Draft amendments for the Children's Wellbeing and Schools Bill

Proposed Amendments

1. **Transparency for Data Access** (a) Require a published audit trail of data access and distribution to track the use of data in the registers of 'children not-in-school' to increase public trust in the new data powers.
2. **Transparency for Data Access** (b)– Require an audit trail of data access and distribution to track usage around the new single unique identifier, to increase public trust in new data powers.
3. **Limit Local Authority Data Collection** – Remove open-ended data collection powers without clear justification, to meet tests of necessity and proportionality.
4. **Restrict national-level Secretary of State's Access to Identifiable Data** – Ensure only aggregated statistics are collected, except to make a direction on the case-by-case basis for adjudication on a School Attendance Order (SAO).
5. **Remove the new powers for Local Authority to give unlimited, identifying, individual-level personal data from the children-not-in-school register in bulk** to Ofsted, His Majesty's Chief Inspector of Education and Training in Wales, or the Welsh Ministers.
6. **Separate Ministerial powers to use individual level data from aggregated data**, conflated in 436F(1) as drafted, about anyone in the Children Not in School registers.
7. **Mandatory Code of Practice** – Ensure Local Authorities take a supportive approach to home education and school attendance issues fro anyone on the CNIS registers.
8. **Home Education Ombudsman** – Establish an independent mediator for disputes between families and authorities.

Further related powers in the Data Use and Access Bill: **Clarify 'Safeguarding' Data Condition** which overlaps with these powers – Require assessments of vulnerability and prevent unnecessary persistence of data processing.

---

1. After Clause 31 (Registration — "Children not in school"), page 60, line 44 insert the following new Clause—

After section 436F of the Education Act 1996 (inserted by section 31) insert—

436FB Use of information in the register at national level

(1) A local authority must, if the Secretary of State so directs in relation to a local authority in England, or the Welsh Ministers so direct in relation to a local authority in Wales, provide the Secretary of State or the Welsh Ministers (as the case may be) with information of a prescribed description from their register under section 436B (whether that is information relating to an individual child or aggregated information as specified in (2)).

(2) The Secretary of State may collect and process—

information relating to an individual child only on a case-by-case basis for the purposes of giving a direction on a school attendance order following a parental request under section 442 and in accordance with UK data protection law;

statistics regarding children in receipt of Elective Home Education (EHE), or Children Missing Education (CME) for the purposes of monitoring educational trends and informing policy;

(3) The data collected under subsection (2)(b) shall be limited to prior aggregated statistical information and shall not include any personal data that would enable the identification of individual children or linkage with other data that would do so. The statistical information may include, but is not limited to—

(a) the collective number of children on any requested date;
(b) the collective number of children throughout a year;
(c) the percentage of children in each category relative to the overall child population.

Member's explanatory statement

This amendment separates the Ministerial powers for use of individual level data and aggregated data that are conflated in 436F(1) as drafted.

This new clause explicitly enables the Secretary of State and Welsh Ministers to collect case-specific individual data for adjudication of school attendance orders which is the case today but for no other purpose. It prevents bulk national-level collection of identifiable home education data about individual children and their family members, as listed in clauses 436C, 436D, and 436E. In 2011 the Welsh Government adopted the UNCRC law in Wales, with the Rights of Children and Young Persons (Wales) Measure 2011. The Measure places a duty on Welsh Ministers to have a due regard to the UNCRC and its Optional Protocols when making their decisions. This promotes and protects the child's right to privacy under UK law, the UNCRC Article 16 as adopted into law in Wales, and the ECHR Article 8.This is necessary to uphold public trust in families of children-not-in-school who may support the use of their personal data for direct purposes by the Local Authority, but who do not support the State's centralised collection of the same identifying data without any defined purpose.

---

2. With regard to 16LA Duty to share information and the new Single Unique Identifier

Clause 4, Page 7, line 19, at end insert—

(10) The relevant person must maintain a record of processing of the disclosures made under this section.

[NOTE: This also requires that (10) as drafted, becomes (11).]

Explanatory note

Since this section is about children under the Children Act 2004 (safeguarding partners for local authority areas) (e.g. not about generic home education) it expands existing data sharing powers and practices. Clause 4 increases the data processed to include a new single unique identifier, which is yet to be defined. Given its potential sensitivity, the record of processing (ROPA) for this should be explicit in order to increase public trust in the expanded use of a national identifier.

