

Open Report on behalf of the Executive Director for Adults and Children's

Report to:	Children and Young People Scrutiny Committee
Date:	5 January 2012
Subject:	Education Act 2011 – Summary

Summary:

The Education Act 2011 received Royal Assent on 15 November 2011, the day after it finished its last Parliamentary stage reflecting the Government's need to implement several provisions without delay. The Department for Education (DfE) has not issued a timetable containing information of the Act's implementation. Although some were immediately implemented, some are implemented on the 15th January as for legal reasons 2 months consultation is required, others such as quangos are closing on 31st March 2012 and most of the remaining will be implemented at the start of the next academic year.

Actions Required:

The Children and Young People Scrutiny Committee is invited to discuss and comment on the impact of the Education Act 2011 on the Local Authority.

1. Background

Background to the Act

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 *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.

Nature of the Act

The Act is wide-ranging and far-reaching, amending or repealing 47 separate issues to do with education and children law. The Education Act 2011 is 153 pages and explanatory notes have been produced to assist the reader in understanding the Act.

Compared to recent Acts from the education/children's services department, this Act is comparatively short with 83 sections and 18 schedules over 10 Parts. However, the brevity is achieved by amending previous legislation and not by writing new legislation for many of the 47 issues the Act covers. This makes the legislation very difficult to fully comprehend in some parts. The 19 Education and Children Acts which are being amended, or parts repealed, are:

Children Act 1989	Children Act 2004
Further and Higher Education Act 1992	Higher Education Act 2004
Education Act 1994	Education Act 2005
Education Act 1996	Childcare Act 2006
Education Act 1997	Education and Inspections Act 2006
Teaching and Higher Education Act 1998	Education and Skills Act 2008
School Standards and Framework Act 1998	Apprenticeships, Skills, Children and Learning Act 2009
Learning and Skills Act 2000	Children, Schools and Families Act 2010
Education Act 2002	Academies Act 2010

The 'standalone' provisions in the Act are to do with the residual affairs of four bodies which are being abolished: General Teaching Councils England (GTCE), Training and Development Agency for Schools (TDA), Qualifications and Curriculum Development Agency (QCDA) and Young People's Learning Agency (YPLA). Details are in Sections 12, 17, 27 and 68 with their schedules 3, 6, 9 and 17 respectively. The "sunset clause" (which removes the provision from the statute book) in section 75 on direct payments is also standalone. The rest of the Education Act 2011 amends the various Acts and related legislation listed above. This short analysis follows the order of the Education Act 2011, as a consequence of this presentation some related issues are not always together. For example, amendments to admissions legislation can be found in sections 34, 36 and 64 (and schedule 10).

Section 2 – Education Act 2011: Four main themes that frame the legislation as set out by the DfE

1. Good behaviour and discipline

We must support teachers by giving them powers to ensure good behaviour and discipline. The Act will:

- Allow same-day after school detentions.
- Provide a power to search pupils for any item likely to cause harm or injury.
- Give teachers pre-charge anonymity when faced with an allegation by a pupil that they have committed an offence, to prevent false accusations being used to undermine teachers' authority.

2. Sharper accountability

With increased freedom, should come sharper accountability. The Act will:

- Focus Ofsted inspections on four key areas – pupil achievement; quality of teaching; leadership and management; and behaviour and safety.

- Create a power to end routine inspections of outstanding schools and colleges.
- Ensure that Ofqual, the independent regulator, must ensure our exams system is as robust and strong as the best around the world. It also gives Ofqual greater enforcement powers.
- Strengthen the Government's powers to intervene in poorly performing schools.
- Abolish five quangos, with many of their activities ending.
- Make the Secretary of State directly accountable to Parliament for important functions, such as the barring of teachers.

3. Freeing up professionals

We need to free teachers and school and college leaders from bureaucracy so they have the autonomy to use their skills and judgement to meet the needs of all their children. The Act will:

- Remove unnecessary duties on schools.
- Extend the Academies and Free School programme further with Academies for 16 to 19 year olds and alternative provision Academies for the most vulnerable children.

