

Obligation to Attend School: the English Law^{*}

Anwar (Andy) N. Khan

*Professor of Legal Studies, and Director of Research, Athabasca University, Alberta,
Canada (Formerly of the University of Leeds, England)^{**}*

Introduction

The laws of education in all Western democracies, including England, provide for efficient and mandatory schooling for children between certain ages, normally between 5 and 16. The Universal Declaration of Human Rights (1948) stipulates minimum standards of education in every country and states that 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory'. This is reiterated in the International Covenant on Economic, Social and Cultural Rights (1966), in which it is emphasised that the signatory countries should 'work out and adopt a detailed plan of action for the progressive implementation of the principles of compulsory education free of charge for all'.

In England, despite massive statutory changes in education during the last two decades,¹ compulsory education for children between the ages of five and sixteen remains a cardinal principle of society's concern for certain basic minimum educational provision.² The *Education Act* 1996, which modified and consolidated previous provisions, has not changed any fundamental principle in this respect. Similarly, manifold changes in the law of education introduced in 1997 and placed in the 1998 parliamentary pipeline by the New Labour government, (there are going to be many changes because Tony Blair before taking over as the Prime Minister declared that his three priorities would be 'education, education, education') do not amend the truancy or compulsory education provisions. Despite the recent evolution of a more individually-orientated and rights-based society, no one appears to advocate or defend parents' right *not* to educate their children. However, in every country, there are parents who want their children to be educated outside the school or at home, primarily for religious reasons. That wish, mostly, is granted, but with strings attached, for example that the home or the other place must be open for inspection by the education authority or that the national curriculum must be taught.

This paper explains and analyses the English model of compulsory schooling.

Rationale Behind Compulsory Education

The second half of the 20th century has seen compulsory education for children of certain ages at the forefront of the Western socio-educational developments. The thinking seems to be that the

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Also Adjunct Professor of Business Law, Curtin University, Perth, Western Australia; and UN-sponsored Professor of Public Law, University of Zimbabwe.

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liberal ideals of democracy cannot bloom or survive without an 'educated' population. As was said by the famous nineteenth-century jurist Blackstone, it is not easy:

to imagine or allow that a parent has conferred any considerable benefit on his child by bringing him into the world, if he afterwards entirely neglects his culture and education and suffers him to grow up like a mere beast, to lead a life useless to others and shameful to himself.³

The Universal Declaration of Human Rights emphasises:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups.

The International Covenant on Economic, Social and Cultural Rights states that 'education shall enable all persons to participate effectively in a free society, promote understanding [and] tolerance'.

In compliance, *inter alia*, with the international obligations, all Western democracies prescribe compulsion for parents for schooling their children. As the Supreme Court of Canada has stated, the State has a valid interest in the education of its population:

Whether one views it from economic, social, cultural or civic point of view, the education of the young is critically important in our society ... Education is today a matter of prime concern to governments everywhere. Activities in this area account for a very significant part of every provincial budget. Indeed, in modern society, education has far-reaching implications beyond the province, not only at the national, but at the international level.⁴

In the same vein, the United States Supreme Court's view is that education is the most important function of the state:

Compulsory school attendance laws and the great expenditure for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities ... it is the very foundation of good citizenship ... it is a principal instrument in awakening the child to cultural values ... it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.⁵

The English law of education, in line with many other countries' laws, recognises that it is not necessary to receive education only in public schools. Therefore, detailed rules are provided for giving parents the choice of either sending their children to independent, non-State schools or to arrange the education of their children by themselves.

Some would argue that compulsory 'schooling' does not necessarily provide 'education' to all such children.⁶ Some parents question whether schooling does provide education. However, one of the purposes of compulsory schooling is said to be the removal of young children from the

labour force. This is very true in the developing countries where many children have no opportunity to attend school, let alone get proper education; for example in India and Pakistan millions of young children are forced to work. Myron Weiner (1991),⁷ points out:

Primary education in India is not compulsory, nor is child labor illegal. The result is that less than half of India's children between ages of six and fourteen - 82.2 million - are not in school. They stay at home to care for cattle, tend younger children, collect firewood, and work in the fields. They find employment in cottage industries, tea stalls, restaurants, or as household workers in middle-class homes. They become prostitutes or live as street children, begging or picking rags and bottles from trash for resale. Many are bonded laborers, tending cattle and working as agricultural workers for local landowners. 'The government', a senior education official told me, 'should not force poor parents to send their children to school when it cannot provide employment for all adults. Children are an economic asset to the poor. The income they bring in and the work they do may be small, but parents close to subsistence need their help.'

