



# Department for Education

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## The Children's Wellbeing and Schools Bill – towards equal accountability for academies?

*The Children's Wellbeing and Schools Bill aims to address a disparity between local authority schools and academies when it comes to a number of issues: curriculum, teacher qualifications, and teachers' pay. In doing so the Bill aims to make academies just as accountable to the Department of Education as local authority schools are. But Anne West and David Wolfe argue that the Bill doesn't go far enough in addressing the fragmentation of the school system.*

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The school system in England is fragmented into a private fee-charging sector and two separate systems of state-funded schooling. One state system comprises schools maintained by local authorities and subject to education law, the other (barely a "system") "academies" state funded through varied and diverse contracts (or funding agreements) between single or multi-academy trusts and the Secretary of State for Education. These academies are subject to [company law](#), [contract law](#), [charity law](#) and [aspects of education law](#). Around [four out of ten state funded primary schools are academies](#), with eight out of ten secondary schools.

Academies currently have freedoms which maintained schools do not have – e.g. they are [not required to teach the national curriculum](#), employ [qualified teachers](#) or pay teachers according to the School Teachers Pay and Conditions Document framework.



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The Children's Wellbeing and Schools Bill offers an opportunity to address this disparity on a number of areas and bring some coherence to the rules governing academies and maintained schools with regard to the national curriculum; align teachers' qualifications and teachers' pay and conditions; change to the accountability mechanism for academies failing to comply with their legal duties; make changes regarding the provision of new schools; address the "forced academisation" for schools deemed to be failing; and enhance cooperation at a local level regarding school admissions arrangements.

## Accountability

Accountability is fundamental to education which is predominantly publicly funded. The current fragmentation frustrates accountability. At best, multiple forms of accountability now exist – contract, market, performance, legal, financial, bureaucratic, and public accountability.

All state-funded schools (maintained schools and academies) are subject to performance accountability by means of Ofsted inspections. Financial accountability varies: local authority-maintained schools accountable to the local authority, which in turn is accountable to the DfE. Academy trusts account direct to the DfE (and, as private companies, must also file accounts with Companies House).



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## *national curriculum, teachers qualifications, and schoolteachers pay.*



It is important to stress that **not all academy trusts provide high quality education**. According to the **CEO of a multi-academy trust**: “A small minority of trusts have misused their freedoms, leading to underperformance, or worse, unethical practices. Phillipson [The Secretary of State for Education] is right to confront these issues, and the sector should welcome scrutiny that ensures accountability”.

## What the schools part of the Bill does

The Schools part of the Bill includes provisions seeking to align academies and maintained schools regarding the national curriculum, teachers’ qualifications, and schoolteachers’ pay. It also seeks to simplify the legal and bureaucratic accountability for academy trusts; removes the requirement for new schools to be academies; ends “forced academisation” and requires “cooperation” regarding **school admissions arrangements at the local authority level**.

### National curriculum

Academies are, subject to their funding agreement, required to offer a “balanced and broadly based curriculum”. The Bill would make it a requirement for academies like other state-funded schools to teach the (new) National Curriculum. **The DfE states** that this would “create a *common entitlement* for all children in state-funded schools” [our italics]...The **DfE further states** that “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”.

In short, this provision should ensure **equality of opportunity for pupils** in state funded schools by means of access to a common curriculum.

### School teachers qualifications

Currently, unless required by the trust’s funding agreement, their teachers need not have qualified teacher status. The Bill seeks to ensure that new teachers have, or are working towards, **Qualified Teacher Status** (QTS). This would align academies with **Local Authority maintained schools in England**

In short, this provision should thus increase **equality of opportunity in terms of the teaching** pupils receive.

### Teachers’ pay and conditions

A proposed government amendment to the Bill extending the statutory pay and conditions arrangements to teachers in academies will allow the Secretary of State to require 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)”. **The measure** will also require the academy to have regard to the whole of the STPCD in determining the pay and conditions of their teachers. **The aim** is for this to “deliver a floor and remove the ceiling for pay and conditions across state schools in England”.