4. Using resources fairly

The Act takes forward the "fairness premium" by:

- Providing the power to create an entitlement to free early years provision for disadvantaged two year olds.
- For new higher education students, the Act helps enable the new progressive student finance arrangements - the lowest earning 25 per cent of graduates will pay less over their lifetime than under the current system.

Section 3 – Notes and reference to the Education Act 2011

Part 1: Early Years provision

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

- School staff receives 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 any items 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).
- The parents of an excluded pupil lose the right to appeal to a local independent panel to ask that their child is reinstated. Instead, parents can ask a review

panel to ask the school to think again (although the school does not have to). If the review panel finds that there were procedural irregularities, or that information about the exclusion was not properly considered by the school before confirming the exclusion, the exclusion can be quashed and the school must then consider properly the exclusion. In such circumstances, the school can be fined. Pupils who have a disability will be able to appeal to the first-tier tribunal (Section 4).

- 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

- 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). Transitional, consequential and transfer arrangements are made consequent upon the abolition of the GTCE (Sections 10 to 12).
- 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).
- 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).
- 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).
- A drafting error in earlier legislation to do with the management of staffing where a local authority suspends delegation is corrected (Section 19).

Part 4: Qualifications and the Curriculum

- Maintained schools may be required to take part in international surveys of school and pupil performance (Section 20).
- The examination regulator Ofqual is reorganised with the appointment of a chair to the Ofqual Board as a separate person from that of the Chief Regulator who becomes the chief executive of Ofqual (Section 21). 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). A similar power to Welsh Ministers (Section 24).
- 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).

- 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 (LAs) 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 provisions

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

- Schools will no longer have to publish a school profile (Section 32), and local authorities will no longer need to appoint School Improvement Partners to each school (Section 33).
- The admission forum, 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).
- 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).
- Any 'body or person' will be able to refer an objection to a school's admissions arrangements to the adjudicator for determination (Section 36)
- 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. A local authority will be able to use the "special cases" route, which does not require the consent of the Secretary of State, if all else fails. This route can now be used to merge separate infant and junior schools (Section 37).
- 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).
- When a school leaves a federation, the federation can continue if there are at least two remaining schools. (Section 39)
- 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). Outstanding further education colleges will be exempt from OfSTED inspections. Such colleges can request an inspection but may have to pay. The legislation allowing complaints to the Local Government Ombudsman about individual schools by parents and pupils is repealed. (Section 45)

- 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).
- Wide-ranging changes are made to the governance arrangements of FE and sixth form colleges including their powers and duties. Particular changes affecting the local authority role are the repeal of the powers to establish, or discontinue, a sixth form college, or intervene if something goes wrong. Guaranteed places on Sixth Form College Governing Bodies for local authority nominees are also abolished. The college governance constitution arrangements in the Further and Higher Education Act 1992 are rewritten. Colleges in England will approve their own articles and instruments of governance subject to a broad framework which does preserve staff and student representation (Section 49).
- Pupil Referral Units will have delegated budgets on the same basis as maintained schools (Section 50). The decision to rename PRUs as Short Stay Schools is repealed (Section 51).

Part 6: Academies

- The Academies Act 2010 is largely rewritten.
- 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).
- 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 power of a local authority to continue to fund a school once it becomes an Academy is put beyond doubt thus enabling local authorities to continue to fund Private Finance Initiative (PFI) deals on schools which become Academies (Section 58). The law is clarified on the transfer of staff contracts to Academies where an enforced transfer agreement is used (Section 59).
- An Academy must consult on a proposal to increase its age range (Section 60). Local authority support for boarding costs in Academies with boarding is permitted (Section 61). 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). Miscellaneous amendments are made to the law on Academies (Section 65).

Part 7: Post-16 Education and Training

- 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).
- 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). Apprenticeship certificates will be issued by the Sector Skills Councils (Section 71).
- The SFA must consult on matters as directed by the Secretary of State (Section 72). 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).
- 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

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

The Secretary of State gets greater flexibility to set interest rates for student loans; for students starting in or after September 2010, the rate cannot be higher than those which are commercially available (Section 76). A cap can be set on undergraduate part-time course fees. (Section 77)

Part 10: General

Sections 78 to 83 contain the standard provision on interpretation and commencement etc.

