



Department
for Education

Grammar Schools

Schools Bill Factsheet

May 2022

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Schools Bill Factsheet: Statutory protections for grammar school academies

What is the government's policy objective?

The 163 grammar schools in England are the only state-funded schools in England that are permitted to select their entire pupil intake by general academic ability. 99% are rated by Ofsted as good or outstanding, and 75% are rated outstanding.

In the future fully-trust led system, the government wants to ensure that grammar schools continue to play an important role within the communities that they serve. The government's objectives are to:

- i. Ensure that, as stated in the [Schools White Paper](#), grammar schools are secure in MATs, whilst also preserving the rights of parents to decide whether existing grammar schools should be able to retain the ability to select by high general academic ability;
- ii. Ensure that no future government could amend protections regarding the selective status of grammar schools without bringing forward primary legislation;
- iii. Bring consistency to the regimes for maintained grammar schools and academy grammar schools; and
- iv. Maintain the existing position that new selection by ability is limited to post 16 admissions and pupil banding.¹

What are we doing?

This measure will place a duty on the Secretary of State to designate the 143 academy grammar schools in England as grammar schools, putting them onto the same legal footing as the 20 maintained grammar schools. It will also:

- prescribe that selection can only be removed from these schools following a parental ballot in favour of removing selection
- take an order making power to revoke the designation of a grammar school after a parental ballot in favour of removing selection, and
- take a regulation making power to prescribe in which school year a school which has been the subject of a ballot in favour of removing selection needs to end selection.

The measure will thereby ensure that the law protects the selective status of academy grammar schools whilst also protecting the rights of parents to ballot for the removal of selection through a parental ballot initiated by a petition of eligible parents.

Why is legislation needed?

There are currently different regimes in place for maintained grammar schools and academy grammar schools with respect to establishing their status as wholly-selective schools and prescribing how selection can be removed.

The selective status of maintained grammar schools and the means by which selection can be removed are set out in legislation. However, for academy grammar schools, their selective status and the means by which selection can be removed are set out in the funding agreement. This is a contractual agreement between the academy trust and the Secretary of State, and one that a trust and Secretary of State could mutually agree to amend.

Legislation will align the regimes for maintained grammar schools and grammar academies. By ensuring that both are on a statutory footing, a future government could not amend the arrangements without bringing forward further primary legislation.

What is the effect of the legislation?

The measure will:

- i. Place a duty upon the Secretary of State to designate the 143 wholly selective academy schools as 'grammar schools' in legislation alongside the 20 maintained schools which are currently designated as grammar schools. It also changes his power to designate maintained grammar schools to a duty to do so.
- ii. Specify that the only way selection can be removed from these schools is by a public ballot of eligible parents, initiated by a petition.

In doing so it will remove the right of either the academy trust in the case of academy grammar schools or the governing body in the case of LA maintained grammar schools from formally proposing to remove selection.

This will give complete protection against trusts or governing bodies attempting to remove selection against the will of parents.

We are currently proposing that this legislation (and the necessary amendments to existing secondary legislation) will take effect from the start of the 2023/24 academic year at the earliest.

How will this work in practice?

The only means by which selection could be removed at a grammar school would be:

- when a person who wants to end selection at a grammar school (or schools) initiates a petition of eligible parents
- if 20% of eligible parents sign the petition, a ballot must be held on the question of whether selection should be removed at the school(s)
- if a simple majority vote in favour of removing selection, the admission authority must amend the admission arrangements to remove selection by ability, and Secretary of State must revoke the school's designation as a grammar school (i.e. it will no longer be a grammar school and so will not be able to be wholly selective)

The trust (in the case of academy grammar schools) or the governing body (in the case of local authority maintained grammar schools) would not have the right to remove selection outside of this process.

Key questions and answers

What is the current regime for removal of selection in local authority (LA) maintained grammar schools, and what is changing?

