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BRIEFING PAPER

Number 07232, 17 June 2015

Education and Adoption Bill 2015-16 (Bill 4)

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Summary

The Bill's provisions only apply to England.

Background

The [Education and Adoption Bill 2015-16](#) is scheduled to have its Second Reading in the House of Commons on Monday 22 June 2015. It builds on reforms made under the 2010 Government and takes forward commitments in the Conservative Party's General Election Manifesto.

Its provisions concern two main areas: schools in England deemed to be underperforming, and the performance of local authority adoption services. The schools measures form the major part of the Bill.

School clauses

For schools in England, the Bill's provisions would:

- Require every school judged 'inadequate' by Ofsted to be turned into a sponsored academy. The Government has estimated an extra 1,000 schools could be converted to sponsored academy status over the current Parliament.
- Give new powers to the Secretary of State for Education to intervene in schools considered to be underperforming, and constrain local authorities from doing so in some circumstances.
- Expand the legal definition of the 'eligible for intervention' category to include 'coasting' schools, and enable (but not require) the Secretary of State to turn such schools into sponsored academies or intervene in them in other ways.
- Allow the Secretary of State to issue directions, with time limits, to school governing bodies and local authorities, to speed up academy conversions.
- Place a new duty on schools and local authorities in specified cases to take all reasonable steps to progress the conversion
- Require schools and local authorities in specified cases to work with an identified sponsor toward the 'making of academy arrangements' with that sponsor.
- Remove the requirements for a general consultation to be held where a school 'eligible for intervention' is being converted to a sponsored academy.

Adoption clauses

In respect of adoption, the Bill would allow the Secretary of State to give directions requiring one or more English local authorities to make arrangements for any or all of their specified adoption functions to be carried out by one of the named local authorities or by a different adoption agency (either a different local authority or a voluntary adoption agency).

The provisions in the Bill build on and expand the joint arrangement legislation in the *Adoption and Children Act 2002* (which were added by the *Children and Families Act 2014*).

The Government has stated that the new powers "will require councils combine their adoption functions if they fail to join together services under their own steam within the next 2 years" – however, there is no reference to a waiting period in the Bill.

Reaction to the Bill

Comment on schools clauses

- “Contrary to the criticism it has received, last week’s plans in the education bill that all underachieving and coasting schools will be converted into academies is one that should be welcomed” – Charlie Rigby, Challenger Multi-Academy Trust
- “The fact that a government would want to focus on schools where not enough children are making the progress which everyone – schools, society and their parents – would want them to is surely a reasonable ask [...]” – Jonathan Simons, Policy Exchange
- “There are academies deemed ‘inadequate’ by Ofsted. A change in structure is not axiomatically the path to school improvement. It is irresponsible to tell parents otherwise.” – National Union of Teachers
- “An effective and rapid programme of intervention needs to be put in place when a school is rated as ‘inadequate’ [...] In many cases, academisation may be the best solution. However, in itself it is not a magic wand. Schools fail for a number of reasons and simply changing their structure may not address the whole picture” – Association of School and College Leaders
- “This Bill represents a further centralisation of decision making regarding our schools; it does not sit well with the Government’s rhetoric about school autonomy as it not only removes the right for parents to be consulted, but it will give the Secretary of State power to overrule the decisions of local decision makers” – National Governors’ Association

Comment on the adoption clause:

- “Regional work on adoption is already taking place and many homes for children have been provided in this way” – Local Government Association
- “By increasing the pool of potential adopters by working in regional arrangement will, we believe[,] help more children to be matched” – British Association for Adoption and Fostering
- “The encouragement to local authorities and voluntary adoption agencies to work more closely together under regional arrangements makes sense as long as we see continuous improvements in matching children and supporting families when they need it” – AdoptionUK
- “On the issue of regional adoption agencies, Tact would much prefer to see a move to permanence hubs. The constant focus on one permanence option – adoption – which is a solution for a minority of children in public care, is unhelpful” – Tact
- “There’s been a lot of progress made but there is much to do. And we think that combining efforts across local authorities is a welcome development” – Association of Directors of Children’s Services
- “The move “inevitably contributes to demoralising social workers and does nothing to help recruitment and retention difficulties nationally and, ultimately, vulnerable children on the receiving end of all of this” – British Association of Social Workers

1. Introduction

The [Education and Adoption Bill 2015-16](#) builds on reforms by the 2010 Government to the system of school organisation, intervention in underperforming maintained schools, and adoption services in England.

The Bill would significantly amend existing legislation:

- the *Education and Inspections Act 2006* (intervention in maintained schools causing concern)
- the *Academies Act 2010* (power of the Secretary of State to make an academy order, and consultation requirements in respect of academy conversion)

and amend

- the *Adoption and Children Act 2002* (joint arrangements for adoption functions)

The provisions in the Bill extend to England and Wales and apply in relation to schools and local authorities in England only.

1.1 Progress of the Bill

The Bill was introduced into the House of Commons on 3 June 2015:

- [Education and Adoption Bill 2015-16 \(Bill 4\)](#), as introduced

The Government has published Explanatory Notes alongside the Bill, which provide detailed background:

- [Education and Adoption Bill 2015-16 \(Bill 4\), Explanatory Notes](#)

The Bill is scheduled to have its Second Reading in the Commons on 22 June 2015. No impact assessment has been published for the Bill.

2. Schools measures

The education measures in the Education and Adoption Bill would apply only in respect of schools in England.

2.1 Background

In a speech on 2 Feb 2015, Prime Minister David Cameron suggested that under a Conservative Government schools graded 'requires improvement' which could not "demonstrate the capacity to improve" would be required to become sponsored academies.¹ Sponsored academies are schools independent of local authorities, run by an academy trust with a sponsor that oversees the operation of the school.

The Conservative Party's 2015 General Election Manifesto contained a similar pledge:

We will turn every failing and coasting secondary school into an academy [...]. [W]e will introduce new powers to force coasting schools to accept new leadership. Any school judged by Ofsted to be requiring improvement will be taken over by the best headteachers – backed by expert sponsors or high-performing neighbouring schools – unless it can demonstrate that it has a plan to improve rapidly.²

The Queen's Speech subsequently included a commitment to introduce legislation to make these and other changes. Background briefing notes to the Queen's Speech, published on 27 May 2015, gave further details on the main schools-related provisions to feature in the forthcoming Bill:

- The Bill would give Regional Schools Commissioners powers to bring in leadership support from other excellent schools and heads, and would speed up the process of turning schools into academies.
- An inadequate Ofsted judgement would usually lead to a school being converted into an academy, and barriers would be removed to ensure swift progress towards conversion.
- It would make schools that meet a new coasting definition, having shown a prolonged period of mediocre performance and insufficient pupil progress, eligible for academisation.
- A coasting definition will be set out in due course according to a number of factors.³

A Department for Education (DfE) press notice of 3 June 2015 confirmed the Bill would be introduced and estimated that up to 1,000 'failing' schools in England could become sponsored academies during the current Parliament. 'Coasting' schools would be "put on a notice to improve". The measures were motivated by a desire to pursue "real social justice" and in recognition of the fact that that "no parent should

¹ ['A Britain that gives every child the best start in life'](#), speech by David Cameron, 2 February 2015,

² The Conservative Party, [General Election Manifesto 2015](#), April 2015, p34

³ Cabinet Office/ Prime Minister's Office, 10 Downing Street, [Queen's Speech 2015. Background briefing notes](#), 27 May 2015, pp40-41

have to be content with their child spending a single day in a failing school”:

Tough new measures to turn around failing schools introduced today (3 June 2015) will ‘sweep away bureaucratic and legal loopholes’ that previously prevented schools from being improved, Education Secretary Nicky Morgan said.

Previously, campaigners could delay or overrule failing schools being improved by education experts by obstructing the process by which academy sponsors take over running schools. In some cases campaigners have delayed intervention by drawing out debates, refusing to provide important information and blocking vital decisions.

But the Education and Adoption Bill, being laid in Parliament today, will force councils and governing bodies to actively progress the conversion of failing schools into academies, removing roadblocks which previously left too many pupils languishing in underperforming schools.

The new rules also make clear that in the future every single school rated ‘inadequate’ by Ofsted will be turned into an academy.

The bill also includes plans to tackle coasting schools by putting them on a notice to improve. These schools will be given support from our team of expert headteachers, with those schools that continue to be unable to demonstrate a clear plan for improvement given new leadership.

Since 2010 the government has been able to intervene in around half of local-authority-maintained schools rated ‘inadequate’ by Ofsted. Today’s measures will in future allow the government to tackle 100% of these schools. The exact number of schools the new measures will benefit will depend on future Ofsted findings - but it is expected that as many as 1,000 local-authority-maintained schools could be transformed.

[...]

The bill will also include previously announced new powers to transform coasting schools, the implementation of which will be consulted on in the summer.⁴

In an answer to a PQ given on 15 June 2015, the Minister for Children and Families, Edward Timpson, said:

Draft regulations on the definition of coasting will be published at Committee stage.

These will be based on performance over a number of years. The number of schools categorised as coasting will therefore vary from year to year, depending on the outcome of examination and test results.

The definition will focus on data, will reflect performance over time and will capture schools that are failing to support their pupils to fulfil their potential.⁵

⁴ Department for Education press release, [Up to 1,000 failing schools to be transformed under new measures](#), 3 June 2015

⁵ [PQ 1920 \[on Schools: Standards\]](#), 15 June 2015

An article in the *Times Educational Supplement* of 4 June 2015 quoted the Secretary of State on the issue of what intervention 'coasting' schools might be subject to. They would not, she said, always be faced with the replacement of the current head teacher where there was a cogent plan to improve the school:

When pressed on the fact that her first act in a new Parliament was to introduce legislation that could threaten headteachers' roles, Ms Morgan replied: "Why does it mean that [headteachers will lose their jobs]?"

"Where a headteacher – and I have been very, very clear on this – has a plan and capacity to improve then we will absolutely put in support and work with those in a position of leadership to make that difference," she added.

"But I think if you talk to any headteacher – if you are in a position of leadership, whether you are prime minister or a headteacher or me – [you] have to be honest when people aren't making the grade. [When people] aren't doing the best for the children in their care then of course we need to recognise that and to deal with it."

A change in a school's leadership would be made only "if necessary", she added.⁶

2.2 History of the academies programme

Labour government

The first academies were established in 2002 by the Labour government as part of its programme to increase diversity in school provision and improve educational standards. Generally, these academies were established to replace poorly performing schools in deprived areas, and had sponsors.

A Library briefing note describes how the academies programme developed under the Labour Government:

- [Library briefing paper, Academies under the Labour Government, published 20 January 2015](#)

Academies under the 2010 Government

Immediately after the 2010 General Election, the Government announced its intention to allow all schools to seek academy status. The *Academies Act 2010*, as amended, allows the governing body of a school in England to apply to the Secretary of State to convert to academy status. It also allows the Secretary of State to make academy orders in respect of schools that are 'eligible for intervention' within the meaning of Part 4 of the *Education and Inspections Act 2006*.

