

A Short Guide to the Education and Inspections Bill 2006

This document has been produced by the Department for Education and Skills in order to assist the general reader in understanding the Bill's provisions.

Overview

The Education and Inspections Bill represents a major step forward in the Government's aim of ensuring that every child in every school in every community gets the education they need to enable them to fulfil their potential.

Trust schools

We know that schools work best when they tailor their curriculum to meet their pupils' needs and take responsibility for their own school improvement, working closely with other schools and external partners. The Bill will empower schools by devolving as much decision-making to them as possible, while giving local authorities an enhanced strategic role as the champion of pupils and parents.

All schools will be able to become Trust schools by forming links with external partners who will be able, should the school choose, to appoint the majority of the Governing Body. We expect that many schools will acquire shared Trusts that can foster and deepen collaboration and help to deliver improved children's services and a new 14-19 offer.

Acquiring a Trust will give schools access to the freedoms enjoyed by other foundation schools – owning their own assets, employing their own staff (subject to the School Teachers Pay and Conditions Document) and setting their admission arrangements (subject to the law and a newly strengthened Code on School Admissions). Trusts will also be able to apply for additional flexibilities which can be used by all the schools with which they are associated.

There will be new safeguards around the acquisition of Trusts to ensure that they operate in the best interests of local children. Where the Trust appoints the majority of governors, they will also have to set up a Parent Council. All schools, including Trust schools, will be given new duties to have regard to the views of parents and to the local Children and Young People's Plan.

Local Authorities

Local authorities will take on a new strategic role, with duties to promote choice, diversity, high standards and, for the first time, the fulfillment of **every child's** educational potential. They will respond to parental concerns about the quality of local schools – and, in doing so, they will have new powers to intervene earlier where performance is poor. As the commissioner of school places, local authorities will be able to propose expansions to all categories of school, set the terms for school competitions and take all decisions relating to school organisation.

Fair Access

The Bill will tighten the admissions framework to ensure fair access for all. As well as reaffirming the ban on new selection by ability, it will outlaw interviewing; strengthen the status of the Code on School Admissions; create a new power for Admission Forums to produce an annual report and to refer objections to the Schools

Adjudicator; and make the Adjudicator's decisions binding for three years.

Fair access will also be supported by an extended duty on local authorities to provide free transport for the most disadvantaged families and by a new duty to provide advice and assistance to parents in expressing a preference for a school for their child.

Behaviour

Behaviour has long been a major concern for school staff and for parents alike. The Bill will give effect to some of the key recommendations of the recent Steer report. It will create, for the first time, a clear statutory right for school staff to discipline pupils – putting an end to the “You can't tell me what to do” culture. It will extend the scope of parenting orders and contracts and will improve provision for excluded pupils, with parents taking responsibility for excluded pupils in their first five days of an exclusion. Governing bodies and local authorities will be required to provide full-time alternative provision from the sixth day of an exclusion.

14-19

The Bill gives effect to the most important reforms of curriculum and qualifications since the introduction of the National Curriculum. In the 14-19 White Paper, we set out our plans to transform opportunity for young people through changes to curriculum, qualifications and the organisation of education and training, so that every young person would be able to pursue a course of study that prepare them for success in life. Central to this is the introduction of 14 new specialised Diplomas, available to every young person aged 14-19, wherever they are in the country. The Bill makes access to Diplomas an entitlement for every young person everywhere. In order to deliver the entitlement to young people aged 14-16, schools will need to work with each other and with colleges and other providers – the Bill also empowers them to enter into formal collaboration with FE Colleges.

School Food

The Bill will revolutionise the provision of school meals. It establishes the power to create tough new nutritional standards for food and drink served in maintained schools to ensure that all children have access throughout the day to good quality food and drink.

Youth

The Bill will give local authorities responsibility for making sure young people have a range of exciting and positive things to do in their spare time, as promised in the recent Youth Green Paper, Youth Matters. This will increase their access to new opportunities and new experiences, and empower them to shape the services they receive.

Inspectorate Reform

Finally, the Bill will merge several existing inspectorates to bring all learning issues within one body that covers the full range of services for children and young people, as well as lifelong learning. This will reduce the burden of inspection and associated bureaucracy and ensure that all inspection has a stronger focus on delivering for citizens and ensuring value for money.

