



REPORT OF THE CHIEF EXECUTIVE OF EDUCATION LEEDS

EXECUTIVE BOARD: 14 March 2007

SUBJECT: Education and Inspections Act 2006

EXECUTIVE SUMMARY

1. PURPOSE OF THE REPORT

The purpose of the report is:

- i. to summarise the implications for Leeds City Council arising from the key provisions of the Education and Inspections Act (E&I Act);
- ii. to share key issues for discussion;
- iii. to gather the Boards' response to these issues to inform further work;
- iv. to identify appropriate future directions of travel in Leeds.

2. BACKGROUND INFORMATION

The Education and Inspection Act received Royal Assent on 8 November 2006, with the main provisions coming into effect during the period to December 2008 (Appendix 1: Education and Inspection Act 2006 Wall Planner). It followed the Government's White Paper 'Higher Standards, Better Schools for All'. The significant features of the Act were summarised in a report to the Board in January 2007. The Act also implements the Green Paper "Youth Matters".

3. MAIN ISSUES

The Act presents a range of new opportunities and challenges to the ways in which education provision is managed locally and how the standards for children and young people are maintained and improved. These opportunities and challenges present both to the Council and its maintained schools and to other stakeholders in the Leeds learning community. The general powers under the Act indicate a step change in the traditional landscape of education in a local authority area. If fully exploited, they will lead to a far more complex delivery pattern with the local authority moving away from direct provision into a championing role for children, young people and families. There will be a much greater variety in the models of

provision by a number of different agencies and organisations, managing in an even more devolved environment in relation to decision-making and resources. This will make strategic partnerships even more central to the ensuring that standards are delivered and the Every Child Matters' outcomes are met. The Council's role at the heart of those partnerships will be key, leading and influencing change and ensuring that efficient commissioning arrangements are in place.

The following issues have been identified for the consideration by the Board:

Trust school issues for consideration:

- The extent to which the Council will proactively support the development of Trusts in Leeds to deliver its learning vision and offer diversity to children and young people.
- The impact of Trust schools on the local authority's admissions policy (see Fair Access section below)
- The requirement for consideration to be given to acquiring a Trust as one option (academy status and closure are others) when a school is failing;
- The new role of the Schools Adjudicator as an 'appeals' process if the local authority or other stakeholders have concerns about the impact of the Trust on standards or the consultation process.
- Where the school is part of a PFI contract, it retains its contractual obligation to contribute to the unitary charge for the PFI contract and the services it will receive from the contract.

Local authority issues for consideration:

- impact of competitions for any new schools or for failing schools will limit the scale of local authority provision and enable a range of other providers e.g. faith groups, private sector organisations and businesses
- what will replace the School Organisation Committee? One option is for the Executive Board to make all decisions; or delegation of some decisions to e.g.: a sub-committee (all decisions are subject to call-in by Scrutiny Committee);
- The role of the adjudicator in making decisions or addressing appeals - the likely impact of excessive workload on a scarce adjudicator resource delaying decisions leading to poor planning.
- The potential of creating an Integrated Youth Support Service as a platform to address the Youth Matters requirements of Clause 6.

Fair access issues for consideration:

- need for a complete overhaul of our admissions policy, to move away from the current distance based prioritisation to e.g. catchment areas or feeder schools
- Impact of parents no longer able to change preferences – this is likely to increase the number of appeals by parents in the 2008 round, when Leeds already has a higher than average number
- Ensuring that all schools adhere to the In Year Fair Access policy from September 2007
- Impact of the new school transport regulations set out in the Act – cost of administration of the new regulation, cost of the additional transport allowances generated from the eligibility, shifts in patterns of parental preferences.

Behaviour issues for consideration:

- Use and enforcement of parenting orders for early intervention, prior to exclusion
- Identification of and resourcing of appropriate accommodation in each wedge area that will provide shared provision run and managed by local schools. Dedicated staff in Education Leeds will scope the local needs. Identify staffing requirements and cost these options.
- Use of Standards Fund resources identified for the authority which may need to be prioritised elsewhere.

Youth Services issues for consideration:

- provision of youth work
- publication of a youth offer
- promotion of positive activities
- youth engagement
- youth opportunity cards and youth volunteering.

4. RECOMMENDATIONS

Executive Board are asked to:

- i. note the detailed requirements in the Education and Inspection Act 2006; and
- ii. consider and offer comment on the issues raised in regard to each of the specific areas of the Act described.

