

SECURE 16 TO 19 ACADEMIES BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Secure 16 to 19 Academies Bill as introduced in the House of Commons on 11 December 2023 (Bill 135).

- These Explanatory Notes have been prepared by the Ministry of Justice, with the consent of Dr Caroline Johnson MP, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	2
Territorial extent and application	3
Commentary on provisions of Bill	4
Clause 1: Secure 16 to 19 Academies Bill (funding, impact and consultation)	4
Clause 2: Extent, commencement and short title	4
Commencement	5
Financial implications of the Bill	5
Parliamentary approval for financial costs or for charges imposed	5
Compatibility with the European Convention on Human Rights	5
Annex A – Territorial extent and application in the United Kingdom	6
Subject matter and legislative competence of devolved legislatures	6

Overview of the Bill

- 1 This Bill will reduce the minimum notice period for mutual no-fault termination of a secure schools funding agreement from seven to two years. The Bill will also amend consultation duties under the Academies Act 2010 to be more appropriate for a custodial establishment, rather than a mainstream school.

Policy background

- 2 Secure 16 to 19 academies, also known as secure schools, are a new form of provision for children sentenced or remanded to custody. They will be “schools with security” rather than “prisons with education”.
- 3 The Police, Crime, Sentencing and Courts Act 2022 established secure schools in legislation as both “secure 16 to 19 academies” under the Academies Act 2010 (“the Act”), and secure children’s homes under the Children’s Homes (England) Regulations 2015.
- 4 Secure schools are different to other academies because they are also custodial establishments. As such, provisions need to be made that will allow government to set different requirements for them.

Legal background

- 5 This Bill makes a number of amendments to the Act for the purpose of providing different requirements for secure 16 to 19 academies as opposed to standard 16 to 19 academies.
- 6 Section 2 of the Act provides for payments under Academy agreements, and in subsection (2) sets out that payments under an Academy agreement must provide for them to continue for at least seven years or indefinitely but terminable by the Secretary of State giving at least 7 years’ written notice. This Bill will amend the period set out in subsection (2) so that where the Academy agreement applies to a secure 16 to 19 academy, the payments must continue for at least two years or indefinitely but terminable by the Secretary of State with at least two years’ written notice.
- 7 Section 9 of the Act provides that the Secretary of State must take into account the impact on other educational provision in the area when entering into arrangements to open a new academy or expand an existing academy. This Bill will amend section 9 so that where the intended educational institution is a secure 16 to 19 academy, the duty will not apply.
- 8 Section 10 of the Act provides a duty for educational institutions to consult on the question of whether the arrangements should be entered into. This Bill will amend the duty to consult so that if the educational institution in question is a secure 16 to 19 academy, the Secretary of State must instead consult on the question of how they should cooperate with potential local partners in connection with the establishment and carrying on of the academy.

Territorial extent and application

- 9 The Bill extends to England and Wales, but applies only to England given that the Academy system has not been adopted in Wales.
- 10 Management of the youth detention estate is within the devolved competence of the Scottish Parliament and the Northern Ireland Assembly. This Bill does not extend to Scotland or Northern Ireland.

Commentary on provisions of Bill

Clause 1: Secure 16 to 19 Academies Bill (funding, impact and consultation)

- 11 Clause 1 sets out how the Act will be amended.
- 12 Clause 1(2) amends section 2 of the Act to reduce the minimum notice period for termination of a funding agreement from seven to two years for secure 16 to 19 academies. A minimum seven-year termination period is intended to provide continuity for year seven pupils who may stay at an academy for up to seven years. As custodial establishments, this rationale does not apply to secure 16 to 19 academies because children placed there will stay for a much shorter period, and so a minimum two-year notice period is more suitable. A minimum two-year notice period will allow government to prioritise value for money.
- 13 Clause 1(3) amends consultation requirements set out in the Act. Section 9 of the Act requires the Secretary of State to consider the impact of entering a new academy funding agreement on other educational establishments in the area. Secure 16 to 19 academies are custodial establishments and as such, we do not expect that they will have an impact on the viability of other local mainstream schools. Subsection (3) therefore disapplies section 9 for secure 16 to 19 academies to relieve government of an unnecessary administrative burden.
- 14 Clause 1(4) amends section 10 of the Act. Section 10 currently requires an academy provider to consult with ‘appropriate’ persons on whether a funding agreement should be entered into. Given that secure 16 to 19 academies will be custodial establishments, such a binary question would not result in constructive engagement with interested stakeholders. Instead, subsection (4) makes provision to require the provider to consult with ‘appropriate’ persons on how the school should work with local partners.

Clause 2: Extent, commencement and short title

- 15 Clause 2(1) establishes that the Bill will extend to England and Wales.
- 16 Clause 2(2) provides that the provisions of the Bill will come into force at the end of the period of two months beginning with the day on which it receives Royal Assent and is passed.
- 17 Clause 2(3) establishes that the Bill may be referenced as the Secure 16 to 19 Academies Act 2024 once in force.

Commencement

18 The provisions of the Bill will come into force two months after the day of Royal Assent.

Financial implications of the Bill

19 We do not anticipate that the measures in this Bill will cause any additional costs for government. The rationale for these measures is, in part, to reduce the cost burden on the department and the secure school provider.

Parliamentary approval for financial costs or for charges imposed

20 As any additional expenditure arising from this Bill will be minimal, this Bill is not subject to a money resolution.

Compatibility with the European Convention on Human Rights

21 This is a Private Member's Bill and there is no requirement for a statement of compatibility with the European Convention on Human Rights ("ECHR") in accordance with section 19(1)(a) of the Human Rights Act 1998.

22 The Ministry of Justice has, nevertheless, considered the question of compatibility and has concluded that the Bill is compatible with the ECHR.

Annex A – Territorial extent and application in the United Kingdom

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 process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	No	No	No	No	No	No
Clause 2	Yes	No	No	No	No	No	No

Subject matter and legislative competence of devolved legislatures

- 23 This Bill applies only in England and therefore falls outside the legislative competence of the Senedd Cymru. Management of the youth detention estate is within the devolved competence of the Scottish Parliament and the Northern Ireland Assembly. This Bill does not extend to Scotland or Northern Ireland

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