



Children's Wellbeing and Schools Bill

Briefing for schools

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Bath
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1. Introduction and headlines

This briefing provides Stone King's comment on the provisions we regard as the key parts of this Bill, as it affects schools.

The overall stated aim of the Bill is to “remove barriers to opportunity in schools and improve the education system to make it more consistent and safer for every child”. In practice it covers a wide range of changes seeking to meet those aims and also implements manifesto commitments of the new Government.

The ‘Children’s Wellbeing’ parts of the Bill aim to tighten the safeguarding of children outside institutions currently regulated as schools, including considerable further regulation of home education and independent institutions not registered as schools. We anticipate there will be a broad welcome to these provisions given continued and profound concerns about safeguarding of children outside formal education, especially during and after the pandemic lockdown.

The ‘Schools’ parts of the Bill are much more controversial, removing legislation which focused the sector on academy governance as the preferred structure of the previous Government, and also largely removing “academy freedoms” by requiring academies to meet certain obligations applying to maintained schools and making academies subject to the same powers of Department for Education (“DfE”) intervention. This is an early and radical change in direction under this new Parliament and, together with other changes to admissions and the establishment of new schools, clearly signals a decisive and deliberate enhancement by the DfE of the role of local authorities (“LAs”) as both providers of schools and strategic actors in education overall.

2. Academies no longer the governance model of choice for the DfE: further reductions of “Academy Freedoms” and other academy-related changes

The Bill continues the new Government's process of reducing historic “academy freedoms” by bringing academies closely into alignment with maintained schools and effectively removing the previous Government's formal preference (imposed through legislation) for the academy form of school governance.

Larger range of DfE powers of intervention in academies

Academies will now be subject to very broad powers of DfE direction that currently apply to maintained schools, under the Education Act 1996, when “the Secretary of State (“SoS”) is satisfied that the academy has breached, or is likely to breach a legal duty or has acted or proposes to act unreasonably in the performance of a duty, or where the SoS is satisfied that the trust has acted or proposes to act unreasonably with respect to the exercise of a power conferred on a proprietor” (Government Explanatory Notes). This is essentially a formal preliminary intervention before use of a termination warning notice.

This is a radical change, being a complete reversal of the current freedom of academies to act as they wish subject to the specific requirements of academy funding agreements, the limited parts of education legislation that have previously applied to academies. In practice, the DfE has often been reluctant to use this power (towards either LAs or individual maintained schools) but we shall see whether that continues to be the case. The extent of academy duties and powers actually covered by this change in DfE practice will be critical in measuring the remaining extent (if any) of distinct and significant “academy freedoms”.

No longer compulsory for a school causing concern to be academised

The DfE will no longer be obliged to issue an academy order to maintained schools eligible for intervention by virtue of the Education and Inspections Act 2006 (i.e. schools requiring significant improvement or special measures, referred to as “schools in a category causing concern”), although it will retain the discretionary power to do so. Consequently, academy trusts will not automatically be the forum for the improvement of schools causing concern, a critical part of the academy mission to date, and we anticipate that forum will become the regional improvement for standards and excellence (“RISE”) teams, although the capacity and constitution of those teams will, in practice, probably rely heavily on the existing improvement expertise within academy trusts. However, the DfE has indicated that “for the worst-performing schools, we expect that the Secretary of State will continue to issue an academy order”.

New schools no longer have to be academies

The Bill will remove the presumption that a new school must be established as an academy, giving LAs in England greater flexibility to decide the types of schools that can be established in their area if they think a new school needs to be established. This supports recently stated DfE policy welcoming “proposals for all types of school, not just academies, so new schools are opened by the provider with the best local offer for local children and families”.

This means that LAs can consider proposals for foundation, voluntary or foundation special schools, as well as academy schools, or alternative provision academies. If the LA decides a new academy school should be opened, it cannot approve that school unless the SoS has “indicated a willingness to enter into negotiations with a view to entering into a funding agreement for the establishment of that particular academy” (Government Explanatory Notes).

The LA will also be able to make its own proposals for new schools (to be decided by the DfE).

LAs will no longer require the consent of the DfE to publish a notice inviting proposals for the establishment of a new school, and do not have to invite proposals from other providers at all if a school or PRU is replacing an existing corresponding type of institution (school or PRU) already maintained by that LA.

