



Briefing note

Children's Wellbeing and Schools Bill

The Confederation of School Trusts (CST) is the national sector body representing academy trusts in England. Our members represent 77% of academy schools and educate more than 3.6m children. Over half of all state schools in England are now academy schools and around 64% of state-educated pupils attend academy schools.

Introduction

We welcome the measures in the Children's Wellbeing part of the Bill (Part One), specifically, on child protection and safeguarding, support for children in care and the regulation of children's homes. However, CST members are very concerned about the 'schools' part of the Bill and in particular the measures which would remove academy freedoms.

We share this government's ambition to remove barriers to opportunity for all our children. We want to work with the government to achieve this aim. We are committed to being a constructive voice in the system.

Trusts have taken on and turned around some of the most underperforming schools in the system, especially those that serve some of the most disadvantaged areas in England. At the heart of the opportunity mission is a commitment to 'breaking the link between background and success'. Trusts are central to this. As part of our civic mission, trusts have reached beyond the children, staff and communities we directly serve. The CST National Trust Survey indicates that 72% of trusts are already supporting maintained schools.

The Secretary of State said in her statement to the House of Commons on the second reading of the Bill that "Academies, introduced by the last Labour Government and expanded by the Conservative party, have been instrumental in raising standards in our school system. They have delivered brilliant results, particularly for the most disadvantaged children, and they will continue their record of excellence under this Labour Government."

This diversity in provision in the school system has enabled innovation and improvement in a way that was not previously possible. This has been achieved in part by the freedoms and flexibilities that academy trusts have had. It has also been achieved through the structural resilience of groups of schools working together in deep and purposeful collaboration in a single legal entity.

Executive summary

Teacher and support staff pay and conditions: We welcome the constructive engagement we have had with Government on this measure in the Bill and the Government's subsequent amendment to the bill. There is more work to do in relation to the School Support Staff Negotiating Body (SSSNB) which is proposed in the Employment Rights Bill. We need to ensure that the establishment of this body offers similar provisions for a floor not a ceiling on pay, and flexibility with regard to conditions.

National Curriculum: We welcome the Secretary of State's clarification in her evidence to the Education Select Committee that she intends the new national curriculum framework will provide a "minimum floor to ensure consistency." We must ensure that a high-level national framework protects the ability of schools and trusts to deliver the 'enacted' curriculum in a flexible and responsive way, and would not necessarily undermine or constrain the ability of schools and trusts to continue to innovate and become centres of curriculum excellence. We welcome the interim report of the Curriculum and Assessment review.

School improvement - Repeal of duty to make academy order in relation to a school causing concern: We welcome the clarification in the DfE's consultation document on school accountability reform, which says that that a school judged by Ofsted to require special measures will continue by default to receive structural intervention (although this presumption does not extend to schools with serious weaknesses / requiring significant improvement). Our position is that schools judged to be inadequate by Ofsted should require a change of governance in order to secure timely improvement. Therefore, this measure could be removed from the Bill.

Admissions, pupil admissions numbers (PAN) and new schools: We want to work with government to create a robust decision-making framework to ensure that decision-making is in the right place, in the interests of children and communities, and protects high quality education. This can be achieved through a combination of regulations and statutory guidance. Conflicts of interest must be either removed or actively mitigated, specifically in relation to direction powers, admission numbers, and establishing new schools.

Qualified Teacher Status: In the midst of the most severe teacher recruitment and retention crisis since records began, leaders must retain the flexibility to make decisions with regard to teacher expertise. Given the impact of this measure on the special, specialist and alternative provision sector, exemptions should be set out in regulations to ensure that appropriately qualified staff can teach in our schools. This will ensure that schools retain the flexibility to recruit teachers from the further education sector, those with industry or creative qualifications and higher level teaching assistants on a route to qualification. We are pleased with the constructive engagement we have had on this matter with the DfE.

Power to secure performance of academy proprietor's duties: CST believes that an amendment to this measure (set out in detail below) is necessary to provide a legal safeguard that the DfE still respects the operation of academy trusts as independent charities under charity law.

