



HOUSE OF LORDS

Select Committee on the Constitution

---

1st Report of Session 2022–23

# Schools Bill [HL]

---

Ordered to be printed 6 June 2022 and published 6 June 2022

---

Published by the Authority of the House of Lords

### *Select Committee on the Constitution*

The Constitution Committee is appointed by the House of Lords in each session “to examine the constitutional implications of public bills coming before the House; and to keep under review the operation of the constitution and constitutional aspects of devolution.”

#### Membership

The Members of the Constitution Committee are:

|  |   |  |
|--|---|--|
| <a href="#"><u>Baroness Drake</u></a> (Chair)      | <a href="#"><u>Lord Hope of Craighead</u></a>       | <a href="#"><u>Lord Sherbourne of Didsbury</u></a> |
| <a href="#"><u>Lord Falconer of Thoroton</u></a>   | <a href="#"><u>Lord Howard of Lympne</u></a>        | <a href="#"><u>Baroness Suttie</u></a>             |
| <a href="#"><u>Lord Faulks</u></a>                 | <a href="#"><u>Lord Howarth of Newport</u></a>      | <a href="#"><u>Lord Thomas of Gresford</u></a>     |
| <a href="#"><u>Baroness Fookes</u></a>             | <a href="#"><u>Lord Howell of Guildford</u></a>     |  |
| <a href="#"><u>Lord Hennessy of Nympsfield</u></a> | <a href="#"><u>Lord Robertson of Port Ellen</u></a> |  |

### *Declarations of interests*

A full list of Members’ interests can be found in the Register of Lords’ Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests/>

### *Publications*

All publications of the committee are available at:

<https://committees.parliament.uk/committee/172/constitution-committee/>

### *Parliament Live*

Live coverage of debates and public sessions of the Committee’s meetings are available at:

<http://www.parliamentlive.tv>

### *Further information*

Further information about the House of Lords and its committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at: <http://www.parliament.uk/business/lords>

### *Committee staff*

The current staff of the committee are John Turner (Clerk), Rachel Borrell (Policy Analyst) and Jackie Lam (Committee Operations Officer). Professor Stephen Tierney and Professor Alison Young are the legal advisers to the Committee.

### *Contact details*

All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email: [constitution@parliament.uk](mailto:constitution@parliament.uk)

### *Twitter*

You can follow the Committee on Twitter: [@HLConstitution](https://twitter.com/HLConstitution).

# Schools Bill [HL]

## Introduction

1. The Schools Bill (“the Bill”) was introduced in the House of Lords on 11 May 2022. Second reading took place on 23 May and Committee stage is scheduled to begin on 8 June.

## Framework legislation

2. The Bill places the regulation of academies under a legislative framework, replacing the current, primarily contractual, regime. While most of the Bill’s provisions establish a detailed scheme of statutory regulation, with an appropriate use of delegated powers to enable the Government to provide further detail, those parts relating to the regulation of academies are an exception.
3. Clause 1 provides a broad ministerial power to establish academy standards. It includes a non-exhaustive list of 20 areas in which standards may be set by delegated legislation. These include, for example: the nature and quality of education and matters of the curriculum; the length of the school day and year; assessments; premises; the health and well-being of pupils; governance structures; staff remuneration; accounts and spending issues; and application procedures for academy schools with a religious character.
4. The Government provides three justifications for using delegated as opposed to primary legislation. First, that the current regime is purely contractual, with no parliamentary oversight of specific contracts with academies, so the power in clause 1, requiring affirmative resolution, provides for greater parliamentary scrutiny of academy standards. Second, that these standards are likely to be lengthy and technical and therefore unsuited for primary legislation. Third, that the process of moving all schools to become academies will take time and there is a need to modify standards quickly to take account of changes in the education sector, particularly as the policies in the Schools White Paper are implemented.<sup>1</sup>
5. **In a previous report, we expressed concerns about the use of framework legislation, given the effect on parliamentary scrutiny, concluding that the Government must provide exceptional justification for their use that does not rely on generalised assertions about flexibility or future-proofing.<sup>2</sup> *The Government should provide stronger justification for the scope of the delegated power in clause 1 to set standards for academies. Alternatively, the Bill should be amended to provide greater detail on the operation of the power. The publication of proposed regulations in draft would aid scrutiny.***
6. Clause 1 is unclear on whether the power is designed to facilitate the making of regulations for all academies or may also be used to set distinct requirements for a specific academy. Clause 1(1) states that “the Secretary of State may by regulations set standards in relation to Academies (or types or descriptions of Academy)”. This appears to provide a general regulatory power, enabling

---

1 [Delegated Powers Memorandum](#), Schools Bill 2022, pp 4–5.

