

**Presentation to
Children and Young People Scrutiny Committee**

Education Act 2011

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Education Act 2011



The Education Act 2011 received Royal Assent on 15 November 2011. The Act is wide-ranging and far-reaching, amending or repealing 47 separate issues to do with education and children's law. The Education Act 2011 is 153 pages; explanatory notes have not been produced, but are expected soon. Current notes published in May for the House of Lords.

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 (19 other Acts) 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.

- Sources
- Education Act 2011: 15 Nov 2011
 - Education Bill: Explanatory Notes 12 May 2011
 - LGA commentary on Education Act 2011: Nov 2011
 - DfE website commentary on the Education Bill.

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Education Act 2011 - Four main themes



Good behaviour and discipline

Support teachers by giving them powers to ensure good behaviour and discipline:

- 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.

Sharper accountability

With increased freedom, should come sharper accountability:

- Focuses Ofsted inspections on four key areas – pupil achievement; quality of teaching; leadership and management; and behaviour and safety.
- Creates a power to end routine inspections of outstanding schools and colleges.
- Ensures 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 powers to intervene.
- Strengthens the Government's powers to intervene in poorly performing schools.
- Abolishes five quangos, with many of their activities ending.
- Makes the Secretary of State directly accountable to Parliament for important functions, such as the barring of teachers.

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Education Act 2011 - Four main themes cont.



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.

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

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.

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Part 1: 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

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. Similar powers are given to staff at FE institutions

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Part 2: Discipline

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.

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

Part 3: School workforce

The General Teaching Council England (GTCE) is abolished. 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.

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Part 3: School workforce

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

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.

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

A drafting error in earlier legislation to do with the management of staffing where a local authority suspends delegation is corrected .

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Part 4: Qualifications and the Curriculum

Maintained schools may be required to take part in international surveys of school and pupil performance.

Examination regulator Ofqual has chair to the Board as a separate person from the Chief Regulator who becomes the chief executive. Ofqual is directed to consider examination standards in other countries when considering standards in England. Ofqual is given powers to investigate and fine examination boards for errors.

The QCDA is abolished with functions transferred to the Secretary of State. The development of the National Curriculum is transferred to the Secretary of State.

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. 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.

Local authorities will no longer be responsible for securing the additional (non-core) diploma entitlement for 16 to 18 year olds and the full range of diploma courses for 14 to 16 year olds.

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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 and local authorities will no longer need to appoint School Improvement Partners to each school.

The admission forum 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. 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.

Any 'body or person' will be able to refer an objection to a school's admissions arrangements to the adjudicator for determination.

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Part 5: Education Institutions: other provisions continued

When a new school is required, the LA must first try to find a promoter to establish an Academy (or its Free School variant). If none can be found, the LA can conduct a competition for a foundation or voluntary school as currently happens. If none can be found following a competition, the LA can then seek the consent of the Secretary of State to establish a community school. A LA will be able to use the “special cases” route, which does not require the consent of the Secretary of State, if all else fails. Maintained school governing bodies must consist of parent governors, 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 LA if that person meets the ‘eligibility criteria’ set by the governing body. The headteacher can resign from the governing body. When a school leaves a federation, the federation can continue if there are at least two remaining schools.

Outstanding schools and FE Colleges will be exempt from OfSTED inspections. Such schools can request an inspection but may have to pay for it. 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. The legislation allowing complaints to the Local Government Ombudsman about individual schools by parents and pupils is repealed.

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Part 5: Education Institutions: other provisions continued

The Secretary of State can direct changes to LA schemes for financing schools. 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. Schools will be able to charge parents for early years educational provision when the school provides educational provision outside the 'free entitlement'.

Wide-ranging changes are made to the governance arrangements of FE and sixth form colleges including their powers and duties. Particular changes affecting the LA 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 LA 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.

Pupil Referral Units will have delegated budgets on the same basis as maintained schools. The decision to rename PRUs as Short Stay Schools is repealed.

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Part 6: Academies The Academies Act 2010 is largely rewritten.

Secondary academies will no longer need to have a specialism. Two new types of academies are created: 16 to 19 Academies and Alternative Provision Academies. Current Academies become known as Academy schools. The influence of school trustees, associated foundations and “the appropriate religious body” is strengthened prior to the making of an Academy Order. 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. An individual school in a federation is able to apply to become an academy. The power of a LA to continue to fund a school once it becomes an Academy is put beyond doubt thus enabling LA to continue to fund PFI deals on schools which become Academies. The law is clarified on the transfer of staff contracts to Academies where an enforced transfer agreement is used. An Academy must consult on a proposal to increase its age range. LA support for boarding costs in Academies with boarding is permitted. The law clarifying the rights of staff not to be required to comply with religious requirements in faith academies which were formerly VC schools is clarified. The law on Academies land is revised. The Adjudicator can hear complaints against an Academy’s admission arrangements. Miscellaneous amendments are made to the law on Academies.

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Part 7: Post-16 Education and Training

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. 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. The SFA must make reasonable efforts to secure the participation of employers in apprenticeship training. Apprenticeship certificates will be issued by the Sector Skills Councils. The SFA must consult on matters as directed by the Secretary of State. 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. 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.

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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

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. A cap can be set on undergraduate part-time course fees.

Part 10: General

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

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Key changes for local authorities

- 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).

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