The School Standards and Framework Act 1998 (SSFA) gives the Secretary of State the power to designate LA maintained grammar schools and sets out the only two routes by which selection can be removed. They are:

- a. If local parents want to remove selection, at least 20% of eligible parents must petition to initiate a secret public ballot of those eligible parents. If a simple majority vote in favour of removing selection, the admission authority must amend the admission arrangements accordingly and the Secretary of State must revoke the school's/schools' designation as a grammar school(s). The SSFA and the Education (Grammar School Ballots) Regulations 1998 (as amended) ("the ballot regulations") prescribe who is an eligible parent for the purposes of petitions and ballots, and the rules surrounding petitions and ballots.
- b. If a LA maintained grammar school governing body wants to remove selection, it is done through a prescribed alteration, which means the governing body can simply propose it and it is decided by either the local authority or the schools adjudicator (depending on whether it is opposed or not).

This measure will make no change to the right of parents to petition and ballot for the removal of selection. However, the government is removing the right of the governing body to remove selection via a prescribed alteration. This will ensure consistency with grammar academies and ensure that selection can only be removed where it is what parents want.

What is the current regime for removal of selection in academy grammar schools, and what is changing?

Unlike LA maintained grammar schools, academy grammar schools are not currently designated as such in legislation. Instead, the Academies Act 2010 enables converter academies that have previously been designated as 'grammar schools' to continue to select.

The academy funding agreement (a contract between the trust and the Secretary of State) is what establishes and maintains their status as 'wholly selective academies' and permits them to continue to select by ability. The only two routes by which selection can be removed are set out in an annex to the funding agreement rather than legislation. They are:

- a. If local parents want to remove selection, there is a public ballot process which is very similar to that prescribed in legislation for maintained grammar schools.
- b. If an academy trust wants to remove selection, it must first ballot parents of registered pupils at the school. This, therefore, represents a distinct difference between the contractual regime that applies to grammar academies, and the statutory regime that applies to maintained grammar schools.

The Bill measure will place a duty on the Secretary of State to designate the 143 academy grammar schools as 'grammar schools', putting them onto the same legal footing as the 20 maintained grammar schools. It will also change his power to designate

maintained schools that were wholly selective in 1997 to a duty to do so. It will prescribe that the only means by which selective admission arrangements can be removed from a grammar school is via a successful parental ballot initiated by a petition of eligible parents. This effectively moves what is currently a contractual arrangement into legislation. In doing so, it shall also remove the right of trusts to ballot parents to remove selection. This will ensure consistency with LA maintained grammar schools and ensure that selection can only be removed where it is what parents want.

Have the provisions within legislation and academy funding agreements ever been used to remove selection?

Since 1998, no governing body or academy trust has ever proposed the removal of selection.

One petition to call a ballot reached the necessary threshold of 20% of eligible parents signing a petition to call a ballot. Parents voted 2 to 1 in favour of retaining selection.

The right for parents to ballot for the removal of selection is a longstanding right. We consider it important that parents get to choose whether selection should continue in their area. We will therefore retain the right for them to ballot for its removal.

Why are you not enabling more grammar schools to be set up?

Grammar schools are amongst the best performing schools in the country and will play an important role in the future school system. We are committed to ensuring that they are secure in multi academy trusts.

Rather than opening more grammar schools, our priority is working with the 163 grammar schools that already exist to ensure that more high-ability disadvantaged pupils are benefitting from the excellent education they provide, and to ensure that they act as real drivers for social mobility.

Post-16 providers can select students by ability as can any school for entry to its 6th form. This government has opened twenty-nine 16-19 free schools which are all, likewise, able to select their pupils by ability. Nothing we are proposing for 16-19 free schools will affect the need for an open and transparent process for admitting students.

Why are you protecting / prioritising grammar schools instead of helping the most disadvantaged children?

We are doing both.

Grammar schools are amongst the best performing schools in the country and will play an important role in the future school system. We therefore want to ensure that grammar schools' status as selective schools will continue to be protected in the future system, unless a ballot of parents chooses to remove it.

Grammar schools are particularly beneficial for the disadvantaged pupils who attend them. That is why, through our Memorandum of Understanding with the Grammar School Heads Association (GSHA), we are seeking to increase the admission of disadvantaged pupils to grammar schools.