A Library briefing paper provides background on the 2010 Act:

- [Library briefing paper 10/48, Academies Bill 2010 \[HL\], published July 2010](#)

⁶ ['Nicky Morgan. Heads should not fear for their jobs'](#) in *Times Educational Supplement* [online], 4 June 2014

The *Education Act 2011* amended the academies legislation. Another Library briefing paper provides background on this Act:

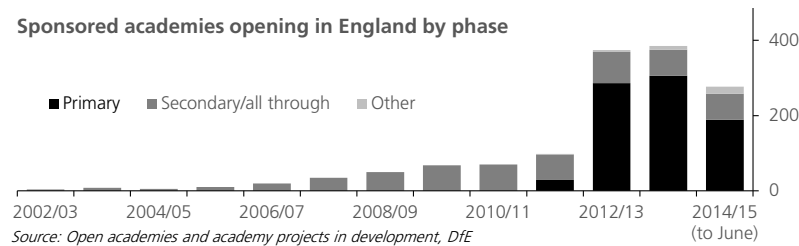
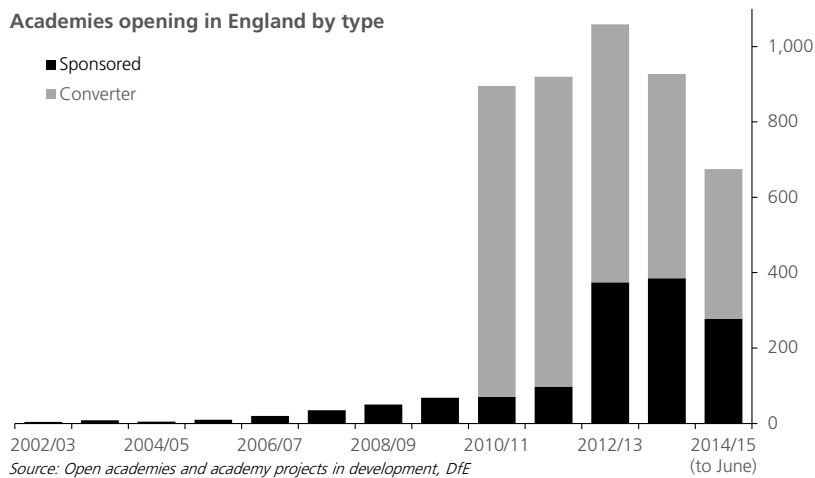
- [Library briefing paper 11/14, Education Bill 2010-11 \[HC\], published February 2011](#)

2.3 Academies: statistics on growth of the sector, and performance

At the start of June 2015 there were 4,676 academies of all types open across England. 30% were sponsor led academies. 70% of current academies are converters, set up under the model introduced in 2010 by the last Government.

Trends in the annual number of new academies opening are illustrated below. Converters dominated new academies in the first few years of the last Government with more than 800 in 2010/11 and 2011/12 compared to a total stock of 200 under the Labour Government.

The number of new converters has fallen somewhat since 2011/12 and the number of new sponsor-led academies has increased to around 300 in 2012/13 and 2013/14. These new sponsor led academies have opened under the last Government’s extension of the original sponsor led model. The second chart shows that the increase has largely been in primaries.



Sponsored academies

At the end of 2012/13 there were 565 approved academy sponsors supporting the 731 sponsor led academies open at the time. The largest number of sponsors were converter academies (44%), charities (16%),

further education (10%), Dioceses (9%), universities (6%) and business (5%).

The DfE has said that in 2013 sponsored academies improved their overall performance on the headline GCSE indicator⁷ at a faster rate than maintained secondaries. An improvement of 2.3 percentage points compared to 1.8 points. They also said that sponsored academies open for longer have improved at a faster rate than maintained schools.⁸ However, as it is generally schools with existing poorer performance that have become sponsored academies we might expect them to improve at a faster rate than all maintained schools. They had greater scope for improvement. This phenomenon is known as 'regression to the mean' and may explain this finding, rather than any impact solely due to their change of status, support from sponsor etc. The comparison does not match the improvement among schools with similar initial levels of performance.

In 2014 achievement in sponsored academies was around 10 percentage points below the maintained mainstream average on the headline 5+ GCSEs at A*-C including English and Maths indicator.

The gap was somewhat smaller for sponsored academies that had been open for longer. There were much smaller gaps when analysed by the prior attainment bands of pupils; those with below the expected level at the start of secondary school did slightly better on this indicator at sponsored academies and those at or above this level performed better on average in maintained schools.⁹

More discussion on the issue of how academisation impacts on school improvement can be found in other Library briefing papers:

- Library briefing paper, [Free schools and academies: FAQs](#)
- Library briefing paper, [Converter Academies: Statistics](#)
- Library briefing paper, [Sponsored Academies: Statistics](#)
- Library briefing paper, [Free School Statistics](#)

2.4 Ofsted outcomes for maintained and academy schools in England

Maintained schools and academies undergoing routine 'Section 5' Ofsted inspections¹⁰ are inspected in line with [Ofsted's current Framework for School Inspection](#) (last revised January 2015).¹¹

Further detail about evaluation criteria and the evidence Ofsted consider can be found in [Ofsted's School Inspection Handbook](#) (January 2015).

A Library briefing paper provides detailed information on Ofsted and ongoing reforms to the inspection regime:

⁷ Percentage of pupils at the end of Key Stage 4 achieving 5+ grades A*-C including English and maths.

⁸ DfE, [Academies annual report Academic year: 2012 to 2013](#), July 2014

⁹ DfE, [Revised GCSE and equivalent results in England: 2013 to 2014](#), January 2015

¹⁰ Inspections carried out under Section 5 of the *Education Act 2005*, as amended.

¹¹ The arrangements for 16-19 academies and free schools are conducted in line with Ofsted's Common Inspection Framework.

Regression to the mean: Where 'extreme' results on a first measurement are subsequently closer to the mean. We might expect a group of schools selected due to below average performance in one year to be closer to average the following year simply due to the play of chance

- [Library briefing paper, *Ofsted inspections of maintained and academy schools: FAQs*](#)

The four categories of Ofsted judgements

There are four main categories of overall judgement that Ofsted may make on a school's effectiveness:

- 'Outstanding' (Grade 1)
- 'Good' (Grade 2)
- 'Requires Improvement' (Grade 3, replaces the previous 'satisfactory' category)
- 'Inadequate' (Grade 4)

The 'inadequate' grading is sub-divided into two further categories: schools with 'serious weaknesses' (and in need of significant improvement) and schools requiring 'special measures'.

At the start of April 2015 there were almost 21,000 state funded schools across England with a current¹² Ofsted rating. 20% were judged 'outstanding', 62% 'good', 16% 'requires improvement' and 2% 'inadequate'. The table below summarises how the stock of schools with different judgements have changed over the past six years. This period covers changes to the inspection regime which can affect inspection judgements.

Most recent overall effectiveness of schools at selected dates, state funded schools in England

	Outstanding	Good	Requires Improvement	Inadequate	Total
<i>number</i>					
31.8.2009	3,593	11,143	7,058	377	22,171
31.8.2010	3,863	11,034	6,538	573	22,008
31.8.2011	4,282	10,901	6,207	455	21,845
31.8.2012	4,442	10,534	6,024	548	21,548
31.8.2013	4,213	12,417	4,123	582	21,335
31.8.2014	4,146	12,948	3,529	574	21,197
31.12.2014	4,160	12,923	3,474	493	21,050
<i>percentage</i>					
31.8.2009	16%	50%	32%	2%	100%
31.8.2010	18%	50%	30%	3%	100%
31.8.2011	20%	50%	28%	2%	100%
31.8.2012	21%	49%	28%	3%	100%
31.8.2013	20%	58%	19%	3%	100%
31.8.2014	20%	61%	17%	3%	100%
31.12.2014	20%	61%	17%	2%	100%

Notes:

The most recent judgement for predecessor schools is included where an academy converter has not been inspected since opening. Before September 2012 schools graded 3 were judged as satisfactory, then they have been judged as 'requires improvement'.

Source: *Maintained schools and academies inspections and outcomes, Ofsted*

The proportion of outstanding schools increased steadily up to the end of 2011/12 and has changed little since then. Around half of all schools were judged as good up to the end of 2011/12. The increase since then has coincided with the introduction of the current inspection regime. Similarly the number given a grade 3 ('Satisfactory' to August 2011, 'Requires Improvement' subsequently) dropped from around 30% to

¹² If this is an Academy converter with no inspection since conversion then the findings from its predecessor school are used.

below 20% soon after the current regime was introduced. The proportion of schools judged inadequate has remained in the 2-3% range while the number has been between 450 and 600.

Schools judged 'inadequate'

At the start of April 2015 there were 447 state funded schools across England that were judged inadequate and in one of two categories of concern; subject to special measures or identified with serious weaknesses. Basic background details are given opposite.

- These 447 schools taught more than 200,000 pupils or almost 3% of all pupils in state-funded schools in England
- While most schools judged inadequate were primary schools, the rate was highest in secondary schools at almost 6%
- Just over three-quarters were in special measures
- When broken down by school type the rate was below 2% for all types of maintained schools other than foundation schools. Academy converters had a slightly higher rate than the maintained average. Sponsored academies had a much higher rate, but this should not be a surprise as they generally became academies to address the underperformance of the predecessor maintained school.
- While the large majority of schools judged inadequate had their quality of teaching and pupil achievement assessed by Ofsted as inadequate there were small numbers with good or even outstanding rating on these areas.
- Around half of schools judged inadequate had a 'requires improvement' rating at their previous inspection. 40% were judged good and 7% outstanding in their previous inspection.

Schools judged inadequate at 2 April 2015

	Number	Rate ^a	% of schools judged inadequate ^b
Phase			
Nursery	2	0.5%	0.4%
Primary	234	1.5%	52.3%
Secondary	175	5.8%	39.1%
Special	26	2.6%	5.8%
PRU	10	3.2%	2.2%
Type (mainstream only)			
Community	147	1.7%	36.0%
Foundation	41	4.2%	10.0%
Voluntary Controlled	30	1.3%	7.4%
Voluntary Aided	57	1.6%	14.0%
<i>All maintained mainstream</i>	<i>275</i>	<i>1.8%</i>	<i>67.4%</i>
Academy Converter	48	1.9%	11.8%
Academy Sponsor led	81	12.1%	19.9%
Free Schools	4	5.8%	1.0%
Category of concern			
Special measures	343	..	76.7%
Serious weaknesses	104	..	23.3%
Achievement of pupils (Ofsted judgement)			
Outstanding	1	..	0.2%
Good	7	..	1.6%
Requires Improvement	24	..	5.4%
Inadequate	415	..	92.8%
Quality of teaching (Ofsted judgement)			
Outstanding	1	..	0.2%
Good	7	..	1.6%
Requires Improvement	62	..	13.9%
Inadequate	377	..	84.3%
Previous overall effectiveness judgement (where applicable)			
Outstanding	28	..	7.1%
Good	157	..	39.7%
Requires Improvement	194	..	49.1%
Inadequate	16	..	4.1%
n/a	52	..	13.2%
Total			
Schools	447	2.9%	..
Pupils	224,200	3.0%	..

(a) % of all schools of that type

(b) Excluding those not applicable under each category

Sources: Monthly management information: Ofsted's school inspections outcomes; Schools, pupils and their characteristics: January 2015, DfE

Flows in and out of 'inadequate' status

The earlier figures show the *stock* of schools with this judgement. As these schools are subject to more frequent inspections and intervention this type of analysis can miss the dynamics of their situation. There is a large amount of 'turnover' with some schools gaining a higher rating on

re-inspection, some becoming academies and others closing outright. In the first two years of the current inspection regime 900 schools were judged as 'inadequate' and placed in one of the two categories of concern. The turnover of schools in this category means that the number judged inadequate at any one time was much less than this.

In academic year 2013/14 320 schools were made subject to special measures and 100 were identified with serious weaknesses. 146 of the 456 schools subject to special measures at the start of that year were removed from this category by the end of the year (32%) and 191 (42%) closed. 55 of the 126 schools with serious weaknesses at the start of the year were removed from this category by the end (34%) and 35 (28%) closed.

