



HOUSE OF LORDS

Library Note

Education Bill (HL Bill 67 of 2010–12)

This Library Note provides information on the Education Bill which is due for second reading in the House of Lords on 14 June 2011. The Note is intended to be read in conjunction with two House of Commons Library Research Papers: *Education Bill* ([RP 11/14](#), 7 February 2011) and *Education Bill: Committee Stage Report* ([RP 11/37](#), 5 May 2011) which provide background information and summarise the second reading debate and committee stage in the Commons. This Note summarises the report stage and third reading debate.

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1. Introduction

The Education Bill was introduced in the House of Commons on 26 January 2011. The Parliament website offers a page of information on the Bill, including the text of the Bill and links to each debate: <http://services.parliament.uk/bills/2010-11/education.html>.

It is a wide ranging bill, which seeks to implement the legislative proposals in the Department for Education white paper, *The Importance of Teaching*, along with measures from the Department for Business, Innovation and Skills on skills and higher education funding. A Department for Education press release summarises the provisions of the Bill as follows:

The Education Bill, published today, will help teachers raise standards in schools. It includes measures to root out bad behaviour, tackle underperformance and improve the way in which schools are held to account.

Measures in the Bill include:

- extending the Secretary of State's powers to intervene where schools are underperforming
- introducing smarter school inspections. Ofsted will now focus only on four core elements of schools—pupil achievement, teaching, leadership and behaviour and safety
- measuring our education system against the best in the world. Ofqual will compare our exam standards against the highest performing countries

In addition, the Bill will strengthen teachers' powers to deal with bad behaviour. It gives teachers the power to search for any items schools ban that disrupt learning, like mobile phones and video cameras. It also gives schools the final say in expelling violent pupils and protects teachers from pupils making false allegations.

(['Education Bill Gives Secretary of State New Powers to Intervene in Underperforming Schools'](#), 27 February 2011)

The Bill received its second reading on 8 February 2011, when the programme motion and money resolution were also agreed. The Secretary of State for Education, Michael Gove, stated that:

The Bill is a response to three specific challenges that our country faces in this the second decade of the 21st century—the challenge of how to respond to an economic crisis, the challenge of how to respond to the scandal of declining social mobility, and the challenge of how to respond to our educational decline, relative to competitor nations.

(HC *Hansard*, 8 February 2011, [col 164](#))

The Bill had 22 sittings in Public Bill Committee, between Tuesday 1 March 2011 and Tuesday 5 April 2011. For background to the Bill and an account of the second reading debate and committee stage, please consult the following House of Commons Library Research Papers: *Education Bill* ([RP 11/14](#), 7 February 2011) and *Education Bill: Committee Stage Report* ([RP 11/37](#), 5 May 2011). This Note summarises the report stage and third reading debate in the Commons.

2. Report Stage

The report stage took place on 11 May 2011. MPs considered the following new clauses and amendments: new clauses 20, 21, 2, 5 and 9, and amendments 30–33, 13 and 34–39.

2.1 Pupil Referral Units

New clause 20 related to the financing of pupil referral units, and was added to the Bill.

Nick Gibb, Minister of State at the Department for Education, explained that the clause amends section 45 of the School Standards and Framework Act 1998, so that the provisions on school finances apply to Pupil Referral Unit management committees. He stated that:

This is a small change, but its effect will be significant, and we believe that it will be an important driver for further improvement in the Pupil Referral Unit sector. In common with our other education reforms, it is based on the trust that we place in the teaching profession and our desire to give schools of all kinds the freedom and autonomy to run their own affairs.

(*HC Hansard*, 11 May 2011, [col 1188](#))

2.2 Alternative Provision Academies

Government amendments 34 and 35 to clause 51 of the Bill related to alternative provision academies and were agreed to.

Mr Gibb explained that “amendments 34 and 35 are being introduced so that some of the pupils who would most benefit from good alternative provision—AP—can be referred to AP academies”. He suggested that:

The current wording of clause 51 means that an AP academy would be restricted to taking a majority of its pupils as referrals by local authorities under section 19 of the Education Act 1996, which places a duty on local authorities to make arrangements to provide education for children who, because of illness, exclusion or otherwise, would not receive suitable education unless those arrangements were made.