---

3. Clause 31, section 436C Content and maintenance of registers (subsection (3))

Page 56, leave out lines 32-33

Explanatory note

This removes, "A register under section 436B may also contain any other information the local authority considers appropriate." *In the Schools Bill 2022 peers opposed limitless data collection powers and here too it should be removed as it may encourage a breach of the data protection principles of necessity and proportionality. Unclear wording leads to confusion around what is "appropriate" and heightens dispute between Local Authorities and families about what information is the minimum and maximum requirement and with what frequency of collection, as well as who and what may be in scope.*

---

4. Clause 31 Registration — "Children not in school"

Clause 31, Page 59, leave out lines 31 to 45

Explanatory note

As drafted, this clause conflates the Ministerial powers for use of individual level data and aggregated data in 436F(1).

This change removes the duplication of local authority powers already explicitly listed in the same clause 436F(3), page 60 lines 5-10, which empower the local authority to share identifying individual level data with a long list of organisations prescribed persons listed in section 11(1) or 28(1) of the Children Act 2004 (arrangements to safeguard and promote welfare).

This change would also remove the Secretary of State or Welsh Government powers to copy identifiable data from the local authority about individuals in bulk. There is no justification given why at national level, Ministers need the names or identifying data for every individual in the registers that may include parents, a wide range of family members, others involved in their education, or "any other information the local authority considers appropriate" under 436C(3).

Aggregated, non-identifying data may be lawfully handed over already to anyone from the local authority and is exempt from data protection law. There is no restriction to sharing

statistical data and therefore explicit powers are unnecessary to enable its sharing as described in lines 35-37.

---

5. Clause 31 Registration — "Children not in school"

Clause 31, Page 60, leave out lines 14 to 21

Explanatory Note

This change would remove the new powers for Local Authority to give unlimited, identifying, individual-level personal data from the children-not-in-school register in bulk to Ofsted, or His Majesty's Chief Inspector of Education and Training in Wales, and the Welsh Ministers.

There is no case made why these national institutions require the named, identifying data of every individual child, their families, or the names of those involved in their education, or "any other information the local authority considers appropriate" under 436C(3) from people who have not consented to their data being processed by the Local Authority, nor its onwards distribution.

Where information is statistical or non-personal data, it is exempt from data protection law, there is no restriction on its sharing, and therefore the Bill would not require explicit new powers to share statistical data, but it may be desirable to do so.

6. After Clause 31 (Registration — "Children not in school"), page 60, line 44 insert the following new Clause—

After section 436F of the Education Act 1996 (inserted by section 31) insert—

436FB Use of information in the register at national level

(1) A local authority must, if the Secretary of State so directs in relation to a local authority in England, or the Welsh Ministers so direct in relation to a local authority in Wales, provide the Secretary of State or the Welsh Ministers (as the case may be) with information of a prescribed description from their register under section 436B (whether that is information relating to an individual child or aggregated information as specified in (2)).

(2) The Secretary of State may collect and process—

(a) information relating to an individual child only on a case-by-case basis for the purposes of giving a direction on a school attendance order following a parental request under section 442 and in accordance with UK data protection law;
(b) statistics regarding children in receipt of Elective Home Education (EHE), or Children Missing Education (CME) for the purposes of monitoring educational trends and informing policy;

(3) The data collected under subsection (2)(b) shall be limited to prior aggregated statistical information and shall not include any personal data that would enable the identification of individual children or linkage with other data that would do so. The statistical information may include, but is not limited to—

(a) the collective number of children on any requested date;
(b) the collective number of children throughout a year;
(c) the percentage of children in each category relative to the overall child population.

Explanatory note

This amendment separates the Ministerial powers for use of individual level data and aggregated data that are conflated in 436F(1) as drafted.

This new clause explicitly enables the Secretary of State and Welsh Ministers to collect case-specific individual data for adjudication of school attendance orders which is the case today but for no other purpose. It prevents bulk national-level collection of identifiable home education data about individual children and their family members, as listed in clauses 436C, 436D, and 436E. In 2011 the Welsh Government adopted the UNCRC law in Wales, with the Rights of Children and Young Persons (Wales) Measure 2011. The Measure places a duty on Welsh Ministers to have a due regard to the UNCRC and its Optional Protocols when making their decisions.This promotes and protects the child's right to privacy under UK law, the UNCRC Article 16 as adopted into law in Wales, and the EHRC Article 8.This is necessary to uphold public trust in families of children-not-in-school who may support the use of their personal data for direct purposes by the Local Authority, but who do not support the State's centralised collection of the same identifying data without any defined purpose.