The diagram below (Figure 1) takes a slightly longer perspective and shows what has happened to the stock of schools with an inadequate judgement just after the current inspection regime was introduced.¹³

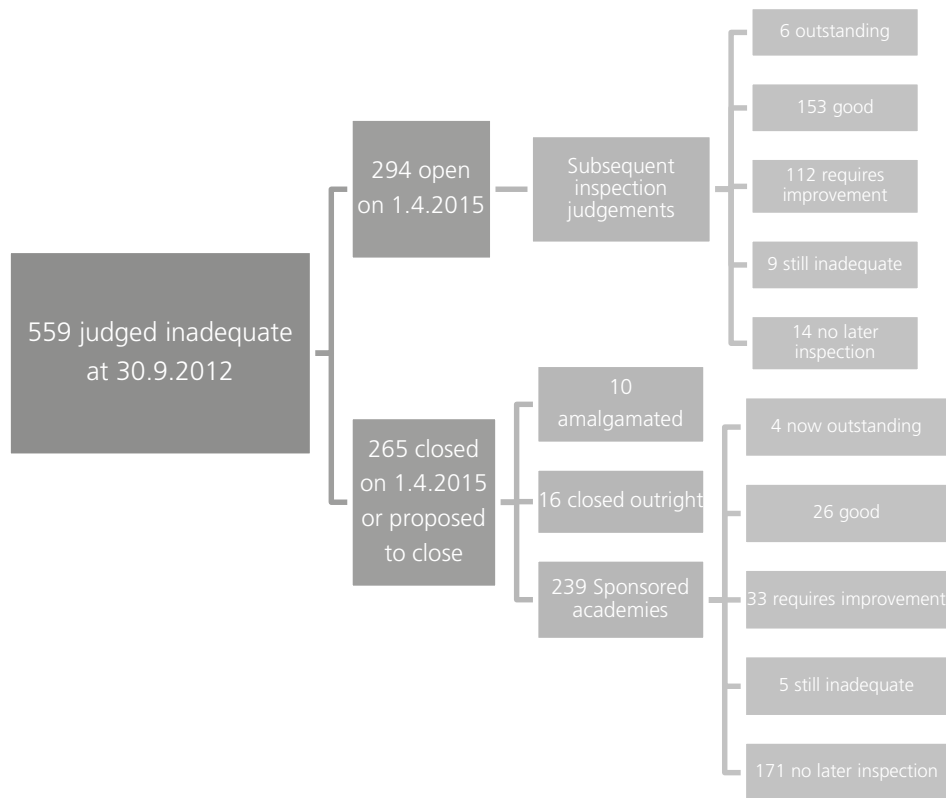


Figure 1: What happened to schools judged inadequate

More than half were still open and had not changed their status. The large majority of these schools have seen their subsequent Ofsted rating improve. Only a handful are now rated as 'Outstanding' but a

¹³ Maintained schools and academies inspections and outcomes, Ofsted; *EduBase*, DfE

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substantial number, around half those still open/unchanged are now judged to be 'Good'.

Just under half had closed, or were proposed to close at the end of spring term 2014/15. The large majority of these were formal closures to re-open as a sponsored academy. Only a relatively small proportion of these schools have had a subsequent Ofsted inspection because most new sponsored academies have opened recently. Most improved their rating to either 'Good' or 'Requires Improvement'

With intervention more likely where schools do not improve there will be a movement of these schools from the 'open and still inadequate' status to 'closed to become an academy' status. For instance at the end of March 2013 only 82 (15%) had closed. So the still open group should really be viewed as those schools that were more successful at turning their performance around without a change in status. The inspection judgements should therefore not be directly compared.

2.5 Intervention in maintained schools: the current legislation

Maintained schools

Maintained schools are those funded by central government through the local authority. They account for around 85% of primary schools and slightly under 40% of secondary schools. There are several different categories of maintained schools, including community schools; voluntary schools (many of which have a religious designation) and foundation schools.

The different categories of maintained schools operate similarly in many respects, but there are differences in governance structures, building ownership, and admissions. Statutory intervention processes also differ slightly depending on school category – for example, there are different consultation requirements for voluntary aided schools before the issuing of warning notices.

Under Part 4 of the [Education and Inspections Act 2006](#), as amended, local authorities and the Secretary of State each have a variety of powers under which they can intervene in maintained schools that are judged to be performing unsatisfactorily.

The DfE publishes statutory guidance on intervention powers and processes, to which local authorities (LAs) must have regard:

- DfE, [Schools causing concern: statutory guidance for local authorities](#), updated January 2015.¹⁴

Performance, standards and safety warning notices

Section 60 of the *Education and Inspections Act 2006* provides local authorities with the power to issue performance, standards and safety warning notices to schools as an early form of intervention.

Currently, only LAs have the power to issue a warning notice to the governing body of a maintained school. However, the Secretary of State can direct a local authority to consider issuing a warning notice in specified terms. If the local authority does not subsequently decide to do so, the Secretary of State can direct it to issue one.¹⁵

LAs can issue warning notices where they are satisfied:

- (a) that the standards of performance of pupils at the school are unacceptably low, and are likely to remain so unless the authority exercise their powers under this Part, or
- (b) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or

¹⁴ DfE, [Schools causing concern: statutory guidance for local authorities](#), January 2015

¹⁵ *Ibid*, pp15-16

(c) that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).¹⁶

Further guidance for LAs on when a warning notice should be issued, compliance periods and rights of representation against the notice to Ofsted is provided in Section 3 of the DfE's *Schools causing concern* statutory guidance.¹⁷

Teachers' pay and conditions warning notices

Where a governing body has failed to comply with requirements concerning the pay and conditions of teachers, local authorities have the power, under section 60A of the *Education and Inspections Act 2006*, to issue a teachers' pay and conditions warning notice.

The procedures relating to a teachers' pay and conditions warning notice are similar but not identical to those relating to performance standards and safety warning notices – again, guidance on this can be found in the DfE's *Schools causing concern* statutory guidance.

Maintained schools "eligible for intervention"

Local authorities and the Secretary of State have a range of further intervention powers in maintained schools that are "eligible for intervention". A school is currently deemed eligible for intervention if:

- A governing body has failed to comply with the terms of a warning notice.
- A school has been judged by Ofsted as "requiring significant improvement" or "special measures" – e.g., is in Ofsted category '4' or Inadequate.¹⁸

Local authorities' powers where a school is 'eligible for intervention'

Where a maintained school is eligible for intervention the *Education and Inspections Act 2006* gives the LA the power to:

- Suspend the right of the school's governing body to a delegated budget.¹⁹
- With the Secretary of State's consent, appoint an Interim Executive Board (IEB) to take the place of the school's governing body. The IEB takes on the responsibilities of a normally constituted governing body and may also seek an academy order from the Secretary of State.
- Appoint as many additional governors as it thinks fit.²⁰
- Except where a school is eligible for intervention following the issue of a teachers' pay and conditions warning notice, require the governing body to 'enter into arrangements', e.g.:
 - Entering into a contract for advisory services from a specified person

¹⁶ *Education and Inspections Act 2006*, section 60(2)

¹⁷ DfE, [Schools causing concern: statutory guidance for local authorities](#), January 2015

¹⁸ *Education and Inspections Act 2006, as amended*, sections 60, 60A, 61 and 62

¹⁹ See DfE, [Schools causing concern: Statutory guidance for local authorities](#), January 2015, p17

²⁰ *Ibid*, p20

- Collaborating with the governing body of another school
- Collaborate with a further education body
- Take specified steps for the purpose of creating or joining a federation.²¹

In the case of a school that is eligible for intervention as a result of a warning notice, the powers to suspend the governing body's delegated budget, appoint additional governors, and require the governing body to enter into arrangements can only be exercised within two months of the end of the compliance period. The power to apply to the Secretary of State for consent to appoint an IEB can be exercised at any time while a school is eligible for intervention.²²

Before a local authority can exercise require the governing body to enter into arrangements, or apply for consent to appoint an IEB it must consult:

- (a) the governing body of the school
- (b) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
- (c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.²³

Secretary of State's powers where a school is 'eligible for intervention'

Where a maintained school is eligible for intervention the 2006 Act provides the Secretary of State with the power to:

- Appoint as many additional governors as he or she thinks fit.²⁴
- Direct the local authority to close a school.²⁵
- Appoint an Interim Executive Board to take the place of the school's governing body.²⁶

The Secretary of State is required to consult before using any of these powers.²⁷ Unlike local authorities, the Secretary of State does not currently have the power to require a governing body to enter into arrangements or to suspend a governing body's right to a delegated budget.

Academy orders

Under section 4 of the *Academies Act 2010* the Secretary of State has the power to make an academy order in two circumstances:

²¹ *Education and Inspections Act 2006*, section 63

²² DfE, [Schools causing concern: Statutory guidance for local authorities](#), January 2015, p17-21

²³ *Education and Inspections Act 2006*, sections 65(2) and 63(2)

²⁴ *Ibid*, section 67

²⁵ *Ibid*, section 68

²⁶ *Ibid*, section 69

²⁷ Details of the consultation requirements are in DfE, [Schools causing concern: Statutory guidance for local authorities](#), January 2015, pp24-5

- Where an application for an academy order has been made in respect of the school (e.g., a voluntary conversion)
- Where the school is 'eligible for intervention' within the meaning of Part 4 of the *Education and Inspections Act 2006*, as amended.

The statutory 'Schools causing concern' guidance makes clear that conversion to sponsored academy status should be considered the normal means of improving a school where it had a history of sustained underperformance.²⁸

Consultation requirements prior to entering into academy arrangements

Currently, section 6A of the *Academies Act 2010*, as amended, requires a consultation to be held before the Secretary of State 'enters into academy arrangements' (e.g., signs a 'funding agreement' in respect of a school.) This requirement applies equally whether the governing body applies for an academy order or whether the predecessor school is 'eligible for intervention'.

Where a school's governing body has applied for an academy order, the consultation must be held by the school's governing body.

Where a school is 'eligible for intervention', the consultation can be administered either by the school's governing body or by the person with whom the Secretary of State is proposing to 'enter into arrangements' with.

2.6 Intervention in academies

Local authorities do not have any formal powers to directly intervene when there are general concerns about the performance of an academy.

An overview of the DfE's and Secretary of State's powers of intervention in academies causing concern are set out in Section 1 of Annex B of the following document:

- [DfE's Accountability system statement for education and children's services, published January 2015.](#)²⁹

The precise options open will depend on the terms of the academy trust's funding agreements, but may include:

- Meetings and target-setting
- the issuing of pre-warning and warning notices
- 're-brokering' to find the school a new sponsor
- in extreme cases, termination of the funding agreement.

The accountability system statement explains:

²⁸ DfE, [Schools causing concern: Statutory guidance for local authorities](#), January 2015, p11

²⁹ DfE, [Accounting officer: Accountability system statement for education and children's services](#), January 2015

25. The academies programme seeks to raise performance through providing autonomy and freedom to innovate and Academies continue to improve faster than the national average.

26. The Department monitors ATs' performance and intervenes in cases of poor performance. To raise standards, the Department is working with ATs that:

- are below the floor standards;
- are identified as needing improvement by Ofsted, or
- whose results have fallen, or appear in danger of falling, below the floor standards.

27. Underperforming ATs are monitored through meetings with the academy trust and with the sponsor where they have control of the governance of the trust through their nominated members and trustees. The Department also undertakes visits to the academy with an Education Adviser to assess the impact of the actions being taken. Each AT is then risk-assessed according to its results, our assessment of the capacity of the sponsor to bring about rapid improvement and our assessment of the effectiveness of the improvement plan. Where ATs do not improve at the pace expected, the Department takes further action. The Department has increased its capacity to act in this area through the recent appointment of Regional Schools Commissioners.

