

## CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM**

**REPORT TO CABINET**

**12 JANUARY 2012**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

### **CABINET DECISION**

**Children & Young People – Lead Cabinet Member – Councillor Ann McCoy**

#### **EDUCATION ACT 2011**

1. Summary

This report updates Cabinet on the content of the Education Act 2011 and pays particular reference to those aspects that impact upon the statutory role and responsibilities of the local authority.

2. Recommendations

1. Members note the provisions as set out in the Education Act 2011

3. Reasons for the Recommendations/Decision(s)

To update members on the provisions of the Education Act 2011

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

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**EDUCATION ACT 2011**

**SUMMARY**

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**RECOMMENDATIONS**

1. Members note the provisions as set out in the Education Act 2011

**DETAIL**

1. The Education Bill was introduced into the House of Commons on Wednesday 26 January 2011 and received Royal Assent on 15 November 2011. It takes forward the legislative proposals in the Schools White Paper, *The Importance of Teaching*. It is a wide-ranging Act, in that it also reflects measures from the Department for Business, Innovation and Skills to improve skills, including two elements of the reforms to higher education funding. Most provisions in the Act will be commenced within the next two months, with those relating to abolition of arms-length bodies being commenced at the end of the financial year and the remainder at the start of the school year in September 2012. The Act is divided into 10 distinct parts, each of which are summarised below.
2. Part 1 makes provision for the organisation and supply of early years learning by amending the Childcare Act 2006 to extend the duty on all English local authorities that requires them to provide 15 hours of early years education free of charge for all three and four-year olds to all two year olds identified as disadvantaged. The Secretary of State and local authorities will determine those who fall into such a category through tax credit information.
3. Part 2 extends the power given to school staff in the Education Act 1996 to search a pupil or their possessions if they believe them to be carrying certain items, to include power to search if the member of staff believes one or more of the possessions have been, or may be used, to commit a criminal offence, cause personal injury or damage property. Staff are also given the power to search a student even if they are under the age of criminal responsibility, and for staff of the opposite sex to the student to search said student if they believe the risk is so great that serious harm would be caused if they waited or attempting to find a member of staff who is the same sex as the student to be searched. Clarification is also provided as to when "reasonable force" can be used by staff to confiscate items, as well as setting out the process to be followed if specified items are found. Teachers are also given the power to examine data files on electronic devices and delete them if they believe there is good reason to do so.

4. Part 2 also gives headteachers of maintained schools and lead teachers of pupil referral units the power to exclude a pupil either permanently or for a fixed-term for disciplinary reasons. The excluded pupil is also given the power to appeal to a "review panel" if the headteacher or lead teacher decide against reinstating the pupil. The review panel may uphold the exclusion, recommend a review of the exclusion by the headteacher or lead teacher, or quash the exclusion and force the headteacher to reconsider the exclusion.
5. Further sections of Part 2 remove the requirement on a school to provide a student's parent, guardian or carer with 24 hours' written notice of an out of school detention and remove the duty imposed on schools by the Apprenticeships, Skills, Children and Learning Act 2009 to enter into behaviour and attendance partnerships in a local area.
6. Part 3 abolishes the General Teaching Council for England (GTCE), and transfers the majority of its functions to the Secretary of State, including the power to investigate disciplinary cases, issue prohibition orders to bar a person from teaching and maintain a register of those barred from teaching. It also legislates for all new teachers in England to be required to serve an induction period, a practice that already currently exists but is administered by the GTCE, whose abolition requires the Secretary of State to take on the responsibility for the procedure, as this section sets out. Also abolished are the Training and Development Agency for Schools (functions transferred to the Secretary of State) and the School Support Staff Negotiating Body.
7. Through Section 13 of Part 3 restrictions on the reporting of allegations made against teachers by students are introduced. These include the reporting of information through which a teacher against whom an allegation has been made could be identified. Such restrictions would only be lifted once a teacher is charged with a criminal offence, or when the Secretary of State publishes certain information. The Act makes it a criminal offence to breach these restrictions, including through reporting on the internet.
8. Part 4 gives the Secretary of State the power to direct the governing bodies of schools to participate in certain international education surveys. It also makes changes to the operation and management of Ofqual, the government's qualifications regulator including the title and means of appointing and length and terms of office of the Chief Executive and Chairman of Ofqual. A definition of what Ofqual's objectives are in relation to the standard of qualifications and power to impose financial penalties on qualification awarding bodies are included in this part of the Act
9. The Qualification and Curriculum Development Agency (QCDA) is abolished by Part 4 and its powers and functions are transferred to the Secretary of State.
10. Part 4 also removes the Secretary of State's powers to give directions to local authorities regarding the provision of careers and post-16 education advice, and the requirement that schools must provide people involved in careers advice access to both students and school facilities. It legislates that all schools must continually provide students aged between 14-16 careers advice that is completely independent and that provides impartial information about all post-16 training options, including apprenticeships. Unenacted provisions from the Apprenticeships, Skills, Children and Learning Act 2009 relating to diploma entitlements are repealed.
11. Part 5 removes the need for school governing bodies to publish a 'school profile', removes the requirement for the local authority to appoint 'school improvement partners', removes a local authority's need to set up 'admission forums', as well as making slight alterations to the powers of the schools adjudicator in relation to school admissions.
12. Through Part 5 a cap is imposed on the charge that can be made for providing milk, school meals and other refreshments to pupils, preventing any charge being higher than the cost of providing such a service, whilst also giving schools the power to charge different prices for the same item.