Teacher and support staff pay and conditions

The Secretary of State has confirmed in her evidence to the Education Select Committee that:

"We want a solid floor for all teachers working across the profession, with clear expectations about what it means to be a teacher so that every school has the freedom to innovate and go beyond... I want to be absolutely clear that all schools will have full flexibility to innovate with a floor and no ceiling on what that means because we all know the challenges that schools across the country are facing at the moment around recruitment and retention.

"But that innovation, that flexibility, that excellence – much of which we have seen within the academy system – I want to be available to all schools. They do brilliant work especially where it comes, I think, to some of the changes we will need to see to make teaching a more attractive place"

This is a welcome clarification on the direction of travel.

The government has brought forward an amendment to the Bill to say that:

- The Secretary of State may by order make provision requiring the remuneration of an academy teacher to be at least equal to the amount specified in, or determined in accordance with, the order; and
- In determining the conditions of employment or service of an academy teacher, the relevant proprietor must have regard to any provision of an order under section 122 that relates to conditions of employment or service (and must also have regard to guidance under section 127(1) that relates to such conditions).

We want to be clear that there is no evidence to suggest academy freedoms have been to the detriment of staff: median pay for primary school teachers is the same in mainstream maintained and academy settings, and slightly higher in secondary academies compared to their maintained equivalents. It has, however, allowed for local flexibility to recruit, without distorting the overall system.

We believe a flexible pay and conditions frameworks for both teachers and support staff could impact positively on both standards and our collective ability to deliver the reforms on the SEND system, so urgently needed. Conversely, restrictive and prescriptive pay and conditions, might undermine schools' and trusts' ability to attract staff to schools serving disadvantaged communities and/or in need of turnaround

All leaders need (now more than ever in a time of constrained resources and a retention and recruitment crisis) the ability to deploy their staff flexibly, against their school improvement strategy. This includes running an extended day and the provision of extra-curricular activities which would be difficult to deliver with restrictive pay and conditions. The duty to provide breakfast clubs is likely to be problematic for some schools and trusts in the context of a potential reduction in flexibility.

Leaders also need the freedom to be able to deliver flexible working arrangements so sorely needed if we are to retain our staff, as the Secretary of State acknowledged in her evidence to the Education Select committee.

We want to be clear that even those CST members who currently broadly follow the School Teachers' Pay and Conditions Document (STPCD) expressed concern that mandating STPCD terms could be problematic in the future by limiting their ability to respond to local need and/or to implement their school improvement strategies.

Where our trusts have innovated on this they have done so by using their flexibilities around pay and conditions, for example Dixons 9-day fortnight or The Education Alliance Trust which has taken the decision to offer teachers and support staff 18 weeks of full maternity pay and eight weeks at half pay.

If we are to deliver reform of the SEND system, we will need to retain the ability to innovate and be flexible with workforce so that we can pilot, test and learn different models of provision across schools and trusts and in different local areas.

This will require us to think differently about the training, development, pay, progression and conditions of support staff. Some trusts have already started doing this, for example by using pay and conditions flexibilities and the apprenticeship levy to enable all support staff to achieve level three qualifications.

We welcome the constructive engagement we have had with Government on this measure in the Bill and the Government's amendment to the bill. There is more work to do in relation to the School Support Staff Negotiating Body (SSSNB) which is proposed in the Employment Rights Bill. We need to ensure that the establishment of this body offers similar provisions for a floor not a ceiling on pay, and flexibility with regard to conditions.

National Curriculum

Academies are currently required by their funding agreements to provide a "balanced and broadly based" curriculum; to teach English, mathematics, and science; to promote British values; support equality of opportunity for all; and to provide careers guidance. They must publish details of their approach, so parents and pupils are aware of their approach.

The Children's Wellbeing and Schools Bill introduces legislation which would additionally make the national curriculum binding on academy trusts, following the Curriculum and Assessment Review. Given this position, the work of the Curriculum and Assessment Review is even more important to get right. What emerges from it must be flexible enough to allow schools to respond to local need, including in specialist SEND and AP settings. The interim report from the Curriculum and Assessment review is encouraging in this regard and we welcome the Interim Report. It is sensible, authoritative and evidence-led.



We welcome the Secretary of State’s clarification in her evidence to the Education Select Committee that she intends the new national curriculum framework will provide a “minimum floor to ensure consistency.”

