statutory guidance

The changes to SAO legislation will:

- reduce the statutory timeframes for the issue and process of SAOs to increase efficiency in processing and reviewing orders, and to minimise the time that children may be receiving unsuitable education for
- bring the SAO process for academies in line with maintained schools, therefore creating more consistency among state-funded schools and make the process for local authorities more straightforward
- make it an offence for a parent to withdraw a child who is subject to a SAO from school, except by following the proper procedure for having the SAO amended or

revoked; also a parent convicted of breaching an SAO by failing to have their child registered at the named school will be able to be prosecuted again under the same SAO if they continue to breach it in this way

- bring the maximum penalty for a breach of a SAO into line with the offence of knowingly failing to cause a child to attend the school at which they are registered – this would attract a penalty on conviction of up to £2,500 fine or up to 3 months' imprisonment (51 weeks after the commencement of wider changes to sentencing legislation) or both

## **How will this work in practice?**

### **Duty of local authorities to keep registers of children not in school**

Each local authority in England will be required to maintain its own register of children who are not in school. A child will be eligible for registration if they are mainly living in the local authority's area, of compulsory school age, and not a registered pupil at a school maintained by a local authority, a non-maintained special school, an Academy school or alternative provision academy, or a registered independent school.

Children of compulsory school age will also be eligible for registration if they are registered as pupils at schools but do not attend school full-time, including 'flexi-schooled' children, children who attend mainstream school part-time but spend the rest of their time in unregistered alternative provision, and children who are registered at school but attend unregistered alternative provision (part-time or full-time) instead.

The registers will need to contain the child's name, date of birth, home address, parents' names and home addresses, and certain details of how their education is being provided (the details to be set out in regulations, including any persons providing some or all of the education and any institutions at which some or all of it is being provided). Other information will be included in the registers and will be set out in regulations. This could include the child's ethnicity and other demographic information, reasons for EHE, any special educational needs, and information about the child's welfare and general circumstances.

Local authorities will be responsible for maintaining the information on the registers and ensuring it is as accurate as possible in relation to each child. This includes any additional or corrected details as well as the deletion of data where appropriate, including when a child on their register is no longer of compulsory school age and so out of scope of registration eligibility. Requirements about how to maintain the registers will be provided in regulations.

### **Provision of information to local authorities: parents**

The parent of any child who is eligible for registration by a local authority will have a duty to provide the local authority with any of the information that the authority is required to include in the registers (set out above). The parents must also inform the local authority when any of the required information changes or the child ceases to be eligible for

registration. Parents will need to provide information to local authorities when their child reaches compulsory school age and meets the other eligibility criteria for registration.

The duty will apply only where the child is electively home-educated (including flexi-schooled). It will not apply where the child is exclusively in unregistered alternative provision, or attending school part-time and in unregistered alternative provision the rest of the time, as in those cases the parent is normally not responsible for the child's becoming eligible for registration and may not have the required information. In the rare situation where a child is in unregistered alternative provision for part of the time and electively home-educated for the rest of the time, then the duty will apply to the parent.

There is no immediate criminal or civil sanction for breach of this duty. However, it is important to make clear that parents in scope must take the initiative in getting their children registered and must cooperate with local authorities' efforts to populate the registers. On that basis, parents who fail to provide the required information within 15 days will be subject to the existing SAO process, on the basis that a parent's failure to comply with their duties creates a legitimate presumption for the local authority that they need to investigate the suitability of the child's education. This would be achieved through the issue of a preliminary notice, which the parent may respond to in the usual way to in order to satisfy the local authority that suitable education is being received.

### **Provision of information to local authorities: education providers**

Many electively home-educated children will attend out-of-school education provision as part of their parents' arrangements for securing a suitable education. Some children will also be placed in unregistered alternative provision settings. The legislation will require such out-of-school education providers and unregistered provision to provide information to local authorities. Local authorities will have the power to request that such settings provide information for the register.

Where a child is registered in a local authority's CNIS register and the local authority reasonably believe that the child is attending a setting for more than a prescribed proportion of their education (specifics to be set out in regulations), or they reasonably believe that one or more eligible children are doing so (even if they do not know the identities of those children), the local authority will have the power to give a notice to the provider requiring them to confirm whether they are providing education to an eligible child; and, if so, to provide the child's name, date of birth and home address and the name and home address of each parent of that child. This is a vital element of the measures that will significantly aid the identification of eligible children, and to cross-reference information on the registers. Regulations will create exceptions to the duty so that specified, unintended out-of-school settings or arrangements are not brought in scope due to a technicality. This could include informal groups of home educating parents or museums that offer extensive educational programmes to children.

Where a person fails to comply with a notice to provide information within 15 days, or

provides false or incorrect information, the local authority may issue a warning notice of their intention to impose a civil financial penalty on that person. The notice should explain why they intend to issue a penalty, the amount of the penalty, and how and when the person can make representations about the matter.

The local authority must consider any representations made by a certain deadline. Having done so, or where no representations have been made, the local authority will be required to either give the person a penalty notice or inform the person that they do not intend to give them a penalty notice. A penalty notice should set out the amount to be paid, the time for payment, the methods of payment, the consequences of non-payment, and details of how to appeal. The penalty will be set in regulations at £2,500 and payable within the deadline set out in the penalty notice (which must be at least 28 days of the issue of the notice). If the person fails to pay, the penalty will increase to a higher amount (set out in regulations) and become recoverable as if it had been imposed in an order made by the county court. A person given a penalty notice will have a right of appeal to the First-tier Tribunal.

## **Use of information on the register**

At present, local authorities are not under a duty to share information with the Department relating to children not in school. Under the new legislation, local authorities must, if the Secretary of State so directs, provide the Secretary of State with information of a prescribed description from their registers. This could include information relating to an individual child or aggregated information.

Local authorities will be able to provide information from their registers, including personal data and sensitive personal data, to persons specified in regulations, which will likely include the police and health bodies, when they consider it appropriate for the purpose of promoting or safeguarding the education, safety, or welfare of a child,<sup>3</sup> or any other person under the age of 18.

Where a local authority becomes aware that a child on their register will move, or has moved, to the area of another local authority in England, the local authority must also provide the other authority with the information contained on their register relating to that child. This is an important element to ensure that children do not drop off local authority registers should they move out of the area.

## **Support**

Every local authority must provide or secure the provision of support to any parent of a child registered in the authority's CNIS register to promote the education of that child, where this is requested by their parent.

