

TO: CHILDREN, YOUNG PEOPLE & LEARNING OVERVIEW AND SCRUTINY PANEL  
18 JANUARY 2012

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**EDUCATION ACT 2011**  
**Director of Children, Young People and Learning**

**1 PURPOSE OF REPORT**

1.1 To brief the Panel in respect of the provisions of the Education Act 2011.

**2 RECOMMENDATION**

2.1 **That the Children, Young People and Learning Overview and Scrutiny Panel notes the provisions of the Education Act 2011.**

**3 SUPPORTING INFORMATION**

3.1 The Education Bill was introduced into the House of Commons on Wednesday 26 January 2011 and received Royal Assent on 15 November 2011.

3.2 The **Education Act 2011** implements the Government's education reform programme and seeks to help to create an education system that delivers ever higher standards for all children. Most provisions in the Act will be commenced within the next two months, with those relating to abolition of arms-length bodies being commenced at the end of the financial year and the remainder at the start of the school year in September 2012.

3.3 The Education Act 2011 takes forward the legislative proposals in the Schools White Paper, *The Importance of Teaching* and measures from the Department for Business, Innovation and Skills to improve skills, including two elements of the reforms to higher education funding.

3.4 Some elements of the Act have drawn particular comment including the granting to teachers of the power to search pupils for items banned under the school rules and issue same-day detentions. The Act also seeks to provide better protection for teachers from false allegations by pupils. Exclusion appeal panels will be replaced by review panels, which will review decisions but will not have the power to force a school to reinstate an excluded pupil.

3.5 One consequence of the Act is the significant accretion of powers to the Secretary of State. This is seen in the abolition of five public bodies and the creation of three executive agencies, the Teaching Agency, the Education Funding Agency and the Standards and Testing Agency. And some new functions that the Secretary of State is taking on, such as curriculum development and dealing with parental complaints will be handled within the DfE and not by an executive agency.

3.6 Changes to the Ofsted Framework are confirmed as it the intention to exclude schools judged to be outstanding from regular inspection.

3.7 Much of the new Act amends or repeals 47 separate issues to do with previously enacted education and children law. Many of the Act's provisions were announced in the Department for Education's Schools White Paper *The Importance of Teaching* in November 2010 covering teaching, schools and the school system. In addition, proposals from the Department for Business, Innovation and Skills, found in

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*Skills for Sustainable Growth and Further Education – New Horizon*, cover vocational learning and management of further education and sixth form colleges. The Act also contains provisions on early years and student fees and loans.

3.8 Compared to recent Acts from the education department, this Act is comparatively short with 83 sections and 18 schedules over 10 Parts over 159 pages.

3.9 Details of each section.

### **Part 1: Early Years provision**

3.10 Early years provision (the 'free entitlement', notionally 15 hours a week for 38 weeks a year) will be offered to 2-year-olds from disadvantaged families (**Section 1**).

### **Part 2: Discipline**

3.11 School staff receive greater powers to search pupils for, and seize, more items. In addition to knives, offensive weapons, stolen articles, and alcohol, staff will be able to search for and seize items those thought likely to be used to commit an offence or cause personal injury to either the pupil or another pupil. Schools will be able to seize items banned by school rules. If school rules prohibit electronic devices (mobile phones etc), these can have files removed before they are returned. In urgent circumstances, a member of staff can dispense with the need for the presence of another member of staff of the same sex as the pupil before carrying out a search of a pupil's clothing or possessions (**Section 2**). Similar powers are given to staff at further education institutions (**Section 3**).

3.12 The parents of an excluded pupil lose the right to appeal to a local independent appeals panel to ask that their child is reinstated. Instead, parents can ask the Local Authority to arrange an independent review panel, to ask the school to think again about a decision to exclude a child. Where a governing body is directed to reconsider a permanent exclusion by the panel and it does not subsequently offer to reinstate the pupil, the school will be expected to make an additional payment to the LA towards the costs of alternative provision. (**Section 4**).

