

Children's Wellbeing and Schools Bill: Comments from education lawyers

17 December 2024

The government has published its Children's Wellbeing and Schools Bill, which introduces a wide range of legislation affecting education and early years provision.

First announced in the King's Speech, the Bill includes a series of new laws spanning [academisation](#), [Ofsted inspections](#), [teacher pay](#) and [safeguarding](#).

Lawyers from Browne Jacobson's education team comment on what the government has announced.

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New package of legislation covers broad range of issues

Nick MacKenzie, Head of Education at Browne Jacobson, said:

"School and academy trust leaders have been eagerly awaiting news of the government's plans for education, with only three in 10 respondents to our recent School Leaders Survey saying they felt positive about the impact of government policy 100 days after the General Election.

"What is the story of the Bill? Looking at the title, it seems clear. However, if you look at the long title, it illustrates the breadth of ground the Bill is seeking to cover.

"Government is about making choices and prioritising. Do the measures in the bill provide a coherent package of reforms that will move the dial for the sector on its most pressing issues or are they a selection of targeted measures to remove legislation that does not fit with the Secretary of State's view of what the sector should look like?

"Tackling children not in school is clearly a pressing issue but perhaps some of the measures are more political than addressing pressing sector need.

"Whilst the Bill gives a greater sense of the Secretary of State's strategy and reform agenda, a lot of detail will still need to come in secondary legislation, policy statements and guidance before the sector really understands the direction of travel and what it really means for them. Making strategic decisions with the level of detail provided so far will be extremely difficult to do.

"Many of the headlines will focus on academies and it is hard to escape the significance that the Bill seeks to remove two of the core academy freedoms made available in 2010; freedoms around the delivery of the curriculum and freedom to set teacher pay and conditions."

“It is perhaps also significant that in the same week as the Bill was published, the Government also published its English Devolution White Paper. There is a lot of detail in both but, on detailed reading, it will be interesting to see if there is coherence between the two agendas and, in particular, whether local authorities will have the bandwidth to address both of these government agendas.”

Register to identify children not in school

Philip Wood, Senior Associate specialising in education law, said:

“Too often, children have fallen through the cracks of the education system due to the lack of a national register that identifies those who are not in school, so the introduction of this is a no-brainer.

“Given the steep rise in home-schooling since the pandemic – government data shows there has been a 20% rise in home-educated children over the past year – this is a long overdue policy.

“However, creating a register alone won’t be enough to protect children’s welfare and rights to education. Recent safeguarding reviews regarding children who have been victims of abuse indicate the relevant authorities have been aware of their education circumstances, with missed opportunities for intervention being the crux of the problem.

“Having a register therefore isn’t a panacea to resolve those safeguarding issues. Instead, it must be used as part of a local authority’s armoury of wider powers.

“With this Bill coming hot on the heels of proposals to usher in major local government reform, as set out in the English Devolution White Paper, central government must also support local authorities in maintaining their statutory duties in areas such as children’s safeguarding during any restructuring process in the short and medium terms.

“One of the best ways that government can provide support is to set out how it intends to reform special educational needs and disabilities (SEND) policy and funding, with 13% of families stating that poor SEND provision is behind their decisions for home education.”

National pay scales and conditions for teachers

Sarah Linden, Senior Associate specialising in education employment law, said:

“Currently, academy trusts have freedom to depart from teachers’ national terms and conditions in the annual School Teachers Pay and Conditions Document (STPCD) and the broader Conditions of Service for School Teachers in England and Wales, known as the Burgundy Book.

“In practice, this freedom has been fettered considerably by the requirement to comply with protections for terms and conditions upon TUPE transfer, as well as pressure exerted by trade unions to continue compliance.

“This has resulted in the vast majority of academy trusts continuing to apply STPCD. The government’s proposals means STPCD compliance will become mandatory for academy trusts.

“In exchange, the Department for Education (DfE) argues the academy sector will have a voice in pay and conditions for the first time by asking the School Teachers’ Review Body (STRB), an independent body that provides advice on teachers’ pay and conditions to the Secretary of State for Education, to expand its remit beyond maintained schools to include academies – which employ 58% of teachers in England, according to the STRB.

“For the minority of academy trusts that do not currently follow STPCD, this will represent a significant change in the way they set conditions and remuneration for their teaching staff, but the impact of proposed changes on the wider academy sector remains to be seen.

“Coupled with the DfE’s proposal to the STRB of a 2.8% pay increase for teachers in 2025/26 – which it said would not be fully funded, with an acknowledgment that schools will have to make ‘efficiencies’ to meet this uplift – it is a worrying time for academy trusts contemplating their finances next year, where it appears restructures and redundancies are on the horizon.”

Academisation of maintained schools

Katie Michelon, Partner specialising in the area of school intervention, said:

“The removal of mandatory directive academy orders for maintained schools judged to be in special measures or requiring significant improvement nudges the dial once again away from academisation. This follows the government’s previous decisions to remove the grant available to converting schools and to no longer require the academisation of coasting maintained schools.

“The Bill retains the discretionary power available to the Secretary of State to direct that a maintained school eligible for intervention is academised. It will be interesting to see what policy guidance follows regarding the application of this power.

“Certainly, in theory, the removal of the statutory duty to issue an academy order means that when a relevant regional director does opt to issue one, there will be an element of decision-making involved, making it intrinsically more susceptible to challenge.”

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