A number of grammar schools, including the King Edward VI ('KEVI') schools in Birmingham, already have a mature outreach programme. Among other things, they aim to support disadvantaged children in obtaining a grammar school place.

The 22 grammar schools approved to expand under the Selective Schools Expansion Fund are currently implementing their 5 year programmes to support high-ability disadvantaged children in obtaining a grammar school place and the GSHA, KEVI and Colyton Grammar School in Devon are leading in providing [free, online, test familiarisation](#) for high ability disadvantaged primary pupils. They state that over 50 grammar schools are currently involved.

Part 2: Additional detail on Delegated Powers

Order making duty to designate schools that select their intakes according to high general academic ability as grammar schools

What does this delegated power do?

There is an existing order making power in the School Standards and Framework Act 1998, which currently only applies to maintained schools. It states the Secretary of State may designate any maintained school as a grammar school which 'had selective admission arrangements at the beginning of the 1997–98 school year' which 'make provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils with high ability'.

We are extending this power to require the Secretary of State to designate the following schools as grammar schools:

- maintained schools in England that had selective admission arrangements at the beginning of the 1997-98 school year
- academy schools that immediately before conversion to academy status, were designated as maintained grammar schools.

This power will ensure that the 20 maintained and 143 academy grammar schools are all protected by being designated as grammar schools by order. In this respect it is a return to the position all grammar schools had in law in 1998.

The power does not permit any new grammar school to be opened. It does, however, state that the Secretary of State must designate schools as grammar schools when they have the features set out above to ensure the designation order can only be revoked as the result of a successful parental ballot.

How does the government intend to use this power?

The government will designate the 143 academy grammar schools that were maintained grammar schools prior to conversion. Since conversion, these schools have all lawfully continued to operate as grammar schools under arrangements set out in their funding agreements. However, this step will recognise their status as grammar schools in legislation.

Will there be any further consultation on this issue?

We are not proposing to consult on this measure as it is an extension of an existing power which will operate in practice to restore the formally designated grammar status of those schools that were originally designated as grammar schools in 1998. Given these academy schools are all still operating as grammar schools under their funding agreements, it will not have any practical impact on the way these academies are run day to day.

Key questions and answers

Why do you need to designate academies as grammar schools on the face of the Bill to protect their character?

Grammar schools are amongst the best performing schools in the country and will play an important role in the future school system. We want to ensure that grammar schools' status as selective schools will continue to be protected under the future system.

Designating academy grammar schools as 'grammar schools' will place their status as wholly-selective schools onto a firm statutory footing. Once designated, an academy grammar school's status as a grammar school may only be removed if decided by a majority of eligible parents in a ballot.

Regulation making power to prescribe the process to remove selection from grammar schools.

What does this delegated power do?

This is an extension of an existing power that currently applies to maintained grammar schools, which because of the amendments we are making will also apply to academy grammar schools. The power allows the Secretary of State to make regulations about parental ballots held for the purpose for determining whether grammar schools should retain their selective admission arrangements.

The Education (Grammar School Ballots) Regulations 1998 (as amended) have been made under the existing power, and set out the process to remove selection at a maintained grammar school by a parental ballot. In summary, the regulations cover:

- the rules for petitioning
- the rules for conduct of the ballot
- eligibility to sign the petition and participate in the ballot
- the designated body responsible for conducting the ballot
- the circumstances under which the Secretary of State may void a ballot

To date, for academy schools that select wholly by academic ability, a parallel process has been set out in their funding agreements.

We are extending the regulation making power under which the Grammar School Ballot regulations are made so that the Grammar School Ballot regulations will also apply to designated academy grammar schools.

How does the government intend to use this power?

We intend to review and amend as necessary the Grammar School Ballot regulations to ensure parents are able to ballot for the removal of selection at an academy which is a grammar school, as they are for a maintained grammar school. We do not anticipate making any other changes of substance to the Grammar School Ballot regulations.

Will there be any further consultation on this issue?

We are not proposing to consult on this measure as it is an extension of an existing power to apply the rules about parental ballots to academies directly through legislation, rather than through contractual provisions in their funding agreements.



Department
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