



Department  
for Education

# **Considering the impact of the Education and Adoption Bill provisions**

**July 2015**

# Contents

|  |    |
|--|----|
| Education Provisions                     | 3  |
| Public Sector Equality Duty              | 3  |
| The Family Test:                         | 8  |
| UN Convention on the Rights of the Child | 9  |
| Child Poverty:                           | 11 |
| Adoption Provisions                      | 13 |
| Public Sector Equality Duty              | 13 |
| The Family Test                          | 16 |
| UN Convention on the Rights of the Child | 18 |
| Child Poverty                            | 20 |

## **Education Provisions**

In line with the Public Sector Equality Duty (contained in section 149 of the Equality Act 2010), in developing the intervention provisions in the Education and Adoption Bill the Secretary of State must have due regard to the need to –

### **Public Sector Equality Duty**

- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The provisions in this Bill will facilitate more schools becoming academies. In broad policy terms, we consider that the overall aim of improving the quality of schools by streamlining intervention measures and facilitating swifter transfer of failing and (where appropriate) coasting maintained schools to academies with effective sponsors will “advance equality of opportunity” for affected pupils. This is because fewer pupils would be being educated in schools that were less than good and it would, when the proposals had been implemented and had taken effect, give the pupils of formerly underperforming schools equality of opportunity with those pupils who attended better schools.

| <b>Protected Characteristic</b> | <b>Considerations</b>   | <b>Conclusions</b>   |
|---------------------------------|---|--|
| <b>Age</b>                      | <p>Protection against age discrimination does not apply to children (under 18) attending school.</p> <p>Schooling is provided by reference to age and it is not a contravention of the Equality Act 2010 to do this (age is not a protected characteristic in relation to education within the Act).</p>  | <p>The policy applies to children of a specific age (school age).</p> <p>The new coasting criteria will rely on Key Stage 2 and Key Stage 4 attainment and progress measures which do not apply to infant schools. This means that schools with only infant age children (age 5 – 7) will not be capable of falling within the ambit of the improved intervention powers.</p> <p>We may need to consider how coasting infant schools could be defined in order to also target intervention at these schools.</p>   |
| <b>Disability</b>               | <p>Children with disabilities attending special schools that become academies will continue to be protected under existing SEN legislation as it applies to all schools, including academies.</p> <p>The policy intention is that the levels set to define a coasting school in the draft regulations sent to the Committee will not be applied to special schools in the same way as they apply to mainstream schools. That is because the proposed definition of a “coasting” school has an element of attainment as a measure (Key Stage 2 and Key Stage 4 attainment) and because the proposed levels would not be achievable for the majority of special schools. Special schools are rightly measured in a more nuanced way to assess performance so raw attainment</p> | <p><b>Children</b></p> <p>We have continued to ensure that the rights of children and young people with a special educational need (SEN) and/or disability can access an inclusive educational setting in line with their family’s preferences. In the Children and Families Act 2014, we have ensured that academies and free schools have the same duties as maintained schools to promote and safeguard the education of children and young people with SEN. These settings must ensure that they: have a qualified SENCO, publish their SEN School Information Report, and put in place a system to identify, assess and provide for all children with SEN and disability. In addition, for any child with an Education, Health and Care Plan, if an academy or free school is</p> |

| <b>Protected Characteristic</b> | <b>Considerations</b>  | <b>Conclusions</b>   |
|---------------------------------|--|--|
|                                 | <p>figures may not be appropriate to determine whether intervention is appropriate. For mainstream schools, with a special needs unit, the performance of that school may well lead to them falling within the coasting definition. Regional Schools Commissioners will consider the context of the school when making decisions about the support or intervention that is needed, however, and that could include considering the effect that the proportion of special needs children has on a school's results.</p> | <p>named, the governing body must admit. These settings are bound by the Equality Act 2010 and cannot, for example, discriminate in their admissions on the ground of disability.</p> <p>We want all pupils to be given the opportunity to fulfil their potential regardless of which type of school they attend.</p> <p>Whilst the coasting levels as set out in the draft regulations will not be applied to special schools, we will ensure that the consultation on the regulations covers how those special schools which are not supporting their pupils to make the progress they should can be identified.</p> <p>Other strengthened powers of intervention proposed by the Bill will apply to special schools in the same way as mainstream schools. For example where a special school is rated inadequate by Ofsted, the Secretary of State will be under a duty to issue an academy order to bring about rapid and sustained transformation.</p> <p><b>Parents</b></p> <p>Being able to send your child to a good local school (where more schools are good or outstanding) may have a particularly positive impact on some disabled parents in terms of being easier to get their children to nearby schools rather than feeling pressured to send them longer distances to</p> |

