

# EDUCATION AND ADOPTION ACT 2016

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Education and Adoption Act 2016 (c. 6) which received Royal Assent on 16 March 2016.

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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## Overview of the Act

- 1 This Act makes provision about schools in England that are causing concern, including provision about their conversion into academies and about intervention powers; and makes provision about joint arrangements for carrying out local authority adoption functions in England.

## Policy background

- 2 The Act takes forward a range of Government commitments which are intended to improve education for all children and adoption services for some of the most vulnerable children in England.
- 3 The measures in the Act will enable the Government to intervene more swiftly in failing schools. It also ensures that intervention is possible in a new category of schools, labelled 'coasting schools', where such intervention is deemed necessary.
- 4 The measures in the Act would enable directions to be given requiring local authorities to make arrangements for their adoption functions to be carried out by another adoption agency. This will result in adoption functions being carried out on a larger scale by fewer individual agencies, and consequently, will result in a greater pool of approved adopters with whom to match vulnerable children.

## Legal background

### Education

- 5 The legislation on intervening in maintained schools is set out in Part 4 of the Education and Inspections Act 2006. It sets out the circumstances in which maintained schools become eligible for intervention, the intervention powers of Local Authorities and the Secretary of State respectively, and the powers of the Secretary of State to require Local Authorities to intervene. Academies are governed under a different system. They are operated by Academy Trusts under the terms of individual funding agreements between the Secretary of State and the Academy Trust.
- 6 The Education and Inspections Act 2006 will continue to be the main Act dealing with intervention in maintained schools and this Act inserts new provisions into that Act and amends certain existing provisions. Academies will continue to be governed according to the provisions of their funding agreements as amended by Section 14 of this Act.
- 7 The legislation on the making of Academy orders is contained in the Academies Act 2010 at:
  - a. sections 3 to 8, which set out the means and process by which maintained schools convert to Academy status and the effect of conversion; and
  - b. paragraph 10 of Schedule 1 which concerns the power of the Secretary of State to make a direction about land held by a Governing Body, a Foundation Body or Trustees.
- 8 The Academies Act 2010 will continue to be the main Act dealing with the conversion of maintained schools to Academy status and this Act amends the Act by inserting new provisions and replacing an existing provision.

## Adoption

- 9 The legislation governing adoption agencies and their functions is set out in Part 1 (the Adoption Service) of the Adoption and Children Act 2002. Part 1 provides for local authorities to maintain an Adoption Service to meet the needs of certain people in their area, provides that, as part of that Service, local authorities must provide facilities for the provision of adoption support services, and provides for a general power to regulate adoption agencies.
- 10 The Adoption and Children Act 2002 will continue to be the main Act governing adoption agencies and their functions and this Act inserts a new provision into that Act and repeals the current section 3A (recruitment, assessment and approval of prospective adopters).

## Territorial extent and application

- 11 The provisions in this Act extend to England and Wales and apply in relation to schools and local authorities in England only.

# Commentary on provisions of Act

## Section 1: Coasting schools

- 12 Section 1(2) amends section 59 of the Education and Inspections Act 2006 (meaning of “maintained school” and “eligible for intervention”) so as to provide that the meaning of “eligible for intervention” includes coasting schools.
- 13 Section 1(3) inserts new section 60B into the Education and Inspections Act 2006. Section 60B creates an additional category of school “eligible for intervention” for local authority maintained schools that are “coasting”. It includes a requirement for the Secretary of State to define in regulations what “coasting” means and allows the Secretary of State, through regulations, to disapply the coasting definition from certain types of schools. The coasting regulations will be subject to the affirmative procedure the first time they are laid. The Section also provides that a school is eligible for intervention if the Secretary of State has notified the governing body of the school that it is coasting and has not subsequently notified them that the school is no longer coasting.

