

A Short Guide to the Education and Inspections Act 2006

Produced by the Department for Education and Skills to inform the general reader about the provisions of the Education and Inspection Act 2006.

Overview

The Education and Inspections Act represents a major step forward in the Government's aim to ensure that all children in all schools get the education they need to enable them to fulfil their potential.

Trust schools

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 Act will empower schools by devolving as much decision-making to them as possible, while giving local authorities an enhanced strategic role as the champions of pupils and parents.

All schools will be able to become Trust schools by forming links with external partners. If the school chooses, those external partners will be able 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 offer for 14–19-year-olds.

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)
- setting their admission arrangements (subject to the law and a newly strengthened School Admissions Code).

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, contribute to raising standards at the school and promote community cohesion.

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. Where Trusts appoint the majority of governors, they will also have to set up a Parent Council.

Trust schools will be inspected by Ofsted in the same way as other publicly funded schools.

Local Authorities

Local authorities will take on a new strategic role, with duties to promote:

- choice;
- diversity;

- high standards;
- 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.

The local authority, as the commissioner of school places, 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 Act places a duty on local authorities in England to promote fair access to educational opportunity and tightens the admissions framework to ensure this.

As well as reaffirming the ban on new selection by ability, the Act will:

- outlaw interviewing;
- create a new power for Admission Forums to produce an annual report and to refer objections to the Schools Adjudicator;
- make the Adjudicator's decisions binding for three years;
- strengthen the status of the School Admissions Code.

The new Code will prohibit oversubscription criteria that seek to select by stealth (such as the use of supplementary application forms) and provide clear guidelines on uniform and transport policies that might undermine a fair admission system and disadvantage children from poorer families.

Fair access will also be supported by:

- an extended duty on local authorities to provide free transport for the most disadvantaged families;
- 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 parents alike. The Act 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 the first five days of their exclusion.

Governing bodies and local authorities will be required to provide full-time alternative provision from the sixth day of an exclusion.

14–19 year-olds

The Act 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. This is to enable every young person to pursue a course of study that prepares them for success in life.

Central to this is the introduction of 14 new specialised Diplomas. The Act 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 Act also empowers them to enter into formal collaboration with Further Education colleges.

School Food

The Act 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 Act 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 Act will merge several existing inspectorates to bring all learning issues within one body. It will cover the full range of services for children and young people, as well as for lifelong learning.

This will reduce the burden of inspection and associated bureaucracy and ensure that all inspection has a stronger focus on delivery and 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 Act gives local authorities some new legal responsibilities as part of this new role.

Section 1 places a duty on local authorities to promote high standards and, for the first time, the fulfillment of **every child's** educational potential. It also places a duty on local authorities in England to promote fair access to educational opportunity.

Section 2 requires local authorities to promote choice and diversity when carrying out their strategic duties in relation to the provision of school places.

Section 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. Section 4 places a new duty on local authorities to make arrangements to identify children of compulsory school age missing education in their area.

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

Section 6 places a duty on local authorities in England to promote the well-being of persons aged 13–19 (and up to age 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

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

Sections 7 to 14 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 (section 9), and invite promoters to bring forward proposals to set up the school (section 7).

Regulations will prescribe the areas that can be covered by specifications. Local authorities will have the opportunity for to set out their expectations for the community that the new school would serve, and to suggest the extended services that should be on offer. The successful proposal will be decided in a competition, judged by the local authority (unless the local authority itself has entered the competition).

Sections 7, 8 and 10 set out the criteria to allow a local authority to propose a new community or community special school. The best local authorities will be able to enter

a community school into a competition without the consent of the Secretary of State. The worst local authorities will not be allowed to propose new community schools at all. The remaining authorities would be able to apply to the Secretary of State for consent.

Section 7 extends the existing competition provisions to primary and special schools. This will further develop the diversity of local provision available to parents. Only nurseries, 16–19 year-old provision and schools replacing existing independent schools will remain outside the competition process.

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 (abolished by section 29). In the light of this, sections 15, 16 and 17 introduce procedures for the closure of maintained schools.

Local authorities will also have extended powers (under section 19) to propose the enlargement of premises, the addition 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. Section 18 enables every school to become a foundation school, acquire a foundation and allow that foundation to appoint a majority of governors. All of these changes can only be made where the governing body agrees (as ensured by Section 22) although local authorities may refer that decision to the Schools Adjudicator in some circumstances. Under the Act, the acquisition of a foundation, and the decision to allow that foundation to appoint a majority of governors, become 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, section 25 allows a school that has real dissatisfaction at the performance of its Trust to remove it. 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.

