

# Memorandum to the Children, Schools and Families Select Committee – Post- Legislative Assessment of the Education Act 2005





# Department for Children, Schools and Families

## **Memorandum to the Children, Schools and Families Select Committee – Post-Legislative Assessment of the Education Act 2005**

Presented to Parliament  
by the Secretary of State for Children, Schools and Families  
by Command of Her Majesty

March 2010

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# 1. Memorandum to the Children, Schools and Families Select Committee – Post-Legislative Assessment of the Education Act 2005

## Introduction

1. This memorandum provides a preliminary assessment of the Education Act 2005 and has been prepared by the Department for Children Schools and Families for submission to the Children, Schools and Families Select Committee. It will be published as part of the process set out in the document *Post-Legislative Scrutiny – The Government’s Approach* (Cm 7320).

## Objectives of the Education Act 2005

2. In January 2004, the Government announced a package of education proposals aimed at simplifying the school improvement process, improving data flows and strengthening the accountability framework for schools. This was complemented in February 2004 by Ofsted’s consultation document, *The Future of Inspection, which set out proposals* for the introduction of shorter, more regular and less burdensome inspections based on the school’s own cycle of planning and evaluation. There were also proposals for how inspections across sectors of children’s services might be better aligned.
3. Following a period of consultation, the two sets of proposals were brought together in a policy document, *A New Relationship with Schools*, published jointly by the Government and Ofsted in June 2004. This developed Ofsted’s proposals for inspection reform following a broadly positive response to *The Future of Inspection*. It also set out accompanying changes for the new accountability framework, including accountability to parents. A key theme of the Act was to enable those leading their schools to more accountable for their own school improvement. By establishing a new relationship between schools and central/local government, built on smarter accountability, we would see a reduction in bureaucracy, ensure greater financial stability and provide more transparency for parents and carers.

- **Smarter accountability** – a new system of inspection which is less disruptive; more frequent inspections but shorter and more outcome focused, drawing on schools' own improvement processes. Each school supported by a school improvement partner;
- **Less bureaucracy** – removing unnecessary preparation for inspection and multiple bidding processes for resources; doing away with separate post-inspection action plans, replacing annual reports and poorly attended parent/governor meetings with a more accessible and wide-ranging school profile;
- **Financial stability** – rationalising funding streams through central Government processes and enabling the setting of three year budgets for schools.

4. The Act is divided into five parts:-

- **Part 1 (including Schedules 1 to 9)** repealed the School Inspections Act 1996, re-enacting many of the provisions but with some significant modification. It removed the system of 'registered inspectors' so that the Chief Inspector became directly responsible for inspections and reports. It revised the categories of schools causing concern, introducing a new designation of a school requiring significant improvement. It removed the requirement for every school to have to produce a separate post-inspection action plan. It also aligned the inspection of early years provision with school inspection, enabling extended service schools to experience a single inspection event and report.
- **Part 2 (including Schedules 10 to 12)** extended and clarified the circumstances in which a local education authority must invite proposals for a new or replacement secondary school.
- **Part 3 (including Schedules 13 to 15)** broadened the remit of the Teacher Training Agency, now the Training and Development Agency for Schools, to carry out activities in relation the whole school workforce, not just in relation to teaching. It also rationalised the functions of the Agency that had previously been provided under various pieces of primary and secondary legislation. This ensured that the Agency was given appropriate powers to take on new roles, to enable coherent support for the development and continuous improvement of the professional skills needed by all members of the school workforce.
- **Part 4 (including Schedules 16 to 18)** covered miscellaneous provisions relating to maintained schools, attendance for excluded pupils at alternative educational provision, and information sharing between government departments. It provided for schools' adjusting their accounting period from financial to academic year, for the introduction of a guaranteed multi-year school budget, the transfer of powers from the Secretary of State to school forums, enabling them to agree proposals for local education authorities for variations in central expenditure limits as part of local setting of budgets. Part 4 also provided for local education authorities to set annual targets for pupil performance, removed the requirement on schools to hold an annual parents' meeting and produce a governors' annual report and introduced the school profile. It included special provision for school admissions in relation to looked-after children. On information sharing, it provided for the then Department for Education and Skills,

Inland Revenue and Department for Work and Pensions to share information to enable verification of applications for education maintenance allowances as a means of reducing fraud, and for data to be shared to improve the administration of free school meals.

