

Academies: Freedoms and intervention

13 January 2025

This article is part of our series of briefings on [The Children's Wellbeing and Schools Bill](#).

Part 2 of the Children's Wellbeing and Schools Bill, which is the part of the Bill that directly relates to schools, enables us to piece together what has, until recent weeks, been a somewhat elusive government policy position on school structures and academies.

Various parts of the Bill seek to put maintained schools and academies on the same legal footing. In some instances, this simply codifies existing practice and expectations. In other areas, this will be viewed as a more contentious erosion of core academy freedoms and plainly moves the education landscape away from a preference for academy status.

Our briefings on the sections of the Bill covering [admissions](#), [new schools](#), [attendance](#) and [teacher pay and conditions](#) all reflect this theme. The academies section of the Bill (sections 41-44) is also particularly notable in this respect. It reverses one of the core freedoms granted to academies when the framework was originally established: the freedom to design their own curriculum.

In addition, this part of the Bill contains some important changes to the Secretary of State's (SoS) intervention powers, for both academies and maintained schools. For maintained schools, the Bill represents a further significant shift in the government's approach to structural intervention, building on recent policy changes made earlier this academic year.

Academies will be required to teach the National Curriculum

Section 41 of the Bill introduces a statutory requirement on academies to teach the National Curriculum, which will bring academies into line with maintained schools and removes one of the flagship freedoms of the academies programme.

The Academies Act 2010 already requires academies to offer a "*balanced and broadly based curriculum*", which under the terms of the funding agreement must include English, mathematics, science, and (subject to the academy's specific characteristics) religious education. However, this Act did not previously require academies to teach the National Curriculum.

The Bill amends that Act so that as well as being "*balanced and broadly based*", an academy's curriculum must also include the National Curriculum. The amendments will also operate to disapply any provision of an academy's funding agreement which conflicts with this statutory requirement, removing any scope for academy trusts to negotiate alternative arrangements.

Timing

The requirement will not have immediate effect: it is intended to apply to the revised National Curriculum, once developed following the conclusion of the ongoing Curriculum and Assessment Review. The extent of the impact on individual academies therefore remains to be seen.

To plan ahead, academy trusts should pay close attention to the interim report, expected early 2025, and the full report, due in Autumn.

Statutory footing for academy off-site directions

Currently, the governing body of a maintained school has a statutory power under s.29A of the Education Act 2002 to require a pupil to attend another educational setting to improve their behaviour. The legislation doesn't apply to academies, although it is accepted that academies can arrange off-site provision for such purposes under their general powers (see the DfE's statutory [suspensions and exclusions guidance](#)).

The Bill makes provision for the s.29A statutory power to be extended to academies, placing academies on the same statutory footing as maintained schools when it comes to directing off-site.

The clarity that comes with an express power is likely to be welcomed. However, the change means academies will also be required to have regard to the DfE's statutory guidance on [Alternative Provision](#). This contains obligations relating to the management and review of placements made under the power to direct off-site.

Compliance with these obligations is currently "*encouraged*" under the suspensions and exclusions guidance, so for many academies this is unlikely to result in any significant change to current practice. We do though recommend that trusts review their current processes against the guidance to ensure any areas of non-compliance can be addressed.

Power for the Secretary of State to give directions to an academy trust

Significantly, this provision grants the Secretary of State ('SoS') a new, broad power to give directions to an academy trust where the SoS is satisfied that the trust has breached or is likely to breach a relevant legal duty, or where the SoS is satisfied that the trust is acting or is proposing to act unreasonably.

The SoS already has equivalent powers to direct maintained schools and local authorities under the Education Act 1996. The Bill amends this legislation to incorporate the new power, which will sit alongside the SoS's existing power to issue a Termination Warning Notice ('TWN') to an academy which has breached its funding agreement by failing to comply with its legal duties.

The new power could see directions issued to academy trusts for failures to comply with provisions in the Bill, as well as with other duties, such as a failure to follow its complaints process in dealing with a parental complaint. The measure appears to be another move designed to level the playing field between academies and maintained schools, and it also offers the SoS a more straightforward route of intervention in cases where a TWN is not considered proportionate to the matters involved.

Proposed process

The policy notes accompanying the Bill set out the proposed process, which makes clear that trusts will be notified in the first instance that the SoS is minded to make a direction, and will be given the opportunity to make representations.

It's worth noting that non-compliance with a direction may still result in a TWN, which ultimately may lead to the termination of the academy funding agreement. A mandatory order could also be sought by the SoS via the courts.

However, the legal obligations involved are those that trusts should be meeting anyway: provided trusts have clear policies and robust systems in place to ensure compliance with their legal duties, the risk of intervention is likely to be relatively low.

Withdrawal of mandatory directive academy orders for maintained schools

The Bill will amend the Academy Act 2010, removing the SoS's statutory duty to issue a directive academy order for a maintained school judged to be in special measures or requiring significant improvement. Maintained schools placed a category of concern by Ofsted will therefore no longer automatically receive a directive academy order requiring them to convert to academy status.

This follows previous policy changes introduced in the autumn term, including the withdrawal of the SoS's intervention powers for coasting schools and the removal of the academy conversion grant, which demonstrate a clear shift in the government's approach away from academisation and structural intervention.

'Eligible for intervention'

Maintained schools placed in a category of concern will still be 'eligible for intervention' under the Academies Act, and the SoS will retain a discretionary power to issue a directive academy order to these schools.

The discretionary element will in theory render any such decision more susceptible to challenge. It has been indicated that the "worst performing" schools can still expect to be forced to academise but no policy guidance is yet available setting out how these decisions will be approached. There is of course ongoing reform of the Ofsted inspection framework and methodology which will presumably remain relevant to decision-making and policy on academisation as a form of intervention.

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