Part by Part summary

Part 1 (Education Functions of Local Authorities)

The Schools White Paper set out a vision for a new local authority role, as champion of parents and pupils. Part 1 of the Bill gives local authorities some new legal responsibilities as part of this new role.

Clause 1 places a duty on local authorities to promote high standards and, for the first time, the fulfillment of **every child's** educational potential. Clause 2 requires them to promote choice and diversity when carrying out their strategic duties in relation to the provision of school places. Clause 3 gives parents more say in the provision of schools in their area by requiring local authorities to respond to representations from parents who are not satisfied with the local provision of schools.

There are still too many children who are not receiving any formal education. Clause 4 places a new duty on local authorities to make arrangements to identify children of compulsory school age missing education in their area.

Clause 5 requires local authorities to appoint accredited School Improvement Partners for maintained schools. The School Improvement Partner will provide the governing body and the head teacher with challenge and support, helping them to focus on priorities and targets for school improvement. This is a crucial step in raising standards and closing educational achievement gaps.

Clause 6 places a duty on local authorities in England to promote the well-being of persons aged 13-19 (and up to 25 for persons with learning difficulties) by securing access to educational and recreational leisure-time activities and facilities. This gives effect to the proposals contained in the Youth Green Paper, *Youth Matters*.

Part 2 (Establishment, Discontinuance or Alteration of Schools in England)

We are committed to a new strategic role for local authorities, and to offering all parents a real choice of a school which suits their child's strengths and interests. This Part of the Bill contains a range of school organisation provisions which take forward these objectives.

Clauses 7 to 13 deal with the establishment of new schools. In its role as commissioner of local services, the local authority will consult on the specification for any new school (clause 8), and invite promoters to bring forward proposals to set up the school (clause 7). Regulations will prescribe the areas that can be covered by specifications, but these will include the opportunity for local authorities to set out their expectations for the community the new school would serve and the sorts of extended services that should be on offer. The successful proposal will be decided upon in a competition, which is judged by the local authority unless the local authority itself has entered the competition. Clauses 7 and 9 allow the local authority to propose a new community or community special school with the Secretary of State's agreement. In this case, the competition would be judged by the Schools

Adjudicator. The reason the Secretary of State, rather than the Schools Adjudicator, is involved is because the Adjudicator cannot both rule on whether a community school proposal should be allowed and be the decider of the competition. The Secretary of State will consider each case on its individual merits. However, where a local authority with a good track record proposes a community school that will command the support of parents, the Secretary of State will not normally intervene. A local authority may enter a competition with proposals for a new foundation school without the Secretary of State's consent.

Clause 7 extends the competition provisions (that were legislated for in the 2002 and 2005 Acts) to primary and special schools; this will further develop the diversity of local provision available to parents. Only nurseries, 16-19 provision and schools replacing existing independent schools will be outside the competition process, as they are at present.

Part of the local authority's new strategic role is to plan local school provision, including making decisions about the establishment, alteration and closure of any maintained mainstream, special and nursery schools. This means that the local authority will take over existing functions of the School Organisation Committee which is abolished by clause 27. In the light of this, clauses 14, 15 and 16 introduce procedures for the closure of maintained schools. Local authorities will also have extended powers (under clause 18) to propose the enlargement of the premises, the addition or discontinuance of SEN provision or the addition of a sixth form to any foundation, foundation special or voluntary school.

A key reform in the White Paper was the development of Trust schools. Clause 17 enables every school to become a foundation school¹, acquire a foundation and allow that foundation to appoint a majority of governors. All of these changes can only be made where the school agrees. Clause 20 ensures that only governing bodies can decide these changes, although local authorities may refer their decision to the Schools Adjudicator in some circumstances. The Bill makes the acquisition of a foundation and the decision to allow that foundation to appoint a majority of governors prescribed alterations. This means that safeguards and the consultation process will be set out in regulations and guidance.