3.13 The requirement to give 24 hours notice before a pupil is detained outside school hours as part of a punishment is repealed (**Section 5**). The requirement that each secondary school must participate in a behaviour and attendance partnership is repealed (**Section 6**).

### **Part 3: School workforce**

3.14 The General Teaching Council England (GTCE) is abolished (**Section 7**). Teacher discipline functions are given to the Secretary of State who gets the power to investigate allegations of professional misconduct etc against qualified teachers and the power to prohibit qualified teachers from teaching (**Section 8**). The Secretary of State will take over from the GTCE the management of teacher induction (**Section 9**).

3.15 Restrictions are placed on reporting by the media etc of alleged criminal offences by teachers in schools prior to a formal charge being made (**Section 13**).

3.16 The Training and Development Agency for Schools (TDA) is abolished and the Secretary of State becomes directly responsible for funding initial training, including the setting of entry standards for funded training to teaching and other school related professions (**Sections 14 to 17**).

3.17 The School Support Staff Negotiating Body (SSSNB) is also abolished; the Body has not yet issued, and will not now issue, its first report on pay and conditions of support staff (**Section 18**).

### **Part 4: Qualifications and curriculum**

3.18 Maintained schools may be required to take part in international surveys of school and pupil performance (**Section 20**).

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- 3.19 Ofqual is directed to consider examination standards in other countries when considering standards in England (**Section 22**). Following the problems with errors in the Summer 2011 GCSE and GCE examinations, Ofqual is given powers to investigate and fine examination boards for errors (**Section 23**).
- 3.20 The Qualifications and Curriculum Development Agency (QCDA) is abolished with functions being extinguished or transferred to the Secretary of State. The development of the National Curriculum is transferred to the Secretary of State without the need to involve an arm's-length body (**Sections 25 to 27**).
- 3.21 The Secretary of State gives up power to direct how the Connexions service works in a particular local authority, but schools can refuse entry to Connexions advisers (**Section 28**). Schools become responsible for impartial careers guidance for 14 to 16-year olds which cannot be provided by a member of the school's staff (**Section 29**). Local authorities will no longer be responsible for securing the additional (non-core) diploma entitlement for 16 to 18 year olds (**Section 30**), and the full range of diploma courses for 14 to 16 year olds (**Section 31**).

### **Part 5: Education institutions: other provision**

- 3.22 The provisions (which were at the start of Part 5) repealing the duties on schools to co-operate with the local authority and other partners to promote the well-being of children and have regard to the children and young people's plan were removed from the Bill by a Government amendment in the Lords.
- 3.23 Schools will no longer have to publish a school profile (**Section 32**), and local authorities will no longer appoint School Improvement Partners to each school (**Section 33**).
- 3.24 The admission forum, the body which supports local co-ordination of school admission arrangements, is abolished. On an appeal against a school's admission arrangements, the adjudicator will lose the power to rewrite admission arrangements. Instead, the adjudicator will state what needs to be done in respect of the appeal to bring the admission arrangements into line with the School Admissions Code. This judgement will remain binding on the admission authority. Local authorities will continue to send annual reports to the Schools Adjudicator but the content of the report will be set out in the Admissions Code rather than regulations (**Section 34**).
- 3.25 Local authorities and schools must not charge more for school meals than the cost of providing the meals. However, differential charging will be permitted to encourage take up by specific groups (**Section 35**).
- 3.26 When a new school is required, the local authority must first try to find a promoter to establish an Academy (or its Free School variant). If none can be found, the local authority can conduct a competition for a foundation or voluntary school as currently happens. If none can be found following a competition, the local authority can then seek the consent of the Secretary of State to establish a community school.
- 3.27 Maintained school governing bodies must consist of parent governors, an elected staff governor and the head teacher and a person appointed by the foundation if there is one. A person can be appointed by the local authority if that person meets the 'eligibility criteria' set by the governing body. The headteacher can resign from the governing body (**Section 38**).
- 3.28 Outstanding schools will be exempt from OfSTED inspections. Such schools can request an inspection but may have to pay for it (**Section 40**). School inspections will principally have to report on the achievement of pupils, the quality of teaching, the quality of leadership and management, and the behaviour and safety of pupils (**Section 41**).
- 3.29 The Secretary of State gets additional powers to close directly a school: all schools which are eligible for intervention can be closed directly except those which are eligible for intervention because of a Teachers' Pay and Conditions Warning Notice. The Secretary of State can override a local authority decision not to issue a

Performance Standards and Safety Warning Notice and thus make a school eligible for intervention (and consequently eligible for an Academy Order) **(Section 44)**.