- **Part 5 (including Schedule 19)** contains general incidental and supplemental provisions, subordinate legislation, general interpretation, repeals, commencement and extent.

## Implementation

5. The Act enabled the various powers and duties to be commenced and then implemented through a suite of regulations and secondary legislation. Table 1 sets out how the respective policy areas were implemented.

**Table 1: Secondary legislation derived from the Education Act 2005**

Policy Area	Title of Statutory Instrument / Statutory Guidance	Description
School inspection	SI 2005/2038 – The Education (School Inspection) (England) Regulations 2005	The Regulations provide for a three year cycle of school inspections; specify who should be notified of the inspection; give schools identified as causing concern 5 days to comment on the draft inspection report; give local authorities 10 working days to prepare a statement on action in relation to schools which are causing concern; cover fees relating to providing copies of school inspection reports; specify which body a maintained faith school should consult with in arranging an inspection of RE and collective worship; specify that such inspections must be carried out within 10 working days and that reports must be prepared within 15 working days.

Policy Area	Title of Statutory Instrument / Statutory Guidance	Description
	SI 2007/1089 – The Education (Investigation of Parents' Complaints) (England) Regulations 2007	The Regulations prescribe various matters in relation to the handling of Ofsted of parents' complaints about a school. In particular they set out the areas for qualifying complaints (which align with Ofsted's school inspection remit); prevent complaints being considered where there is an alternative statutory route; and provide discretion for Ofsted to consider complaints in circumstances where local procedures have not been exhausted.
	SI 2008/1723 – The Education (School Inspection etc.) (England) (Amendment) Regulations 2008	<p>The Regulations extend the list of areas which qualify for investigation in relation to parents' complaints to include a schools contribution to community cohesion. This reflects a change to Ofsted's school inspection remit in this respect.</p> <p>The Regulations also clarify the circumstances where a school may charge for providing an inspection report.</p>
	SI 2009/1564 – The Education (School Inspection) (England) (Amendment) Regulations 2009	The Regulations specify a maximum period between school inspections of five years.
Early years inspection	SI 2005/2299– The Nursery Education (Inspection) (England) Regulations 2005 SI 2005/2300 – The Day Care and Child Minding (inspection) (England) Regulations 2005	These Regulations aligned Ofsted's inspection frameworks covering early years provision (child minding, day care and funded nursery education) and schools, as well as introducing a new requirement on early years providers to notify and send parents a copy of the inspection report. They have since been superseded by the Childcare Act 2006 and SI 2008 No 1729

Policy Area	Title of Statutory Instrument / Statutory Guidance	Description
School organisation	<p>SI 2006/2139 The Education (New Secondary School Proposals) (England) Regulations 2006</p> <p>SI 2007/59 The Education (New Secondary School Proposals) (England) (Amendment) Regulations 2007</p>	<p>The Education (New Secondary School Proposals) (England) Regulations 2006 (came into force 1/9/2006), outlined the detail of the statutory process requirements for holding a competition for new secondary school provision.</p> <p>The Department subsequently introduced the Education (New Secondary School Proposals) (England) (Amendment) Regulations 2007 (came into force January 2007) to ensure impartiality in the decision making process. These regulations stipulate that in a competition where a bid has been submitted by a member of the School Organisation Committee (SOC) (i.e. the local authority holding the competition, the Church of England or Roman Catholic diocese), the decision maker in the competition will be the Schools Adjudicator rather than the SOC. This is to ensure impartiality in the decision making process so that the decision is not taken by the body which included an organisation which had itself submitted a proposal in the competition and might therefore be perceived to have a conflict of interest.</p>



