



Department
for Education

Schools Bill Briefing Session

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What problems are we trying to solve?

Academies - The current legal and regulatory system for trusts, based around individual contracts, was designed for a small group of disruptor schools. This has become increasingly unsuited to ensuring quality and fairness in a system that already educates more than half of all children. Barriers exist to prevent schools from becoming academies and benefitting from being part of a strong family in a multi academy trust, including for faith and selective schools.

Funding - The current funding arrangements in England mean that there can be large discrepancies between funding for schools depending on which local authority they are in. For large, deprived secondary schools, this can be as much as £1.25 million depending on where it is in the country.

Children not in schools and attendance – There is not currently a system in place that provides accurate data of children who are not in full-time education in mainstream schools, and importantly whether their education is of sufficient quality. It is estimated that there were around 115, 542 children in home education in the 2020/21 academic year.

Currently, there is not a standard, consistent set of attendance standards and guidance to follow across schools. Pre-pandemic, 1 in 9 pupils missing were more than 10 per cent of possible sessions in 2018-19.

IEI and Teacher misconduct – The current registration requirements do not go far enough to ensure that all settings that are providing all or the majority of a child's education, such that they could not access mainstream schooling, are registered and within our regulatory regime. At present, it is also too easy for those running an unregistered school to obstruct and prevent Ofsted finding evidence which indicates that the children attending are at risk.

It is often not clear what independent schools are registered to cater for, and there are currently no powers in place to suspend the registration of an independent educational institution that is breaching the standard and posing a risk to children's safety.

The current teacher misconduct regime does not apply to teachers in various educational settings such as further education colleges, meaning that many children are not being safeguarded by the regime. The regime only applies to teachers who are currently in post, meaning that teachers who committed misconduct, but have had a career break are able to teach.

The Schools Bill will:

Deliver the core legislative changes needed to achieve the vision for a stronger and fairer school system that works for every child. Measures will:

- **Strengthen the regulatory framework for academy trusts**, to support the development of a strong trust-led system. **Establish new statutory standards** to drive clarity and consistency of expectations for academy trusts, underpinned by **intervention powers** to ensure action can be taken to tackle serious failure if it occurs.
- **Support more schools to become academies in strong trusts** by removing barriers to conversion for faith schools and grammar schools and bringing schools into the academy sector where this is requested by Local Authorities.
- **Protect the selective status of grammar schools** within Multi-Academy Trusts whilst maintaining the rights of eligible parents to ballot to remove selection.
- **Enable better, more targeted, and more consistent multi-agency support** to the children and families who need it most across England by making necessary reforms to the **attendance legal framework**.
- **Ensure that all schools are supported to deliver high standards** by implementing a direct **National Funding Formula**, meaning that each mainstream school will be allocated funding on the same basis, wherever it is in the country, and every child can be given the same opportunities, based on a consistent assessment of their needs.

Deliver essential safeguarding measures to ensure that more children receive a suitable and safe education. Measures will:

- **Enhance the ability of local authorities** to undertake their responsibilities related to **children who are not in school** by establishing 'Children Not In School' Registers, as well as creating a duty on local authorities to provide support to home educating families.
- **Improve safeguarding** by expanding registration requirements for independent educational institutions, enhancing enforcement, and working with Ofsted to expand investigatory powers.
- **Strengthen the current teacher misconduct regime** by widening its scope to include more educational institutions, increasing powers to investigate individuals who commit misconduct and enact appropriate regulatory discipline procedures.

Academy Trust Standards

Context

- Requirements on academy trusts are spread across numerous instruments in a complex regulatory system designed for a school system encompassing hundreds of academies, rather than the thousands we now have.
- As we move towards a school system in which all schools sit within a family of strongly performing academy trusts, there is a pressing need to ensure those existing requirements are consolidated into a single, simple overarching statutory framework, suitable for a school system consisting entirely of academies in strong trusts, that serves the needs of both trusts and communities while enabling the Government to steward a thriving school system.

Purpose

- The measure will provide a clear, consistent and transparent regulatory framework (a 'common rule book') fit for a school system of strong trusts, where compliance can be effectively enforced in the best interests of children and students.

Effect of the legislation

- a. Allows the Secretary of State to make regulations to set out the standards to which academies must adhere. The first set of regulations will largely bring on to statute requirements that currently exist in places like the academy funding agreement.
- b. Allows the requirements placed on schools to be updated to keep pace with the evolution of the system.
- c. Provides Parliament with the opportunity to scrutinise any future proposals to change the obligations placed on academy trusts.
- d. Creates a regulatory system that supports proportionate intervention where it is needed.