13. The Act makes provision regarding the creation of new schools. It requires that when a local authority is of the opinion that a new school is required, it must seek proposals for such a school to be created through the creation of a new academy school, and that no competition for the creation of a new school may begin without the local authority obtaining the consent of the Secretary of State. The Schedule sets out the various bureaucratic processes that must be conducted by both the local authority and Secretary of State when the local authority decides that a new school is needed.
14. There is a reduction in the number of different categories of governors that must be elected to a school's governing body and provision is made for the procedure to dissolve the governing body of a single school within a wider federation of schools should the school wish to leave the federation in order to convert to academy status.
15. Power is given through the Act to the Chief Inspector of Schools, to create a list of 'exempt schools' that do not need to be inspected at the regular intervals set out in the Education Act 2005. It also makes provision about what matters should be covered by a school inspection. Further education and sixth-form colleges that received an 'Outstanding' inspection grading in their last inspection are given exemption from future inspections. The Secretary of State is given additional powers to intervene in schools that have been judged by Ofsted to require improvement, including the power to direct the closure of any school that has failed to comply with performance standards. The requirement of the Local Government Ombudsman to consider complaints about a school from parents and pupils is removed and the Secretary of State's power to intervene when they are of the opinion that a governing body is acting or intends to act in an unreasonable manner is strengthened.
16. The Secretary of State is awarded the power, after consultation, to direct a local authority to revise parts of the scheme they are required to keep that details its financial relationship with schools under its control, whilst the governing body is given the power to use the school's budget to reimburse the local authority any outstanding funds following the retirement, `dismissal or resignation of members of staff employed by the school for 'community purposes'. Section 48 amends Education Act 1996 to give governing bodies the power to charge for early years provision that is provided beyond the 15 hours of free provision provided by Part 1 of the Act, which can include charges to maintain the upkeep of buildings and their utility supplies, education materials, and for the employment of teaching staff.
17. Additional powers are given to further education and sixth-form colleges, including the power to borrow money to run their education services without having to first gain the permission of either the Young People's Learning Agency for England (YPLA) or their local authority, and the duty on post-16 establishments to "promote the economic and social wellbeing of an area" is removed. The Secretary of State is given the power to dissolve a further education college of sixth-form without having to consult the YPLA as is currently required, as well as to create a new sixth-form college without having to wait for a local authority to request such a creation. The Secretary of State is also given the power to draw up the initial instruments and articles of government of a new sixth-form, a function previously undertaken by the YPLA. As a result of the removal of almost all of their responsibilities, the Act also dissolves the YPLA and transfers any remaining powers to the Secretary of State. The need for post-16 governing bodies to have regard to possible future staff and students in the exercise of their functions is removed and the power currently held by the Chief Executive of Skills Funding in respect of further education colleges, and by the local authority in respect to sixth-form colleges, to intervene in establishments that are considered to be either mismanaged or failing is transferred to the Secretary of State.
18. Part 5 also relates to Pupil Referral Units (PRUs), with Section 50 providing for PRUs to be allocated funding by the local authority in the same manner as maintained schools, whilst Section 51 repeals unenacted provisions in the Apprenticeships, Skills, Children and Learning Act 2009 that would have renamed PRUs as 'Short-Stay Schools'.

