Baroness Barran
Parliamentary Under-Secretary of State for the School System
Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/contactus/dfe

Baroness Chapman of Darlington
House of Lords
London
SW1A 0PW

7 July 2022

Dear Jenny,

I promised to write to you during Day 2 of Lords Committee on the Schools Bill to provide further information on the operation and parameters of the proposed education and childcare behaviour orders, contained in amendment 148 of the Schools Bill (Hansard, column 1370, 13 June 2022). Amendment 153 of the Bill introduces the corollary offence of breaching one of these orders. I would also like to follow up on Baroness Penn's offer that we would write to you in response to the questions you raised regarding the Children Not in School registers during Day 5 of Lords Committee on the Schools Bill.

The Government is proposing that magistrates' courts be given the power to exercise discretion to impose an order on any person convicted of the offence of conducting an unregistered independent educational institution, under section 96 of the Education and Skills Act 2008. In accordance with existing legislation, a "person" can refer to both an individual, and corporate or unincorporated bodies.

The purpose of the order is to prevent a person from placing children at risk of harm by conducting an unregistered independent educational institution. These orders will achieve that purpose by enabling the courts to impose restrictions which may place requirements or limits on the activities that recipients may lawfully undertake which could be used as a cover for operating an illegal unregistered independent school. The intention is to prohibit the behaviour which led to the original conviction and introduce restrictions which, if this behaviour were to re-occur, it would be more efficient to evidence. These orders therefore provide a mechanism to identify and prevent re-offending by individuals who through their previous behaviour have demonstrated themselves to be willing to ignore a regulatory regime intended to keep children safe.

It will be for the courts to decide what, if any, restrictions or requirements to impose in each individual case and there is no limit on the sorts of activities which may be covered by one of these orders, provided that the court thinks this appropriate to prevent the risk of the person causing harm to children. However, the intended purpose is <u>not</u> to place a general obligation on an individual that would prevent them

from working with children outside the context of an educational or childcare setting. To use your formulation in the debate (Hansard, column 1370, 13 June 2022), the object of these orders is to disrupt someone's professional ability to engage in running an illegal independent school, not to impinge in other areas of their life and their contact with children (unless doing so is necessary to prevent the running of an unlawful educational institution).

As illustrative examples, I consider it possible that recipients of these orders could be prohibited from the teaching, supervising, instructing or caring for children who are not their own during specified hours (e.g. weekdays between the hours of 8am and 4pm) or in a specified building or postcode (e.g. where the original offence under section 96 was conducted), or a combination of the above, for a specified period of time.

This example order would not stop an individual supervising their own children or babysitting for friends and neighbours, providing teaching in areas other than those specified in the order or providing teaching outside 'normal school hours'. Further, these orders are not necessarily intended to prevent an individual applying for a role in another educational setting or engaging in other educational activity beyond that specified by the terms of the order, although, as I stated in the debate (Hansard, column 1370, 13 June 2022), other regulatory regimes may apply at that point, if appropriate.

Any person who has this order made against them will have a right to apply to the court to vary or end the order. If there were specific, lawful activity that the defendant wished to undertake that might be restricted by the proposed order, such as working in a registered independent school or childcare setting, then this activity could be excluded from the order. I would expect courts to exclude from the order any such activities that clearly could not be a cover for reoffending.

I further note that both the imposition of one of these orders, and their contents, can only follow an application by the prosecution and if the court considers this appropriate to address the risk posed by the person subject to an order. There is also an automatic right of appeal to the Crown Court against the sentence imposed by a magistrates' court. I consider these important safeguards on the exercise of the power and the protection of a person's private and family life.

Thank you for your confirmation in the debate that you supported the principle and intent behind the introduction of education and childcare behaviour orders, and amendments 148 and 153. I trust that the above gives you the clarification you were seeking.