This duty to provide support is limited to parents who are electively home educating their children only. It will not apply where a child is registered at a school, or where the local

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<sup>3</sup> A 'child' as per the Education Act 1996 is someone of or under compulsory school age. (See section 8 of Education Act 1996 for definition of 'compulsory school age'.)

authority is required to make arrangements for the child's education under section 19 of the Education Act 1996 or section 42 of the Children and Families Act 2014, i.e. those in alternative provision and those with an education, health and care plan, where local authorities already have relevant duties.

The nature and amount of the support are at the local authority's discretion whilst considering the parent's initial request. In guidance, we will set out expectations that support is provided to any child whose parents request it, tailoring the level and nature of the support to the degree of the child's needs. More support should be offered to those children that need it most, for instance whether a child has special educational needs or is a child in need.

The support should be provided for the purpose of promoting the education of the child in question. Statutory guidance will set out that the support should, as a minimum, aim to help the parent to ensure that the child is receiving an efficient, full-time, suitable education. If the child's education is already meeting that standard without support from the local authority, any requested support should be aimed at further improving the child's education.

The support that may be provided by local authorities could include, but is not necessarily limited to, the following:

- advice about education of the child
- information about sources of assistance for the education of the child
- provision of facilities, services, or assistance (including financial assistance)
- access to non-educational services or benefits

If the parent has asked for a particular form of support, then that should be considered, though the authority will remain free to decide not to provide what has been asked for. If the parent has set out any relevant information about the child's circumstances or needs, then those should also be considered.

## **Guidance**

The new legislation provides that the Secretary of State may give statutory guidance to local authorities in England about their new duties and functions under sections 436B to 436H. Local authorities in England must have regard to the guidance.

## **School Attendance Orders**

New legislation will amend the School Attendance Order (SAO) process in England. Sections 437 to 443 of the Education Act 1996 will continue to apply in Wales. New sections 436I to 436Q will be added to the Act setting out the process for SAOs in England only. These provisions will create two new scenarios where the local authority must issue a 'preliminary notice' (requiring the parent to evidence that their child is receiving a suitable education): in cases where it appears that a parent of a child who is or may be eligible for inclusion on the CNIS register has been asked for information by

the local authority to help the authority work out whether the recipient is the child's parent and / or whether the child should be registered, and has failed to provide the requested information or provided incorrect information to the local authority; and in cases where the person appears not to have complied with some of the parental duties described above under section 436D ('provision of information to local authorities: parents'). A flowchart outlining the new process of considering and issuing of SAOs in cases where a child appears not to be receiving suitable education can be found on page 12.

The new process for England is that a parent who receives a preliminary notice will have no less than 10 days to satisfy the local authority that their child is receiving a suitable education. This minimum timeframe has been shortened from 15 to 10 days as we want to ensure that the time when any child that could be in potential receipt of unsuitable education to be kept to a minimum. Additionally, the preliminary notice will need to be issued by the local authority within 3 days of the event that triggers their duty to issue it. This is a relatively short timeframe on account of the importance for local authorities to act immediately once they have legitimate reason to believe they must investigate whether a child is receiving a suitable education.

The changes will make the process for and effect of SAOs more similar for academy schools and alternative provision academies to the current process for maintained schools. This means that an academy school may be named in the SAO if admitting the child would not take the academy school above its published admission number or, if that rules out all academy schools (and maintained schools) in a reasonable distance of the child's home, an academy school may be chosen, as may a maintained school, if it is reasonably close to the child's home. As academy schools will be treated the same as maintained schools, they cannot be specified in a school nomination notice if the child's admission would force the school to take prejudicial measures to avoid exceeding the infant class size limit.

The local authority will continue to be required to consult the governing body of any maintained school they intend to name in the SAO or offer the parent an alternative choice. Following this consultation, the local authority will still be required to inform the governing body if they still intend to do so. Where the named school is an academy school or alternative provision academy, the local authority has a duty to consult with, and serve notices on, the proprietor.

The local authority will need to give this notice to any maintained schools or academy school or alternative provision academy it intends to name within the SAO or offer as alternatives within 15 days of the expiry of the deadline set out in the preliminary notice.

A governing body or proprietor served with a notice of intention to name will have a 10-day period in which to apply to the Secretary of State for a direction that their school should not be named in the SAO. If the Secretary of State gives a direction, the local authority must choose a school or schools in accordance with that direction.

Having narrowed down the list of possible schools, the local authority will need to notify the parent of their intention to make an order, identifying the school they intend to name in the SAO and, if they wish, one or more alternative options for the child to attend. The local authority will need to serve the notice (known as a 'school nomination notice') on the parent within three days of the school's deadline for making an application to the Secretary of State. However, if there is an application, the local authority will need to wait for the Secretary of State's decision before notifying the parent. The local authority will need to issue an order naming that school within three days of the direction.

A parent who receives notice that an SAO is to be issued will be able to influence which school is named in the order in three ways:

- if the notice offers more than one school, they may state a preference for one of the schools mentioned in the notice and that school must be named in the order
- they can try to get the child admitted to a school that is not named in the notice:
  - they may apply for the child to be admitted to an academy school or alternative provision academy or a school maintained by a local authority and, if the child is admitted that school must be named in the order
  - if the parent wishes their child to attend a fee-charging school, they can apply to the local authority asking them to pay the fees. If the child is admitted and the application for fee-payment is granted, then the school must be named
  - they can apply for the child to be admitted to a fee-charging or other school that is not maintained or an academy school or alternative provision academy, without asking for any fees to be paid by the local authority; if the child is admitted, the local authority must decide whether the school is suitable and, if so, name it in the SAO

In each of these options, the parent will have 10 days in which to notify the local authority of their decision.

With the school selection process complete, the local authority will need to serve the SAO upon the parents. The local authority will need to do this within three days of confirming which school is to be named.

Depending on the type of school named in the SAO, the local authority will need to inform the governing body and head teacher, or proprietor, that their school, academy or alternative provision academy is to be named within three days of making that decision. Proprietors of all those types of schools will have a duty to admit that child to their school once the SAO is issued.

Service of a SAO upon a parent will be able to be carried out by 'any effective method', meaning that if a notice or order is received by the parent, then it is deemed to have been properly served, no matter how it was done. This will provide local authorities with more flexibility in how they ensure an SAO is issued and received and strengthen their ability to enforce it, should it be breached.