7. Page 78, line 38 After Clause 35 Guidance on children not in school and school attendance orders

After section 436T of the Education Act 1996 (as inserted by section 33) insert new clause—

Statutory Local Authority Code of Practice, home education and school attendance

(1) The Secretary of State must issue guidance, including a code of practice to be followed by Local Authorities in England and Wales in respect of their functions under Clause 31 prior to the commencement of the clause.

(2) Before issuing a code of practice, the Secretary of State must consult—

(a) families and organisations with experience of Home Education and/or barriers to school attendance and/or the school attendance order procedure;
(b) organisations with relevant experience of mental health and well-being;
(c) organisations with experience of data protection and the Information Commissioner;
(d) the Welsh Ministers;
(e) and such other persons as may be considered appropriate.

(3) The Code of Practice must specify how Local Authorities are to take a holistic approach to home education registration and school attendance issues; their process for both the issue and revocation of a school attendance order following a parental request under section 442; the mental health of the families' affected, and the provision of support to families and children."

(4) Regulations under subsection (1) are to be made by statutory instrument no later than 3 months prior to the commencement of Clause 31 and are subject to the affirmative resolution procedure.

Explanatory note

Families who offer a suitable education and safe environment to children may still not want to be on a state register. This Bill pushes non-consensual compulsory registration onto them, which will create concern and adversarial relationships between families and Local Authority staff. The amendment is designed to require the Secretary of State to issue a statutory code of practice on how Local Authorities must take a holistic approach to registration of home education, including the mental health of the children and parents and providers affected and the provision of support, and revocation of school attendance orders.

---

8. Page 79, line 2, After Clause 35, insert the following new Clause—

Home Education Ombudsman

(1) Prior to the commencement of Clause 31: Registration, the Secretary of State must appoint a person as the Home Education Ombudsman ("the Ombudsman") to mediate between families and—

(a) Local authorities, or persons acting on their behalf;
(b) the Department for Education;
(c) the Welsh Ministers;
(d) providers of education;
(e) independent educational institutions;
(f) magistrates courts;
(g) persons with interests across devolved jurisdictions; and
(h) any other appropriate persons and organisations.

(2) The Ombudsman must—

(a) possess relevant experience and independence and must not be an employee of the Department for Education, or the Welsh Ministers; and
(b) be appointed in consultation with the home education community.

(3) A local authority must consult the Ombudsman before any investigation into the education of homeschooled children to assure protection of the rights of children and families, including—

(a) freedom of expression;
(b) freedom of religion;
(c) the right to privacy;
(d) Article 2 of Protocol No.1 of the European Convention on Human Rights;
(e) the Rights of Children and Young Persons (Wales) Measure 2011.

(4) Parents of children who are being educated otherwise than in a school may appeal to the Ombudsman in lieu of judicial review, with regard to treatment by their local authority or the Department for Education, including where the parents believe the local authority or the Department have acted ultra vires.

(5) Where an appeal under subsection (4) has been made, the Ombudsman must attempt to mediate between the parties to find a solution with which all parties agree, on behalf of the child and without charge to the child, or to their parents.

(6) When mediating, the Ombudsman must take account of the rights of children and parents, including the rights under subsection (3)(a) to (e).

Explanatory note
This aims to provide a means to more cost effectively resolve disputes in the courts and for Local Authorities, families, children and caregivers to seek advice and if necessary appeal decisions made in the course of any attempt to register families and providers of education to children who are not in school and in receipt of suitable education otherwise, or school attendance orders.

Proposed related Amendments for the Data Use and Access Bill

Changes to data protection law are on the way that remove safeguards about the processing of vulnerable individuals for the purposes of undefined safeguarding aims. Stephen Cragg KC highlighted in his Opinion on the prior version of the Bill, the DPDI Bill, some of these key areas of concern, including that the legitimate interests for the purposes of 'safeguarding' condition is drawn too widely and requires safeguards. It is a cross-cutting area with the data sharing powers in the Children's Wellbeing and Schools Bill in Clauses 4, 16, and 31.

Numbering will depend on how the Bill is finalised after ping pong.

Schedule 5: Risk assessment of Vulnerable Individuals

Page XXX. After paragraph X (b), after the definition of "vulnerable individual" insert the following new sub-paragraph—

> "X. This condition is met only where the controller has made an assessment of vulnerability and makes it available to the data subjects prior to processing, at minimum on an annual basis for any subsequent processing.

Explanatory note
Transparency and accountability obligations must not be removed from data controllers when processing personal data for the purposes of safeguarding vulnerable individuals based on an undefined characteristic that may change, and that may apply or not apply to any given individual at any point in time. The data subjects may not be aware that they have been categorised as vulnerable and therefore data is being processed on the basis of legitimate interests under the condition that exempts controllers from offering the data subject an opt-out or requiring a balancing test based on the data subject's particular case as today.