28. Since January 2012, the Secretary of State's intervention powers have been utilised on a number of occasions. The Department has issued 84 Pre-Warning Notices and 9 Warning Notices to those causing concern.

29. LAs do not have formal responsibility for the performance of ATs but may inform the Department or the Regional Schools Commissioner if they have any concerns relating to those in their area.³⁰

³⁰ DfE, [*Accounting officer. Accountability system statement for education and children's services*](#), January 2015, pp35 to 36

3. Adoption functions

The adoption provisions in the *Education and Adoption Bill* apply only to England.

3.1 Background

The current adoption legislation

The key piece of adoption legislation in England and Wales is the [Adoption and Children Act 2002](#) as amended. It has been noted that “since that Act came into force, law and policy on adoption between England and Wales has increasingly diverged”.³¹

What is an “adoption agency”?

Under the *Adoption and Children Act 2002* as amended, an adoption agency can be either:

- a local authority (also known as an “Adoption Service”), or
- a registered adoption society defined as a voluntary organisation which is an adoption society registered under Part 2 of the [Care Standards Act 2000](#) (also known as a “voluntary adoption agency”).³²

The [Adoption Agencies Regulations 2005](#) (SI 2005/389) as amended regulate the work of adoption agencies.³³

3.2 Announcement of the policy

In its manifesto for the 2015 General Election, the Conservative Party stated: “We will introduce regional adoption agencies, working across local authority boundaries to match children with the best parents for them”.³⁴

On 23 May 2015, the Children and Families Minister, Edward Timpson, announced that legislation in the forthcoming Queen’s Speech would include “new powers that will require councils combine their adoption functions if they fail to join together services under their own steam within the next 2 years”. It described this as the “greatest step change in the way children are matched for adoption in a generation”.

The Government’s press release stated that:

At the moment, adoption is happening at too small and localised a scale. With councils working together, the choice of potential matches for a child would increase significantly, giving children a far better chance of quickly finding a permanent family.

Councils will be encouraged to identify their own regional approach that would see authorities uniting their adoption services under one system or outsourcing the delivery of their adoption functions into a single regional agency.

³¹ University of Cardiff, [Adoption](#), webpage [taken on 10 June 2015]

³² *Adoption and Children Act 2002*, sections 2 and 9

³³ Hershman and McFarlane, *Children Law and Practice*, para D159

³⁴ The Conservative Party, [The Conservative Party Manifesto 2015](#), p35

The new powers, contained in the Schools and Adoption Bill [now the *Education and Adoption Bill*], would only be used if councils failed to take action quickly enough.³⁵

In terms of the necessity of legislation to allow cross-working, the DfE acknowledged that “there are currently no barriers to councils working together to streamline and improve the adoption system”. However, the Government was concerned because “evidence shows that at present - when placing children for adoption - some councils tend to concentrate their efforts [to find matching adoptive parents] locally” which “can lead to children waiting much longer than necessary”.³⁶ Section 3.3 considers the evidence in further detail.

The press release stated that there would be three advantages arising from the proposed approach, or what it called a “triple win”:

- giving councils a greater pool of approved adopters with which to match vulnerable children successfully first time
- making vital support services more widely available to adoptive families as and when they need them
- better targeting the recruitment of adopters.³⁷

It added that “the government will provide financial and practical support for councils and adoption agencies to enable them to bring services together regionally”, although it did not provide details in this regard.³⁸

In a separate article on the ConservativeHome.org website, the Minister argued that “there are over 180 agencies recruiting and matching adopters for only 5000 children per year, and the majority of agencies still operate on a very small scale”. He said that the Government wished to encourage councils to join forces as “Regional Adoption Agencies”, and said “we want to work with local authorities to deliver all this, and I’m confident that many councils will do so effectively. And we’ve already had a very positive response from voluntary adoption agencies too”, adding:

But if any local authorities are unwilling to rise to the challenge, a new backstop power will force them to come together to deliver their adoption services. After all, we must be ambitious, and that’s why I expect that adoption services will be fully regionalised by the end of this parliament.³⁹

3.3 Evidence of existing joint arrangements

DfE-commissioned June 2010 study

In announcing the new policy (see section 3.2), the DfE stated that its necessity was demonstrated by “evidence [that] shows that at present –

³⁵ DfE/ Edward Timpson press release, [New measures to end delay for children awaiting adoption](#), 23 May 2015

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ Conservativehome.org, [Edward Timpson MP: Today, we introduce our new Adoption Bill – to help ensure that no child is left behind](#), 3 June 2015

when placing children for adoption – some councils tend to concentrate their efforts locally, rather than looking further afield for what might be a better match”, and that “this can lead to children waiting much longer than necessary when parents are readily available so increasing the time children wait to be adopted”.⁴⁰

In terms of the evidence, the DfE said that:

‘An investigation of family finding and matching in adoption - briefing paper’ found that local authorities tend to seek to place their adopters approved ‘in-house’ before considering adopters approved by other local authorities and then voluntary adoption agencies. This results in sequential decision making, which means some children wait longer than they should to be adopted.⁴¹

The research paper cited, [*An investigation of family finding and matching in adoption - briefing paper*](#), was commissioned under the Labour Government, and published by the Coalition Government in June 2010.

The study was conducted in 10 English local authorities, selected because they used one of the four different approaches to family finding and matching. The study was based on 149 children who had successfully been recommended for an adoption by a panel.⁴²

The study analysed the different approaches used to seek a matching family. While the local authority’s own database was almost always searched, a wide number of other approaches were also undertaken:

In practice, the authority’s own database was searched for a suitable family for most children (95%), with three also featured on the agency’s own website, whilst contacts were made with other agencies including the consortia and voluntary adoption agencies (VAAs) for 61%. Referrals were made to a database shared with other agencies for a third of the children, 9% (13) were featured at a profiling event for the authority’s own adopters and 13% (19) at a regional profiling event (Exchange Event). Four children were featured on the internet, 41% in magazines such as Be My Parent and six in the minority ethnic or faith press, whilst 61% were referred to the Adoption Register.⁴³

In terms of which search method was ultimately successful in matching a child and adopters, the study found that:

Of the 112 children for whom this information was available, the family chosen for the child was found within the authority’s own database of adopters for 52% (58), from within the consortium for 10% (11), from in-house and regional profiling events for 10% (11) and from a database shared with another agency for one child. Families were also found from featuring children in magazines for 9% (10) or in the media (2), by sending fliers to VAAs for 5% (6), from the Adoption Register in 5% (5) and in other ways for 8 children, such as serendipitous contact between

⁴⁰ DfE/ Edward Timpson press release, [*New measures to end delay for children awaiting adoption*](#), 23 May 2015

⁴¹ *Ibid*

⁴² DfE, [*An investigation of family finding and matching in adoption - briefing paper*](#), DFE-RBX-10-05, June 2010, p1

⁴³ *Ibid*, p3

family finders and their individual contacts with workers in other agencies.⁴⁴

The survey's findings included the following:

- "In most authorities families were swiftly identified for young children without complex needs from the agencies' own pools of approved adopters or via local authority consortia";
- "For children with more complex needs, authorities frequently needed to look further afield ... [there was] delay in widening the search [and] other obstacles to successful family finding";
- "There were significantly more poor in-house matches (33%) compared to inter-agency ones (18%). In addition, significantly more poor quality matches were arranged by county authorities, suggesting that their greater use of in-house placements may sometimes have involved compromising on fully meeting children's needs";
- "Aside from children's characteristics, post-recommendation delays were caused by lack of proactive work by the children's social worker or family finder (41%) which was often associated with delays in exploring inter-agency options (30%); slowness in assessing potential families (18%) and rigidity in the search requirements (14%)";
- "A key difference was in local authorities' willingness to widen the search for adoptive families and place out of area. A reluctance to pursue inter-agency placements affected 70% of delayed cases in three county authorities and featured rarely in the other seven authorities".⁴⁵

On the issue of searching for possible matching families outside of the local authority, the report concluded that a "willingness to widen the search early was vital to avoid delay, as was flexibility and readiness to revise the requirements for matching when necessary". It added that of the 10 local authorities included in the study, "reluctance to widen the search for families was more common in county authorities, which as a result evidenced more delays in making adoptive placements for children with complex needs and more poor quality matches".⁴⁶

Association of Directors of Children's Services-commissioned April 2013 study

A report entitled [Adoption Data Analysis](#) was produced by Policy Intelligence on behalf of the Association of Directors of Children's Services (ADCS), and published in April 2013.

The report was based on data received by the ADCS covering 139 local authorities – a 91% response rate.⁴⁷

⁴⁴ DfE, [An investigation of family finding and matching in adoption – briefing paper](#), DFE-RBX-10-05, June 2010, p3

⁴⁵ *Ibid*, pp3, 4 and 5

⁴⁶ *Ibid*, p8

⁴⁷ Association of Directors of Children's Services, [Adoption Data Analysis](#), April 2013, p3

Local authorities were asked “to describe any formal and informal partnerships in which they were involved at 31st March 2013 and plans for partnerships in the future [up to 31 March 2014]”.

The report found that partnership working at that point was already common at that point:

- In six of the nine former government office regions, local authorities cited the regional consortium as a source of adopters. Where the regional consortium was not mentioned, most authorities were involved in smaller consortia for sharing a pool of adopters.
- 79 authorities were involved in collaborative activity beyond sharing an adopter pool, including arrangements to support concurrent planning and early matching, marketing and recruitment, assessment, preparation and training of adopters and the running of activity days. The most common areas cited as the subject of plans for new collaborative activity were activity days and shared recruitment and assessment.
- 17 authorities are in, or plan to be in, a formal arrangement with another local authority, these range from full shared services to contractual arrangements to share particular activities, such as adoption panels. A further 53 expressed an interest in such a partnership.
- 21 authorities are in, or plan to be in, formal contractual arrangements with voluntary adoption agencies. A further 22 authorities expressed an interest in such a partnership.
- 31 authorities do not appear to be in any collaborative arrangements beyond accessing the regional adoption pool. Of these 16 expressed an interest in a formal or informal partnership with a local authority or a voluntary adoption agency. Five explicitly stated that they had no interest in such partnerships. The remainder did not comment.⁴⁸

The report also found that the majority of local authorities were willing to work with other agencies outside of their partnerships in order to find a match for children:

88 local authorities (60% of respondents) stated their intention to source adopters from any adoption agency that could provide a suitable match, while 84 stated that they would supply adopters to any adoption agency that had a child waiting for whom the adopter would be suitable.

However, most local authorities appear to source adopters through existing consortia of which they are members. Only five local authorities reported purchasing adopters from specific local authorities not in the same consortium. 13 had purchased from a named voluntary adoption agency not in their consortium. A total of 31 voluntary adoption agencies were named, either as members of consortia or as the source of adopters purchased by local authorities.

⁴⁸ Association of Directors of Children’s Services, [Adoption Data Analysis](#), April 2013, p6

Those in formal arrang[e]ments with voluntary adoption agencies were less likely to plan to over-recruit to supply the national market and two of the 16 stated that they plan to draw from the national Register, but not contribute surplus adopters to it. Certainty about supply was one of the key benefits cited by those aut[h]orities with these arrangements. It is not clear if the voluntary adoption agencies are contributing to or drawing from the National Register in order to fulfil their contractual obligations.⁴⁹

The report concluded that evidence “suggests that there is a benefit to be gained through local authorities going even further in their collaborative efforts to understand the needs profile of children waiting and those for whom adoption might be required in the future in order to undertake targeted shared recruitment activity”, adding that:

The sources of adopters remain much as have been found by previous studies, with the majority of adopters recruited locally to meet local need, though authorities are increasingly participating in small, closely connected consortia to share adopters and particularly to do so at an early stage to prevent children waiting. Some local authorities, and some consortia, have service level agreements with voluntary adoption agencies to support concurrent planning. Local authorities provided information about their commissioning intentions up to 31st March 2014, and these included sourcing 15% of adopters from voluntary adoption agencies. This estimate is by no means an upper limit, and the effect of the equalisation of the inter-authority and inter-agency fee may be to increase the proportion of adopters recruited from voluntary adoption agencies.