Agenda Item:

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SUBJECT: Education and Inspections Act 2006

Electoral wards Affected: All

Specific Implications For:

Equality & Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call-in

Not Eligible for Call-in
(Details contained in the Report)

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1. to summarise the implications for Leeds City Council arising from the key provisions of the Education and Inspections Act (E&I Act);
2. to share key issues for discussion; and
3. to gather the Boards' response to these issues to inform further work
4. to identify appropriate future directions of travel in Leeds.

2 BACKGROUND INFORMATION

2.1 In autumn 2005 the Government published the Schools White Paper - Higher Standards, Better Schools For All - as part of their aim of ensuring that all children get the education they need to fulfil their potential. Changes requiring legislation were taken forward by the Education and Inspections Bill published in February 2006. The E&I Act provides the statute for many of these proposals and to some additional measures that were not included in the original White Paper. It received

Royal Assent on 8 November 2006.

- 2.2 The Act is mainly enabling and reflects the government's aspiration to increase diversity and devolve responsibility to schools, by introducing Trusts. There are also a range of associated changes to transport and admissions policies to ensure fair access to school.
- 2.3 The Act also contains the legislation to implement the "Youth Matters" Green Paper and, as such, contains significant implications for the organisation and scope of youth service

3 **MAIN ISSUES**

3.1.1 The Act presents a range of new opportunities and challenges to the ways in which education provision is managed locally and how the standards for children and young people are maintained and improved. These opportunities and challenges present both to the Council and its maintained schools and to other stakeholders in the Leeds learning community. The general powers under the Act indicate a step change in the traditional landscape of education in a local authority area. If fully exploited, they will lead to a far more complex delivery pattern with the local authority moving away from direct provision into a championing role for children, young people and families. There will be a much greater variety in the models of provision by a number of different agencies and organisations, managing in an even more devolved environment in relation to decision-making and resources. This will make strategic partnerships even more central to the ensuring that standards are delivered and the Every Child Matters' outcomes are met. The Council's role at the heart of those partnerships will be key, leading and influencing change and ensuring that efficient commissioning arrangements are in place.

3.1.2 The following sections describe the new requirements in the Act in the particular areas of Trust school status, 14-19 provision, Fair Access and school place provision and behaviour. Issues for consideration by the Board are identified in regard to these.

3.2 **Trust schools**

3.2.1 As part of its agenda for choice and diversity, the Trust arrangements are intended to open up new and different ways for schools to work in the future. Schools (or groups of schools) that choose to take up the new arrangements will be backed by a charitable trust, drawing on the expertise and energy of partners to strengthen governance and support their strategic leadership. The Government has funded a small pathfinder programme, including Garforth Community College and will use the experience of these to assess how Trusts support collaboration, pooling of resources and sharing of best practice. Schools can acquire a shared Trust to put their existing collaboration on a more formal and sustainable footing, with each retaining its own governing body. Where schools want to acquire a shared Trust which builds on an existing hard federation they can continue to have shared governing body arrangements.

3.2.2 A Trust school remains a local authority maintained school that is funded on the same basis as other local authority maintained schools, and funding will be delegated to the governing body, not the Trust. There will be no additional funding from the local authority for a Trust school, and there is no expectation that

the Trust will provide the school with additional funding. They could, however, bring in additional *resources* in terms of professional expertise, knowledge and vocational opportunities.

