Department for Education

Children's Wellbeing and Schools Bill

Policy Summary Notes

January 2025

Contents

Summary

The following policy summary notes provide information on the Children's Wellbeing and Schools Bill as it was introduced in Parliament on Tuesday 17th December.

It also includes an additional note on the government's intention to amend the Bill regarding the teacher pay measure. The government tabled an amendment on 28 January 2025. The amendment is subject to debate at Commons Committee stage.

These notes provide information on measures in the Bill.

Children's Wellbeing and Schools Bill: Overview

What is the purpose of the Bill?

The Children's Wellbeing and Schools Bill is a key step towards delivering the government's Opportunity Mission to break the link between young people's background and their future success. It will put in place a package of support to drive high and rising standards throughout our education and care systems so that every child can achieve and thrive. It will protect children at risk of abuse, stopping vulnerable children falling through cracks in services, and deliver a core guarantee of high standards with space for innovation in every child's education.

What are the main benefits of the Bill?

The ambitions of the Bill are set out in seven key parts:

- Making a child-centred government
- Keeping families together and children safe
- Supporting children with care experience to thrive
- Cracking down on excessive profit making
- Driving high and rising standards for every child
- Removing barriers to opportunity in schools
- Creating a safer and higher quality education system for every child

What are the main elements of the Bill?

The measures in this Bill will deliver on manifesto and Opportunity Mission commitments:

- **Make a child-centred government** by facilitating a statutory framework to authorise the deprivation of liberty of children with complex needs in accommodation provided for the purposes of treatment and care; strengthening Ofsted's powers in relation to children's social care providers by giving them the power to issue fines for breaches of the Care Standards Act 2000, including to unregistered providers, and enabling them to hold provider groups to account for quality issues in the provision of care; regulating the use of agency workers in children's social care; and protecting 16 and 17 year olds from ill-treatment or wilful neglect.

- **Keep families together and children safe** by mandating local authorities to offer family group decision making so that all families with children on the edge of care have an opportunity to form a plan of family-led care, improving information sharing across and within agencies, strengthening the role of education in multi-

agency safeguarding arrangements and implementing multi-agency child protection teams.

- **Support children with care experience to thrive** by requiring local authorities to publish their local offer for children in kinship care and their carers, extending the virtual school head role to children in kinship care and those with a social worker, and strengthening our offer of support for care leavers by requiring local authorities to provide 'Staying Close' support to eligible care leavers where their welfare requires it – this gives support to help find and keep suitable accommodation and access services – and requiring local authorities to publish the arrangements it has in place to support and assist care leavers in their transition to adulthood and independent living.

- **Crack down on excessive profit making** by including a backstop law to potentially cap the profit providers can make; supporting the creation of regional care co-operatives to improve the forecasting and commissioning of placements; establishing a financial oversight scheme to increase financial and corporate transparency of 'difficult to replace' care providers and their corporate owners.

- **Drive high and rising standards for every child** by delivering manifesto and Opportunity Mission commitments on school admissions, Qualified Teacher Status. Requiring academies to follow the statutory pay and conditions framework and a reformed National Curriculum. Removing the presumption that new schools will be opened as academies and instead allowing proposals for all types of new schools, including giving local authorities the choice of proposing their own new school.

- **Remove barriers to opportunity in schools** by delivering manifesto commitments on free breakfast clubs and limiting the number of branded uniform items that schools can require.

- **Create a safer and higher-quality education system for every child** by introducing Children Not In School registers to make sure help can be mobilised for every child that needs it. To help protect children who are most vulnerable, parents will have to obtain local authority consent to home educate in certain circumstances. It will also extend the registration requirements, already in place for independent schools, to more Independent Educational Institutions which could be expected to provide all or the majority of a child's education and make changes to improve arrangements for the regulation and inspection of independent schools; and the consideration of cases of serious teacher misconduct.

Part 1: Children' Social Care measures - Children's Wellbeing and Schools Bill: Family group decision making (FGDM)

A measure to mandate local authorities to offer a 'family group decision making' meeting at the point the local authority is seriously considering applying to the court for a care or supervision order, to give all families an opportunity to come together and make a plan in response to concerns regarding the child's welfare.

What does this measure do and why do we need it?

Family group decision making (FGDM) meetings allow a family network to come together and make a plan in response to concerns about a child's safety and wellbeing. These family-led meetings can include identifying practical support for parents, while prioritising the wellbeing of the child.

The government know many local authorities already deliver family group decision making at different stages. However, offers of FGDM meetings are not consistent across the country.

The Independent review of children's social care reported that too often families enter proceedings without a FGDM meeting having taken place and opportunities may have been missed in identifying family network members who could act as a support system to the parents to promote the wellbeing of the child or be considered as alternative care givers if the need arose.

A Family Group Conference (FGC) is a specific model of FGDM which has strong evidence of diverting children from care, as shown by the findings of the randomised control trial conducted by Foundations – the What Works Centre for Children & Families. Children whose families were referred for an FGC as part of this randomised control trial were less likely to have had care proceedings issued (59%) compared to those not referred (72%) and were less likely to be in care one year later (36%) compared to those not referred (45%).

The government believe that creating a new legal duty for local authorities to offer family group decision making meetings to families who are on the edge of care at pre-proceedings will bring consistency to the approach and will encourage a family-first culture.

Unless there are exceptional circumstances in which the offer would not be in the best interests of the child, every family should be offered the opportunity to make a family-led plan when the local authority is seriously considering bringing care proceedings.

What is the effect of the legislation?

It will place a legal duty on local authorities to offer a family group decision making meeting to the parents (or those with parental responsibility) of children whose cases have reached the pre-proceedings stage (i.e. they are on the edge of care and the local authority are seriously considering applying to the court for a care or supervision order).

Unless there are exceptional circumstances in which the local authority decides that this meeting would not be in the child's best interests, local authorities must offer this meeting to all families who have reached the pre-proceedings stage and must facilitate this meeting where accepted.

The government will work with the sector and other government departments on examples of these exceptional circumstances for accompanying guidance.

Strengthening the offer of FGDM further will reduce applications for court proceedings as well as prevent children from entering the care system. In doing so, this will improve outcomes for children and families, as well as create significant savings for local government. Building on the excellent practice already offered by many local authorities, through legislation the Bill will ensure every local authority must offer an FGDM meeting to families at the pre-proceedings stage. It will give parents the legal right to be involved in planning and decision making at this critical point, alongside their family network and with the support of coordinators, social workers and other professionals.

How will this work in practice?

The government know that many local authorities already offer FGDM meetings to families at different stages.

However, research has shown that this offer is inconsistent and too often families enter care proceedings without a FGDM meeting having taken place. This means opportunities may be missed in identifying family network members who could act as a support system to parents.

This measure will ensure that this evidence-backed offer of an FGDM meeting is offered consistently at this crucial time and will divert children from care.

Although the duty will make it mandatory to offer FGDM at the pre-proceedings stage, the government will encourage local authorities to also offer these meetings as early as possible in the child's journey and repeat the offer as necessary to support a 'family first' culture.

The government envisions that the family's history of FGDM meetings should be considered at the legal planning meeting where it should be discussed and recorded. The FGDM offer should be made in writing to the family in the 'letter before proceedings'.

To facilitate local authority implementation and support best practice, the government plans to update relevant statutory guidance and provide additional practice guidance for Local Authorities.

Key questions and answers

Why are you not prescribing the Family Group Conferencing model as there is strong evidence that it is effective?

In current guidance, the department does not prescribe a specific model of family group decision making, however local authorities are encouraged to consider the evidence for the family group conference model.

It is a local authority's decision to decide which model of family group decision making will best serve the families they support after considering the evidence.

If family group decision making meetings are mandated, couldn't this put victims of domestic abuse/child sexual abuse/coercive and controlling behaviour at risk from the perpetrator?

Identifying and managing risks is vital in safely conducting family group decision making meetings. A key principle of this duty is that local authorities have discretion over whether or not it is in a child's best interest to offer a family group decision making meeting – given they know families' and children's circumstances best.

Participating in family group decision making meetings is entirely voluntary. Facilitators work alongside the family's social worker and other professionals to understand risks and how to best support participation. The government will provide guidance to share best practice on safe participation.

Research shows that family group decision making increased family unity and family safety. Following domestic abuse, research shows that these meetings can restore positive communication about the child in a structured setting.

Safety of children and families is vital. The government will use guidance to outline best practice to make sure families are safe during these meetings.

Children's Wellbeing and Schools Bill: Strengthen the role of education in safeguarding

A measure to place duties on safeguarding partners (local authority, police, health) to secure the participation of education and childcare settings as relevant agencies as well as ensure that their views are sufficiently included and represented at strategic and operational levels in multi-agency safeguarding arrangements. The aim of this measure is to strengthen the role of education in multi-agency safeguarding arrangements to better protect children from abuse, neglect, and exploitation.

What does this measure do and why do we need it?

This change will see better join-up between children's social care, police, and health services with education, to better safeguard and promote the welfare of all children in local areas.

Currently, legislation outlines that safeguarding partners can name the local education settings they deem appropriate as relevant agencies in their arrangements. However, this is implemented inconsistently nationally and can lead to some settings being left out of arrangements, which can mean opportunities to protect children are missed.

In 2022, the Independent Care Review and the Child Safeguarding Review Panel's review into the deaths of Arthur Labinjo-Hughes and Starr Hobson, Child Protection in England recommended that education become a statutory safeguarding partner, alongside local authorities, police and integrated care boards.

The intent behind this recommendation was to ensure that the contribution and voice of education was included when identifying priorities and support for children and families.

The government want local areas to have a deep understanding of their safeguarding needs and to tailor their multi-agency responses accordingly, ensuring that children and families receive the right support at the right time.

The government have also heard through multiple expert reviews of the child protection and safeguarding system that current arrangements do not go far enough to ensure that education has an effective and proportionate role. Reports describe inconsistent communication between education settings and children's social care, police, and health services, and a lack of strategic connections when making decisions. This means that crucial knowledge and insights of education settings are missed from decision making by safeguarding partnerships.

What is the effect of the legislation?

The intention of the legislation the government are proposing in the Children's Wellbeing and Schools Bill is to strengthen the role of education in multi-agency safeguarding arrangements (MASAs) to better protect children from abuse, neglect, and exploitation. The government are building on existing legislation and recognise that the current system needs to change to ensure education is adequately represented both operationally and strategically. The aim of our legislative change is two-fold, to ensure that:

Safeguarding partners automatically include all relevant agency education and childcare agencies in their safeguarding arrangements.

These arrangements enable education and childcare agencies to have representation at both the operational and strategic decision making levels of these safeguarding arrangements.

How will this work in practice?

The make-up and needs of a local area differs across the country, meaning legislation will be implemented in a way that works best for each local area.

Practically, this may look like including the breadth of education settings from early years and childcare to schools including academies and independent schools, alternative provision and further education in operational safeguarding boards, and having representation for their views at executive boards so that they can influence decisions being made about safeguarding in their local area.

The government have a good understanding of different practice across the country on how to include education well in safeguarding arrangements so will look to share this information through guidance and support documents.

The government will expect safeguarding partners to outline their arrangements for the inclusion and representation of education in their annual reports.

Key questions and answers

Are you going to make schools a fourth safeguarding partner?

No, the government are not making schools a safeguarding partner with this measure. This is a first crucial step in ensuring consistency nationally for how education is involved in multi-agency safeguarding arrangements.

The government believe placing duties on safeguarding partners to fully include and represent education and childcare at all levels of their arrangements will ensure that

opportunities to keep children safe are not missed and will give educational settings a clear role in safeguarding locally.

This legislation enables the voice of education to influence the decisions of safeguarding partners and recognises the key role that education plays in keeping children safe.

Is there any support available for us to implement a strengthened role for education?

The government will publish guidance and work with local areas to share good practice.

Through the Families First for Children Pathfinder local areas have been testing a strengthened role for education and will ensure this learning is shared.

The government know many local areas will have been working on how education is involved and represented in their local area, and we will continue to work with stakeholders to support this work.

Children's Wellbeing and Schools Bill: Establish multi-agency child protection teams

A measure to create a duty for safeguarding partners (local authorities, police and health) to make arrangements to establish multi-agency child protection teams (MACPTs) to support the local authority in the discharge of its child protection duties; and require relevant agencies to enter memorandums to set out how they will facilitate the operation of the MACPT.

What does this measure do and why do we need it?

Our ambition is for a child protection system that is decisive, where multi-agency practitioners have the expertise, experience, time and support to identify actual or likely significant harm quickly. This will lead to stronger risk assessment and decision making, and more children protected at the right time.

Ineffective multi-agency working is a key factor where child protection activity fails to keep children safe. Following a review of child protection practice in England, The Child Safeguarding Practice Review Panel (CSPRP) recommended introducing multi-agency child protection units in every local authority area to address this.

In 2024 (as of 31 March), nearly 50,000 children were on protection plans, about 1 in every 240 children. This number and rate have decreased for the second consecutive year (50780 in 2023), reaching the lowest number since 2015 (49690) and lowest rate since 2013 (37.9 per 10,000 children). There were 405 serious incident notifications in which 205 related to child deaths, up 4 from 2023 and down 22 from 2019.

Through this legislation, safeguarding partners will be under a collective duty to make arrangements to establish and run one or more multi-agency child protection teams for the local area. MACPTs will consist of a minimum core membership, set out in the primary legislation, to be nominated by the safeguarding partners. This will include a social worker, police officer, healthcare professional and person with education experience. These integrated teams of child protection experts will deliver specific child protection activities, which will be set out in regulations.

The precise membership of MACPTs, beyond the minimum core members, should be aligned with local demographics, needs, and patterns of harm including where harm comes from outside the home or online. The local authority will therefore have the flexibility, dependent on local requirements, to add other individuals and agencies to the MACPT as it considers appropriate after consulting with the other safeguarding partners. Where the safeguarding partners identify that the expertise of a specific relevant agency is required, the safeguarding partners may notify that relevant agency and require a memorandum to be put in place. The purpose of the memorandum is to set out a written

agreement outlining how the relevant agency will work with the safeguarding partners to facilitate the operation of the MACPT.

What is the effect of the legislation?

Despite existing legislation, day to day multi-agency operations can be inconsistent, resulting in missed opportunities to protect children effectively. New legislation would clarify day to day child protection responsibilities across agencies, bring together multi-agency practitioners, and improve cooperation among safeguarding partners and other relevant agencies.

The government want a child protection system where the rationale for decisions in relation to children is clear, and decisions focus on the needs and best interests of children, involving parents, family networks and others in a transparent and compassionate way.

Placing a duty on safeguarding partners to establish and run one or more MACPTs in their area, will balance the lead role of the local authority in child protection enquiries whilst creating a defined duty from safeguarding partners and other relevant agencies ensuring they are also accountable for how they support local authorities to deliver their child protection activities.

Clearly defined duties will address inconsistencies and ambiguities in child protection practices and improved joint working will result in:

- Stronger approaches to information sharing and will improve consistency.
- Improvements for integrated working, shared identification of risk and proactive work around early intervention, prevention, and family help.
- Better join-up between children's social care, police, and health services with education.
- Improved understanding of the roles of each agency in supporting children and families.
- Effective multi-agency practice.

Our view is that this would add clarity that all agencies are responsible for the welfare, safeguarding and protection of children. The government think there is the potential to significantly improve outcomes for children and young people, building on early intervention and family help and ensuring that the children that need the highest levels of child protection are identified quickly and efficiently. This duty will ensure a multi-agency child protection system that is expert led, decisive, provides effective and clear decisions focused on the best interests of the child and co-ordinates support from across a range of agencies.

How will this work in practice?

Safeguarding partners (local authorities, police and health) will be under a collective duty to establish and run a MACPT. Safeguarding partners will be required to nominate representatives for the local area and relevant agencies must collaborate with the MACPT as required through safeguarding arrangements or specific memorandums.

The MACPT will be an integrated team of child protection experts supporting local authorities to deliver their child protection functions. These teams will offer expert advice and expertise to local services in relation to the need to protect children from significant harm and monitor and evaluate the effectiveness of multi-agency child protection activity.

The government plan to delay commencement of these provisions until 2027 and can include specific expectations in regulations on the support to be given by the MACPT to the local authority in the discharge of its child protection duties. This approach will ensure the multi-agency child protection teams are informed by findings from the evaluation of the Families First for Children Pathfinder programme and give areas time to prepare for implementing changes. The government will also use this time to engage extensively with all sectors intended to be part of the multi-agency child protection teams.

Later commencement allows more time to secure funding and resources and workforces will have more time to engage and prepare for change. Statutory guidance, Working Together to Safeguard Children, will be updated to support legislative changes.

Additional information on delegated powers

The new provisions will include a power for the Secretary of State to set out in regulations how the multi-agency child protection teams will carry out their day-to-day activities. The activities will all be related to supporting local authorities to carry out child protection work (under section 47 of the Children Act 1989) including making enquiries about the safety of children, gathering information about whether a child is suffering significant harm and putting plans in place to support and protect children. The government will use learning from the Family First for Children Pathfinder and evaluation in 2026 to determine the operational details required.

The new provisions will include a power for the Secretary of State to set out in regulations requirements for the practitioners who are nominated to be part of the multi-agency child protection teams. This might include examples of the types of "minimum qualifications or experience" that they will need, which have not been included in the legislation as this will require discussion with the relevant work forces, including police, health and education, to understand what would be relevant and to ensure the right levels of expertise. The government will also use learning from pathfinders to inform this.

There are already a group of agencies that are required to support and co-operate with safeguarding partners (police, health and local authorities) when it comes to safeguarding and protecting children. These are known as ‘relevant agencies’. These provisions will include a power for the Secretary of State to designate in regulations which of these relevant agencies must enter into a memorandum if notified to do so by the safeguarding partners for any local area. The purpose of the memorandum is to set out how the relevant agency will work with the safeguarding partners to facilitate the operation of the MACPT.

Key questions and answers

Where is the evidence for multi-agency child protection teams?

Early results from 10 local area Pathfinders who are testing this approach show multi-agency teams show better management of complex issues, reducing crisis points and enabling quicker, effective interventions and improving outcomes for children.

These teams are also based on lead practitioner and partnership working models with evaluations including the Supporting Families and Strengthening Families programmes. They are a key recommendation from the National Child Safeguarding Review Panel report: child protection in England, based on evidence drawn from local child safeguarding practice reviews.

The Family First for Children Pathfinder programme will provide evidence to support eh policy development of the MACPTs. Early findings will be published in Spring 2025.

How will this be funded?

On 28 November, government announced an additional £250m for the year 2025-26 to support the national roll out of family help and child protection reforms.

We are seeking a longer-term commencement of the duty to ensure that workforces have the time to prepare, and support workforce transitions to MACPTs.

We will engage closely with the sector to understand the support required to implement MACPTs and use the evaluation from the Family First for Children Pathfinder.

Children's Wellbeing and Schools Bill: Information-sharing and consistent identifiers

Measures to improve data sharing between agencies to better safeguard and support children and families. An information sharing duty that provides a clear legal basis to share information for the purposes of safeguarding and promotion of welfare, and provision to enable the specification of a consistent identifier (also known as 'Single Unique Identifier').

What does this measure do and why do we need it?

The duty provides a clear legal basis for sharing information for the purposes of safeguarding and promoting the welfare of children. This will give practitioners confidence to request and provide information appropriately and in line with data protection legislation, removing barriers to providing targeted, timely and accurate support for families.

Multi-agency information sharing not only protects children from harm but also helps earlier identification of support needs so that children get the help they need to make the best possible start in life.

Introducing a consistent identifier as part of wider improvements will enable quicker and less burdensome interactions between agencies and greater accuracy of shared information.

What is the effect of the legislation?

Establishing a clear legal framework for information sharing in safeguarding contexts enables professionals to collaborate effectively, ensuring all relevant details are considered to meet a child's needs and prevent instances of abuse or neglect from being missed.

Professionals require a comprehensive view of a child's situation to make informed decisions. Missing information can limit their understanding, but when data from various agencies is combined, it creates a clearer and more accurate picture of the risks and needs. This leads to better assessments, protection, and support for the child.

The legislation also enables specification of a consistent identifier for children by regulations.

How will this work in practice?

Practitioners will be able to use the new information sharing duty as a clear legal basis to both disclose and request information about a child for the purposes of safeguarding and promotion of welfare. This will promote a more seamless sharing of information so that practitioners can consider the full picture of a child's life.

A consistent identifier (or ‘Single Unique Identifier’) is a consistent number for each individual that is included across multiple sets of data to link information together more quickly and accurately. It contributes to ensuring reliable, efficient data linking across systems, improving service delivery and outcomes.

Additional information on delegated powers

We are seeking powers to specify by regulations which number should be used as a consistent identifier for children and which agencies, from a list set out on the face of the Bill, will be required to use the consistent identifier (or ‘Single Unique Identifier’), alongside guidance to support implementation.

We consider that it is appropriate to seek a delegated power to specify the number to be used as a consistent identifier as it is not yet known which will be most appropriate for these purposes, and it is prudent to future-proof the legislation by enabling a new number to be specified should a particular designated consistent identifier fall out of use.

To achieve the benefits of a consistent identifier, it will take time for it to be used by the various agencies that play a role in safeguarding and promoting the welfare of children. Specifying the agencies that must use the consistent identifier by regulations means that agencies will only be required to use the number once they have the appropriate systems in place to make it an effective tool in supporting children and families.

Key questions and answers

Why is the government considering implementing a 'consistent identifier'?

Having the right information is vital for practitioners working with children and families to assess risk accurately and make informed decisions about their needs. The absence of effective information sharing has resulted in missed opportunities for early intervention, allowing children’s needs to escalate and, in some tragic cases, leading to their deaths.

The government set out in ‘Keeping Children Safe, Helping Families Thrive’ that it would introduce a consistent identifier to improve data sharing and linking in services related to children and families. The department will conduct a regional pilot to test the feasibility of

using the NHS number, as recommended by the Independent Review of Children's Social Care, as a consistent identifier across children's services. This pilot will assess whether the NHS number improves information sharing for safeguarding and welfare purposes. If properly implemented, the consistent identifier could serve as a valuable tool to connect data across different services.

How can people's data be shared if they have not given their consent? This conflicts with the common law duty of confidentiality.

The need to safeguard children is prioritised over any requirement to obtain consent to share information, as already set out by the Information Commissioner's Office and Data Protection legislation. The duty provides a clear legal basis for sharing information on the grounds of safeguarding and promotion of welfare, balanced against any detriment to the child as a result of sharing. Further, the disclosure of information under this duty would not be subject to the common law duty of confidentiality. We will cover this further in guidance.

Children's Wellbeing and Schools Bill: Kinship local offer requirement

A measure to create a duty for local authorities to publish a kinship local offer. This aims to provide clarity and ensure that kinship families are aware of and can access the support they need. This will add definition of children in kinship care and kinship carers into the statutory framework for the first time.

What does this measure do and why do we need it?

The kinship local offer measure will legislate the requirement for local authorities to publish a kinship local offer. This offer will detail the support available in any local authority's area to children living in kinship care arrangements and kinship carers.

Kinship carers often step in to care for children when their parents are unable to do so, often at short notice. This can mean that kinship carers may be unaware of the range of support and services that may be available. This legislation aims to ensure parity of access to information across England, so that all children in kinship care and kinship carers have access to information about support services they can receive in their local area.

The department has taken a decision to replace the existing statutory guidance expectation to publish a kinship local offer with a legal duty because recently published analysis revealed inconsistent compliance with the expectation. We expect that as a result of this legislation, we will see an increase in local authorities publishing a kinship local offer. The department will also be putting in place a programme of work to improve the quality of underlying local offers.

What is the effect of the legislation?

The legislation will place a statutory duty on local authorities to publish information about services in their area for children in kinship care and kinship carers, which will be known as a kinship local offer.

The aim in doing so is to promote transparency to ensure kinship families are informed about their rights and the resources available to them.

Through these measures, we intend that kinship carers receive the recognition and support they need, both financially and practically throughout the process of becoming and being a kinship carer. Ultimately, by supporting kinship carers, this measure aims to improve the overall wellbeing and stability of children who cannot live with their parents.

The new Section 22I also defines children living in kinship care arrangement and kinship carers. A child will be in kinship care arrangement if they live with a relative, friend or other connected person in prescribed circumstances. These prescribed circumstances include where a child lives with a relative, friend or other connected person for all or most of their time than with the parent, and that person provides all or most of the care and support for the child.

How will this work in practice?

The legislation will require each local authority to publish the details of the services and support that are available locally to support kinship children and kinship carers. This should include those available from both national and local authorities, as well as relevant services and support from other organisations including in the voluntary sector.

These services may include those relating to health and wellbeing, relationships, education and training, and accommodation. The local authority must also publish information about financial support which may be available to kinship families in their area, and information about the local authority's general approach to supporting kinship families.

Local authorities will also be expected to review their kinship local offer from time to time as appropriate.

Key questions and answers

What is the effect of the legislation?

The legislation mandates that all local authorities publish a kinship local offer, ensuring transparency and accessibility of information for kinship families. This requirement will standardise the availability of support information, making it easier for kinship carers to understand and access the services they are entitled to, regardless of where they live. This will help bridge gaps and ensure that all kinship carers receive the necessary information and resources to support their caregiving roles effectively.

By defining kinship care in law, the legislation will provide a clear and consistent framework. This will ensure that all local authorities interpret and apply the term uniformly, reducing ambiguity and potential disparities in access to information based on a geographic location.

Children's Wellbeing and Schools Bill: Virtual school head

A measure to introduce a statutory strategic duty to promote the educational achievement of children with a social worker and children in kinship care (which in practice is likely to be discharged by an officer of the local authority known as a Virtual School Head).

What does this measure do and why do we need it?

Since September 2021 Virtual School Heads have had a non-statutory duty to promote the educational outcomes of all children with a social worker through strategic leadership and support to ensure these children receive the necessary educational opportunities and resources to succeed. This measure will make this role statutory, ensuring that every local authority must have a dedicated officer to champion the educational outcomes of these children, helping to improve their school attendance, engagement, and overall achievement.

