

1. INTRODUCTION

The **Education Bill 2011** seeks to implement the legislative proposals of the white paper published in November 2010, **The Importance of Teaching**, [see *Document Summary Service DSS 10/11 18, December 2010*]. The Bill received its House of Commons second reading on 8 February. Once fully enacted, with any changes resulting from its passage through Parliament, the Bill will become the **Education Act 2011**.

It is a very wide-ranging Bill. Key areas are:

- the introduction of **targeted free early years care** for children under compulsory school age;
- changes to provisions on **school discipline** and **restrictions on the public reporting of allegations** made against teachers;
- **abolition of five quangos**: the General Teaching Council for England, the Training and Development Agency for Schools, the School Support Staff Negotiating Body, the Qualifications and Curriculum Development Agency and the Young Person's Learning Agency, and **new powers to the Secretary of State** as a consequence of some of these changes;
- **removal of certain duties** on school **governing bodies**, **local authorities** and **further education institutions**, including the duty on local authorities to appoint **school improvement partners**;
- changes to the arrangements for **setting up new schools**, and amendment of the Academies Act 2010 to make provision for **16 to 19 academies** and **alternative provision academies**;
- measures relating to school **admissions**, school **meals**, composition of school **governing bodies**, school **inspection**, school **finance** and **permitted charges**.

As is commonly the case with such Bills, its text is predominantly a series of detailed changes and amendments to previous legislation: in this case, 17 earlier Acts from the *Children Act 1989* to the *Academies Act 2010*. Section 2 of this Summary provides a complete overview of all ten parts of the Bill. *Italicised square bracketed paragraphs in smaller type* give selected supplementary details of many key provisions, drawing mostly on the *Explanatory Notes* published simultaneously with the Bill on 26 January 2011, and sometimes on the *Overarching Impact Assessment for the Education Bill 2011*. Throughout, the abbreviation *SofS* means the Secretary of State for Education.

2. OVERVIEW OF THE 10 PARTS OF THE EDUCATION BILL

Part 1: Early Years Provision

- **Permits** the introduction of **free** early years provision for children of **two years of age from disadvantaged backgrounds**.
[*Extension to particular targeted 2-year olds of existing entitlement to 15 hours per week for all 3- and 4-year olds. It also allows for the entitlement for all children to be based on criteria other than age alone (such as family economic circumstances), which could affect existing entitlements of 3- and 4-year olds. Also gives SofS wide powers of control over the nature of the provision, for whom it must be made available, and how and when it must be provided*].

Part 2: Discipline

- **Extends** the power of members of staff at schools and further education institutions to **search pupils without their consent** for an item that has been, or is likely to be, used to commit an offence or cause injury to the pupil or another, or damage property, and to search for **items banned under the school rules**.
[In particular, extends range of 'searchable' items to include 'any other item which the school rules identify as an item for which a search may be made', thereby laying an important responsibility on how school rules are formulated. Includes amended regulations about use of force in item seizure. Also, introduces new powers regarding electronic devices, allowing for examination and erasure of data or files if 'there is a good reason to do so', the latter being determined with regard to guidance from the SofS].
- **Reforms** the process for reviews of **permanent exclusions**.
- **Repeals** the duty on schools to give 24 hours' written **notice of a detention** to parents.
- **Repeals** the duty on all schools to enter into a **behaviour and attendance partnership** with other schools in their area.