Most exchanges appear to happen at a consortium level, within a region or sub-region, though local authorities still turn to the national market when that offers the best chance of a suitable match. They do not appear to prefer local authorities to voluntary adoption agencies in this context.⁵⁰

Lords’ Select Committee on Adoption Legislation

In February 2013, the House of Lords’ Select Committee on Adoption Legislation produced its second report, which included consideration of the issue of joint arrangements of local authority adoption functions.

Noting that a number of local authority consortia had already been formed, the Committee said that “the initial results from this approach have been promising”. The Committee recommended that “a greater number of councils should move towards joint working and integrated management of adoption services, including recruitment, as has already been achieved by some smaller local authorities. This will help to address the systemic disincentives to greater adopter recruitment and speedier matching”.⁵¹

However, the Committee found that where consortia had been formed “some difficulties [had been] encountered”, including “moving

⁴⁹ Association of Directors of Children’s Services, *Adoption Data Analysis*, April 2013, pp5-6

⁵⁰ *Ibid*, p6

⁵¹ House of Lords Select Committee on Adoption Legislation, *Adoption: Post-Legislative Scrutiny*, 2012–13 HL 127, 6 March 2013, p42, para 146

employees into a shared service, resulting in staff being co-located and undertaking the same work whilst employed on different salary structures and differing terms and condition”, as well as difficulties in how Ofsted undertook inspections.⁵²

In regard to the proposals that the then Coalition Government put forward in what was the *Children and Families Bill* to give the Secretary of State “the power to require some, or all, local authorities to outsource adopter recruitment and assessment” (see below), the Committee stated that:

This would constitute a significant reform of adopter recruitment in England. We understand and share the concerns of the Government about the fragmentation of adopter recruitment, and the national shortage of adopters to which this contributes. We therefore urge local authorities and partners to work together to make progress on these issues, particularly in light of concerns that outsourcing adopter recruitment risks isolating adoption from other services for looked-after children. We strongly encourage the Government to allow sufficient time for the sector to develop viable and achievable alternative proposals, before using the new power.⁵³

3.4 Existing statutory provisions

At present, joint arrangements in respect of prospective adopters are legislated for through section 3A of the *Adoption and Children Act 2002* as amended.

Section 3A was itself inserted by section 4 of the *Children and Families Act 2014*.

The direction-making powers in section 3A came into force on 13 May 2014, while section 3A’s order-making power only came into force on 1 March 2015.

The *Education and Adoption Bill* proposes the repeal of section 3A (to be replaced by section 3ZA, which the Bill will insert – see section 4.2)

Amendment during Lords’ Report Stage

The *Children and Families Bill* as [originally introduced to the Commons](#) proposed that section 3A would allow the Secretary of State to direct one or more, or all, local authorities in England in regard to joint arrangements for functions relating to prospective adopters.

However, during Report Stage in the Lords Baroness Hamwee, a former member of the Lords’ Select Committee on Adoption Legislation, put forward an amendment that would only allow the Secretary of State *by order* (rather than through a direction) to require *all* local authorities to undertake such joint arrangements. Baroness Hamwee explained:

Our amendments would turn directions relating to all local authorities into an order requiring the agreement of both Houses through the affirmative procedure. That would mean the Minister

⁵² House of Lords Select Committee on Adoption Legislation, [Adoption: Post-Legislative Scrutiny](#), 2012–13 HL 127, 6 March 2013, p42, para 147

⁵³ *Ibid*, p43, para 155

explaining the position, and both Houses debating it with an order not to be made before March 2015.⁵⁴

As noted above, prior to Baroness Hamwee's amendment, it would have been possible for the Secretary of State to have simply given a direction to all local authorities in this respect; unlike an order, a direction would not necessarily be subject to parliamentary scrutiny.

Following the "concerns" raised by a number of peers and the resultant "constructive discussions", the Parliamentary Under Secretary of State for Schools, Lord Nash, said he was "persuaded" of the need for such an order to be made under the affirmative procedure, and accepted Baroness Hamwee's amendment which was placed on the statute book.⁵⁵

Analysis of section 3A of the *Adoption and Children Act 2002*

Entitled "Recruitment, assessment and approval of prospective adopters", as the explanatory notes state, [section 3A](#) of the [Adoption and Children Act 2002](#) as amended:

provides a new power for the Secretary of State to direct one or more named local authorities in England, or one or more descriptions of local authority in England, to make arrangements for all or any of their functions in relation to the recruitment of persons as prospective adopters; the assessment of prospective adopters' suitability to adopt a child; and the approval of prospective adopters as suitable to adopt a child, to be carried out on their behalf by one or more other adoption agencies (other local authorities or voluntary adoption agencies).

The new section 3A also provides a new power for the Secretary of State to require, by order, all local authorities in England to make arrangements for all or any of their functions in relation to the recruitment of persons as prospective adopters; the assessment of prospective adopters' suitability to adopt a child; and the approval of prospective adopters as suitable to adopt a child, to be carried out on their behalf by one or more other adoption agencies (other local authorities or voluntary adoption agencies). Such an order is subject to the affirmative resolution procedure and cannot be made before 1 March 2015.⁵⁶

Explaining the need to allow the Secretary of State to either direct or order, as the case may be, local authorities in this regard, Lord Nash said:

The clause is intended as a backstop should the current and significant efforts of local government and voluntary agencies prove insufficient. Unfortunately, we have to accept that this is a possibility as adoption agencies have to work within a flawed system. The fundamental problem are the structure of provision, based around local boundaries, and the unhelpful incentives associated with this structure. This constrains the ability to recruit adoptive parents in sufficient numbers. As a result, the system

⁵⁴ [HL Deb 9 December 2013 c619](#)

⁵⁵ [HL Deb 9 December 2013 c625](#)

⁵⁶ [Children and Families Act 2014, Explanatory Notes](#), p14, paras 59–60

fails to deliver enough adopted parents to meet national demand, as we have already discussed.

However, let me be quite clear: it is the system that is failing to meet national demand, not the individual local authorities and voluntary adoption agencies that make up the system.⁵⁷

3.5 Recent trends in placement and adoption

Prior to an adoption order being made, which is almost always an irrevocable step,⁵⁸ a child is “placed” with a family for adoption. Such a placement is either made with the consent of the birth parent(s), or through a placement order.

For England and Wales, while the number of adoption orders being made has risen year-on-year recently – increasing from 4,709 in 2011 to 6,743 in 2014 – there has been a notable decline in placement orders made, falling from 6,231 in 2013 to 4,225 in 2014. This has mirrored the decline in the number of placement order applications, from 7,182 in 2013 to 4,939 in 2014. The latest data does not suggest any recovery in the figures – for each quarter during 2014 the number of placement order applications was consistently between 1,200 and 1,300, with no sign of an upward trend apparent.⁵⁹

Two legal cases in particular have been cited as explaining this, namely *Re B* and *Re B-S* for which judgments were given in June 2013 and September 2013 respectively.⁶⁰ In November 2014, the Parliamentary Under-Secretary of State for Schools, Lord Nash, acknowledged that there had been a “significant decrease in children coming into the [adoption] system since September last year”, which “appears to be in response to particular court judgments”.⁶¹

In response, the National Adoption Leadership Board published guidance in November 2014 entitled [*Impact of Court Judgments on Adoption – What the judgments do and do not say*](#). It stated that it was a myth to say that “the legal test for adoption has changed” and that “to satisfy the courts, all alternative options must be considered”, but it was true that “high quality assessment and evidence is essential in all cases”.⁶² An [addendum](#) was subsequently published to reflect subsequent case law.

In particular, it was reported that in his December 2014 judgment in *Re R* the President of the Family Division,⁶³ Justice Sir James Munby, had “confirm[ed] ... that *Re B-S* was not intended to, and has not, changed the law. It has not set any higher hurdle for placement orders. Sometimes adoption is in the best interests of the child and, where that

⁵⁷ [HL Deb 9 December 2013 cc622–623](#)

⁵⁸ Hershman and McFarlane, *Children Law and Practice*, para D2

⁵⁹ Ministry of Justice, [Family court statistics quarterly: October to December 2014](#), Tables 13 and 14

⁶⁰ [Re B \(A Child\) \[2013\] UKSC 33](#), 12 June 2013 and [Re B-S \(Children\) \[2013\] EWCA Civ 1146](#), 17 September 2013

⁶¹ [HL Deb 18 November 2014 cc374–375](#)

⁶² National Adoption Leadership Board, [Impact of Court Judgments on Adoption – What the judgments do and do not say](#), November 2014, pp3 and 7

⁶³ [Re R \(A child\) \[2014\] EWCA Civ 1625](#)

is the case, the courts should not shy away from making a placement order. Children should not be kept with their birth families if it compromises their welfare".⁶⁴

The most recent [Ministry of Justice statistics](#) only covered the number of placement orders applied for and made in the period to the end of December 2014; new statistics covering the first quarter of 2015 should be available shortly which might indicate if the recent guidance and the judgment in *Re R* have begun to make a positive impact.

3.6 The National Adoption Register

Although prospective adopters register with a local adoption agency, there is no restriction preventing them from adopting a child with another adoption agency.

The National Adoption Register was established under section 125 of the *Adoption and Children Act 2002* – its formal title is the "Adoption and Children Act Register". As the DfE notes:

Agencies must refer children to the Adoption Register when they are not actively considering a local match for the child, i.e. being in the process of exploring a potential match with a named prospective adopter. Referrals must be made as soon as possible after, and no later than three months from, the agency decision-maker's decision that the child should be placed for adoption (AAR [*Adoption Agencies Regulations 2005* (SI 2005/389), regulation] 19[A]) (unless they have identified particular prospective adopters and are actively considering placing the child with that prospective adopter).⁶⁵

It is possible for prospective adopters to "self-refer" to the Adoption Register – as the Register's website notes: "If your agency has not already sent your details to the Adoption Register, you will be able to start this process yourself. You just need to wait until three months after the date on which your agency approved you as an adopter".⁶⁶

In terms of what happens if a match is found, the Register's website explains that:

When a child is referred to the Register we search our database for suitable links with families. The Register Operators look closely at possible families and will send details of the most appropriate ones to the child's social worker. They will also send details of the child to the families' worker. The social workers will then consider the proposed link and exchange further information if they wish to pursue. This may lead to a visit to the prospective adopters and if everyone is happy that this is the right child and the right family then the proposed match will be taken to the child's agency's adoption panel.⁶⁷

⁶⁴ Family Law, [Care and placement orders – clarification following Re B-S](#), 16 December 2014

⁶⁵ DfE, [Statutory Guidance on Adoption](#), July 2013, p51, para 2.75

⁶⁶ Adoption Register for England, [How the adoption register works – Self Referral](#), website [taken on 16 June 2015]

⁶⁷ Adoption Register for England, [How the adoption register works – Matching](#), website [taken on 16 June 2015]

4. The Bill

The education provisions would apply to schools in England only.

4.1 Education provisions: clauses 1 to 12

The Bill amends the provisions of the *Education and Inspections Act 2006* and the *Academies Act 2010* which concern the powers of local authorities and the Secretary to intervene in maintained schools.