Some writers and parents express the opinion that compulsory State schooling is not education but its antithesis. Some academic writers have even maintained that State schooling cannot be equated with education because of its rigidity, uniformity or secularity. Some parents withdraw their children from the compulsory State schooling because of their belief that compulsory public schooling tends to be too narrow and thus counterproductive. As Bessant & Spand (1976) pointed out in 1976:

In many ways the differences between education and schooling are differences between institutions and people. Institutions organise. They allow and disallow. They limit individual choice in a manner which is in the interests of the preservation of the institutions. People can restrict their own choices but when left to their own devices they tend to explore and broaden their experience ... It is these boundaries which mark the difference between education and schooling.⁸

However, the previous British Conservative governments did not accept these arguments or criticisms, instead blaming teachers and 'lefties' for parental dissatisfaction. For example, according to Margaret Thatcher, her government wanted 'education to be part of the answer to Britain's problems, not part of the cause'. She complained that 'in the inner cities - where youngsters must have a decent education if they are to have a better future - that opportunity is all too often snatched from them by hard left education authorities and extremist teachers'.⁹

Complex Reasons of Truancy

Compulsory or mandatory schooling has a flip side: high or unacceptable rates of truancy. While in developing countries where free or compulsory education is not available, millions of parents and children make enormous sacrifices for the sake of education, in the western countries where education is free, children for various reasons run away from schools!

As observed in *Truancy: the Politics of Compulsory Schooling*,¹⁰ school non-attendance:

is more complex than the term 'truancy' implies, and is mediated by historical, legal, sociological, political and economic relations that circumscribe schooling and the child's experience of it ... Explanations of truancy as a form of individual pathology or anti-school culture are over-simplistic since they ignore the ways in which issues of attendance and non-attendance constitute two faces of the same coin.

Many commentators now accept that there are different and complex causes of truancy; and therefore new solutions have to be found by government, local education authorities and teachers.¹¹ However, general public perceptions may not always be in conformity with recent research. As one author notes:

The present political climate supports ever tougher measures to combat non-attendance at school. Moral condemnation of truancy is underpinned by an increasing emphasis, by the Government in particular, on links between truancy and criminality and on the need for parents to take greater responsibility.¹²

Forcing Children to Accept Only Public Education

While a country's laws may force parents to send their children to school, compulsory public-schooling does not necessarily equate with 'education'. Legislatures and courts are aware of this, and they recognise that the State must allow parents the right to select their children's education, so that proper schooling in non-public institutions or elsewhere has been regarded as sufficient to fulfil the compulsory schooling requirement. The following statement of Reynold J. of the United States Supreme Court is appropriate in this context:

The fundamental theory of liberty upon which all governments ... repose excludes any general power of the State to standardise its children by forcing them to accept instructions from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty to ... prepare him for additional obligations.¹³

It is arguable that the responsibility for the development of the child must be shared between the State and parents, because parents have the duty to secure compulsory school attendance and the State has the responsibility of ensuring the provision of proper, suitable and full-time education. It is through such collaborative efforts that parents participate in, and share the inculcation of, the society's values and ideals - what some would call social-construction.¹⁴

The previous British Conservative governments of Thatcher and Major had taken credit for the policy (it has its admirers and detractors) of giving parents many choices, so that they may participate in the education of their children and in the policy-making processes of education itself. The major planks in that claim are the many recent legislative changes, and the Parents Charter issued in 1991.¹⁵ The New Labour Government of Tony Blair has already started dismantling some of the radical legislative provisions of the previous Conservative governments, for example the *Education (Schools) Act* 1997, which removed the 'assisted places' scheme, and the *Education Bill* 1998, which introduces major changes *inter alia* in school organisation and curriculum (Tony Blair's 1998 slogan: 'back to basics'). However, no change is envisioned in the laws of compulsory education and truancy.