## Section 2: Performance standards and safety warning notices

- 14 Section 2 amends section 60 of the Education and Inspections Act 2006 (performance standards and safety warning notices).
- 15 Under section 60 only local authorities may give a warning notice to the governing body of a maintained school, and Section 2 gives the power to the Secretary of State as well.
- 16 Section 2(2)(b) and (c) sets out how a maintained school may become eligible for intervention after a warning notice has been given. It allows the person giving the warning notice to set the period for compliance by the governing body, in place of the current fixed period of 15 working days from the giving of the warning notice. As a consequence of the removal of the representations procedure by section 2(2)(h), and the changes made by sections 2(4) and 2(5), the beginning of the time when it is possible to exercise the powers to appoint additional governors (under s 64 of the Education and Inspections Act 2006) and to suspend the right to a delegated budget (under s 66 of that Act) is determined by reference to the compliance period specified in the warning notice.
- 17 Section 2(2)(e) inserts new subsection (4A) into section 60. This provides that if the local authority are notified that the Secretary of State has given a warning notice then the local authority may not give a warning notice unless the Secretary of State tells them that they may.
- 18 Section 2(2)(e) also inserts a new subsection (4B) into section 60. This provides that if the Secretary of State gives a warning notice to a governing body any prior warning notice given by the local authority to the same governing body ceases to have effect.
- 19 The governing body's entitlement to make representations against the warning notice to Her Majesty's Chief Inspector of Education, Children's Services and Skills, and the obligation of Her Majesty's Chief Inspector of Education, Children's Services and Skills to consider those representations, is removed by section 2(2)(h).
- 20 Section 2(6) removes the power of the Secretary of State, found in section 69A of the Education and Inspections Act 2006, to direct a local authority to give a performance standards and safety warning notice. This is because as a result of the amendments in section 2 the Secretary of State can now give these notices.

- 21 Section 2(7) omits the definition of working day from section 73 (Interpretation of Part 4) as it is redundant as a result of the other amendments made by sections 2 and 3.

### Section 3: Other warning notices

- 22 Section 3 amends section 60A of the Education and Inspections Act 2006, which makes provision for teachers' pay and conditions warning notices.
- 23 Section 3 sets out amended conditions to be satisfied for a maintained school to be eligible for intervention under section 60A. It removes the 15 day period within which the governing body must comply with a warning notice and instead allows the local authority to specify a period for compliance.
- 24 Section 3(2)(d) inserts into section 60A(6) a requirement on the local authority to give a copy of a teachers' pay and conditions warning notice to the Secretary of State at the same time as they give the warning notice to the governing body.
- 25 Section 3(2)(e) removes the entitlement and procedure by which the governing body may make representations to the local authority. As a consequence of the removal of the representations procedure, by sections 3(3) and 3(4) the start of the time limits for exercising the power to appoint additional governors (under s 64 of the Education and Inspections Act 2006) and the power to suspend the right to a delegated budget (under s 66 of that Act) respectively is determined by reference to the compliance period specified in the warning notice.
- 26 Section 3(3) and (4) replace references in sections 64 and 66 of the Education and Inspections Act 2006 to the 15 day compliance period with references to the new period of compliance at s.60(1)(b) of the Education and Inspections Act as amended by this act.

### Section 4: Power to require governing body to enter into arrangements

- 27 Section 4 inserts a new section 66A into the Education and Inspections Act 2006 to give the Secretary of State the power to give a governing body of a maintained school notice requiring it to take specified action to secure improvement of the school's performance. This power can only be exercised in relation to a maintained school that is eligible for intervention, though not if the school is eligible for intervention by virtue of failure to comply with a teachers' pay and conditions warning notice under section 60A. Local Authorities already have a similar power at section 63 of the Education and Inspections Act 2006.
- 28 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. Section 66A(2) sets out consultation requirements the Secretary of State must comply with before giving a notice under section 66A.
- 29 If the school is eligible for intervention further to a performance standards and safety warning notice under section 60 of the Education and Inspections Act 2006, this power can only be exercised within two months from the end of the compliance period specified in the warning notice in accordance with section 60(1)(b).

## Section 5: Appointment of interim executive members

- 30 Section 5 amends Schedule 6 to the Education and Inspections Act 2006 by inserting a new paragraph 5A which provides that where an interim executive board (IEB) is to be appointed by the local authority, the Secretary of State may give directions about who is to be appointed, the size of the IEB, the terms of appointment of the members of the IEB, and the termination of the appointment of any members made by the local authority.

