

EDUCATION BILL 2011 – UNISON BRIEFING

The Education Bill 2011 consists of 10 parts with 17 schedules which range from early years to higher education and with implications for careers, skills and children's services. As such, it is of major significance to UNISON, not least because its provisions will centralise, de-democratise and stratify education even further.

UNISON is concerned particularly by:

- The abolition of the School Support Staff Body (SSSNB) (Part 3)
- More pressure to establish academies; the "transfer scheme" for staff (Part 6)
- Diminished role of local authorities in education (Part 4 – careers, Part 5)
- The exclusion of schools and colleges from children's services (Part 5)
- Restriction of apprenticeships and adult learning entitlements (Part 7)
- Charging in early years' settings (Part 5)
- Anonymity for teachers suffering accusations from pupils, rather than all staff; civil liberty issues in search proposals (Part 3)
- Training of the school workforce, other than teachers (Part 3)
- Significant increase in Secretary of State for Education's power over running of local services (throughout).

Part 1: Early Years

Local authorities in England have a duty to ensure that there are 15 hours of free early years' provision for all three and four year olds (section 7 Children's Act (CA) 2006). The Bill extends this to a targeted group of two year olds. Regulations under the revised section 7 will define entitlement on criteria such as economic circumstances and will describe how provision must be made.

UNISON concern:

We welcome this extension of entitlement, with the caveat that there must be adequate funding, staff and capacity for additional places in early years' settings.

New sections 13A and 13B are inserted into the CA 2006 to provide for sharing benefit information to establish entitlement.

Part 2: Discipline

The power to search pupils is enhanced significantly. Section 550Z of the Education Act (EA) 1996 is amended to add to the list of prohibited items (e.g. alcohol, drugs and stolen goods) which can justify a search with reasonable force and includes items prohibited under school rules, for which force cannot be used. Members of staff of the opposite sex to the pupil can carry out a search and searches can be carried out without another member of staff present if there is reasonable belief that there is a risk of serious harm. Further sub-sections deal with the disposal of seized items and provides specifically for electronic devices and the viewing and deleting of data files under certain circumstances. There is no personal liability for seizure, loss, disposal or damage of goods if the search takes place in compliance with this provision. The term “offence” is made applicable to younger children as if they had attained the age of criminal responsibility.

These powers are extended to staff at further education institutions, without the right to search for items under school rules.

UNISON concern:

There are considerable civil liberty issues in these new provisions, which will create difficulties for staff expected to execute them. UNISON is also concerned that the removal of previous safeguards, such as same sex searching and never searching alone, will increase the vulnerability of pupils and of staff to allegations.

The Secretary of State can use his regulation-making powers on exclusions in relation to the new review panel, which replaces the current appeal panel (except in Wales). School budgets can be adjusted and the new powers can be applied to academies.

Parents will no longer be entitled to 24 hours’ written notice of detention outside of school hours and the duty to enter into behaviour and attendance partnerships is repealed.

Part 3: School workforce

The General Teaching Council for England is abolished and professional conduct will be considered by the Secretary of State. There are new provisions on induction for teachers.

Clause 13 inserts three new sections into the EA 2002 to restrict the reporting of allegations of offences by teachers in England and Wales. Anonymity is assured until any charge of a criminal offence is made.

UNISON concern:

Support staff are as vulnerable to allegations as teachers. They are in close contact with pupils, often working one to one or providing intimate care and medical support. This provision should apply to the whole school workforce.

The Training and Development Agency for Schools (TDA) is abolished and its functions pass to the Secretary of State. Financial support will be made available for training of teachers and members of the school workforce, who are receiving training in higher education institutions.

UNISON concern:

Although the school workforce, other than teachers is mentioned, there is very little indication of how the Secretary of State will support its training in schools. If funding is confined to those attending a Higher Education institution, much necessary school workforce training at college level will be neglected.

Clause 18 abolishes the SSSNB.

UNISON concern:

The abolition of the SSSNB is of central importance to UNISON. It was en route to agreements on pay, grading, working time and conditions of service. Its abolition signals an ignorance of the reasons for its establishment and is an extremely retrograde step for staff, pupils and schools. School staff roles have changed immeasurably with a greater number of support staff taking on a wider range of more complex roles. The Secretary of State has suggested that employers and unions should enter into voluntary agreements on school staff, but this offers no statutory backing to a fair, consistent and transparent pay and grading framework across schools in England.

There are minor amendments on staffing and the effects of any suspension of budget delegation.

Part 4: Qualifications and the curriculum

Clause 20 amends the EA 1996 to enable the Secretary of State to rely on the participation of community, voluntary and foundation schools in international surveys.