Failure to Secure Regular School Attendance

A parent¹⁶ of a child of compulsory school age¹⁷ is under a statutory duty to cause the child to receive¹⁸ efficient full-time education suitable to the child's age, ability and aptitude, by regular school attendance or otherwise.¹⁹ According to section 144 of the *Education Act 1996*,²⁰ when a child who is registered at school and is of compulsory school age fails to attend school regularly, that child's parent is considered to have committed an offence.²¹ There are certain circumstances, as provided under subsections 3-6, when a child's absence from school is excusable:²² officially granted leave;²³ sickness;²⁴; any unavoidable cause;²⁵ religious reasons;²⁶ where the school is not within walking distance²⁷ and no suitable arrangement for transportation has been made by the local education authority;²⁸ or where the child has no fixed abode, the parent is engaged in a trade or business of such a nature as to require him/her to travel from place to place, the child has attended a school as regularly as the nature of that trade or business permits, and the child has attended school at least 200 times during a 12-month period.²⁹

School Attendance Orders

A parent of a child of compulsory school age is under a duty to secure regular school attendance.³⁰ If it appears to the local education authority that a child is not receiving a suitable education through regular school attendance³¹ or otherwise,³² it may serve a written notice on the child's parent, ordering him or her to show within 15 days that the child is being suitably educated.³³ If the local education authority is not satisfied that a child is being suitably educated out of school, it must serve on the parent of the child the 'school attendance order',³⁴ in the prescribed form, requiring the parent to cause the child to become a registered pupil at a school named in the order.

Before it serves the school attendance order under section 437 of the *Education Act 1996*, the local education authority is required by s. 438 of the 1996 Act to serve a notice in writing on the parent, informing him or her that it intends to serve the order, and giving the names of school(s) that will be specified in the order.³⁵ A school will be named in the order unless one of the following steps takes place.

1. If the notice specifies one or more alternative schools and the parent selects one of them within 15 days, the school he or she selects will be named in the order.
2. If within 15 days (a) the child is admitted to a State school under an authority different from the one which issued the notice, and the issuing authority is notified of the admission, or (b) the child is admitted to a State school in the same authority that issued the notice, and the authority by whom the notice was served is notified of the application, that school will be named in the order.
3. The parent may request the local education authority to pay for the education of the child in a private school, and if a place for the child is secured, the local education authority may do so (it rarely does), in which case that school will be named in the order.³⁶
4. If the parent is willing to pay the fee for the independent school, and secures for his or her child a place there, that school will be named in the order.

There are certain exceptions, whereby the local education authority is prohibited from specifying certain schools, e.g. the school may already be full,³⁷ or the child may already have been excluded from that school.³⁸ The local education authority is enjoined to consult the school in question before specifying it in the notice.

Amendment/Revocation of the School Attendance Order

Where a parent secures a place for the child at a State school different from the one named in the order, and requests the local education authority to amend the order by substituting the newly named school for the original one, the authority is obliged to comply with the request. Where the school attendance order is in force, the parent can also apply to the local education authority asking for the school attendance order to be revoked on the grounds that the parent has made arrangements to the satisfaction of the local education authority for the child to receive a suitable education other than at a public or private school. If the authority refuses, the aggrieved parent can refer the question to the Secretary of State for Education.

Education Supervision Orders

As of 1989, it is the duty of every local education authority, before it institutes criminal proceedings for failure to comply with a school attendance order, to consider whether it would be appropriate to apply for an education supervision order. This may be instituted with or instead of the criminal proceedings.³⁹ A court (i) that finds a parent guilty of failure to comply with a school attendance order, or (ii) that is considering charging a parent with failure to secure regular school attendance, is empowered to direct the prosecuting education authority to apply for an education supervision order with respect to the child, unless the authority decides that the child's welfare will be satisfactorily safeguarded without a supervision order. (This is important because only the local education authority can apply for an education supervision order).⁴⁰

However, if the local education authority decides not to apply for an education supervision order, it must inform the court of its decision and the reasons for the decision, within eight weeks, unless the court otherwise directs. If an education supervision order is applied for with respect to a child who is the subject of a school attendance order, the court may order the cancellation of the school attendance order.⁴¹

