

Get in on the Act

Education and Adoption Act 2016

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Background

The Education and Adoption Bill was introduced in the House of Commons on 3 June 2015, completed its parliamentary stages on 23 February 2016 and received Royal Assent, becoming law, on 16 March 2016.

The Education and Adoption Act 2016 (the Act) takes forward government commitments intended to improve education and adoption services. It will enable the Government to intervene in schools deemed to be coasting, as well as in failing schools. Measures in the Act allow the Government to require local authorities to make arrangements for their adoption functions to be carried out by another adoption agency, allowing for regional approaches.

The Act is made up of six parts as follows:

1. Maintained schools causing concern: eligibility for intervention
2. Maintained schools causing concern: intervention powers
3. Maintained schools causing concern: conversion into academies
4. Academies causing concern: intervention powers
5. Adoption
6. General

This publication aims to provide readers with an introduction to the Act and summarises the main issues on which the Local Government Association (LGA) campaigned.

The role of the LGA and local government in influencing the legislation

We worked with LGA vice-presidents, ministers, parliamentarians, and civil servants to influence the Act. Key highlights include:

- Throughout the passage of the legislation, the LGA called for failing and coasting academies to be subject to the same intervention measures as maintained schools. In response, the Government tabled amendments so that the coasting definition will be applied to academies.
- The LGA worked with parliamentarians to raise concerns about the availability of high quality academy sponsors to take on additional schools. Amendments were proposed that would have required the Secretary of State to consider the availability of a sponsor, including a local authority, before converting a school. Department for Education figures on the long waiting times for available sponsors were put before Parliament in the course of the debate.
- The LGA secured clarifications that the duty to convert would not apply automatically where a school is identified as coasting, expressing concerns about the number of schools that could potentially be brought into this definition, the shortage of high quality sponsors available, and whether conversion is always the best way to bring improvements.
- Throughout the LGA's work on the Bill we sought opportunities to reinforce the role of local authorities in schools improvement through amendments, but also in parliamentary questions and debates.
- The LGA welcomed the provisions on adoption, which put existing collaborative arrangements on a statutory footing.

The key provisions and their implications for local government

1. Maintained schools causing concern: eligibility for intervention

Section 1: Coasting schools

Section 1 amends the Education and Inspections Act 2006 to expand the meaning of schools eligible for intervention to include coasting schools. The definition of a coasting school will be set out in subsequent regulations, to be agreed in both Houses of Parliament. The Secretary of State may exclude certain types of school from the definition, but, following arguments made by the LGA the coasting definition also applies to academies, through section 14 of the Act.

The Department for Education published a revised version of the Schools Causing Concern guidance, taking effect from 18 April 2016.

A school will be eligible for intervention if the Secretary of State notifies its governing body that it is coasting and has not subsequently notified them that it is no longer coasting. In practice, many of the powers given to the Secretary of State through this Act will be exercised by regional school commissioners on her behalf

Section 2: Performance standards and safety warning notices

Section 2 gives the power to issue warning notices to a governing body to the Secretary of State, not just local authorities. The warning notice will set out the period for compliance by the governing body, instead of the current fixed period of 15 working days. If a local

authority is notified that the Secretary of State has given a warning notice they may not give a warning notice without her permission. Any prior warning notice given by the local authority ceases to have effect.

The section also removes the governing body's entitlement to make representations against the warning notice to the Chief Inspector.

Section 3: Other warning notices

Section 3 amends the provisions in the Education and Inspections Act 2006 on teachers' pay and conditions warning notices. It removes the current fixed period of 15 working days and allows the local authority to specify the period for compliance. A local authority is now required to give a copy of a teachers' pay and conditions warning notice to the Secretary of State at the same times as to the governing body.

This section also removes a governing body's entitlement to make representations to the local authority.

2. Maintained schools causing concern: intervention powers

Section 4: Power to require governing bodies to enter into arrangements

Section 4 allows the Secretary of State to give the governing body of a maintained school eligible for intervention notice requiring it to take specific action to improve the school's performance. The notice may require the governing body to contract with another

body for advisory services, to collaborate with another maintained school or further education body, or to form or join a federation of maintained schools.

Section 5: Appointment of interim executive members

Section 5 gives the Secretary of State the power to make directions regarding appointments to an interim executive board.

Section 6: Interaction between intervention powers

Section 6 amends provisions in the Education and Inspections Act 2006 that stop a local authority from appointing additional governors of a maintained school where, in specified circumstances, the Secretary of State has exercised the power to appoint additional governors.

Instead, local authorities will be required to notify the Secretary of State before they exercise powers to require a governing body of a maintained school to enter into arrangements, to appoint additional governors or to suspend a governing body's right to a delegated budget.

The section also requires the Secretary of State to notify the local authority before exercising any of the powers to require a governing body to enter into arrangements, appoint additional governors, direct the closure of a school or provide for the governing body of a maintained school to consist of interim executive members. If a local authority has been notified, it cannot exercise the same power in relation to the same school without permission from the Secretary of State.