Policy Area	Title of Statutory Instrument / Statutory Guidance	Description
	Handbook for Local Authorities – Establishing a New Secondary School (Sep 2006)	<p>This contains statutory guidance local authorities need to adhere to when they want to establish a new secondary school. It explains the options available and the role of the local authority in the process. It also includes statutory guidance that the decision maker needs to follow.</p> <p>This has all been superseded by the new regime in the Education and Inspections Act 2006</p>
School Funding	School Finance (England) Regulations 2006 and 2008	The regulations require local authorities to set multi-year budgets for schools and give effect to the powers of the Schools Forum to make decisions relating to the Schools Budget central expenditure limit and Minimum Funding Guarantee.
School admissions/ looked after children	The Education (Admission of Looked After Children) (England) Regulations 2006 (SI 2006/128) – revoked and re-enacted	<p>The Regulations set out in detail what priority should be given to looked after children – subject to certain exceptions, the admission authorities for maintained schools must give first priority in their oversubscription criteria to all looked after children. These Regulations have now been revoked and re-enacted by the School Admissions (Admission Arrangements) (England) Regulations 2008 (SI 2008/3089).</p> <p>The provisions of the Regulations were first summarised in the School Admissions Code in 2007.</p>
School Workforce database	The Education (Supply of Information about the School Workforce) (England) Regulations 2007	The Regulations allow for the collection of information required for the School Workforce Census.

Policy Area	Title of Statutory Instrument / Statutory Guidance	Description
	The Education (Supply of Information about the School Workforce (No2) (England) Regulations 2007	The Regulations correct a technical error in the previous Regulations
	The Education (Supply Of Information About The School Workforce) (No 2) (England) (Amendment) Regulations 2009	The Regulations make amendments based on lessons learnt from the pilot exercises. They add to the list of partner organisations with whom data in the Census can be shared; allow the collection of the same data items for all staff included in the scope of the Census; change the period of employment used to determine whether individual level data is required for a member of staff in the Census, from one month to 28 days.
Alternative provision for excluded pupils	DCSF updated the Guidance on Education – related parenting contracts, parenting orders and penalty notices in September 2007 and the Regulations	

## Legal Issues

6. There has been no litigation on any of the provisions in the Act as far as the Department is aware

### Merits Committee interest

As the introduction of the Education (New Secondary School Proposals) (England) (Amendment) Regulations 2007 so closely followed the enactment of the original 2006 regulations (and further regulations relating to new school competitions were to be introduced from May 2007 following the Education and Inspections Act 2006 which gained Royal Assent in November 2006 and made further changes to the new school competitions regime), the Merits Committee reported this statutory instrument to the House. This was on the grounds that “it is politically and legally important and may be of public policy interest to the House” and because “The Regulations will be superseded by provisions in the Education and Inspections Act 2006, which the Government aim to bring into force in May 2007. The timing of this use of secondary legislation raises questions about the adequacy of the Department’s forward planning, and seems liable to cause confusion to interested parties involved in any competition already underway.”

Although we did not formally respond to the Committee, the Department’s position on this at the time was as follows:

- The purpose of the regulations is to ensure that there is a level playing field for all competition entrants. It is right and proper that the decision maker should be independent of any of the bodies entering proposals in competitions.
- When the 2006 Act comes into force SOCs will be abolished and local authorities will decide competitions in which they do not have an interest. Where the local authority does have an interest in proposals, the competition will be decided by the Schools Adjudicator.
- The new arrangements introduced by the regulations under the 2005 Act which we laid on 19 January 2007 are therefore consistent with the arrangements which will be introduced in due course by the 2006 Act.
- The Department is monitoring the competitions which are currently under way, and we are not aware of any evidence to suggest that there is confusion about the changes which will be introduced by these regulations. The regulations do not alter the way that competitions are run, or the arrangements whereby parents can make their views known about proposals.

## Other Post-Legislative Reviews

7. Since the Act was passed there have been a number of additional reviews on various aspects of the policies within the Act. These are listed below according to the respective Part of the Act.