Criminal Sanctions

Recent changes in the law of compulsory schooling and truancy have endeavored to take modern views into consideration. As a consequence, there has been a recent trend in some criminal justice jurisdictions to avoid criminalising truant behaviour. The modern approach towards the problem of school absenteeism has been to examine and address its root causes. It is common knowledge in most countries these days that the appropriateness of penal intervention as a method of combating the rise in truancy has failed. A recent British Government Report on the Leeds Truancy Project elaborates the practice of adjournment of care proceedings - once widespread but now abolished - used in an attempt to encourage improvement in school attendance.⁴² These days, special efforts are being made (i) to ensure that schools are less alienating and more interesting, (ii) to strengthen enforcement provisions, particularly measures such as the use of special patrols to target truant children in public places, e.g. shopping centres,⁴³ (iii) to encourage schools to publish their truancy

rates, (iv) increase the involvement of welfare officers in encouraging resumption of school attendance, and (v) to introduce effective monitoring of truancy by school inspectors.⁴⁴

Another important development, is that care proceedings have been eliminated in cases of truancy and replaced by education supervision orders, so that education welfare officers can befriend the child and help and assist the family and the child to resume schooling. Thus, interests of the children take precedence, although the final sanction is still criminal punishment. However, there might be circumstances where truancy may be a consequence of some other more serious causes, e.g. parental neglect. In such serious cases, care proceedings can be instituted where the child 'is suffering or is likely to suffer significant harm'.

Thus, the recent changes in the law, for example the removal of care proceedings for truancy - whereby children were taken from their parents and placed under the care and control of the local education authority - have not resulted in the removal of penal sanctions. The two statutory educational offences were not only kept but were consolidated by the 1993 and now the 1996 Act: 'failure to comply with school attendance order' and 'failure to secure regular attendance at school of registered pupil'. If parents on whom a school attendance order is served fail to comply with the requirements of the order, they are guilty of an offence,⁴⁵ unless they can prove that they are causing the child to receive a suitable education outside school.⁴⁶ It is now provided that if the parent is acquitted, the court may direct that the school attendance order should cease to be effective. However, it is further clarified that such a direction does not affect the duty of the local education authority (once again) to start the proceedings for the issue of a (new) school attendance order.

When a parent of a registered pupil⁴⁷ fails for the second time to secure regular school attendance of that pupil, he or she is guilty of an offence.⁴⁸

In both the above crimes, proceedings cannot be instituted except by a local education authority. Currently the current maximum penalty is a small fine.⁴⁹

Conclusion

Despite major shifts towards 'privatisation' of public education by the Conservative governments 1979-1996, and significant changes in public policy in 1997-98 by the New Labour government of Tony Blair, the philosophy of providing compulsory and publicly funded education, presumably in order to turn children into civic-minded and law-abiding citizens,⁵⁰ remains dominant in Britain.⁵¹

The standards governing attendance at school have been modified and strengthened by recent legislation.⁵² Thus parents remain obliged, in fact forced, to educate their children between the ages of 5 to 16. The required education can be outside the public school system, but the alternative school in the private sector or education at home remain subject to control or regulation because the state remains obliged to maintain adequate standards. If parents wish to educate their children outside any public or approved private school, or at home, they can do so,⁵³ but the State continues to have an interest in ensuring that children between the ages of 5 to 16 received a basic and compulsory education.

Before the *British Education Act 1944*⁵⁴ which introduced free school education,⁵⁵ universal education was not generally available, although the first legislative enactment providing

for compulsory school was the *Education Act 1870*.⁵⁶ In between 1870 and 1993, various experiments were conducted, under the then existing educational principles and social welfare philosophies, to ensure school attendance. Sometimes fines were considered to be a good deterrent, other times imprisonment was introduced or used to induce parents to abide by the law,⁵⁷ later supervision or care proceedings were considered appropriate,⁵⁸ now education supervision orders⁵⁹ largely replace the care/supervision proceedings/orders. All along, the dominant perceived principle has been 'the welfare of the child'. Would the 20th century's statutory provisions, educational principles and philosophies solve the problem of truancy in the twenty-first century? While the new Labour government of Tony Blair has started undoing some of the Tory educational statutory provisions in order to reverse the Conservative policies, it is unlikely that any major changes in truancy and compulsory education will be introduced in the remaining years of this century.