Although a relationship with a Trust is designed to be lasting, we recognise that there should be some safeguards to deal with changing circumstances. The White Paper set out how local authorities would be able to remove a Trust in circumstances of school failure. Clause 23 will allow a school, where there is real dissatisfaction at the performance of the Trust, to remove the Trust. Regulations will prescribe the process, but it will be possible for a minority of governors to trigger a formal consideration of the Trust's future. If the governing body decides, by a two-thirds majority, to retain the Trust, there can be no new minority resolution for seven years.

¹ Thus giving schools access to the freedoms enjoyed by foundation schools – owning their own assets, employing their own staff and setting their admission arrangements, subject to the law and the Code on School Admissions. A summary of these freedoms can be found in the table at Annex A.

Part 3 (Further Provisions about Maintained Schools)

Part 3 sets out a number of provisions relating to maintained schools including further safeguards around Trusts and changes to the admissions framework to ensure fair access – a central part of the White Paper.

Clause 31 sets out a number of requirements that must be met by Trusts. They must be incorporated charitable bodies and they will have to have specified objects (to be set out in regulations). The clause enables local authorities to be a partner in a Trust. Finally, it gives the Secretary of State a reserve power to remove trustees (and to appoint replacements), and provides for regulations to prevent unsuitable persons from becoming trustees. Proposals for the acquisition of Trusts will have to demonstrate how they will contribute to community cohesion.

To strengthen the voice of parents in Trust schools where the majority of governors are appointed by the Trust, there is a duty in clause 32 for governing bodies to establish Parent Councils in order to secure parental influence in the running of the school.

Clause 33 amends the definition of capital expenditure for Voluntary Aided schools to reflect modern accounting practices. Clause 34 changes the assets regime around disposals for foundation and voluntary schools. It ensures that if a Trust school wishes to dispose of non playing-field land provided or enhanced at public expense, it must inform the local authority in advance, who will be able to object or to claim a share of the proceeds. Where agreement cannot be reached, the Schools Adjudicator will play a mediation role. Local authorities will also be able to make proposals to use any surplus land held by Trusts for other children's services. Any proceeds from disposals must be used for capital investment for the purpose of improving education. The existing rigorous restrictions on playing field disposal will apply to all maintained schools. Assets will revert back to the local authority in the case of school closure (except where Trust originally provided the land).

Clause 35 places a new duty on the governing bodies of maintained schools to have regard to the views of parents and to the relevant Children and Young People's Plan in their conduct of the school and in their provision of extended services.

We are committed to a system of fair admissions that delivers for all pupils. Clause 36 reaffirms the ban on new selection by ability. Clause 37 strengthens the legal status of the Code so that admission authorities will have to "act in accordance" with it, rather than simply "have regard to" it, while clause 38 widens the role of admissions forums, and strengthens their powers and organisation so that they can refer objections to the Adjudicator and can produce an annual report on fair access in their area.

Clause 39 gives the local authority a duty to support parents to express a preference for a particular school, thereby helping a broader range of parents to exercise their right to choose the most suitable school for their child and take advantage of the diversity of local provision.

Clause 40 bans interviewing as part of any school's admission arrangements. Clause 41 will prevent new and expanded schools, and schools which have had an objection against their admission arrangements upheld by the Schools Adjudicator or Secretary of State, from amending their admissions arrangements for three years. This is to allow fair admission arrangements, in line with the Code, to bed in and to prevent schools reintroducing arrangements which have been ruled out. Clause 43 makes it easier for schools to introduce banding and allows them to do so based on local or national ability ranges – this enables schools to achieve an all-ability intake.

Clause 44 makes minor amendments to the Secretary of State's role in maintained schools' delegated budgets, giving more power to local decision-makers.

Clause 45 removes the outdated Code of Practice on local authority and school relations to enable more decisive intervention, and to take account of the introduction of School Improvement Partners (SIPs) through the New Relationship with Schools.

Part 4 (Schools Causing Concern)

Despite the sharp improvement in the number of good schools, too many children are still let down by teaching and learning which do not live up to the high standards that parents and children rightly expect and deserve. The White Paper set out a series of measures to toughen the regime for turning around underperforming and failing schools more quickly and this Bill will make these proposals law.