## Section 6: Interaction between intervention powers

- 31 Section 6 amends the Education and Inspections Act 2006 to provide for how the intervention powers of the Secretary of State and local authorities are to interact with one another.
- 32 Section 6(2) amends section 64 (which is concerned with the appointment by local authorities of additional governors) by removing subsection (1A) which stops a local authority from appointing additional governors of a maintained school where, in specified circumstances, the Secretary of State has exercised the power to appoint additional governors under section 67. This limitation is no longer needed because of the changes made concerning the interaction of the powers of the Secretary of State and local authorities made by section 6(3).
- 33 Section 6(3) inserts new sections 70A, 70B and 70C into the Education and Skills Act 2006.
- 34 New section 70A requires local authorities to notify the Secretary of State before they exercise their powers to require a governing body of a maintained school to enter into arrangements (under section 63) , to appoint additional governors (under section 64) , or to suspend a governing body's right to a delegated budget (under section 66). There is no need for a local authority to notify the Secretary of State before they exercise their power to intervene under section 65 (appointment to provide for governing body to consist of interim executive members) because the existing legislation already requires them to obtain the Secretary of State's consent before exercising the power under section 65. Section 70A also requires the Secretary of State to notify the local authority before exercising any of the powers to require a governing body to enter into arrangements, appoint additional governors, direct the closure of a school or provide for the governing body of a maintained school to consist of interim executive members.
- 35 New section 70B restricts the use of a local authority's intervention powers where the Secretary of State has notified the authority that the Secretary of State intends to exercise any of the powers of intervention to require a governing body to enter into arrangements, appoint additional governors, direct the closure of a school or provide for the governing body of a maintained school to consist of interim executive members. A local authority so notified must not exercise that same power in relation to the same school unless and until the Secretary of State notifies them that they may.
- 36 New section 70C allows the Secretary of State to take over responsibility for arrangements in connection with interim executive members appointed by a local authority. Where the Secretary of State takes this responsibility, the local authority's notice to the governing body of the maintained school that it is to consist of interim executive members is treated as having been given by the Secretary of State; and anything done by the local authority in exercise of its powers in relation to the interim executive board as set out in Schedule 6 to the Education and Skills Act 2006 is treated as if done by the Secretary of State.

## Section 7: Duty to make Academy orders

- 37 Section 4 of the Academies Act 2010 permits the Secretary of State to make an Academy order which enables the conversion of a maintained school into an Academy in two circumstances; firstly on the application of a school's governing body; and secondly if the school is eligible for intervention within the meaning of section 59(2) of the Education and Inspections Act 2006 (schools subject to warning notices, and those requiring significant improvement or special measures).
- 38 Section 7 amends section 4(1) of the Academies Act 2010. It places a duty on the Secretary of State to make an Academy order in respect of a maintained school that is eligible for intervention by virtue of the fact that the school has been found to require significant improvement or special measures (under section 61 or 62 of the Education and Inspections Act 2006).
- 39 Section 7(3) further amends section 4 to provide that the Secretary of State will retain discretion as to whether to issue an Academy order in other circumstances where a school is eligible for intervention either because it fails to comply with a warning notice (under section 60 or 60A of the Education and Inspections Act 2006) or where it is identified as "coasting" (in accordance with the new section 60B of the Education and Inspections Act 2006 to be inserted by section 1 of this Act).

## Section 8: Consultation about conversion generally

- 40 Section 8 replaces existing section 5 of the Academies Act 2010. Replacement section 5 retains the requirement that a governing body of a school proposing to convert to an Academy must consult those they think appropriate about whether the school should convert to an Academy; but it provides no such consultation requirement if a school is eligible for intervention and subject to an Academy order which has been made under section 4(A1) or (1)(b) of the Academies Act 2010 (schools eligible for intervention).

## Section 9: Consultation about identity of sponsors in certain cases

- 41 Section 9 inserts a new section 5A into the Academies Act 2010. The new section applies to a foundation or voluntary school with a foundation that is subject to an Academy order under section 4(A1). In relation to those schools, the Secretary of State is under a duty to consult the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body, about the identity of the person with whom the Secretary of State intends to enter into Academy arrangements. New section 5A does not cover Academy orders under section 4(1)(b) because there is already a similar, but slightly broader, requirement to consult before making such an Academy order (see section 4(1A)).

## Section 10: Duty to facilitate conversion

- 42 Section 10 inserts a new section 5B into the Academies Act 2010. The new section provides that where a school is the subject of an Academy order under section 4(A1) or (1)(b), the governing body and its relevant local authority must work towards the school's successful conversion into an Academy by taking all reasonable steps necessary to that end.
- 43 New section 5B also says that if a sponsor has been identified with a view to the sponsor entering into Academy arrangements with the Secretary of State to run the school as an Academy, and the Secretary of State has notified the school that the Secretary of State is minded to enter into academy arrangements with that person, the governing body must take all reasonable steps to facilitate the making of Academy arrangements with that particular sponsor.