Other proposers, aside from the LA, will continue to have the power to publish proposals if wanting to propose the establishment of a new foundation, voluntary or foundation special school (for decision by the LA), and there will no longer be a requirement to obtain prior consent from the DfE for publication of such proposals.

When LAs consider responses to a proposal for a new school, they will now consider academy and non-academy proposals at the same time and equally (they were previously considered sequentially, with a maintained school only being possible if there were no appropriate academy proposals).

The process for new schools will consequently largely return to LAs managing proposals for establishing different types of new schools in their area, as part of the long-standing duty on each LA to ensure there are sufficient school places in its area, subject to certain decision-making controls exercised by the DfE. Although it will still be possible for the DfE to approve the opening of a new school as an academy, there will be no statutory presumption that nearly all new schools will be academies and, for the first time in nearly 15 years, significant numbers of new maintained schools may be opened. We anticipate LAs will initially use this power to open more special schools as part of the urgent process of addressing the cost and availability of special provision.

Duty to follow and implement the National Curriculum

This duty will be imposed on academies, and will override any different arrangements in the existing funding agreements of individual academies.

Academies to have the express power to direct children off site

Academies will now be included in the types of institution that can direct pupils off site to receive education intended to improve their behaviour under section 29A of the Education Act 2002. This is a welcome change from academies having to rely on their general corporate powers to take that step. Academies will also correspondingly be subject to the Regulations and DfE Guidance that currently only apply to maintained schools in the use of this power.

3. Tightening the regulation of teacher pay, qualifications and performance

Teacher misconduct

The Bill proposes significant reforms to the regulation of teacher misconduct, designed to strengthen the oversight of teacher conduct and ensure a consistent approach across a wider range of educational settings.

One of the key provisions of the Bill is the broadening of the criteria for misconduct investigations. Under the current legislation, the Teaching Regulation Agency (TRA) is limited to considering misconduct that occurs during an individual's employment as a teacher. This limitation shall be removed, allowing the TRA to investigate misconduct that takes place outside of teaching work, as long as the individual has previously been employed or engaged in teaching.

Additionally, the Bill extends the scope of the regulations to include a wider range of educational settings, such as further education colleges and online education providers, which will be defined in the Education Act 2002. These settings will be subject to the same regulations as academy trusts and other state-funded schools, and they will have a legal duty to consider making a referral to the TRA when a teacher is dismissed for serious misconduct (or would have been dismissed had they not resigned).

The Bill also introduces provisions allowing DfE officials to make referrals to the TRA if relevant information comes to light. Currently, the TRA is reliant on external referrals.

While these changes will enhance the regulatory framework for teacher misconduct, they will not alter the responsibilities of schools in handling teacher misconduct. Academy trusts and other

state-funded schools will continue to be required to assess whether referrals to the TRA are necessary when a teacher commits serious misconduct.

School teachers' qualifications and induction

The Bill introduces key changes to teachers' qualifications and induction. The Bill will amend the Education Act 2002 to extend the requirement to hold Qualified Teacher Status (QTS) for "specified work" to teachers in academies. This change will align academies with maintained schools and special schools, ensuring that new teachers in these settings either have QTS or are working towards it.

The Bill will also introduce a statutory induction requirement for Early Career Teachers in academies. This shall only apply to teachers who gain QTS after the new rules come into effect (1 September 2026).

Academy trusts will need to review their recruitment and induction processes to ensure they are compliant with these new requirements when they come into effect. This may involve identifying whether an academy trust employs any unqualified teachers in its academies, and consulting with these members of staff to make any necessary changes to their role before 1 September 2026.

The Government has announced that it will provide guidance ahead of the implementation date to support academy trusts with this transition.

Teachers' pay and conditions

The Bill shall extend the School Teachers' Pay and Conditions Document (STPCD) to include teachers in academies (and principals where they are not appointed as a senior executive leader of the academy trust). This change aims to create a unified pay and conditions structure across all state-funded schools, ensuring that teachers in academies receive the same core offer as those in maintained schools.

The Government has outlined that it will ask the School Teachers' Review Body (STRB) to consider additional flexibilities to make the statutory framework most effective for all schools before requiring academy trusts to comply with the framework. This means that academy trusts will not be affected by the proposed changes until the Government has considered what additional flexibilities are needed through the pay review process.