...We know that, in addition to those children, the AP sector also provides education and support for pupils referred to it by schools for early intervention to tackle behavioural problems. We want to encourage greater use of early intervention, which can re-engage a child and address behavioural problems at an early stage and, thus, reduce the risk of permanent exclusion.

(*ibid*, [col 1189](#))

Kevin Brennan, Labour MP for Cardiff West, said:

On amendments 34 and 35, I would be grateful if we could have an assurance that there is no risk that pupils will be referred unnecessarily under these provisions or that there will be a huge increase in the volume and therefore the cost of alternative provision.

What safeguards are in place to ensure that pupils are not simply referred out of mainstream schools and into alternative provision because, for example, their academic performance is not up to scratch as regards hitting their English baccalaureate targets or because schools want a way of dealing with pupils with special educational needs?

(ibid, [col 1191](#))

Mr Gibb responded:

The hon Member for Cardiff West (Kevin Brennan) asked about unnecessary referrals to alternative provision academies or to pupil referral units generally. There are three routes by which pupils can be referred to a PRU: first, through section 19 of the Education Act 1996 on placements by local authorities; secondly, through section 100 of the Education and Inspections Act 2006, which was introduced by the Government of whom he was a member, under a duty on schools and academies to provide education for pupils on fixed-term exclusions of more than five days; and thirdly, through section 29A of the Education Act 2002, under which a maintained school can direct a pupil to be educated off-site for the purpose of improving behaviour.

Each of those routes carries its own safeguards, which will remain in place. That will ensure that alternative provision academies will provide for pupils who can most benefit from that provision.

(ibid, [col 1204](#))

2.3 Charges at Boarding Academies

New clause 21 related to charges at boarding academies, and was added to the Bill. Government amendment 38 to clause 76 of the Bill also related to charges at boarding academies and was agreed to.

Mr Gibb explained that under the Education Act 1996 local authorities are required to remit boarding fees for pupils from their area who are attending maintained boarding schools in certain circumstances. Since boarding schools are now able to convert to academies, new clause 21 and amendment 38 were intended to ensure that pupils at boarding academies will also have the right to be considered for a remission of boarding fees.

Kevin Brennan, Labour MP for Cardiff West, asked:

What safeguards are in place to ensure that excessive fees cannot be charged to the state in relation to independent boarding schools that become academies?

(ibid, [col 1189](#))

Mr Gibb assured him that:

It is up to the local authority as to whether it remits boarding fees. These powers are rarely used and apply only in two very limited circumstances. The first is where no other educational provision that is needed for the particular pupil is available in the area. The second, as an alternative, is where the parent is

suffering financial hardship... Of course, boarding academies will not be permitted to make a profit on the boarding elements of their provision.

(ibid, [col 1189](#))

2.4 Admission Policy of Independent Schools Opting for Academy Status

New clause 2 related to the admission policy of independent schools opting for academy status. It was later withdrawn.

Graham Brady, Conservative MP for Altrincham and Sale West, spoke to the new clause, explaining that:

It seeks to remove an anomaly that the Government have themselves created, arising from the fact that in the Academies Act 2010 they legislated to allow state grammar schools to become academies without changing their admissions status, thereby accepting the principle that it is possible to be an academy and a selective school.

The new clause would merely extend exactly the same arrangements to independent schools seeking to become academies and retain their existing admissions arrangements.

(ibid, [col 1207](#))

Mr Gibb answered that he could not support the new clause because the government had given their commitment “that we would not increase the number of selective schools in the state sector” (ibid, [col 1234](#)).

2.5 The Schools Adjudicator

Amendment 13 to clause 34 of the Bill related to the power of the schools adjudicator to intervene if schools do not comply with the admissions code. Clause 34 of the Bill seeks to remove the school adjudicator’s power to change admission arrangements under the School Standards and Framework Act 1998. During committee stage, opposition members argued this could impede fair access to schools. Amendment 13 to clause 34 would allow local authorities to intervene in order to enforce compliance with a decision of the schools adjudicator. It was negated on division.