Currently, sections 59 and 60 of the *Education and Inspections Act 2006*, as amended, provide that schools in England are 'eligible for intervention' if they:

- Are judged to be inadequate, following an inspection by schools' inspectorate Ofsted.
- Have been served with, and failed to act on, certain warning notices from either the Secretary of State or their local authority.

Clause 1 would insert new clause 60B into the 2006 Act to include 'coasting' schools in the definition of 'eligible for intervention'. Schools would be considered coasting if they had been notified by the Secretary of State that they were considered to be coasting, and had not been notified that this no longer applied. Clause 1 allows for the definition of 'coasting' to be defined in secondary legislation.

Clause 2 would amend section 60 of the 2006 Act to provide the Secretary of State with the power, alongside local authorities, to issue performance, standards and safety warning notices to maintained schools. The clause would also:

- Remove the current, fixed, 15 day compliance period and instead allows the compliance period to be set by the issuer of the warning notice.
- Remove the procedure under which school governing bodies can make representations to Ofsted against a warning notice.

Teachers' pay and conditions warning notices

Clause 3 would make a number of amendments to Section 60A of 2006 Act, including:

- The removal of the current, fixed, 15 day compliance period for teachers' pay and conditions warning notices and, as with performance, standards and safety warning notices, allow the compliance period to be set by the issuer of the warning notice
- The removal of the procedure under which a school's governing body can make representations to the local authority against a teachers' pay and conditions warning notice.

Intervention powers

Clause 4 would amend the 2006 Act to insert new section 66A. This would provide the Secretary of State with the power to require the governing body of a maintained school 'eligible for intervention' to enter into arrangements. The clause mirrors the current section 63 of the *Education and Inspection Act 2006*, which provides local authorities

with this power. The Secretary of State's power would not apply where a school was eligible for intervention because it had failed to comply with a teachers' pay and conditions warning notice. The explanatory notes to the Bill explain further:

The notice under new section 66A may require the governing body to contract with another party (for example, the governing body of another school) for the provision of advisory services, to collaborate with another maintained school or further education body, or to form or join a federation of maintained schools under section 24 of the *Education Act 2002*.⁶⁸

Clause 4 would also make further provision about the time limits on issuing such notices to require a school to 'enter into arrangements'.

Clause 5 would amend Schedule 6 to the 2006 Act by inserting new paragraph 5A. This would provide that where a local authority is to appoint an Interim Executive Board (IEB) to replace the governing body of a school that is eligible for intervention, the Secretary of State may give directions as to the size of the IEB, who is to be appointed, the terms of their appointment and the termination of their appointment.

Interaction between Secretary of State's and local authorities' intervention powers

Clause 6 makes provision about how the intervention powers of the Secretary of State and local authorities would interact with each other. It would amend Section 64 of the 2006 Act, and would insert new Sections 70A, 70B and 70C. It would provide that, before exercising their intervention powers to require a maintained school governing body to 'enter into arrangements', suspend a delegated budget or appoint additional governors, LAs must notify the Secretary of State. There would be reciprocal duties on the Secretary of State to notify the relevant LA in advance of exercising the power to intervene in a school in specified ways.

It also provides that where the Secretary of State has used an intervention power in relation to a school, the local authority cannot use their powers of intervention unless the Secretary of State informs them that they may.

Subsection 3 of clause 6 inserts a new section 70C into the 2006 Act, which provides the Secretary of State with the power to take over responsibility for arrangements in connection with interim executive members who have been appointed by a local authority.

Academy conversion

Under current Section 4 of the *Academies Act 2010* the Secretary of State has the power to make an academy order where a school is 'eligible for intervention' because it is in Ofsted Category 4 (inadequate) or because it has failed to act on a warning notice issued to it, or where the school's governing body applies for an order. Under the 2010 Government, the DfE was clear that conversion to academy status

⁶⁸ [Education and Adoption Bill, Bill 4, Explanatory Notes](#), 3 June 2015, p5

would be the usual means to secure improvement at schools with sustained underperformance or rated 'inadequate'.⁶⁹

Clause 7 would amend existing Section 4 of the *Academies Act 2010*. It would place a duty on the Secretary of State to make an academy order where a school is 'eligible for intervention' because requires significant improvement or special measures. Where a school is eligible for intervention because it has failed to comply with a warning notice or because a school has been designated as 'coasting' (following provisions in Clause 1), then Clause 7 provides a power (but not a duty) for the Secretary of State to make an academy order.

Current section 5 of the *Academies Act 2010*, as amended, requires that a consultation must be held before the Secretary of State 'enters into academy arrangements' in respect of a school. This requirement applies whether the school is converting voluntarily or is being required to convert because it is deemed to be underperforming.

Where a school is converting voluntarily, the consultation currently must be held by the school's governing body. Where a school is 'eligible for intervention', the consultation can be run either by the school's governing body or by the person with whom the Secretary of State is proposing to 'enter into arrangements' with.

Clause 8 would replace existing Section 5 of the 2010 Act. **Clause 9** would insert new section 5A into the 2010 Act. The effect of the clauses would be to retain the requirement for a consultation where a school was not eligible for intervention. Where the Secretary of State has made an academy order under the new duty in Section 4(A1) or (1)(b) of that Act, no consultation would be required (e.g., when a school is 'eligible for intervention'). Where the school is a foundation school or a voluntary school with a foundation and where that schools is being converted under Section 4(A1) then the Secretary of State would have to consult with specified bodies about the identity of the sponsor.

Clauses 10 and 11 concern schools subject to an academy order under amended Section 4(A1) or 4(1)(b) of the 2010 Act (e.g., schools being converted because they are 'eligible for intervention'). The clauses seek to speed up academy conversion in respect of those schools.

Clause 10 would insert new Subsection 5(b) into the 2010 Act, to require local authorities and the school's governing body to take "all reasonable steps" toward the conversion of the school; in cases where a sponsor has been identified, the governing body and local authority would similarly be required to take "all reasonable steps" toward the making of academy arrangements with the identified sponsor. Clause 11 would insert new Section 5(c) into the 2010 Act, and would enable the Secretary of State to require the school's governing body or local authority to take specified steps in order to facilitate the conversion of a school to an academy. The specified steps may include time limits.

⁶⁹ See: DfE, [Schools causing concern: Statutory guidance for local authorities](#), January 2015, Pp. 25

Revoking an academy order

Currently there is no specific statutory provision allowing an academy order to be revoked if, for example, the Secretary of State decides that another approach to school improvement would be preferable. **Clause 12** would insert new Section 5D into the 2010 Act to give the Secretary of State this power in respect of an order relating to a school eligible for intervention. It would also require certain parties to be notified.

4.2 Adoption provisions: clause 13

Clause 13 would replace the existing section 3A of the *Adoption and Children Act 2002* as amended (see section 3.4) with a new section 3ZA that would apply in respect of England only.

It builds on and goes beyond the existing section 3A; as the Government notes, while section 3A “was introduced to address the failure of the system to recruit enough adopters for the children waiting for adoption” (i.e. prospective adopters), the proposed section 3ZA “is designed to be used in a different way, to direct local authorities to come together to make arrangements for one regional adoption agency to carry out a wide range of adoption functions on behalf of a number of local authorities”.⁷⁰ The term “regional” is not defined in the Bill or explanatory notes, so it is not apparent at this stage how big (or small) the Government envisages a “regional adoption agency” being, or what an optimum size might be, for example.

Under section 3ZA(1) the Secretary of State will be able to give “directions” to local authorities “to make arrangements for any or all of their specified adoption functions to be carried out on their behalf by one of the local authorities named or by another adoption agency”.⁷¹

Neither the Bill nor the explanatory notes specify under what circumstances this power will be used; this is in contrast to the provision in the Bill relating to education which sets out the circumstances in which a maintained school is eligible for intervention, for example.

Such a direction can be made to “one or more” local authorities – this potentially could include a direction made to all local authorities (although the current policy intention is to create “regional adoption agencies”). However, unlike the current section 3A, should such a direction apply to all local authorities there would not be a requirement to give it in the form of an order (where such an order would be subject to parliamentary scrutiny).

Further, the Bill does not indicate how the Secretary of State will determine by whom the functions in the direction will be carried out – with the options being a local authority either within or without the group of local authorities that are being directed by the Secretary of State, or by a voluntary adoption agency.

⁷⁰ [Education and Adoption Bill, Bill 4, Explanatory Notes](#), 3 June 2015, pp8–9, para 49

⁷¹ *Ibid*, p8, para 47

Section 3ZA(4) “enables the Secretary of State to give a direction to any local authorities to terminate arrangements” made under section 3ZA(1).⁷²

When a section 3ZA(1) direction is issued, under section 3ZA(2) the Secretary of State may either specify who is to carry out the functions, or require the local authority (or authorities) to determine this. The Government argue that this is an “important distinction between a direction under section 3A and a direction under section 3ZA”, stating that where the local authority (or authorities) determine the matter, this would “give them a greater role in the restructuring of the system”.⁷³ However, no indication is given as to how the Secretary of State would choose which option to take under section 3ZA(2).

Where the Secretary of State chooses to specify who is carry out the functions, neither the Bill nor the explanatory notes detail how they will decide whether a local authority or another adoption agency should carry out those functions.

Under section 3ZA(3), the range of functions extends beyond prospective adopters as set out currently in section 3A; the full list of functions is:

- a) the recruitment of persons as perspective adopters;
- b) the assessment of prospective adopters’ suitability to adopt a child;
- c) the approval of prospective adopters as suitable to adopt a child;
- d) decisions as to whether a particular child should be placed for adoption with a particular prospective adopter; and
- e) the provision of adoption support services (including carrying out an assessment of need).⁷⁴

The list of functions set out in section 3ZA(3) will be able to be amended through subordinate legislation subject to the affirmative procedure.⁷⁵

Under section 3ZA(5), a direction made under section 3ZA may make different provision for different purposes – the explanatory notes include the following example: “the Secretary of State can direct that arrangements should be made for specific functions to be carried out on the local authorities’ behalf in relation to a particular group of children, for example recruitment of adopters for disabled children”.⁷⁶

While the Government’s press release announcing the tabling of legislation for the new powers in section 3ZA stated that they would “only be used if councils failed to take action quickly enough” and that the “powers ... will require councils combine their adoption functions if they fail to join together services under their own steam within the next 2 years”,⁷⁷ the Bill does not include such a timescale: for example,

⁷² [Education and Adoption Bill, Bill 4, Explanatory Notes](#), 3 June 2015, p8, para 48

⁷³ *Ibid*, p9, para 49

⁷⁴ *Ibid*, p8, para 48

⁷⁵ *Ibid*, p8, para 48

⁷⁶ *Ibid*, p8, para 48

⁷⁷ DfE/ Edward Timpson press release, [New measures to end delay for children awaiting adoption](#), 23 May 2015

under clause 17 there is no commencement date stated which could prevent the powers in section 3ZA coming into force, and being used, before a certain date.

5. Reaction to the Bill's provisions

Much of the commentary on the Bill has focused on its education provisions, and in particular on the proposals in respect of conversion to sponsored academy status and the introduction of a new 'coasting' category. At the time of writing, there had been relatively little direct comment about the Bill's adoption provisions.

5.1 Education provisions

Academy conversion as a school improvement strategy

The DfE's press release cited support from "leading headteachers and education experts from across England" for the measures in the Bill:

Dame Rachel de Souza, CEO of the Inspiration Trust, which runs 12 schools and colleges in East Anglia, said:

We must intervene quickly and decisively so all pupils can experience the benefits of a great academy education and today's bill will help sponsors like us to help more young people faster.

As an academy principal and now CEO of a multi-academy trust I have seen for myself the power of academies to transform young lives and turn around failing and lacklustre schools quickly. A fresh start as an academy brings hope and new energy to staff and pupils. Our Thetford and Great Yarmouth primary academies are proof that with hard work and teamwork the sky is limit for pupils' progress and achievement.