This change is needed because these children have worse educational outcomes than their peers at every stage. Children with a social worker are roughly half as likely to achieve the expected standard in reading, writing and mathematics at Key Stage 2 compared to the overall pupil population, whilst at Key Stage 4 they perform less well across all measures. They are also more likely to be persistently absent and permanently excluded from school than the overall pupil population. Furthermore, children with a social worker are over two and a half times more likely to have an Education, Health, and Care Plan than the overall pupil population, whilst two thirds face domestic abuse or mental ill-health in their families.

Since September 2024 Virtual School Heads have also had a non-statutory duty to promote the educational outcomes of all children in kinship care arrangements. This involves providing strategic leadership and working with schools, colleges, and social care leaders, to champion the attendance, attainment, and progress of these children. It also involves providing information and advice, upon request, to carers and guardians, schools and colleges, and others.

This new measure will extend Virtual School Head statutory duty to all children in kinship care, regardless of whether they spent time in care or not. This will give Virtual School Heads the legal mandate to continue to support these children, putting the role on the same footing as their duties towards looked-after and previously looked-after children. It will also provide a clear framework that will allow local authorities to prioritise the needs of these children.

What is the effect of the legislation?

It is anticipated that making the Virtual School Head role for children with a social worker and kinship children statutory will have multiple effects. These include:

- Consistent support: The legislation will ensure that all local authorities in England provide consistent and dedicated support to promote the outcomes of these vulnerable groups of children and young people, which will help to address the challenges and barriers they face in education.
- Improved educational outcomes: By making the role statutory, Virtual School Heads will have a stronger legal basis to effectively champion the educational progress of these children, leading to better academic outcomes and reduced disparities compared to their peers.
- Enhanced collaboration: The legislation will enable greater collaborative working between schools and local authorities, creating a more integrated approach to supporting these children.
- Increased awareness and resources for carers and guardians: Kinship carers and guardians will be entitled to better guidance and resources, increasing their awareness of educational support available for the children they have responsibility for.
- Accountability and oversight: Statutory status will bring greater responsibility and oversight for the outcomes of these children, ensuring that the Virtual School Heads' responsibilities are met and that the educational needs of these children are prioritised.
- Greater assurance to local authorities: These measures will give Virtual School Heads authority which we think will give them greater confidence to support these children. Without the measures, local authorities may de-prioritise Virtual School Head provision to children with a social worker and kinship children due to increasing budgetary pressures and an increasing steer to prioritise statutory services only.

How will this work in practice?

The Virtual School Head role for children with a social worker involves providing strategic oversight to improve educational outcomes for these children. In practice, this includes the effective use of data to monitor their educational outcomes to help identify those most at risk of disengagement, enabling early intervention to support them to improve their attendance, attainment, and overall school experience.

The extension of the Virtual School Head role to children with a social worker also includes raising awareness and improving visibility of the needs of this cohort. The involves increasing schools' and social workers' understanding of the educational needs

of these children by delivering training on areas such as trauma-informed practices, care experience, and effective interventions and strategies to improve educational outcomes.

The extended role for kinship children has two key functions. The first is to provide strategic, system-wide oversight of the cohort of children in kinship care in the Virtual School Head's local authority area. Key activities may include raising awareness of the unique needs and disadvantages these children face and promoting practices that support their attendance and engagement in education and improving their educational attainment. This might involve ensuring that kinship care experiences are included in training for school staff, fostering a kinship-friendly culture within the education system, and facilitating partnerships between education settings, local authorities, and organisations that support kinship families.

The second function is to provide information and advice to kinship carers of children subject to special guardianship and child arrangement orders, regardless of whether the child was previously in local authority care. This will help kinship carers navigate the education system, manage behaviour, and address issues such as exclusions and admissions.

What outcomes do you anticipate making the Virtual School Head role statutory will have?

Since the Virtual School Head role was extended on a non-statutory basis in 2021 to include promoting the educational attainment of all children with a social worker we have seen good evidence of impact. The evaluation of the extension shows early signs of improved educational outcomes for these children, with several local authorities reporting improved attendance, reduced exclusions and enhanced collaboration between education and social care services. The extended role has also contributed to increased awareness and understanding of the educational needs of children with a social worker among professionals. By making the role statutory we anticipate that we will continue to see positive outcomes.

We anticipate that this measure will also enhance the support available for carers and guardians of children in kinship care by increasing their awareness of, and access to, the support mechanisms available to help these children thrive academically.

The Virtual School Head's strategic role for these cohorts of children will also continue to raise awareness of the challenges they face in education, which will lead to greater targeted support and, as a result, improved outcomes.

How will you ensure that local authorities are consistent in how they meet these duties?

We will issue statutory guidance to local authorities which will set out the expected Virtual School Head role in relation to these cohorts of children and young people. This will give local authorities the framework to support the outcomes of all children they have a duty towards but will also allow sufficient flexibility that meets local need, reflecting variations in virtual schools in terms of size, demographic and how they are resourced.

The guidance will support Virtual School Heads to raise awareness of the needs of these cohorts, build and enhance partnerships between education settings and local authorities, and promote practice that improved educational outcomes. This will include improving attendance and absence rates and identifying and addressing barriers to educational progress.

Children’s Wellbeing and Schools Bill: Staying Close

A measure to require each local authority to assess whether they should provide 'Staying Close' to eligible care leavers, which gives support to help find and keep suitable accommodation, and to access services relating to health and wellbeing, relationships, education, training and employment.

What does this measure do and why do we need it?

Care leavers experience significantly worse outcomes than their peers in the general population and are heavily over-represented in the adult prison population; homelessness data; and indicators of poor emotional health and well-being.

The transition into adulthood is a crucial opportunity to shape a young person’s life. Care leavers need the opportunity to not only be safe and cared for, but the chance to thrive and have access to the building blocks they need to become happy and successful adults.

There is a gap in support nationally for young people leaving residential homes and other forms of accommodation. These young people often find themselves in independent accommodation without support and often find themselves isolated and unable to manage with the challenges that independent adult life brings.

The new duties will replace the current staying close grant funded scheme and will require each local authority to consider whether former relevant children (up to age 25) require staying close support. If it is the local authority’s view that their welfare requires it, they will then offer support for the purposes of helping them to find and keep suitable accommodation; and to access services relating to health and wellbeing, relationships, education and training, employment and participating in society.

This support means the provision of advice, information, and representation. The aim is to help develop confidence and skills for independent living so that young people can feel positive about their future and opportunities as a result of the support they receive. The new clause makes clear that these duties are in addition to those already required under the act.

What is the effect of the legislation?

This new clause will require all local authorities to assess whether the provision of Staying Close support to former relevant children (up to age 25) is required in the interests of that person’s welfare.

Where the local authority determines that Staying Close support is required, the authority must provide staying close support to the former relevant child having regard to the extent to which the person's welfare requires it.

We want to bring in these new duties, alongside existing duties, to ensure that all local authorities are offering a framework of support into independent living for all former relevant children.

How will this work in practice?

Staying Close works to provide support that is based upon the individual needs of the young person. This covers support to find and keep long-term stable accommodation and access essential wraparound services that help young people to thrive.

These new duties will operate alongside existing ones to require all local authorities to offer a flexible framework of support for care leavers transitioning into independent living.

New statutory guidance will cover the new requirements alongside areas of good practice that LAs might want to consider. This will include options around the role of a trusted person within staying close support, and how other duties can apply when looking at what practical support needs to be provided.

Key questions and answers

What evidence have you got that this will improve outcomes?

The independent evaluations of the existing grant funding scheme found that the scheme supported young people to develop and build the skills needed to prepare for independent living. Feedback showed that young people's life skills had improved after six months of participating in the project. There was also evidence that young people felt happier in themselves, had better stability in their accommodation and there was increased participation in activities, whether education, employment or getting involved with other activities in the project.

Will the offer differ from local authority to local authority?

The support that each eligible young person will receive will be dependent on what their welfare requires. As each local authority is best placed to know their care leaver cohorts and their specific needs it is likely there will be some variation. They must all however adhere to the duties set out in legislation and the new statutory guidance.

Children's Wellbeing and Schools Bill: Local offer for care leavers

A measure to require each local authority to publish the arrangements it has in place to support and assist care leavers in their transition to adulthood and independent living.

What does this measure do and why do we need it?

Whilst housing and children's services departments are encouraged in guidance (part 7 of The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers) to work together to achieve the common aim of planning and providing appropriate accommodation and support for care leavers, this is not happening consistently in practice.

Expert reviews have shown that many care leavers face barriers to securing and maintaining affordable housing. Too many young people end up in crisis and experiencing homelessness shortly after leaving care. Care leavers are overrepresented amongst those sleeping rough.

To enable better joined up planning and support for care leavers we want to amend legislation to require local authorities to publish their plans, setting out how they will ensure, a planned and supportive transition between care and independent living for all care leavers.

What is the effect of the legislation?

This legislation will amend Section 2 of the Children and Social Work Act 2017 (local offer for care leavers in England) to require local authorities to publish the arrangements they have in place for the purpose of supporting and assisting care leavers in their transition to adulthood and independent living as part of their published offer for care leavers.

Tackling homelessness will have a significant positive impact on the life outcomes for these young people.

How will this work in practice?

It will require each local authority to publish the arrangements it has in place to support and assist care leavers in their transition to adulthood and independent living as part of their published local offer for care leavers.

This must include information about the authority's arrangements for anticipating the future needs or care leavers for accommodation, co-operating with the local housing

authorities in its area and providing assistance to care leavers who are at risk of homelessness.

Key questions and answers

What is the difference from the Staying Close measure? Why do we need both?

The staying close measure requires local authorities to provide support to former relevant children up to age 25 where their welfare requires it. This duty requires local authorities to publish information about the arrangements that the local authority has in place for the purpose of supporting and assisting care leavers in their transition to adulthood and independent living.

How will this benefit care leavers?

Many care leavers do not feel equipped to deal with the challenges of living independently and they do not always have strong support networks and families that other young people rely upon to help them with the transition to independent living. The new legislation will impose a duty to publish information, that will allow care leavers to know what services are available to them and aid professionals working closely with care leavers to advise and signpost offers.

Children's Wellbeing and Schools Bill: Regional co-operation arrangements

A measure to regionalise the commissioning, analysis, and sufficiency practices of local authorities, by giving the Secretary of State the power to direct them to join together to make regional co-operation arrangements, harnessing their collective buying power.

What does this measure do and why do we need it?

This measure will enable the Secretary of State to direct local authorities to establish regional co-operation arrangements (known as Regional Care Co-operatives or RCCs) where needed.

The Competition & Markets Authority and independent Review of Children's Social Care both recommended a regional approach to planning and commissioning children's care places in their respective reports in 2022. The reports found that local authorities' relatively small size means they can struggle to forecast looked after children's accommodation needs and commission places effectively, particularly for children with specialist needs. This is one of the reasons why too many children live far from home and the costs of their care can be high. The government accordingly set out its proposals for Regional Care Co-operatives in *Keeping Children Safe, Helping Families Thrive.* Two pathfinders are currently being set up in the South East and Greater Manchester to test this approach. They are being set up under current legislation and will be operational in 2025.

Many local authorities are interested in greater regional working. The government has worked with the sector to design Regional Care Co-operatives and intends to continue working in partnership with local authorities and other services. Three-quarters of local authorities were part of regional bids to be one of the Regional Care Co-operative pathfinders. However, the problems in the children's social care market are significant and Regional Care Co-operatives are one of the steps the government is taking to address them. There are currently 150+ local authorities competing for accommodation for looked after children. Introducing Regional Care Co-operatives nationwide would significantly reduce the number of bodies seeking to procure accommodation and enable greater efficiency. Therefore, as a last resort, this measure would give the Secretary of State the power to direct local authorities to establish regional co-operation arrangements.

What is the effect of the legislation?

The measure inserts a new section, section 22J, into the Children Act 1989. Section 22J is called "Accommodation of looked after children: regional co-operation arrangements".

The measure describes the strategic accommodation functions that can be carried out by Regional Care Co-operatives along with their local authorities. The legislation refers to regional co-operation arrangements instead of Regional Care Co-operatives but for all intents and purposes they are the same. The scope of these functions has been developed following sector feedback.

The strategic accommodation functions are:

- Assessing current and future requirements for the accommodation of children being looked after by the local authority.
- Developing and publishing strategies for meeting those requirements.
- Commissioning the provision of accommodation for children being looked after by the local authority.
- Recruiting prospective local authority foster parents and supporting local authority foster parents.
- Developing, or facilitating the development of new provision for the accommodation of children being looked after by the local authority.
- Any other functions relating to a local authority's duties under sections 22A, 22C or 22G of the Children Act 1989 that are specified in regulations made by the Secretary of State.

The measure also gives flexibility around how the Secretary of State can direct for Regional Care Co-operatives to be set up, either as joint arrangements between the local authorities, with the strategic accommodation functions to be carried out by a local authority on behalf of the others or as a corporate body. This will enable the Secretary of State to respond to local areas' preferred ways of working and build on any existing regional arrangements.

The Secretary of State may also specify the type of corporate body to be set up and which of the local authorities is to establish it or require local authorities to determine this for themselves. There is also an option for the Secretary of State to terminate regional co-operation arrangements if they are not working.

How will this work in practice?

We expect Regional Care Co-operatives to gain economies of scale and harness the collective buying power of individual local authorities. This will facilitate greater collaboration with partners to improve services for looked after children. Furthermore, Regional Care Co-operatives will develop expertise in areas such as data analysis and forecasting, as well as targeted marketing, training, and support for foster carers. Working collectively with improved specialist capacities should allow for greater innovation so that local areas are better able to deliver services for children in care. For

example, both pathfinders are trialling measures to boost the regional workforce for children's homes in response to local and regional recruitment challenges.

The legislation enables the Secretary of State to direct two or more local authorities to make regional co-operation arrangements. If local authorities do not make regional co-operation arrangements voluntarily to carry out their strategic accommodation functions, then this power can be used by the Secretary of State.

Additional information on delegated powers

The measure includes a power for the Secretary of State to direct two or more local authorities to make regional co-operation arrangements. These arrangements could either be (a) to carry out their strategic accommodation functions jointly, (b) for those functions to be carried out by one of the local authorities on behalf of the others or (c) for a corporate body to support the local authorities in carrying out those functions. The power for the Secretary of State to direct two or more local authorities to enter into regional co-operation arrangements is a non-legislative delegated power.

Subsection (2) provides a definition of 'strategic accommodation functions' as:

- Assessing current and future requirements for the accommodation of children being looked after by the local authority.
- Developing and publishing strategies for meeting those requirements.
- Commissioning the provision of accommodation for children being looked after by the local authority.
- Recruiting prospective local authority foster parents and supporting local authority foster parents.
- Developing, or facilitating the development of, new provision for the accommodation of children being looked after by the local authority.
- Any other functions relating to a local authority's duties under sections 22A, 22C or 22G of the Children Act 1989 that are specified in regulations made by the Secretary of State.

Subsection (2)(f) therefore includes a power for the Secretary of State to introduce regulations to add to the definition of local authorities' strategic accommodation functions. The scope of such regulations would be limited to local authorities' duties set out in specific sections of the Children Act 1989, namely:

- Section 22A – the duty to accommodate looked after children.
- Section 22C - how looked after children should be accommodated by the local authority, including the factors that local authorities should take into account when finding the most appropriate place for a child to live.

- Section 22G – the duty to ensure sufficient accommodation in the local area to meet the needs of looked after children.

Such regulations would be made using the affirmative procedure and following consultation with local authorities and any other appropriate persons.

This approach aims to strike a balance between allowing the regional co-operation arrangements to grow over time – for example, to keep pace with future changes in the children's social care placement market – while ensuring input from interested parties and continued parliamentary scrutiny.

Key questions and answers

Why does this measure only apply to local authorities and not to other partners such as health and youth justice?

The measure relates to local authorities' strategic accommodation functions for looked after children. It does not confer duties or functions on other bodies such as Integrated Care Boards. However, there is already a legal requirement under the Children Act 2004 for local authorities to make arrangements to promote cooperation with health and justice partners to improve children's well-being.

In *Keeping Children Safe, Helping Families Thrive*, we were clear about our expectations that Regional Care Co-operatives would collaborate with other services to improve children's outcomes. Regional Care Co-operatives will create opportunities for joint working between children's social care, health and youth justice services in areas such as data sharing, joint commissioning of children's care and governance.

The pathfinders in the South East and Greater Manchester will test how this can work in practice.

How will you ensure children are not placed further from home as a result of Regional Care Co-operatives?

Local authorities will continue to have the same statutory duties to find the most appropriate place for looked after children, including that they should live near home so far as reasonably practicable. Regional Care Co-operatives will assist local authorities in meeting these duties.

Placement shortages is a key driver of children being placed in homes far from where they live. Regional Care Co-operatives should improve this by increasing local and regional sufficiency and making more places available locally for children who need them.

Children's Wellbeing and Schools Bill: Use of accommodation for depriving liberty

A measure to provide a statutory framework to authorise a deprivation of liberty in accommodation other than a secure children's home, which has the primary purpose of care and treatment and where restrictions that amount to deprivation of liberty, if required to keep children safe, can also be imposed.

What does this measure do and why do we need it?

This measure will allow children with complex needs who need to be deprived of their liberty to facilitate care and treatment to be authorised under a statutory framework. The measure will only apply where a child absconds from other types of accommodation and is at risk of significant harm or where they are at risk of causing injury to themselves or others.

We anticipate this measure will facilitate the growth of a much-needed type of community-based provision, which will provide suitable, therapeutic care and accommodation, and is also capable of sustaining varying restrictions on children's liberty linked to their fluctuating needs. This will better meet some children's needs and keep this vulnerable cohort safe.

Section 25 of the Children Act 1989 only allows local authorities to deprive children of their liberty in a placement which has been designed for, or has the primary purpose of, restricting liberty; currently only a Secure Children's Home (SCH) meets this definition. The updated legislation will allow children to be deprived of their liberty in accommodation where the features of the accommodation are not solely or primarily for the purpose of depriving a child of his/her liberty, reflecting the fact that an SCH is not always the most appropriate placement option for these children. Instead, the care and/or treatment delivered in the accommodation, in combination with the physical features that enable deprivation of liberty, will be the purpose of the accommodation. The legislation, alongside the growth in this type of provision, will afford children with complex needs greater placement stability, allowing restrictions to fluctuate with their needs to keep them safe while remaining in the same accommodation.

The number of children deprived of their liberty via the High Court jurisdiction has increased from 100 in 2017/18, to over 1,300 in 2022/23. Most of these children have multiple needs, which the system is failing to meet. Many of these children are placed in expensive, unregistered placements.

We anticipate that this measure will reduce the use of Deprivation of Liberty Orders under the High Court's inherent jurisdiction and ensure children benefit from the protections afforded by a statutory scheme, with a framework of clear safeguards for

children subject to a deprivation of liberty and mandatory review points to ensure no child is deprived of their liberty longer than necessary. Additionally, this change will signal to local authorities and other key sector partners our endorsement of and commitment to these placement options, supporting them to grow and reduce dependency on poor quality, expensive unregistered placements.

What is the effect of the legislation?

This measure will allow for children to be deprived of their liberty in provision other than a SCH under a statutory framework (section 25 of the Children Act 1989). This will create a statutory basis for a court-authorised deprivation of liberty in provision which provides care and treatment, where it is needed to keep a child safe. This measure will underpin growth in these types of provision, eventually reducing reliance on the use of deprivation of liberty orders under the high court's inherent jurisdiction and unregistered and unsuitable homes, instead giving children access to placements with more appropriate safeguards and rights. This will ensure some of our most vulnerable children are kept safe and given the support to get on well in life improving their lived experience by ensuring there is appropriate support (including with community links, health access etc) to assist them to develop to their full potential. The legislation, alongside the growth in this type of provision, will afford children with complex needs greater placement stability, allowing restrictions to fluctuate with their needs to keep them safe will remaining in the same accommodation.

This legislation will give children deprived of their liberty under this framework entitlement to legal aid that is not merit or means tested, and regular statutory review points of the deprivation. These are not available for children deprived of liberty under the existing system via the inherent jurisdiction of the high court.

Due to a lack of sufficiency of suitable placements under the existing statutory mechanism (i.e. in SCHs), many children are currently being placed in unregistered provision under a deprivation of liberty order. This measure will have a positive impact for this cohort of children; they will benefit from placements better suited to their needs and that maintain community links, allowing for long term pathway planning which ensures they are in the right placement for their needs at the right time, and supported by a skilled, multi-disciplinary workforce.

How will this work in practice?

Where a local authority assesses a child to have a history of absconding and is likely to abscond from other forms of provision and be at risk of significant harm if they abscond, and/or is at risk of causing injury to themselves or others, they will be able to apply to the court for a section 25 order to deprive that child of their liberty within new types of settings. These settings, which will be registered as children's homes, will provide care and treatment, and be able to vary the different restrictions which amount to a deprivation of liberty, linked to the fluctuating needs of the child. This will enable children with complex needs to access the care that they need, allowing them to get on well in life.

The court order will be made following an application from the local authority that includes (via the child's care plan) the restrictions the LA deems appropriate for the child's needs that amount to a deprivation of liberty. The court ordered deprivation of liberty will be time-limited and require reviews at regular intervals (as to be defined in regulations) to ensure that it is still in the best interest of the child.

The court order will set out a list of permissive maximum restrictions based on the needs of the child, to allow the provider to reduce restrictions as appropriate. Of these restrictions, providers will be expected to apply the minimum level required to keep the child safe. The section 25 court order will set out the maximum period a child can be deprived of liberty in this provision before the local authority is required to re-apply to the court for an extension to the order; the maximum period of time will be set out in regulations.

Additional information on delegated powers

Currently the Secretary of State has powers to make regulations in section 25(2) and (7) of the Children Act 1989 for what is currently understood to be secure accommodation – these powers have been used to make the 'Children (Secure Accommodation) Regulations 1991'; the same powers are now being included to make regulations for the new community provision.

These provisions will give Secretary of State powers that include, for example, the ability to specify a maximum period beyond which a child may not be deprived of liberty in community provision without the authority of the court.

The inclusion of this power is consistent with the existing powers in respect of secure accommodation and will allow for a more tailored and specific approach to the use of this new type of accommodation which is being facilitated through this new measure. Any specific requirements for the new accommodation will be included in regulations that will be informed by learnings from the pilots specifically testing the sort of accommodation and the cohorts of children that local authorities are looking to place in this alternative accommodation using these new powers.

Key questions and answers

Won't this encourage the increased practice of depriving children of their liberty?

The legislative change, in conjunction with capital investment from His Majesty's Government to build more community provision, will ensure that (rather than encouraging more DOLOs) where a child needs to be deprived of their liberty, this can occur in the most suitable provision.

The legislation will help direct more deprivation of liberty cases via a statutory scheme, with the benefits of clearer criteria and mandatory review points that will better promote and protect children's rights and support placement stability. In addition, the capital investment to build more homes will lead to a reduction in the use of unregistered provision – and, in parallel, allow children to benefit from the safeguards provided by the independent scrutiny afforded to children placed in registered children's homes.

These children are some of the most vulnerable in our society and we must do all that we can to keep them safe and help them get on well in life. We want new forms of provision to address the rising need for suitable homes and intend to change the legislation so that it supports this new type of provision.

To facilitate the use of such new provision, we will amend primary legislation to provide a statutory framework for local authorities seeking to place children in a new type of accommodation, where they may be deprived of their liberty, but where the accommodation is not designed according to the current SCH model.

How does this legislative measure solve the real problems facing the sector: sufficiency of placements, workforce, models of care, etc?

As a result of a lack of sufficiency of places for children with complex needs who need to be deprived of their liberty to keep them safe, as well some secure children's homes providers believing some children's needs are better met in other provision, increasing numbers of children are placed in unregistered, expensive accommodation under a Deprivation of Liberty Order via the inherent jurisdiction of the high court. This measure,

combined with capital investment in provision which meet these children's needs, will reduce pressure on sufficiency and ensure that more children get the care and treatment they need to get on well in life.

The changes to legislation are only one part of a significant programme of work to help ensure the wider system is set up to provide these children with the right support. The department is working with NHS England, as well as with partners across national and local government, to support social care and health partners to commission joint care across sectors, which delivers integrated, consistent, and collaborative practice for these children and young people.

This includes via piloting the new, community-based approach to pathways and provision which provides care and treatment, bringing in professionals from children's social care, health, justice and education.

We have also recently commissioned independent research on how the system works, its current impacts and how we could do things differently to achieve better outcomes for children and young people. We will draw on these reports to support the development and testing of evidence-based models of safe, therapeutic care that delivers integrated, consistent, and collaborative practices for these children and young people.

Children's Wellbeing and Schools Bill: Provider oversight regime

A measure to strengthen Ofsted's regulatory powers to hold provider groups (organisations that own or control the majority of providers of children's homes and other provision in relation to the accommodation of children) to account when there are quality issues in multiple children's social care settings they own.

What does this measure do and why do we need it?

The vast majority of children's homes, independent fostering agencies and residential special schools are owned or controlled by provider groups, which are multi-layer organisations that have a parent undertaking owner and generally a number of subsidiaries, one or more of which will be registered with Ofsted as a provider. Those provider groups own or have control over multiple individual settings but they are not accountable under current legislation, because the current regime focuses almost exclusively on those that run and manage individual settings and agencies. We know however, that these provider groups influence how their settings and agencies are run.

We have seen what can happen when environments and cultures in provider groups lead to poor practice, and in rare cases, harm and abuse of children.

It is imperative Ofsted are able to act at scale and pace when there is poor quality in multiple settings and agencies owned by a single provider group (parent and subsidiary undertakings in legislation). When improvement is not forthcoming, Ofsted will be able to take enforcement action at provider group level.

What is the effect of the legislation?

This legislation will place a requirement on the provider group to prepare and implement an improvement plan, that is approved by Ofsted, to deal with issues across all the settings under the ultimate control of the parent undertaking, where Ofsted have grounds for concern.

This legislation will supplement the existing regime to allow Ofsted to look across settings and take action at parent undertaking level – rather than being limited to setting by setting and ensuring the provider group is accountable for the quality of the settings that they own.

Provider oversight will allow Ofsted to issue a fine and/or refuse further registrations from the provider group if it does not implement the improvement changes that are required.

How will this work in practice?

Where Ofsted reasonably suspects, based on intelligence they receive or via inspection, that required standards are not being met in two or more settings owned by the same provider group, they will be able to act at scale and pace by working with senior people in the group who can ensure change and improvement in multiple settings.