Academy Trust Intervention Powers

Context

- The intervention framework for trusts has not kept pace with developments in the academy sector. The current intervention framework facilitates intervention mainly where failures occur at an individual academy, rather than addressing issue at trust level. It relies on a limited menu of powers, mostly contractual, which are ultimately limited to the termination of funding agreements. These limitations mean intervention activity can be slow or ineffective, and that it can be difficult to remedy specific breaches of requirements which may not, in themselves, justify termination action. This risks the provision of education and the efficient use of public funds and has the potential to undermine confidence in the sector.

Purpose

- The measure will build the capacity of high-quality trusts across the school system. This requires the development of a strong and effective system of oversight so that instances of failure can be rapidly addressed.
- The new framework will allow for proportionate intervention both in relation to a trust's management of its individual academies and where weaknesses are identified at academy trust level.

Effect of the legislation

- a. The new trust-level intervention powers will facilitate more proportionate, transparent and effective engagement with underperforming single and multi-academy trusts.
- b. Provide powers that can be used more flexibly, allowing for trusts to be improved rather than transferring their schools to another trust.
- c. Powers will be the enforcement mechanism for the new Academy Trust Standards.
- d. Termination powers currently in individual funding agreements will be incorporated into legislation so the powers can be applied consistently across the academy sector.

Local Authority Academisation Power

Context

- There are limits to the role that local authorities currently play in shaping the school system in their areas as academy orders can only be issued to schools where the governing body has applied to convert, or where a school is underperforming and is eligible for intervention.

Purpose

- This measure will enable local authorities to play a more active role in enabling all the schools in their areas to become part of strong academy trusts by initiating the conversion process.

Effect of the legislation

- a. Enables a local authority to make an application to the Secretary of State to make an academy order in respect of any maintained schools in its area.
- b. Prior to making a request for an academy order, local authorities will need to engage extensively with local partners and, as required by the legislation, consult governing boards and foundations of the schools and the obtain the consent of the trustees of a foundation or voluntary schools and persons by whom foundation governors are appointed prior to making an application.
- c. Local authorities will be able to convert their remaining schools into academies which would free up significant resource to invest into other functions.

Transfer of land by local authorities

Context

- The Government's aim is that all children will benefit from being taught in a school in, or in the process of joining, a multi academy trust by 2030. That is why the Government has committed to support schools to become academies by removing barriers to conversion that apply to schools with particular characteristics, including those with a religious character.
- The Government recognises that when considering whether their schools should become academies, charitable school trustees will want to be confident that the nature and purpose of their trust will be preserved. The Government is introducing a measure to preserve trustees' existing land interest once schools whose sites are held on charitable trusts become academies.

Purpose

- This measure relates to academies where land is held by separate charitable school trusts.
- The measure will preserve trustees' existing land interest once schools whose sites are held on charitable trusts become academies.
- This is a particular issue for Church and faith schools and contributes to the Government's aim to both encourage, and remove any barriers to, Church and faith schools joining a multi academy trust.

Effect of the legislation

- a. If a local authority decides to use its discretionary power to provide a new site for an academy, they will need to consider whether any of the academy's existing land is held on a separate charitable school trust. If it is, then the local authority will be required to transfer the interest it holds in the land it is providing – usually the freehold – to the trustees.
- b. Required trustees to transfer proceeds of sale from the old site to the local authority to ensure the current nature and purpose of the trust are preserved.
- c. Replicates for these schools as academies what would have happened if they had relocated to a new site as a maintained foundation or voluntary school.

Statutory faith protections for academies with a religious character

Context

- The Government's aim is that by 2030, all children will benefit from being taught in a family of schools, with their school in a multi academy trust or with plans to join or form one. That is why the Government has committed to support more faith schools to become academies by removing barriers to conversion that specifically apply to schools with a religious character

Purpose

- The measure encourages Church and faith schools to join a multi academy trust by introducing equivalent statutory religious character protections for academies as local authority-maintained schools.
- This is to protect the religious character of a faith school through its governance arrangements and provision of religious education and collective worship to pupils and will address an existing barrier to maintained faith schools joining a strong academy trust.

Effect of the legislation

- a. Provides powers to the Secretary of State to make regulations regarding the governance of academy trusts which have academies designated with a religious character.
- b. Provides protection in law for academies designated with a religious character to provide religious education and collective worship in accordance with the tenets and practices of the relevant religion or denomination.