## Failure to Comply with School Attendance Order

Any ongoing failure to comply with an SAO that is in force will be an offence for which the parent can be prosecuted and convicted. This means that a parent who does not comply with the SAO by sending their child to the named school, is prosecuted and convicted for this non-compliance, and then still does not have their child registered at the school can be prosecuted for breaching the SAO again. This is a change to the current law, which says that a parent cannot be found guilty of breaching the same SAO twice, meaning that if they are convicted and still do not comply, a new SAO must be issued before any further enforcement action can be taken.

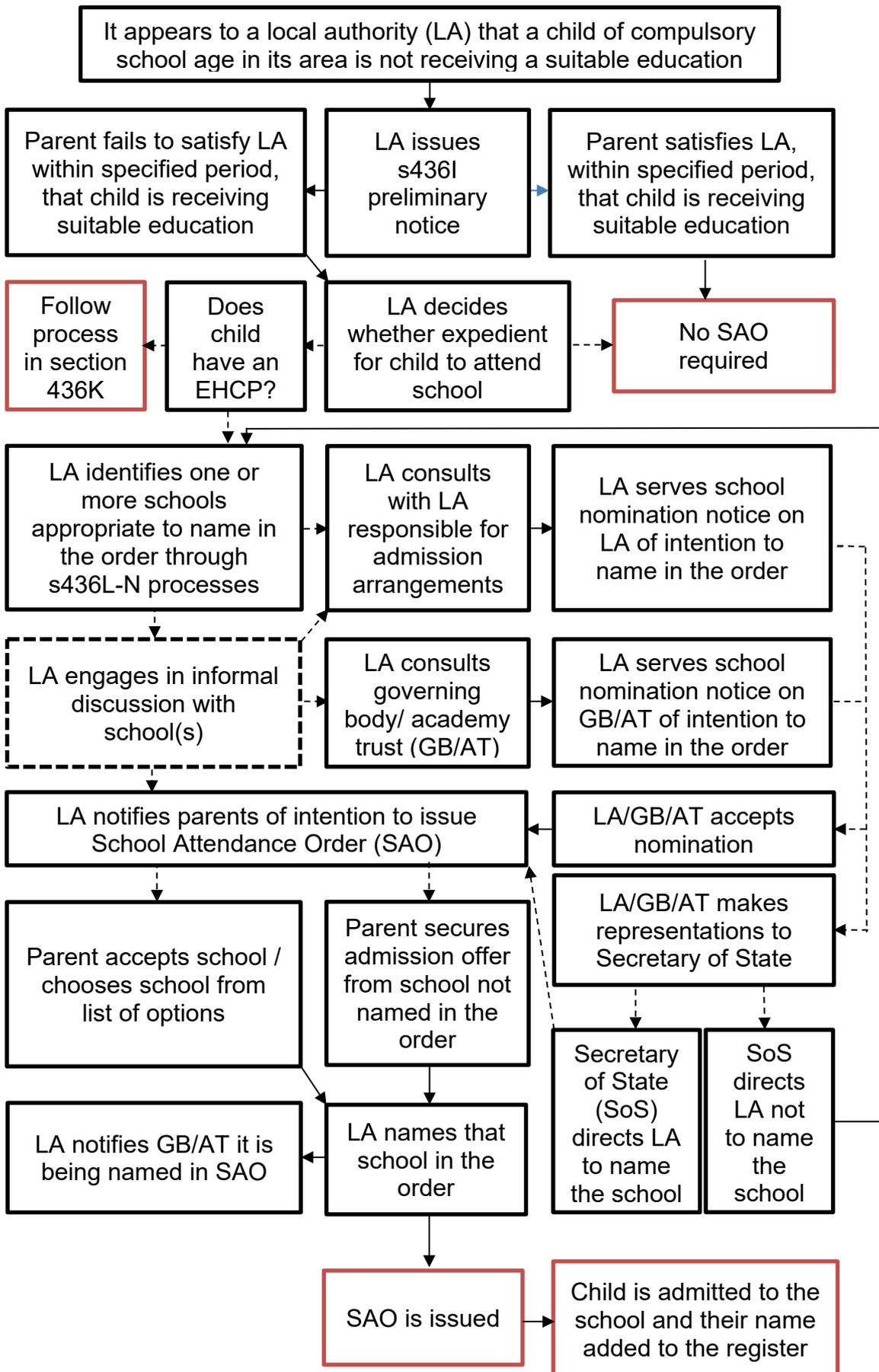
As under current law, the SAO will remain in force until it is revoked by the local authority or terminated by a court or until the child ceases to be of compulsory school age. Revocation may occur if the parent is able to demonstrate to the local authority that their child will be receiving a suitable education otherwise than at school, or if the recipient of the order demonstrates that they are not the child's parent. Guidance will be given to local authorities about how to handle revocation requests, recommending that they should normally seek to convene a meeting with the parent and representatives of the school to discuss the matter. A flowchart outlining the process of revocation requests and prosecutions of SAOs can be found on page 13.

Where an SAO is in force in relation to a child and the child is registered at the school named in the order, it will be an offence for the child's parent to cause the child's name to be deleted from the register except as part of the statutory process for amending or revoking an SAO. This is to prevent a parent withdrawing their child from school so that the child can be educated entirely otherwise than at school (or not educated at all) without satisfying the local authority that the child will be suitably educated.