- 3.30 The legislation allowing complaints to the Local Government Ombudsman about individual schools by parents and pupils is repealed. **(Section 45)**
- 3.31 The Secretary of State can direct changes to local authority schemes for financing schools **(Section 46)**. Premature retirement and redundancy costs of school staff employed for community purposes must be met from school budgets provided that meeting these costs does not interfere with the provision of education to the school's pupils **(Section 47)**. Schools will be able to charge parents for early years educational provision when the school provides educational provision outside the 'free entitlement' **(Section 48)**.
- 3.32 Pupil referral units will have delegated budgets on the same basis as maintained schools **(Section 50)**. The decision to rename Pupil Referral Units (PRUs) as Short Stay Schools is repealed **(Section 51)**.

#### **Part 6: Academies**

- 3.33 The Academies Act 2010 is largely rewritten.
- 3.34 Secondary academies will no longer need to have a specialism **(Section 52)**. Two new types of academies are created: 16 to 19 Academies and Alternative provision Academies. Current Academies become known as Academy schools **(Sections 53 and 54)**.
- 3.35 The influence of school trustees, associated foundations and, where one exists, "the appropriate religious body" is strengthened prior to the making of an Academy Order **(Section 55)**. Consultation prior to conversion can be done by the potential Academy Trust where the Secretary of State uses the power to force an Academy Order where the maintained school is eligible for intervention **(Section 56)**. An individual school in a federation is able to apply to become an academy **(Section 57)**. The law is clarified on the transfer of staff contracts to Academies where an enforced transfer agreement is used **(Section 59)**.
- 3.36 An Academy must consult on a proposal to increase its age range **(Section 60)**. The law clarifying the rights of staff not to be required to comply with religious requirements in faith academies which were formerly voluntary controlled schools is clarified along with the rights of staff which were formerly reserved teachers in such schools and new staff appointed to such positions **(Section 62)**. The law on Academies land is revised **(Section 63)**. The Adjudicator can hear complaints against an Academy's admission arrangements **(Section 64)**.

#### **Part 7: Post-16 Education and Training**

- 3.37 The Young Peoples Learning Agency (YPLA) is abolished and functions transferred to the Secretary of State including the funding of 16 to 19 education and Academies. **(Sections 66 to 68)**.
- 3.38 The duty on the Skills Funding Agency (SFA) to find an apprenticeship place for all suitably qualified young people is repealed. The SFA must provide "proper facilities for apprenticeship training" for young people who have found an "apprenticeship opportunity" and who are aged 16 to 18 or are above that age but have previously been in care but are under 25 or are of a prescribed description **(Section 69)**. The SFA must make reasonable efforts to secure the participation of employers in apprenticeship training **(Section 70)**.
- 3.39 The scope of training that must be funded by the SFA (and free of charge to the student) is reduced for those over 19 years: entry level qualifications in literacy and numeracy will remain but it will not be possible to specify level 2 courses except for adults less than 24 years (previously 25 years). The ability to specify level 3 courses for this age range remains. The power to specify area-wide bodies to formulate skills policy is removed **(Section 73)**.

- 3.40 The Secretary of State gains flexibility on the enforcement of the 'duty to participate' in education and training for 16 and 17 year olds including the possibility of a criminal offence for failure to participate. **(Section 74)**

**Part 8: Direct Payments**

- 3.41 The local authority gains a power to make direct payments for children with special educational needs instead of specifying (and meeting the costs) of the special educational provision. A similar power is given for young people with a learning difficulty assessment. The power must only be exercised in accordance with a Pilot Scheme made by the Secretary of State. The provision is repealed four years after the Act is passed **(Section 75)**.