The Bill will give local authorities an enhanced role in tackling underperformance through supporting and challenging schools earlier. So that underperformance does not become entrenched, authorities must also have an unremitting focus on tackling school failure and securing sustainable improvements at the school, immediately after it has been judged by Ofsted to require special measures or significant improvement

Clause 47 re-enacts existing legislation with amendments so that local authorities can intervene earlier and more easily tackle underperforming schools by issuing them with a formal warning notice. Schools will be given a right to make representations to Ofsted against the issue of the notice.

Provisions within Schedule 7 require local authorities to act more quickly and decisively in relation to schools which have received an adverse Ofsted report. Clauses 50 to 53 give the local authority powers (most of which are re-enactments of existing provisions with minor amendments) to intervene in schools causing concern; clause 50 contains a new power which enables the local authority to require a weak school to collaborate with another school or to work with a partner on school improvement.

Clauses 54, 55 and 56 re-enact with minor amendments the Secretary of State's existing reserve powers of intervention in schools causing concern.

Clause 59 requires local authorities to have regard to guidance in using their

intervention powers under this Part of the Bill.

Part 5 (Curriculum and Entitlements)

Part 5 of the Bill gives effect to the most important reforms of curriculum and qualifications since the introduction of the National Curriculum. In the *14-19 Education and Skills White Paper*, we set out our plans to transform opportunity for young people through changes to curriculum, qualifications and the organisation of education and training, so that every young person would be able to pursue a course of study that would meet their needs and aspirations and prepare themselves for success in life. Central to this is the introduction of 14 new specialised Diplomas, available to every young person aged 14-19, wherever they are in the country - and offering a route to success for young people who want to learn through practical experience. The Diplomas are being designed by partnerships led by employers and higher education, so that they provide young people with the skills and knowledge that they will need to progress to employment and to further study at university. The Diplomas will be available at three levels - level 3 being equivalent to A level standard - so that young people can study at an appropriate level for them, knowing that succeeding at that level will prepare them to progress to the next level.

Clauses 61 and 62 put in place the powers to make access to Diplomas an entitlement for every young person everywhere. In order to deliver the entitlement to young people aged 14-16, schools will need to work with each other and with colleges and other providers in order to make sure that between them they offer young people the full entitlement, because no school could be expected to deliver every Diploma on its own. The Bill gives local authorities the strategic lead for securing the entitlement for these young people, with the essential role of making sure that in every area, schools and colleges between them make the full range available.

Through these provisions, the Bill puts in place the essential underpinnings for achieving our ambition that at least 90% of young people continue to participate in education and training until at least the age of 17. In doing so, it is crucial to ending once and for all the lack of opportunity in this country for those whose preference is for practical learning

Part 6 (School Travel and School Food)

Clause 64 reduces the impact of transport as a barrier to parents from low income groups exercising their choice of school; it improves and extends the offer of free transport which was first set out in the 1944 Education Act. The Bill will place a new duty on local authorities to provide free transport for some of the most disadvantaged pupils (i.e. those eligible for free school meals or whose parents are in receipt of the maximum level of Working Tax Credit) to attend any of three suitable secondary schools closest to their home, where these schools are more than two (and less than six) miles away, and for primary-aged pupils to the nearest school more than two miles from their home.

Clause 63 gives local authorities a duty to prepare and publish a sustainable school travel strategy, leading to health and environmental benefits.

Clauses 65, 66 and 67 will enable a small number of 'Pathfinder' local authorities to develop school travel schemes to pilot innovative approaches to home to school travel. 'Pathfinder' authorities will put in place new travel arrangements to support school choice, reduce the distances pupils are expected to walk to school, and increase the proportion of pupils traveling by sustainable means. 'Pathfinders' may also trial transport arrangements that support the provision of a wider 14-19 offer and extended services and that address the problems faced in rural authorities – for example, by using Yellow Buses. The Pathfinders will also test the efficacy of co-funding arrangements.

Poor diet can be a real barrier to learning and the School Meals Review Panel report in October 2005 recommended new standards for school meals. We are determined to transform the quality of school food: clause 74 covers our commitment to providing children with high-quality, nutritious food at school by permitting nutritional standards to be applied to all food and drink supplied on school premises. Clause 74 changes the existing 'duty to charge' into a 'power to charge'; this will enable schools and local authorities to provide free meals, including breakfast, if they wish to do so.