| <b>Protected Characteristic</b> | <b>Considerations</b> | <b>Conclusions</b>   |
|---------------------------------|-----------------------|--|
|                                 |                       | access a good school which may be harder for disabled parents.   |
| <b>Gender Reassignment</b>      |                       | The school intervention measures have no equality impacts by reference to this protected characteristic per se, but better school provision overall advances equality of opportunity for all pupils.   |
| <b>Pregnancy and Maternity</b>  |                       | The school intervention measures have no equality impacts by reference to this protected characteristic per se, but better school provision overall advances equality of opportunity for all pupils.   |
| <b>Race</b>                     |                       | The school intervention measures have no equality impacts by reference to this protected characteristic per se, but better school provision overall advances equality of opportunity for all pupils.   |
| <b>Religion or Belief</b>       |                       | Where a foundation or voluntary school has a designated religious character and is subject to a new directive academy order because it is failing, coasting, or is otherwise eligible for intervention because it has failed to comply with a warning notice, the Bill requires the Secretary of State to consult the appropriate religious body about the identity of the proposed sponsor. This additional requirement gives children of faith in such schools security that the proposed sponsor is likely to be sympathetic to the faith and |

| <b>Protected Characteristic</b> | <b>Considerations</b> | <b>Conclusions</b>  |
|---------------------------------|-----------------------|---|
|                                 |                       | secure the continuance of the religious ethos in the school.  |
| <b>Sex</b>                      |                       | <p>The powers in this Bill apply equally to single sex school as to co-educational schools.</p> <p>The school intervention measures have no equality impacts by reference to this protected characteristic per se, but better school provision overall advances equality of opportunity for all pupils.</p> |
| <b>Sexual Orientation</b>       |                       | <p>The school intervention measures have no equality impacts by reference to this protected characteristic per se, but better school provision overall advances equality of opportunity for all pupils.</p>   |

## The Family Test:

The objective of the Family Test is to introduce an explicit family perspective to the policy making process, and ensure that potential impacts on family relationships and functioning are made explicit and recognised in the process of developing new policy:

1) **Will the policy support or limit individuals' decisions to form a family?**

We do not identify an effect of the policy relating to this question.

2) **Will the policy add to pressures on families, or give families support?**

If children receive a good or outstanding education, the impact on their families can only be a positive one. Many families living near poor schools feel compelled to move house (if they can afford to do so), which is very disruptive to family life. Ensuring that children can receive a good education in their local school therefore removes much of the stress on family life that having to move house brings. The school admissions system itself is notoriously stressful with good state schools being massively oversubscribed and many parents not receiving their first preference school, or even any school they expressed a preference for which can be an anxious time for families. This stress is effectively removed where all schools are good or outstanding and families can confidently send their children to the local school.

3) **How will the policy impact on family members' ability to play a full role in family life, e.g. with respect to work-life balance, time together, care roles?**

Being able to confidently send your children to a good local school gives all family members the best chance of fully participating in family life as travel to school time, stress and expense is reduced.

4) **Will the policy support parents who have separated in their parenting after separation?**

We have not identified an effect of the policy relating to this question.

5) **How will the policy impact on those families most at risk of deterioration of relationship quality and breakdown?**

We do not identify an effect of the policy relating to this question.



## UN Convention on the Rights of the Child

The UK Government ratified the UN Convention on the Rights of the Child (UNCRC) twenty years ago and has ever since been responsible for ensuring that all its policies and practices comply with the Convention.

- 1) **Impact on Children: Describe how the proposed policy may impact on children (this could be for children as a whole or it may relate to minority or disadvantaged groups)**

Tackling and transforming failing and coasting schools will directly impact on children – they will no longer be taught in schools that are less than good which will directly improve their life chances and their chances of obtaining gainful employment when they leave school.

- 2) **Have you consulted children and young people about the impact your proposals will have on them? If so, explain how you did so and how their feedback was taken into account.**

No such consultation has taken place.

- 3) **What are the issues raised by the sector about your proposals? : What do you know about the concerns raised by parents, carers, local organisations, sector representatives? Are there known concerns with your proposals?**

There are fears among teachers and head teachers that the coasting powers in particular are harsh and will unfairly target schools that are already achieving reasonable results, or will be based on historical data where circumstances have subsequently changed. They are concerned that the precise coasting definition will not be known until Committee stage which is making it difficult to assess whether their own school will be affected.