Part 3: School Workforce

- **Abolishes:** the **General Teaching Council for England (GTCE)**; the **Training and Development Agency for Schools (TDA)**; and the **School Support Staff Negotiating Body (SSSNB)**.
*[Relevant functions of the GTCE and the TDA to be undertaken by the Secretary of State and where appropriate by Welsh Ministers, and gives the necessary powers to make schemes for the transfer of staff from these bodies to the Secretary of State. **GTCE will continue until 31 March 2012**. GTC (Wales) continues unaffected. By amendments to the Education Act 2002 the SofS will henceforth consider allegations of unacceptable professional conduct, conduct that may bring the profession into disrepute, or conviction of a relevant offence, and decide whether to prohibit the person from teaching. All prohibition or conditional orders will continue for the specified period or until revoked, and any investigations of teachers under way prior to commencement (i.e. before 31 March 2012) may be continued by the SofS. SofS will also take direct responsibility for Induction arrangements. Regarding TDA functions, SofS will have power to give or arrange financial assistance for initial training (e.g. training bursaries) and in-service training. Welsh Ministers will take over functions currently exercised by TDA in Wales, effectively making them independently responsible for all school workforce training and development in Wales. While the **SSSNB** is to be abolished, neither the Bill nor Explanatory Notes indicate what, if anything replaces it, though the SSSNB has never actually 'implemented any initiatives to change the way that the pay of support staff is decided'].*
- Introduces **restrictions** on the public reporting of **allegations made against teachers**.

Part 4: Qualifications and curriculum

- **Requires** sampled schools to take part in **international education surveys** when directed by the Secretary of State.
[This signals a commitment to ensure 'access to a regular and consistent supply of valuable and reliable international comparisons data, to measure the progress of our system against the best in the world'].
- Amends the governance structure of the Office of Qualifications and Examinations Regulation (Ofqual) and revises its **standards objective** to include international comparison.
[The effect of the latter is to expand Ofqual's qualifications standards objective to require that Ofqual ensures that qualifications it regulates 'indicate a consistent level of attainment with comparable qualifications' it does not regulate within or beyond the UK].
- **Abolishes** the **Qualifications and Curriculum Development Agency (QCDA)**, and provides for the relevant functions of the QCDA to be transferred to the Secretary of State and gives the necessary powers to make schemes for the transfer of staff from this body to

the Secretary of State.

*[This places extensive powers of curriculum regulation in the hands of the SofS, enabling him/her to make further **changes to subordinate legislation by ministerial order**, and removes references to the QCDA from other legislation. It also changes the way in which the SofS must consult before making certain regulations or orders relating to the National Curriculum: providing an opportunity to submit evidence/representations before publishing a summary of views and a draft proposed order or regulation, followed by 'at least one month for further evidence and representations', before making the order 'with or without modifications']*.

- **Amends** legislation relating to provision of **careers education and guidance**.
*[Provides for a new requirement for maintained schools and pupil referral units in England to secure **independent** and **impartial** careers guidance for pupils in the school year in which they reach the age of 14 until they have ceased to be of compulsory school age. 'Independent' means that 'a school cannot fulfil the duty by asking a teacher or another person employed by the school to provide guidance to all pupils...[but] would not prohibit a teacher from offering some careers guidance']*.
- **Repeals** the duty on local authorities (LAs), schools and governing bodies to secure **access to the diploma entitlement** for 16 to 18 year olds and pupils in the fourth key stage, *[i.e. 14-16 year olds]*.
*[Reference to the formal Impact Assessment of the Education Bill 2011 (pages 19-20) indicates that the intention of this part of the Bill is to **remove the obligation** on all LAs and others to ensure that **all Diploma lines** are available at **every level** for **all 14-19 year olds** in their area, and to enable them instead to 'respond flexibly to local demand and need' to fund '**appropriate Diploma provision only where it is needed**']*.

Part 5: Educational Institutions: other provisions

- **Repeals certain duties on the governing bodies** of maintained schools in England and repeals the duty on local authorities to appoint a **school improvement partner** in each maintained school.
*[Clause 30 (England only): removes obligation on governing bodies and others ('relevant partners') to co-operate with the LA to **improve children's well-being** under Section 10 of the Children Act 2004; instead, they will be able to decide for themselves how to engage in arrangements to improve well-being.*
*Clause 31 (England only): removes requirement for schools forums and governing bodies of maintained schools to have regard to the **children and young people's plan** prepared by their local children's trust board.*
*Clause 32: repeals the duty for maintained schools in England to prepare and publish a **school profile** which is required to contain information provided by the SofS for inclusion and other prescribed information.*
*Clause 33: removes duty on LAs to appoint **School Improvement Partners (SIPs)** for each school they maintain].*
- Makes **changes** to the duties of local authorities in relation to **school admissions**. In addition, the schools adjudicator will no longer be able to make modification to a school's admissions arrangements in response to a **complaint or a referral**.
*[Clause 34 (School Admissions): a) removes requirement on English LAs to establish an **admissions forum** for their area; b) restricts power of the **School Adjudicator** in the area of requiring changes to be made to a maintained school's admission arrangements following referral of a specific matter relating to those arrangements; c) removes requirement that LAs provide to the adjudicator **reports on admissions** to schools in their area, and removes from SofS the power to regulate the content of those reports, with the Schools Admissions Code instead to specify requirements for such reports].*
- **Introduces a cap on the amount** local authorities and the governing bodies of maintained schools in England are allowed to charge for the provision of **school meals, milk etc**.