Endnotes

- 1 As Neville Harris points out, during the last twenty or so years, an education Act of Parliament has been added almost every year to the statute book: Harris, N (1997) *Education Reform and the Law in England and Wales, Australia & New Zealand Journal of Law & Education* 2(1) 3-24.
- 2 Under the *Education Act 1996*, the state has to provide full-time and efficient education, which is suitable to the child's age, ability and aptitude. Admission to school is tightly regulated so that on the one hand parents have a choice of schools and on the other admission policies take care of prioritising needs of local residents: see e.g., *R. v. Wiltshire CC, ex parte Razazan* [1996] ELR 220; *R. v. Bromley LBC* [1992] 1 FLR 174; *R. v. Greenwich LBC* [1989] 88 LGR 589, *R. v. Leicestershire CC* (1996) CL 213; *R. v. Lancashire CC, ex parte Maycock* (1995) 159 LGR. 201. See Harris, N., 'The Three 'Rs' - Rights, Remedies and Regulation: The Legal Frontiers of Education in the 1990s', (1998) XX(1) *Liverpool Law Review* 7; Khan, A. N, 24(1): 91-102. In recent years in England, more and more central control over educational content and curriculum has been taking place: see J. Gardiner, 'Tinker, tailor, doctor, lawyer ... teacher' *Times Educational Supplement*, 6 February 1998; OFSTED, 'The Annual Report of Chief Inspector of Schools: Standards and Quality in Education (1998); Department of Education and Employment (White Paper), 'Excellence in Schools' (1997) - some of the proposals in the White Paper are included in the School Standards and Framework Bill 1998.
- 3 *Commentaries on the Laws of England*, (1830) Vol. 1 at 446.
- 4 *R. v. Jones* [1986] 2 SCR 284. This is discussed in Khan, A.N (1993) 'Liberty' and Education in Canada, *Education and the Law*, 5: 95. The European Court of Justice has decided that children of migrant workers within the EU are eligible for financial assistance: *Landesamt für Ausbildungsförderung N-W V. Gaal* (1995) *The Times*, 22 June.
- 5 *Brown v. Board of Education of Topeka*, 347 US 483 (1954) at 493. Again, in *Plyer v. Doe*, 457 US 202 (1982), the US Supreme Court thought that schooling is central to maintaining basic institutions and the fabric of American society.

According to one researcher:

Modern states regard education as a legal duty, not merely a right: parents are required to send their children to school, children are required to attend school, and the state is obligated to enforce compulsory education. Compulsory primary education is the policy instrument by the state which effectively removes children from the labor force. The state thus stands as the ultimate guardian of

children, protecting them against both parents and would-be employers: Weiner, M. (1991) *The Child and State in India*.

6 Nevertheless, the Universal Declaration of Human Rights, as seen above, provides for everyone to have the right to education. It goes on to say that 'education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory'. For explanation of the governments' international education obligations, see R. Levesque, 'Educating American Youth: Lessons from Children's Human Rights Law' (1998) 27(2) *Journal of Law & Education* 173. For children's rights, see A. McGillivray, *Governing Childhood* (1997); M. Rebell *et al.*, 'Schools, Communities and the Courts: A Dialogic Approach to Education Reform' (1996) 14 *Yale Law & Policy Review* 99.

On the one hand, the public impression appears to be that many social problems can be reduced, if not eliminated, by schools (cf L. Cuban, 'Reforming Again, Again and Again', (1990) 19 *Education Researcher* 3), and on the other, public perception of decreasing educational standards of, and confidence in, compulsory state schooling is on the increase (cf T. Loveless, 'The Structure of Public Confidence in Education' (1997) 127 *American Journal of Education* 127.

7 Weiner, M., *supra*, note 5.

8 Bessant, B. & Spaul, A. (1976) *Politics of Schooling*.

9 Speech to the Conservative Party Conference, 1987.

10 Carlen *et al.* (1992) *Truancy: the politics of compulsory schooling*.

11 For example, see O'Keefe, D (1994) *Truancy in English Secondary Schools*, (London, HMSO).

12 Harris, N., (1995) *The Law Relating to Schools*.

13 *Pierce v. Society of Sisters of the Holy Name* 268 US (1925) 510. In a similar judgment, in *Wisconsin v. Yoder* (1972) 406 US 205, the US Supreme Court upheld the Amish parents' contention that the public schools were too 'worldly' for their children. But the Indian parents did not succeed on these grounds in *Re McMillan*, 226 SE 2d (1976) 693. (NC App.)