We believe that the principle of bringing the freedoms previously reserved for academy trusts to all schools should be applied here. A high-level national framework that protects the ability of schools and trusts to deliver the ‘enacted’ curriculum in a flexible and responsive way, would not necessarily undermine or constrain the ability of schools and trusts to continue to innovate and become centres of curriculum excellence.

School improvement: Repeal of duty to make academy order in relation to a school causing concern

Over many years, the trust sector has built school improvement capacity. It is now the engine of school improvement in the state school system in England. Given the defunding of local authorities, very few now have school improvement capacity.

A group of schools working together in deep and purposeful collaboration with strong strategic governance is the most resilient of school structures. In a time where there are endemic and multiple pressures on our state schools (funding, recruitment and retention of staff, the failed SEND system, falling pupil rolls, multiple negative impacts of the pandemic, poverty and deprivation, and large increases in the number of children and young people experiencing mental ill health), the state’s role must be to rebuild the resilience of our school system.

CST members are concerned that the government would seek to reduce or limit the levers it has to improve schools that are failing their pupils and communities. It is essential that the state is able to act quickly to intervene where a school is failing. The Bill proposes to repeal the duty for an academy order to be made in relation to a school causing concern. This measure in the Bill, if enacted, could invite a legal challenge each time the Secretary of State seeks to use the power, which would leave children in failing schools for an intolerable length of time.

Ofsted and the Government have both recently published consultation documents on the [Improving the way Ofsted inspects education](#) and on [school accountability reform](#), respectively. The Government’s consultation document clarifies that “a school judged by Ofsted to require special measures will continue by default to receive structural intervention.”

The DfE’s consultation on school accountability reform proposes that, if Parliament approves the change in the law, the DfE will over time change the approach to how they intervene in a school which requires significant improvement. We note that the DfE’s consultation document states that 40% of maintained schools in a category of concern took over a year to join a new trust. This is the rationale given for repealing the duty. In cases where it is taking time for a school requiring significant improvement to join a trust, it is not unreasonable to broker support for the school. We believe that this should not be an alternative to that school joining a strong trust.



We note that the DfE's consultation document states that: "schools that have consistently underperformed over time ('stuck' schools) and have not had a change of structure since their last inspection, will receive mandatory targeted intervention from a RISE team. Structural intervention will be the default if the necessary improvement is not made within two years."

We therefore believe that this measure could be removed from the Bill. It is not necessary to repeal this duty.

We welcome the clarification in the DfE's consultation document on school accountability reform, which says that that a school judged by Ofsted to require special measures will continue by default to receive structural intervention (although this presumption does not extend to schools with serious weaknesses/ requiring significant improvement). Our position is that schools judged to be inadequate by Ofsted (either because they require special measures or because they require significant improvement) should involve a change of governance in order to secure timely improvement. Therefore, this measure to repeal the duty to make an academy order in relation to a school causing concern could be removed from the Bill.

Admissions, pupil admission numbers (PAN) and new schools

Duty to co-operate

We welcome the proposed duty to co-operate. We need to ensure all children in local areas are known, are in registered provision and that we have a coherent way of managing admissions, particularly at a time of falling roles nationally. We think this duty needs to be exercised at a strategic level to ensure sufficiency of places and the right provision locally.

Local authority direction powers

We are concerned that the Bill as it has been laid may create conflicts of interest in decision-making locally. While local authorities still maintain schools, they cannot reasonably operate in a regulatory space, such as directing providers to admit pupils. Additionally, there is no evidence to suggest a significant need for this new power: in 2023 out of around 9m children in English schools there were just 55 requests from local authorities to the Secretary of State to direct academies to admit (the procedure this new power would replace).

Functions of adjudicator in relation to admissions numbers

The proposed extension of the Schools Adjudicator's role to allow objections to existing and increased planned admission numbers (PAN) places the adjudicator in a commissioning space. The department's policy summary envisages local authorities lodging objections to academy PANs, potentially 'choosing' between maintained and academy schools despite the potential conflict of interest with regard to their own schools. While the Office of the Adjudicator is independent, it is not currently well placed to make policy and financial decisions of this type.

Establishment of new schools



It would also be inappropriate for local authorities to run competitions to open new schools where they may well also be a proposer of the school. We note that here where the local authority has chosen to put forward their own proposals for a new school, the Secretary of State will consider all the proposals together and will be the decision-maker. In practice these decisions will be delegated to Regional Directors to take on behalf of the Secretary of State. It is very important that any conflict of interest is removed in the translation of this measure in the Bill into policy and process.