- Makes **changes** to the arrangements for the **establishment of new schools** by introducing a **presumption** that when local authorities set up new schools they will be **Academies** (including free schools).
[The Explanatory Notes for this part of the Bill are reproduced in full in Section 3 of this Summary].
- Makes **changes** to the **composition of school governing bodies** and, with a related clause in Part 6, makes it possible for one or more, but not all, of the **schools in a federation to become an Academy** without first having to go through the statutory process to leave the federation.
- **Provides** for changes to the **inspections framework** for schools, and for the exemption of certain categories of school and further education institution from routine inspection by Her Majesty's Inspectorate, the Office for Standards in Education, Children's Services and Skills. Where a school or further education institution asks Ofsted to carry out an inspection in circumstances where such an inspection is not required, and Ofsted agrees to do so, this Part **allows the Chief Inspector to charge** the school or college for the cost of carrying out that inspection. It also makes changes to the inspection of **boarding provision**.
[This section includes the explicit direction that school inspections under Section 5 of the Education Act 2005 'must in particular cover: the achievement of pupils at the school; the quality of teaching in the school; the quality of the leadership in and management of the school; and the behaviour and safety of the pupils at the school'. In addition, 'the Chief Inspector must consider: a) the spiritual, moral, social and cultural development of pupils; and b) the extent to which the education provided at the school meets the needs of the range of pupils at the school, and, in particular, the needs of pupils who have a disability for the purposes of the Equality Act 2010, and pupils who have special educational needs'].
- Makes **provision** for the Secretary of State to direct a local authority to issue a **warning notice** to a school on grounds of performance or safety concerns, and **extends the Secretary of State's power to close schools to all schools** eligible for intervention, rather than (as at present) only those deemed by Ofsted to be in need of special measures.
[Clause 43 substantially extends the situations in which the SofS can direct the closure of a school (beyond the current reason that it 'requires special measures'): e.g. where a school has failed to comply with a performance standards or safety warning notice, and where a school has been identified as requiring significant improvement and has been issued with a notice to improve].
- **Repeals the power for parents to make complaints** about schools to the Local Commissioner.
- Contains **measures on school finance**, and **allows nursery schools (and schools with nursery classes) to charge** for early years provision that is not funded by the local authority. It enables the Secretary of State to issue **directed revisions** to local authority schemes for financing schools and requires the Secretary of State to **consult** local authorities and others before a direction is given. It also allows the governing bodies of maintained schools to fund the costs of **premature retirement** and **dismissal of community staff** from their budget shares.
- **Repeals and amends** a range of **duties placed on further education corporations** and repeals the change of the name of pupil referral units to short stay schools.

Part 6: Academies

- **Amends** Academies legislation. It allows the establishment of **16 to 19 Academies** and **alternative provision Academies** and **removes the requirement for Academies to have a specialism**.
[Clause 51 makes a number of specific amendments to the Academies Act 2010, and inserts four new sections into it, which are fully explained in Explanatory Notes paragraphs 247-257. The Explanatory Notes also include the following in paragraph 252: 'The government intends to use this legislation to allow providers to set up free schools

for those aged 16 to 19’].