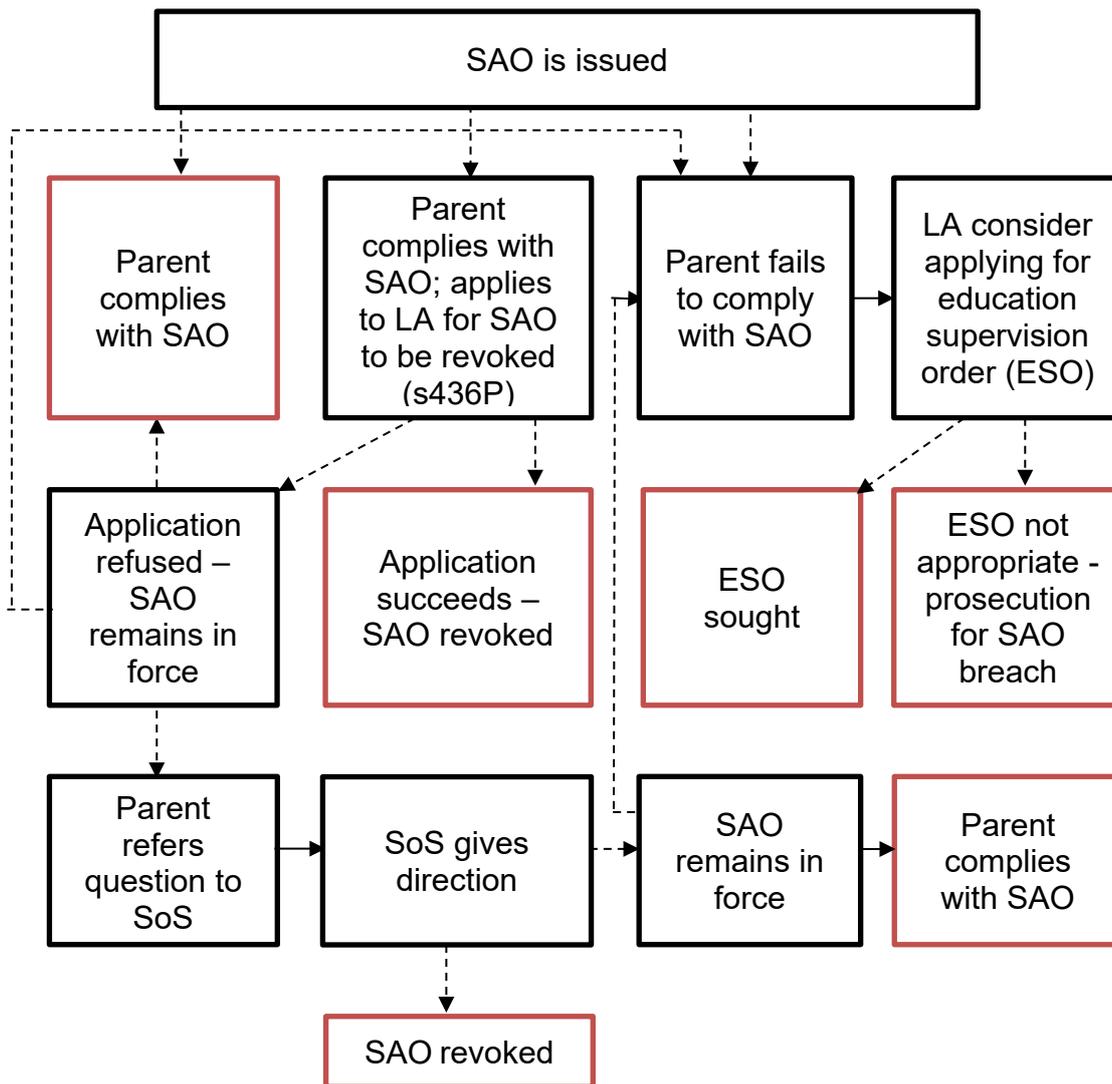
Allowing a parent to deregister their child in these circumstances without a sanction would undermine the force of the SAO and its effectiveness as a means of ensuring a child's suitable education, as it would allow a parent to simply register a child for a short period to comply with the order but then withdraw to potentially provide unsuitable education without consequence. If the parent tries to get their child's name removed from the register but fails, then the offence will not be committed.

The penalty for breach of an SAO will be a fine not exceeding £2,500 or a term of imprisonment of up to 3 months (which will become a maximum of 51 weeks after wider changes to criminal sentencing law come into force) or both. This will be an increase from the current maximum sentence of a fine of £1,000 and will bring the sanction for breach of an SAO in line with the sanction for the offence of knowingly allowing a registered pupil's non-attendance. This will remove the incentive of a lower punishment that may encourage a parent to withdraw their child from school under the guise of home education to avoid a higher fine for non-attendance.

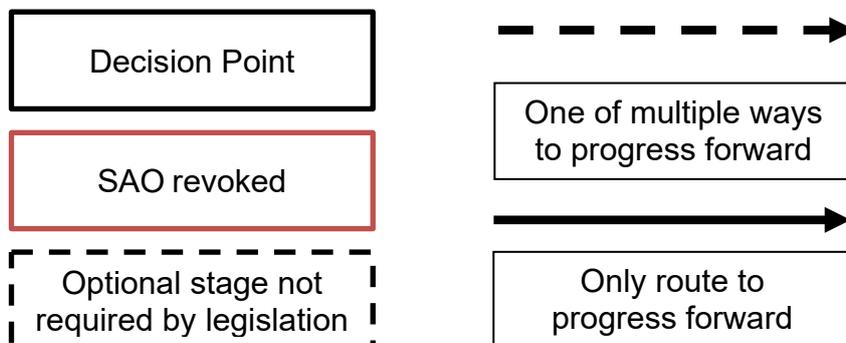
## Flowchart outlining the School Attendance Order (SAO) process in England



## Flowchart outlining the SAO compliance and prosecution process in England



### Flowchart Key:



## **Key questions and answers**

### **Why should local authorities have a duty to register children not in school? Why is this necessary when many parents home educate their children well?**

The move to require local authority registration is not intended to undermine privacy, nor will it interfere with parents' right to educate their child in a way and with methods as they think best and appropriate. While we know many parents who home educate their children are often very committed and do this well, this is not the case for all. Some will not be receiving a suitable education or having their needs met. Notification to a local authority that a child is receiving home education and collecting information on all children who are not in school will help local authorities to plan and target their resources to children who are truly missing education and to safeguard where it is needed. In addition, it will help them to plan their resources for complying with their duties under existing law and the new duty to provide support where it is requested. This will help ensure home educating parents, who would like or need it, are supported to promote a suitable education for their child.

### **Isn't home-schooling socially harmful?**

Elective Home Education is not considered an inherent safeguarding risk. Most parents who take up the weighty responsibility of home education do a great job, and many children benefit from being educated at home. Suitable education is not simply a matter of academic learning but should also involve socialisation. Most home education considers this and is a social experience with other home educators and/or in other educational settings.

### **Do the Children Not In School measures give additional powers to local authorities to assess home education?**

The Children Not In School and School Attendance Order measures do not feature additional or amended powers for local authorities to assess education. The government's view is that authorities' existing powers and duties, if used in the way set out in the government's guidance, are enough for a local authority to determine whether the provision is suitable.

The Children Not In School registers and duty to provide support to home educators will help toward ensuring that no child is missing education and providing a complete list of children who are not in school. This will help relevant support be targeted to where it is needed most.