The group will need to develop and implement an improvement plan to ensure quality improves. The plan will need to address the issues identified by Ofsted and be approved by Ofsted if they are satisfied that it will be effective in addressing the issues. If this doesn't happen, Ofsted will be able to take enforcement action for non-compliance and issue the provider group with a fine. Non-compliance could also be ground for refusing any further registration applications by the provider group.

Ofsted's new enforcement powers to issue a monetary penalty and to limit the granting of registrations are intended to ensure the group implements improvement, and ultimately to help safeguard and protect vulnerable children, reduce risks and improve their experience.

There will be a right of appeal to the First Tier Tribunal against Ofsted decisions. The Tribunal may confirm the Ofsted decision, direct that it should not have effect or where the appeal is against a decision to reject an improvement plan, the Tribunal can direct Ofsted to re-take the decision.

Key questions and answers

Do these measures go far enough to hold groups to account?

We know most settings are good/outstanding - these measures are proportionate and allow Ofsted to act at scale and pace to hold groups to account when Ofsted have concerns in several settings they own.

This measure is one of a suite of measures that will reform children's residential care - improving quality of care and ensuring a reliable and resilient market so it meets vulnerable children's needs, keeps them safe and rooted to their families and local communities, where possible.

If Ofsted have concerns about the safeguarding of children or quality of care and accommodation, or think that regulations are not being complied with, then they can take action whether that be at individual setting level or by requiring the provider group to improve their services across multiple settings. Ultimately, if that does not happen, Ofsted can hold settings and group owners to account with their enforcement powers. Subject to passage of the bill and associated regulations being made with amended powers, Ofsted will be able to:

- Issue a monetary penalty to provider groups when they have been required to, but not taken action to ensure improvements in the settings and agencies they own.
- Issue a monetary penalty to (as an alternative to prosecution under existing powers) registered providers of individual settings and agencies for any breaches of requirements which may also be dealt with as criminal offences under the Care Standards Act 2000.
- Refuse further applications of registration in relation to a person under the ownership or control of a provider group where that group has been served with an improvement plan notice which has not been fully implemented.

Why are you not introducing inspection of provider groups?

Ofsted inspect children's homes (and other children's social care settings and agencies) every year using the Social Care Common Inspection Framework (SCCIF).

Inspection is not warranted at provider group level given the existing robust regime for inspection of settings. The provider oversight measures (which reflect the changing make-up of the market) will supplement this to ensure that Ofsted can take the quickest and most effective action for the benefit of children.

In many situations the provider oversight measures will not be necessary as most provision is rated good, or outstanding and full inspection of provider groups would in many cases simply duplicate what Ofsted already do.

Ofsted is already able to cancel settings registrations if deemed necessary. The point of provider oversight is for Ofsted to act at scale and pace, and seek to ensure that multiple cancellations of registrations, which would leave many children without a home, is not necessary.

Children's Wellbeing and Schools Bill: Ofsted powers to issue monetary penalties

A measure to expand Ofsted powers to issue monetary penalties for breaches of requirements imposed by or under the Care Standards Act 2000 – including non-compliance of the registration requirements (where the only current enforcement power is prosecution). The power will also apply to non-compliance with the new provider oversight legislation.

What does this measure do and why do we need it?

This measure will give powers to Ofsted to impose monetary penalties to persons who breach requirements that could be dealt with as an offence under the Care Standards Act (or under Regulations made under that Act), including not registering their children's social care establishment (e.g. a children's homes) or agency (e.g. an independent fostering agency).

A person operating or managing a children's social care establishment or agency legally has to register with Ofsted. This provides the assurance that those managing and running these services are suitable and are ready to do so.

At present, Ofsted can prosecute those who do not register but operate or manage those services. However, this is a resource intensive process and can take a very long time. This legislation will give Ofsted further enforcement powers to tackle unregistered settings, as an alternative to prosecution.

A recent investigation by the Observer newspaper and Together Trust found an increase of 277% of numbers of children placed in unlawful unregistered children's homes between 2020 and 2023[1].

What is the effect of the legislation?

Strengthening Ofsted's enforcement powers will act as a deterrent to those persistent offenders who seek to breach requirements under the Care Standards Act, including operating illegal children's homes and allow Ofsted to act more quickly and proportionately. There is no limit to the fine Ofsted will be able to issue – they will take into account, amongst any other relevant matters, the provider's previous record, severity of the breach and impact on children.

This will mean that more children are placed into registered settings, where Ofsted, the local authority, and the public can be assured that the child is in a home that meets all the requirements set out in legislation, including their safety, health and well-being. Where this does not happen, Ofsted can take appropriate action – which they are not

able to take in unregistered settings (i.e. in a registered setting Ofsted could issue a compliance notice or amend the terms of registration).

It will also enable Ofsted to enforce compliance with the new provider oversight regime. Where Ofsted reasonably suspect requirements are not being met across multiple settings operated by the same provider group (referred to as a parent undertaking in the Bill), but the group refuses or fails to make improvements, Ofsted can issue a monetary penalty.

How will this work in practice?

Where a registered provider has not complied with relevant legislation (offences in the Care Standards Act 2000) or a parent undertaking has not complied with provider oversight requirements, Ofsted will be able to issue a monetary penalty. This will be an alternative to prosecution for offences in the Care Standards Act 2000 and sit alongside their other enforcement powers like suspending or cancelling a provider's registration.

Where Ofsted are satisfied beyond reasonable doubt that an offence has been committed by a registered provider (or on the balance of probabilities that a parent undertaking has not complied with provider oversight requirements) and Ofsted decide a monetary penalty the right course of action, they will issue the provider or parent undertaking with a notice of intent detailing the offence and amount. The registered provider/parent undertaking will have 28 days to make written representations. If those are not forthcoming then Ofsted will issue the penalty, which will need to be paid within 28 days. There will be a right to appeal to the Tribunal. The Tribunal may either confirm the penalty, direct that it ceases to have affect or vary the amount of the penalty. The penalty would need to be paid within 28 days of the final decision of the Tribunal or of the date that an appeal is withdrawn. Any non-payment of fine will incur interest after the 28-day period, and the unpaid amount of the penalty and any unpaid interest may be recovered by Ofsted as a debt.

Ofsted will act proportionately and take into account a number of factors when deciding what action to take – this will include the providers previous record, severity of the breach and impact on children when deciding whether to issue a fine or use other enforcement action.

Fines monies will go into the Consolidated Fund and help pay for vital public services.

Key questions and answers

Why are you not doing anything about local authorities who place children in unregistered children's homes?

Local authorities have a duty to place looked after children in their care in registered children's homes. We understand that sometimes authorities need to place a child quickly, and when there are no suitable registered places immediately available, so children are temporarily placed in unregistered accommodation. But government is clear that all providers of children's social care provision should register with Ofsted.

We are helping local authorities meet their sufficiency duty by investing in more children's homes places, alongside alternatives to residential care, including fostering hubs and kinship care.

Why are monetary penalties needed, when Ofsted can prosecute a provider?

Ofsted do have the power to investigate and prosecute providers who run unregistered settings or provisions, or for other breaches of the Carre Standards Act 2000.

Investigations can be a long process, and prosecutions are also long processes, resource intensive and therefore costly. Monetary penalties, if Ofsted decide that is the best course of action, could be issued more quickly, ensuring that Ofsted can act at pace and proportionately – both of which will ensure a better deterrent for persistent offenders.

Children’s Wellbeing and Schools Bill: Financial oversight scheme

A measure to increase financial and corporate transparency of 'difficult to replace' children’s social care providers and parent undertakings within their wider corporate group, allow for an accurate, real-time assessment of financial risk, and provide advance warning to local authorities if there is a real possibility that establishments or agencies will cease to be carried on due to risks to their financial sustainability.

What does this measure do and why do we need it?

To promote the stability of children’s care placements, we will introduce a new Financial Oversight Scheme led by the Department for Education.

There are different types of organisations that offer placements for looked after children and young people. Many fostering placements, children’s homes or supported accommodation placements are run by private companies, which can be very large. At 31 March 2024, more than 4 in 5 children’s homes were owned by private companies, or 2,748 homes, 83% of the total.

Currently, local authorities have no way of knowing if a provider of placements for children, or their corporate owners is at risk of failing financially. If one of these large or ‘difficult to replace’ undertakings was in financial trouble, they could suddenly close their doors and stop providing a home for the children living in their provision. Those children might have to move somewhere else at very short notice. If new placements had to be found for large numbers of children at once this could be very difficult for local authorities and mean some children ended up in placements that are unsuitable for their needs.

The current system leaves open the risk of financial difficulty going undetected. We do not think it is acceptable to allow placements to cease abruptly as a result of providers or their owners experiencing financial failure, where the impact and disruption will be most felt by looked after children. That is why we are developing a Financial Oversight Scheme in children’s social care. This will, for the first time, increase financial and corporate transparency by monitoring the financial health of the most ‘difficult to replace’ providers. This could be because of their size, geographical concentration and/or market share, applicable to private, voluntary and charity providers of children’s homes (including dual registered special schools), independent fostering agencies and supported accommodation operating in England. We could look to extend this measure to Residential Family Centres by regulations in the future.

If a provider or a person within the same corporate group is experiencing financial difficulty, we want to be able to let local authorities know quickly so they have as much time as possible to plan and prepare. The Financial Oversight Scheme will provide for an advance warning to local authorities where there is a real possibility an establishment or agency will cease to be carried on due to risk to their financial sustainability. This will give local authorities more time to plan and find new homes that are the best fit for impacted children and young people.

What is the effect of the legislation?

The legislation will allow Government to bring forward a new statutory Financial Oversight Scheme for the children's social care market.

This will enable the department to:

- Increase financial and corporate transparency among the most 'difficult to replace' providers and their owners to enable the department to actively monitor risk of financial failure and cessation of service that could impact stability of placements.
- Increase contingency planning requirements by requiring providers to have a 'Recovery and Resolution Plan' (RRP) on entry to the Scheme. This aims to ensure that if providers do exit the market, they do so in an orderly manner that considers the needs and outcomes of the children they accommodate.
- Introduce an advance warning system to allow local authorities and the sector to better prepare for and manage market exit as a result of risks to provider financial sustainability.
- Impose monetary penalties to enforce compliance of providers to adhere to the requirements of the Scheme.

How will this work in practice?

The Financial Oversight Scheme will include a new requirement on children's social care providers who meet a set of conditions relating to their market significance to provide regular financial and business information to the Department for Education. This will inform a real-time assessment of financial risk.

If we judge that it is a real possibility that the provider will cease to be carried on due to risks to financial sustainability, the department will provide an advance warning notice to adversely affected local authorities and Ofsted, so they can take swift action and minimise disruption to children.

The Scheme will also require providers to develop and submit a contingency plan (otherwise known as a 'Recovery and Resolution Plan') to ensure registered providers, parent undertakings of registered providers and any subsidiary undertakings ("provider

groups") can prepare for the worst-case scenario of financial failure, playing an active role in managing their exit from the market.

The legislation will allow the department to make an ongoing assessment of market health and promote financial stability in the sector.

Additional information on delegated powers

The Secretary of State will have the power to:

- Set 'financial oversight' conditions by regulations, which, if met, would require a provider to enter the Financial Oversight Scheme and comply with its requirements.
- This provides that children's social care providers, and their parent owners will be entered on the Financial Oversight Scheme if they meet a set of conditions which will be designed to mean that the provider is 'difficult to replace', as prescribed by the Secretary of State. These conditions may relate to, for example, a provider's size (e.g., the number of establishments and agencies they run), the number of looked after children they accommodate or provide services for, and their market share either nationally or by reference to a particular geographic area. The Secretary of State must be able to set the conditions for the application of the Scheme in regulations to allow the flexibility to adjust these conditions in line with any changes in the market.
- Set the maximum amount of a civil monetary penalty issued for non-compliance with the Scheme.
- The Secretary of State will have the power to impose a civil monetary penalty on a person who is in breach of the Financial Oversight Scheme. A monetary penalty may be of any amount determined by the Secretary of State. A maximum amount may be set out in regulations, if the Secretary of State so decides. The Secretary of State will use discretion when determining an appropriate amount by considering the below factors set out in primary legislation:
    (a) the nature and seriousness of the failure to comply, or the act or omission, for which the penalty is to be imposed;
    (b) whether there are any mitigating or aggravating factors;
    (c) whether the person has previously failed to comply with, or committed offences under the financial oversight scheme or regulations made under it;
    (d) the likely impact of the monetary penalty on the person.
- Extend the scope of regulations so that they may provide that a person is not fit to carry on an establishment or agency if a parent undertaking has failed to comply with the financial oversight scheme.
- The existing power in s.22 of the Care Standards Act 2000 to make regulations in relation to the carrying on or management of establishments and agencies is

amended through the Bill. This is to allow for regulations to provide that the CIECSS (Ofsted) may determine that a person applying for registration is not a fit and proper person where their parent undertaking has failed to comply with the financial oversight scheme requirements.

- This fits in with the broader powers in the CSA 2000 for Ofsted to regulate those carrying on and management of establishments and agencies by way of regulations rather than having regulatory requirements set out in primary legislation. Before making any regulations which make compliance with financial oversight conditions by a parent undertaking a matter which goes to the fitness of a provider, the Secretary of State must consult with persons he or she considers appropriate, where they are considered to effect a substantial change.

Key questions and answers

What impact do you think this change will have on the placements market?

The Financial Oversight Scheme will guard against sudden or disorderly market exit of 'difficult to replace' providers or their corporate owners. The Scheme's advance warning system will alert local authorities if there is a real possibility that a establishments or agencies will cease to be carried on due to risk to their financial sustainability. This will give local authorities more time to minimise negative impacts on children living in that provision and find new homes that meet their needs.

Local authorities have a statutory duty to ensure there is sufficient provision in their area for children in care and to make placements that best meet the needs of the child. Without sufficient time to manage the impact of large-scale market exit, finding new and sustainable like-for-like placements for lots of children simultaneously would be challenging.

Without the Scheme in place, local authorities would be more reliant on readily available or emergency placements that may be 'spot purchased' and expensive, and that may not be a good fit for a child's needs. This in turn could lead to additional placement breakdown and another move, which would be more damaging for the child.

Advance warning will support local authorities to meet their statutory duties and find alternative and sustainable like-for-like placements at a reasonable cost.

Given sufficiency issues, what do we expect local authorities to do with the advance warning they receive?

Currently, local authorities have no way of knowing if a provider of children's social care placements is at risk of failing financially. If a large or 'difficult to replace' provider did fail,

it could lead to them closing their provision suddenly, causing huge disruption to children who could lose their home. This could leave local authorities having to find appropriate placements for a significant number of children at very short notice, making it challenging to meet their statutory duties.

The Financial Oversight Scheme will provide the ability for the department to give advance warning to local authorities and Ofsted if there is a real possibility that establishments or agencies will cease to be carried on due to risk to their financial sustainability. This will give local authorities more time to find new, permanent placements for affected children at a reasonable cost, ultimately reducing the risk of negative impacts on children and promoting sustainable local government spending.

Children’s Wellbeing and Schools Bill: Future profit cap

A measure to enable the Secretary of State to cap the profits, using secondary legislation in the future, of non-local authority Ofsted-registered providers of certain children's social care placements. This will include a power for the Secretary of State to issue civil sanctions on registered providers in the form of a fine where the profit cap is breached.

What does this measure do and why do we need it?

We are taking a power, through the Children’s Wellbeing and Schools Bill, to cap the profits of non-local authority Ofsted-registered providers of children’s homes and independent fostering agencies. We expect to include supported accommodation within the scope of the potential cap in the future. This power, exercisable through regulations, is one of a number of measures designed to rebalance the children’s social care placements market and drive down excessive profits made by some private providers. It is intended only to be used as a last resort should other measures not have the expected impact in reducing profiteering in the market.

We are taking action because local authorities are facing rising costs to place children in care. The Competition and Markets Authority’s 2022 report described the Children’s Social Care market in England as ‘dysfunctional’ and found that the 15 largest providers of placements for looked after children were making (on average) profits of 19.4% on fostering, 22.6% on children’s homes and 35.5% on supported accommodation. This level of profiteering is unacceptable - taxpayer funds should be focused on delivering outstanding outcomes for children and young people. Our strategy contains a range of measures which we believe will curb profiteering and ensure we have the right types of homes in the right places to meet the needs of the children.

Alongside this power, we are introducing a range of measures to bring profiteering under control, by increasing transparency, improving our understanding of how the market operates, boosting the supply and diversity of provision, improving local authority commissioning, forecasting and the way that local authorities influence the development of the market to fulfil their needs (market shaping). While we expect that these measures will help to drive down profiteering, it is important that government has the means to take regulatory action if they do not have the expected impact.

We will consult publicly before a profit cap is implemented, including specifically with local authorities and representatives of providers.

What is the effect of the legislation?

The legislation will allow the Secretary of State to cap the profits of non-local authority Ofsted-registered providers of children's homes, independent fostering agencies and in the future, supported accommodation. It will also allow the Secretary of State to issue financial penalties for breaches of the profit cap.

The legislation sets the framework for how a future profit cap will work but necessarily leaves some of the important details to be defined at a later date, through secondary legislation. This includes how profit will be determined for the purposes of the cap and the level at which the cap will be set. The legislation will allow the Secretary of State to require, by regulations, non-local authority Ofsted-registered providers to submit an annual return for the purposes of administering the profit cap. It will also allow the Secretary of State to request additional, supplementary information about the contents of the annual return if needed for the purposes of administering the profit cap.

There will be no immediate direct impact from introducing these powers. This is because the profit cap will not apply immediately. We also have a broad package of market reforms which we hope will tackle unacceptable profiteering and rebalance the market. Regulatory action to cap profits would only be imposed if these other measures fail to have the desired impact.

As required by the legislation, consultation with local authorities and providers' representatives would also take place before this power was used.

How will this work in practice?

If the profit cap is implemented, non-local authority registered providers of children's homes, independent fostering agencies and, in the future, supported accommodation, will be required to complete an annual financial return to the Secretary of State enabling their levels of profit to be assessed.

The information to be included in these returns will be set out in regulations at a future date, following consultation, but it will be limited to information necessary for the Secretary of State to be able to administer the profit cap effectively. The Secretary of State will also be able to require additional information to be provided where she judges it necessary and makes regulations to that effect. The Secretary of State will then make an assessment of whether the registered provider has breached the profit cap in the relevant financial year.

We are aware that the administration of the profit cap will be a retrospective look back at whether or not the profit cap has been breached in a past period. It will therefore not necessarily prevent breaches in itself, but it will allow action to be taken retrospectively if such breaches have occurred and act as a disincentive for further breaches.

Should enforcement action need to be taken against registered providers in relation to a breach of the profit cap, the Secretary of State will have new civil enforcement powers that can be used to issue a fine (a maximum amount may be set out in regulations). In determining the level of the fine, the Secretary of State will have regard to a range of factors including the amount of the breach, whether it is a repeat breach or a first-time breach and whether there are any mitigating or aggravating factors.

The Secretary of State will be able to publish details of any civil sanctions issued.

Additional information on delegated powers

There are a number of reasons why some of the important details like the level of the profit cap and its method of calculation are not set out in the Bill itself. The first of these is that the profit cap is a measure that we only intend to use if the range of other market interventions that we are introducing do not have the intended impact in terms of reining in profiteering. Until these other measures have had time to be implemented and have effect, we will not know whether regulatory action in the form of a profit cap is necessary. Of course, the critical information on the level of the cap and its method of calculation will be vital to get right if the profit cap is introduced in the future. These details will also influence the information that the Secretary of State will require providers to submit as part of their annual profit cap return. This is why the legislation requires the Secretary of State to consult before making secondary legislation which would give effect to the cap. This includes specifically consulting with local authorities and representatives of providers.

Before the Secretary of State can use this power to cap profits, the legislation requires her to be satisfied that it is necessary to do so on the grounds that children's social care placements are provided on a basis the represents value for money to the public. She must also consider the interests of both local authorities and registered providers and, crucially, the welfare of looked after children.

Key questions and answers

When are you going to bring the profit cap in? How will you decide when to bring in?

Our strategy will rebalance the market through a broad package of legislative and non-legislative measures, to ensure children receive the care they need at a fair and reasonable price for taxpayers.

Placements for children in care – foster homes, children's homes and supported accommodation – are, first and foremost, homes for young people to live in. Through our

package of measures, we will rein in excessive and exploitative profit making in a sector which supports our most vulnerable children.

We are acutely aware of the importance of not destabilising the market by doing too much too soon at the risk of causing significant disruption to the care our most vulnerable children and young people receive and so we are taking a measured approach. We will continue to keep the market under close review. If our wider reforms do not have the anticipated impact, we will not hesitate to implement a profit cap.

We will make sure that a full consultation is carried out prior to implementation to ensure that all views are considered and that providers are given sufficient notice before the profit cap is implemented.

At what level will you set the profit cap?

The level of any future profit cap would depend on a number of factors, including market conditions at the point that we make a decision that a cap is needed. We are clear that we are not introducing a profit cap immediately and we are not therefore setting out the level at which it might be set at this stage.

We are clear that we are not seeking to eliminate profit-making entirely. There will continue to be a place for profit making providers in the market. As the Bill sets out, one of the factors that the Secretary of State must have regard to before making regulations that would cap profits is the interests of providers within scope of the legislation, which includes the opportunity to make a profit.

In advance of making regulations, the Secretary of State will consult fully. The Bill specifically requires such consultation to include both local authorities and providers' representatives. Such consultation activity would include looking at what the appropriate level for any future cap on profits might be.

Children's Wellbeing and Schools Bill: Children's Social Care agency workers

A regulation making power to govern the use of agency workers in English local authority's children's social care.

What does this measure do and why do we need it?

This legislation will allow the Secretary of State to introduce regulations on the use of agency workers in English local authority children's social care services.

Quality social work transforms lives, but relationships and trust take time to build. Whilst agency workers are an important part of local authority children's social care, they cannot be a long-term replacement for a permanent stable workforce.

Strengthening the regulatory framework for the use of agency workers within local authority children's social care services will further improve the stability and quality of the agency workforce and support workers to build quality relationships with children and families.

Reducing local authority spend on agency workers will also allow local authorities to invest more in services supporting children and families and enhance the offer to permanent employees.

The aim of the regulatory framework is not to prohibit the use of agency workers in children's social care, rather to alleviate significant affordability and stability challenges.

This will help to create a more sustainable workforce in children's social care, by enabling local authorities to invest more resource in developing and maintaining the permanent workforce, to improve outcomes of children and families.

What is the effect of the legislation?

This legislation will allow the Secretary of State to introduce regulations on the use of agency workers in English local authority children's social care services.

The regulations will not ban the use of agency workers, instead they will set conditions on their use in children's social care services to alleviate significant workforce affordability and stability challenges faced by local authorities.

It is important for everyone working in children's social care to build lasting relationships with children and families. This is why we are looking at regulating a broader cohort of agency workers than child and family social workers including, but not limited to, social workers.

How will this work in practice?

We will engage extensively with the sector ahead of introducing secondary legislation on the detail of the regulations. Following public consultation, we will introduce regulations by affirmative procedure as Parliamentary time allows.

The regulations are likely to include similar provision to the current statutory guidance which currently applies to social workers only, but to a wider cohort of workers – this could include local authority oversight and accountability for direct work with children and families, pay and labour costs, and quality assurance provisions such as pre-employment checks and minimum experience needed.

When introduced, the regulations and related guidance will replace the guidance 'Agency Rules for Local Authority Children's Social Care'[1].

Additional information on delegated powers

This legislation will allow the Sectary of State to introduce regulations on the use of agency workers in English local authority children's social care services.

The power is limited to making regulations in respect of 'agency workers' only – individuals who are not in direct employment of a local authority and have been supplied by a third party to carry out children's social care services.

Using secondary legislation ensures the financial requirements relating to pay and labour costs remain relevant and robust.

There is a statutory duty to consult, and the power must be taken by the affirmative procedure. This will ensure that Parliament can debate and approve the introduction of regulations and any subsequent amendments to which local authorities will be subject.

Key questions and answers

Isn't there a risk agency workers will just leave rather than return to direct local authority employment?

Many local authorities have already demonstrated success in transitioning agency workers into their permanent workforce. For those who wish to remain in agency work,

[1] https://assets.publishing.service.gov.uk/media/66e1738bcaa02d92e72c8d45/Agency_rules_statutory_guidance_for_local_authorities.pdf

the regulations will not prevent local authorities using agency workers in their children's social care departments where it is the most appropriate resourcing option and in line with the regulatory framework.

We also understand that people working in children's social care need the right environment to thrive personally and professionally, and that regulation alone is not the answer. To that aim, the government is supporting local authorities to attract and retain children's social workers and provide positive working environments for all those who work in children's social care.

Why just regulate agency use in children's social care, what are you doing about agency costs in other local authority workforces?

We are working with colleagues in the Department for Health and Social Care to align efforts across both children's and adult social care where appropriate. We know that similar issues are facing the Special Educational Needs and Disability (SEND) workforce. We will consider how to build a sustainable SEND workforce as we take forward our work to ensure we have specialists in the right areas to support children and young people with SEND.

Schools, academies and local authorities are responsible for the recruitment of their supply teachers, which includes deciding whether to use supply agencies. The Department for Education, in conjunction with the Crown Commercial Service, has established the agency supply deal, which supports schools to obtain value for money when hiring agency supply teachers and other temporary school staff.

Different labour markets bring different challenges across local authority workforces. We do not think it is appropriate within the scope of this Bill to take a 'one size fits all' approach to regulation that would draw in other roles and professions working across local government.

The Local Government Workforce Development Group will provide a central-local partnership on local government capacity and capability challenges. It will try to identify the priority cross-cutting issues impacting the local government workforce as a whole and seek creative solutions to address them.

Children's Wellbeing and Schools Bill: Ill-treatment or wilful neglect

There is currently a gap in the legal framework meaning that it is not possible to prosecute individuals involved in low level abuse (ill-treatment or wilful neglect) of 16–17-year-olds in regulated children's social care establishments such as children's homes, and in the youth detention accommodation.