Grammar Schools

Context

- The 163 grammar schools in England are the only state-funded schools in England that are permitted to select their entire pupil intake by general academic ability. 99% are rated by Ofsted as good or outstanding, and 75% are rated outstanding.
- In the future fully-trust led system, the government wants to ensure that grammar schools continue to play an important role within the communities that they serve. We committed in the [Schools White Paper](#) to ensure that they are secure in multi academy trusts (MATs).

Purpose

- We recognise the important role that selective schools have within the communities they serve and will ensure they are secure in multi academy trusts.
- The measure will ensure the law protects the selective status of academy grammar schools whilst also protecting the rights of parents to ballot for the removal of selection.
- The selective status of maintained grammar schools and the means by which selection can be removed are set out in legislation. However, for academy grammar schools, their selective status and the means by which selection can be removed are set out in the funding agreement. This measure will place these arrangements in statute.

Effect of the legislation

- a. Gives the Secretary of State the power to designate the 143 wholly selective academy schools as 'grammar schools' in legislation alongside the 20 maintained schools which are currently designated as grammar schools.
- b. Specifies that the only way selection can be removed from these schools is by a public ballot of eligible parents, initiated by a petition as the right approach to grammar school status in the future system, removing the ability for the academy trust from formally proposing to remove selection.
- c. Gives complete protection against trusts or governing bodies attempting to remove selection against the will of parents.

National Funding Formula

Context

- In our 2016 consultation on the national funding formula (NFF), we agreed the principles which should underpin a new school funding system, including that school funding should be fair, simple and transparent.
- The schools NFF was introduced in 2018-19 and was a crucial step towards a fairer funding system through ensuring school resources are now being distributed based on the individual needs and characteristics of schools and their pupils, rather than historic funding patterns

Purpose

- Going further, through the Department directly allocating each school its NFF allocation is the only way to ensure that schools funding fully reflects all these principles, so that schools are funded on the same basis no matter which local authority (LA) they are in.

Effect of the legislation

- a. Places a duty on the Secretary of State to determine funding for mainstream schools (both academies and maintained schools) in England through a single national funding formula. The Education and Skills Funding Agency will allocate funding to academies, and LAs will continue to allocate funding to their maintained schools – but in accordance with the national formula.
- b. Allow the government to use the schools NFF to decide how much core funding to allocate for 5–16-year-old pupils (reception through to Year 11) in mainstream state-funded schools in England.
- c. Enables LAs to still have a role in education, including through managing local high needs and early years spending

Teacher misconduct

Context

- Teachers are the single most important in-school factor in a child's education and the overwhelming majority are highly competent and never engage in any form of misconduct.
- It is vital therefore to keep the teacher misconduct arrangements under review, and continually look to improve the policies, processes and procedures that make up these arrangements. The Government takes seriously any feedback, including judgements made by the High Court, relevant case law etc., that suggests improvements could be made, particularly where these impact on child welfare, safety and safeguarding.

Purpose

- The measure will ensure no child or young person will be disadvantaged as a result of where they access their education. Reforms to the teacher misconduct regime are required to protect more children in educational settings by extending powers to identify and prohibit teachers who have committed serious misconduct.
- The teacher misconduct regime operates under the powers set out in the Education Act 2002, and therefore the changes to the regime identified above, are only possible by amending the overriding legislation.

Effect of the legislation

- a. Broadens the scope of the regime to include persons who commit misconduct when not employed as a teacher, but who have at any time carried out teaching work
- b. Broadens the scope of the regime to include a wider range of education settings
- c. Enables the Secretary of State to consider referrals of serious teacher misconduct regardless of how the matter comes to his attention

School Attendance

Context

- Being in school and ready to learn is crucial to pupils' attainment, wellbeing, and wider life chances. The barriers to accessing education are wide and complex, both within and beyond the school gates, and are often specific to individual pupils and families. Yet considerable variation in attendance support and management exists between schools and between local authorities across England.
- The objective of this policy is to reduce pupil absence rates by improving the consistency of attendance support and management provided by schools, trusts and governing bodies, and local authorities to families across England by focussing better, more targeted multi-agency support on pupils who need it most before poor attendance becomes deep-rooted.

Purpose

- The measure will increase attendance as face-to-face education for children's academic, social and emotional wellbeing is of paramount importance.
- Schools will support their children to attend school consistently as we make it easier for schools to access and emulate best practice around attendance.