**Part 9: Student Finance**

- 3.42 The Secretary of State gets greater flexibility to set interest rates for student loans. **(Section 76)** A cap can be set on undergraduate part-time course fees. **(Section 77)**

**Part 10: General**

Commentary

- 3.43 Ministers have spoken about what they want the education system to achieve ('a world class system') and how it will be measured. In line with Bracknell Forest, they want all schools to be at least good schools.
- 3.44 The Act also raises a number of questions for the LA which will need to be considered and necessary changes made to current policies and procedures. These include:
- 3.45 **School place planning:** will the Act enable the local authority to secure sufficient schools to meet the needs of the local population especially with the much strengthened presumption in favour of academies? Will there be the ability to remove school provision if there are too many school places for the system to run efficiently? How much longer will the LA have to plan ahead in order to meet the new requirements and steps in the process to secure school places?
- 3.46 **Admissions:** with the abolition of the admissions forum, will the LA have sufficient levers over Academy admission arrangements in order to guarantee fair access to school places for the local population? Will the LA have to resort to referring admissions arrangements to the adjudicator in order to achieve compliance?
- 3.47 **Alternative provision:** the Government's policy on alternative provision, especially for pupils over 13 to 14 years of age, is unclear. Is the intention that such pupils are unlikely to return to mainstream provision and that they remain in alternative provision until they reach school leaving age and/or are relieved of the duty to participate?
- 3.48 **Excluded pupils and pupils not in school** (particularly those not on a school roll): are there sufficient powers for the local authority to secure educational provision for excluded children whether in maintained schools or academies? Will the amount that maintained schools and academies have to pay be sufficient to meet the costs of alternative provision?
- 3.49 **School governance:** will the reduction in LA and the potential loss in community representation have an effect on schools' links with their communities?
- 3.50 **LA school improvement role and OfSTED inspection:** while welcoming proportionality in inspection, how will the LA know that an "exempt" school is getting into difficulties if it no longer has to be inspected by OfSTED and there is no contact through a School Improvement Partner? Will it have the capacity to intervene before issues reach a threshold level of concern?
- 3.51 **Careers and the Connexions services:** the duties to provide a Connexions service will remain although the funding has on the whole gone and schools will have a duty

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to provide 'impartial' careers guidance for their pupils in years 9 to 11 from September 2012. What are the implications for commissioning services from Connexions (or others)?

- 3.52 **Academies:** how will the Secretary of State exercise his new powers to require schools judged satisfactory but not improving to convert to Academy status? How will this be managed with governors and school staff?
- 3.53 In summary, the Act covers a broad range of areas each of which will require action by the LA. Some are straightforward whilst others will require more time, and possibly case law, to determine their impact on a changing educational landscape.
- 3.54 The financial implications arising from this Act are unclear at this stage, and some will relate to the Schools Budget, and will need to be financed from within the overall education specific grant allocation, with others being Council responsibilities, which will require decisions on the appropriate level of resources to be provided. The most significant additional cost item expected to fall on the Council relates to the enhanced and expanded free entitlement to education and childcare for 2 year olds in the most disadvantaged families. This legal requirement will be in place from September 2013, and in a full year is estimated in the DfE impact assessment to cost between £276m and £354m. The impact assessment indicates the intention to "fund them [LAs] accordingly" for this new requirement but does not specify how this will be done. A provisional estimate of the additional pressure in Bracknell Forest for this item has been calculated at £0.78m.

## **4 ALTERNATIVE OPTIONS CONSIDERED / ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS / EQUALITIES IMPACT ASSESSMENT / STRATEGIC RISK MANAGEMENT ISSUES / CONSULTATION**

- 4.1 Not applicable.

### Background Papers

Education Act 2011

### Contact for further information

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