This measure will close the gap to make such low-level abuse of 16- and 17-year-olds in children's social care settings and youth detention accommodation a prosecutable offence. The current legislative framework covers children under 16 and adults in social care who are over 18.

What does this measure do and why do we need it?

This measure amends the Criminal Justice and Courts Act 2015 to ensure that 16- and 17-year-olds in "social care" are protected from ill treatment or wilful neglect offences, which currently only extend to health care and adult social care.

Under current legislation it is not possible to prosecute individuals working in a children's social care setting or youth detention accommodation that perpetrate ill-treatment or wilful neglect of 16- and 17-year-olds.

Section 1 of the Children and Young Person Act 1933 defines the offence of cruelty to a child, including in social care settings, as those who are under the age of 16. Section 20 of the Criminal Justice and Courts Act 2015, makes an offence the ill treatment or wilful neglect of over 18's by an individual providing social care or health care.

We want to ensure all adults and children within health or social care setting have the same legal protections and that those perpetrating such abuse can be prosecuted.

What is the effect of the legislation?

This change in legislation will mean that care workers and care providers can be prosecuted for ill-treatment or wilful neglect of 16- and 17-year-olds in regulated children's social care establishments in England such as children's homes, and in the youth detention accommodation.

How will this work in practice?

The Criminal Justice and Courts Act 2015 already protects against ill-treatment and wilful neglect for adults or children in relation to health care (other than excluded health care)

and adults in social care. This change will amend sections 20, 21 and 25 of the 2015 Act, so that an ill-treatment or wilful neglect offence involving “care for a child at a regulated establishment,” can be applied to 16- and 17-year-olds.

The “regulated establishments” to which this measure applies are children’s homes, residential family centres, accommodation where holiday schemes for disabled children are provided, supported accommodation settings, and youth detention accommodation in England.

Key questions and answers

Why has this not been addressed if there has been no protection for 16–17-year-olds from low level abuse in children’s homes?

Police investigations into the ill-treatment of children by the Kisimul Group in 2018 highlighted that the individuals involved were unable to be prosecuted as low-level abuse of 16- and 17-year-olds were not in scope of offences in regulated children’s social care establishments such as children’s homes and in the youth detention accommodation.

Other protections have been in place to ensure abuse does not occur within registered children’s homes. Under regulations, the registered person (registered provider or registered manager) is responsible for preparing and implementing policies and procedures including safeguarding children from abuse or neglect and dealing with allegations involving staff in the home. Settings are also required to report serious incidents to Ofsted.

It is important that we address this legal gap in protection for young people to ensure anyone involved in the low-level abuse of 16- and 17-year-olds can rightly be prosecuted.

What is the maximum associated fine and/or custodial penalty for this offence?

Offences under section 20, 21 and 25 of the Criminal Justice and Courts Act 2015 are already ‘either- way’ criminal offences which means that they can be tried in the magistrates’ court or the Crown Court. This measure will extend the criminal offences so that it also applies to those involved in the ill-treatment or wilful neglect of 16- and 17-year-olds.

The maximum sentence is 5 years imprisonment. There is no time limit for bringing prosecutions for these offences. They are therefore vitally important pieces of legislation which enable prosecutions to be brought in cases of ill-treatment or wilful neglect by care workers.

Children's Wellbeing and Schools Bill: Employment of Children

To give more flexibility to children and employers in relation to when children can work, which will give children more opportunities to take up suitable employment whilst ensuring their health, development and education are not adversely affected. The measure will also replace a power for local authorities to make byelaws in relation to child employment with a power for the Secretary of State to make regulation in relation to the employment of children in England.

What does this measure do and why do we need it?

Part II of the Children and Young Persons Act 1933 (CYPA 1933) makes provision for the employment of children in England and Wales. Section 18 of the CYPA 1933 sets out age limits and restrictions on the hours that children can work and the type of work they can do.

These restrictions apply to children who are under compulsory school age, defined in section 8 of the Education Act 1996. A child remains of compulsory school age until the last Friday in June in the school year that they turn 16 years old. They also apply where a child assists in a trade or occupation carried out for profit even where the child is not paid for their work.

The measure will remove the restriction for children to only be allowed to work for two hours on a Sunday and allow children to work until 8pm instead of 7pm. We need this change to allow children to have greater opportunities to take up suitable employment. This will also give businesses greater flexibility in scheduling children to support their demand. The limit on hours worked over a week will remain.

Children will only be able to work with a work permit, to allow for a greater focus on safeguarding, and only be permitted to work for an hour before school, to ensure their education is prioritised. Most, if not all, local authority byelaws already require a work permit and permit children to work for up to an hour before school.

It will give children the ability to benefit from additional employment opportunities that could be suitable for them by removing outdated restrictions.

The main restrictions contained in the CYPA 1933 will remain. In particular, children will still only be permitted to do light work which is defined as work that is not likely to be harmful to their safety, health or development or to their attendance at school or participation in work experience.

The measure also replaces the power in the CYPA 1933 for local authorities in England to make byelaws with a power for the Secretary of State to make regulations in relation to children employed to work in England.

The regulation making power will ensure that we are able to keep a consistent approach across England in relation to the employment of children. We will also be able to amend them to bring them into line with future societal attitudes and technological advancements. In addition, where new and unsuitable employments emerge, we will be able to restrict children from doing them or allow employment of currently restricted jobs it if new practices mean they are now suitable for children.

What is the effect of the legislation?

All children who are employed to work in England will be required to have a permit, issued by a local authority, to take up suitable employment.

Sunday employment restrictions will be amended in England so that a Sunday is treated the same as a Saturday.

Children will be able to work for up to an hour before school and until 8pm, giving greater opportunity to meaningful suitable employment, whilst still allowing children to be children and have access to education.

Current caps on weekly hour limits, as well as a restriction to not be allowed to work during the school day will remain.

The Secretary of State will be able to make regulations in relation to child employment in England which will replace the power local authorities currently have to make byelaws, ensuing a consistent approach.

This will ensure that children can continue to take up suitable employment, whilst ensuring that their health, development and education are not adversely affected.

How will this work in practice?

Children will be required to have a work permit issued by a local authority if they are employed to work in England. Currently most local authorities have byelaws in place which require children to have work permits.

Children will continue to have strict limits on hours worked over a week and still only be permitted to undertake light work as defined in CYPA 1933.

A child that is employed to work in England will be permitted to work until 8pm on a school day, for an hour before the start of school and for more than two hours on a Sunday.

Additional information on delegated powers

Regulations made under the new power may:

- Prohibit the employment of a child to do work of a specified description. This is important as it may become necessary to add new types of work to the list of prohibited employment if that work is unsuitable for children. Conversely if the way in which work is carried out changes, such that new processes mean certain types of work become suitable for children, previous restrictions may need to be removed.
- Make provision in relation to child employment permits, including in relation to the application process, granting, suspending or revoking permits, appeals against a decision to reject an application or revoke a permit and record keeping.
- Authorise the employment of 13-year-old children in specified descriptions of light work.
- Specify the number of hours in each day, or in each week, and the times of a day at which a child may be employed (subject to the restrictions in the CYPA 1933).
- Specify the intervals to be allowed to children for meals and breaks when in employment (subject to the restrictions in the CYPA 1933).
- Make provision about entitlement to leave.
- Specify other conditions to be met in relation to the employment of children.

The power for the Secretary of State to make regulations in relation to child employment will replace a power which is currently conferred on local authorities in England to make byelaws. It will therefore ensure greater consistency as it will ensure that the same regulations apply across England, rather than having an approach which can lead to variation across different local authorities.

The power is necessary to ensure that the regulation of child employment keeps pace with social change and ensure that children can take up suitable employment whilst ensuring that their health, development and education are not adversely affected. The overall safeguards in the CYPA 1993 will also remain.

Key questions and answers

Why are you making these changes?

By making these changes we will be giving flexibility to children and employers in relation to when children can work, which will give more opportunities to take up suitable employment whilst ensuring their health, development and education are not adversely affected.

Replacing the power for local authorities to make byelaws with a power for the Secretary of State to make regulations will ensure consistency across England.

The main restrictions in relation to child employment found in the CYPA 1933 will remain, including the restriction on the number of hours allowed to work in a week and children only being able to carry out light work.

What will this power mean the Secretary of State will do?

The Secretary of State will be able to make regulations in relation to child employment in England. This will allow the Secretary of State to standardise the approach and the restrictions to child employment across England.

The Secretary of State will also be able to ensure that if new job roles become available in the future, that are not considered appropriate for children, that they will be able to be quickly added to the prohibited employment list to protect children and young people.

Part 2: School measures - Children's Wellbeing and Schools Bill: Free breakfast club provision in primary schools in England

These measures require state-funded schools to ensure that all children on roll in Reception class to Year 6 are provided with access to a free breakfast club before the start of each school day which lasts for at least thirty minutes and includes food. The aim of these measures is to give all children, regardless of their circumstance, a great start to the school day, helping to break down barriers to opportunity. This builds on evidence that breakfast clubs can boost children's academic attainment and attendance, driving up life chances. The free club and food will also support parents with the cost of living and support parents to work the jobs and hours they choose.

What does this measure do and why do we need it?

This measure delivers a manifesto commitment to introduce free breakfast clubs in every state-funded primary school, accessible to all children.

Currently the landscape is fragmented, with some children being able to access paid-for childcare before school but others not able to benefit. The case for primary legislation for new free universally available breakfast clubs is to ensure:

- **consistency and availability across England** which complies with minimum requirements (that schools will have available a club of at least thirty minutes providing nutritious food);
- **accessibility:** providing funding and support so that all state-funded schools in England in scope have breakfast club provision with capacity to meet demand from parents, and ensure the most in need pupils benefit;
- **longevity of provision and future certainty for schools**: ensuring investment in and commitment to delivering this policy effectively and with impact.

While the government's National Wraparound Childcare Programme aims to increase the availability of before-school childcare in primary schools in England, it does not ensure universal, free access. The wraparound programme's focus is on expanding childcare availability for working parents, rather than reducing costs for them. As a result, parents pay for the childcare made available by the programme.

The existing National Schools Breakfast Programme aims to address the accessibility of food for children within the up to 2,700 schools on the programme. However, this programme only funds 75% of the cost of the food and delivery and does not fund schools to staff a club. It only covers a small proportion of state-funded schools, meaning the vast majority of children in England, including many in receipt of benefits related FSM, do not have access to breakfast clubs before the start of their school day.

Legislation and Government support will help remove the barriers for children, parents, and schools that currently exist by requiring a minimum expectation of breakfast club provision which is universally accessible and meets the needs of families, regardless of their financial situation or employment status.

What is the effect of the legislation?

This measure places a legal duty on all state-funded schools with registered pupils from Reception class to Year 6 to secure free from charge breakfast club provision which lasts at least thirty minutes and includes a free breakfast. Provision must be made freely available to all registered pupils at the school within the scope of this measure. The duty will be placed on:

- Maintained schools
- Academy schools
- Non-maintained special schools
- Alternative provision Academies
- Pupil referral units

This measure places a duty on the Secretary of State to issue guidance to schools in scope of the breakfast club duty to aid them in the implementation and delivery of free breakfast club provision. Schools must have regard to this guidance when delivering the programme.

This measure also ensures that regulations known as the School Food Standards apply to all food provided at all academy and maintained schools in England equally. This closes a regulatory gap, whereby a small number of academies are required by their funding agreements to comply with the School Food Standards for their lunchtime provision only, whilst most academies, and all maintained schools, must comply through the school day, including at breakfast clubs. This will not only secure consistency in the standard of food provided in breakfast clubs established as a result of this duty but will ensure consistency in food served across the entire day at all state-funded schools regardless of the age of the pupils they provide education to.

How will this work in practice?

State-funded schools with pupils from Reception to Year 6 will be able to set up a breakfast club themselves, or work with Private, Voluntary, and Independent (PVI) childcare providers to meet their duty to secure breakfast club provision. In this measure, “secure” means to arrange the availability of breakfast club provision.

Funding will be provided directly to schools in scope of this measure (listed above) in order for them to meet this duty. The Secretary of State will issue guidance which will

inform schools how they could use their funding to secure free from charge breakfast club provision for pupils from Reception to Year 6 on roll at the school.

In early 2025, non-statutory guidance for schools will be published to support up to 750 early adopter schools, rolling out from April 2025, to test and learn how to implement this new duty. The learning we take from early adopters will help us develop the statutory guidance issued by the Secretary of State. Statutory guidance will be published in advance of commencement of the duty to secure breakfast club provision, and the commencement date will be decided by Ministers in due course. National rollout will be informed by the early adopter phase of the rollout.

The Government recognises that some schools will face barriers, so we will work with those schools in order to support and overcome them and ensure they are able to meet this duty. A comprehensive support package will be informed by learnings from the early adopters scheme which will fund up to 750 state-funded schools from April 2025 to test the implementation and delivery of this duty.

Attendance at breakfast clubs will be optional and free to all parents and children regardless of income. Breakfast clubs will be accessed by parents directly from the school or the PVI provider. The provision will not form part of the compulsory school day or qualify as a ‘school session’.

Additional information on delegated powers

It is envisaged that there may remain some exceptional circumstances in which a school cannot meet the duty as it would seriously prejudice the efficient use of resources or not be in the best interest of their pupils. We have, therefore, built into the legislation the power for the Secretary of State to grant an exemption to such schools, following a robust application process with the final decision resting with the Secretary of State.

This measure also places a duty on the Secretary of State to issue statutory guidance which will inform schools how to meet their own duty and how to apply for an exemption to the duty. It is important that schools are supported to secure breakfast club provision, so guidance will cover key principles the school should follow in designing the breakfast club; how schools should go about meeting the School Food Standards; minimum childcare standards; and SEND and allergies advice. Within this document will also be guidance on the exercise of the power for the Secretary of State to grant an exemption to the breakfast club duty.

The measure will also grant the Secretary of State a power to issue regulations which set out the application process a school must adhere to when applying for an exemption to the duty to secure breakfast club provision. This is to ensure that the process is fair, transparent, and efficient.

Key questions and answers

Why are you not investing in increasing the Free School Meals threshold or a grab-and-go breakfast model to alleviate child poverty and help the most vulnerable?

Evidence shows breakfast clubs remove barriers to opportunity and help give children the best start in life. Breakfast clubs are associated with improved social and educational outcomes, including social skills, wellbeing, attendance, behavior, and attainment – outcomes which can be transformative for children's life chances and help families with the cost of childcare.

Breakfast clubs can also act as a magnet for children and provide opportunities for them to play, learn, and socialise at the start of the school day. They can help all children to be on time for school and ready to learn throughout the day.

It is a privilege to be focussed on policies like breakfast clubs that will give pupils the best start in life and build strong foundations of all children as part of our Opportunity Mission. This is the right priority to start with in the content of a tight fiscal environment.

As with all government programmes we will keep our approach, including eligibility for Free School Meals, under continued review.

How will schools practically do this when funding is not guaranteed and does not cover the barriers that they will face?

These new breakfast clubs, and the benefits they will bring to children and families up and down the country, are a top priority for this Government. So, of course, we will provide funding to cover the new duty – including for nutritious food and staffing costs. What is more, we will support schools who face delivery challenges, informed by our early adopters scheme to find the right approach for their school, pupils and parents. Schools are absolutely not being left to do this alone.

And, before this duty comes into force will be working with up to 750 new breakfast clubs in schools across the country from April 2025 as part of a test and learn phase. The learning from early adopters will feed into our ongoing support programme for schools.

Why can't you say when you plan to commence the duty to secure breakfast club provision and start national rollout of the programme?

We want every school in scope for this duty to be able to implement and deliver the programme, so as many children and parents can enjoy the full range of benefits that breakfast clubs offer. National rollout will be informed by assessment of the early adopter phase of the rollout which will help us test and learn how best we can support schools to

implement their duty and overcome the barriers they might encounter. The commencement date will be set out next year.

Children's Wellbeing and Schools Bill: School uniforms: limit on branded items

This measure creates a limit of three on the number of branded items of school uniform and PE kit that primary schools can require pupils to have (i.e. compulsory uniform items) over the course of the school year.

Secondary schools and middle schools will be allowed to require an additional compulsory branded uniform item, so long as one of the branded items they require is a tie. In effect that means secondary schools and middle schools have a limit of four compulsory branded items where a tie is listed as one of the required branded items.

This will bring down costs for parents and remove barriers from children accessing sport and other school activities.

What does this measure do and why do we need it?

Where schools choose to have a uniform, they must have regard to statutory cost of school uniforms guidance (published in 2021) which was designed to ensure the cost of school uniforms is reasonable and secures the best value for money. It states that schools should ensure their uniform is affordable.

Despite this, too many families continue to report that the cost of school uniform remains a financial burden. On average parents are paying £442 on average to kit a child out for secondary school and £343 for primary school.[2] The data also shows a clear pattern of significantly lower uniform costs where items can be bought from a range of retailers. In some cases, parents buying items from a designated shop have paid around twice that of parents able to buy items from anywhere.

Whilst more schools are ensuring uniform items can be purchased from a range of retailers or have put second hand uniform schemes in place, too many schools still require pupils to have an excessive number of branded items which can only be purchased from specific suppliers. It is clear that the statement in the statutory guidance that branded items should be kept to a minimum is not resulting in a significant reduction in the number of branded items schools are requiring e.g. in secondary schools the most common number of compulsory branded items is five and the median figure is just over

[2] Cost of School Uniforms Survey, carried out November 2023-January 2024. A survey by the Childrens Society in June 2023 had similar findings (an average spend of £422 a year on secondary and £287 on primary uniforms).

six. There remains large variation in the number of branded items different schools require, from zero to up to 20.[3]

A legislative limit on the number of branded uniform and PE kit items schools can require is the most effective way to target those schools requiring excessive amounts. This limit will enable more parents to buy more items from a range of retailers – including low-cost retailers – allowing them to better control the cost of uniform.

What is the effect of the legislation?

Schools will have a limit of three on the number of compulsory items of branded uniform and PE kit that they can require.

Where pupils are receiving secondary education, or receiving education at a middle school, schools will be allowed an additional compulsory branded uniform item, so long as one of the branded items they require is a tie. In effect that means secondary schools and middle schools will have a limit of four compulsory branded items where a tie is listed as one of the required branded items.

The limit removes any ambiguity about the expectations placed on schools to keep branded uniform items to a minimum. It means that more parents will be able to buy a greater number of uniform items from a range of retailers – including those on the high street - which will help parents control the cost of uniforms.

The legislation does not restrict the ability of schools to make optional branded uniform items available for parents to buy. It just places a limit on the number of branded uniform and PE kit items they can require as compulsory items.

How will this work in practice?

Schools will be able to decide which of their compulsory uniform and PE kit items they want to require are branded, up to the limit.

An item of branded uniform will be considered compulsory if a pupil is required to have it to participate in any lesson, club, activity or event facilitated by the school during that school year – so includes items required for PE and sport. This applies whether the lesson, club, event or activity is compulsory or optional (i.e. even if an activity is optional,

[3] Cost of School Uniforms Survey, carried out November 2023-January 2024

if a pupil requires a branded item of uniform to participate in that activity, the item will count towards the cap).

The definition of branded items includes items with a school name or logo on or attached to it (including items where sew on badges are used - whether by manufacturers or by parents sewing them onto a generic item of clothing) - and items that have a non-standard design, for example a blazer with coloured piping, which means it is only available from a small number of suppliers.

The limit will apply to all clothing items listed as compulsory in the school's uniform policy and include any bags (such as bookbags or rucksacks) and footwear required.

The limit covers the total uniform that pupils are required to have over the school year and includes any items that may only be worn for part of the year (for example, summer dresses). This means that a secondary school pupil could not be required to have, for example, a branded skirt for the winter and a branded dress for the summer where they are also required to buy a branded blazer, tie and PE top because the total number of branded items required for the school year would be five.

We expect the limit will come into force in September 2026, in time for the 2026/27 school year and to give time for schools to make the necessary changes to their uniform policies and renegotiate contracts with uniform suppliers as may be required. This would mean that from September 2026 parents would only be expected to provide a maximum of three items of branded uniform and PE kit for their child (or a maximum of four items for any child in secondary school or middle school if one of those items is a tie).

Key questions and answers

Why are you continuing to allow any branded uniform items?

A small number of branded items can play a valuable role in creating a sense of common identity among pupils and reducing visible inequalities. However, branded items are often more expensive, so it is right to limit their use.

This measure balances reducing costs for parents, with ensuring schools, parents and pupils can continue to experience the benefits that allowing a small number of branded items can bring.

How will the limit be enforced?

We expect all schools to comply with the law. The limit will be clear, and it will be obvious if a school has more compulsory branded items than permitted.

Any concerns about a school's uniform policy should be raised with the school in the first instance, via the school's published complaints procedure where necessary.

If, having completed the school's complaints process, a parent is not satisfied, they can make a complaint to the department. The department will be able to act where it is found that a school has not complied with the limit.

Children's Wellbeing and Schools Bill: Children not in school

This measure helps ensure that children not in school are receiving a suitable education and are safe. The measures will introduce:

- Compulsory Children Not in School registers in each local authority area in England.
- A duty on local authorities to provide support to the parents of children on their registers.
- Changes to the School Attendance Order (SAO) process to make it more efficient.
- A requirement whereby parents of some children for whom there are existing safeguarding concerns or attend special schools will need local authority consent to home educate (and where children subject to some child protection processes are already being home educated, the local authority will be able to require them to attend school).
- A requirement for local authorities to consider the home and other learning environments when determining whether or not children should be required to attend school.

What does this measure do and why do we need it?

All parents have a legal responsibility to ensure their child receives a suitable, efficient, full-time education. Most parents choose to fulfil this responsibility by ensuring their child regularly attends school, but some choose to educate them otherwise than at school (for example, by home-educating them).

Most parents who choose to home educate do so in their children's best interests, and many home educated children receive a suitable education that supports them to achieve and thrive.

However, the number of children in home education has accelerated since the COVID-19 pandemic, with an estimated 111,700 children believed to be home-educated as of October 2024. The statistics show an increase in parents reporting that they are moving their children into home education due to mental health concerns or special educational needs. In some instances, parents may not be well-equipped to provide a suitable education, and some of these children may also be at risk of harm.

Some children have been seriously harmed or died due to abuse or neglect whilst not in school or having been removed from school for the purposes of home education. Children in social care, including those on child protection plans, also experience poorer educational outcomes at Key Stages 2 and 4 than the overall general pupil population.

Education settings can be a protective factor for children, particularly those at risk of harm. Local authorities have duties to keep children in their areas safe and to make arrangements to identify those children of compulsory school age who are not in school and are not receiving a suitable education. As parents currently do not need to notify the local authority that they are home-educating, it is difficult for local authorities to fulfil these duties and take action to support and protect children where necessary.

The proposal to introduce compulsory Children Not in School registers in every local authority area in England will help local authorities to identify all children not in school in their areas. This will be bolstered by the accompanying duties on parents of eligible children and certain out-of-school education providers to provide information for the registers. Making the SAO process more efficient and broadening it to require local authorities to consider the home and other learning environment when determining suitability of education will ensure that local authorities can, where necessary, take prompt effective action to help the child access a suitable education through regular attendance at a school.

The measures will ensure that the most vulnerable children cannot be withdrawn from school until it is confirmed that this would be in their best interests, and that the education to be provided outside of school is suitable.

Parents will need local authority consent to home educate if a child registered at a school is:

- Subject to an enquiry under section 47 of the Children's Act 1989.
- On a child protection plan.
- At a special school maintained by a local authority, special academy or non-maintained special school, or at an independent school which is specially organised to make special educational provision for pupils with special educational needs, where the child became a registered pupil at that school under arrangements made by the local authority.

If children subject to Section 47 enquiries or on child protection plans are already being home educated, the local authority will be able to require them to attend school. This legislation will ensure that the most vulnerable children do not slip under the radar of the professionals that are there to protect them.

What is the effect of the legislation?

The legislation places new requirements on parents, local authorities, schools and out-of-school education providers with the intention of improving visibility of and support for children not in school.

The clause on Local Authority Consent for Withdrawal of Certain Children from School will bring into effect a new requirement for parents to obtain consent from the local authority to withdraw their child from school to home educate them if their child is:

- Subject to an enquiry under Section 47 of the Children Act 1989.
- On a child protection plan.
- At a special school maintained by a local authority, special academy or non-maintained special school, or at an independent school which is specially organised to make special educational provision for pupils with special educational needs, where the child became a registered pupil at that school under arrangements made by the local authority.

The local authority must decide promptly whether to grant consent. They can refuse to do so on the grounds that it is not in the child's best interests to be educated otherwise than at school or no suitable educational arrangements have been made for the child outside of school. The legislation also provides a process by which parents can appeal to the Secretary of State if they disagree with the local authority's decision.

The Registration clause will make it mandatory for a child to be registered on their local authority's Children Not in School register if they are of compulsory school age, living in the authority's area, and are either:

- Not registered at a relevant school.
- They are registered as a pupil at a relevant school but do not attend full time and it has been agreed that they can receive some or all of their education otherwise than at a school (for example, they are flexi-schooled or the local authority has placed them in an alternative provision setting.
- They are a student registered at a further education setting that provides education for children aged 14 and above but they attend that setting on a part-time basis and do not also attend a school.

The registration system will require:

- Each local authority in England to maintain a Children Not in School register.
- Parents of children who are eligible for inclusion on the register to provide certain information for it, such as the child's name, date-of-birth, and home address and details about the education provided, such as the amount of time being educated by a parent and by other people.
- Certain providers of out-of-school education to provide information for the register in cases where they are providing education to an eligible child for more than a prescribed amount of time without any parent of the child being actively involved in the tuition or supervision of the child.
- Local authorities to provide support to families on their registers, where it is requested by the parent.

- Local authorities to include relevant information about the child's circumstances (where held or possible to obtain), such as whether they have special educational needs, or current or historic children's social care involvement.