### Part 1

- Impact of Section 5 inspections: maintained schools in England, National Foundation for Educational Research, July 2006
- School Inspection, Ipsos MORI, October 2006
- Evaluation of the impact of Section 5 inspections, National Foundation for Educational Research, April 2007
- School Omnibus 2007, Ipsos MORI, April 2007
- Teacher Voice Omnibus October 2008 Survey, National Foundation for Educational Research, December 2008
- School Inspection, Ipsos MORI, December 2008
- Evaluation of the impact of Section 5 inspections – strand 3, National Foundation for Educational Research, June 2009
- New Relationship with Schools Evaluation – York Consulting – August 2008
- Children, Schools and Families Select Committee Inquiry on School Accountability – 2009

### Part 3

- Children, Schools and Families Select Committee Inquiry and Report on Training of Teachers – 2010

### Part 4

- HMT Operational Efficiency Programme – Sir Michael Bichard made recommendations on accountability and performance management relating to local authority educational performance targets – April 2009
- Alternative provision for excluded pupils - DCSF has commissioned independent research into the use of penalty notices (and other measures) by LAs. Findings are expected to be published in Spring 2010.
- School Admissions for looked-after children (Section 106). In 2008 the Secretary of State commissioned the Schools Adjudicator to review compliance with the School Admissions Code. The Adjudicator continues to play a lead role in monitoring the Code and reports annually to the Secretary of State on fair access.

## Preliminary assessment of the effect of the Education Act 2005

The Education Act 2005 has been a successful piece of legislation that has laid the foundations for raising standards and has provided the basis for further policy development in a number of areas. Some of the provisions in the Act laid the foundations for many of the changes that now form the basis of the Children's Plan. The aim of the Children's Plan is to make this country the best place for children and young people to grow up.

### School Inspection

The legislative provisions have evolved to respond to wider policy developments some of which are school specific e.g. the duty on schools to promote community cohesion, and others which are broader. In particular some of the measures in the 2005 Act have been developed within the Education & Inspections Act 2006 in the context of establishing Ofsted as the inspectorate for Education, Children's Services and Skills.

However, the core legislative structure for school inspection has proved sufficiently flexible to encompass a new set of inspection arrangements which started in September 2009, following the completion of the first cycle of school inspections conducted under the 2005 Act.

The impact of the school inspection arrangements has been subject to independent evaluation by the National Foundation for Educational Research and Ipsos MORI. The evidence shows that schools feel them to be less stressful than the previous system. It also shows a very high satisfaction rate with the vast majority of survey respondents finding inspection judgements to be fair and accurate, and inspections to be useful in terms of driving improvement. In addition parents are strongly in favour of school inspection and find inspection reports helpful.

### Early years

The changes to early years inspection have resulted in a more consistent approach across different settings and helped streamline arrangements for those providing nursery education and day care. The changes have also enabled more targeted inspection of poor provision.

Overall, the legislative changes have been successful in achieving their objectives, helping to facilitate the introduction of integrated inspections across early education and childcare.

### School organisation

The secondary school competition provisions in this Act built on earlier provisions introduced by the Education Act 2002 (that required new secondary schools to be established by competition) that did not subsequently result in any competitions taking

place. The 2005 Act provisions extended and clarified the requirements and were successful in bringing about competitions for the setting up of new schools for the first time. As a result of this and subsequent supporting legislation a range of new providers have been successful in these competitions including - parent groups, trusts formed from successful schools and schools and universities in partnership.

The policy continues to develop as set out in the recent 21st Century Schools White Paper and provisions proposed in the Children, Schools and Families Bill.

### **Training the school workforce**

The legislation has met the objective of broadening the remit of the Teacher Training Agency (renamed the Training and Development Agency for Schools) so that it now carries out activities in relation to the whole school workforce, not just in relation to teaching. The provisions in this Part also met the objective of rationalising the functions of the Agency previously provided under various pieces of primary and secondary legislation, and now ensuring that the Agency has appropriate powers to take on new roles in the provision of training and development for the school workforce.