Parents sometimes fear the academisation of their child's school. However, such fears are unfounded as research shows that sponsored academies improve faster than other types of school.

- 4) **Which UNCRC article/s relate to the policy you are developing?**

- Article 2 - Non-discrimination
- Article 3 - Best interests of the child
- Article 6 – Child's right to life and maximum survival and development
- Article 27 – Child's right to adequate standard of living
- Article 28 – Child's right to education

Article 29 – The aims of education

5) **How do your proposals comply with the UNCRC Article/s?**

The Bill proposals are not discriminatory – they affect all children attending failing and coasting maintained schools in England. Improving the standard of education in those schools must be in the best interests of the children attending those schools. The proposals will ensure the children’s full educational development in schools that do not fail them, and will help to ensure that they can attain an adequate standard of living once they leave school. They directly affect children’s right to education by ensuring that they receive a good or better education.

6) **How do the proposals conflict with Article/s? Can your proposals be adjusted so that they comply with the articles? What is the overriding policy consideration, if it is not possible to adjust your proposals to be compliant?**

The proposals do not conflict with the Articles.

7) **Has the UN Committee previously made recommendations or expressed concerns about the proposals?**

No, the UN committee has not previously made recommendations or expressed concerns about the proposals.

## Child Poverty:

The Child Poverty Act 2010 sets four income-related targets which government are legally committed to meeting by 2020/21.

- 1) **Is your policy expected to directly affect employment levels, earnings from employment, welfare and benefits (or any other sources of income), the cost and availability of goods, or the educational attainment of children?**

Yes

- 2) **Employment levels: how is your policy expected to change the number of workless families with children?**

We expect improvement to the quality of education to decrease the number of workless families in the future. Giving children the opportunity to fulfil their potential (by tackling failing and coasting schools) will increase the chance of them attaining good exam results leading to them being better able to get gainful employment and being better able to support their own families without having to rely on benefits

- 3) **Earnings from employment: how is your policy expected to change the average net (post-tax) income of those who remain in employment (across all groups)?**

This policy will have a positive impact upon the disposable income of pupils leaving school. Pupils will no longer be attending failing or coasting schools - they will leave school with better qualifications and be able to get better jobs with higher earning potential.

- 4) **Welfare, benefits and other support: are you changing the eligibility criteria or rate of benefits or tax credits, and what is the effect on low-income families with children?**

No this policy will not change the eligibility criteria or rate of any benefits.

- 5) **Comparison: in general, will low-income families with children lose or benefit more than other groups as a result of your policy?**

The policy will have a positive impact on low income families with children. Often, the only schools available for children from low income families are those that are poorly performing. These measures will tackle those failing schools and improve them so the children will leave school with better exam results and be better able to lift themselves out of poverty for the benefit of the next generation of children

- 6) **Cost of living: does your policy affect the cost or availability of goods essential to families with children? (N.B. this is about the cost/availability of goods, not the income to purchase them)**

This policy will have no impact on the cost/availability of goods.

- 7) **Future life chances: other than its impact on poverty now, does your policy impact on the risk of a child growing up to be a poor adult?**

Tackling failing and coasting schools will decrease the risk of children growing up in poverty. They will be better able to support themselves as their ability to get a well-paid job as adults will be increased.

# Adoption Provisions

## Public Sector Equality Duty

The department has considered the impact of this policy on individuals who identify with one or more of those characteristics. We can confirm that this policy does not discriminate on the grounds of: age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity and/or sexual orientation.

| <b>Protected Characteristic</b> | <b>Considerations</b>  | <b>Conclusions</b>   |
|---------------------------------|--|--|
| <b>Age</b>                      | <p><b>Children</b></p> <p>Children of all ages (under 18) can be adopted and the introduction of this policy will not change this. We know that children over the age of 5 on average wait longer to be matched and adopted. We expect this policy to improve the speed at which children are matched and adopted particularly for older children who are harder to place.</p> <p><b>Adopters</b></p> <p>To become an approved prospective adopter people must be aged 21 or over and there is no upper age limit.</p> | <p>The adoption clause measures are inclusive of all children waiting for adoption and all prospective adopters.</p> |