The Supreme Court of Canada in *R. v. Jones*, *supra*, note 4, decided that compulsory school attendance provisions of Alberta were not unconstitutional: see Khan, A.N. (1993) Canadian constitutional guarantee of 'liberty' as it affects education and children, *Journal of Law and Education*, 22: 335; Khan, A.N. (1997) The Legal Context of Canadian Education, *Australia & New Zealand Journal of Law & Education*, 2(1): 25-58; A. N. Khan, Canadian Education: The Legal Position of Religion: 20(1) *Liverpool Law Review* 137.

14 In recent years of English education history, the tension between central and local control of schools has seen-sawed: See P. Meredith, (1998) 'The Fall and Rise of Local Education Authority' XX(1) *Liverpool Law Review* 41.

15 See the government's paper *Choice and Diversity* (1993) in which much emphasis is laid on the rights of parents to choose schools best suited to their children's needs; noting that 'parents know best the needs of their children-certainly better than educational theorists or administrators, better even than our mostly excellent teachers'. Many Conservative changes to the education law 'were underpinned by an ideological commitment to introducing free market principles of competition and consumer choice into the education system and at the same time increasing regulatory control as a means to greater economic efficiency and accountability' Harris, N (1997) 'Education Reform and the Law in England and Wales', *Australia and New Zealand Journal of Law and Education*, *supra*, note 1.

16 'Parent' means anyone who has parental responsibility or care for the child at the time.

17 Generally speaking, the ages between 5-16: ss.8 and 444 of the *Education Act* 1996 precisely define 'compulsory school age'. From June 1998, there will be a single date when all 16 years old

pupils will be able legally to leave school: it will be the last Friday of June every year: *Education (School Leaving Date) Order 1997*.

For the purposes of the offences under s.443 (failure to comply with school attendance order) and 444 of the 1996 Act (failure to secure regular school attendance) (see below), the child is to be presumed to have been of compulsory school age unless the parent proves the contrary: s.445 of the 1996 *Education Act*.

- 18 Parents are allowed the statutory freedom to educate their children outside the state or independent schools—for example, at home. However, this education must meet the requirement of suitability, that is, that it be ‘suitable to the child’s age, ability and aptitude and to any special educational needs the child may have’ (s.7 of the 1996 Act). If the education is provided outside the school, it is the duty of the local education authority to be satisfied that such an education is being provided: *R. v. Surrey Quarter Sessions Appeals Committee, ex parte Tweedle*, (1936) 61 LGR 464; *R. West Yorkshire Justices, ex parte Broadbent* [1910] 2 KB 192.

It has been held by the English Court of Appeal, in *R v. E. Sussex County Council ex parte Tandy* [1997] 3 WLR 884, that where a child, because of prolonged illness, cannot attend school, it is the local authorities’ duty to provide some schooling at home. However, the local authority can take its financial constraints into account in deciding how many hours per week that home-teaching would be. See also *R. v. Gloucestershire County Council ex parte Barry* [1997] 2 WLR 459 (House of Lords: on a slightly different matter).

- 19 s.7 of the 1996 Act.
- 20 The offence is an absolute offence: *Crump v. Gilmore* (1970) 68 LGR 56.
- 21 The previous section, identical to the present s.444 of the 1996 Act, was s.39 of the Education Act 1944. See Khan, A.N. (1986) Parents’ duty to secure regular school attendance, *Solicitors Journal*, 130, p. 213.
- 22 The excuses provided are exhaustive: *Spiers v. Warrington Corporation*, [1954] 1 QB 61.
- 23 In this context ‘leave’ means ‘leave granted by any person authorised to do so by the governing body of the school’. Under school regulations, a pupil may be absent for up to two weeks for the purpose of going on annual family holidays.
- 24 Sickness here does not have a wide meaning, for example it means sickness of the pupil, not of someone else: *Jenkins v. Howells* [1944] 1 All ER 942. During the sickness of the mother, a child was kept home to look after the other children. The court decided that such a sickness is not covered by the exception: *Neave v. Hills* (1919) 121 LT 225. Where a parent sent the child to school with vermin in the hair, and the parent knew that the school policy was to send such children home, the parent was criminally liable: *Walker v. Cummings* (1912) 107 LT 304. For prolonged sickness of a pupil, special rules apply under section 19 of the *Education Act 1996*. See note 15 *supra*.
- 25 “‘Unavoidable cause’ cannot mean ‘reasonable grounds’”: *Jarman v. Mid-Glamorgan Education Authority* (1985) 82 LS Gaz 1249. In another incidence, when a girl was suspended until properly dressed, for coming to school in ‘slacks or trousers, in contravention of the school rules (in 1954), the girl was considered absent from school.