- Makes some **changes** to the **consultation requirements** for the setting up of an Academy, and to the way a school in a federation becomes an Academy (Clauses 54-55).
- **Protects** the existing position in relation to **discrimination in employment practices** for faith schools which convert to become Academies, but makes provision for this to be changed (by order of the Secretary of State) after conversion.
*[A key part of this relates to the **appointment of ‘reserved teachers’**. Reserved teachers are ‘those who have been selected for their fitness and competence to give religious education in accordance with the tenets of the religion or religious denomination of the school and are appointed on such grounds’. Under the School Standards and Framework Act 1998 (SSFA 1998) their number **must not exceed one-fifth** of the total number of teachers including the principal, and the Bill now extends this regulation to all voluntary controlled and foundation schools with a religious character who have converted into Academies].*
- Makes **changes** to the legislation relating to **school land**, to **increase the Secretary of State’s ability to make land available for free schools**.
[Clause 59: the Bill’s provisions are highly detailed, and reference should be made to Clause 59 and Explanatory Notes paragraphs 285-299].
- **Allows** for **schools adjudicators to consider and determine objections** to Academies’ admission arrangements.

Part 7: Post-16 Education and training

- **Abolishes** the **Young People’s Learning Agency for England (YPLA)**, and provides for the relevant functions of the YPLA to be transferred to the Secretary of State, and gives the necessary powers to make schemes for the transfer of staff from this body to the Secretary of State.
- **Replaces** the duty on the Chief Executive of Skills Funding to secure an apprenticeship place for certain young people with a duty to **fund apprenticeship training** (through securing the provision of proper facilities) for certain groups who have secured an apprenticeship place.
- Makes **changes** to the law relating to the issue of **apprenticeship certificates**.
[Clause 66: the effect is that the Chief Executive of Skills Funding is no longer the English certifying authority; instead it will be the person designated for that purpose by the SofS, or the SofS him/herself].
- Makes **changes** to the **skills entitlements**.
*[This is particularly obscure in the Bill and not explained at all in the Explanatory Notes. However, reference to the Impact Assessment for the Education Bill 2011 and to the Apprenticeships, Skills, Children and Learning Act 2009, Part 4, Section 88, reveals that the intention is to **remove free entitlement** to Level 3 and Level 2 provision for those aged 24. It previously applied to anyone aged 19 but less than 25].*
- Gives a **power** to the Secretary of State to direct the Chief Executive of Skills Funding to consult with specified people or descriptions of persons on matters associated with the **performance of the Chief Executive’s functions**.
- **Retains** the commencement of **raising the participation age** legislation in 2013 (to age 17) and 2015 (to age 18) whilst removing the requirement to commence **enforcement procedures** on young people, parents and employers in relation to raising the participation age on a certain date.

Part 8: Student finance

- Includes **measures** that form part of a package of higher education reforms announced in an oral statement in the House of Commons on 3 November 2010 and later refined in a written statement on 8 December 2010, in response to the Browne Review. It will apply the

tuition fees cap for full-time courses on a pro rata basis to **part-time courses**, and **increases the cap on the interest rates** that can be charged on new student loans. *[The Impact Assessment says: ‘There are proposals in the Bill to **give the Secretary of State the power to set interest rates on student loans through secondary legislation**. We expect to use these powers to set real interest rates as part of a wider range of proposals, which include increasing the earnings threshold for loan repayments from £15,000 to £21,000 and increasing the new threshold annually in line with earnings instead of inflation.... The financial effect on graduates depends on their future earnings, as well as the level of contribution the HEIs will charge graduates. Analysis indicates that taking all the proposed changes into account, up to around 25% of graduates (the lowest earners) will be repaying less in net present value terms (assuming debts of £30,000) than under the current repayment system (which assumes debt of £21k)’. By 2014/15 the government anticipates **savings** of up to £3070m, and **costs to students rising** up to £2390m].*

Part 9: Powers of National Assembly of Wales

- Gives the National Assembly for Wales framework **powers** in relation to **professional standards** for the school workforce, **regulation** of the school workforce, and the **recruitment and training** of the school workforce; and in relation to the **funding of pre-16 education** or training.

Part 10: General

- Supplementary provisions about orders and regulations, interpretation of the Act, financial provision, extent, commencement and the short title.