| <b>Protected Characteristic</b> | <b>Considerations</b>  | <b>Conclusions</b>  |
|---------------------------------|--|---|
| <b>Disability</b>               | <p><b>Children</b></p> <p>Children with disabilities waiting for adoption will continue to be protected under existing SEN legislation. We know that children with a disability tend to wait longer to be matched and adopted compared to children without a disability. This policy will widen the pool of adopters available to ensure quicker matching particularly for children with a disability who are harder to place.</p> <p><b>Adopters</b></p> <p>Adults over the age of 21 with a disability can become approved prospective adopters. The introduction of this policy will not change this.</p> | <p><b>Children</b></p> <p>The adoption clause measures are inclusive of all children waiting for adoption and all prospective adopters.</p> |
| <b>Gender Reassignment</b>      |  | <p>The adoption clause measures have no equality impacts by reference to this protected characteristic</p>                                  |
| <b>Pregnancy and Maternity</b>  |  | <p>The adoption clause measures have no equality impacts by reference to this protected characteristic.</p>                                 |

| <b>Protected Characteristic</b> | <b>Considerations</b>  | <b>Conclusions</b>   |
|---------------------------------|--|--|
| <b>Race</b>                     | <p><b>Children</b></p> <p>We know that BME children wait on average longer to be matched and adopted. This policy will widen the pool of adopters available to ensure children are matched quicker, particularly for BME children who are harder to place.</p> | <p>The adoption clause measures are inclusive of all children waiting for adoption and all prospective adopters.</p> |
| <b>Religion or Belief</b>       |  | <p>The adoption clause measures have no equality impacts by reference to this protected characteristic.</p>          |
| <b>Sex</b>                      | <p><b>Children</b></p> <p>We know that boys tend to wait longer on average to be adopted than girls. This policy will widen the pool of adopters available to ensure children are matched quicker, particularly for children who are harder to place.</p>      | <p>The adoption clause measures are inclusive of all children waiting for adoption and all prospective adopters.</p> |
| <b>Sexual Orientation</b>       |  | <p>The adoption clause measures have no equality impacts by reference to this protected characteristic.</p>          |

## The Family Test

### 1) **Policy under consideration:**

The government has already made significant improvements to the adoption system with record numbers of children finding permanent loving homes. However the system remains highly fragmented and we do not think such a localised system can deliver the best service to children. That is why the government has publicly committed to introducing regional adoption agencies, which will work across local authority boundaries and in partnership with voluntary adoption agencies. We will work with the sector to deliver this vision but need a backstop power that can be used to direct local authorities to come together to deliver their services if they are unwilling to rise to this challenge.

The Bill will give the Secretary of State the necessary powers to direct local authorities to make arrangements for certain adoption functions to be carried out, on their behalf, by one of the local authorities named in the direction or by another adoption agency.

### 2) **Will the policy change have an impact on family relationships or functions?**

#### **Yes – for adoptive families:**

The policy is likely to have a positive impact on adoptive families. Once the decision has been made for adoption, the new policy should speed up the time it takes for children to be placed with adopters meaning adoptive families will come together more quickly

#### **No – for birth families:**

The proposed policy change will not have any effect on birth families because regional adoption agencies are not intended to change or influence how decisions to pursue adoption are made. The decision about whether adoption is the right path for a child will remain the responsibility of the local authority. This policy will not change. It remains an absolutely fundamental principle of the Children Act 1989 that local authorities must support the upbringing of children by their families wherever possible. This is reinforced by the revised guidance on Court Orders and Pre-Proceedings that was issued in April 2014. When local authorities apply to court for an order, robust evidence must be presented, which clearly indicates that the threshold has been met to demonstrate that the child is at risk of significant harm if s/he remains with the birth parents. Ultimately, it will be an independent judge who makes the decision to remove a child, based on the evidence presented.



3) **What kinds of impact might the policy have on family formation?**

We do not identify an effect of the policy relating to this question.

4) **What impacts will the policy have on all family members' ability to play a full role in family life, including with respect to parenting and other caring responsibilities?**

Adoptive families are likely to receive better support through regional adoption agencies that will be able to share and use vital support services across local authority boundaries. We know that support can have a very positive impact on family life.

5) **What kind of impact will the policy have on families going through key transitions such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring responsibilities or the onset of a long-term health condition?**

Consolidating the market through regional adoption agencies and bringing in innovative new practice models should speed up the time it takes for children for whom adoption is the right decision, to be placed with adopters, meaning adoptive families will come together more quickly.

6) **How does the policy impact families before, during and after couple separation?**

We do not identify an effect of the policy relating to this question.