2 Constitution Committee, [The Legislative Process: The Delegation of Powers](#) (16th Report, Session 2017–19, HL Paper 225), para 58

divergence in regulations for types of academies, but not necessarily for a specific academy. However, clause 1(4) states that “a standard may be set by reference to whether or not the proprietor of an Academy has regard to guidance issued, or a document published, by the Secretary of State from time to time”. This appears to provide that the Secretary of State may use the power to make a specific set of standards for a particular academy, considering the actions of the proprietor of that academy.

7. ***The Government should clarify whether the power in clause 1 is intended to enable the Secretary of State to set specific standards for a particular academy.***

### Consultation

8. The Bill follows a White Paper<sup>3</sup> and a series of consultation exercises. This is welcome. Some of these consultation exercises were delayed or extended, given Covid restrictions, which is understandable. However, some of the consultation exercises which took place when Covid restrictions had been relaxed did so under a short timescale.
9. The consultation exercise on the National Funding Formula took place over three months from July to September 2021.<sup>4</sup> While three months may be an acceptable period for consultation, some of the time would have fallen in the summer holiday, which may have made it harder for those involved in education to provide their views. The consultation exercise on school attendance started on 25 January 2022 and closed on 28 February 2022.<sup>5</sup>
10. According to the Government’s Consultation Principles 2018, consultation exercises should last for a proportionate amount of time. This is to be judged “on the basis of legal advice and taking into account the nature and impact of the proposal”. These principles recognise the need to ensure that consultation does not lead to unnecessary delay, whilst providing sufficient time for consideration to maintain the quality of responses. The Consultation Principles also recognise the problems that may arise from consultation fatigue.
11. We have previously endorsed the view of the House of Lords Secondary Legislation Scrutiny Committee, which recommended a period of six weeks as the minimum feasible consultation period, save in exceptional circumstances.<sup>6</sup> This period was not observed for the consultation exercise on school attendance.
12. **We draw the attention of the House to the timescales and timing of the consultations which preceded the Bill.**

---

3 Department for Education, *Opportunity for all: Strong schools with great teachers for your child*, CP 650 (March 2022): <https://www.gov.uk/government/publications/opportunity-for-all-strong-schools-with-great-teachers-for-your-child> [accessed 30 May 2022]

4 Department for Education, *Fair school funding for all: completing our reforms to the National Funding Formula Government response to consultation*, (March 2022): <https://www.gov.uk/government/consultations/fair-school-funding-for-all-completing-our-reforms-to-the-national-funding-formula> [accessed 30 May 2022]

5 Department for Education, ‘School attendance: improving consistency of support Government response to consultation’ (May 2022): <https://www.gov.uk/government/publications/school-attendance-consultation-response> [accessed 30 May 2022]

6 Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament* (4th Report, Session 2017–19, HL Paper 27), para 58

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

---

### Members

Baroness Drake (Chair)  
 Lord Falconer of Thoroton  
 Lord Faulks  
 Baroness Fookes  
 Lord Hennessy of Nympsfield  
 Lord Hope of Craighead  
 Lord Howard of Lympne  
 Lord Howarth of Newport  
 Lord Howell of Guildford  
 Lord Robertson of Port Ellen  
 Lord Sherbourne of Didsbury  
 Baroness Suttie  
 Lord Thomas of Gresford

### Declarations of interest

Baroness Drake (Chair)  
*No interests declared*  
 Lord Falconer of Thoroton  
*No interests declared*  
 Lord Faulks  
*No interests declared*  
 Baroness Fookes  
*No interests declared*  
 Lord Hennessy of Nympsfield  
*No interests declared*  
 Lord Hope of Craighead  
*No interests declared*  
 Lord Howard of Lympne  
*No interests declared*  
 Lord Howarth of Newport  
*No interests declared*  
 Lord Howell of Guildford  
*No interests declared*  
 Lord Robertson of Port Ellen  
*No interests declared*  
 Lord Sherbourne of Didsbury  
*No interests declared*  
 Baroness Suttie  
*No interests declared*  
 Lord Thomas of Gresford  
*No interests declared*

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Professor Stephen Tierney, University of Edinburgh, and Professor Alison Young, University of Cambridge, acted as legal advisers to the Committee. They declared no relevant interests.