3. NEW SCHOOLS

[This section of the Summary reproduces the Explanatory Notes for Clause 36 in full (paragraphs 182-188). Clause 36 gives effect to Schedule 10 which makes amendments to Part 2 of the Education and Inspections Act 2006, (EIA 2006), dealing with the establishment of new schools].

Schedule 10

182. *Paragraph 2* inserts new section 6A into EIA 2006, placing a **duty on local authorities to seek proposals** for the establishment of an Academy where they are of the view that there is a need for a new school in their area. The local authority must specify a date by which proposals must be submitted and after that date must notify the Secretary of State of the steps taken to satisfy this duty and the proposals that have been submitted or if there have been no proposals. The notification to the Secretary of State must identify a site for the school and any other matters prescribed by regulations.
183. *Paragraph 3* amends section 7 of EIA 2006 so that before publishing proposals for a competition for the establishment of a new school the local authority must obtain the consent of the Secretary of State. In addition, section 7 is amended to **remove the ability of the local authority to publish any of its own proposals for a new foundation or community school** in a section 7 competition. In consequence, *paragraph 5* repeals section 8 of EIA 2006, which prescribed the circumstances in which the local authority could enter its own proposals for a new school in a competition.
184. *Paragraph 4* inserts new section 7A into EIA 2006 which provides for the local authority (with the consent of the Secretary of State) to withdraw, or for the Secretary of State to direct the withdrawal of, a section 7 notice at any time before the end of the period that proposals may be submitted. The effect of this new provision is that **a competition can be halted at this early first stage**.
185. *Paragraphs 6 and 7* make amendments to sections 10 and 11 of EIA 2006 which deal with publication of proposals outside a competition. The amendments to section 10 (proposals that require the Secretary of State's consent) provide that the following proposals for a new school can be published with the consent of the Secretary of State:
- local authority proposals for a community or foundation school to replace one or more maintained schools (except infant and junior amalgamations, which do not now require consent), excluding those providing education suitable only for persons over compulsory school age;
 - proposals for foundation, and voluntary controlled schools by other proposers (except those within section 11(2) as amended).
186. Under the amended section 11 of EIA 2006 the following proposals will be able to be made **without the Secretary of State's consent**:
- Local authority proposals for a new community or foundation primary school to replace a maintained infant and a maintained junior school;
 - Proposals for the establishment of a new voluntary aided school;
 - Proposals for a new foundation or voluntary controlled school resulting from an existing religious school changing or losing its religious designation; and a new foundation or voluntary controlled school with a religious character replacing an existing religious school, resulting from the reorganisation of faith schools in an area.
 - Local authority proposals for a new community or foundation school where following publication of a section 7 notice no proposals are approved by the local authority, no Academy arrangements are entered into, or no proposals are received.
187. *Paragraphs 10 to 17* make amendments to Schedule 2 to EIA 2006 which deals with the consideration and approval of proposals under Part 2 of EIA 2006 by the local authority or the adjudicator (in respect of local authority proposals). These amendments are consequential on the amendments made by paragraphs 3 to 9.
188. In addition, **these paragraphs have the effect that Academy proposals are no longer submitted to local authorities for approval**. Instead, any **Academy proposals entered into a section 7 competition will be referred to the Secretary of State**, for him to decide if he wishes to enter into Academy arrangements with the proposer. Where there are both Academy and non-Academy proposals in a competition, the Secretary of State must first decide the Academy proposals and notify the local authority if he enters into Academy

arrangements as a result of the proposals. If the Secretary of State decides against entering into Academy arrangements in such a case, the non- Academy proposals will be considered by the local authority. Even if the Secretary of State approves the Academy proposals, paragraph 7A of Schedule 2 also enables him to direct that all or any of the non-Academy proposals be considered by the local authority. In such a case, it would be possible for a section 7 competition to result in the approval of both Academy proposals (by the Secretary of State) and non-Academy proposals (by the local authority). This might happen, for example, where Academy proposals are for a small school but the local authority has identified a need for a larger school in its area.

The Education Bill 2011, the Explanatory Notes, and the Impact Assessment are all accessible online and downloadable as pdf files through links at: <http://www.education.gov.uk/> > About the Department > Education Bill.

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