When the Bill was published, it was initially unclear whether academy trusts who offer enhanced pay ranges would be required to reduce teacher salaries so they are in line with the STPCD.

During the second reading of the Bill on Wednesday 8 January 2025, Bridget Phillipson confirmed that the reforms will not cut teachers' pay. Bridget Phillipson also stated: "Every child will be taught by an excellent, qualified teacher who has undertaken statutory induction. That will be supported by giving every school the flexibility to create attractive pay and condition offers to recruit and retain excellent teachers, and by backing those schools already doing that to keep it going", so it seems the intention is to create flexibilities in the framework to allow all state-funded schools to offer enhanced pay scales to their teaching staff.

Representatives of the academy sector will be included in all subsequent statutory consultations.

4. Changes regarding everyday provision for pupils in all school settings

Safeguarding

Schools will be automatically included in multi-agency safeguarding arrangements and will participate in improved information sharing across those multiple agencies. There will also be a person "with educational experience" included in multi-agency child protection teams.

Breakfast clubs

The Bill aims to provide free breakfast clubs for at least 30 minutes before the school day, to be available to all children of primary school age in England. The SoS must issue guidance on this duty to which schools must have regard. Schools can apply to be exempt from the requirement but the direction of travel indicates that these would be a very limited number of cases.

The Bill introduces measures in relation to food and drink to be provided at academies. This will include a statutory duty to comply with the School Food Regulations.

Children not in school

In the wake of a significant increase in elective home education since the Covid Pandemic and concerns about children missing from education and the safeguarding of children being educated at home (notably the tragic Sara Sharif case), the Bill introduces more control as follows:

- The end to a parent's automatic right to home education: there will be a requirement for a parent to obtain their LA's consent to withdraw a "relevant" child from school to receive elective home education ("Education Otherwise"). This applies to children who are attending a special school or subject to Section 47 child protection enquiries or action.

- The Bill empowers LAs to refuse that consent and to require a relevant child to attend a school when doing so is in their best interests, or if no suitable arrangements have been made for Education otherwise by their parent.
- Schools will not be allowed to delete a pupil from its admission register unless the LA has given its consent.
- The Bill also introduces a duty on LAs to have and maintain Children Not in School registers and provide support to home-educating parents.

The Bill also aims to improve the efficiency of the School Attendance Order (“SAO”) process by enabling LAs to name academies as well as maintained schools in SAOs. The same exceptions to being named will continue, including a school not being named if it would take a relevant year group (a normal year of entry) over PAN unless it is the only available local school for the child in question (that exemption also only applies if the LA is not the admission authority for that school). This is a significant change from the current position where academies can push back on being named in a SAO at a time when LAs are increasingly using SAOs to direct “hard to place” pupils into a school.

The Government Explanatory Notes about the Bill state that the Government will issue guidance concerning “administrative expectations” of LAs in performing the children not in school measures, and the school attendance order process. Presumably much closer working between the education and social care functions of LAs will be necessary to make this work effectively, but we anticipate schools will largely welcome the introduction of more substantial controls over the safeguarding of children educated outside school.

5. Local Authorities to have a Larger Role in Admissions

School places and admissions

The Bill sets out some brief yet important changes to admissions law:

- Schools and LAs will be under a duty to co-operate with each other when carrying out their respective duties regarding school admissions, including duties set out in legislation and the School Admissions Code. This could be used by either schools or LAs to ensure compliance with the various duties set out within the Code which can cause disputes to arise, in particular admissions under Fair Access Protocols. The duty to co-operate will not apply to the admission of children with EHCPs (which sits outside the general admission

law regime).