Part 7 (Behaviour, Discipline and Exclusion)

Though Ofsted tells us that behaviour is good in most schools most of the time, we have made tackling bad behaviour a major priority, providing schools with unprecedented powers, training and resources. Part 7 of the Bill takes this further, and gives us the legislative framework we need, implementing and building on some of the key recommendations of the recent Steer Report.

Chapter 1 of Part 7 deals with school discipline. Clauses 75 and 76 require schools to have a behaviour policy. Clauses 77 and 78 provide a new statutory power to discipline, which will give all staff in lawful charge of pupils the power to discipline pupils for inappropriate behaviour or for not following instructions. This will provide greater clarity for schools, pupils and parents on the extent of school staff's power to discipline pupils, including when they are off school premises. Clause 78 also provides flexibility for Heads to respond to the particular needs of their school when exercising disciplinary powers. Clause 80 re-enacts provisions around the use of force. Clause 79 replaces existing provisions on detention with new powers giving schools greater scope and flexibility to employ the sanction. Clause 81 provides a defence for school staff in confiscating inappropriate items.

Clauses 84, 85 and 86 extend parenting contracts and orders so that they can be used more widely to ensure that parents take proper responsibility for their children's behaviour at school. We are bringing forward the availability of parenting contracts so that they can be used as an earlier intervention, well before the pupil has been excluded. We are enabling parenting orders to be used where the pupil has seriously misbehaved (regardless of whether or not they have been excluded). And schools are being empowered to make their own applications for parenting orders.

Clauses 90, 91 and 92 require parents to take responsibility for excluded pupils in their first five days of exclusion, whether fixed term or permanent; and provide for prosecution or penalty notices to be issued to parents where excluded pupils are found in a public place during school hours without

reasonable excuse. Governing bodies and ultimately local authorities will be required to provide alternative provision from the sixth day of their exclusion (clauses 87 and 88). Clause 89 makes reintegration interviews compulsory for pupils who have been excluded.

Part 8 (The Office for Standards in Education, Children's Services and Skills)

Part 8 of the Bill provides for the enlargement of Ofsted to create a new single inspectorate for children and learners as the Office for Standards in Education, Children's Services and Skills, still colloquially to be known as Ofsted.² This is part of the Government's strategy for public service inspection. This seeks to refocus inspection on what is relevant to the people who use public services, the way they use them and the outcomes they experience, and to reduce the amount of inspection activity and the burden it generates.

Chapter 1 of Part 8 creates a non-executive board to set the strategic direction and hold Her Majesty's Chief Inspector (HMCI) to account. It also sets out the general duties which will be placed on HMCI (based extensively on HMCI's current duties). It gives the Office and HMCI the overarching purpose of encouraging improvement, user-focus and efficient and effective use of resources. It places other statutory duties on the board and HMCI. It is important to note that HMCI will remain solely responsible for inspection judgements. Chapter 1 also transfers the Children's Rights Director from CSCI (Commission for Social Care Inspection) to Ofsted.

Chapter 2 transfers to the new HMCI the functions of the existing HMCI. These include, for example, powers to inspect schools, child minding and nursery education.

Chapter 3 transfers to HMCI the existing ALI (Adult Learning Inspectorate) inspection functions covering further education and training, together with the existing inspection functions of the existing HMCI, as currently contained in Part 3 of the Learning and Skills Act 2000. It also re-enacts the existing 14-19 Area Inspection provisions.

Chapter 4 transfers to HMCI CSCI's local authority inspection functions with regard to services for children, and integrates these with his existing local authority inspection functions.

Chapter 5 provides for the transfer of inspection of CAFCASS (Children and Family Court Advisory Service) functions in England from HMICA (Her Majesty's Inspectorate of Court Administration) to HMCI.

Chapter 6 contains further provisions relating to HMCI. It transfers new areas of responsibility to him, such as the inspection of secure training centres, and the registration of children's homes, residential family centres, fostering agencies, voluntary adoption agencies, and adoption-support agencies. It also contains general provisions for HMCI, including his interaction with other

² The Government published *A Single Inspectorate for Children and Learners: The Government's Response to Consultation* in December 2005, making clear the intention to create this new enlarged inspectorate.

public sector inspectorates.

Chapter 7 contains transitional provisions facilitating the transfer of staff and property to the Office from existing inspectorates.