This provision thus seeks to ensure **equivalence for teachers’ pay** in maintained schools and academy trusts, which is **not currently the case**.

### **Power to Secure Performance of Proprietor’s Duties etc**

At present, if an academy trust fails to comply with its legal duties, it is considered a breach of its funding agreement and the DfE has the power to issue a termination warning notice or termination notice. This can lead to **a school being removed from one trust and transferred to another**.

“This new power will enable the Secretary of State to issue directions in cases of non-compliance ... **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”.

**The DfE argues** that this provision “will provide a straightforward and proportionate remedy where there is a specific breach or incident of unreasonable behaviour. Currently, the Secretary of State has similar powers in relation to schools maintained by local authorities”.

This provision is thus an attempt to align procedures for maintained schools and academies.

### **Forced academisation**

The Bill would remove the existing obligation **for the Secretary of State to make an academy** order if a maintained school is identified by Ofsted as having serious weaknesses.

Instead, this will become a discretionary power. Where forced academisation may not be deemed necessary, the Secretary of State can **support school improvement through other means**.

### **Establishment of new schools**

This measure would remove the existing legal presumption that new schools should be academies. Instead, it would allow local authorities to invite proposals for other types of school, as well. They would also be given the discretion **to put forward their own proposals, alongside others**.

The new measure thus rectifies an anomaly in current policy with local authorities under a legal duty to secure sufficient schools for providing primary and secondary education but **without any direct legal power to set up new schools themselves** in response.

## Co-operation on admissions

The Bill would require co-operation between maintained school governing bodies, academy trusts, and local authorities when discharging their admissions functions. It would also extend local authorities' powers to **direct a pupil's admission to an academy**.

This provision should help ensure **equality of opportunity** in terms of **access to maintained schools and academies**. **Research** has demonstrated that such co-operation is possible even when a significant number of schools are responsible for their own admissions.

## What is missing from the Bill?

Although the schools element of the Bill seeks to address a number of concerns highlighted in academic research in relation to the impact of education fragmentation it does not address longstanding concerns regarding **excessive pay of executives in Multi Academy Trusts (MATs)**.

Nor does it address the inspection of MATs. Whilst individual academies within MATs are inspected by Ofsted, the MATs themselves are not; this is important as like local authorities, not all MATs provide a high quality education, with academies **having been removed from trusts** for **various reasons**.

Most fundamentally, the Bill does not change the fact that individual academies in a MAT do exist as legal entities and so cannot leave a MAT to join another or return to a LA. Given the problems associated with some MATs, this option would seem on *a priori* grounds a way forward if an academy found that it was **part of an ineffective or incompetent**.



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Other issues not tackled in the Bill include the **enormous variation in the structure of academy trusts** (e.g., number of members, trustees, expertise of trustees, schemes of delegation, existence of a local governing body, selection of governors and responsibilities). The contrast between statutory governing bodies of maintained schools which are legal entities based in the local community and the local governing bodies (if any exist) of academy schools is stark and arguably not conducive to meeting the needs of local communities.

Finally, the measures regarding admissions are limited. Cooperation is difficult to enforce and unlikely to ensure equitable access to schools that are responsible for designing their own admissions arrangements and making decisions as to who should be offered a place. Furthermore, the Local Government Ombudsman has no authority in relation to admission panels run by academy trusts **unlike maintained schools**. This is problematic for parents especially given concerns about academies **not setting up independent appeals panels** (e.g., Kent County Council).

The Bill solves a number of issues, in particular regarding the curriculum, teacher qualifications, forced academisation and the provision of new schools. It was an opportunity to provide greater coherence across the school system and reduce complexity regarding governance. Ultimately, it does not go far enough to ensure a “common rule book” between academies and mainstream schools.

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## About the author

### Anne West

Anne West is Professor of Education Policy. Her research focuses in particular on education policy and early childhood education and care, in England (past and present), and in comparative perspective. Anne also has interests in health policy and is currently involved in the EU Horizon 2020 project PERISCOPE.

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