- The duty to co-operate also has a second limb which aims to ensure that decisions taken by schools are not detrimental to the LA capacity to meet its duties under section 14 (provision of sufficient schools) or section 19 Education Act 1996 (duty to arrange suitable education where a child will not receive such education without authority support). Whilst the explanatory notes suggest that this clause is aimed at the authority's place planning duties (i.e. reduction in PAN or other significant changes to school admission policies) the wording could potentially permit the LA to invoke the duty in individual admission cases – i.e. challenges to school decisions not to admit a child.
- LAs will be empowered to direct an academy to admit a child, in the same way as they currently can in respect of a maintained school. There will also be a right of appeal for all schools to the Schools Adjudicator. It is also proposed that the use of directions will be extended to cover the admission of previously looked after children and to ensure admissions where fair access protocols have not resulted in the admission of children. The School Admissions Code will be updated to reflect these new powers.
- School Adjudicators will, on receipt of an objection from another person or a referral from the SoS which references the PAN at a school, be able to set a new PAN for the school when upholding the complaint/referral. The Adjudicator will also be able to set the PAN for the admission year following the year to which the objection refers. The Adjudicator's power to set a PAN is only exercisable when the objection/referral refers to the PAN. It cannot be used by the Adjudicator when exercising their reserve powers to consider all aspects of admission arrangements on receipt of a complaint/referral. In addition, it is proposed to extend the current right to object to the reduction of PAN to all scenarios, including where PAN is maintained or increased. In practice this will give LAs considerably more influence over the setting of PANs by individual schools, presumably to support the LAs' place planning function.

6. Changes regarding school inspection

The law regarding inspection is already flexible enough to accommodate most policy changes but this Bill will cover new powers for Ofsted to “search” suspected illegal schools, and also to share information freely with the Independent Schools Inspectorate.

7. Changes involving Independent Educational Institutions

The stated purpose of these changes is to ensure that children receive a safe and broad education, whilst increasing the scope for Government intervention in these settings.

Definition of full-time education

A new definition of full-time education will be introduced for independent educational institutions to mean 'if the child could be expected to receive all or a majority of their education at the institution'. The Bill does not quantify this but provides scope for further regulations to do so. Relevant factors will include the number of hours per week that children are expected to attend, number of weeks in an academic year that children are expected to attend, and the time of day at which children are expected to attend.

This change will probably bring significantly more settings under DfE regulation of schools and the inspection regime.

Suitability of proprietors

The Bill introduces a new power for the SoS to exercise discretion in determining if an individual is 'fit and proper' to participate in the management of an independent educational institution. This would apply in cases where an individual may pass the required checks, but are nevertheless not deemed suitable to be involved in the running of an institution.

Power to suspend registrations

The Bill introduces a new power for the SoS to suspend the registration of an institution, which will have the effect of temporarily preventing it delivering education (for up to 12 weeks, with scope for this to be extended) whilst the institution takes remedial action. There will also be a parallel power to suspend boarding as appropriate.

This will enable faster action to remove children from an unsafe environment where an institution is not meeting the required standards or where children are or may be exposed to the risk of harm. This will be appropriate where a restriction on the proprietor would not be sufficient to effectively safeguard children, but where an order for de-registration and permanent closure may be disproportionately severe.

It will be an offence for the proprietor of an institute to continue to provide education whilst its registration is suspended. Clearly this could in practice have a fatal effect on the setting's future viability if the period of suspension is long enough to result in a permanent exodus of pupils.

Deregistration appeals

The Bill makes changes to how appeals against the de-registration of an independent school are determined. There will be a requirement for the Tribunal to have due regard to whether the school will meet the independent school standards on an ongoing basis, and the burden of proof will shift to the proprietor to evidence this (rather than on the SoS to show that they will not). The purpose of this is to ensure that institutions with persistent, serious failings do not avoid deregistration by making short term improvements that are not sustained.

Material changes

The Bill introduces three new types of material change:

- Occupying/ceasing to occupy a building for student use for more than six months.
- Becoming/ceasing to be an institution for students with special educational needs.
- Changing the type of special educational needs catered for at the institution.

There will also be new measures to enable the SoS to approve material changes where the standards are not being met, if they are satisfied that the change is likely to be beneficial to the education, welfare or safety of students at the institutions and will enable the standards to be met within a reasonable time. A further measure gives the SoS the power to impose restrictions (such as preventing the institution admitting more pupils) where an unapproved change is made. At present the only recourse for unapproved material changes is for the institution to be deregistered which will be disproportionate to the breach in many instances, so this approach provides a mechanism for making the system more enforceable.

8. We will keep you up to date on the Bill's progress

The Bill will almost certainly change as it goes through its parliamentary stages and we will keep you up to date with any important alterations as they emerge.

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