The changes to the School Attendance Order (SAO) process included in the legislation will:

- Introduce statutory timeframes for issuing and processing SAOs.
- Align the SAO process for academies with maintained schools, creating consistency and simplifying the process.
- Make it an offence for parents to withdraw a child subject to an SAO from school without following the proper procedure. Parents convicted of breaching an SAO can be prosecuted again if they continue to breach it without local authorities having to begin the process again.
- Align the maximum penalty for breaching an SAO with the offence of knowingly failing to ensure a child attends school.
- Require local authorities to consider the home and other learning environments when deciding whether education is suitable or for children subject to child protection processes, whether it is in their best interests to attend school.
- Enable local authorities to request to see the child in their home(s) and where this request is refused, consider this a relevant factor when determining whether to issue a SAO.
- Enable local authorities to use the SAO process for children who are subject to Section 47 enquiries or on child protection plans to require them to attend school where it is in their best interests to do so.

How will this work in practice?

Local Authority Consent for Withdrawal of Certain Children from School

Currently, parents must notify their child's school that they wish to withdraw their child to educate them otherwise than at school. Children can then be withdrawn from school immediately without any checks, such as whether home education is a safe or suitable educational environment for them. Local authorities and safeguarding partners have raised concerns that the current system makes it easy for vulnerable children to slip under the radar of the professionals that are there to protect them.

As well as requiring local authorities to keep registers of children not in school, this legislation would require schools to check with the local authority if the child can be removed from the school roll immediately, or if the child falls into one of the categories which require parents to obtain local authority consent before they can be removed from the school roll to be home educated.

Where it is the case that local authority consent is required, we envisage that the local authority will write to the parent requesting information from them to help with their decision making. The local authority will also sometimes need to gather information from other relevant persons, such as the school or the child's social worker. Where the child is subject to a Section 47 enquiry, or on a child protection plan, the local authority will consider the request in the context of the wider child protection processes.

After considering this evidence, the local authority must decide whether to grant consent. They must decide not to consent if the evidence shows that it's not in the child's best interests to be home educated, and/or they don't believe suitable education arrangements are in place for them outside of school. The local authority must inform the parents and the school of their decision. If consent is granted, the school will remove the child from its register. Parents can appeal to the Secretary of State if they disagree with the local authority's decision to refuse consent; and the Secretary of State can overturn or uphold the decision or refer it back to the local authority for reconsideration. If one of the child's parents did not support the application for consent, they may appeal against a decision to grant consent; and the Secretary of State can uphold the decision to grant consent or refer it back to the local authority for reconsideration.

Where children in the cohorts subject to child protection processes are already being home educated, we will set out in statutory guidance that local authorities should conduct a review to consider which children may be better served by being in school. Local authorities will then be able to use the SAO process to require these children to attend a named school.

Children Not in School Registers

Each local authority will keep a register of all children not in school in their area. These are likely to mainly include home educated children but could also include children who are flexi-schooled or are in certain forms of alternative provision. Registers will need to include for each child: their name, address, date-of-birth, and their parents' names and addresses, as well as details of how they are receiving their education. Parents will be required to provide this information. If they don't or provide incorrect information then the local authority can begin the SAO process, which would require parents to provide evidence that their child is receiving a suitable education. Regulations may make it compulsory for other information to be included on registers; and local authorities can also include any other information they think is relevant – however, although encouraged to do so, parents will not be required to provide this additional data.

Certain out-of-school education providers will be required to provide information for the registers. Out-of-school education providers will be in scope of the provider duty if they are providing education to an eligible child for more than a specified proportion of their

education and without the parent being actively involved in the tuition or supervision of the child.

The exact proportion of education that a provider needs to deliver to fall into scope of the provider duty will be set in regulations; and this will be consulted on to ensure it is set at an appropriate level.

If a provider is in scope of the duty and a local authority serves a notice requiring information, the provider will need to give: all eligible children's names, dates of birth, and home addresses; the amount of time each child spends receiving education from the provider, and the amount of time the child spends receiving that education without any parent of the child being actively involved. Providers will need to give this information for eligible children that were being educated at the provision at the time of the request and any eligible children receiving education in the previous three months. We would expect providers to already hold this information for health and safety and safeguarding purposes, so the duty should not introduce undue burdens on providers. Those providers who don't hold that information will be required to obtain it. Local authorities will have discretion to impose a monetary penalty (the amount will be set in regulations) on providers who refuse to provide information or provide incorrect information, but the legislation sets out that local authorities cannot do this within the first three months of the law coming into effect. This will give out-of-school education providers time to adjust to their new duty. The provider duty will be crucial in supporting local authorities to check that the information on their registers is accurate and identifying children who are not currently included in their registers but should be.

Support Duty

Local authorities will be required to provide support to the parent of a child that is included in their register by giving advice or information about the child's education, if requested by the parent. Local authorities have discretion over what advice and information they think is appropriate to provide based on what the parent has requested. This can include, for example, advice about the child's education or information about other sources of support for the child's education. Local authorities can still offer other forms of support if they wish to do so, but this duty places a minimum requirement on authorities to offer advice and information to parents who want it.

Changes to School Attendance Orders

Local authorities will have discretion to trigger the School Attendance Order (SAO) process if a parent of an eligible child does not provide information for Children Not in School registers. The proposals also place specific timeframes on parts of the process to minimise the time a child is potentially not in receipt of suitable education. The first step of the process is that the local authority issues a preliminary notice to the parent. This

notice requires parents to demonstrate that their child is receiving a suitable education or for children subject to child protection processes, to demonstrate that it is in the best interests of their child to receive their education outside of a school. Where parents do not provide evidence of the above, the local authority usually must issue an SAO without delay. An SAO remains in force until revoked by the local authority or a court, or when the child is no longer of compulsory school age. This legislation will ensure that parents can be prosecuted and convicted for ongoing failure to comply with an SAO.

Considering the Home and Other Learning Environments

The legislation will also require the local authority to consider the suitability of all settings where a child is being educated. As part of this requirement, the local authority will be empowered to request to see the child in their home(s) to help decide whether education is suitable or for children subject to child protection processes, that it is in the best interests of the child to receive their education outside of a school.

If the child's parent refuses the local authority's request, then the local authority will need to take this into consideration as part of their overall decision making process. As the home environment is an integral part of the child's ability to receive a suitable education or the education being in the child's best interests, if access to the home is refused, the local authority may conclude that they do not have sufficient evidence of the above and therefore need to issue a SAO. Local authorities will not be empowered to request that parents grant them access to see other learning environments which the child may attend – for example, tuition centres—as parents may not be able to organise access to these, but other learning environments will be a factor when assessing whether education is suitable or, in the case of children subject to child protection processes, in the child's best interests

Additional information on delegated powers

The government is seeking the following powers to make regulations as part of these measures.

Regulations on when a child is to be regarded as falling or not falling within eligibility for registration relating to children not in school

Local authorities in England must keep a register of eligible children. Eligible children include those of compulsory school age who:

- Are not registered at relevant schools.
- Are registered at relevant schools (including FE) but don't attend full time and receive education outside of school or college.

The second category mainly intends to cover flexi-schooled children and those in unregistered alternative provision. However, it could also include children who are absent on a very short-term basis for school trips or swimming lessons that take place away from the school site. We intend to use this power to ensure children who are absent on a very short-term basis are not brought into scope – so as not to cause an unnecessary administrative burden on both local authorities and parents.

Regulations prescribing specific details to be included in registers

This power allows Secretary of State to specify additional information to be included in local authority registers if held by the local authority. This power will be used to require local authorities to gather more detailed information about a child's background and needs, such as ethnicity, special educational needs, and safeguarding concerns and any related local authority and partner agency action. Local authorities can request this information from parents, but parents will not be under a duty to provide this additional information. The intention behind this is to ensure that local authorities have a fuller picture of each child’s circumstances so they can target support – and, where necessary, protection - effectively. The ability to adjust data requirements through regulations ensures that they can be adjusted in a timely manner if new circumstances arise, or if feedback is received from local authorities following implementation of the registers that certain categories of data would be useful to have consistently collected across individual local authorities’ registers.

Regulations about the keeping of registers and how time is to be recorded by a parent or carer

This power will allow regulations to be made setting out how local authorities deal with administrative elements of their registers. This may include how amendments should be made to information on the registers, the format of registers, whether standard information collection forms should be used to populate registers with the required information, and how the amount of time a child spends receiving education is to be recorded on registers.

Our intention is for there to be consistency across all local authorities to ensure that all registers are kept to an appropriate standard, as well as helping to create the most accurate national picture of electively home educated cohorts. Greater consistency will help make the system easier to navigate for parents. These administrative matters may require adjustment over time, for example to account for differences in local authority structure or internal processes, and so regulations are appropriate.

Regulations setting a threshold for providers of out-of-school education to provide information

This power will be used to set the threshold for when out-of-school education providers will be required to comply with the provider duty. This is likely to be based on the amount of time that an eligible child would need to be provided with out-of-school education by a particular provider without any parent of the child being actively involved in their tuition or supervision. It is appropriate to put this in regulations as changes to the threshold may be needed in time as local authority and department data improves and authorities develop a clearer picture of educational arrangements and the impact on providers in their area as well as nationally.

Regulations making exceptions to duty to provide information

This power is linked to the new power set out above which sets the threshold at which a local authority is able to require out-of-school education providers to provide information for their registers.

Providers of some types of out-of-school education may become inadvertently subject to the duty to provide information, by virtue of the threshold being set, for example, at a particular number of hours per day or week. As an example, if the threshold were set as 9 hours per week, this might capture a museum that offers an extensive educational programme for children, which is open to all members of the public. Without being able to exclude such cases from scope, we could place undue requirements on such providers, and that might serve to discourage the provision of these activities.

Therefore, this power will be used to prevent cases like these, and potential unforeseen providers being brought into scope of the duty, and to adjust the exceptions to eligibility due to any changes to the threshold.

Regulations to set a monetary penalty for failure to provide information and setting the increase in the penalty if provided late

This power will be used to set the level of the monetary penalties that in-scope out-of-school education providers could be subject to if they refuse to provide information for local authority registers on request, or if they provide incorrect information. The power will be available to adjust the level of the penalties as may be needed from time to time, such as to keep in line with inflation and to keep in line with other comparable penalties. It may also be necessary to adjust the level of the penalty in light of experience of the system in operation, as the out-of-school education sector is varied, and it is not easy to predict what level of penalty will be most effective.

Regulations prescribing information local authorities must provide to the Secretary of State

The government will use this power to stipulate which information contained within the registers must be provided by local authorities to the Secretary of State upon request. This could include the provision of information such as:

- The number of children on register.
- Details of the child's education provision.
- Ethnicity.
- Sex.
- Reasons for electing to home-educate (if applicable).
- Whether the child has any SEND.
- Whether the child has an EHC plan.
- Whether the child is or was a child in need, looked after child, subject to a Section 47 enquiry, or on a child protection plan.
- Whether the child is missing education.

The government would use this data to evaluate the impact of the registration system on local authorities and eligible families. The information will help inform policy development, for example in relation to the types and level of support needed by families and the resources of local authorities to deliver that support, and whether particular groups need more support than others and why. We will use the data to understand the reasons why parents home educate a child or why the child has been placed in alternative provision and identify any trends or common issues within a particular area. This could help improve understanding of SEND or issues like off-rolling, bullying or mental health.

Regulations prescribing persons to whom Secretary of State may provide information

This power will allow the Secretary of State to share information from registers with prescribed persons. This is to ensure that professionals, organisations or education settings that are there to support – and, where necessary, protect - children on the registers have a full and accurate picture of a child. The powers will enable the department to create a consistent view of a child's education – particularly if they have moved across different education settings — and share this information back to relevant local authorities, education settings or professionals so that the child could benefit from more tailored support. The Secretary of State will therefore need to be able to share certain information with relevant persons – for example, relevant local authorities, education providers, or other organisations connected with promoting the education or wellbeing of children in England.

Prescribed form of School Attendance Order

Regulations will set a requirement for a standardised form for a School Attendance Order (SAO) that is issued by a local authority in England, including the format and wording used within it.

Prescribing a standard form for SAOs will ensure that such orders contain the right information for the parents on whom they are served and achieve the aim of consistency across all issuing local authorities, making the process clearer for local authorities and parents. Once the new form of SAOs has been prescribed and begun to be used in practice, it may be necessary to review the form to ensure it's as clear as possible for parents and local authorities.

Guidance to be given on registration of children not in school and use of School Attendance Orders

The power gives the Secretary of State the ability to issue statutory guidance to local authorities on how they must exercise their duties in relation to keeping registers and the SAO process. The final contents of the guidance will be subject to consultation with stakeholders; however, we would expect it to include information such as:

- How local authorities should engage with home educating families in relation to Children Not in School registers.
- Entering / recording of information on registers.
- Procedures for changes to registers (amendments, deletions).
- Information sharing practices
- Guidance on the minimum requirement of support to offer to home educators,
- Considering the home and other learning environments.

It is intended that this guidance will be issued when the relevant provisions of the Bill come into force.

Key questions and answers

Is the intention of the Children Not in School measures to criminalise home-educating parents?

No. The measures aim to support local authorities to identify all children not in school in their areas, so they can – with partner agencies - fulfil their existing education and safeguarding duties.

Most parents who home educate do so in their children's best interests, and many home educated children receive a suitable education that supports them to achieve and thrive.

These measures are not intended to criminalise the parent, but to provide children with a route to suitable education and protect those at risk of harm.

Why are you requiring consent to home educate for children on Child Protection Plans, or who are subject to Section 47 enquiries?

While home education is not a safeguarding risk in itself, school can be a protective factor for children who are at risk of harm. The proposal to require local authority consent for children on child protection plans, or who are subject to Section 47 enquiries, before they can be home educated will help ensure that the most vulnerable children do not slip under the radar of professionals who are there to protect them.

Additionally, broadening the SAO process to consider suitability of home and learning environments will support all children to receive suitable education in safe settings.

These measures complement wider Government action to keep children safe and help families thrive, including:

- Almost doubling - to over £500m - direct Government investment in preventative services for children and families from April 2025.
- Testing, through the £45m Families First for Children Pathfinder programme, new ways to reform every part of the children's social care system, helping children to stay with their families in safe and loving homes, whilst protecting vulnerable children where needed.
- Strengthening the role of childcare and education settings in local safeguarding arrangements.
- Improving information sharing between agencies, including through a consistent identifier for children.
- Establishing multi-agency child protection teams.

Children's Wellbeing and Schools Bill: Expanding the scope of regulation

This measure makes changes to section 92 (s.92) of the Education and Skills Act 2008 ("The 2008 Act") and, as a result, changes the independent educational institutions regulated under Chapter 1 of Part 4 of the 2008 Act. In practice, this measure changes the definition of what constitutes an "independent educational institution" for regulatory purposes and as a result will bring more settings into scope of the regulatory regime found in the 2008 Act (which already applies to independent schools in England).

What does this measure do and why do we need it?

s.92 of the 2008 Act defines what constitutes an independent educational institution, a type of institution that is regulated under Chapter 1 of Part 4 of that Act and as a result is required to register with the Secretary of State. The definition includes "independent schools". Independent schools are settings which satisfy the definition found in section 463 of the Education Act 1996 - any school at which full-time education is provided for (a) five or more pupils of compulsory school age, or (b) at least one pupil of that age for whom an EHC plan is maintained or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989 and which is not a school maintained by a local authority or a non-maintained special school). This definition allows some settings to offer a very narrow curriculum or education on a full-time basis but avoid the requirement to register.

This proposed change will amend s.92 so that it captures more settings which are the source of all or a majority of child's education.

Independent educational institutions which operate on a full-time basis are those which could be expected to provide all or a majority of a child's education. Full-time settings will be brought into regulation under the 2008 Act, regardless of the breadth or nature of the curriculum they provide and regardless of whether the children are supervised or by whom when in attendance. This new category of setting will include all independent schools (settings which meet the definition found in s463 of the Education Act 1996). All settings which are captured by the new definition will be regulated by Chapter 1 of Part 4 of the 2008 Act. This means that they will be required to apply to register with the Secretary of State (if not already registered) and, once registered be subject to regular inspection against specified standards. The intent at this stage is that all inspections will be conducted against the Independent School Standards ("ISS"). This will ensure that settings which could be expected to provide all or a majority of a child's education are held accountable in the same way, ensuring equality of treatment and opportunity for more children regardless of the type of educational setting they attend.

Proprietors of settings who do not wish to register and be inspected against the ISS will be required to either change their provision and operate part-time (and so allow the children to receive a suitable full-time education elsewhere) or cease operating. Those proprietors who continue to operate an independent educational institution, without registering, will be committing a criminal offence.

This change promotes the principle that full-time independent educational institutions, those responsible for all or a majority of a child's education, should be regulated to provide assurance about the quality of education and safeguarding provided to the children who attend these settings. It extends the protections which already apply to children who attend registered independent schools to more children.

What is the effect of the legislation?

Chapter 1 of Part 4 of the 2008 Act imposes certain obligations on proprietors of independent schools. Among other things, they are required to register with the Secretary of State or be committing a criminal offence (under s.96 of the 2008 Act), be subject to regular inspection against the Independent School Standards (s.109 of the 2008 Act) and proprietors must also comply with any relevant restrictions that are imposed on them, restrictions on how they can operate their institution - such as one which prohibits the admission of new pupils.

The effect of this legislation is to extend this existing regime to more settings which at present provide full-time education to children but operate without regulation.

This legislation also removes from the scope of the 2008 Act part-time educational settings, which at present may be regulated under the 2008 Act. In practice, however, these provisions have never been in force and so part-time educational settings will not be impacted by this change.

How will this work in practice?

The changes will introduce a new test to help settings determine whether they are providing a full-time education to students of compulsory school age. A setting will be providing full-time education for a child if the child could be expected to receive all or a majority of their education at the setting. In determining whether this new test is met, the Bill sets out a number of factors that will be taken into account when assessing whether a setting is operating full-time and, as a result, should be regulated. These factors are concerned with the number of hours per week, the time of day, and the number of weeks per academic year that a child is expected to attend a setting. These factors may be varied by the Secretary of State via regulation.

A setting which meets this test (i.e. if offering a full-time education, among other requirements) will be captured by the regulatory regime in the 2008 Act and required – as is already the case for settings which are independent schools – to register with the Secretary of State, meet specified standards and be subject to regular inspection. There is a power which permits the Secretary of State to introduce different standards for different types of setting, but the current intent is for all settings to be brought into the regulatory regime in the 2008 Act to be inspected against the Independent School Standards. These already apply to independent schools, so applying these to more settings will ensure parity of treatment and opportunity for more children regardless of the type of educational setting they attend.

The Government intends to produce guidance to assist proprietors understand how these factors interact with each other to constitute full-time education.

Additional information on delegated powers

There are three regulation-making powers associated with these measures.

The first delegated power permits the Secretary of State to amend or repeal the list of factors and how they are to be taken into account. This power is intended to act as an anti-avoidance measure and to allow the regulatory regime to respond to novel educational approaches taken in future and so ensure that the aims of the legislation are fulfilled.

The second power concerns “excepted institutions”. “Excepted institutions” are those which despite meeting the other requirements of being an independent educational institution are not to be regulated under the 2008 Act, usually because they are more appropriately regulated in other ways. This delegated power allows the Secretary of State to designate other types of setting as “excepted institutions” and for example allow any future development in the way education is provided to be reflected in the exempted list, if required.

The third delegated power will permit other legislation which applies to “independent schools” to be applied to independent educational institutions. This will ensure other regulatory obligations which protect children in independent schools can be applied to protect children in independent educational institutions, once Parliament has agreed in principle to the regulation of independent educational institutions in this manner.

Key questions and answers

Will changes to the registration requirement prevent parents from securing the faith-based education that they want for their children?

Every child should receive an education that is safe and lets them achieve and thrive. That is our aim in bringing forward this measure. This does not prevent parents securing a faith-based education for their children, if that is their wish.

Many registered independent schools already provide a faith-based education which combines a substantial focus on religious education with the broad education required to meet the Independent School Standards.

This change extends the existing registration requirement so that it applies to more settings which provide full-time education and are therefore responsible for all or the majority of a child's education.

If you think these settings are unsafe or unsuitable, why are you not closing them down?

The Government does not have current evidence that the settings to be brought into regulation are actively unsafe or unsuitable for children but will always take action where we receive evidence of such.

This measure is aimed at giving greater assurance with regards to the education offered to children in these settings and so extend the protections which apply to children who attend independent schools to more children.

The Government already has many options to intervene against an educational setting which is actively unsafe or unsuitable for students and will consider these in all cases as appropriate.

Children's Wellbeing and Schools Bill: Independent education setting and safeguarding: Due diligence and standard setting

Proprietors of independent schools are required to ensure that they meet the Independent School Standards ("ISS") at all times. This measure, among other changes, enables the Secretary of State to set standards which can introduce a new "fit and proper person test". This can supplement the existing due diligence measures which are already taken before a proprietor is approved, or otherwise, for the running of an independent school.

What does this measure do and why do we need it?

Under section 94 of the Education and Skills Act 2008 ("the 2008 Act"), the Secretary of State is required to make standards. These are the Independent School Standards ("ISS") that proprietors of independent educational institutions are required to comply with and if they do not, then they face the possibility of regulatory or enforcement action.

This measure introduces new powers relating to the suitability of proprietors of independent educational institutions. In particular, new standards may be made which will require that an individual proprietor, or an individual with control or legal responsibility for a proprietary body must be a person who is, in the opinion of the Secretary of State, a fit and proper person to be involved in the running of an independent educational institution.

This proposal addresses an identified gap in our regulatory regime. At present the Secretary of State is required to make specified 'due diligence' checks on prospective proprietors. Broadly speaking this consists of identity checks, DBS checks and Section 128 checks. These checks are narrow in scope and in some cases allow individuals who may not be suitable to become a proprietor. For example, this may include individuals who have engaged in serious financial misconduct. The change will allow the Secretary of State to make judgements about who is fit and proper, apart from mandatory criteria already set out in the standards.

Our planned change is targeted at preventing, in the small number of cases like these that are received annually, unsuitable individuals being involved in the running of independent educational institutions and so be responsible for students' wellbeing.

Our second measure will put beyond doubt that the Secretary of State may make standards requiring that proprietors must have regard to guidance, or a document published by the Secretary of State.

What is the effect of the legislation?

The changes to the legislation will give the government the power to prescribe, by regulations, a standard requiring a proprietor to be a fit and proper person, meaning that an application to register a new independent school, or make a material change to change a proprietor, can be refused when, in the opinion of the Secretary of State, a new proprietor is not fit and proper.

How will this work in practice?

The fit and proper person changes are an extension of the existing power to make provision about the suitability of proprietors. In particular it allows for discretion to be conferred on the Secretary of State to decide whether someone is fit and proper to participate in the management of an independent educational institution. This will allow the Secretary of State to exclude those who are unsuitable to be involved in the running of independent educational institutions.

This measure will also put beyond doubt that standards can be made requiring proprietors to have regard to other guidance, and documents published, by the Secretary of State.

Key questions and answers

How will suitability be determined?

It is important that proprietors of independent educational institutions are suitable to carry out the role. Guidance will be published which sets out what will be considered in determining suitability in terms of a fit and proper person.

Will there be a right to an appeal against a decision to deem someone not fit and proper?

Existing rights of appeal open to proprietors and prospective proprietors will remain. Full guidance will be published, which will set out what will be considered in determining suitability, which should assist individuals in deciding whether or not they may be deemed fit and proper to be running such a setting.

Children's Wellbeing and Schools Bill: Independent education setting and safeguarding: Suspension of private school registration and boarding

Independent schools are primarily regulated under Chapter 1 of Part 4 of the Education and Skills Act 2008 ("the 2008 Act"). Section 120 (s.120) of the 2008 Act permits the Secretary of State to apply to the courts for an emergency order which would close an independent school permanently in cases where a "student at the institution in question is suffering or is likely to suffer significant harm". This measure supplements this existing emergency power by allowing the Secretary of State to suspend the registration of a registered independent educational institution temporarily where the Independent School Standards ("ISS") are not being met and as a result one or more students will or maybe at risk of harm at the setting but where, for whatever reason, outright closure (under s.120) is considered inappropriate.

What does this measure do and why do we need it?

Currently, the only measure that the Secretary of State has available to immediately address risks at an independent school with serious safeguarding failings is the emergency power under s.120 of the 2008 Act. Under s.120, the Secretary of State may apply to a Magistrates' Court for:

- An order imposing a relevant restriction on the proprietor.
- An order that an institution is removed from the register.

The court may only grant an order where it appears that a student at the institution in question is suffering or is likely to suffer significant harm.

In the type of situations where this action is typically appropriate, issues relating to an institution are rarely limited to a specific concern about its operation or part of its premises. An institution will generally have a widespread set of failings. Therefore, often practically, an application under s.120 is generally for de-registration (rather than the imposition of a relevant restriction). However, given its impact on the proprietor, staff, students and parents, because de-registration in essence means immediate and permanent closure, it is a severe option, which in some circumstances may not be appropriate.

The Secretary of State can also take enforcement action against independent schools under s.116 of the 2008 Act whereby a relevant restriction may be imposed on an independent school in order to motivate improvement or a school may be removed from the register. However, this process takes a considerable amount of time as it requires the school to have been given the opportunity to produce an action plan and implement it and often a number of inspections are required during the course of the process. Further,

an appeal against this decision suspends the enforcement action until the appeal is resolved.

This measure will allow the Secretary of State to temporarily suspend the registration of an independent educational institution (and also put in place a stop boarding order if applicable) in order to allow a proprietor a period of time to make the necessary changes/improvements to ensure the safety of students attending the setting. If those improvements cannot be made within the initial suspension period, then it may be extended to allow the proprietor sufficient time. Equally, if the proprietor can demonstrate that the necessary changes have been implemented ahead of the end of the suspension period, then the suspension must be lifted in order that students can return to the setting.

This measure therefore is necessary to give the Secretary of State more flexibility to respond to risks of harm while, where necessary, minimising disruption to students' education.

What is the effect of the legislation?

This measure allows the Secretary of State to suspend the registration of an independent educational institution where one or more students at the setting will or may be exposed to a risk of harm due to a breach of the Independent School Standards. During the period of suspension, it would no longer be lawful to provide education or supervised activity at the institution. In effect the institution will be required to close for the period of the suspension. In addition, where an institution provides boarding accommodation, where the Secretary of State suspends the registration, she may also impose a requirement to "stop boarding". Again, in essence this will require the boarding accommodation to be closed for use to students.

A proprietor who breached a suspension or a stop-boarding requirement (subject to certain defences) would be committing a criminal offence if they allowed this to happen; there is an existing similar offence of operating an independent school without registration. These new offences would be summary offences and punishable by up to six months imprisonment and/or an unlimited fine.