Andy Burnham, the Shadow Education Secretary, argued that amendment 13:

... would restore the crucial ability of the schools adjudicator to seek early rectification of non-compliance with the admissions code in admissions policies, working through local authorities. The adjudicator is an important guarantor of fairness for parents. As he told the Education Committee, 92 percent of the complaints that he received last year came from parents.

The Government have failed to make any case to support their changes beyond saying, “Trust the schools.” Well, the Opposition trust schools, but we also know that the adjudicator must frequently step in to correct non-compliance with the code. Indeed, the very fact that the adjudicator has that power focuses the minds of schools and local authorities to ensure that policies are fair in the first place.

The Government are therefore undermining the office of the schools adjudicator in terms of helping parents when they need it.

(ibid, [col 1212](#))

Mr Burnham asked when the new draft admissions code would be published, suggesting “it is disgraceful that the House does not have access to that code when it is being asked to vote on the Bill” (ibid, [col 1213](#)).

Mr Gibb responded that there was “nothing” in the Bill “about the admissions code”, saying “it just happens that at the same time as we are bringing the Bill through, we are revising the code. I would have liked to bring it before the Committee, but the work on it is extensive. As I said, we are ensuring that it is right before it is published for consultation” (ibid, [col 1236](#)).

Mr Gibb gave his opinion of amendment 13:

Amendment 13 would provide for a wide-ranging local authority power of scrutiny and direction over admissions authorities following a binding decision by the adjudicator, and offer a mere two weeks’ grace in which such authorities can act to comply with the decision.

...Although at first glance a fortnight seems reasonable, on closer examination it looks less reasonable. Admissions policies must be locally consulted on for at least eight weeks to allow all parties to consider proposals or amendments. Many changes subsequent to an adjudicator’s decision can be swift and simple, but others take time, because they are inherently complex or because they seek to address coherently a number of issues.

(ibid, [col 1237](#))

He added that the amendment was not “consistent with our general thrust to allow schools the flexibility to put matters right themselves... All admissions authorities, including academies and voluntary-aided schools, must comply with binding decisions, and we believe that exactly how they do so is best judged by the schools themselves” (ibid, [col 1238](#)).

2.6 Financial Support for Students in Post-16 Education

New clause 5 related to financial support given to students in full-time, post-16 education. It was not added to the Bill.

Nic Dakin, Labour MP for Scunthorpe, spoke to new clause 5. He commented on the consultation which was being carried out on a bursary for 16 to 19 year olds to replace the Education Maintenance Allowance (EMA). Mr Dakin urged the government to link the new bursary to attendance at classes:

My concern is about not only recruitment, but ensuring that, once recruited, the students are retained and that the motivational aspect of the EMA is retained in the new award, so that it can have an impact on motivation and achievement as well as on welfare support.

(ibid, [col 1243](#))

John Hayes, Minister of State for Further Education, responded that:

On whether conditions should be attached to receipt of the 16 to 19 version, we expect, subject to consultation, to set out in guidance that schools, colleges and training providers should consider doing just that.

(ibid, [col 1256](#))

However, he added:

I believe it is right that these conditions should be set locally, as they are now for EMA. As we discussed throughout the Committee proceedings, we are seeking to reduce, not increase, the regulatory burdens on schools and colleges.

(ibid, [col 1256](#))

2.7 Careers Guidance

New clause 9 related to careers guidance. It was negated on division.

Iain Wright, Labour MP for Hartlepool and Shadow Minister for 14–19 Reform and Apprenticeships, spoke to the new clause. He explained that there had been considerable debate in committee about changes to the careers service proposed in the Education Bill. Mr Wright expressed concern about the transition to the new system:

Although some services may be available in September, others will not be operational until April 2012. There is confusion about commitment to funding and there is a real risk that vital professional expertise will be lost.

(ibid, [col 1250](#))

He welcomed plans for an online careers service, but suggested that advice must also be available in person:

A central part of any successful careers advice system is the face-to-face personalised and tailored interaction between a young person and a careers professional.