## **Why are children educated in unregistered alternative provision in scope of Children Not in School measures? Don't local authorities already possess information related to alternative provision in their area?**

We want registers to include all children of compulsory school age educated in unregistered settings. Some home education arrangements aside, in practice, this should only happen when the local authority or school has arranged suitable education, commonly called alternative provision, under section 19 of the Education Act 1996.

Whilst these children will be known by the local authority, we believe it is important that the new registers contain all children of compulsory school age who are being educated whilst not on a school roll, as well as those that receive *some* of their education otherwise than at a mainstream education setting (e.g. those who are flexi-schooled). We do not want to include children where a school has arranged alternative provision in an unregistered setting and so we intend to make regulations creating exceptions for these children. In these cases, the pupil remains on the school roll and the school is responsible for the education they receive and therefore we feel should not be in scope for the local authority registers.

## **What data will be required for the Children Not In School measures and how will it be maintained?**

Local authorities will be responsible for maintaining the information on their registers and ensuring it is as accurate as possible. This includes any additional or corrected details as well as the deletion of data where appropriate. Recommendations on how to maintain the registers will be provided in departmental guidance.

Local authorities will be able to provide information about the contents of their registers, including personal data and sensitive personal data, to persons or agencies specified in regulations. They will be able to do so when they consider it appropriate for the purpose of promoting or safeguarding the education, safety, or welfare of a child. It is anticipated that such persons may include the police and health bodies.

## **Are School Attendance Orders a suitable consequence for parents who don't provide information for registers?**

The government does not intend to criminalise parents who fail to provide information for their home-educated child to be registered with the local authority. Ultimately, the important issue is that the child receives a suitable education and so the most appropriate response to a failure to register is to take steps to determine whether the child is being suitably educated and, if not, to get that child into school. The use of existing SAO procedures, strengthened by the reforms in this Bill, will help local authorities to achieve this aim and the best outcome for the child.

## Part 2: Additional detail on Delegated Powers

The government is seeking the following powers to make regulations as part of these measures:

- Regulations making exceptions to the eligibility of a child for inclusion on a local authority's Children Not in School register
- Regulations prescribing certain details to be included on Children Not in School registers
- Regulations about the format and keeping of Children Not in School registers
- Regulations setting the threshold for a provider of out-of-school education to be required to provide information to the local authority
- Regulations making exceptions to the duty on proprietors of out-of-school education to provide information to the register
- Regulations setting monetary penalty for failure by an out-of-school education provider to provide information and regulations setting the increase in the penalty if paid late
- Regulations prescribing the categories of information that a local authority must provide to the Secretary of State
- Regulations prescribing categories of persons to whom local authorities may provide information
- Prescribed form of School Attendance Orders

In addition to the above, we will also seek powers to create statutory guidance on children not in school registration and use of School Attendance Orders.

### Regulations making exceptions to the eligibility of a child for inclusion on local authority Children Not in School registers

#### What does this delegated power do?

Each local authority in England will be required to keep a register of certain eligible children in their area. Two types of children of compulsory school age will be eligible: those who are not registered as pupils at 'relevant schools'<sup>4</sup>, and those who receive some, or all, of their education otherwise than at school with the school's agreement.

The Secretary of State will have the power to make regulations specifying the circumstances where a child who is registered at school is not eligible for registration, despite receiving some or all of their education otherwise than at school. This is mainly intended to ensure that children who are educated otherwise than at a relevant school on a very short-term basis (for example, a school teacher takes their class to a museum for the day) and children in certain kinds of unregistered alternative provision are not eligible for registration.

#### How does the government intend to use this power?

The regulations will set out the circumstances where children who would be eligible to be included in their local authority's register, due to being registered at a relevant school but absent

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<sup>4</sup> 'Relevant schools' for the purposes of the duty to maintain the register are schools maintained by local authorities, non-maintained special schools, Academies, and alternative provision Academies

some of the time and receiving education otherwise than at a school, are not to be considered as eligible. As a result of not being eligible, the child will not be included in the local authority's register and therefore the child's parents will not be subject to the duty to provide information to the local authority for the register.

We do not want children who are on school rolls but are absent from school regularly to receive education otherwise than at a school for a very small amount of the school week or on one-off occasions to be eligible for registration. For example, this may occur where a school has made arrangements for pupils to receive weekly swimming lessons at their local leisure centre as part of PE or a series of educational visits off the school site.

A child who is registered as a pupil at a relevant school but attending unregistered alternative provision<sup>5</sup> will also only be eligible if their attendance at that provision is arranged by the local authority and not when a registered school has arranged the alternative provision. Registered schools are responsible for the alternative provision they arrange and are accountable for ensuring that it is a suitable and safe placement that will meet pupils' education and pastoral needs. In these cases, the pupil will remain on the roll of the school arranging the alternative provision.

This power will be used to remove from scope some children who have certain types of flexi-schooling arrangements or are placed by schools in unregistered alternative provision. Flexi-schooling and alternative provision arrangements can take many varied forms. Without regulations to exempt some of those forms of arrangements, the registers would become incredibly burdensome and ever-changing on account of the numerous short-term arrangements in which children are educated otherwise than at school (for example, they are educated otherwise than at school only for a couple of hours a week on an irregular basis). If such circumstances were brought into scope of the register then it would create onerous administrative work for parents and local authorities whilst not meeting the policy object of identifying all children not in school. The eligibility exceptions may need to be adjusted from time to time as different situations come to light, and it may not be possible to identify and describe them all without observation of the system operating in practice.

The regulations can also be used by local authorities and parents to provide clarity should there be any disagreement or uncertainty as to whether a child falls within section 436B(5)(b) or not.

## **Will there be any further consultation on this issue?**

Eligibility for registration was included in the Children Not in School consultation, which closed in June 2019 with nearly 5,000 responses from parents, local authorities and other interested groups. We do not anticipate requiring further consultation on this issue.

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<sup>5</sup> Alternative Provision is education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; and education arranged by schools, including for pupils being directed by schools to off-site provision to improve their behaviour; and provision for pupils on a suspension.

Most alternative provision is delivered through Pupil Referral Units (PRUs) and AP Academies which are required to register as schools. Unregistered alternative provision falls outside any existing designation as a school, and includes a wide range of providers from tutoring and online companies to bespoke vocational training and therapeutic provision. The circumstances in which unregistered provision is used instead of a school placement vary significantly and include part-time placements (e.g. half a day a week), short term intensive placements before returning to mainstream, or longer term placements.

## Regulations prescribing certain details to be included in registers

### What does this delegated power do?

The Secretary of State will have the power to make regulations that prescribe certain details to be included in local authorities' Children Not in School registers.