How will this work in practice?

This proposed power may only be used if the Secretary of State is satisfied that one of more of the standards prescribed under section 94(1) of the 2008 Act (or any of the requirements in the Early Years Foundation Stage, if applicable) is or are not being met, and has reasonable cause to believe that a student at the institution will or may be exposed to the risk of harm as a consequence.

The Secretary of State will be able to suspend the registration of an independent educational institution by notice to the proprietor of the institution.

Any suspension, including a stop boarding requirement if appropriate, will be, in the first place, for a period up to a maximum of 12 weeks. The initial period of up to 12 weeks should in most cases give a proprietor adequate time within which to address any failings.

If before the end of the 12-week period the proprietor can demonstrate to the Secretary of State that necessary improvements have been made, then the suspension will be lifted.

There will be a duty on the Secretary of State to lift the suspension if (in effect), the proprietor manages to rectify the failings or instead, where the Secretary of State no longer believes that there is a risk to students.

Key questions and answers

Is this the government taking a power to close down good schools?

No, the new power of suspension will only be available where the Secretary of State has evidence that there is a risk of harm to students.

The only current emergency action open to the Secretary of State is to apply to the Magistrates' Court, for a permanent deregistration or a relevant restriction (under s.120 of the 2008 Act). The power of suspension is more flexible, giving institutions with problems an opportunity to improve (and reopen), without permanent deregistration being the only way to remove students from a risk of harm.

We only expect to consider using this power in relation to the very small fraction of independent schools where we currently consider the application of s.120 each year (c. 5 schools per year out of c. 2,450).

This measure addresses the Independent Inquiry into Child Sexual Abuse's concern in its residential school's investigation report that "There are also weaknesses in systems of enforcement in respect of schools which fail to meet requisite standards, including safeguarding".

If a school is suspended, what happens to the students?

Students will not be able to be educated at the school for the period of suspension. The Secretary of State will always work with relevant local authorities to ensure that options are clear to parents and alternative places are found where this is appropriate. While the school is suspended, all the normal education options will be available to those students,

such as applying for a state school place, seeking a school place in a different independent school or choosing to electively home educate.

Suspension is a very serious step that will inevitably disrupt students' education. In deciding whether to suspend the registration of a setting, the effect of this disruption will be balanced against the risk of harm to students. The Secretary of State only intends to use these powers in the most serious cases.

Where students board at a setting, the Secretary of State will work with relevant local authorities to ensure that students are able to return home safely.

Once the suspension is lifted on the school, students can resume their education at that setting if their parents wish.

Children's Wellbeing and Schools Bill: Independent education setting and safeguarding: Private school deregistration: appeals

In a relatively small number of cases, the Secretary of State determines that an independent school's very serious and/or very long running failures to meet the Independent School Standards (ISS) justify the de-registration (effective closure) of that school in order to promote the wellbeing of the students currently attending the setting. This measure changes how appeals against these decisions are determined by the First Tier Tribunal. There will be a requirement in these cases that the Tribunal had due regard to whether the school will meet the ISS and the Early Years Foundation Stage (EYFS) on an ongoing basis. It also puts the burden of proof on the appealing proprietor to demonstrate that there is likely to be future compliance.

What does this measure do and why do we need it?

An enforcement decision to deregister an independent school is very serious, as it requires the school to close. It is very common for a proprietor to appeal a deregistration decision, although in some cases they withdraw their appeal if a further inspection shows that little progress has been made in meeting the ISS. The Secretary of State ordinarily withdraws from defending deregistration appeals if re-inspection finds that significant progress in meeting the ISS has been made, because the aim of the regulatory and enforcement regime is to secure improvements at schools so that they are again providing a safe and suitable education; not to close them down.

Currently, a proprietor may successfully argue, that a decision to de-register should be overturned, by making sufficient improvements to meet the ISS by the time of the appeal hearing. However, the improvements may be short-lived, with the Secretary of State returning to regulatory and enforcement action because the school does not have the capacity or willingness to sustain long-term compliance with its regulatory obligations. This creates a number of difficulties in that schools with severe and/or persistent, long-term failings are able to avoid deregistration by making temporary improvements to meet the ISS by the time of the appeal hearing, even if their history suggests they will relapse quickly. Further, the time it takes for deregistration decisions to take effect means that persistently failing schools can remain open for lengthy periods. This is very damaging to the interests of students, some of whom may be attending such schools for many years while it goes through repeated cycles of improvement and deterioration.

The government believes that to tackle this phenomenon at its root it is necessary to change how these de-registration appeals are determined. It should be the case that the Tribunal have due regard to future compliance, together with the history of failure against

the ISS, and this measure places the burden of proof on the appealing proprietor to demonstrate that there is likely to be future compliance with the ISS. This is to mitigate against the risk of failing schools continuing to provide a poor education or to inadequately safeguard their students by not putting in place sufficiently robust measures to continuously meet their regulatory obligation.

A separate change is being made as part of this measure. This change, found in clause 34, provides clarity that a registered setting may be voluntarily de-registered with the written agreement of the proprietor.

What is the effect of the legislation?

This measure will change how the Tribunal considers de-registration appeals and reverses the burden of proof so that the appealing proprietor must demonstrate they have capacity to sustain compliance with the ISS (and EYFS as relevant) in the future.

This legislative change will ensure more consistent compliance with the ISS (and EYFS as relevant) and provide a mechanism so that the Secretary of State can more effectively de-register (effectively close) settings which, are not consistently meeting the ISS over a long period of time and are putting students at risk.

How will this work in practice?

The burden of proof will be on the proprietor, who is appealing, to demonstrate to the Tribunal (on the balance of probabilities) that there is likely to be future compliance with the ISS (and EYFS when appropriate).

Amending the legislation in this way should in the fullness of time, have a deterrent effect and therefore, a reduction in de-registration appeals in due course.

Key questions and answers

Is this the government taking a power to close down good schools?

This change to the appeals regime will only apply where an independent educational institution has been found to have failed to meet one or more of the standards, and an enforcement decision has been taken to de-register that institution. This does not relate to institutions that are consistently compliant with their obligations.

This measure will allow the government to better secure the timely closure of institutions that, over time, are unable to fully meet the standards (often they will show some improvement then relapse). It will also provide certainty for parents and other

stakeholders more quickly after a deregistration decision has been made by speeding up the appeals process.

Why can schools not be given a further chance to improve before being deregistered under these circumstances?

For independent schools this measure will only apply where schools have failed to meet the Independent Schools Standard (“ISS”) and/or the Early Years Foundation Stage (“EYFS”) to the extent that a decision to de-register has been taken. The school will have been required to provide an action plan(s) and therefore, been given the opportunity to improve. Schools may show some improvement over such a period, but if they are unable to address their underlying leadership and management issues and meet the required standards, improvement will not be secure. In these circumstances, it is appropriate that schools are required to close as quickly as possible. While this will disrupt the education of students attending the school, they will be able to secure an alternative place elsewhere at a registered school that does provide suitable broad and safe education.

Children's Wellbeing and Schools Bill: Independent education setting and safeguarding: Material changes

An application for registration of an independent educational institution (a setting which meets the definition found in section 92 of the Education and Skills Act 2008) must contain certain information, which is set out in the Provision of Information Regulations 2018. Once an application for registration is approved, certain details of the institution's registration will be added to the Register of Independent Schools. If an institution wishes to amend some of these registered details, prior approval must be sought through a material change application.

The measures will redefine what is a material change, introducing three new types, in addition to those currently in operation. The first relating to where an institution occupies a building, routinely for students use, (or ceases to). The second about where an institution becomes (or ceases to be) organised to make special educational provision for students with special educational needs. The third, where an institution organised to make special education provision changes the types of special educational needs catered for.

The measures will also allow the government to make it clear, in regulations how an institution applies for a material change and will ensure the government has suitable discretion to approve material changes, based on the interests of students and whether relevant standards will be met after the change.

The measures will allow proportionate action to be taken, if an institution makes an unauthorised material change, which in some cases may put students at risk of harm.

What does this measure do and why do we need it?

The current regime includes a requirement that an institution needs to apply for a material change approval, when any student with a special educational need is admitted. This measure will provide for a new material change regime so it will become a material change where an institution wants to become or ceases to be a "special institution" (an institution specially organised to make special educational provision for students with special educational needs). In addition, it will become a material change when a special institution wants to change the types of special educational needs it caters for, as to be prescribed in regulations.

Whilst a change of an institution's registered address is a material change, changing what buildings are occupied for student's use, either at or away from the registered address, is not. This means there is no prior assurance that new buildings are safe for use and that the requirements of the Independent School Standards will be met in relation to them. The measure therefore introduces a new material change related to

where an institution occupies a building for student use for a period of six months or more (or ceases to use a building for more than six months).

The measure also adjusts the discretion that the Secretary of State has to approve a material change. The Secretary of State will be able to approve a material change, where it is in the best interest of student's education, welfare or safety, even if the institution will not immediately meet all relevant Independent School Standards following the change. This may help struggling schools seeking to reorganise to facilitate future improvement.

Finally, the measure will also increase the Secretary of State's options to take proportionate action against institutions that make unauthorised material changes. As an example, currently, if a school were to exceed its registered capacity, without applying for and receiving approval for a material change the only option currently is to deregister the school, which amongst other things requires students to find new school places. This measure will enable the government to impose a relevant restriction, for example, prohibiting new admissions. This would require a school to go back to its registered capacity, over time, as students leave and without there being a disproportionate impact on current students.

Overall, the measures will create a material change regime that is clear, proportionate and enforceable. This will provide parents with greater assurance that independent educational institutions are safe and suitable, operating within registration and inspected accordingly.

What is the effect of the legislation?

Currently material changes are regulated under the Education Act 2002 ("2002 Act"), with the provisions on material change in the Education and Skills Act 2008 ("2008 Act") not fully commenced. The provisions in the 2008 Act do not cover as many types of material changes as the 2002 Act, if an institution is not a special institution. The legislation will rectify this so that all those things which are material changes in the 2002 Act (with one exception) become material changes under the 2008 Act for all types of institution. Some other things will also be material changes – namely use of "additional premises" (new buildings to be occupied by students for more than six months) and changes to whether a setting is catering for children with special educational needs, or the types of special educational needs catered for.

It will redefine what constitutes a material change and provide an alternative remedy for an unapproved material change, in broad terms, a restriction on how an institution operates.

It will enable material change approval to be granted where an institution is not meeting (or is not immediately likely to meet) the Independent School Standards at the time the

application for approval is considered but where making the change would likely assist the institution's performance against the Independent School Standards to the benefit of students.

It will provide a power to the government to prescribe, by regulations, how an application for material change approval is made and what information such an application must contain.

How will this work in practice?

The introduction of an amended regulatory regime will apply to all institutions. Material change guidance will be updated to provide further details in relation to the options available to the Secretary of State to take proportionate action against institutions that make unauthorised material changes and further explain the new legislation as to what constitutes a material change under the redefined regime.

The Enforcement and Policy statement will be updated to explain how the department will consider using its new power, where an institution has made an unauthorised material change.

Additional detail on delegated powers

There are two significant new regulation-making powers associated with these measures. They relate to:

Applications for approval of material change and for initial registration: power to prescribe types of special educational need

This power enables the Secretary of State to prescribe the types of special educational needs that are to count for the purposes of a material change involving a change in the types of need an institution caters for.

Section 98 of the 2008 Act will be amended so that regulations may prescribe the types of special educational needs that are to count for the purposes of a material change involving a change in the types of need an institution caters for. The government intends to reflect in regulations the categories already used when registering an independent educational institution.

Applications for approval for material change: power to prescribe information

This power enables the government to prescribe, by regulations, how any application for material change should be made and what information such an application must contain.

Key questions and answers

Why is it important that independent educational institutions seek approval through a material change application, when they are required to do so?

Before institutions are registered, they are subject to a pre-opening inspection that tests whether they are likely to meet the Independent School Standards once registered. This allows parents, local authorities and others to have confidence that an institution provides a suitable broad education and is safe.

Material changes may affect an institution's ability to meet relevant standards. For example, an unsuitable new proprietor could create safeguarding risks, the institution may not be prepared to provide a suitable education to new year-groups and increasing capacity could create health and safety risks. The government, therefore, needs to be able to do appropriate due diligence before approving such changes, which can include inspection.

Why is there a need for regulatory reform?

The proposed measures will mean that it is a material change for an institution to become (or cease to be) specially organised to cater for students with special educational needs or to change the type or types of special educational needs it caters for.

In addition, the measures will create a vehicle to clarify what kinds of special educational needs there are for the purposes of the material change regime. Our intention is that the types of special educational needs will reflect those currently listed in the SEN Code of Practice and asked for as part of the process to register a new independent school.

This will provide greater clarity and transparency to parents, commissioners and inspectorates when both choosing and inspecting independent educational institutions.

Children's Wellbeing and Schools Bill: Independent education setting and safeguarding: Ofsted powers of entry and investigations

Chapter 1 of Part 4 of the Education and Skills Act 2008 ("the 2008 Act") already contains several criminal offences that may be committed by those responsible for independent schools. The most common offence in this area is the offence under section 96 of the 2008 Act – conducting an unregistered independent school. His Majesty's Chief Inspector (HMCI) may already inspect settings suspected of being the site of this offence. These measures increase HMCI's ability to carry out these inspections and identify criminal behaviour which may put children at risk.

What does this measure do and why do we need it?

HMCI may already inspect suspected unregistered independent schools. The purpose of these inspections is to gather evidence to determine whether a criminal offence is being, or has been, committed, or whether there is evidence of the commission of a relevant offence on the premises.

There are existing powers available to Ofsted in section 97 of the 2008 Act. The government's experience is that these powers are too limited to allow effective investigations of some settings which are operating unlawfully; it is too easy for those committing a criminal offence to prevent the discovery of evidence of this and so avoid prosecution. A stronger investigation regime is needed to allow inspections of suspected unregistered independent schools or breaches of relevant restrictions in registered independent schools to proceed and find evidence of wrong-doing, and those responsible to be identified and prosecuted where this is appropriate.

What is the effect of the legislation?

This legislation will permit HMCI to enter and investigate premises in certain specified situations. These powers will not apply to inspections where the question is of a school's performance and will only apply when HMCI has a reasonable cause to believe that one (or more) of the relevant offences specified in the legislation are being (or have been) committed, or evidence of this may be found. In these cases, the legislation expects HMCI to seek agreement to enter and investigate a premises but also allows HMCI to apply for a warrant to facilitate entry into settings and undertake an investigation. HMCI will also have the ability to "search" rather than inspect, and require people present during an investigation to provide specified information or assistance. These powers are necessary to support the identification of criminal activity.

How will this work in practice?

HMCI may already inspect suspected unregistered (and therefore unlawful) independent schools (under section 97 of the 2008 Act). This measure will allow HMCI to conduct a much more thorough investigation in certain specified circumstances and only in those circumstances.

These proposals will permit HMCI during these inspections to act in ways proportionate to their role determining whether a criminal offence is being committed. This measure addresses key weaknesses in the current inspection regime.

These powers should ensure that in all cases HMCI is able to determine whether a criminal offence which puts children at risk of harm is taking place.

Key questions and answers

Will these powers apply to all inspections of independent schools?

No. The legislation is clear that these powers are only available to investigate the commission of the relevant offences specified in the legislation. These powers will not be available to Ofsted when inspecting independent schools against the Independent School Standards or any other routine activity.

It is our experience that the majority of inspections conducted to date into whether one (or more) of the relevant offences is being committed proceed on the basis of consent and cooperation. We anticipate that this will continue even after Ofsted has been granted the enhanced powers in this measure.

What are the relevant offences?

The relevant offences are specified in the legislation. These are:

- Conducting an unregistered independent educational institution (an offence under section96 of the Education and Skills Act 2008).
- Failure to comply with a relevant restriction imposed by (i) the Secretary of State, (ii) a justice of the peace or a Tribunal (offences under section118, section121 and section127 of the Education and Skills Act 2008.
- Providing education at an institution when registration if suspended (a new offence created by the Bill).
- Providing boarding accommodation in breach of a stop boarding requirement (a new offence created by the Bill).
- Obstruction or failure to comply with an investigation (a new offence created by the Bill).

- Breaching a prevention order imposed on an individual who has previously been found guilty of conducting an unregistered independent school (a new offence created by the Bill.

How many unregistered independent schools are there and how many children attend unregistered schools?

Those conducting an unregistered independent school are committing a criminal offence. The department does not retain data about the number of unregistered schools operating in England nor the number of children attending these settings.

Since 2016 Ofsted have identified 172 unregistered independent schools. The real number is likely higher but limitations in the existing inspection powers mean that these go undetected.

Children's Wellbeing and Schools Bill: Independent education setting and safeguarding: Ofsted information sharing

Under section 106 (s.106) of the Education and Skills Act 2008 ("the 2008 Act") the Secretary of State may approve (or withdraw approval from) a body to carry out inspections of registered independent educational institutions (instead of by His Majesty's Chief Inspector of Education, Children's Services and Skills – HMCI – who heads Ofsted). Approved bodies are known as 'independent inspectorates'.

At present, the Independent Schools Inspectorate (ISI) – a body approved to inspect "association" independent schools – is the only independent inspectorate.

This measure facilitates joint working between ISI and Ofsted by clarifying that information held by HMCI can be passed to ISI (or another independent inspectorate, if there were one) for the purposes of assisting inspections by the latter. This measure also varies the existing obligation placed on Ofsted to report at least annually on the performance of inspectorates approved under s.106, and a similar obligation already placed on Ofsted through the Children Act 1989. These obligations, found in s107 of the 2008 and s87BA of the Children Act 1989, are being replaced with a more flexible approach, allowing the Secretary of State to require such reports as and when she wishes and on all independent inspectorates or only one. This will allow more frequent and/or precise reports to be commissioned if necessary.

What does this measure do and why do we need it?

This measure makes two changes to the relationship between Ofsted and the independent inspectorates, currently only ISI. The need for these measures is informed by the government's experiences of how best Ofsted and ISI interact. Two distinct changes are proposed to that relationship, both with the aim of facilitating closer working between Ofsted and ISI.

First, the existing obligation on Ofsted to report at least annually on the other independent inspectorates is being replaced with a more flexible obligation which permits the Secretary of State to require such reports as she desires – either more or less frequently. Second, any ambiguity about whether Ofsted (as a public body) can share information directly with ISI is being removed. This will allow the freer flow of information between both inspectorates and facilitate closer and joint working for the purpose of keeping children safe.

Both measures aim at clarifying and strengthening the relationship between both inspectorates, to improve the performance of both.

What is the effect of the legislation?

This proposal makes changes to s.107 of the 2008 Act (and a similar change to s.87BA of the Children's Act 1989), which change how Ofsted is required to interact with the independent inspectorates and report on the performance of both the 'independent inspectorates' of private schools and inspectors appointed under s87 of the Children's Act 1989.

How will this work in practice?

It is already the case that Ofsted and the Independent Schools Inspectorate ("ISI") work closely to ensure the protection and wellbeing of children in independent schools. These changes facilitate the smoother working of that relationship.

The first practical impact will be to remove HMCI's existing obligation to report on the Independent Schools Inspectorate. These reports are currently published annually and are found here: Link. Instead, HMCI will be required to report as and when commissioned by the Secretary of State.

The second practical impact will simplify how information held by Ofsted on an independent school, for instance, information on historic safeguarding risks, is passed to ISI to inform their inspection work. At present, the department must act as a conduit for such information meaning that information-sharing can be inefficient. This measure removes this unnecessary step in the process.

Key questions and answers

Why is a private organisation like the Independent Schools Inspectorate involved in inspecting schools?

The current system of inspection has its genesis in the Education Act 2002 ("Act 2002") which introduced regular inspections of independent schools against standards set out in regulations.

At that time the Independent Schools Inspectorate (ISI) had been successfully inspecting schools under an informal agreement for over four years. The 2002 Act recognised ISI's experience in this area and provided the statutory basis for it to continue to inspect certain independent schools.

ISI approval as an inspectorate is kept under review and ISI was most recently approved to inspect certain independent schools in 2023.

Are inspections by Ofsted and ISI the same?

Both inspectorates inspect against the Independent School Standards (ISS) which all independent schools are required to meet at all times.

Inspectorates are responsible for developing their own inspection frameworks. Ofsted and ISI operate different frameworks, with different quality judgements but we are content that each inspectorate provides schools with a vigorous inspection which prioritises students' wellbeing. ISI's framework must be approved by the Secretary of State as a condition of its approval.

No matter which inspectorate or framework is used for independent school inspection the consistent element is judging whether schools meet the standards laid out in regulations – the ISS. All independent schools must meet these standards at all times or face regulatory and enforcement action.

Children's Wellbeing and Schools Bill: Teacher misconduct

Broaden the teacher misconduct regime's scope to explicitly capture anyone who has ever been 'employed or engaged' in teaching work in a relevant setting.

Allow the Teaching Regulation Agency (TRA) to investigate and prohibit teachers employed or engaged in teaching work in a wider range of settings, in particular FE colleges, (and those designated as being within the FE sector under the Further Education Act 1992); Special Post 16 Institutions (SPI's) and Independent Training Providers (ITPs) ; online education providers and, Independent Educational Institutions (IEIs) that are not schools.

Allow department officials to make referrals to the TRA if relevant information is brought to their attention.

What does this measure do and why do we need it?

It was always intended that the teacher misconduct regime should capture those individuals who have committed serious misconduct even when they were not employed or engaged in teaching work (e.g. teacher on a career break, supply teachers or those who teach infrequently) and who are likely to try and return to the classroom. One of the proposed changes would make it clear that the Secretary of State is able to consider a referral in respect of those who have previously taught and who commit serious misconduct whilst not in teaching, ensuring that where appropriate they are prevented from returning to the classroom in the future. The Secretary of State, by way of the Teaching Regulation Agency, always considers whether a case against a teacher is in the public interest, all factors considered and will continue to do so.

The main change will be that the TRA will be able to prohibit from teaching work individuals who have committed serious misconduct and who are employed, or have been employed, in FE, SPIs, ITPs, online education providers and Independent Education Institutions (IEIs) that are not schools. It is important that the teacher misconduct regime keeps in step with current policy and practice in the different ways that young people are now being educated. Bringing more settings within scope of the regime would enable the Secretary of State to consider misconduct across the broad range of education settings where young people access their education. It will also ensure that these settings do not employ prohibited teachers. This will require these in-scope settings, by statute, to consider making a referral to the TRA in cases where an individual has been dismissed for serious misconduct.

There are instances where a department official may undertake work which uncovers serious misconduct, for example the officials may uncover fraud during an academy

audit, or the Standards and Testing Agency may uncover serious exam malpractice during an investigation. Enabling the Secretary of State to consider referrals of serious misconduct without the need for an external referral, will bring about more immediate consideration of these cases without the need for an employer to make a referral. It will also remove the need to remind employers and others of the option to refer cases, which does not always guarantee a referral will be made (particularly in cases where potential referrers assume that either someone else will refer or that the matter is so high profile that the Secretary of State will already be aware).

What is the effect of the legislation?

Existing legislation governing the teacher misconduct regime limits the ability of the Secretary of State to investigate cases of serious misconduct and does not allow cases to be investigated where the misconduct occurred whilst the individual was not teaching (even where there is likelihood that the individual may return to teaching). It allows misconduct to be investigated in relation to misconduct committed by individuals undertaking teaching work at some settings that educate pupils and students under the age of 19, but not all such settings, and does not permit misconduct to be investigated where it is uncovered by the department officials in the course of their normal duties.

The proposed changes will broaden the scope of the regime and will ensure that serious misconduct can be considered by the Secretary of State regardless of when the misconduct occurred or whether the individual was teaching when the misconduct was committed.

The changes will also ensure that regardless of where a pupil or student under the age of 19 receives their education, they are protected and safeguarded by the teacher misconduct regime.

The changes will also mean that serious misconduct identified by the department officials can be referred to and investigated by the Secretary of State.

How will this work in practice?

The process for the teacher misconduct regime will continue to operate in the same way as it currently operates, with the same transparent, published, underpinning guidance used by the Teaching Regulation Agency and the independent panels it convenes to consider cases of serious misconduct.

Headteachers, governors, and those responsible for the running of the setting are responsible for appointing teachers and ensuring that they are aware of the standards of behaviour expected of them. They are also responsible for managing teachers in relation to their competence and conduct and for taking action to address underperformance and

misconduct in their settings – which includes considering making referrals to the Secretary of State to consider serious misconduct where appropriate.

The government will communicate with the settings that will be brought within the teacher misconduct regime, to ensure that they are aware of the regime and understand the duties it places on them (to not employ a prohibited teacher and to consider making a referral to the Teaching Regulation Agency where they dismiss a teacher for serious misconduct, or would have done had the teacher not resigned), and so that they are able in turn to communicate this to their teachers.

Additional information on delegated powers

We are adding “an online education provider” into the list, in the Education Act 2002, of education settings which are subject to the teacher misconduct provisions that are also set out in that Act.

We are also inserting a definition of “an online education provider” and giving the Secretary of State the delegated power to amend this definition in the future by regulation, rather than by primary legislation.

Online education provision has grown over the last few years and is continually evolving. The way in which this type of education is offered by providers and accessed by children and young people varies significantly.

In order to identify the types of provision that will be in scope of the teacher misconduct regime, the definition of ‘online education provider’ has been closely aligned with the criteria for the Online Education Accreditation Scheme, which was launched in January 2023. This means that the online education providers that will become subject to the teacher misconduct regime will be limited only to those that:

- Are registered with either Companies House or the Charity Commission in England.
- Provide education to at least one student of compulsory school age but under the age of 19 (or over 19 if they have an EHC plan) and live in England.
- Provide all or the majority of the education for these students.
- Are set up to deliver all or the majority of the education they provide online.

Whilst this may be a relevant definition to describe online education providers at the present time, the pace of change means that what online provision may look like in the future is unknown, and the definition of online education providers may quickly become outdated and need revision because it is no longer fit for purpose.

Therefore, the power to amend the definition by regulation enables the Secretary of State to update the definition if and when necessary. There is no further planned consultation on the delegated power described above.