We want to work with government to create a robust decision-making framework to ensure that decision-making is in the right place, in the interests of children and communities, and protects high quality education. This can be achieved through a combination of regulations and statutory guidance. Conflicts of interest must be either removed or actively mitigated, specifically in relation to direction powers, admission numbers, and establishing new schools.

Qualified Teacher Status

The Bill extends to academies the provisions for mainstream schools for teachers to have Qualified Teacher Status (QTS) or to be working towards it. The government says that this offers reassurance to parents that their children are being taught by a 'qualified' teacher.

The reality is that very few academy teaching staff do not have a teaching qualification: 2.6% in primary academies and 3.5% in secondary academies. This does not mean they are not experienced in their subject, but rather they have not completed UK teacher training. Much of the public appeal of this measure appears based on a misunderstanding of this important distinction.

We are concerned about the impact of this draft measure in the Bill on the recruitment of specialists in our schools that bring specific expertise (for example from industry or the arts) where working towards QTS may not be desirable or practicable – for example, with the requirement for multi-school placements. Schools of all types should be able to use discretion, particularly in the context of a severe teacher recruitment crisis, to bring in expertise to support certain subject domains.

There are concerns among CST members about how the requirement for QTS might affect trusts' ability to deploy higher level teaching assistant (HLTA) to provide emergency and temporary cover where there are sudden and unforeseen staffing issues.

We have a very specific set of concerns about the impact of this proposal on the special, specialist and alternative provision sector, where recruitment difficulties are most acute. As of 2024, 9.2% of teachers in state-funded special schools and pupil referral units don't have QTS. That is the highest proportion since this data was first collected.

[Analysis](#) by the National Foundation for Educational Research (NFER) shows even higher percentages in certain kinds of specialist settings. For example, 14% of teachers working in schools specifically for children with social, emotional and mental health needs don't have QTS. The NFER also found regional disparities within specialist provision: 16% of teachers working in



special schools in the East of England don't have QTS - the highest proportion of any region. London is second highest with 14%.

Many special and specialist schools recruit a range of appropriately qualified staff from different professional backgrounds, including overseas trained teachers, teachers from the further education sector, and other specialists who may not have qualified teacher status.

The DfE's Policy Summary Notes published alongside the Bill refer to extending the existing delegated power in section 133(1) to allow for regulations to be made in respect of specified primary and secondary academies. This does not currently extend to special and specialist academies.

In the midst of the most severe teacher recruitment and retention crisis since records began, leaders must retain the flexibility to make decisions with regard to teacher expertise. Given the impact of this measure on the special, specialist and alternative provision sector, exemptions should be set out in regulations, to ensure that appropriately qualified staff can teach in our schools. This will ensure that schools retain the flexibility to recruit teachers from the further education sector, those with industry or creative qualifications and higher level teaching assistants on a route to qualification. We are pleased with the constructive engagement we have had on this matter with the DfE.

Power to secure performance of academy proprietor's duties

The Bill includes a new power to direct a school trust where the Secretary of State believes the trust has breached or is likely to breach a relevant duty, or where it has acted or proposing to act unreasonably in respect of a relevant duty or relevant power. Relevant duty and powers are defined as any duty or any power whether or not by, or under an enactment.

Our concern is that the powers given to the DfE under the new section 497C have the capacity to be incompatible with charity law, given that a direction under that section is enforceable by a mandatory order (on application by the SoS). Prior to 2010 academies were registered with the Charity Commission which was concerned about academy trusts meeting charity law requirements. The DfE then introduced a statutory designation of academy trusts as charities in the 2010 Academies Act. However the DfE now having complete power to direct any action of an academy trust (as currently drafted in the proposed section 497C) is too broad for the following reasons:

- a) The charity trustees of academy proprietors must be able independently to discharge their duty to act in that charity's best interests.
- b) Academy trusts often have other charitable objects (and corresponding activity) in addition to their education object over which the DfE should not have any control, for instance operating public leisure facilities; and
- c) There is a danger that academy trusts will in fact not meet the definition of an independent charity under the Finance Act 2010 and therefore may be subject to corporation tax. The definition of a charity for corporation tax purposes (as detailed in the Finance Act 2010 schedule 8 part 1) is an entity which is established for charitable



purposes only and meets conditions known as the jurisdiction, registration and management conditions. If an academy trust is subject to the wide-ranging conditions in the proposed Section 497C it may not be viewed as being established for exclusively charitable purposes, having an additional implied purpose of delivering government policy at its direction.