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.

Section 33 sets out a number of requirements that must be met by Trusts. They must be incorporated charitable bodies and they will have to advance education and, in doing so, promote community cohesion. Guidance will stipulate that Trusts must not be involved in activities that may be considered inappropriate for children and young people (such as tobacco, gambling, adult entertainment and alcohol). The reputation of Trusts' members and proposals must be in keeping with the charitable objects, and Trust members and proposed trustees should not be involved in activities which could bring the school into disrepute.

This section also enables local authorities to be a partner in a Trust. Finally, it gives the Secretary of State a reserve power to remove trustees (and appoint replacements), and provides for regulations to prevent unsuitable persons from becoming trustees.

To strengthen the voice of parents in Trust schools where the majority of governors are appointed by the Trust, section 34 sets out a duty for governing bodies to establish Parent Councils, in order to secure parental influence in the running of the school.

Section 35 amends the definition of capital expenditure for voluntary aided schools to reflect modern accounting practices.

Section 36 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 that has been provided or enhanced at public expense, it must first inform the local authority. The local authority will be able to object or 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 the Trust originally provided the land).

Section 37 amends some existing anomalies in the law on the staffing of schools with a religious character. It allows voluntary aided faith schools in England, when appointing support staff, to have regard to a person's faith where there is a genuine occupational requirement. This brings these schools into line with the EU Employment Anti-Discrimination Directive.

Section 38 places new duties on the governing bodies to promote community cohesion and the well-being of pupils at the school. They will be inspected by Ofsted on how effectively these duties are fulfilled. They must also have regard to the views of parents, and to the relevant Children and Young People's Plan, in their:

- conduct of the school;
- provision of extended services.

We are committed to a system of fair admissions that delivers for all pupils. Section 39 reaffirms the ban on new selection by ability.

Section 40 strengthens the legal status of the School Admissions Code so that admission authorities will have to "act in accordance" with it, rather than simply "have regard to" it. The Code will prohibit oversubscription criteria that seek to select by stealth (such as the use of supplementary application forms). It will also provide clear guidelines on uniform and transport policies that might undermine a fair admission system and disadvantage children from poorer families.

Section 41 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.

Section 42 gives the local authority a duty to support parents to express a preference for a particular school. In this way it helps 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.

Section 44 bans interviewing as part of any school's admission arrangements.

Section 45 gives religious organisations more influence over the admissions arrangements of schools of their own faith.

Sections 46 and 47 will prevent new and expanded schools, and schools that 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 the bedding-in of fair admission arrangements, in line with the Code, and to prevent schools reintroducing arrangements that have been ruled out.

Sections 48 to 52 widen local authority powers so that they can direct the admission of looked-after children to the most suitable school to meet their needs.

Section 53 closes a loophole that had allowed some schools to increase the amount of pre-existing partial selection by returning to the pre-1997 levels.

Section 54 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.

The remainder of Part 3 contains further miscellaneous provisions relating to maintained schools.

Section 55 allows sixth-form pupils to withdraw themselves from collective worship.

Section 56 allows charges for specialist vocal tuition and for instrumental tuition in groups of any size. This removes an anomaly in the 1996 Education Act that prevented charging for these activities, and will mean that more children will have access to specialist tuition in music.

Section 57 makes minor amendments to the Secretary of State's role in maintained schools' delegated budgets, giving more power to local decision-makers.

Section 58 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 that do not live up to the high standards that parents and children rightly expect and deserve. Part 4 contains a series of measures to toughen the regime for turning around underperforming and failing schools more quickly.

Section 60 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 a notice.

Provisions within Schedule 7 require local authorities to act more quickly and decisively in relation to schools that have received an adverse Ofsted report.

Section 63 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.

Sections 64 to 66 give the local authority powers (most are re-enactments of existing provisions with minor amendments) to intervene in schools causing concern.

Sections 67, 68 and 69 re-enact with minor amendments the Secretary of State's existing reserve powers of intervention in schools causing concern.

Section 72 requires local authorities to have regard to guidance in using their intervention powers under this Part of the Act.

Part 5 Curriculum and Entitlements

Part 5 of the Act 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. This would enable every young person to pursue a course of study that would meet their needs and aspirations and prepare them for success in life.