## Section 11: Power to give directions to do with conversion

- 44 Section 11 inserts a new section 5C into the Academies Act 2010. The new section provides that the Secretary of State may direct the governing body of a school which is eligible for intervention and subject to an Academy order under section 4(A1) or (1)(b), or its local authority, to take specified steps to facilitate the conversion of the school into an Academy. Examples of the steps that a direction may require a governing body or local authority to take include those in connection with a transfer scheme under section 8 (transfer of certain property, rights and liabilities) of, or Part 1 of Schedule 1 (transfer of land) to, the Academies Act 2010. The new section provides that a direction may include a time period within which the steps must be taken.

## Section 12: Power to revoke Academy orders

- 45 Section 12 inserts a new section 5D into the Academies Act 2010. The new section allows the Secretary of State to revoke any Academy order issued under section 4(A1) or (1)(b) of the Academies Act 2010 (schools eligible for intervention), for example if the Secretary of State decides it would be better to direct the local authority to close the school. The Secretary of State is required to give a copy of any such order to everyone whom the Academy order was given by virtue of section 4(4) of the Academies Act 2010.

## Section 13: Duty to communicate information about plans to improve school

- 46 Section 13 inserts a new section 5E into the Academies Act 2010. The new section provides that before a maintained school which is causing concern is converted into an academy the proposed proprietor of the academy must communicate information about their plans to improve the school to parents.

## Section 14: Academies causing concern

- 47 Section 14 inserts new sections into the Academies Act 2010 to provide that all funding agreements for Academies and free schools made after section 14 comes into effect will include termination provisions around failing and coasting schools which are broadly in line with those in the current model funding agreement. It also provides that where an academy or free school [other than a 16 – 19 Academy] with a funding agreement entered into before section 14 comes into effect is judged inadequate by Ofsted or meets the coasting definition, then their funding agreement will be read as having provisions around failing and coasting schools which are broadly in line with those in the current model funding agreement.
- 48 In practice, the termination provision for failing academies gives the Secretary of State consistent powers to terminate academy and free school funding agreements on the grounds of an inadequate inspection judgement. The Secretary of State is required to give the proprietor of the academy the opportunity to make representations before terminating the funding agreement on the grounds of an inadequate inspection. The provision for coasting academies, applies to academies the coasting definition as defined in regulations for maintained schools. It also provides the Secretary of State with the power to make regulations to exclude certain type of academies from the coasting definition. The provision allows the Secretary of State to terminate the funding agreement of a coasting academy where a termination warning notice has been issued and the proprietor of the academy has failed to comply with that notice.

## Section 15: Local authority adoption functions: joint arrangements

- 49 Section 15 inserts a new section 3ZA into the Adoption and Children Act 2002. Section 3 of the 2002 Act requires each local authority to maintain within their area an adoption service designed to meet the needs, in relation to adoption, of, and provide facilities for: children who may be adopted; their parents and guardians; persons wishing to adopt a child; and adopted

persons, their parents, natural parents and former guardians. Local authorities may provide those facilities by securing their provision by other local authorities and registered adoption societies (defined in section 2(2) of the 2002 Act). Only local authorities and registered adoption societies may make arrangements for adoption (sections 92 and 94 of the 2002 Act).

- 50 The new section 3ZA gives the Secretary of State a new power to direct one or more local authorities in England 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. The Secretary of State can either name which adoption agency should carry out these functions, or instruct the local authorities to determine who should carry out the functions. If the local authorities are instructed to determine who should carry out the functions, they may decide to set up a new voluntary adoption agency to do this. Alternatively, they may prefer to make arrangements for one of the local authorities named in the direction to do so on behalf of the others, or they may make arrangements with a different local authority or voluntary adoption agency. The section also enables the Secretary of State to give a direction to any local authorities to terminate these arrangements.
- 51 In the direction, the Secretary of State can list which adoption functions the arrangements should relate to. The functions that can be specified in a direction are functions in relation to: the recruitment of persons as prospective adopters; the assessment of prospective adopters' suitability to adopt a child; the approval of prospective adopters as suitable to adopt a child; decisions as to whether a particular child should be placed for adoption with a particular prospective adopter; and the provision of adoption support services, including carrying out an assessment of need. The functions that can be included in a direction given by the Secretary of State can be amended by regulations. In a direction, the Secretary of State can also make different provision for different purposes. For 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.
- 52 Section 13(3) removes section 3A of the 2002 Act and replaces it with a new section 3ZA. Section 3A was introduced to address the failure of the system to recruit enough adopters for the children waiting for adoption; consequently, the Secretary of State's power under this section is limited to functions relating to prospective adopters. 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. The functions that can be included under a section 3ZA direction are therefore wider than those under section 3A. In addition to functions relating to prospective adopters, they also include functions in relation to decisions about placing a particular child with a particular prospective adopter and the provision of adoption support services. A further important distinction between a direction under section 3A and a direction under section 3ZA, is that under section 3ZA, local authorities can be directed to determine for themselves who should carry out the specified functions on their behalf, which would give them a greater role in the restructuring of the system.