The Secretary of State may take over responsibility for arrangements in connection with members of an interim executive board appointed by a local authority.

4. Maintained schools causing concern: conversion into academies

Section 7: Duty to make academy orders

Section 7 amends the Academies Act 2010 to place a duty on the Secretary of State to make an academy order for a maintained school that is eligible for intervention because it has been found to require significant improvement or special measures.

The LGA worked with parliamentarians to table amendments that would have required the Secretary of State to consider whether a high quality sponsor was available before converting a school, and to consider the role for local authorities in school improvement.

The Secretary of State retains discretion as to whether to issue an academy order where a school is eligible for intervention because it fails to comply with a warning notice or where it is identified as coasting.

The LGA secured clarifications during the debates that the duty to convert would not apply automatically where a school is identified as coasting, expressing concerns about the number of schools that could potentially be brought into this definition, the shortage of high quality sponsors available, and whether conversion is always the best way to bring improvements.

Section 8: Consultation about conversion

Section 8 retains the requirement in the Academies Act 2010 that a governing body must consult such persons as they think appropriate on proposals to convert to an academy, but removes the requirement in the case that a school is eligible for intervention subject to warning notices or requiring significant improvement or special measures.

Section 9: Consultation about identity of academy sponsor in certain cases

Where a foundation or voluntary school is subject to an academy order the Secretary of State must consult the trustees of the school, the person by whom the foundation governors are appointed, or the appropriate religious body about the person with whom the Secretary of State intends to enter into academy arrangements.

Section 10: Duty to facilitate conversion

Section 10 provides that where a school is subject to an academy order the governing body and its relevant local authority must work towards the school's successful conversion into an academy by taking all reasonable steps necessary.

If a sponsor has been identified with a view to the sponsor entering into academy arrangements with the Secretary of State to run the school as an academy, and the Secretary of State has notified the school that the Secretary of State is minded to enter into academy arrangements with that person, the governing body must take all reasonable steps to facilitate the making of academy arrangements with that particular sponsor.

Section 11: Power to give directions to do with conversion

Section 11 provides that the Secretary of State may direct the governing body of a school which is eligible for intervention and subject to an academy order, or its local authority, to take specified steps to facilitate the conversion of the school into an academy within a specified time period. This may include the transfer of certain property, rights and liabilities under section 8 of the Academies Act 2010.

Section 12: Power to revoke academy orders

Section 12 allows the Secretary of State to revoke any academy order if she decides it would be better to direct the local authority to close the school. The Secretary of State is required to give a copy of any such order to everyone whom the academy order was given by virtue of section 4 of the Academies Act 2010.

Section 13: Duty to communicate information about plans to improve school

Section 13 provides that before a maintained school which is causing concern is converted into an academy the proposed proprietor of the academy must communicate information about their plans to improve the school to parents.

4. Academies causing concern: intervention powers

Section 14: Academies causing concern

Section 14 inserts new sections into the Academies Act 2010 to the effect that all funding agreements for academies and free schools made after the Education and Adoption Act 2016 comes into force will include termination provisions around failing and coasting schools which are broadly in line with those in the current model funding agreement.

Where an academy or free school with a funding agreement entered into prior to this is judged inadequate by Ofsted or meets the coasting definition, then their funding agreement will be read as having provisions around failing and coasting schools which are broadly in line with those in the current model funding agreement.

Following the work of the LGA with a group of cross-party parliamentarians, the Government amended the legislation so that the definition of coasting applies to an academy

5. Adoption

Section 15: Local authority adoption functions: joint arrangements

The Act amends the Adoption and Children Act 2002, so that local authorities are no longer required to maintain an adoption service within their area but may secure provision by other local authorities or registered adoption societies. Under the new section, the Secretary of State may direct one or more local authorities to make arrangements for all or any of their adoption functions to be carried out on their behalf by another local authority or adoption agency.

The Act repeals section 3A of the Adoption and Children Act 2002, which gave the Secretary of State the power to remove all local authorities from adopter recruitment and assessment en masse. The LGA strongly resisted the inclusion of this clause in the Children and Families Bill, and welcomes its repeal. In its place, section 3ZA gives the Secretary of State the power to direct individual local authorities to make arrangements for adoption functions to be carried out by another local authority or adoption agency on their behalf, through the formation of regional or sub-regional adoption agencies

Thank you

Throughout the passage of the legislation through Parliament we worked closely with our President and vice-presidents, as well as other MPs and peers, briefing them ahead of debates and suggesting amendments. On behalf of local government, we are grateful to all those parliamentarians who supported us and championed the concerns and arguments of the sector.

Useful links

For the full text of the Act, please refer to: www.legislation.gov.uk/ukpga/2016/6/contents/enacted

The revised guidance on Schools Causing Concern can be found here: www.gov.uk/government/publications/schools-causing-concern--2

For the LGA's briefings on the Bill, please go to: www.local.gov.uk/legislation



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