Steve Lancashire, CEO of REAch2, which from September will sponsor 51 schools across the country, said:

Just one day in a failing school is one day too many and so any move to accelerate the process for failing schools to become academies is an important part of this and something that will be a very positive step forward for families across the country.

It will mean that no child is left behind. From next September, there will be 51 academies in the REAch2 family. We believe in school-led improvement and as a result of this our schools improve on average 3 times the rate of the national average. We welcome the opportunity that the bill will bring to engage with more schools, helping ensure that children get the first-class education they deserve.⁷⁸

Academy sponsor, Charlie Rigby, of the Challenger Trust, said the Bill had been the subject of "scaremongering", and that proposals to convert more underachieving and coasting schools into academies should be welcomed:

Contrary to the criticism it has received, last week's plans in the education bill that all underachieving and coasting schools will be converted into academies is one that should be welcomed. Far too much scaremongering has accompanied the bill thus far with far too little reference to the positives.

⁷⁸ DfE press release, [Up to 1,000 failing schools to be transformed under new measures](#), 3 June 2015

One of the key points that must be drawn upon is that it will now be significantly easier and quicker for schools to receive the help they desperately need, which I believe will prove to be of colossal benefit.

Many have lost sight of that which matters most, that each and every child's education should be the best possible. The number of schools identified as either coasting or failing is staggering, clearly reflecting a faulty system. Drastic reform has to be taken and this needs to be executed as quickly and efficiently as possible.

These changes are hardly radical either; the conversion of schools to academies has been on-going for many years already and all the new proposals will do is streamline a process clogged with red tape, which increased the time it took for assistance to arrive.

With this red tape hopefully now cut, the length of time for a struggling school to be converted into an academy has dramatically reduced and as such we now expect a greater rate of conversions in the next few years.

In addition, we will see more sponsors appointed by the government to improve these below-par schools, which I believe will see schools offered much needed assistance in building a better overall education experience for students.⁷⁹

The National Union of Teachers (NUT) has warned that academisation is not necessarily a 'magic bullet' and has also raised questions about the practical achievability of the plans:

Campaigners will not take any lectures from Nicky Morgan on social justice. There are academies deemed 'inadequate' by Ofsted. A change in structure is not axiomatically the path to school improvement. It is irresponsible to tell parents otherwise.

A pledge to convert 'up to 1,000' schools is as irrational as it is impractical. Head teachers are already in short supply, so the promise to sack more of them will simply exacerbate the problem. Where does Nicky Morgan imagine that new teachers and heads will come from?

The Government justifies this extended and accelerated privatisation of our school system by claiming that it cares about standards. Yet there is now a mountain of evidence which shows that there is no academy effect on standards in schools. Indeed, research by the Sutton Trust concluded that the very poor results of some chains – both for pupils generally and for the disadvantaged pupils they were particularly envisaged to support – comprised 'a clear and urgent problem'.⁸⁰

Brian Lightman, General Secretary of the Association of School and College Leaders was more equivocal, and said that there was "no doubt that an effective and rapid programme of intervention needs to be put in place when a school is rated as inadequate" and that in many cases "academisation may be the best solution". However, he continued:

⁷⁹ Charlie Rigby, '[Why I support the academisation of underachieving and coasting schools](#)', the *Times Educational Supplement* [online], 10 June 2015.

⁸⁰ NUT press release, '[Education and Adoption Bill](#)', 3 June 2015

[Academisation] [...] in itself it is not a magic wand. Schools fail for a number of reasons and simply changing their structure may not address the whole picture.

“In many parts of the country, for example, it is almost impossible to recruit maths teachers. So, simply converting a school into an academy will not address this issue. A wider solution is needed to deal with the teacher recruitment problems which are affecting many schools.

“Interventions in schools must be accompanied by a clearly thought out improvement strategy which deals with all the complex reasons involved.”⁸¹

Definition of a ‘coasting’ school

Many commentators have questioned the lack of detail on the face of the Bill on how the ‘coasting’ category will be defined. Writing in the *Times Educational Supplement* online, Russell Hobby, General Secretary of the National Association of Headteachers (NAHT) said the Secretary of State needed to “work urgently with the sector to define what coasting is and clarify the process that will be applied to such schools”. Commenting on the Bill’s provisions he asked:

What on earth is a coasting school?

The fact is, we don’t know. The only clue in the legislation is that a coasting school is one that has been told by the Secretary of State that it is coasting. And has not been told that it is no longer coasting. The detail is to be provided in later regulations.

This is the wrong way to do it – it creates a climate of fear. Too many schools are now wondering whether they should expect intervention. This is not the atmosphere to establish calm and purposeful school improvement and it is not the atmosphere to encourage leaders to take on challenging schools.

Here is what I think. Coasting is not a synonym for requires improvement. It will be connected to sustained underperformance. Being defined as coasting will not automatically lead to academisation. However, this is far from sufficient. We don’t even have an established measure of progress at the primary level or a well-tested measure at secondary following the assessment reforms [...] ⁸²

Prior to the Bill’s publication, Jonathan Simons, head of education at think tank Policy Exchange commended the policy focus on schools where children were making insufficient progress, but also commented that this was not an entirely novel policy aim. On the issue of ‘coasting’, he urged “caution and cool heads”. He continued:

The fact that a government would want to focus on schools where not enough children are making the progress which everyone – schools, society and their parents – would want them to is surely a reasonable ask. We also shouldn’t pretend that this is somehow a new area of interest – indeed, the last Labour government developed a similar approach (to pretty similar sound and fury, I recall) off the back of the Children’s Plan. The (positive)

⁸¹ ASCL press release, *Academisation is not a magic wand*, 3 June 2015

⁸² ‘[Are you worried about the Education Bill? Are you in a coasting school? What on earth is a coasting school?](#)’, Russell Hobby (NAHT) in the *Times Educational Supplement* (online), 3 June 2015.

difference this time is that schools will in the first instance be asked to come up with their own plans for improvement which will be at their discretion, rather than a solution imposed from DfE as was the case under Gaining Ground– and if those plans are deemed strong, then they will be tasked to get on with it. ‘Hit squads’ and mass headteacher sackings have been overblown.⁸³

Potential for ‘coasting’ designation to be applied to ‘high performing’ schools

The lack of definition of the term ‘coasting’ has led some to speculate about whether it is likely to apply to schools that, on the surface, appear to be performing very well and where a high proportion of children are obtaining good results. An article in the *Times Educational Supplement* of 27 May 2015 quotes Anne Heavey, an education policy adviser at the Association of Teachers and Lecturers, on this issue:

“Schools that are serving very middle-class intakes may have no problem with floor targets but they struggle with value-added data,” she said. “If you’re not stretching kids that come in with the highest grades from primary school, you could be at risk.”

She said she expected trends in the proportion of pupils gaining five A*-C grades at GCSE to determine, in part, which schools would face intervention. Other measures could include value-added, league table results and whether a specific cohort such as white working-class boys were failing to make good progress, she said.⁸⁴

Removal of some academy consultation requirements; Requiring LAs and governing bodies to speed up conversion

The National Governors’ Association (NGA) has raised concerns about the potential for these provisions to exacerbate a ‘democratic deficit’ and disregard local opinion, arguing:

This Bill represents a further centralisation of decision making regarding our schools; it does not sit well with the Government’s rhetoric about school autonomy as it not only removes the right for parents to be consulted, but it will give the Secretary of State power to overrule the decisions of local decision makers, whether those are the school governing body or the local authority. Where schools are underperforming governing boards must be honest and realistic about their own performance and ensure that at the earliest possible time an appropriate plan to improve the school is put in place. This will almost certainly involve assistance from outside agencies, including in many cases another successful local school (which may be an academy) and often the local authority. Where local authorities have concerns that governing boards do not have a plan for improving schools they need to take action at the earliest opportunity.⁸⁵

Henry Stewart, co-founder of campaigning organisation the Local Schools Network, criticised the proposals to require governing bodies

⁸³ [‘What is a coasting school?’](#), Jonathan Simons, Policy Exchange blog, 20 May 2015.

⁸⁴ [‘Confusion over ‘coasting’ definition sparks concern in schools’](#), *Times Educational Supplement*, 27 May 2015.

⁸⁵ National Governors’ Association news article, [‘Education and Adoption Bill published’](#), NGA website, 3 June 2015.

and local authorities to facilitate academy conversion and co-operate with identified sponsors, reportedly describing Clause 10 (duty to facilitate conversion) as “totally outrageous”. The *Schools Week (online)* article continued:

“It is saying that governors no longer have a duty of care to their children and instead have a duty to implement government policy.”

“It’s an extraordinary attack on basic freedom of speech, and I think governors across the country will be outraged by it”.⁸⁶

Increased intervention powers of Secretary of State

Reaction to the Bill has, in large part, focused on the provisions relating to academisation. However, there has been some commentary on the provisions regarding the other intervention powers, which some commentators have depicted as a further inappropriate concentration of power for the Secretary of State.⁸⁷

The Local Government Association, for example, has previously stated that it believes that “empowered councils are the solution to holding local schools to account”.⁸⁸ In response to the Bill, David Simmonds, Chairman of the LGA's Children and Young People Board also stressed that there was sometimes ‘red tape’ preventing councils from swiftly intervening in their schools:

Hundreds of schools, often in disadvantaged areas, are being turned around thanks to the intervention of local councils.

It's clear that strong leadership, outstanding classroom teaching and effective support staff and governors are the crucial factors in transforming standards in struggling schools.

We want to see bureaucratic barriers that have for a long time prevented councils from intervening swept away.⁸⁹

The NUT’s response to the Bill stated that it agreed with the LGA that “it should be the job of local authorities to assist schools”.⁹⁰

Procedure for making representations about warning notices

There have also been some concerns raised regarding the Bill’s removal of the procedure under which schools can make representations against a warning notice, although as noted above these proposals have not been without supporters.

An article in the Guardian on 9 June 2015 reported comments on this from a solicitor at the legal firm Browne Jacobson:

⁸⁶ ‘[Education Bill is an ‘extraordinary attack’ on free speech, says campaigner](#)’, in *Schools Week* [online], 4 June 2014.

⁸⁷ ‘[Pocket Watch – Unravelling the Education Bill](#)’, Pearson UK website, 3 June 2015 & ‘[More power to intervene in your school: an eight-point guide to what the Education Bill will mean for you](#)’, *Times Educational Supplement*, 3 June 2015.

⁸⁸ Local Government Association press release, ‘[Restore school intervention powers to councils to bring stability](#)’, 14 June 2014

⁸⁹ Local Government Association media release, ‘[Councils comment on new education bill](#)’, 4 June 2015.

⁹⁰ National Union of Teachers press release, [Education and Adoption Bill - press release](#), 3 June 2015.

Katie Michelin, a solicitor at the firm, said schools she worked with on appeals [against warning notices] were generally successful, often arguing local authorities had not followed procedures correctly.

Losing this right will leave a daunting judicial review as schools' only outlet, Michelin says. "This makes me nervous that there will be no route for schools wanting to contest the fairness of a notice." The bill would also see the secretary of state able to issue a warning notice herself.

A DfE spokesman said the removal of appeals was part of the bill's plan to "remove loopholes" that caused schools to "languish" in low Ofsted categories too long.⁹¹

5.2 Adoption provisions

Following the publication of the [Government's press release](#) announcing the proposals to create regional adoption agencies, a number of media organisations reported reaction from those in the adoption sector.