The chair of the Office of Qualifications and Examination Regulation (Ofqual) will no longer be known as the Chief Regulator and will be appointed by the Secretary of State (who will decide on pay and allowances) rather than by the Queen. Ofqual is given a new objective to ensure comparability of qualifications across the UK and beyond.

The Qualifications and Curriculum Development Agency is abolished as well as provisions that refer to it. The Secretary of State will take on its functions and can make a scheme to transfer staff, property, rights and liabilities to Ofqual.

Careers education and guidance

The Secretary of State's power to direct local authorities in the exercise of their careers functions is removed. The duty on schools and other educational institutions under section 73 of the Education and Skills Act (ESA) 2008 to admit persons involved in education and training support services (for example, Connexions personal advisers) is omitted. The prohibition on use of client information is lifted so that the Secretary of State can match information across databases.

A new section is inserted into the EA 1997 requiring maintained schools and pupil referral units in England to secure independent careers guidance to pupils in the year in which they are 14 until the end of compulsory schooling. It must be impartial and independent (not school staff) and include information on all 16 to 18 education or training options, including apprenticeships.

The diploma entitlement for fourth key stage is repealed.

UNISON concern:

That the Secretary of State cannot direct local authorities in the exercise of their careers function may result in some withdrawing it. We welcome the requirement to use an independent career guidance service but would prefer a reference to qualified career professionals to ensure the quality of the service.

The repeal of the diploma entitlement is another step towards scrapping diplomas and the vocational education opportunities that came with them.

Part 5: Educational institutions: other provisions

Section 10 of the CA 2004 is amended to remove schools and colleges in England from the list of relevant partners involved in the well-being of children and young people. School forums and governing bodies will no longer be required to have regard to their local children's trust board's children and young people's plan.

Schools will no longer have a duty to publish a school profile and local authorities will no longer be required to appoint a school improvement partner for each school they maintain or establish an admissions forum for their area in England. The power of the school adjudicator is restricted and local authorities will no longer be required to provide them with admissions reports.

UNISON concern:

The removal of schools and colleges from the list of relevant partners in children and young people's well-being drives a wedge between them and other local services and negates the purpose of Every Child Matters which was intended to remedy the failure of services to work together. The role of local authorities in education is weakened and leaves it with little incentive to develop policies, for example, on administering medicines and medical support in schools. There is crossover here with the Health and Social Care Bill to which we are also responding. The demise of local authority responsibility towards schools has implications for school leadership, for example, school business managers and directors.

Duties in relation to school food

Clause 35 amends the EA 1996 and prohibits local authorities and governing bodies of maintained schools in England from charging more than the cost of providing milk, meals or other refreshments to pupils. This, in effect, introduces a price cap and should prevent profit being made from provision of food in schools. It also repeals the requirement that charges should be the same per pupil, per portion.

UNISON concern:

These clauses are welcome in that they set a cap on school food prices and allow flexibility to vary prices to benefit particular groups, such as reception classes or children from large or low-income families. Our concern is that these provisions should apply to academies.

New schools

A new section is inserted in to the Education and Inspections Act (EIA) 2006 and it is amended to place a duty on local authorities to seek proposals for the establishment of an academy where they believe that a new school is needed. The Secretary of State must approve a competition (not open to community or foundation status school, unless there are no other proposals), be notified of the process, timescale, nature of any proposals and likely site. Consent can be given to replacing one or more maintained schools, or to proposals for a foundation or voluntary-controlled school. Local authorities are free to replace infant and junior schools and accept proposals for new voluntary-aided schools when a faith school loses or changes its religious designation. The conditions and process for opening new schools is set out, including that academy proposals will no longer go to the local authority but directly to the Secretary of State.

UNISON concern:

These clauses increase central government control over the establishment of new schools. They increase the pressure to open academies and weaken the local authority's ability to plan an education strategy in its area.

Governing bodies in England

The EA 2002 is amended to reduce the number of required categories of governor. Staff, local authority and community governors are no longer required. Clause 38 of the bill prevents a governing body's dissolution when it is part of a federation and two or more schools remain.

UNISON concern:

This reduction of the mandatory places on a governing body diminishes its democratic nature, denies the central role of staff and distances schools from their communities.

School inspection

An as yet unspecified category of schools will be exempt from the current inspection regime on amendment of the EA 2005. "Exempt" schools may be inspected under certain circumstances. If a school requests an inspection, Ofsted will be able to charge a fee.

A new sub-section is inserted into the EA 2005 setting out the Chief Inspector's general duty and details of what Ofsted reports should cover. They should focus on achievement, quality of teaching, leadership and management and behaviour and safety of pupils. Consideration of the quality of education should include how disadvantage is challenged and talent fostered. The needs of pupils with a disability or special educational needs must be considered as well as the school's provision for spiritual, moral, social and cultural development.