(ibid, [col 1250](#))

Simon Hughes, the Liberal Democrat MP for Bermondsey and Old Southwark and appointed by the government as Advocate for Access to Education, agreed that transition arrangements were necessary and that personal contact with a careers advisor was important:

I am in the process of finishing my report for the government on the careers service and the implications for access to further and higher education, and I am very clear not only that there should be a careers service available for every secondary school child, but that it should include a personalised service. It is not enough that everyone should have access to a telephone service or an online service or be given a book. I know that the Minister understands that point and is sympathetic to it.

... Ministers understand the need to ensure that a year's worth of young people do not fall through the gap between the old and new services. We must ensure that resources and arrangements are in place to prevent that.

(ibid, [col 1253](#))

2.8 Apprenticeships

Government amendments 36 and 37 to clause 65 of the Bill related to apprenticeships and were both agreed to. Mr Hayes explained:

I would like to have spoken about the apprenticeship entitlement, but it is sufficient to say that in the evidence sessions, it was clear from the witnesses that the arrangements that prevailed under the previous Government were not widely agreed to be effective. I think it was Martin Doel of the Association of Colleges who said he never felt that those arrangements were really operable. I think that our changes will mean that we can deliver on our commitment.

(ibid, [col 1256](#))

Graham Stuart, Conservative MP for Beverley and Holderness and chair of the Education Select Committee, said:

I am pleased to note from Government amendment 36 that Ministers listen. I said in Committee that the Secretary of State's right to withdraw the apprenticeship offer was not appropriate given the new circumstances, and that if employers were prepared to take young people on, the last thing that we should do is introduce a provision allowing someone in the Government to prevent them from doing so. I am delighted that the Minister listened to that, as he said that he would, and has already returned with a Government amendment.

If the Government continue to be firm in purpose and clear in vision, but prepared to listen where the argument is sufficiently strong, we will further improve both the Bill and, most importantly, the education of young people in this country.

(ibid, [col 1246](#))

2.9 Other Amendments

Amendment 39 to Schedule 14 of the Bill was agreed to. Mr Gibb explained that it was a technical amendment, which "seeks to correct a missed consequential amendment in the Bill" (ibid, [col 1190](#)).

Amendment 30 to clause 2 of the Bill related to the power of members of staff at schools to search pupils. It was agreed to.

Amendments 31, 32 and 33 to clause 13 of the Bill related to restrictions on reporting alleged offences by teachers. They were agreed to. Amendment 31 amends clause 13 in such a way that restrictions on reporting alleged offences by teachers cease to apply if the Secretary of State or the General Teaching Council for Wales publishes information about the person who is the subject of the allegation.

3. Third Reading

The Bill was considered at third reading in the House of Commons and was agreed on a division, Ayes 305, Noes 204.

Mr Gibb thanked the members of the Public Bill Committee. He stated that:

The Education Bill has four principal aims: to help schools improve behaviour in the classroom, to remove bureaucratic burdens from schools and, in particular, from teachers by restoring trust in professionals, to ensure that schools are properly accountable to parents and local communities for what they do, and to ensure that the resources that we have are distributed fairly and targeted towards those pupils that need them the most.

(HC *Hansard*, 11 May 2011, [col 1269](#))

Mr Gibb went on to say:

The schools White Paper, “The Importance of Teaching”, set out a pathway to close the attainment gap between those from the poorest and wealthiest backgrounds, and to reverse this country’s decline in international performance tables, so that all who are educated in our state schools have the opportunity to compete with the school leavers and graduates of countries with the best-performing education systems. This Education Bill will allow us to take important steps on that journey, and I commend it to the House.

(*ibid*, [col 1271](#))

Mr Burnham stated that the Opposition would vote against the Bill:

Like the Health and Social Care Bill, the Education Bill threatens a free-for-all in our public services. It is a reckless gamble with standards and with the life chances of our children, with no evidence to support it. That is why we will vote against it tonight. Our principal objection to it is based on the fact that it takes power away from parents and pupils and hands it back to providers and to the centre, in the form of the Secretary of State. That is the flaw at the heart of the Government’s vision for public service reform.

(*ibid*, [col 1271](#))