Two Canadian cases may be relevant here. It was held in the Alberta Court of Appeal that finding the teacher of a subject ‘uninteresting’ and consequently being absent, is not a good excuse: *Finlayson v. Powell* [1926] 1 WWR 939. The Queen’s Bench of Ontario decided that where a student cut into the top of a desk and, as a punishment, was suspended until he fixed the desk with his own hands, he was properly suspended: *Re McCallum and Brant Public School Trustees* (1889) 17 Ont R451.

26 This means the child can be absent on any day exclusively set apart for religious observance by the religious body to which his/her parent belong (s. 199(3)(c)). It was decided by the US Supreme Court that where parents, who were Jehovah's Witnesses, withdrew their children from school because the parents objected to their children being required by State law to salute the American flag, because it was forcing them to worship a graven image, as stated in Exodus, the State law was in breach of 'intellect and spirit of the First Amendment': *W. Virginia State Board of Education v. Barnette* 319 US 624 (1934).

27 'Walking distance' means (a) in relation to a child who is under the age of eight years, two miles, and (b) in relation to a child who has attained the age of eight years, three miles. The distance has to be measured by the nearest available route. S.444(5).

28 See Lee, S. (1987) And so to school, *Law Quarterly Review*, 103; Khan, A.N., *supra*, note 18. See also *R. v. Devon County Council, ex parte G* [1988] 3 WLR 1386.

29 It was clarified in *Hinchley v. Rankin* [1961] 1 WLR 421, that this provision means attendance for at least 200 days.

30 The local education authority's responsibility to 'make suitable arrangement' for the child's transport to and from school where the school is not 'within walking distance of the child's home' or 'boarding accommodation' becomes relevant in school attendance: see the House of Lords' decision in *Rogers v. Essex County Council* [1986] 3 All ER 321. See also *R. v. East Sussex County Council, ex parte D* (unreported 15 March 1991); *R. v. Essex County Council, ex parte C* [1994] ELR 54, ELR 273; *R. v. Rochdale Metropolitan Borough, ex parte Schmet* [1994] ELR 89.

31 'Regular school attendance' is not statutorily defined. However, it is generally accepted that it means attendance at the times prescribed by the governing body of the school. See Harris, N. (1993) *Annotation to the Education Act 1993*.

32 As explained above, legislation gives some freedom to parents to get their children educated other than in public/approved private schools or otherwise, but the education the children receive has to be in compliance with the statutory requirements to the satisfaction of the local education authority.

33 S.447 of the 1996 Act.

34 A 'school attendance order' should not be confused with the 'education supervision order' under s.447 of the *Education Act* (1996) (see below). Any school attendance order previously made may become ineffective on the issue of an education supervision order.

35 This section does not apply to children with a statement of special educational needs, because there are special provisions in the Act for special education. For the new law relating to special educational needs introduced in 1994, see Khan, A.N (1995) Special educational provision in Britain - The 1994 Model, *Education and Law Journal*, 6(2): 259-328.

36 S.438. The local education authority has the discretion to pay the fees of a pupil in a private school: see s.517 of the *Education Act* 1996.

37 This means that the number of pupils at the school in the child's age group would exceed the number fixed under statutory provisions: see s.426 of the 1996 Act.

38 A head-teacher has the power to exclude permanently a pupil under s.22 of *Education (No. 2) Act* 1986: if this happens the parent can appeal to the local education appeal committee under s.26.

39 See Pifer (1994) 'Parental responsibility and the Education Acts', *Family Law*, 9: 146.

40 The paramount consideration is the child's welfare. The court has to examine all the factors and fulfil the statutory checklist: see *M v. M (Removal from Jurisdiction)*, (1993) *The Times*, 1 August; *Essex County Council v. B* [1993] 1 FLR 866; *Re P (a Minor) Education* [1992] 1 FLR 316.

41 It is a rebuttable presumption that where a school attendance order is in force, the child is not receiving proper education.