- 3.2.3 Trusts are likely to differ in nature. The members of the Trust might include education charities, further or higher education institutions, business foundations or community groups. A Trust might work with a single school, a group of local schools or a network of schools. The local authority has a key opportunity to become a partner in the Trust and engage strategically with a number of individual partners in order to support development through the establishment of a charitable foundation.
- 3.2.4 A Trust school is legally a foundation school supported by a charitable foundation that appoints some of its governors. The law has previously allowed for foundation schools to be formed and to acquire a foundation with almost no associated process (e.g. consulting parents or allowing others to comment) or any safeguards on what it can and cannot do. The 2006 E&I Act puts in place some safeguards around forming and acquiring a Trust.
- 3.2.5 In practice, a Trust school governing body is the employer of the staff much like in an aided school, but must comply with the national School Teachers' Pay and Conditions Document. The governing body will set the school's own admission arrangements, but they will have to act in accordance with the School Admissions Code and will not be allowed to introduce selection by ability. Trust schools will have to promote good local community and race relations, and be subject to the requirements of the Race Relations Act and the Disability Discrimination Act. They will deliver the National Curriculum and be governed by the Ofsted inspection framework. The Government has stated that Trust schools will be expected to play their full part in taking hard to place pupils, having fair admissions and working with other schools. The school will manage its own land and assets; the Trust will hold the land and assets for the duration of its relationship with the school.
- 3.2.6 The school is supported by the Trust through the appointment of governors to the school's governing body. The governing body of a Trust school, and not the Trust itself, will remain responsible for all aspects of the conduct of the school. The Trust and the governing body remain separate entities although where an existing governing body decides that the Trust may appoint the majority of the governors, it would effectively give the Trust control over all decisions.
- 3.2.7 The decision to move to trust status is made by the school's existing governing body. It also determines who the members of that Trust should be, and whether the Trust should appoint the minority or majority of the governing body. If the Trust appoints the majority of governors, a Parents' Council must be formed. Parents and other local stakeholders, including the local authority, must be consulted before the governing body publishes formal proposals. The local authority can refer a proposal for a trust to the Schools Adjudicator if it believes a trust will be detrimental.
- 3.2.8 Academies differ from Trust schools in two key ways; they are publicly funded independent schools whilst trust schools remain as LA maintained schools; and academies take revenue funding out of the local authority system. Academies and Trust schools are presented as two strands in the diverse range of options

designed to deliver real improvements in school standards. For instance, the first Academies programme was presented as a radical solution, designed to provide a step change in education in failing schools. The two models also differ in the level of involvement from business partners. Academy sponsors appoint the majority of governors to the governing bodies of their schools and are expected to contribute £2 million. In Trust schools, the Trust can appoint either the minority or majority of governors and is not expected to make a financial contribution.

3.2.9 Issues for consideration:

- The extent to which the Council will proactively support the development of Trusts in Leeds to deliver its learning vision and offer diversity to children and young people.
- The impact of Trust schools on the local authority's admissions policy (see Fair Access section below)
- The requirement for consideration to be given to acquiring a Trust as one option (academy status and closure are others) when a school is failing;
- The new role of the Schools Adjudicator as an 'appeals' process if the local authority or other stakeholders have concerns about the impact of the Trust on standards or the consultation process.
- Where the school is part of a PFI contract, it retains its contractual obligation to contribute to the unitary charge for the PFI contract and the services it will receive from the contract.

3.2.10 Appendix 2 provides a flowchart of the process of acquiring Trust school status and Appendix 3 provides a summary of responsibilities across the existing range of school structures.

3.3 Local authorities

3.3.1 The Act sets out new local authority duties:

- *To ensure fair access to educational opportunity and promote fulfilment of educational potential*
- *To secure diversity in the provision of schools and increasing opportunities for parental choice*
- *To consider parental representations*

3.3.2 These duties are built into new regulations around establishing a new school, closing a school or prescribing alterations to existing schools. There is now a requirement on a local authority in establishing a new primary, secondary or special school to hold an open competition; if it publishes proposals for a community school as part of a competition it is then determined by the Adjudicator. Local authorities and promoters can apply for consent to new school proposals without a competition but only in exceptional circumstances.

3.3.3 In closing a school, local authorities and governing bodies can publish notices to close schools but there are additional requirements for closing rural primary schools. Governing bodies of voluntary and foundation schools can give two years notice of intention to close a school.

3.3.4 The prescribed alterations covered in the Act are still to be specified in regulations but are likely to include the acquisition of a foundation; change of instrument of

government so that the majority of the governing body are foundation governors; and a change of category (explicitly precluding changes from foundation or voluntary to controlled, change of religious character or change from mainstream to special & vice versa).

3.3.5 The process for new school competitions commences with consultation, followed by the first notice inviting bids and second notice summarising bids, representations, decision by the local authority or adjudicator and finally, implementation. The indicative timeline is between 14 to 18 months.

3.3.6 The Act makes changes to the decision making process for determining changes to or new provision. The School Organisation Committee ceases to exist under the Act. The local authority will determine most new proposals in a commissioning role. The governing body will decide “foundation proposals” (e.g. *seeking Trust status or change of category to foundation school*) although the local authority can require proposals to be passed to the Adjudicator where they believe that the school has not consulted properly or the proposed trust will have a negative impact on standards. The Schools Adjudicator will decide on all the exceptions to the local authority making a decision on a proposal.