We propose a clarificatory amendment to ensure that the directions power is not potentially available in relation to an academy's non-educational purposes. Academies are often engaged in community type activities including leisure activities – this amendment by linking the direction power to the activities of an Academy pursuant to the Academies Act 2010 ensures the appropriate focus.

We therefore propose the following amendment to this provision in the Bill, indicated by the additional words that are underlined :

497C Academies: power to secure performance of proprietor's duties etc

(1) Subject to subsection (4), if the Secretary of State is satisfied that the proprietor of an Academy— (a) has breached or is likely to breach a relevant duty, or 35 (b) otherwise has acted or is proposing to act unreasonably with respect to the performance of a relevant duty, the Secretary of State may give the proprietor such directions as the Secretary of State considers appropriate to secure the proper performance of the relevant duty.

(2) Subject to subsection (4), if the Secretary of State is satisfied that the proprietor of an Academy has acted or is proposing to act unreasonably with respect to the exercise of a relevant power, the Secretary of State may give the proprietor such directions as the Secretary of State considers appropriate as to the exercise of the relevant power.

(3) In this section—

“relevant duty” means any duty (whether or not imposed by or under an enactment) to which the proprietor of an Academy is subject in relation to any Academy it operates pursuant to the Academies Act 2010;

“relevant power” means any power conferred (whether or not by or under an enactment) on the proprietor of an Academy in relation to any Academy it operates pursuant to the Academies Act 2010.

(4) A direction made under subsections (1) or (2) will only have effect insofar as it is consistent with any duties (whether or not imposed by or under an enactment) to which the proprietor of the Academy is subject by reason of their charitable status.



(45) Subsection (56) applies (instead of section 572) to the giving of a direction under this section.

(56) The Secretary of State may give a direction under this section to the proprietor of an Academy by—

(a) delivering it by hand to the proprietor

(b) leaving it at or sending it by post to any address at which the Secretary of State believes, on reasonable grounds, that the notice will come to the attention of the proprietor, or

(c) sending it to any email address by means of which the Secretary of State believes, on reasonable grounds, that the notice will come to the attention of the proprietor.

(67) A direction under this section is enforceable, on the application of the Secretary of State, by a mandatory order.

CST believes that an amendment to this measure (set out above) is necessary to provide a legal safeguard that the DfE still respects the operation of academy trusts as independent charities under charity law and that power may not be used in relation to any non-educational activities of the academies.

A compelling educational vision for the school system

We want to work with government to set out this shared vision for our school system in England, underpinned by the principles of *excellence, inclusion and equity*. Excellence, inclusion and equity cannot be mandated from the centre. The state should create the enabling policy framework and conditions for the school system to respond. A resilient system where schools have the agility to respond to need and context is also required.

This matters particularly in relation to how the system responds to the issue of disadvantage, which goes to the heart of the government's opportunity mission.

We believe the right strategy to tackle disadvantage is not one that mandates control from the centre, but rather a strategy that enables those educating our children with the flexibility they need to respond with agility to the unique needs of that community.

It's long been understood that the key to addressing disadvantage is equity rather than equality. This principle was captured well by Lee Elliot Major and Emily Bryant's book 'Equity in Education'.

The principle of equity means that we need greater flexibility in our school system in England, not greater prescription and control.

We are committed to working with the government to create a shared narrative which mobilises the whole school system in England around a shared vision of what success looks like and ensures the conditions for flexibility/ responsiveness to deliver excellence.



The positions outlined in this paper have been informed by two open CST member engagement meetings, a meeting of CST's elected Policy Advisory Group, and other meetings and feedback from members over this period, especially the special, specialist and alternative provision sector. Our elected Policy Advisory Group represents CST members in all regions of England and in trusts of all sizes, from single academy trusts to small, medium, and large trusts. The positions originally tested in this paper each polled at more than 90% at our member engagement meeting, attended by around 500 CST members.

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