- 42 See Hollins, R. (1985) 'The Leeds Truancy Project', *Justice of the Peace*, 149: 488. See Thomas, T. (1994) 'Police truancy patrols', *New Law Journal*, 82.
- 43 Thomas, T. (1994) 'Police Patrol Project', *ibid*; Greville, M. (1989) 'Police truancy patrols', *Education and the Law*, 1: 65; Harris, N. (1989) 'Supervision of Truants: whose role?', *Family Law*, 19: 404.
- 44 See Her Majesty's Chief Inspector of Schools for England (1992) Framework for the Inspection of Schools. See also Pack, C.D. (Chair) *Truancy and indiscipline in schools in Scotland* (1977).
- 45 The Department for Education recommends that in cases of truancy, parents should be prosecuted at an early stage of persistence, which is likely to bring prompt and sustained improvement: *Education Supervision Orders-Guidelines* (1991).
- 46 It would appear that only one offence is created with regard to any particular school attendance order, meaning that the parent could not be prosecuted for a continuing or subsequent offence under the same order: *Enfield London Borough Council v. Forsyth* (1987) 85 LGR 526.
- 47 Providing for proper and adequate registration of pupils at school is an important part of the rules: see the Pupils' Registration Regulations 1956, made under the *Education Act* 1944, as amended by the *Education Reform Act* 1988. The Rules now provide for computerised records: see the Education (Pupils' Attendance Records) Regulations 1991. For the Department for Education's Guidelines, see *Guidelines, School Attendance-Policy on Practice on Categorisation of Attendance* (1994).
- 48 The offence is an absolute one, in other words it is an offence of strict liability: ignorance of the child's truancy is no excuse: *Crump v. Gilmore* (1970) 68 LGR 56. Persistent late arrival of the child at school may be tantamount to non-attendance: *Hinchley v. Rankin* [1961] 1 WLR 421.
- 49 The penalty of imprisonment was abolished by the *Children Act* 1989, Sch. 15.
- 50 A Minister responsible for schools is reported to have commented that truancy 'can be the first step towards a life of crime': Department for Education Release 253/1992 (20 July).
- 51 Even pupils who get fed up with the schooling system are provided with opportunities for good schooling: see OFSTED (1994) *Education for Disaffected Pupils* (London, HMSO). Schools and local education authorities are coming under microscopic examination as society becomes more and more litigious. For example, cases on negligent teaching and educational malpractice are reaching higher courts. See Callman, T. (1996) 'Negligent local education authorities', *EPLI*, 1, p. 3; Khan, A.N. (1996) 'Educational malpractice in Britain', *Journal of Law & Education*, 25: 271-280; Robinson, J. (1998) 'Damages for a Pupil's Academic Under-Performance in School - Thus far, but how much further?' (1998) 20(1) *Liverpool Law Review* 95; Holloway, J., (1995) 'The liability of local education authorities to pupils who receive defective education', *Education and the Law*, 7: 25; Khan, A.N. & Williams, P. (1993) 'The Liability in Negligence of Teachers and Schools in Australia', *Education and the Law*, 5(3): 55-63; Khan, A. N (1991) Liability of teachers and schools in negligence in England, *Journal of Law and Education*, 20: 537-545.
- 52 In some potato belt Prairie districts in Canada, school boards used to turn a blind eye to the practice of children missing school for a few days to earn a minuscule amount of money by harvesting the crop of potatoes, either by helping their parents or at other farms. The practice will stop in 1998.
- 53 According to the *Christian Science Monitor* (Feb 1998), the New Labour government is planning to return to 'a more traditional classroom philosophy' and tightening up the curriculum. With the 1998 emphasis on 'three Rs' in the school curriculum, it may remain difficult to persuade education officers to accept private education at home as meeting the requirements of adequacy.
- 54 See also the *Education Acts* of 1867 and 1918.

- 55 The upper age for compulsory schooling was raised to 16 in 1972: see the Raising of the School-leaving Age Order 1972.
- 56 See Grenville, M. (1988) Compulsory school attendance and the child's wishes, *Journal of Social Welfare Law*, 41. See also Berg, I. (1980) *Out of School*; White, R. & Brockington, D. (1983) *Tales out of School*; Reid, K., *Combating School Absenteeism* (1987).
- 57 As seen above, the power of imprisonment was removed by the *Children Act* 1989.
- 58 Introduced by the *Children and Young Persons Act* 1969.
- 59 Introduced by the *Children Act* 1989.