3.3.7 The following appeals can be made to the Adjudicator from:

- the Catholic and CE Diocesan Authorities against all proposals;
- the LSC against any proposals involving a school that makes provision for pupils aged 14+;
- the promoter of a new school (other than in a competition) where proposals are rejected by the local authority;
- the governing body or trustees of a foundation school or voluntary school where proposals for closure or any alteration are decided by the local authority; and
- the governing body of any school where proposals to enlarge, add 27 or more pupils to pupil admission number or add a sixth form as decided by the local authority.

3.3.8 Issues for consideration:

- impact of competitions for any new schools or for failing schools will limit the scale of local authority provision and enable a range of other providers e.g. faith groups, private sector organisations and businesses
- what will replace the School Organisation Committee? One option is for the Executive Board to make all decisions; or delegation of some decisions to e.g.: a sub-committee (all decisions are subject to call-in by Scrutiny Committee);
- The role of the adjudicator in making decisions or addressing appeals - the likely impact of excessive workload on a scarce adjudicator resource delaying decisions leading to poor planning;

3.4 **Fair access**

3.4.1 The Act seeks to ensure fair access to schools by tightening the admissions framework, extending entitlement to free transport, and requiring the local authority to support parents in choosing schools. It includes:

- reaffirming the ban on new selection by ability, and outlawing interviewing

of parents of prospective pupils

- strengthening the Code on School Admissions so that schools will have to “act in accordance” with it rather than “have regard” to it
- new powers for admissions forums, to refer objections to the Schools Adjudicator, and to produce an annual report on fair access in their area
- a requirement for local authorities to provide free transport for disadvantaged pupils to attend any of three suitable secondary schools closest to their home, (between 2 and 6 miles away), or up to 15 miles away where it is the nearest suitable school preferred on grounds of religion or belief

3.4.2 The new Admission Code came into force in February 2007 with effect from September 2008. Leeds has consulted on the new admission arrangements for 2008. The Code is now clear about what must be done and what should be done. Even where it states something should be done effectively it can only be disregarded by the Authority if there is clear justification. The Code is stronger in that it states that stakeholders must ‘act in accordance with’ rather than merely ‘to have regard to it’. For instance, foundation schools with Trusts as an admitting body will be obliged to follow the local Code.

3.4.3 The Leeds Admission Forum has been strengthened to manage the new arrangements. It has an important new power to publish an annual report on how well admission arrangements are working locally, including whether admission arrangements are working fairly for all members of the community. It will also consider the effect that the arrangements are having on ethnic and social segregation and the admission of vulnerable children and whether this changes over time. These reports are a valuable tool in ensuring an open and fair admission system and will be used by the Schools Commissioner in drawing up his two yearly national review of fair access.

3.4.4 The Admission Forum, along with Education Leeds and other local schools have powers to refer admission arrangements to the Schools Adjudicator where the admission authority concerned fails to comply with the mandatory provisions of the Code, or where they fail to follow its guidelines. Parents may also refer an objection to the Adjudicator and faith groups may object to the admission arrangements of the schools of their faith. Education Leeds has appointed a Choice Advisor attached to the Parent Partnership Team, to provide impartial support to parents who feel challenged by the admissions process.

3.4.5 Local authorities have a duty to ensure fair access and should ensure that schools which are their own admission authorities have arrangements that are clear, objective, fair and promote social equity. Local authorities may be held to account by the Local Government Ombudsman if, being aware of unfair admission arrangements, they do not object to the admission arrangements that may be unfair or do not comply with the Code.

3.4.6 An important change to the admission arrangements for Leeds in 2008 is that parents will not be allowed to change their preference once they have made them. This had been allowed since the 2000 Leeds Admission Review without the authority applying any deadlines to that or the appeals process. Another change that Leeds has had to make following the Act is to remove the 'first preference first' arrangements which operated in twelve schools in Leeds. This prevents schools as admitting authorities from automatically de-selecting non-first preferences.

3.4.7 Free home to school transport is extended for low income families to one of their three nearest schools, where they are between two and six miles away. For primary aged pupils transport will only be provided to the nearest suitable school, but for these low income families with children aged 8 – 11, free transport must now be provided if they live more than two miles from school compared to three miles previously. Secondary aged pupils from low income families must have transport to any one of the three nearest suitable schools where the distance travelled is between two and six miles. Any transport agreement will last for the whole academic year.