These provisions are extended to colleges, with exemption given to those which were rated outstanding in their last inspection. Ofsted will be able to inspect under certain circumstances and charge for inspections that are on request.

There are new provisions on the inspection of boarding accommodation.

UNISON concern:

UNISON will be keen to see that Ofsted focuses on the role of support staff in delivering quality education and that aspects of school life, such as the quality of school food and eating experience are considered both under quality of education and social and cultural development.

Schools causing concern: powers of the Secretary of State

Part 4 of the EIA 2006 which sets out the legal framework for maintained schools causing concern in England is amended to extend the powers of the Secretary of State. He will be able to close a school which has failed to comply with a performance standards or a safety warning notice or has been identified by Ofsted as requiring significant improvement. The Secretary of State can also direct the local authority to issue a warning notice in specified terms.

Complaints: repeal of power to complain to Local Commissioner

Clause 44 in the Apprenticeships, Skills, Children and Learning Act (ASCLA) 2009 is repealed so that the Local Government Ombudsman in England will no longer hear complaints from parents and pupils about maintained schools. Hearing of complaints will be the responsibility of the Secretary of State.

UNISON's concern:

These measures build upon the central powers that the Secretary of State is taking to himself and deny community-based redress to complaint.

Finance

The Schools, Standards and Framework Act (SSFA) 1998 is amended to enable the Secretary of State to revise the whole or any part of a local authority scheme, which sets out its financial relationship with schools, after consultation with it and other parties at his discretion.

The EA 2002 is amended to allow governing bodies to meet the costs of early retirement or unfair dismissal of school staff from the school's budget share.

Allowing schools to charge for early years' education

The EA 2002 is amended to extend the definition of 'optional extras' for which a charge can be made and to allow charging for early years' education. This can include the cost of teaching staff.

UNISON concern:

This clause raises questions about free education, which is at the heart of UNISON's education policy. It is unclear whether there will be safeguards for children from disadvantaged backgrounds. We have concerns that places in nursery schools, which are often the highest quality settings, will be subject to an ability to pay and this could place those children that have most to benefit from quality early years' provision at a disadvantage. We recognise that there are issues regarding schools inability to charge where other types of settings can and the impact this has on the

viability of them offering free places, but we do not believe charging for places is the way forward.

Further education

Clause 48 gives effect to schedule 11 and amends duties placed on college corporations in England under the Further and Higher Education Act (FHEA) 1992. Colleges will be able to borrow money or invest in charitable organisations without the consent of local authorities or funding bodies. The duty on colleges to promote the economic and social wellbeing of the local area is repealed.

Sixth form colleges will be able to apply directly to the Secretary of State for dissolution rather than relying on the advice of the funding body and can seek establishment from him; articles and instruments, without recourse to the local authority or Young People and Learning Agency (YPLA). Certain powers of the YPLA, which is to be dissolved, are removed or pass to the Secretary of State. Governing bodies no longer have to consult potential students and employers in the exercise of their functions.

The chief executive of skills funding (CESF) will no longer be able to direct governing bodies to consider taking disciplinary action against senior post holders or to appoint up to two additional members of the governing body of a further education college. The local authority and the YPLA lose the corresponding power in sixth form colleges and the duty to notify the CESF of concerns about delivery in a further education college.

The local authority and the YPLA will no longer be able to intervene in sixth forms and their role transfers to the Secretary of State.

UNISON concern:

Colleges are a vital part of their local communities. At a time when drastic spending cuts are impacting on them, the duty on colleges to promote economic and social wellbeing should be maintained. Other provisions are consistent with prising education institutions away from local authorities, communities and democratic involvement. Local authorities have a key role in quality, planning, commissioning joined up provision for young people. Removing their duties, obligations and relationship with colleges is another attack on the community.

Pupil referral units (PRUs)

PRUs will continue to be known as such, rather than 'short stay schools' as was previously planned. They may convert to academies, retaining their legal obligations.

Part 6: Academies

The Academies Act (AA) 2010 is amended to remove the requirement to have a specialism; to establish three types of academy: academy schools, 16-19 academies (including free schools) and 'alternative provision' (PRUs) academies.

The Secretary of State no longer needs to consult foundation trustees when issuing an order but must give them a copy.

A federated school can apply for an academy order without the agreement of the whole federated governing body. Regulations controlling this will be introduced.

Transfer of property, rights and liabilities to academies

The AA 2010 is amended to change the 'property transfer scheme' into the 'transfer scheme', which in addition to covering the transfer of other property, rights and liabilities of local authorities and governing bodies, will cover the rights and liabilities in relation to staff. The responsibility will be "a person concerned with the running of the academy", as directed by the Secretary of State.

Academies: other provisions

A new section in the AA 2010 requires the Secretary of State to consider the impact of a new academy or extended academy on other schools, academies and further education colleges.

