

FAQS – Children’s Wellbeing and Schools Act 2026

1. Parental responsibility vs. local authority role

Parents continue to hold the legal duty to provide a suitable education under Section 7.

The Act does not transfer this responsibility to the local authority. Instead, it:

- Clarifies the LA’s role in identifying children not receiving suitable education (already a duty under Section 436A)
- Introduces mechanisms for visibility, not control of educational philosophy

LAs are not determining how you educate, but whether education appears *suitable in a broad sense*, consistent with established case law.

2. Standard applied to home education vs. schools

The law continues to recognise that:

- Home education is not the same as school education
- “Suitable” does not mean “matching school standards”

The Act does not create a higher legal standard, but it does:

- Formalise how LAs may request information where suitability is unclear
- Expect a reasonable level of cooperation

The benchmark remains Section 7 and case law, not the national curriculum.

3. Safeguarding thresholds and intervention

We want to be clear:

- The Act does not replace Children Act thresholds (e.g. Section 47)
- Safeguarding investigations still require appropriate cause and proportionality

What has changed is:

- A preventative safeguarding approach, ensuring children are visible and not overlooked
- Information gathering that is non-intrusive and proportionate

Routine engagement is not the same as a child protection investigation.

4. Powers of the local authority

The Act itself provides the new statutory basis for:

- Maintaining a Children Not in School register
- Requesting information where needed

LAs will not act beyond their powers — rather, their powers are being updated through Parliament.

All actions must still comply with:

- Administrative law
- Human Rights Act
- Proportionality principles

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5. School Attendance Orders (SAOs)

The position on SAOs remains consistent:

- They are a last resort
- Used only where it appears education is not suitable

Parents retain the right to:

- Present evidence of suitability
- Request an alternative school

The aim is to secure suitable education, not to override reasonable parental choice.

6. Evidence and record keeping

It remains correct that:

- Parents are not legally required to keep formal records or follow a curriculum

However, the Act allows LAs to request:

- Reasonable information to help determine suitability

This does not prescribe format:

- Conversations, summaries, or informal examples are acceptable

The expectation is proportionate engagement, not bureaucratic compliance.

7. Suitability and case law

The Act does not replace established [case law](#) such as:

- *Harrison v Stevenson, 1981*
- *Phillips v Brown, 1980*

Suitability remains:

- Individual
- Flexible
- Not required to resemble school

LA officers will continue to be expected to apply these principles in practice.

8. Data protection and GDPR

All data collection will:

- Follow UK GDPR principles
- Be limited to what is necessary and proportionate

LAs must demonstrate:

- Clear purpose
- Data minimisation
- Appropriate safeguards

The new duties will be implemented within existing data protection law, not outside it.

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9. Equality and impact on specific groups

We recognise that:

- Many EHE families include SEND children, faith groups, and Traveller communities

LAs are legally required to:

- Complete and apply Equality Impact Assessments
- Ensure policies are proportionate and justified

The aim is to support vulnerable groups, not disadvantage them.

10. Concerns about political framing

Local authorities operate under:

- Public law duties of objectivity and fairness
- A requirement to act based on evidence, not rhetoric

Regardless of national debate, LA decisions must:

- Be lawful
- Be case-specific
- Avoid bias

11. Presumption of innocence

The Act does not create a presumption of wrongdoing.

Instead, it reflects a safeguarding principle:

Children should be visible and known, even where no concerns are present.

Engagement is about:

- Assurance, not accusation
- Prevention, not presumption of harm