3.4.8 Issues for consideration:

- need for a complete overhaul of our admissions policy, to move away from the current distance based prioritisation to e.g. catchment areas or feeder schools
- Impact of parents no longer able to change preferences – this is likely to increase the number of appeals by parents in the 2008 round, when Leeds already has a higher than average number
- Ensuring that all schools adhere to the In Year Fair Access policy from September 2007
- Impact of the new school transport regulations set out in the Act – cost of administration of the new regulation, cost of the additional transport allowances generated from the eligibility, shifts in patterns of parental preferences.

3.5 **14 – 19 Curriculum**

3.5.1 The Act gives effect to important reforms of the national curriculum, outlined in the 14-19 Education and Skills White Paper. The central feature is the introduction of 14 new specialised Diplomas, which the local authority must ensure is available to every young person aged between 14 and 19. Schools will be expected to work with each other and with colleges and other providers to fulfil this entitlement.

3.5.2 The report to the Executive Board's meeting in January 2007 set out the aims and vision for post 16-education in Leeds, given the context of the Act. The Board endorsed the recommendations of Cambridge Education's report and agreed to receive a further options paper in May.

3.6 **Behaviour**

3.6.1 The Act builds on the recommendations of the Steer Report and creates a clear statutory right for school staff to discipline pupils for inappropriate behaviour, extends the scope of parenting orders and contracts and generally improves the provision for excluded pupils. Parents will have to take responsibility for excluded

pupils in their first five days of exclusion, either fixed term or permanent, and have to ensure excluded children are properly supervised, backed up by fines for a new offence of allowing an excluded child to be found in a public place during school hours without good cause. Governing bodies and local authorities are now required to provide alternative provision from the sixth day of exclusion (currently after 16 days of permanent exclusion). The Pupil Referral Units (PRUs) are not the automatic existing provision to fill this new need, particularly as their realigned focus is now on early intervention/prevention work on a full cost recovery basis.

3.6.2 Through the progress made with the No Child Left Behind initiative, Education Leeds and schools are in a good position to respond to these new requirements. For instance, a comprehensive training programme has been planned for schools, governors, parents and carers, together with revised guidance on the requirements for all key stakeholders including parents and young people, in readiness for the start date. In addition, heads will be trained for work on appeals panels through a joint Legal Services and Education Leeds approach.

3.6.3 Issues for consideration:

- Use and enforcement of parenting orders for early intervention, prior to exclusion
- Identification of and resourcing of appropriate accommodation in each wedge area that will provide shared provision run and managed by local schools. Dedicated staff in Education Leeds will scope the local needs. Identify staffing requirements and cost these options.
- Use of Standards Fund resources identified for the authority which may need to be prioritised elsewhere.

3.7 Youth Services

3.7.1 Clause 6 of the Act implements the Youth Matters Green Paper and introduces the duty to provide sufficient educational leisure-time activities for the improvement of young people's well-being and to provide sufficient facilities for such activities. This duty applies to the 13 to 19 age range and those aged up to 24 with learning difficulties. A further key component is the provision of information, advice and guidance services linked to the localisation of Connexions services as from April 2008.

3.7.2 Issues for consideration:

- provision of youth work
- publication of a youth offer
- promotion of positive activities
- youth engagement
- youth opportunity cards and youth volunteering.

4 IMPLICATIONS FOR COUNCIL POLICY AND GOVERNANCE

4.1 There are wide ranging implications for council policy and governance, in particular working in a more complex and diverse provision model. This will demand greater partnership working and getting agreement on strategic direction to achieve the aims of the Act and the ECM outcomes. The specific implications will be identified as part of the development of the future direction of travel.

5 **LEGAL AND RESOURCE IMPLICATIONS**

- 5.1 The legal and resource implications of the Act will need to be further assessed as the regulations become operational and opportunities are taken up.

6 **CONCLUSIONS**

- 6.1 The Act introduces a number of new enabling provisions and requirements as presented in the above paragraphs. Some of these have already been considered through the Scrutiny arrangements of the Council; plans for 14-19 provision and the models for Trust schools were reported to the Scrutiny Board for Children and Young People in January 2007. Similarly, the Admissions Forum have considered the original recommendations in response to the DfES consultation in December 2006 and agreed the new Code for the 2008/9 admission round. It is proposed that further detailed proposals are developed in response to the new requirements which will be informed by the discussion from the Board's consideration of this report.

7 **RECOMMENDATIONS**

- 7.1 Executive Board is asked to:

- note the detailed requirements in the Education and Inspection Act 2006; and
- consider and offer comment on the issues raised in regard to each of the specific areas of the Act described.