A register may also include any other information that the local authority considers appropriate, for example for carrying out its functions in relation to assessing education and safeguarding.

### How does the government intend to use this power?

The government will use this power to set out what information local authorities must include in their registers. This will ensure consistency across local authorities on the information that should be collected for their registers. This will be beneficial for local authorities and the Department for Education, as it will aid data processing and analysis on local and national levels, and also for parents and providers who are required to provide information and may operate or move across different local authorities.

The information about the child that must be included in a local authority's Children Not in School register consists of:

- child's name
- child's date of birth
- child's address
- name(s) and address(es) of the child's parent(s)
- details of the child's education provision

Regulations will set out what details of the child's education provision must be included in registers. This will likely include details of where a child is being educated otherwise than a school (e.g. entirely at home, in an out-of-school setting, in a Further Education College, in unregistered alternative provision, etc.) and what proportion of their education they are receiving at those settings.

The above information should be sufficient to support the existing duties of a local authority to try to identify those children not in school and ensure they are receiving an efficient and suitable education.

However, following implementation of the registration system there may be other situations related to the education of the child that may need to be captured on registers, and so the government will use this power to set out any further arrangements about the child's education that should be recorded in Children Not In School registers if needed.

The regulations are also to specify that the following further information about a child must be added to local authority registers:

- ethnicity
- sex

- primary reason for electing to home-educate (if applicable)
- whether the child has any special educational needs (SEND)
- whether the child has an Education, Health and Care Plan (EHCP)
- whether the child is a Child in Need, Looked After Child, or has a Child Protection Plan
- whether the child is a Child Missing Education

This data will aid development of government policy to support children not in school by providing insight into reasons for home educating, the make-up of children not in school, and how and where local authorities should best target their resources. It will also support the governments work to evaluate the impact of the registration system.

This is a non-exhaustive list. Other information categories may be laid out in regulations following further monitoring and evaluation, after implementation of the registration system, and local authorities signalling where further information would be necessary, or useful in carrying out their aims, to ensure a suitable education and that all children are safeguarded.

## **Will there be any further consultation on this issue?**

The Children Not in School consultation, published in 2019, put forward the proposal that local authorities collect certain data on home-educated children and that the exact categories of information to be collected would be set out in legislation. Respondents were asked to put forward their views on what types of data should be collected and held on the register. As this issue was addressed in that consultation, we do not intend consult further on the use of this power.

## **The power to make regulations about the format and keeping of registers**

### **What does this delegated power do?**

The Secretary of State will have the power to make regulations about various administrative matters concerning the keeping of the registers, including, for example, a requirement for a standard registration form to be made available to parents or a standard information sharing form to be made available to providers.

### **How does the government intend to use this power?**

Many local authorities already voluntarily maintain registers of children not in school or those who are electively home educated, which have been developed based on local needs.

However, to ensure consistency of process and procedure for maintaining and collecting information, the department needs to be able to prescribe how registers should be kept, shared and publicised.

As such, the regulations will stipulate:

- how the registered information is to be kept up to date
- how amendments are to be made (e.g. dates of, and reasons for, amendments to be recorded)
- the format of the registers (e.g. electronic records)
- how registers must be made available to certain persons or information published.
- how the contents of registers are made available or published
- how to publicise the register and / or publicise the duties of those persons responsible for maintaining and managing the register (e.g. publicise how parents have to tell the local authority when their child(ren) becomes eligible for registration)

The regulations may also require a standard registration form to be made available to parents and/or a standard information sharing form to be made available to education providers

Consistency across local authorities will mean that all local authorities will have a register to an appropriate standard, as well as aiding a more accurate national picture to be created, which can then be analysed accordingly. Greater consistency will help make the system easier to navigate for parents, where approaches can differ between local authorities. Such matters may require adjustment over time, for example to account for differences in local authority structure or internal processes, and so regulations are appropriate.

The government does not intend to use this power to instruct local authorities to publish personal information about children or families as part of the regulations setting out how registers are to be published.

## **Will there be any further consultation on this issue?**

We do not intend to consult the public on these regulations, however we will engage with key stakeholders, including relevant local authority officers, to ensure they are effective.

## **Regulations setting the threshold for a provider of out-of-school education to be required to provide information to the local authority**

### **What does this delegated power do?**

The Secretary of State will have the power to make regulations setting the threshold for a provider of out-of-school education to be required to provide information to the local authority.

Many out-of-school education providers are currently unregulated under education and childcare law, and there are no existing statutory powers to enable local authorities to require information from those providers (whether they are regulated or unregulated).

### **How does the government intend to use this power?**

A new regulatory power will set the amount of time that an eligible child would need to be provided with out-of-school education by a particular provider without their parent present, to make that provider in scope for local authorities to require them to provide information for a register.

This information would confirm whether the setting is providing education to a specified child, or to any child who is registered or eligible to be registered in the local authority's Children Not In School register. It will also provide the authority with the name, date of birth, and home address of a specified child or any child they are providing with out-of-school education, and the name and home address of each parent of that, or any, child receiving education in that way.

The local authority can only require a provider to give them this information when they reasonably believe that the person is providing out-of-school education above a specified amount of time or proportion of a child's time spent receiving education.

The duty on providers of certain out-of-school education to supply information on request to the local authority will help ensure the registration system is as effective as possible in safeguarding children from harm and ensuring children are not missing education.

However, setting a threshold at which this duty should apply will ensure that it only targets those providers that are used by parents for a substantial proportion of their children's elective home education. We do not want to bring in scope providers which may be truly supplementary to an eligible child's education by having a threshold that is too low. A threshold that is too low could bring into scope settings such as Sunday Schools or sport clubs, which is not our intention. The department recognises that out-of-school education providers mainly offer provision outside of traditional school hours (i.e. outside of 9-3), but some providers offer provision during the school day to support children who are electively home educated and/or children not in school. Settings that are likely to be in scope of the duty to provide information include tuition centres, for example.

The threshold, as will be set out in the regulations, will be based upon the amount of time a child spends receiving out-of-school education from a provider, without their parent present. That amount of time may be set according to the number of hours in a day or week the child attends

the place where the provision occurs, or by reference to the proportion of their time spent being provided with the education in question. More work needs to be undertaken to decide an appropriate threshold, but it's likely this would be a provider that provides a substantial proportion of a child's education.