Key questions and answers

How can you justify taking the power to make amendments to the definition by regulation?

We believe that the definition of an online education provider that we are proposing is the right definition to bring online education providers within the teacher misconduct regime at the present time. However, as this sector of education is evolving quickly, we need to ensure that the Secretary of State is able to adapt or amend this definition, if necessary, in the future, more swiftly than could be done through primary legislation. This in turn will ensure that the children and young people who receive their education from an online education provider continue to be given the same level of protection and safeguarding as those who study at other types of education providers.

How will you make sure that any changes to the definition are appropriate and are catching the right online education providers?

We will monitor how the Online Education Accreditation Scheme operates and evolves and consider any changes in the sector which might need to be reflected in the definition of an online education provider. We will also work closely with the sector to help identify any changes that might be necessary to ensure that the definition remains appropriate.

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of an online education provider. We will also work closely with the sector to help identify any changes that might be necessary to ensure that the definition remains appropriate.

Children's Wellbeing and Schools Bill: School teachers' qualifications and induction

This measure will reaffirm the professional status of teaching and emphasise the importance of high-quality teaching in outcomes for children, by ensuring that new teachers entering the classroom have, or are working towards, Qualified Teacher Status (QTS). The measure will also extend the requirement of statutory induction to newly qualified teachers in academies for them to work as a teacher there.

What does this measure do and why do we need it?

To ensure that children have access to well-trained, qualified teachers, the government is amending section 133 of the Education Act 2002 to extend to academies the requirement to employ teachers with QTS for 'specified work'. The approach being taken will allow the Secretary of State to specify in regulations the types of academies to which section 133 should apply. The specified primary and secondary academy settings will be subject to the same legal requirement to employ teachers with QTS as currently applies to primary and secondary local authority-maintained schools and special schools. The requirement for teachers in academies to have QTS will only apply to teachers employed after the implementation date.

Alongside this, legislation will similarly extend the statutory induction requirement for Early Career Teachers (ECTs) working in specified primary and secondary academy settings. This will ensure ECTs have the best possible support and training to support their professional development as they enter the profession. The statutory induction requirement will not apply retrospectively to any teachers already in the system who gained QTS prior to the date when the requirement for ECTs working in specified academies to have satisfactorily completed an induction comes into effect.

Extending these requirements to include academies will ensure that children benefit from well-trained and professionally qualified teachers; and new teachers in state schools in England are prepared for a successful teaching career through high-quality, regulated initial teacher training followed by early career statutory induction which supports their development.

What is the effect of the legislation?

Amending section 133 of the Education Act 2002 will extend to academies the requirement for teachers to be qualified. The definition of 'schools' will be expanded to include 'academies of a description specified by the Secretary of State in regulations under this section'. This will establish a regulation-making power whereby the Secretary

of State will be able to specify in regulations which academies will be subject to the requirements of section 133.

Amending section 135A of the Education Act 2002 will extend the requirement of satisfactorily completing induction to teachers in academies for them to work there as a teacher. The definition of 'relevant school' in section 135A(4) will be expanded to include 'academies of a description specified by the Secretary of State in regulations under this section'. Amending section 135A will extend the existing delegated power in section 135A and will also establish a regulation-making power whereby the Secretary of State will be able to specify in regulations which academies will be subject to the requirements of s135A.

How will this work in practice?

The requirement will come into affect from 1 September 2026, which will give schools reasonable timescales to prepare for any necessary changes to their approach to teacher recruitment and induction. Guidance will be made available to schools ahead of this date, to encourage them to start to consider how they will ensure that the teachers who they recruit have QTS or are working towards it.

Primary and secondary local authority-maintained schools, and special schools, in England are already legally required to employ teachers with QTS, subject to exemptions laid out in the Education Regulations (Specified Work) (England) 2012.

Employing schools must check a teacher's record as part of safeguarding checks prior to employment. Records can be checked for anyone with a teacher reference number (TRN) using the GOV.UK 'Check a teacher's record' service. This record indicates whether a teacher has QTS and has satisfactorily completed statutory induction.

Under section 497 of the Education Act 1996, the Secretary of State can issue a direction to a maintained school to enforce compliance with a legal requirement if it becomes aware of non-compliance through inspection or otherwise. As per Clause 43 of this Bill (Academies: power to secure performance of proprietor's duties etc), an equivalent measure for academies will be introduced whereby, if an academy does not comply with a legal requirement, the Secretary of State can issue them with a direction stating they are not in compliance and give them directions as to how compliance should be secured. This measure may be used to enforce the QTS requirements.

Additional information on delegated powers

Qualified Teacher Status (QTS): Section 133(1) of the Education Act 2002 enables the Secretary of State to make regulations which may provide that 'specified work' may not be carried out by a person in a school unless they are a qualified teacher or satisfy

specified requirements. Section 133(6) of the 2002 Act sets out that these regulations apply to maintained primary, secondary and special schools in England.

We are amending section 133(6) to confer on the Secretary of State the power to set out in regulations the type of academy settings the QTS requirement will apply to.

This will extend the existing delegated power in section 133(1) to allow for regulations to be made in respect of specified primary and secondary academies. This will bring academies in line with maintained schools and will standardise the approach across state-funded schools in relation to the requirement that new teachers to the classroom, other than those employed under the exemptions currently laid out in the Education Regulations (Specified Work) (England) 2012, either have, or are working towards, QTS.

Statutory Induction: Regulations may be made under section 135A of the Education Act 2002 to make provision for the conditions of statutory induction, including which teachers are in scope, how induction is conducted and who is responsible.

The effect of this clause is to extend the existing delegated power in section 135A so that the same power will allow for regulations to be made in respect of specified primary and secondary academies.

We are amending section 135A(4) to confer on the Secretary of State the power to set out in regulations the type of academy settings the induction requirement will apply to.

Regulations will set out that the new requirement on teachers working in academies to satisfactorily complete induction only applies to new teachers who gain QTS after the requirement comes into force.

Any teacher who gains QTS prior to the date this requirement comes into force will be exempt from the new statutory induction requirement. Regulations will also be updated to extend provisions restricting induction in maintained schools in special measures to also apply to specified academies.

Key questions and answers

Qualified Teacher Status (QTS): Most teachers in English state schools have QTS, so why is the government focused on this, rather than addressing the shortage of teachers in our schools?

We know that high quality teaching is the most important in school determinant of pupil outcomes, which is why we are ensuring that new teachers have or are working towards QTS.

We remain focused on the recruitment and retention of teachers. We are committed to recruiting 6,500 additional teachers across mainstream and specialist schools and our colleges over the course of this Parliament. We are committed to keeping great teachers in our schools - one of the first actions of the government was to ensure teachers received a 5.5% pay rise from September 2024.

Induction: Why will experienced teachers be required to undertake a statutory induction period especially if they have recently gained QTS and demonstrated that they have met the Teachers' Standards?

Regulations will specify that the new requirement to undertake induction will only be required of new teachers in academies, who gain QTS after the law comes into effect. If a teacher gained QTS prior to the law coming into effect, they will not be affected.

Induction bridges initial teacher training and a career in teaching, ensuring teachers meet standards and are fully supported to be well-trained in their profession. Induction, alongside QTS, is an equally essential requirement of the statutory teacher development framework, designed to ensure teachers meet standards and are fully supported to be well-trained in their profession, regardless of the setting they are working in.

To ensure induction is proportionate, appropriate bodies may reduce the length of the induction period to a minimum of one term (based on an academic year of three terms) if they are satisfied that the teacher has met the Teachers' Standards.

Children's Wellbeing and Schools Bill: Academy schools: National curriculum

This measure introduces a requirement for academies to teach the National Curriculum in the same way as other state-funded schools. It will be commenced following the Curriculum and Assessment Review and the introduction of a revised National Curriculum.

What does this measure do and why do we need it?

Maintained schools are legally required to follow the National Curriculum, which sets out the subjects and programmes of study (what pupils must be taught at each key stage of the National Curriculum) which schools are required to cover. Currently, academies do not have to teach the National Curriculum, unlike maintained schools, although they are required to meet the curriculum requirements of section 78 of the Education Act 2002 – offering a "balanced and broadly based curriculum".

The current discrepancy between maintained schools and academies leaves potential for inconsistencies in education standards, opportunities and outcomes for pupils from different types of schools. The government has therefore committed to requiring all state-funded schools to teach the reformed National Curriculum which will be developed following the Curriculum and Assessment Review. This measure brings academies into the scope of existing National Curriculum legislation, matching the curriculum requirements for maintained schools.

What is the effect of the legislation?

Following the Curriculum and Assessment Review recommendations and the implementation of reforms, this measure will require academies to teach the revised National Curriculum, in the same way as other state-funded schools.

Every child should be taught a consistent core curriculum with an excellent foundation in reading, writing and maths, and support to develop essential digital, speaking, and creative skills. This measure will create a common entitlement for all children in state-funded schools, giving assurance to parents of the minimum curriculum their child will be taught, regardless of the school they attend.

How will this work in practice?

The measure will be commenced after the Curriculum and Assessment Review has concluded and its recommendations have been consulted on and reflected in the subject Programmes of Study.

We recognise the importance of giving schools – of all types – and teachers sufficient time to plan.

Additional information on delegated powers

The Education Act 2002 provides a framework for National Curriculum requirements. This measure applies those requirements, which already apply to maintained schools, to academies. It extends existing delegated powers and does not take new ones.

Using delegated powers in this way ensures that the curriculum itself can change at pace in response to changing educational, social, technological and economic needs.

Key questions and answers

Will academies have to teach the National Curriculum as soon as the Curriculum and Assessment Review has concluded?

No. The government will not require academies to teach the current National Curriculum at all. It will only commence the measure once the revised National Curriculum has been developed, following the recommendations of the Curriculum and Assessment Review. The Review will publish an interim report in early 2025 and aims to publish the final report with recommendations in Autumn 2025, though it will take several years after that for its recommendations to be implemented.

Will making academies teach the National Curriculum stifle their innovation and freedom?

No. Following the recommendations of the Curriculum and Assessment Review, we will make sure we have a National Curriculum that empowers, not restricts, all schools, including academies. The revised curriculum will ensure that teachers have the flexibility to innovate and adapt to the needs of their pupils.

Children's Wellbeing and Schools Bill: Academy schools: education provision for improving behaviour

A measure to extend, to academies, legislation that allows maintained schools to temporarily direct pupils to another location (usually another education setting) in order to improve their behaviour (known as off-site direction). The intention is to place academy schools on the same statutory footing as maintained schools to ensure consistency of practice.

What does this measure do and why do we need it?

The statutory power of off-site direction, under s.29A of the Education Act 2002, does not currently apply to academy schools, who can instead arrange off-site provision for similar purposes under their general powers. The existing legislation currently only applies to maintained schools and this measure will place academy schools on the same statutory footing as maintained schools.

This legislation will allow academy schools to direct pupils off-site to improve their behavior, as it currently exists for maintained schools. The legislation is not intended to change practice, but to help regularise the legal framework between academies and maintained schools' powers. This is to ensure that all state-funded mainstream and special schools are subject to the same statutory requirements in using off-site direction, including processes to protect pupils and review off-site direction placements.

What is the effect of the legislation?

By placing academies and maintained schools on the same statutory footing, this legislation will reinforce that all such schools are subject to the same limits and controls around the use of off-site direction, and subject to the same statutory requirements in terms of how pupils move around the school system. In doing so, the amendment supports wider efforts to consistently safeguard pupils and promote educational outcomes, ensuring similar scrutiny and transparency and guarding against misconduct or malpractice.

How will this work in practice?

Academy schools can already arrange off-site provision under their general powers. This legislation regularises the legal framework between both academy and maintained schools, ensuring that academies have the same explicit power as maintained schools to direct pupils off-site. In using this power, academies must adhere to the same statutory safeguards as maintained schools such as:

- The requirement for academy schools to notify local authorities (where the pupil has an Education, Health and Care (EHC) plan).
- Establishing the objectives of the placement.
- The requirement for parents to be fully informed.
- For off-site direction placements to be kept under review.

Additional information on delegated powers

This legislative measure will have delegated powers with this clause giving the Secretary of State the power to make regulations extending the power of off-site direction, and the associated regulations, to cover academy trusts as well as maintained schools. The intention is for the Education (Educational Provision for Improving Behaviour) Regulations 2010 to be amended to apply their existing provision to academy schools in the same way as they currently apply to maintained schools, without any other substantive change in policy or effect. The subject-matter to be covered by the regulations in relation to academy trusts will be the same as for maintained schools including ensuring that academies follow the same statutory safeguards as maintained schools.

Key questions and answers

Why does the use of off-site direction not require parental consent?

Off-site direction does not require parental consent as it is a temporary measure to improve behaviour enabling schools to swiftly commission a placement into another appropriate mainstream school or alternative provision to support a pupil's behaviour and reduce the likelihood of a school exclusion.

The statutory guidance on Suspension and Permanent Exclusion and Alternative Provision guidance makes clear that parents should be informed about the placement: why, when, where, and how it will be reviewed, ensuring it is a collaborative process leading to maximum support for the pupil during this process.

Why do academies need this power now? And why did they not have it before?

Academy schools can already arrange off-site provision under their general powers. This measure places academy schools on the same statutory footing as maintained schools, thereby regularising the legal framework between both institutions and ensuring greater scrutiny and transparency against misconduct or malpractice.

By creating a baseline between academies and maintained schools, this amendment will reinforce that all schools are subject to the same regulatory requirements and safeguards when directing pupils off-site to improve their behaviour.

Children's Wellbeing and Schools Bill: Academies: Power to Secure Performance of Proprietor's Duties etc

This measure will create a power to direct academy trusts that are not complying with their legal duties or are acting or proposing to act unreasonably. The Secretary of State has comparable powers in relation to the governing bodies of maintained schools (sections 496 and 497 of the Education Act 1996). This measure will support the proportionate enforcement of other key measures introduced in this Bill, such as those relating to the curriculum and admissions.

What does this measure do and why do we need it?

The current approach when an academy trust is not complying with its legal obligations is based on contractual arrangements between the Secretary of State or the Department for Education and the individual academy trust.

Failure of an academy trust to comply with its legal duties will be a breach of its funding agreement. As a result, the department has the power to issue a Termination Warning Notice. If the trust fails to meet the conditions specified in the Termination Warning Notice, a Termination Notice may be issued. In some circumstances, where a trust is in breach of a legal requirement set out in the Academy Trust Handbook, the Secretary of State may issue a Notice to Improve requiring the trust to remedy the breach. In the event that the trust did not comply with the NtI, the Secretary of State could then issue a Termination Warning Notice and then a Termination Notice if the trust failed to meet the Termination Warning Notice conditions. In practice, issuing a Termination Notice would lead to the removal of the relevant academy or academies from their existing academy trust and transferring them to another trust and could ultimately lead to the closure of the trust. The process of transferring an academy to a different trust can be disruptive for pupils and parents.

Currently, the Secretary of State has no other alternative intervention mechanism to ensure that academy trusts comply with their legal duties. This means that, in all cases of academy trusts' non-compliance, the Secretary of State can only take the action of issuing a Termination Warning Notice with a view to potentially issuing a Termination Notice to secure compliance.

Academy trusts have a wide range of legal duties and powers and commencing the process leading to the eventual termination to secure compliance is not always an appropriate, effective or a proportionate course of action.

Therefore, this measure will provide additional and proportionate intervention which aligns with that which already exists in relation to maintained schools.

A direction issued by the Secretary of State under this power may be enforced by a Court.

What is the effect of the legislation?

The purpose of this provision is to create a new legal route that allows the Secretary of State to issue a compliance direction to academy trusts that have breached their legal duties or are acting unreasonably. It will provide a straightforward and proportionate remedy where there is a specific breach or incident of unreasonable behaviour.

This provision applies to all relevant duties and powers of the academy trust.

Currently, the Secretary of State has similar powers in relation to schools maintained by local authorities, as outlined in sections 496 and 497 of the Education Act 1996. This new power will enable the Secretary of State to issue directions in cases of non-compliance and particularly when issuing a Termination Warning Notice would not be appropriate. This will ensure that the Secretary of State can secure compliance more quickly without the unnecessary disruption to parents and children faced when transferring an academy to a different trust.

How will this work in practice?

Where the department considers that a trust is in breach of a relevant duty or acting or proposing to act unreasonably, officials will write to the trust explaining that the Secretary of State is minded to issue a direction and asking the trust to make representations. In the event that is not satisfied with the trust's response, the department may issue a direction, instructing the trust what it must do in order to ensure compliance. The following are examples of the circumstances in which a direction might be issued:

- If the academy trust's school uniform policy does not conform to the new school uniform requirements for a limit on branded school uniform items being introduced under this Bill, the Secretary of State would issue a direction requiring the academy trust to update and implement its policies in line with the legal obligations.
- The academy trust has failed to deal with a parental complaint and has not followed its complaints process. Therefore, the issue may be escalated to the department to consider. In such cases the Secretary of State could issue a compliance direction to ensure the trust addresses the complaint appropriately and or address the readdress the complaint ensuring due process is followed.

In these examples, if the issues are resolved, no further intervention action will

take place. If not resolved, or if there is non-compliance with the restrictions in the direction, the Department for Education will consider taking further intervention action, which could result in a Termination Notice being issued or formal legal action to enforce compliance.

Additional information on delegated powers

The compliance direction is a delegated power as it is a power to make an administrative direction, but it is not legislative in nature, in that it is not a power to make rules that effect a class of persons. It is an administrative power that will apply in specific cases.

The government believes the Secretary of State is best placed to decide whether a compliance direction should be issued, as she does with the equivalent directions for maintained schools under sections 496 and 497 of the Education Act 1996.

Key questions and answers

Why is this new compliance direction power needed for the Secretary of State?

These new compliance powers are needed to provide a proportionate way of ensuring that academy trusts meet their legal duties. The new power will provide a way of ensuring that trusts act reasonably when exercising their powers for which the Secretary of State cannot currently issue a Termination Warning Notice. The power to issue a compliance direction will allow for timely and appropriate intervention in cases of non-compliance or unreasonable behaviour, ensuring that issues can be addressed without resorting to measures like issuing a Termination Warning Notice. This helps maintain high standards across all academies and ensures that academy trusts are held accountable for their responsibilities, ultimately protecting the interests of students and parents and carers.

How will the compliance direction power work?

The new compliance direction power allows the Secretary of State to intervene when an academy trust has failed to comply with its legal obligations or is acting unreasonably in relation to those obligations.

The power allows the Secretary of State to specify what actions the trust must take to rectify the failure. Before exercising the power, the Secretary of State will invite representations from the trust and, where relevant in all but exceptional circumstances.

Academy trusts will be required to comply with the direction under this power. If an academy trust fails to comply it could result in a mandatory order or the issuing of a Termination Warning Notice.

Children's Wellbeing and Schools Bill: Repeal of Duty to make Academy Order in relation to School Causing Concern

This measure seeks to convert the Secretary of State's duty to issue an academy order to a school maintained by a local authority identified by Ofsted as being in a statutory category causing concern, into a discretionary power.

What does this measure do and why do we need it?

This measure will change the current duty to issue academy orders to the most underperforming maintained schools into a discretionary power.

Currently the Secretary of State is under a duty to issue an academy order to all maintained schools that are judged by Ofsted to be in a category causing concern (schools requiring special measures or requiring significant improvement) so that they can be converted into sponsored academies.

The existing duty to issue academy orders to maintained schools causing concern has meant that converting into sponsored academies is the only intervention route for these schools. However, this forced academisation has not always been effective and can be highly disruptive for pupils, staff and parents.

Repealing the duty to issue academy orders will allow the Secretary of State the flexibility to determine what the most appropriate action is to drive school improvement in each individual case. For the worst performing schools, we expect that the Secretary of State will continue to issue an academy order. However, where academisation may not be necessary, this measure means that the Secretary of State can support school improvement through other means, including the deployment of Regional Improvement for Standards and Excellence (RISE) teams, as committed to in the government's manifesto.

What is the effect of the legislation?

This government has committed to removing barriers to opportunity and raising school standards to ensure the school system is fair for every child, no matter their background. The introduction of a discretionary power will enable a more nuanced and targeted approach to intervention and school improvement, thereby advancing opportunities for all pupils.

This legislative proposal will positively impact maintained schools by ensuring that they can benefit from different approaches to suit their particular circumstances, rather than

defaulting to an academy order. Where a school can improve without academisation, this measure means that the Secretary of State can support school improvement through other means including the deployment of RISE teams.

Ofsted's Single Headline Grades (SHGs) have now been abolished; however, Ofsted still has a duty to report where schools are in a category causing concern.

How will this work in practice?

We expect the number of schools in scope to be low, as less than 2% of schools are currently in a category causing concern. Where Ofsted identifies that a school is causing concern the Department, on behalf of the Secretary of State, will take action to either support the leadership to improve the school or change who governs the school, whichever is more appropriate in the context to drive high standards. This approach ensures that targeted support is provided to address specific challenges, fostering an environment where students can thrive. By focusing on tailored interventions, we will enhance educational outcomes and create a positive and effective learning environment.

We will continue to change who governs a school where the evidence tells us it is the best approach to achieve improvements. However, repealing the duty to issue academy orders to schools identified as requires significant improvement or special measures will allow the Secretary of State the flexibility to take the most appropriate action to drive school improvement in each individual case. For those schools that require more intensive support but not academisation, our RISE teams will work as partners to address weaknesses and empower sustained improvement.

Additional information on delegated powers

The power to make an academy order is a delegated power as it is a power to make an administrative order. This measure, therefore, amends an existing delegated power. The power is not a legislative one, in that it is not a power to make rules effecting a class of persons. It is an administrative power that applies in a particular case.

The Government believes the Secretary of State is best placed to take these administrative decisions, as she has been doing under the existing academy order powers.

Key questions and answers

Does this mean that schools will no longer be directed by the Department for Education to become an academy?

No. It is important that the Secretary of State is able to act quickly and decisively when maintained schools are underperforming to secure improvement. In some cases, this will involve directing the school to convert to an academy to achieve the necessary improvements. We will continue to move academies to stronger trusts where that is necessary.

How will this new measure benefit-maintained schools?

The new measure will benefit maintained schools by helping to ensure that they receive the support that they need to improve, taking account of their individual circumstances. In some cases, this will mean that they transfer to new management, by joining a high-quality multi academy trust. In others, where they have the capacity to improve under their current management, they will receive targeted support from RISE teams.

Children's Wellbeing and Schools Bill: Academy schools: Extension of statutory pay and conditions arrangements to Academy teachers

A measure to extend the statutory school teacher pay and conditions framework to include teachers in academy schools and alternative provision academies.

What does this measure do and why do we need it?

As part of broader changes to create a core offer and a school system more rooted in collaboration and partnership, this measure will extend the statutory pay and conditions framework to include academy schools and alternative provision academies, creating one overarching pay and conditions framework to spread best practice across all state schools. Whilst we understand that the majority of academy trusts choose to follow the statutory framework, and only some trusts have materially deviated on pay and conditions, this change will mean that a school's ability to innovate their pay and conditions offer will not be determined purely by its administrative structure, meaning all state schools will have the same ability to attract and retain the best teachers. Furthermore, all prospective and current school teachers will benefit from a transparent and guaranteed core pay and conditions offer, which is subject to scrutiny and consultation through the independent pay review process.

To create one overarching pay and conditions framework across all state funded schools, Part 8 of the Education Act 2002 needs to be amended.

What is the effect of the legislation?

These clauses extend the application of Part 8 of the Education Act 2002 to academy schools and alternative provision academies, allowing the Secretary of State to determine academy teacher remuneration and conditions of employment following consideration of a report prepared by the School Teachers' Review Body (STRB). This will largely mirror the provisions that currently exist in the maintained school sector. The clauses will define the types of academy and the specific (teaching) staff who will be within the statutory framework. It will require Academy Trusts to take account of any relevant guidance that the Secretary of State issues in relation to pay and conditions and it will expand the list of statutory consultees, who provide evidence to the School Teachers' Review Body as part of the pay review process, to include representatives of academy trusts

How will this work in practice?

As explained in the previous section, teachers employed in academy schools and alternative provision academies will be subject to the statutory School Teachers' Pay and Conditions Document, which is made by the Secretary of State following consideration of a report from the independent School Teacher Review Body. However, we recognise the good practice that academy trusts have developed over the years, and we are committed to making sure that best practice from both academy trusts and maintained schools is spread across the system. That is why, at the appropriate time, we will ask the School Teachers' Review Body to consider additional flexibilities to make the statutory framework most effective for all schools before requiring academy trusts to comply with the framework. This means that academy teachers won't be affected by the provisions until the department has considered what additional flexibilities are needed through the pay review process and therefore following consultation with statutory consultees, giving stakeholders the opportunity to provide evidence on what changes they think are needed.

After Royal Assent, the Secretary of State will decide when to remit the School Teachers' Review Body to consider what appropriate changes are needed to enable best practice across the school system. Representatives of the academy sector will be included in all subsequent statutory consultation and once the applicable School Teachers' Pay and Conditions Document (STPCD) is published, all academy trusts will be required to comply with the statutory framework within it.

This will happen through secondary legislation, known as the Pay Order, which gives legal effect to the School Teacher Pay and Conditions Document. The updated School Teacher Pay and Conditions Document will outline the pay and conditions requirements both academies and maintained schools will be expected to follow.

Additional information on delegated powers

The existing delegated powers allow the Secretary of State to determine remuneration and other conditions of employment for teachers in maintained schools - this will be extended to school teachers in academy schools and alternative provision academies.

Key questions and answers

Why are you making this change if most academies already follow the statutory framework?

We know that most schools, including most academies, want this. It is important that all prospective and long-standing teachers can easily understand their pay and conditions offer. Even though, in practice, most academies do follow the statutory pay and conditions framework, the current system means that a teacher could expect different

terms and conditions, depending on whether they work in a maintained school or academy trust – there is no guarantee of a core offer for school teachers. Expanding the statutory framework to include academy schools and alternative provision academies will mean all state school teachers can expect a core pay and conditions package regardless of which school type they work in.

Why are you reducing academy freedoms over setting pay and conditions?