Section 4 – Key changes for local authorities

The Act will:

- enables a new entitlement for disadvantaged two-year-olds to 15 hours' free early years education;
- replaces independent appeals panels for exclusions with independent review panels;
- removes the duty on local authorities to appoint a School Improvement Partner for every school;
- gives precedence to academy proposals, where a local authority identifies the need for a new school, and expands the academies programme to allow 16-19 and alternative provision academies;
- extends the Secretary of State's powers to intervene in underperforming schools;
- provides for the closure of the Local Government Ombudsman's school complaints service, and removes the duty to consider complaints about the curriculum from LAs. General complaints about schools will now be made to the Secretary of State;
- allows for pilots of direct payments for SEN education services;
- makes changes to LA powers over sixth form colleges; and
- provides for the abolition of five arm's length bodies (the TDA, the GTCE, the QCDA, the YPLA and the SSSNB).

The Act no longer makes changes to the section 10 Children Act duty to co-operate with the local authority to promote children's wellbeing.

Section 5 – Commentary

It is difficult to sum up a piece of legislation which contains so many issues. Ministers have repeatedly referred to four themes which underlie the legislation see section 2 above. One is specific to education relating to good student behaviour and discipline through improving the quality of teaching. In terms of the Bill this gives additional disciplinary powers to teachers and lecturers. The other three appear across the Coalition Government's approach to public services. The four themes vary from the focus of the Labour Government policy in that the Acts in the latter part of their administration tended to place more focus on the "*User of Children's Services and Education and their rights*". The complexity of the legislation because of amending previous legislation not necessarily designed for the purpose means there could be some challenges in the courts.

Ministers have spoken about what they want the education system to achieve ('a world class system') and how it will be measured, which has usually been accompanied by a sprinkling of OECD statistics. The Academies Act 2010 provided the stimulus for that theme, however the much higher level of conversion to academy status of local authority maintained schools than the Government had initially planned, and the reductions in local government expenditure and, consequently, of support services for schools has not been addressed in this Act. With regard to the local authority role, Ministers repeatedly stated they wanted to

“free local authorities, to focus on championing the interests of parents and children who most need support”. However there are no additional powers for local government to fulfil this role or even any clear definition of what the statement really means.

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, four of which have a sizeable staffing complement, 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, he will handle within the DfE areas such as curriculum development, parental complaints and teacher discipline. The Secretary of State makes it clear that he is directly accountable to Parliament for these important functions.

Section 6 – Some key issues for consideration

Listed below are some key issues which we may wish to consider. There will be others.

1. School place planning: does the Act enable the local authority to secure that there are 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 local authorities have to plan ahead in order to meet the new hurdles to secure school places?
2. Admissions: with the abolition of the admissions forum, will the local authority have sufficient levers over Academy admission arrangements in order to guarantee fair access to school places for the local population? Will the local authority have to resort to referring admissions arrangements to the adjudicator in order to achieve compliance?
3. Alternative provision: what is Government policy on alternative provision, especially for pupils over 13 to 14 years of age? 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?
4. 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 alternative provision?
5. Supply of teachers with QTS: what will be the effect of removing the register of teachers, especially when ascertaining that a teacher is eligible to undertake the specified tasks? (The Government has said that it is investigating whether to retain a list of qualified teachers.)
6. School governance: will the reduction in LA and the potential loss in community representation have an effect on schools' links with their communities?
7. 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 School Improvement Partners?

8. 14-19 co-ordination: will the loss of the LA role lead to inefficiencies in the supply and appropriateness of courses for this age group, particularly for the most vulnerable?
9. 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 to provide 'impartial' careers guidance for their pupils in years 9 to 11 from September 2012. What are the implications for LA services?

2. Conclusion

This report sets out the main changes arising from the Education Act 2011 and the implications of these changes. The Committee is invited to discuss and comment on the impact of the Education Act 2011 on the Local Authority.

3. Consultation

a) Policy Proofing Actions Required

No policy proofing actions are required for this report.

4. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Andy Breckon, who can be contacted on 01522 553288.