Changes to the threshold may be needed in time as local authority and department data improves and authorities get used to their registration duties and develop a clearer picture of educational arrangements in their area as well as nationally.

Further observation of the system will likely be required to ensure this threshold is set at an appropriate level, and to monitor the impact on providers.

## **Will there be any further consultation on this issue?**

We will engage with key stakeholders ahead of setting the initial threshold. The first set of regulations made under this power will also be subject to the affirmative procedure. We will keep the threshold under review as more data on the use of out-of-school settings by home educating parents becomes available through use and analysis of the registers.

# **Power to make regulations making exceptions to the duty for providers of out-of-school education to provide information**

## **What does this delegated power do?**

This enables the creation of exceptions to the duty on providers of out-of-school education to provide information when requested by a local authority. This means that regulations can specify which providers will not be in scope to supply information despite providing education to a child or children above the prescribed threshold. As the threshold itself will be set in regulations (as described above), exceptions for those who are above the threshold also need to be set in regulations, to ensure only those needed are brought into scope and that adjustments can be made in line with any alterations to the threshold itself.

## **How does the government intend to use this power?**

Providers of some types of out-of-school education may become inadvertently subject to the duty to provide information, by virtue of the threshold being set at a particular number of hours per day or week. As an example, if the threshold were set as 9 hours per week, this might capture informal groups of home educating parents who may come together and take it in turns to teach their own and their friends' children collaboratively. It could also capture cases like a museum that offers an extensive educational programme for children, which is open to all members of the public. Without being able to exclude such cases from scope, we could place undue requirements on such providers, that might serve to discourage the provision of these activities.

We will also want to exclude certain types of unregistered alternative provision from scope. We do not want to include children in the registers where a school has arranged unregistered alternative provision as, in these cases, the school is still accountable for the education they receive. We will use this power to ensure that those providers are not required to supply information to the local authority.

The power will also be used to prevent other potential unforeseen cases being brought into scope, and to adjust the exceptions to eligibility due to any changes to the threshold.

## **Will there be any further consultation on this issue?**

We will consult with key stakeholders ahead of determining the initial types of providers that should be exempted from the duty to provide information. We will keep the types of providers that are exempt from the duty under review as more data on the use of out-of-school education providers is made available through use and analysis of the registers. The first set of regulations made under this power will be subject to the affirmative procedure.

## **Regulations setting monetary penalty for failure by an out-of-school education provider to provide information and regulations setting the increase in the penalty if paid late**

### **What does this delegated power do?**

The power gives the Secretary of State the ability to make regulations that set the amount of the monetary penalty to be paid by a person who does not comply with their duty of certain providers of out-of-school education to provide information for Children Not In School registers when requested to do so by the local authority. The Secretary of State will also have the power to define in regulations the amount that the penalty will increase by percentage if the person does not pay the penalty within the deadline.

### **How does the government intend to use this power?**

The government will use this power to set the level of the monetary penalties. It is likely to be initially set at £2,500 to be in line with the penalty for a breach of a School Attendance Order. In cases where the person does not pay the penalty within 28 days, the penalty should increase to a higher amount of up to double the original amount. The power will be available to adjust the level of the penalties as may be needed from time to time, such as to keep in line with inflation and to keep in line with other comparable penalties. It may also be necessary to adjust the level of the penalty in light of experience of the system in operation, as the out-of-school education sector is very varied and it is not easy to predict what level of penalty will be most effective. This power would be exercised in a way similar to the regulations made under sections 444A and 444B of the Education Act that govern monetary penalties for school attendance offences.

### **Will there be any further consultation on this issue?**

We do not intend to consult further on this issue.

# Regulations prescribing the categories of information that a local authority must provide to the Secretary of State

## What does this delegated power do?

Local authorities will be under a duty to provide the Secretary of State with information from their Children Not in School register when the Secretary of State directs those local authorities do so. Regulations under this power will stipulate the categories of information from the registers that must be provided to the Secretary of State by local authorities in response to that direction. This information may relate to individual children or it may be aggregated.

## How does the government intend to use this power?

The government will use this power to stipulate which information contained within the registers must be provided by local authorities to the Secretary of State upon request. This could, subject to the information required for inclusion in registers by local authorities, include the provision of information such as:

- the number of children on register, including breakdown of recent additions and those who have ceased to be registered in the CNIS register
- date of birth
- details of the child's education provision
- ethnicity
- sex
- reasons for electing to home-educate (if applicable)
- any SEND
- whether the child has an EHCP
- whether the child is a Child in Need, Looked After Child, or has a Child Protection Plan
- whether the child is missing education

The government may also use this power from time to time, to adjust the particulars of the information on the registers to be shared, in response to changes made to the regulations setting out which information is to be kept on the register, or in response to unforeseen situations or circumstances, which could be influencing an increase or decrease in those children being registered. For example, allowing for data collection to measure the impact of situations, such as the Covid-19 pandemic.

The government would use this data to evaluate the impact of the registration system on local authorities and eligible families. The information will help inform policy development, for example in relation to the types and level of support needed by families and the resources of local authorities to deliver that support, and whether particular groups need more support than others and why. We will also be able to assess the challenges faced by families in accessing support and those of the local authority in delivering it. We will use the data to understand the reasons why parents home educate, flexi-school, or have been placed in alternative provision and identify any trends or common issues within a particular area. This could help improve understanding of SEND or issues like off-rolling and bullying.

## **Will there be any further consultation on this issue?**

Data collection was detailed in the Children Not In School consultation in 2019 and a significant number of responses were received. We therefore do not intend to consult further on this issue.

## **Regulations prescribing categories of persons to whom local authorities may provide information**

### **What does this delegated power do?**

The power gives the Secretary of State the ability to make regulations prescribing the persons to whom local authorities will be able to provide information from their registers, when the authority considers it appropriate to do so for the purposes of promoting or safeguarding the education, safety or welfare of a child under 18.

### **How does the government intend to use this power?**

The register will include important information on a child or children that may aid another professional's work for the purposes of promoting or safeguarding the education, safety or welfare of the child (or, sometimes, another child such as a sibling). It therefore must be necessary that relevant information can be shared with other persons external to a local authority.

However, this power must be limited and not allow any non-prescribed external person to access the information, for any reason. The government will use the power conferred by this provision to limit who the information may be shared with and will not impinge on the data rights and privacy of home-educating families. We envisage that local authorities will be able to share relevant information with organisations such as the police, Ofsted, National Health Service and other local authorities where appropriate to carry out their shared objectives of protecting children and ensuring they receive a suitable education.