An article on the BBC News website included the following reaction from a number of parties:

David Simmonds, chairman of the LGA's [Local Government Association's] children and young people board, said: "Finding loving homes for children is one of the most important jobs councils do and we are already working together to do this.

"Regional work on adoption is already taking place and many homes for children have been provided in this way.

"The welfare of a child is at the heart of every decision on adoption a council makes and we would like to see councils encouraged to work regionally only if this is in the best interests of a child."

Barnardo's chief executive Javed Khan said: "The immediate and long-term welfare of the child must always be paramount.

"Getting children into the best placement first time reduces disruption and should be an essential part of the system. There are still many children waiting too long for a loving home, so we welcome any efforts that put children first."

[...]

The British Association for Adoption and Fostering [BAAF] welcomed the plan, saying it was not acceptable for children to wait up to 18 months for an adoptive family.

"Delay is itself significantly harmful and every step must be taken to minimise it," said the association's policy director, John Simmonds.

"Working together across all organisations to deliver this objective could not be more important and there are many excellent examples where this currently happens".⁹²

⁹¹ ['Department for Education lines up praise for the academies solution'](#), *Guardian*, 9 June 2015.

⁹² ['Adoption services 'should be merged''](#), BBC News, 23 May 2015

In a press release, BAAF added that “By increasing the pool of potential adopters by working in regional arrangement will, we believe[,] help more children to be matched”.⁹³

The Guardian reported that:

Reactions to the plans ... have been mixed. [Adoption UK](#) praised them but warned that there was still a lot of work to do ... But Tact [The Adolescent and Children’s Trust], the UK’s largest adoption and fostering charity, said the focus on adoption risked missing out children whose interests were better served by alternative care arrangements.

[...]

Hugh Thornbery, CEO of Adoption UK, said he was pleased at the new plans. “I have long held the view that 180 agencies in England does not make sense when only 5,000 children a year are being placed,” he said. “The encouragement to local authorities and voluntary adoption agencies to work more closely together under regional arrangements makes sense as long as we see continuous improvements in matching children and supporting families when they need it.

“Adoption UK will be looking to see much stronger links between the recruitment of adopters, matching with children and the provision of support. I want to see initiatives that bring a holistic approach to that support, as so many children adopted from care have multiple and complex needs.”

But Andy Elvin, a spokesman for Tact, warned that the scheme risked failing to account for the needs of thousands of children for whom adoption was not the best solution. “There are 65,000-plus children in public care,” he said. “Adoption is a solution for about four or five thousand of them, so why this focus on adoption? We need to support all options equally because each of them is equally important for that particular child. We’d like to see an equal focus on all forms of care.

“No one’s going to say adoption is a terrible thing, because it’s not – it’s great. But so is long-term foster care, so is living with your grandparents, and so is permanent residential care, for some children. It all needs to be viewed as a piece, and this dividing things out is not helpful”.⁹⁴

Mr Elvin subsequently published an article in *The Guardian* in which, while commenting that while the Government’s proposals were “well-intentioned and come from a laudable place”, added that rather than regional adoption agencies Tact “would much prefer to see a move to permanence hubs. The constant focus on one permanence option – adoption – which is a solution for a minority of children in public care, is unhelpful”, adding:

Foster care, special guardianship or other arrangements within extended families are the most common permanence options for children who cannot remain with their parents. For some children, residential care is the best permanence option. It is vital that these

⁹³ British Association for Adoption and Fostering press release, [BAAF's Statement re introduction of new measures regarding adoption](#), 23 May 2015

⁹⁴ ['New law will force councils to merge services to improve adoption rates'](#), *The Guardian*, 23 May 2015

options are given equal attention and that we do not artificially separate out different options or elevate one above the others. The recent guidance on permanence through fostering is welcome, but it is only a start.

Ideally, we'd like to see a legislative framework that puts achieving permanence for all children without delay at the heart of the system. This could involve establishing integrated permanence services in all areas and a nationally agreed permanence practice and skills framework. Assessing families for permanence is a specific skill and is distinct from assessing and managing risk in the birth family home.

Therefore, I suggest that we create permanence teams that assess all prospective adopters, foster carers and any family or connected people applying for special guardianship. These permanence specialists could also assess birth parents as the permanence option for children where appropriate.⁹⁵

Family Law Week noted that the President of the Association of Directors of Children's Services, Alison O'Sullivan, had said:

We've been working with the government, with voluntary adoption agencies, with the courts over the past several years now to try and improve the process and improve the ability to find families for children as quickly as possible.

It's crucial that local areas are free to put in place the best arrangements to suit local needs, there are examples of local reform in this area that are working very well. Such as the WWISH Adoption Service which brings together the adoption work of St Helens, Warrington and Wigan councils. We welcome the commitment from government to provide practical and financial support to help each local area to work out the best way forward.

Nationally, the Adoption Register and initiatives such as Adoption Activity Days allow local councils access to a bigger pool of adopters to reduce the time children are waiting in care – particularly those considered 'harder to place' e.g. older children or sibling groups who are often waiting the longest.

There's been a lot of progress made but there is much to do. And we think that combining efforts across local authorities is a welcome development. Our members are committed to ensuring a strong focus on adoption and other forms of permanence to give children secure and loving homes.⁹⁶

An article in *Community Care* noted the concerns of Nushra Mansuri, professional officer at the British Association of Social Workers (BASW), who, it was reported, "warned it is 'another stick to beat local authorities with' and signals the Conservative government's 'disappointing preoccupation' with adoption, as opposed to any other form of permanency planning". *Community Care* added that:

She said: "This comes at a time when children's services are under inordinate pressure, including adoption services, which are by no

⁹⁵ ['Stop treating adoption as the only option for children in care'](#), *The Guardian*, 1 June 2015

⁹⁶ ['Government to introduce regional adoption agencies'](#), *Family Law Week*, 31 May 2015

means exempt from austerity measures. BASW members working in these services frequently tell us that they have taken hits, yet the whip is being cracked in terms of meeting government targets.”

She added that the move “inevitably contributes to demoralising social workers and does nothing to help recruitment and retention difficulties nationally and, ultimately, vulnerable children on the receiving end of all of this”.⁹⁷

⁹⁷ [‘Councils will be forced to merge adoption services under controversial new law’](#), *Community Care*, 26 May 2015

Appendix 1: Regional Schools Commissioners

Since September 2014, eight Regional Schools Commissioners (RSCs) have been responsible for approving new academies and intervening in underperforming academies in their areas.⁹⁸

The RSCs are directors of the Department for Education and take decisions on behalf of the Secretary of State.⁹⁹ Currently, their main responsibilities all relate to academies and free schools. They:

- monitor the performance of the academies in their area
- take action when an academy is underperforming
- decide on the creation of new academies
- make recommendations to ministers about free school applications
- encourage organisations to become academy sponsors
- approve changes to open academies, including:
 - changes to age ranges
 - mergers between academies
 - changes to multi-academy trust arrangements.¹⁰⁰

The eight RSCs are each supported by a headteacher board.¹⁰¹ Each headteacher board comprises a minimum of six members, four of whom are headteachers elected by academy heads in the region and two of whom are appointed by the RSC.¹⁰² Each RSC's office had a budget for 2014-15 of approximately £460,000.¹⁰³

RSCs are accountable to the Schools Commissioner, Frank Green, and the Director General of the Department for Education. The Secretary of State remains responsible for the academy system and holds the RSCs to account for the performance of academies in their area.¹⁰⁴

Currently, RSCs are not involved with local authority maintained schools in their areas.¹⁰⁵ However, in evidence to the Education Committee on 22 October 2014, the Education Secretary stated that "the direction of travel for the Conservative party" was for RSCs to also oversee local

⁹⁸ DfE, [How major decisions affecting academies will be dealt with from autumn 2014](#), 23 December 2013.

⁹⁹ 'Schools Commissioners Group', Gov.uk, last accessed 31 May 2015 & Education Committee, [Academies and free schools](#), 21 January 2015, HC 258, para 74.

¹⁰⁰ 'Our governance', School Commissioners Group, last accessed 31 May 2015.

¹⁰¹ Education Committee, [Written evidence from the Department for Education: Regional School Commissioner Briefing](#), AF50122.

¹⁰² Education Committee, [Academies and free schools](#), 21 January 2015, HC 258, para 73 and Education Committee, [Written evidence from the Department for Education](#), AF50122. Each headteacher board can also co-opt up to two additional members.

¹⁰³ [PO 219893](#) [on Regional Schools Commissioners] 6 January 2015.

¹⁰⁴ Education Committee, [Written evidence from the Department for Education: Regional School Commissioner Briefing](#), AF50122.

¹⁰⁵ 'Regional schools commissioners to oversee academies', Gov.uk, 23 December 2013.

authority maintained schools.¹⁰⁶ In addition, in an article in the *Daily Mail* on 13 October 2014, the Prime Minister stated that a future Conservative government would widen the remit of RSCs:

Currently there are eight regional school commissioners overseeing all Free Schools and Academies. We will give these experts, who include former teachers, a wider remit: unprecedented powers to overhaul failing schools.

If it's the leadership that's not working, they can make them remove it – reappointing the whole governing body if they have to. If the curriculum isn't up to scratch, they can change it.

They can issue new disciplinary measures for bad behaviour. They can pair up failing schools with good local schools. And if they succeed, we will look at what they can do for schools that are said to 'require improvement' – what I call coasting schools.¹⁰⁷

The [background briefing](#) published alongside the Queen's Speech on 27 May 2015 stated that the forthcoming Education and Adoption Bill would:

...give Regional Schools Commissioners powers to bring in leadership support from other excellent schools and heads.¹⁰⁸

The Bill does not contain any provisions directly concerning RSCs, but it is possible that they may have day-to-day responsibility for making key decisions.

¹⁰⁶ Education Committee, [Oral evidence: Academies and free schools](#), HC 258, Wednesday 22 October 2014, Q1282

¹⁰⁷ ['I want a brilliant education for all and I want it fast, writes David Cameron'](#), *Daily Mail*, 13 October 2014.

¹⁰⁸ [The Queen's Speech 2015 Background Briefing](#), Gov.uk, p40-41

Glossary

Key terms: schools

- **Academy:** state-funded school in England independent of local authority.
- **Academy chain:** group of academies – the largest of which is the Academies Enterprise Trust (AET).
- **Sponsored academy:** usually replaces an underperforming maintained school, and has an external sponsor or belongs to a chain.
- **Converter academy:** maintained school performing well that voluntarily converts to academy status.
- **Maintained school:** school in England maintained by local authority
- **'Eligible for intervention':** defined in Part 4 of the *Education and Inspections Act 2006*. Currently, schools that have failed to respond adequately to a warning notice about either performance, standards and safety or teachers' pay and conditions are 'eligible for intervention', as is any school deemed by schools' inspectorate Ofsted to require either special measures or serious improvement (Category '4', 'inadequate')
- **'Coasting':** a proposed new description for schools; schools deemed 'coasting' may be subject to a range of measures.
- **'Inadequate':** the lowest of four gradings that can be given to a school following Ofsted inspection. Subdivided into 'requires significant improvement' and needing 'special measures'.
- **'Requires improvement':** has replaced the old Ofsted judgement of 'satisfactory'

Key terms: adoption

- **Placement order:** an order made by the family courts to place a child for adoption with prospective adopters. The local authority and prospective adopters have parental responsibility, and the local authority may restrict the parental responsibility of any parent or guardian, or the prospective adopters.
- **Adoption order:** an order made by the family courts that a child be adopted. Parental responsibility is given exclusively to the adoptive parents, and the child is treated in law as if they were born as a child of the adopters.
- **Adoption agency:** either a local authority (also known as an "Adoption Service"), or a registered adoption society (also known as a "voluntary adoption agency").

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