7) **How does the policy impact those families most at risk of deterioration of relationship quality and breakdown?**

We do not identify an effect of the policy relating to this question.

## UN Convention on the Rights of the Child

- 1) **Impact on Children: Describe how the proposed policy may impact on children (this could be for children as a whole or it may relate to minority or disadvantaged groups).**

Evidence shows that children in harder to place categories tend to wait longer to be adopted than other children. This is starkly illustrated by the around 3,000 children who are still waiting for “forever families”, despite there being enough approved adopters across the country. Consolidating the market through regional adoption agencies and bringing in innovative new practice models should speed up the time it takes for vulnerable children to be matched and placed with adopters.

- 2) **Have you consulted children and young people about the impact your proposals will have on them? If so, explain how you did so and how their feedback was taken into account.**

No such consultation has taken place.

- 3) **What are the issues raised by the sector about your proposals? : What do you know about the concerns raised by parents, carers, local organisations, sector representatives? Are there known concerns with your proposals?**

We know that some stakeholders have raised the question about whether regional adoption agencies will consider varied permanence options other than adoption when finding a solution for a child in public care. The duty to make a decision about which permanence option to pursue for a particular child will remain with the local authority once regional adoption agencies are established. The policy we are introducing is about ensuring that once a decision has been made that adoption is the best outcome for a child, children are found loving homes without delay. If local authorities are interested in bringing together other permanence services as well as adoption services, they have the freedom to do so.

- 4) **Which UNCRC article/s relate to the policy you are developing?**

- Article 20 – Children deprived of their family environment
- Article 21 – Adoption

- 5) **How do your proposals comply with the UNCRC Article/s?**

N/A

6) **How do the proposals conflict with Article/s? Can your proposals be adjusted so that they comply with the articles? What is the overriding policy consideration, if it is not possible to adjust your proposals to be compliant?**

N/A

7) **Has the UN Committee previously made recommendations or expressed concerns about the proposals?**

N/A

## Child Poverty

- 1) **Is your policy expected to directly affect employment levels, earnings from employment, welfare and benefits (or any other sources of income), the cost and availability of goods, or the educational attainment of children?**

Yes

- 2) **Employment levels: how is your policy expected to change the number of workless families with children?**

Negligible impact.

- 3) **Earnings from employment: how is your policy expected to change the average net (post-tax) income of those who remain in employment (across all groups)?**

Negligible impact.

- 4) **Welfare, benefits and other support: are you changing the eligibility criteria or rate of benefits or tax credits, and what is the effect on low-income families with children?**

No this policy will not change the eligibility criteria or rate of any benefits.

- 5) **Comparison: in general, will low-income families with children lose or benefit more than other groups as a result of your policy?**

The policy does not directly affect income.

- 6) **Cost of living: does your policy affect the cost or availability of goods essential to families with children? (N.B. this is about the cost/availability of goods, not the income to purchase them)**

This policy will have no impact on the cost/availability of goods.

- 7) **Future life chances: other than its impact on poverty now, does your policy impact on the risk of a child growing up to be a poor adult?**

Delays in the system cause lasting harm to vulnerable children. Based on an in-depth study of the case histories of 130 older looked after children for whom adoption had been identified as the best option, Dr Julie Selwyn concluded that: 'delay in decision making and action has an unacceptable price in terms of the reduction in children's life chances and the financial costs to local authorities, the emotional and financial burden later placed on adoptive families and future costs. Selwyn's research into adoption disruption found that nearly three-quarters of the children who experienced an adoption disruption waited two or more years for an

adoptive placement, whilst nearly three-quarters of the children in intact placements were placed within 2 years of entering care . We would expect this policy to have a positive impact and see a reduction in the number of children waiting to be adopted, especially those waiting over 18 months.

**Overall conclusion on adoption:**

Currently, on balance, this policy will be positive for children and families for the following reasons: tackling and transforming failing and coasting schools will directly impact on children – they will no longer be taught in schools that are less than good which will directly improve their life chances and their chances of obtaining gainful employment when they leave school; a reduction in the number of children waiting to be adopted, especially those waiting over 18 months.



Department  
for Education

© Crown copyright 2015

This publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit [www.nationalarchives.gov.uk/doc/open-government-licence/version/3](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3)

email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries [www.education.gov.uk/contactus](http://www.education.gov.uk/contactus)

download [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Reference: DFE-00227-2015



Follow us on Twitter:  
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:  
[facebook.com/educationgovuk](https://facebook.com/educationgovuk)