I would also like to address the questions you raised regarding the Children Not in School registers during Day 5 of Lords Committee on the Schools Bill. Thank you for your contributions to this important debate. You asked whether the regulations in relation to the sharing of data by local authorities to other parties could be made available to the House before Report (Hansard, column 283, 22 June 2022). You also asked for further information regarding the penalty timeframes for a School Attendance Order (Hansard, column 294, 22 June 2022)

The power to require local authorities to share information with the Secretary of State has a narrow scope, as it only applies to information included within a local authority register. Furthermore, the information collected will be used for specific reasons: for the department to analyse, identify trends and feed this into policy development and to support safeguarding.

The information held in registers will be protected under UK-GDPR like any other personal data. The intention of the regulations is to limit the persons to whom local authorities may give information from registers under section 436F(2) to significant bodies. We envisage that local authorities will be able to share relevant information with organisations such as the police, Ofsted, the 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.

Following the passing of the Domestic Abuse Act 2021, the Home Office have consulted on the draft Domestic Abuse statutory guidance and the final guidance will be published in due course. This document will provide guidance to frontline professionals who have responsibility for safeguarding and supporting victims of domestic abuse, including children. It will set out further information about the impact of domestic abuse on children and include guidance for a range of professionals including those working in children's social care and early years and education settings, where appropriate signposting relevant resources.

The final guidance is planned to include a section on safe and effective information sharing to support multi-agency working to respond to domestic abuse. This will make clear that decisions about what information professionals share, and when, should be governed by a clear and collective understanding about the risks to safety for an individual and family, and how those risks and the other needs within that family can be addressed.

We will continue to work closely with local authorities, home educating parents, and other interested stakeholders throughout the progression of the Bill, on the level of requirements and detail to be set out in regulations and statutory guidance, to ensure the new registration system works for everyone.

Regarding your query on the penalty timeframes for the offence of breaching a School Attendance Order, the offence carries a maximum penalty of 51 weeks to be read as 3 months' imprisonment until the commencement of section 281 of the Criminal Justice Act 2003. The Government has no present plans to commence section 281. However, it is standard drafting practice to include the provision in the event of section 281 coming into force.

Our intention, through new section 436Q(9), is for this offence to carry a maximum penalty of 3 months' in order to create a consistent framework with other similar offences, such the penalty for the offence of knowingly allowing a school pupil to fail to attend school. It is important to align the penalties for these offences for the reasons I set out in the debate.

Finally, it may be helpful for me to clarify the process, where there may have been some misunderstanding on the question of criminal sanctions raised during both

Days 4 and 5 of Committee.

The school attendance order process is only triggered in one of two cases. First, where the parent appears to have failed to provide information for maintenance of the registers. Second, where following informal enquiries it appears to the local authority that a child is not receiving a suitable education.

This is not intended to criminalise the parent but to check whether the child is receiving a suitable education. The consequence of failing to provide information is not criminal – a point which I made in the debate – rather it simply starts the process for a School Attendance Order. It is important to recognise that, as is the position in law, the process only leads to a School Attendance Order if the parent fails to show the local authority that the child is suitably educated.

Where a School Attendance Order is served, a parent only commits an offence in two situations: if they do not enrol their child at the named school, or if the child is enrolled at the named school but the parent de-registers the child without following the relevant procedure. The parent can, however, prevent an Order being served, or have an Order revoked, at any time by showing that their child is being suitably educated. The key point is that if the provision is suitable, then the local authority will not serve the Order, and if there is no Order, there can be no offence.

In addition, even if a parent breaches a School Attendance Order, they are still not guilty of an offence if they can prove in court that the child is being suitably educated.

If, in those rare cases where the steps above have been completed and the parent still cannot prove they are providing a suitable education, a parent may be found guilty of committing an offence, and be subject to a fine or prison sentence imposed by the Magistrates' Court.

We would therefore expect there to be no impact on parents who are already providing a good education for their child, as they should have ample opportunities to be able to demonstrate, during any of the stages above, that they are providing a suitable education.

I am placing a copy of this letter in the library of the House.

Yours sincerely,

BARONESS BARRAN
PARLIAMENTARY UNDER-SECRETARY OF STATE