### **Funding of maintained schools and local authorities**

The legislation introduced multi-year funding periods for schools. Local authorities now have to notify schools of indicative budgets for each future year of a multi-year period and can only change the funding formula within the period with the consent of their Schools Forum or by application to the Secretary of State. This has led to greater predictability of school budget allocations.

Another significant change has been the transfer of responsibility to Schools Forums from the Secretary of State, to agree that the local authority can exceed the Schools Budget central expenditure limit, and to agree changes to the Minimum Funding Guarantee, provided that these affect schools covering fewer than 50% of the authority's pupils. If the Forum disagrees, the local authority can appeal to the Secretary of State. The changes have worked well, enabling greater local determination of funding issues and reducing bureaucracy at central government level. There have been few examples where appeals have been necessary.

The final change was removing the power of the Secretary of State to direct a local authority in England to set a higher Schools Budget. This was no longer necessary because of the introduction of the ring-fenced Dedicated Schools Grant in 2006.

### **Local Authority educational performance targets**

The legislation has enabled the Secretary of State to continue setting regulations requiring Local Authorities (LAs) to set and submit educational performance targets. This has helped LAs to review school level performance and targets, and then set and submit realistic and stretching LA targets. By doing so, it has helped to improve standards and is a key part of the accountability system.

## **School profile**

The school profile has given more focused information about schools and a broader understanding of what a school is doing. By removing the requirement to hold an annual parents' meeting, governors have been able to manage their own relationship and communications with parents.

The 21st Century Schools White Paper proposes replacing the school profile with a new multi purpose school report card.

## **Admission arrangements for looked after children**

The legal provision relating to school admissions for looked after children has been successful and these children are now given highest priority.

## **Disposal of publicly funded school land**

There is no record of any disposals of publicly funded school land being caught by this legislation before it was superseded by the Educations & Inspections Act 2006 provisions.

## **Data sharing and eligibility in relation to free school meals**

The Free School Meal Hub has been a success and has brought benefits to the local authorities that use it. The legislation has been key to providing access to data from different sources to improve customer service and has reduced bureaucracy for LAs and parents in checking eligibility for FSMs.

## **Workforce Database**

The school workforce census is currently being piloted, with the first full collection planned for autumn 2010. So far the regulations have had to be amended, but otherwise the legislation has allowed us to collect the data as intended.

The only members of the workforce where we have not been able to collect information are Educational Psychologists because the way the provisions have been drafted means that it is not clear whether educational psychologists "*assist in the provision of education*".

The current data collections will start to be dropped in 2010 and it is at this point that we will be able to assess whether the change to how we collect data on the school workforce has achieved one of its original objectives, releasing schools from the burden of providing data aggregated in various ways to various parties.

## Alternative provision for excluded pupils

The Overall Absence percentage in 2007/08 was a record low level.

There were 70,000 extra pupils in school on average every day in 2007/08 compared to 1996/97. DCSF data collection shows 48,549 penalty notices issued to parents in 135 LAs.

The provisions in section 115 have met their objective, to the extent that the provisions have now been extended further:

- Section 100 of the Education and Inspections Act 2006 imposes a duty on the governing body of a school to provide full-time education for pupils who they exclude from school for a fixed period, from the 6th day of the exclusion. Section 115 of the 2005 Act gives governing bodies the power to require pupils excluded for a fixed period to attend alternative education provision. Without this power, governing bodies would not be able to fulfil the duty imposed under section 100 of the EIA 2006.
- Section 154 of the Education and Skills Act 2008 will extend the power of governing bodies under section 29 of the 2005 Act, to allow governing bodies to refer their pupils to off-site provision which is designed to improve their behaviour. We are currently consulting on this power.

## Conclusion

The Education Act 2005 has been successfully implemented with many of the elements providing a basis for improving standards in our schools, including through the introduction of shorter, sharper inspections; and through improvements to the recruitment and retention of a more qualified workforce by the formal establishment of the Training and Development Agency. The Act also provided a platform for future Acts such as the Education and Inspections Act 2006 which enhanced the remit of Ofsted.





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