Staff at academies with religious character

A new section is added to the SSFA 1998 which applies to all voluntary-controlled and foundation schools with a religious character which have converted into academies. It ensures that they cannot recruit more than one-fifth of teaching staff, including reserve teachers, on the basis of the religious tenets of the academy; this is in line with maintained schools. Similar provisions are made for the composition of the governing body to ally with voluntary-aided faith schools.

Academies: land

Additional powers to transfer publicly funded land to academies are invested in the Secretary of State.

Academy admissions arrangements: reference to adjudicator

The SSFA 1998 is amended to allow the adjudicator to consider objections from parents and other persons relating to admissions to academies, in line with maintained schools. The Secretary of State will be able to make referrals to the adjudicator who will have discretion to consider admissions arrangements other than those referred.

UNISON concern:

UNISON's objection to academies is on record and the extension of the programme into 16-19 provision and PRUs is extremely unwelcome. Current 16-19 provision may have to compete with institutions which have preferential funding and government support. The current arrangements for establishing post-compulsory provision should be adequate to meeting additional needs.

There is much concern at the unknown implications of the change of property transfer schemes into transfer schemes that cover staff.

Part 7: Post-16 education and training

The provisions in the ASCLA 2009 establishing the YPLA are abolished and its functions (including guidance to local authorities) will move to the Secretary of State and will be carried out by a non-statutory agency within the Department of Education.

UNISON concern:

The YPLA has only been in existence since April 2010. According to the Association of Colleges in its short life the YPLA has, for the most part, communicated effectively with providers of post 16 education and ensured the voice of colleges, schools and academies is heard via its Board. There are also concerns about capacity. Staffing levels must be protected or else the service to providers will suffer and could impact on learner attainment. The trend to centralise power with the Secretary of State continues.

Apprenticeships

There is a new clause 65 which places a duty on the CESF to prioritise funding for apprenticeship training for specified groups of young people. The duty under the ASCLA 2009 to secure an apprenticeship place for all suitably qualified young people in these groups is repealed. New section 83b limits the scope of the

'apprenticeship offer'. It specifies that the duty to fund apprenticeship training under the offer applies to one completed apprenticeship at each apprenticeship level. There are regulation-making powers to specify eligibility for an apprenticeship at the behest of the Secretary of State who can also suspend the offer in relation to a specified skill, trade or occupation.

Clause 66 replaces section 6 in the ASCLA 2009 and provides that the certifying authority for apprenticeships in England will be a person designated by the Secretary of State. Where a person is not designated, the Secretary of State will be the English certifying Authority.

Consultation by the CESF

A power is given to the Secretary of State to direct the CESF to consult specified people or groups of persons on matters associated with the performance of his functions.

Functions of the CESF

The ASCLA 2009 is amended so that the entitlement to fee remission on the first full vocational qualification at level 2 and specified qualification at level 3 are restricted to those aged 19 to 24.

UNISON concern:

The changes withdraw certainty of the apprenticeship offer and limit it. An individual could not access funding for an apprenticeship if they already held an apprenticeship certificate at that level. This will have an impact on those individuals wishing to retrain in a bid to find employment in a new area. The Secretary of State is to take over responsibility for apprenticeships from the CESF.

The restriction on adult 'learner entitlements' to 19 to 24 year olds will impact on a wide range of those in need of training and will deepen the skills deficit in England. Coupled with this the government aims to replace public funding with a loans system that will see those adult learners not covered by the proposed restricted fee remission schemes having to take on a debt (this is not in the Bill but has been announced separately for introduction in 2013). UNISON strongly believes that the full adult entitlements must be retained. It would be very damaging for the long-term economic prospects of the nation and for social cohesion if the entitlements were cut. UK Commission for Employment and Skills (UKCES) is already forecasting that the UK will be a long way behind our target to train at least 90% of the workforce to Level 2 by 2020 (Level 2 target). Now would be precisely the wrong time to cut the adult learner entitlements.

Raising the participation age: commencement

The legislation, which raises the participation age in 2013 (to age 17) and 2015 (to age 18), is retained while removing the requirement to commence enforcement procedures on young people, parents and employers.

Part 8: Student finance

This clause is part of the higher education reforms announced in November 2010 which will apply a tuition fees cap and increase the cap on interest rates that can be charged on new student loans. Clause 71 amends the definition of a course in the Higher Education Act (HEA) 2004 to remove the exclusion of part-time courses. The Secretary of State will be able to cap the amounts that institutions are charging part-time students.

UNISON concern:

Unison views the fees package as a disastrous disincentive to study and a leap backwards to education for the privileged few.

Part 9: National Assembly for Wales

The Welsh Assembly is given framework powers to take on the role of the abolished TDA and in relation to funding of pre-16 education and training.

Part 10: General provisions and interpretations.