Effect of the legislation

- a. Local authorities will be required to use their existing powers to promote regular attendance and reduce the number of absences and will pay regard to new attendance guidance issued by the Secretary of State.
- b. Ensures the proprietor of every school in England will be required to ensure policies to promote regular attendance are implemented and published in an attendance policy.
- c. Allows the Secretary of State to set, through regulations at a national level, the circumstances in which the issuing of fixed penalty notices for absence must be considered.
- d. Extends the Secretary of State's power to make regulations in respect of the granting of leaves of absence to also cover all types of schools that are Academies.

Children Not In School

Context

- While we know that many parents who home educate do so well, often to a high standard, this is not the case for all. Some may be deemed to be 'home educated' but in reality are educated mainly or entirely through attendance at unsuitable settings, such as unregistered independent schools; and there is a risk for a number of other children that their education is simply unsuitable, because their parents are not able to educate them effectively at home, or the children are not being educated at all.
- The government's objective therefore is to ensure that all parents who decide to educate their child at home are supported to provide them with a suitable education, and that local authorities have the tools they need to help them to carry out their duties in relation to education and safeguarding.

Purpose

- The measure will ensure that parents who choose to educate their child at home are providing them with a suitable education, and will help local authorities carry out their duties in relation to education and safeguarding.

Effect of the legislation

- a. Places a duty on local authorities in England to establish and maintain Children Not In School (CNIS) registers, and to provide support to interested home educators.
- b. Ensures local authorities are aware of the children not in school in their area to undertake their existing safeguarding responsibilities more effectively, including trying to identify children missing education (CME).
- c. Parents, and certain providers of out-of-school education (meeting a prescribed threshold to be set out in regulations), will be required to provide information for this register.
- d. Changes will be made to School Attendance Order (SAO) legislation in England to help increase the efficiency of the process.

Independent Educational Institutions: Registration Requirements and Ofsted powers

Context

- There are currently some educational settings that provide the majority of a child's education but where the curriculum offered is so narrow that the setting does not meet the legal definition of an 'independent school' and so does not currently need to be registered and be subject to inspection.
- At present, it is too easy for those running an unregistered school to obstruct and prevent Ofsted finding evidence which indicates that the children attending are at risk.

Purpose

- Expanding registration requirements ensures settings which provide all, or the majority of, a child's education during normal school hours are in scope of our regulatory regime to ensure more settings provide a safe and suitable education.
- Enhancing Ofsted powers will enable inspections to take place even if the adults (suspected of) committing this offence make efforts to prevent this. ensure there are fewer proprietors of registered independent educational institutions breaching relevant restrictions and unregistered independent educational institutions being conducted unlawfully
- Data sharing agreements will ensure that school inspectorates can work effectively together.

Effect of the legislation

- a. Settings that provide all or the majority of a child's education during school hours, i.e. which prevent the children attending elsewhere for their education, will be required to register with the Secretary of State and be subject to our regulatory regime.
- b. Strengthened legal framework relating to the investigation, prosecution and sentencing of offences, providing enhanced powers to Ofsted as inspector.
- c. School inspectorates will be able to share information to help them better support the Department for Education (DfE) in regulating independent educational institutions.

Independent Educational Institutions regulatory reform: material change, suspension of registration, and appeals against de-registration

Context

- It is often not clear what independent schools are registered to cater for, and the changes will provide more clarity to ensure schools are safe and can be inspected properly.
- There is currently no immediate mechanism to safeguard children who may be exposed to risk of harm in their school environment.
- Appeals against deregistration can currently take a long time, through which the failing school continues to operate as the deregistration does not take effect until an appeal is withdrawn or the First Tier Tribunal finds in favour of the Department.

Purpose

- Amendments to the material change regime will ensure that it is clear what schools are registered to do and enable the Secretary of State to impose relevant restrictions where a material change is implemented without prior approval, and to set standards to reject proprietors on the basis that they are not fit and proper
- Enforcement powers will enable the Secretary of State to suspend the registration of settings where there is a breach of standards and clear risk of harm to the students attending.
- Changes to the basis on which appeals against de-registration are heard from a full-merits to a judicial review basis will mean that challenges can be resolved more quickly and failing schools closed sooner.

Effect of the legislation

- a. Gives the Secretary of State discretion to accept or refuse an application for material change subject to certain conditions being met and a power to impose a relevant restriction where there is an unapproved material change.
- b. Provides the ability to suspend registration of a setting in breach of the standards will provide more flexibility to DfE as regulator, comparable to Ofsted and the Care Quality Commission
- c. De-registration decisions can take effect more expeditiously against schools with long term failings, meaning children will spend less time at failing schools