## Section 16: Consequential repeals

- 53 Section 16 provides that, in consequence of the amendments made by this Act, the following are omitted -
- a. paragraph 6(2) and (3) and 11 of schedule 13 to the Apprenticeships, Skills, Children and Learning Act 2009;
  - b. sections 44(3) and 56 of the Education Act 2011;

c. section 4 of the Children and Families Act 2014.

### Section 17: Transitional, savings and consequential provision

- 54 Section 17(1) allows the Secretary of State to make transitional or saving provision. Section 17(2) allows the Secretary of State to make consequential amendments to legislation passed before or in the same Session as the Act. Regulations making consequential amendments to an Act are subject to the affirmative procedure; other regulations making consequential amendments are subject to the negative resolution procedure.

## Commencement

- 55 Sections 16, 17, and 18 come into force on the day of Royal Assent.
- 56 Sections 1 to 15 will come into force on days appointed by the Secretary of State in commencement regulations. The regulations will not be subject to parliamentary procedure.

## Related documents

57 The following documents are relevant to the Act and can be read at the stated locations:

- Considering the impact of the Education and Adoption Act provisions  
<https://www.gov.uk/government/publications/education-and-adoption-bill-impact-assessment>

## Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Sections 1- 17	In Full	No	No	No	No	No	No

## Annex B - Hansard References

58 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	03 June 2015	<a href="#">Vol. 596 Col. 610</a>
Second Reading	22 June 2015	<a href="#">Vol. 597 Col. 638</a>
Public Bill Committee	02 July 2015	<a href="#">Public Bill Committee - Education and Adoption Bill (Bill 004) 2015 - 2016</a>
	07 July 2015	
	09 July 2015	
	14 July 2015	
Report and Third Reading	16 September 2015	<a href="#">Vol. 599 Col. 1077</a>
<i>House of Lords</i>		
Introduction	16 September 2015	<a href="#">Vol. 764 Col. 1956</a>
Second Reading	20 October 2015	<a href="#">Vol. 765 Col. 582</a>
Grand Committee (Day 1)	05 November 2015	<a href="#">Vol. 765 Col. GC381</a>
Grand Committee (Day 2)	10 November 2015	<a href="#">Vol. 765 Col. GC445</a>
Grand Committee (Day 3)	17 November 2015	<a href="#">Vol. 767 Col. GC1</a>
Report	01 December 2015	<a href="#">Vol. 767 Col. 1051</a>
	16 December 2015	<a href="#">Vol. 767 Col. 2081</a>
Third Reading	08 February 2016	<a href="#">Vol. 768 Col. 1989</a>
Commons Consideration of Lords Amendments	23 February 2016	<a href="#">Vol. 606 Col. 256</a>
Royal Assent	16 March 2016	<a href="#">House of Commons Vol 607 Col 986</a>
		<a href="#">House of Lords Vol 769 Col 1843</a>

*These Explanatory Notes relate to the Education and Adoption Act 2016 (c. 6) which received Royal Assent on 16 March 2016*

## Annex C - Progress of Bill Table

59 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Act through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13					Clause 13
Section 14					Clause 14
Section 15	Clause 13	Clause 13	Clause 13	Clause 13	Clause 15
Section 16	Clause 14	Clause 14	Clause 14	Clause 14	Clause 16
Section 17	Clause 15	Clause 15	Clause 15	Clause 15	Clause 17
Section 18	Clause 16	Clause 16	Clause 16	Clause 16	Clause 18
Section 19	Clause 17	Clause 17	Clause 17	Clause 17	Clause 19
Section 20	Clause 18	Clause 18	Clause 18	Clause 18	Clause 20

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