19. Part 6 removes the need for academies to have a specialism in one or more specific subject areas, as well as providing for the creation of specific '16-19 academies' and 'alternative provision academies'. Section 55 makes it necessary for the Secretary of State to involve the appropriate religious body in the decision making process to convert a foundation school, a voluntary aided school or a voluntary controlled school to an academy, whilst Section 56 places a requirement on the governing bodies of maintained schools to consult all those who they see fit before they opt to convert to academy status. Section 57 allows for the conversion of a federated school to an academy without the agreement of the whole federated body, section 58 clarifies that a local authority is not prohibited from providing an academy with assistance, financially or otherwise, should it believe it would be beneficial, whilst Section 59 makes technical amendments to the power held by the Secretary of State by virtue of the Academies Act 2010 regarding the transfer of properties and other liabilities from the local authority to a new academy.
20. Section 63 enacts Schedule 14 relating to the land academies may own, and gives the Secretary of State the power to transfer the publically funded land held by maintained school to an academy, but whilst also protecting the public interest in any such land. The Secretary of State is given the power to obtain through compulsory purchase any land a local authority has sold without his consent to a third party, if he believes such land is now needed by an academy. Section 64 places academies on the same basis as maintained school with regards to the power of a parent, pupil, or the Secretary of State, to refer the academy's admissions arrangements to the School Adjudicator, and thus extends many of the Adjudicator's power to include academies.
21. Part 7 abolishes the Young People's Learning Agency for England (YPLA), and transfers its functions and duties to the Secretary of State, as well as giving the Secretary of State the power to introduce a scheme to allow for the transfer of the staff, properties and liabilities of the YPLA to the Department of Education, through the Secretary of State. Also included in Part 7 are provisions relating to the apprenticeship offer. The Chief Executive of Skills Funding is required to prioritise funding in order to secure an apprenticeship offer for those aged between 16-18, those aged 19-24 who are care-leavers, and those aged 19-24 who are disabled. The right to fee remission for vocational training is limited to those aged between 19 and 24. Finally, Part 7 gives the Secretary of State greater flexibility in the commencement of the provisions of the Education and Skills Act 2008 regarding the raising of the education and training leaving age to 18, but does not alter the inherent requirement for the leaving age to have been fully raised to 18 by 2015.
22. Part 8 gives the Secretary of State the power to create pilot schemes that would allow local authorities to make direct payments to secure goods and services for students with a statement of Special Educational Needs (SEN).
23. Part 9 gives the Secretary of State greater power to set the interest rates that are to be charged of student loans made to those who commence their courses on or after 1 September 2012, the day on which the level of tuition fee is permitted to increase to a maximum level of £9,000 per year. The rates the Secretary of State sets cannot, however, be out of line with the rates at the time being offered on loan available to the public. Section 77 introduces limits on the amount a higher education institution can charge students undertaking courses on a part-time basis in order to ensure they do not exceed the equivalent charges being made to full-time students.
24. Part 10 concludes the Act with general provisions relating to the use of Statutory Instruments, the citation of preceding Acts of Parliament that are referenced in the Act, allowance for any charges incurred in the implementation of the Act to be paid for by Parliament, detail of the territorial extent of the Act within the United Kingdom, details of when and how the provisions of the Act are to be implemented, authorisation for the Act to be called the Education Act 2011, and for it to be included in the official list of Education Acts maintained in Section 578 of the Education Act 1996.

25. The key changes for local authorities encapsulated in the legislation are listed below. The Education Act 2011:
- enables a new entitlement for disadvantaged two-year-olds to 15 hours' free early years education
  - replaces independent appeals panels for exclusions with independent review panels
  - removes the duty on local authorities to appoint a School Improvement Partner for every school
  - gives precedence to academy proposals, where a local authority identifies the need for a new school, and expands the academies programme to allow 16-19 and alternative provision academies
  - extends the Secretary of State's powers to intervene in underperforming schools
  - provides for the closure of the Local Government Ombudsman's school complaints service, and removes the duty to consider complaints about the curriculum from LAs. General complaints about schools will now be made to the Secretary of State
  - allows for pilots of direct payments for SEN education services
  - makes changes to LA powers over sixth form colleges
  - provides for the abolition of five arm's length bodies (the TDA, the GTCE, the QCDA, the YPLA and the SSSNB)
26. The Act no longer makes the changes to the section 10 Children Act duty to co-operate with the local authority to promote children's wellbeing, as had been included in the Education Bill.

## **FINANCIAL IMPLICATIONS**

27. There will be financial related considerations for the Council from the implementation of the Education Act 2011. However, until further statutory guidance / regulations are published together with related Government funding announcements the financial implications cannot be fully assessed.

## **LEGAL IMPLICATIONS**

28. Legal implications cannot be fully assessed until Guidance on the Act is issued. Guidance is anticipated on the various clauses of the Act by the summer recess.

## **RISK ASSESSMENT**

29. The implications for Council of the 2011 Education Act is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

## **SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS**

30. The implications for the Sustainable Community Strategy will be considered alongside the statutory guidance relating to the Act upon publication.

## **EQUALITIES IMPACT ASSESSMENT**

31. This report is not subject to an Equalities Impact Assessment because the guidance relating to the Act has not yet been published and therefore impact cannot be assessed.

## CORPORATE PARENTING

32 Upon the publication of guidance relating to implementation of the Act implications for corporate parenting will be considered.

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Education related? Yes

Background Papers None