Part 9 (Miscellaneous)

This Part contains a number of miscellaneous policy provisions.

In order to ensure that the legitimate concerns of parents are given proper consideration, clause 145 creates a new parental right of complaint to Ofsted, when local complaints procedures have been exhausted. The Chief Inspector of Schools will be given a new power to gather additional information as part of following up a complaint.

Clause 146 extends the existing Power to Innovate provisions, which allow schools to apply for legislation to be set aside or modified if they believe that it is inhibiting innovation that could raise standards. The existing provisions will be extended to give the same powers to Further Education colleges, and to enable Trusts to apply for freedoms on behalf of all their schools.

Clause 147 is a technical provision which will allow us to update references in legislation to "local education authorities" and "children services authorities" making clear that they are all the same (integrated) local authority.

Clause 149 provides an enabling power for maintained schools to collaborate formally with Further Education colleges, as they can already do with other maintained schools, and vice versa. It also allows for formal collaboration between Further Education colleges. This collaboration will be essential for the delivery of the new 14-19 entitlement set out earlier.

Clause 148 enables the collection of data on children who are not educated at school.

Clause 152 extends the powers of the Learning and Skills Council (LSC) to provide support for under-16s.

Clause 153 removes the requirement that university bodies seek the consent of the Secretary of State or National Assembly for Wales (as relevant) before imposing restrictive covenants on their tenants who wish to acquire the freehold or extend the lease of land under the Leasehold Reform Act 1967. Such covenants can currently be imposed for the purpose of reserving the land for possible development by them or a related university body. In future, a university body will only be able to impose these restrictive covenants on their tenants to reserve the land for possible development for university purposes by them or a related university body.

Part 10 (General)

This Part of the Bill contains a number of technical and general provisions which are common to all Bills.

Clause 154 gives Wales a framework power to make its own secondary legislation in a number of areas. The Framework powers are drafted to grant

the National Assembly for Wales wide powers to determine the detail of how legislative provisions should be developed and implemented in Wales. This approach implements the Government's policy set out in the White Paper "Better Governance for Wales" of delegating to the Assembly maximum discretion in making its own provisions in subject areas where it already exercises legislative and executive functions. The Education and Inspections Bill is the second Bill to include framework powers³.

The policy areas included in the proposed framework power are:

- school organisation ;
- school admissions;
- the curriculum in maintained schools;
- attendance, discipline and exclusion;
- entitlement to education and training;
- services to encourage, support or assist young people with regards to education and training;
- travel of persons receiving education and training; and
- food and drink provided for children in education and childcare settings.

Clause 164 sets out the timing for the legislation to come into force. In this case, the legislation that deals with school food (Part 6), and which provides for regulations to be made relating to the establishment of the new Inspectorate (Part 8) will be commenced immediately on Royal Assent.

³ The NHS Redress Bill is the first Bill to include framework powers.

ANNEX A - DIFFERENCES BETWEEN FOUNDATION AND COMMUNITY SCHOOLS (IF BILL PASSED)

	FOUNDATION	COMMUNITY
Composition of governing body	If school has a foundation, the foundation may appoint governors. The instrument of government may provide for the foundation to appoint a majority of the governing body.	May not have a foundation.
Ownership of the land and buildings	Foundation (if there is one) - otherwise governing body. Disposal of playing field land continues to require SoS consent. New legal safeguards apply to other disposals of publicly-funded land.	Local authority. Disposal of playing field land continues to require SoS consent.
Building Projects	Foundation schools can contract and procure building projects themselves (as can voluntary aided schools).	Will normally contract and procure through their local authority.
Employs the staff	Governing body	Local authority
Appointment of Headteacher	Governing body selects and appoints	Governing body selects but the local authority makes the appointment.
Decides admission arrangements (within the Admissions Code)	Governing body	Local authority
Publishes proposals to change the school	Governing body. The Bill will allow the local authority to publish proposals for enlargement of the school, the addition of SEN provision or the establishment of a sixth form.	Local authority (but also governing body for proposals to change category, expand or add a sixth form)
Sets dates of terms	Governing body	Local authority
Religious character	May have a religious character only if established on that basis.	May not have a religious character.