Key questions and areas of concern:

This amendment seeks to explore whether the government intends to remove transparency and accountability obligations from data controllers when processing personal data for the purposes of safeguarding vulnerable individuals based on an undefined characteristic that may change, and that may apply or not apply to any given individual at any point in time

By adding a requirement to make an assessment of vulnerability and ensure its public availability to affected data subjects, the amendment raises questions about the practical implementation of safeguarding measures, including:

1. How data controllers determine vulnerability,
2. The mechanisms for ensuring that data subjects are informed and have visibility into assessments of their categorisation as vulnerable affecting their data rights,
3. The balance between transparency, professional confidentiality, and the rights of data subjects and that the balancing test currently required will no longer be mandated.

The government would need to clarify whether this additional transparency aligns with its intentions for safeguarding vulnerable individuals and maintaining compliance with data protection principles.

Amendment to Schedule 5: Attribution of Vulnerability to Individuals

Page XXX. In paragraph X, after the definition of “vulnerable individual”, insert the following new sub-paragraph—

> “X. The condition ceases to apply when the nature of the vulnerability for the individual, or the type of individual, is no longer present or has otherwise expired.

Explanatory note

Clarification is required on the safeguards and processes for ensuring that processing activities tied to an undefined and changeable characteristic of ‘vulnerability’ do not persist unnecessarily or disproportionately.

Key questions and areas of concern:

This amendment seeks to clarify whether and how the conditions for processing personal data based on the vulnerability of an individual should expire when the individual's circumstances change. It raises the following questions for consideration

1. Time-Limited Processing: Should the processing of personal data for vulnerable individuals automatically continue when the vulnerability no longer exists? How and when is that to be assessed by data controllers and processors?
2. Assessment and Review: What mechanisms are in place to ensure that data controllers regularly assess whether the justification for processing based on vulnerability remains valid?
3. Impact on Data Subjects: Since data subjects who are vulnerable are also more susceptible to data exploitation and otherwise have a lack of protection or agency, can the government justify in what circumstances such a persistent condition would apply that would be proportionate to necessitate the removal of the data subject’s rights to a balancing test and being offered an opt-out?
4. Practical Implementation: Are data controllers equipped to identify and act on changes in an individual’s vulnerability in a timely and accurate manner and how will this not simply lead to lazy application of this weakening of the protections that should accompany legitimate interests and are (rightly) already necessary for processing under the basis of Vital Interests?
5. The reason this is important is that this is a key element of data protection law: “conditions” create certain permission or exemptions from other aspects of data protection law that protect people from their personal confidential data in ways they do not expect or would be compatible with their other rights, like human agency and dignity. If another adult has decided arbitrarily to remove someone’s rights, there should be justification that can be if not challenged, at the time, at least scrutinised

and challenged when the condition no longer applies. The drafting of the Bill as it is makes no distinction or limitation on this characteristic so a company could decide that it will simply use everyone's personal confidential data as adults that the company collected from those people as a child and retain the exemptions from the law to need to do a risk assessment or "balancing test" as it is called, forever. Whereas in data protection law, without the new condition the Bill creates, you would need to have greater respect for the data over time and a duty towards the people it is from.

Proposed New Clause: Information to Be Provided to Data Subjects

Page XX, in clause XX, insert the following new sub-paragraph—

> "Exemptions from Data Protection law Article 13, Information and access to personal data; and Article 14, Information to be provided where personal data have not been obtained from the data subject; shall not apply where the data subject is a child at the time of data collection or at the time of any data processing.

Explanatory note

The exemption regarding the obligation to provide information about further processing should not apply to children, since these purposes will be broadened if the definition of research is explicitly expanded as per changes that result to consent from the draft Bill, "whether carried out as a commercial or non-commercial activity". Article 12(1) of the GDPR necessitates informed processing to form part of the most fundamental adequate protection, in particular where data is collected from or about children that may have lifelong effects, and in the spirit and letter of GDPR recitals relevant for children (38) Special Protection of Children's Personal Data (58) The Principle of Transparency (59) Procedures for the Exercise of the Rights of the Data Subjects (60) Information Obligation (73) Restrictions of Rights and Principles. Commercial reuses of personal data necessitates stricter safeguards and transparency in such contexts since the long 'daisy chain' of multiple processors' reuse will otherwise become entirely unaccountable to the data subject, to a child, or as future adults. Informed processing is fundamental to public trust in data processing, and fundamental to data protection law.