It may be necessary to adjust the persons in scope over time as local authorities get more experience of maintaining their registers, and using them for purposes related to education, safeguarding and welfare, or should a new and relevant safeguarding/education body be created that would benefit from having access to the Children Not In School registers.

### **Will there be any further consultation on this issue?**

As part of our evaluation of the registration system once implemented, we may undertake informal consultation with key stakeholders to assess how this power is being utilised, but there are no plans for any formal consultation.

## **Prescribed form of School Attendance Order**

### **What does this delegated power do?**

The Secretary of State will have the power to make regulations that set a requirement for a standardised form for a School Attendance Order that is issued by a local authority in England, including the format and wording used within it.

### **How does the government intend to use this power?**

The government will use this power to set out that every School Attendance Order form should clearly set out:

- the person named in the order is the parent of a child who has been assessed to not be receiving a suitable education, and as a result that child must attend a named school in order to receive that education
- the details of the named school
- a statement of the penalty to the parent if they fail to comply with the order by not having their child registered as a pupil at that school
- a notification to the parent that they will not be found guilty of an offence of breaching the order if they can prove that their child is receiving a suitable education otherwise than at school

Prescribing a standard form for School Attendance Orders will ensure that such orders contain the right information for the parents on whom they are served and achieve the aim of consistency across all issuing local authorities, making the process clearer for local authorities and parents.

It may also be necessary to adjust the form of School Attendance Orders from time to time to ensure they remain easily intelligible and accessible for recipients. Once the new form of School Attendance Orders has been prescribed and begun to be used in practice, it may be necessary to review the form to ensure it's as clear as possible for parents and local authorities.

The essential contents of a School Attendance Order are set out in the Bill itself, so the Regulations will deal only with the precise wording, the order in which the required information is presented, and the inclusion of any less crucial information.

### **Will there be any further consultation on this issue?**

We do not intend to consult on the use of this power. However, we will undertake informal engagement with local authorities to ensure the form is appropriate and also then review once the form has been used for a period of time.

## **Guidance to be given on registration of children not in school and use of School Attendance Orders**

### **What does this delegated power do?**

The power gives the Secretary of State the ability to issue statutory guidance to local authorities on how they must exercise their duties in relation to keeping a register of Children Not in School, including maintenance, amendments, data sharing, reporting, and the duty to support home educators. In addition, how preliminary School Attendance Order processes are to be used as part of the sanction for parental non-compliance.

### **How does the government intend to use this power?**

We intend to issue statutory guidance to local authorities setting out how they should carry out their duties in relation to keeping a register on a day-to-day basis. We would expect this guidance to include information on:

- how they should work with home educating families
- entering / recording of information
- procedures for changes to the register (amendments, deletions)
- information sharing practices
- the minimum expectation of support to offer to home educators and the types of support to consider offering to families.

It is intended that this guidance will be issued when the relevant provisions of the Bill come into force.

### **Will there be any further consultation on this issue?**

The government may consult or engage with key stakeholders further on new statutory guidance. The statutory guidance will set out in more detail how the amended legislation will work in practice, including case studies and good practice.

## **Key questions and answers**

### **How will local authorities ensure that their registers comply with data protection legislation and the personal information of children and parents will not be available to the general public?**

All local authorities will be required only to process the personal data they collect and store on their register in accordance with the UK General Data Protection Regulation and Data Protection Act 2018. This legislation requires each local authority, as a data controller, only to collect and store the minimum of personal data necessary and to protect and restrict access to the personal data by implementing appropriate technical and organisational measures. Each local authority is also restricted to sharing personal information on its register with only prescribed persons under the new legislation.

### **How does the power of local authorities to require information from out-of-school education providers work alongside the absence of a requirement for these providers to register with local authorities?**

Some out-of-school education providers, such as tuition centres and supplementary schools, are not regulated under education or childcare law, and are not required to register with local authorities or a regulatory body. However, we know that some home educating parents will use these providers as part of their arrangements to educate their child. Some children will also be placed in unregistered alternative provision.

The parent of any child who is eligible for registration will have a duty to provide the local authority with any of the information that the local authority is required to include in the register (unless an exception applies), including details of where a child is being educated otherwise than at school (e.g. in an out-of-school setting) and what proportion of their education they are receiving at those providers.

The details provided by the parent will enable the local authority to identify which out-of-school education providers they can request information from. A threshold as set out in regulations will ensure that the duty to provide information only targets those providers that are used for a substantial proportion of a child's education.

### **How will it be ensured that the Secretary of State receives accurate and quality information from local authorities?**

An overarching benefit of the Children Not In School measures is that there will be greater consistency in information related to children not in school across local authorities in England. This will help ensure local authorities are better able to identify, register and understand the children in scope in their areas to then help undertake existing responsibilities and duties.

Regulations will state how registers should be kept and maintained by local authorities, including how and which information contained within the registers can be shared with those persons that need to know. Furthermore, regulations will provide direction to local authorities stating what information the Secretary of State requires and timeframes for these submissions.

## **How will it be ensured that local authorities only share information with the persons or organisations that the regulations state they may provide information to, and for the correct and appropriate purposes?**

The measures stipulate that information is only to be shared with other persons when it's "appropriate to do so for the purposes of promoting or safeguarding the education, safety or welfare of" a child or person under the age of 18. This is to ensure that personal information is not shared for purposes outside of these purposes (e.g. for commercial reasons).

Regulations will prescribe which persons will be able to access information from the registers to further ensure that it's only done for appropriate purposes.

## **When will statutory guidance be issued to assist local authorities with the discharge of their new duties, and how often will be reviewed and updated?**

We will look to publish statutory guidance as soon as possible following passage of the Bill. In line with other guidance documents, we will keep the statutory guidance regularly under review and update as necessary to ensure it remains fit for purpose.

## **Why are there several delegated powers in relation to Children Not in School?**

Implementing the CNIS registration system across all local authorities in England is a large technical and administrative endeavour which has required several regulations to be included.

The proposed regulations cover areas that either cannot be adequately outlined in the Bill due to their complexity (e.g. children or providers in scope), or the level of detail required (such as detailing the categories of data collected by the LA or the department). In other parts, it is necessary to include the technical details in regulations so that changes may be made once we have a greater understanding of how the registers are working in practice. This applies to the powers around the amount of penalties for failing to provide information, and which persons or organisations could have access to the register.



Department  
for Education

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