We recognise the good practice that academy trusts have developed over the years, but good practice should not be limited by administrative structures. These schools, like maintained schools, will be able to use flexibilities within the statutory pay and conditions framework to allow all schools to innovate and meet their local recruitment needs within a consistent and overarching framework. We will also consider how we can make changes to the framework to build more flexibility, over and above the core offer, to ensure good practice is not lost. This change will enable flexibility and best practice to flourish in all schools, rather than being determined by school type.

Children's Wellbeing and Schools Bill: Academy schools: Amendment on Extension of statutory pay and conditions arrangements to Academy teachers

It is the Government's intention to amend this measure in the Bill. The Government tabled an amendment on 28 January 2025. The amendment is subject to debate at Commons Committee stage.

The Government's objective has not changed – we will still create a floor with no ceiling by providing a core pay offer for teachers in state schools and enabling innovation to help all schools to attract the top teaching talent they need – but this amendment provides clarity as to how we deliver it.

The measure, if the government amendment is passed, will allow the Secretary of State to require academy schools and alternative provision academies to pay teachers at least a minimum level of remuneration set out in secondary legislation. This will be set at the same level as applies to maintained schools, through the School Teachers' Pay and Conditions Document (STPCD) each time it is updated, creating a consistent floor on pay for all state schools.

Beyond that the measure will require academy schools and alternative provision academies to have regard to the whole of the STPCD in determining the pay and conditions of their teachers. This means they must follow it unless they have a good reason not to. This will ensure an established foundation for all schools, while giving confidence that existing or future changes which benefit teachers and pupils will be able to continue.

When taken alongside the existing commitment to update and improve flexibility within the STPCD (which we will do using existing powers), this will deliver a floor and remove the ceiling for pay and conditions across state schools in England.

What does this amendment do and why do we need it?

The factor in schools that makes the biggest difference to a young person's education is high-quality teaching, but there are severe shortages of qualified teachers across the country. Our teachers are integral to driving high and rising standards and having an attractive pay and conditions framework is vital to recruiting and retaining excellent teachers for every classroom. Academies have made transformational change, and we want them to continue to drive improvement for all pupils, particularly for disadvantaged pupils.

That is why, as the Secretary of State has set out, we want to create a floor with no ceiling enabling healthy competition and innovation to improve all schools.

In summary, the measures in the Bill (as amended) and the changes we intend to make by way of secondary legislation following the Bill will mean that:

- All teachers have a guaranteed minimum pay offer;
- In a constrained teacher labour market, all state schools have flexibility to attract and retain teachers;
- Innovations which are making a positive difference can continue and spread.

We will also remit the School Teachers' Review Body to consider the benefit of further flexibilities for all schools following Royal Assent. We will be using existing powers to make these changes through secondary legislation, which is why we have not included a power to go through this process in the Children's Wellbeing and Schools Bill.

What is the effect of the legislation (if amended)?

The amended clauses will introduce three new powers and a duty in primary legislation.

This includes:

- A power to set a minimum level of remuneration by order for academy teachers in academy schools and alternative provision academies, creating the pay floor for those teachers. There is also a power to issue guidance concerning minimum pay level setting.
- A duty on academy proprietors to have regard to the School Teachers' Pay and Conditions Document and follow it, unless they have good reason not to. This will allow existing and future innovations which benefit pupils and staff to continue.
- A power to exclude certain people working in academy schools and alternative provision academies from scope e.g. support staff who will be covered by the School Support Staff Negotiating Body (SSSNB) once established.

The amended clauses will also define the types of academies and the specific (teaching) staff who will be within the statutory framework and will expand the list of statutory consultees, who can be asked to provide evidence to the School Teachers' Review Body and to the Secretary of State as part of the pay review process, to clarify that this process should take account of the views of proprietors of academies.

How will this work in practice?

Maintained schools are already required to follow the minimum of the pay bands in the STPCD and will continue to do so. Our subsequent reforms to the STPCD, which will happen through secondary legislation using our existing powers, will remove the maximum of the pay bands for maintained schools and provide additional flexibilities to enable healthy competition and innovation.

The power to set minimum remuneration levels for academy schools and alternative provision academies will come into effect two months after Royal Assent. After this time the Secretary of State can issue a pay order which sets out the minimum levels of pay that academy schools and alternative provision academies must follow. To create the pay order, the Secretary of State will remit the School Teachers' Review Body (STRB) to consider the minimum level of remuneration for academy teachers. This will be set at the same level as that which will apply to teachers in maintained schools, through the School Teachers Pay and Conditions Document (STPCD). Academy schools and alternative provision academies will only be required to pay their teachers in line with or greater than the minimum levels of remuneration set out in the pay order, once it has been made. This will be no earlier than September 2026.

The duty for academy schools and alternative provision academies to have regard to the STPCD will commence by regulations once we have remitted the STRB to consider and recommend changes to the STPCD, consulted on those and subsequently update the STPCD. This means that statutory consultees will be fully engaged on what those changes should look like before the duty takes effect. Academies will also know exactly what the framework looks like before being required to have regard to it. This will be no sooner than September 2026.

Additional information on delegated powers

The Secretary of State will have a delegated power to exclude certain types of school staff in academy schools and alternative provision academies from the teacher pay and conditions provisions. This will ensure that staff whose remuneration and pay and conditions are determined through other processes do not come within the statutory framework for teacher pay.

Key questions and answers

Why is this amendment needed?

This amendment provides clarity for the sector. Our objective - to create a floor with no ceiling by providing a core pay offer for teachers and enabling innovation to help all schools to attract the top teaching talent they need – remains the same.

What does it mean to have regard?

This means that academy schools and alternative provision academies must follow the School Teachers' Pay and Conditions Document unless they have a good reason not to do so, such as where the change would benefit both teachers and pupils.

Children's Wellbeing and Schools Bill: Co-operation on admissions and place planning

A measure to introduce new duties for schools and local authorities to co-operate with each other regarding admissions and for schools to co-operate with local authorities regarding place planning.

What does this measure do and why do we need it?

We are introducing new duties for mainstream state schools and local authorities to co-operate regarding their respective school admissions functions and for mainstream, special and alternative provision state schools to co-operate with local authorities regarding their place planning functions. The onus will be on schools and local authorities to work together constructively on these issues so that their statutory responsibilities can be fulfilled.

The functioning of the admissions and place planning system is dependent on effective co-operation between schools and local authorities. Examples of where co-operation is needed include:

- Local authorities and schools developing and agreeing the local area's Fair Access Protocol to ensure that unplaced and vulnerable children (e.g. children with special educational needs and disabilities (SEND) and children with a social worker) are allocated a school place as quickly as possible.
- Local authorities engaging with schools to produce and deliver proposals for ensuring sufficient school places - both mainstream and specialist provision - and reducing/repurposing spare capacity, for example, adding a SEN unit to a school.
- Local authorities working with all admission authorities in their area to collate and publish a composite prospectus for parents with the admission arrangements for schools in that area for the normal admissions round.

Generally, schools and local authorities work well together on school admissions and place planning. However, there are certain areas where co-operation tends to be weaker, for example, regarding in-year admissions and the Fair Access Protocol. Poor co-operation on these issues disproportionately affects children with SEND and other disadvantaged and vulnerable children who are overrepresented in in-year admissions. Additionally, the lack of formal co-operation requirements means that collaboration is not always prioritised, and, in some cases, schools choose to act in isolation and without considering their local community's needs.

The new duties will send a strong message to the school system about the importance of co-operation on admissions and place planning so that the local community's needs, especially those of the most vulnerable and disadvantaged, are met. The government

expects schools and local authorities to help (and not hinder) each other on these issues and to behave in an inclusive way regarding school admissions and place planning.

Where co-operation breaks down or fails, the Secretary of State will be able to intervene. Currently, the absence of co-operation duties means that if one party refuses or fails to co-operate with the other party, there are limited options for addressing this.

What is the effect of the legislation?

Currently, there are no general duties on schools and local authorities to co-operate regarding their admissions and place planning responsibilities, although there are legal requirements to co-operate on specific admissions issues and expectations to work together on place planning (which are set out in non-statutory guidance).

The measure will require maintained and academy schools and local authorities to co-operate with each other when carrying out their respective statutory duties regarding school admissions. These statutory duties include:

- The body responsible for the school's admission arrangements i.e. the admission authority (the governing body or local authority for a maintained school or the academy trust for an academy) must determine the school's admission arrangements for the coming year and must consult on those arrangements before they are decided.
- The local authority must co-ordinate arrangements for the admission of pupils to schools during the normal admissions round.
- Local authorities and schools must comply with any requirements set out in the School Admissions Code, for example, each local authority must have a Fair Access Protocol in place which is developed in partnership with all schools in its area.

Additionally, the measure will require schools to co-operate with local authorities with the aim of contributing to the local authority's 'place planning' duties, so far as is reasonable. The relevant 'place planning' duties are as follows:

- Section 14 of the Education Act 1996 - the duty to ensure there are enough school places available in their area for pupils of compulsory school age ("the sufficiency duty")
- Section 19(1) of the Education Act 1996 - the duty to arrange suitable and (normally) full-time education for children of school age who, because of exclusion, illness or other reasons, would not receive suitable education without such provision. This is often called 'alternative provision'.

How will this work in practice?

The measure will place legal duties on schools and local authorities to co-operate on school admissions and place planning matters and put existing expectations that they do so on a statutory footing. The new duties will send a strong signal to the sector about the importance of schools and local authorities working together in a collaborative way, and in the interests of the local community, on admissions and place planning. The duties will also provide a mechanism for addressing serious failures to co-operate. Where a school or local authority is failing or refusing to co-operate, the Secretary of State will be able to intervene and direct the party at fault to take specific steps to comply with the co-operation duties.

Key questions and answers

Why does this duty not cover SEND inclusion, as the manifesto committed to?

There are already reciprocal duties for local authorities and schools to co-operate regarding their responsibilities for children and young people with special educational needs, which we do not need to replicate. However, the new co-operation duties will cover the admissions of children with SEND - but without EHCPs - to mainstream schools and place planning for all schools including special schools and AP.

Additionally, we know that a lack of co-operation on admissions, particularly in-year admissions, tends to disproportionately impact children with SEND and other disadvantaged groups. We expect that this measure, alongside our other admissions reforms, will support SEND inclusion by fostering greater co-operation between schools and local authorities and ensure that admissions decisions account for the local area's needs.

What is meant by co-operation? Is this about schools and local authorities always having to be in agreement?

The new co-operation duties are intended to ensure that schools and local authorities work together constructively on admissions and place planning so that their respective statutory responsibilities can be delivered. These new duties complement existing, more specific requirements to co-operate, for example, developing and agreeing the local area's Fair Access Protocol. The government's expectation is that schools and local authorities should seek to support or help (and not hinder) each in other in carrying out their respective duties.

Schools' and local authorities' interests may not always be aligned, and they are not expected to agree on all admissions and place planning matters. However, it is expected

that they will behave reasonably and collaboratively, for example, considering the other party’s views, being willing to meet and discuss differences, and sharing relevant information in a timely manner.

Children's Wellbeing and Schools Bill: Local authority direction powers

This measure extends local authorities' current powers to direct a maintained school to admit a child, to also enable them to direct academies in the same way.

It aims to streamline the direction process and provide a more robust safety net for vulnerable children, by giving local authorities the levers they need to secure school places for children more quickly and efficiently, when the usual admissions processes fall short.

What does this measure do and why do we need it?

Where parents have been unable to secure a school place for a child through any standard admission process, as a last resort local authorities are able to direct a maintained school to admit the child. However local authorities can only do so in certain limited circumstances, including that the child must have been refused admission by every suitable school within a reasonable distance.

Furthermore, where they wish to place a child into an academy, they must request the Secretary of State to use her powers under an academy's funding agreement to direct the academy to admit the child. This additional step can create a further delay in a child getting a school place.

This measure gives local authorities powers to direct both maintained schools and academies to admit a child, in the rare circumstances that admissions cannot be secured for a child through the usual processes, including through the use of Fair Access Protocols.

It will improve and speed up the existing direction process by removing the need for the local authority to seek a Secretary of State direction and make it easier for the local authority to direct admission for certain groups of children, providing a more robust safety net for vulnerable children and ensuring that school places can be secured for them more quickly and efficiently, when the usual admissions processes fall short.

Like maintained schools, academies will be able to appeal to the Schools Adjudicator where they disagree with a local authority's decision to direct, providing an effective check and balance on local authorities' new powers to direct into academies.

Local authorities' current direction powers are set out in the School Standards and Framework Act 1998. New legislation is required to effect the changes outlined above, including changes to the School Admissions Code ("the Admissions Code"). Any changes to the Admissions Code will require a statutory process, including a full public consultation and parliamentary approval.

What is the effect of the legislation?

This measure will extend local authorities' current powers to direct a maintained school to admit a child, to also enable them to direct an academy in the same way.

It will also streamline the directions process and make it more transparent, by enabling local authorities to direct where the Fair Access Protocol fails to secure a school place for a child.

The measure will also streamline the directions process for children who have come out of care, providing them with greater parity with those in care.

Overall, this measure will provide a more robust safety net, especially for vulnerable children, by giving local authorities the levers they need to secure school places for such children more quickly and efficiently, where parents and families may be struggling to secure a school place through the usual processes.

How will this work in practice?

In the rare circumstances that parents and families are unable to secure a school place for a child through the usual admissions processes, including through the use of Fair Access Protocols, local authorities will be able to direct both maintained schools and academies to admit a child.

Currently, local authorities only have powers to direct the admission of a child into maintained schools. Where they wish to place a child into an academy, they must request the Secretary of State uses her direction powers under the academy's funding agreement to direct the academy to admit the child. This additional step can further delay a child getting a school place.

These measures improve and speed up existing direction processes by enabling local authorities to direct an academy themselves, without needing to go through the process of requesting the Secretary of State to invoke her direction powers to compel the school to admit the child. A more streamlined direction process will also ensure that school places for unplaced and vulnerable children are secured more quickly and efficiently.

These measures will also provide academies with a formal route of appeal to the Schools Adjudicator, where they disagree with a decision to direct admission – a route of redress which is currently only available to maintained schools, as academies cannot appeal an equivalent direction from the Secretary of State. This safeguard will ensure local authorities use their powers appropriately and place children in suitable schools, where they can thrive.

Additional information on delegated powers

This measure will include a delegated power for the Secretary of State to set out in the statutory Admissions Code, additional circumstances in which a local authority can initiate a direction to a school to admit a child who is not in care in their area. These additional circumstances will be limited to enabling local authorities to initiate a direction where the child is a previously looked after child or where a 'relevant procedure has been invoked', such as the Fair Access Protocol.

Fair Access Protocols are the current mechanism set out in the Admission Code for securing school places for children who are struggling to secure one via the usual admissions processes. The Admissions Code includes the requirement that all local authorities must have a Fair Access Protocol in place, which has been agreed with local schools and also specifies the categories of children (including vulnerable and hard-to-place children) that are eligible to be considered for a school place under the Fair Access Protocol.

Future iterations of the Admissions Code will therefore be able to specify circumstances in which children eligible for the Fair Access Protocol, or any equivalent future process, could be the subject of a local authority direction to admit. i.e. where that process has failed to secure the child a school place.

Key questions and answers

This is a centralising of power, giving local authorities control over school admissions?

Admission authorities will continue to make decisions on admissions for their schools, in line with admissions law. Local authorities, however, have duties to ensure that children in their area have access to suitable education but the levers currently available to them to achieve this are not always effective. This can result in too many children, many of whom are vulnerable, being left without a school place for too long, which can have serious consequences. These changes therefore aim to provide an effective safety net to ensure that unplaced and vulnerable children can secure a new school place quickly, where admissions cannot be secured through the usual admissions processes.

Through the admissions measures, are your changes not going to prevent schools from taking decisions that will impact their budget and resourcing? Would this take away academy freedoms?

Like maintained schools, academies are already subject to being directed to admit a child, however, this power currently sits with the Secretary of State. Transferring these powers to the local authority will not have a significant impact on academy freedoms.

Rather it will rationalise and streamline existing processes, to ensure that school places for unplaced and vulnerable children can secured more quickly and efficiently. These measures also provide academies with a formal route of appeal to the Schools Adjudicator where they disagree with a local authority direction.

Children's Wellbeing and Schools Bill: Functions of adjudicator in relation to admissions numbers

A measure to enable the Schools Adjudicator to set a school's published admission number (PAN) where they uphold an objection to it, to enable local authorities to better influence the setting of PANs to support the needs of the local community.

What does this measure do and why do we need it?

A school's published admission number (PAN) is the number of external pupils a school intends to admit into a main entry year group for the school (e.g. Reception or Year 7). Each school has an admission authority which is responsible for admissions decisions for that school, including setting the PAN as part of the school's admission arrangements. The admission authority depends on the type of school: the local authority is the admission authority for community and voluntary controlled schools; for voluntary aided and foundation schools it is the governing body; and for academies it is the trust.

Partly due to academisation, and the ability of academies to set their own PAN, in recent years local authorities have had increasingly limited influence over the PAN of schools in their area. However, local authorities remain responsible for ensuring that there are sufficient school places in their area. In combination with other changes, this measure will help address this tension in responsibilities by giving the local authority greater influence over the PANs of schools in their area, whilst preserving the important role of admission authorities in setting a PAN that works for their school.

Specifically, this measure will allow the independent Schools Adjudicator to set the PAN of a school where they have upheld an objection about the PAN set by an admission authority. At present, objections to PANs can only be made where an admission authority has decreased a school's PAN. We intend to amend the 2012 School Admissions Regulations to extend local authorities' ability to object to the Adjudicator, to enable them to also object where a school's PAN has been increased or has been kept the same.

Where an objection to PAN is upheld, this measure will allow the Adjudicator to specify the level at which the PAN must be set, to ensure that the admission authority, local authority and parents are all clear on how many places the school must offer.

This measure will help meet the government's manifesto commitment to ensure "admissions decisions account for the needs of communities", both in cases where there are insufficient places in an area, and where a surplus of places needs to be effectively managed.

The school admissions system is already highly prescribed through primary legislation, regulations and the School Admissions Code. New legislation is needed to effect the changes to strengthen the Adjudicator's powers for PAN objections.

What is the effect of the legislation?

This measure will give the Adjudicator power to set the PAN of a school where they have upheld an objection about the school's PAN. The Adjudicator will be able to set the PAN for up to two years, if they deem this necessary. This will ensure that the route for the local authority to challenge the PAN of a school is robust and effective. It will also ensure that, where an objection is upheld, all parties know what change must be made, so that a school's admission arrangements can be amended quickly and easily, creating greater clarity and certainty for admission authorities, local authorities and parents.

We will make the necessary changes to the 2012 School Admissions Regulations to extend the ability of local authorities to object to the Adjudicator about the PAN which has been set for a school, to ensure they can object where a PAN has been increased or kept the same as well as reduced.

The measure also provides for the ability to set out in regulations the factors the Adjudicator must consider when determining what the PAN should be. Schools will also still be able to vary their PAN if there is a significant change in circumstances after a PAN has been set by the Adjudicator.

Collectively, these changes will help to give local authorities more influence over the PANs of schools in their area, ensuring that they are able to meet their sufficiency duty and to manage their school estate effectively.

How will this work in practice?

This measure, alongside intended changes to regulations to extend local authorities' ability to object to PANs, will strengthen local authorities' ability to influence the number of places offered in their area, in the interests of the community.

The local authority will be able to object to the PAN set by a school where this does not meet the needs of the local community. The Adjudicator will then consider the objection, considering the arguments of both the local authority and the school, and the requirements of admissions law, according to the circumstances of the case. If they uphold the objection, they will then set the PAN for the school. If necessary, given the circumstances, they will also be able to specify the PAN for the subsequent year. In taking the decision regarding the PAN, new regulations will set out issues that the Adjudicator must, or must not, take into account.

Once the Adjudicator has made their decision, the admission authority will need to amend their admission arrangements to reflect the PAN specified by the Adjudicator.

We intend to make changes to the School Admissions Code to require admission authorities to give consideration to the needs of the community and the views of the local authority when they are setting their PAN. As such, we expect that many issues will be able to be resolved locally without the need to object to the Adjudicator.

Additional information on delegated powers

These measures include a delegated power to set out factors that the Adjudicator must or must not consider when they are setting the PAN of a school where they uphold an objection to a school's PAN.

This will provide support and guidance to the Adjudicator when they are considering what the PAN should be set at, ensure the resulting PAN does not leave a school in breach of other relevant legislation or regulations, and will give clarity to the sector as to what factors the Adjudicator will consider when they are setting a PAN.

Key questions and answers

It is important for an admission authority to be able to set their school's PAN. Why are you giving greater power on this to the Adjudicator and local authorities?

We recognise the importance to admission authorities of being able to set their published admission number (PAN). In many areas these PANs work effectively, and admission authorities will work in co-operation with local authorities to set a number which works with local need.

However, in some areas, local authorities are struggling to ensure that there are sufficient school places or to manage the school estate effectively in areas where there are surplus places, because the PANs set by individual admission authorities do not meet the needs of the local community.

These powers will ensure that, where agreement cannot be reached locally and the independent Schools Adjudicator upholds an objection to a school's PAN, it can be set at a level that works for the needs of the community. The views of all parties, including the admission authority, will be taken into account in these decisions.

Will these changes make it harder for parents to get their child into a good school?

These powers will only be used where there is local disagreement about the level at which the PAN should be set, resulting in an objection to the Adjudicator, and where the Adjudicator then agrees with the objector and upholds the objection. Overall, admission authorities will retain their ability to set their PAN according to their local circumstances, which may include demand for places at their school. They should do this in co-operation with their local authority, to ensure that decisions about PAN meet the needs of the local community. We would expect local authorities to give consideration to factors such as the demand for places and the quality of local provision before submitting an objection.

When considering any objection, the Adjudicator will consider the wider circumstances of the case, including the arguments of the school and local authority. In doing so, where relevant, they may consider the demand for places at the school. In some areas, where there is a surplus of places, it may be necessary for the Adjudicator to set a PAN which is lower than originally set, given the impact on other local schools, in the wider interests of the community.

Children's Wellbeing and Schools Bill: Establishment of new schools

A measure that changes the legal framework for opening new state-funded schools. It will end the current legal presumption that new schools should be academies and allow proposals for other types of school to be put forward where a new school is needed, including proposals from local authorities themselves.

What does this measure do and why do we need it?

This measure removes the requirement for local authorities to seek proposals only for an academy to meet the need for a new school. Instead, it allows local authorities to invite proposals for other types of school – voluntary, foundation (or foundation special[4]) – as well as proposals for an academy school or alternative provision academy[5]. It also allows local authorities to put forward their own proposals for a community (or community special) or foundation (or foundation special) school or a pupil referral unit alongside other proposals received.

Local authorities are legally responsible for making sure that there are sufficient school places for children living in their area. These changes are intended to support them in fulfilling their place planning function; helping ensure new schools can best meet need identified in an area and are opened in the right place at the right time.

The framework for opening new schools is currently set out in the following primary and secondary legislation:

- The Education and Inspections Act 2006 as amended by (among other Acts) the Education Act 2011.
- The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013.

New legislation is required to make the changes outlined above.

[4] A special school is specially organised to make provision for pupils with special educational needs.

[5] An alternative provision academy is the academy version of a pupil referral unit: a school principally concerned with providing education for children of compulsory school age who might not otherwise receive it for a number of reasons, including those who are too ill to attend mainstream school and those who have been permanently excluded from one school and have not yet been found a place at another.

What is the effect of the legislation?

The legislation removes the current requirement for local authorities to invite *only* academy proposals where a new school is required. All partners in the education system have much to offer – broadening out the invitation process will allow a range of different proposers to advance different solutions for meeting the need a local authority has identified.

Local authorities are also given discretion to put forward their own proposals alongside others.

How will this work in practice?

When a local authority thinks that a new school should be established in their area, they will publish a notice inviting proposals for a new school. They will be able to invite proposals for voluntary, foundation and academy schools and their special school and alternative provision equivalents. They will also have discretion to put forward their own proposals for a community or foundation school or pupil referral unit alongside others received.

Where they have chosen not to put forward their own proposals, they will decide which proposals to approve. If one or more of the proposals is for an academy, the Secretary of State will need to confirm she is willing to negotiate a funding agreement with the relevant academy trust.

Where the local authority has chosen to put forward their own proposals for a new school, the Secretary of State will consider all the proposals together and will be the decision maker. In practice these decisions will be delegated to Regional Directors to take on behalf of the Secretary of State. Regional directors are senior civil servants who work locally across children's social care, special educational needs and disability (SEND), schools and area-based programmes to improve outcomes for children, families and learners.

Additional information on delegated powers

The legislation contains or amends delegated powers that allow the Secretary of State to prescribe in secondary legislation a number of procedural matters relating to the new arrangements. For example:

- The information that must be contained in a proposal for a new school published by a local authority as part of an invitation process.

- The steps a local authority must take to publicise proposals that have been published by a proposer for a new school outside of the invitation process.
- Arrangements for a local authority to consult the Secretary of State before approving an academy proposal submitted as part of an invitation process.
- Arrangements for objections to be made to the Secretary of State where she is the decision maker for proposals submitted in response to an invitation process.

Key questions and answers

What is the difference between academy, community, foundation and voluntary schools?

Academy schools receive funding directly from central government. Academies are maintained through a contractual arrangement (the funding agreement). The parties to the funding agreement are the Secretary of State and the relevant academy trust and no third-party rights are given to the local authority under the funding agreement.

The main types of maintained schools are:

- Community schools are those where the local authority has the biggest role. The school land is owned by the authority and the authority also employs the staff and is ordinarily the admissions authority for the school.
- Foundation schools have more freedom than community schools in how they are managed. The governing body is responsible for the employment of staff and the admissions policy. The land is by owned the governing body, a body of trustees or a foundation body.
- Voluntary schools may be voluntary aided schools or voluntary controlled schools. The land and buildings are typically owned by a foundation or a group of trustees. Voluntary aided schools are generally more independent of local authority involvement than voluntary controlled schools; they employ the school's staff and have responsibility for admissions, whereas the local authority fulfils these functions for a voluntary controlled school. The majority of voluntary schools are faith schools.

What is wrong with the current system?

The current system only allows academy proposals in response to an identified need for a new school; and only allows local authorities to propose new schools as a last resort or in very limited circumstances. This measure better aligns local authorities' responsibility for securing sufficient school places with their ability to open new schools.

Department for Education

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