Central to this is the introduction of 14 new specialised Diplomas, available to every 14–19-year-old, wherever they are in the country. This offers 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 needed 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, knowing that succeeding will prepare them to progress to the next level.

Sections 74 and 75 put in place the powers to make access to Diplomas an entitlement for every young person everywhere. No school can be expected to deliver every Diploma on its own. So in order to deliver the entitlement to 14–16 year-olds, schools will need to work with each other, and with colleges and other providers, to make sure that between them they offer young people the full entitlement.

The Act gives local authorities the strategic lead for securing the entitlement for these young people, with the essential role of making sure that schools and colleges between them make the full range is made available in every area.

Through these provisions, the Act puts in place the essential foundations 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, the Act 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

Section 77 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 that was first set out in the 1944 Education Act.

The Act will place a new duty on local authorities to provide free transport for some of the most disadvantaged pupils (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

Alternatively, pupils may choose a school up to 15 miles away where this is the nearest suitable school preferred on grounds of religion or belief.

Section 76 gives local authorities a duty to prepare and publish a sustainable school travel strategy, leading to health and environmental benefits.

Sections 78, 79 and 80 will enable a small number of Pathfinder local authorities to develop school travel schemes to pilot innovative approaches to home–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;
- increase the proportion of pupils travelling by sustainable means.

Pathfinders may also:

- trial transport arrangements that support the provision of a wider 14–19 offer and extended services;
- address problems faced in rural authorities, for example, by using Yellow Buses.

The Pathfinders will also test the efficacy of co-funding arrangements.

We are determined to transform the quality of school food: Section 86 covers our commitment to providing children with high-quality, nutritious food at school. 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. It permits nutritional standards to be applied to all food and drink supplied on school premises.

Section 87 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 Act 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.

Sections 88 and 89 require schools to have a behaviour policy.

Sections 90 and 91 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, on and off school premises.

Section 93 re-enacts provisions around the use of force. Section 165 (in Part 9 of the Act) extends this to apply to Further Education institutions. Section 92 replaces existing provisions on detention with new powers giving schools greater scope and flexibility to employ this sanction. Section 94 provides a defence for school staff in confiscating inappropriate items.

Sections 97, 98 and 99 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). In addition, schools are being empowered to make their own applications for parenting orders.

Sections 103, 104 and 105 require parents to take responsibility for excluded pupils in their first five days of exclusion, whether fixed-term or permanent. They also 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 (sections 109 and 110). Section 111 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 Act provides for the enlargement of Ofsted to create a new single inspectorate for children and learners. Its full name will be the Office for Standards in Education, Children's Services and Skills, but it will still be known as Ofsted.

This is part of the Government's strategy for public service inspection. It seeks to refocus inspection on what is relevant to the people who use public services, the way they use them and 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 Ofsted and HMCI the overarching purpose of encouraging improvement, user-focus and efficient and effective use of resources, and places other statutory duties. 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 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.

Under Chapter 4 CSCI's local authority inspection functions with regard to services for children is transferred to HMCI, and integrated with their existing local authority inspection functions.

Chapter 5 provides for the transfer of inspection of CAF/CASS (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 HMCI, 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 their interaction with other public sector inspectorates.

Chapter 7 contains transitional provisions facilitating the transfer of staff and property to Ofsted 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, section 160 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.

Section 161 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.

Section 162 is a technical provision that 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.

Section 164 enables the collection of data on children who are not educated at school.

Section 166 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.

Section 167 extends the current requirement on schools to have regard to guidance

on consultation with pupils, to cover pupils in nursery schools.

Sections 169-172 ensure that unsuitable people are prohibited from managing independent schools.

Section 173 requires governing bodies to appoint a Special Educational Needs Coordinator (SENCO) and allows for regulations which will stipulate particular requirements as to the qualifications or training of that person.

Section 176 extends the powers of the Learning and Skills Council (LSC) to provide support for under-16s.

Section 177 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.

Part 10 General

This Part of the Act contains a number of technical and general provisions that are common to all Acts.

Section 178 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 Better Governance for Wales White Paper) of delegating maximum discretion to the Assembly, to make its own provisions in subject areas where it already exercises legislative and executive functions. The Education and Inspections Act is the second Act to include framework powers.

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 people receiving education and training;
- food and drink provided for children in education and childcare settings.

Section 188 sets out the timing for the legislation to come into force.