



## **School (Reform of Pupil Selection) Bill [HL]**

### **HL Bill 26 of 2022–23**

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On 13 June 2022, Baroness Blower (Labour) introduced her private member's bill, the [School \(Reform of Pupil Selection\) Bill \[HL\]](#), in the House of Lords. The bill would seek to prohibit state-funded schools from admitting students wholly or partially based on criteria relating to ability or aptitude. It would do this by introducing a phased plan to bring admission policies for England's remaining selective schools in line with every state-funded comprehensive secondary school. Second reading in the House of Lords is scheduled to take place on 2 December 2022.

At present, there are 163 grammar schools in England. These schools can select all or most of their pupils based on academic ability or aptitude. Legislation prohibits new maintained grammar schools from opening and current schools from having selective admission arrangements.

The Boris Johnson government had previously praised grammar and selective schools. It had sought through the Schools Bill to protect the status of academy grammar schools and to ensure that the only way to remove a grammar school's selective status is following a parental ballot process. Additionally, between 2018 and 2020 it ran a fund to support selective schools in expanding and improving access for disadvantaged children to attend such schools.

Further, Prime Minister Rishi Sunak has previously supported the opening of new grammar schools in the future.

## I. Grammar and selective schools in England

Grammar and selective schools are schools which select all or most of their pupils based on examination of their academic ability.<sup>1</sup> Section 104 of the School Standards and Framework Act 1998 prohibits new maintained grammar schools from opening and existing schools from having selective admission arrangements.<sup>2</sup>

As at May 2022, there were 163 grammar schools in England. Of these, 143 are academy grammar schools, whilst 20 are maintained grammar schools.<sup>3</sup> There are currently no grammar schools in Wales.<sup>4</sup>

### I.1 Selection criteria for grammar and selective schools

#### Grammar schools

The schools admissions code defines grammar schools as schools which select all, or substantially all, of their pupils based on academic ability.<sup>5</sup> Only designated grammar schools<sup>6</sup> are permitted to select their entire intake based on high academic ability.<sup>7</sup> The code states that:

- designated grammar schools do not have to fill all of their places if applicants have not reached the required standard
- where arrangements for pupils are wholly based on selection by ability and provide for only those pupils who score highest in any selection test to be admitted, then no priority needs to be given to looked-after children (those either in the care of a local authority or being provided with accommodation by a local authority) or previously looked-after children<sup>8</sup>
- where admissions are not based solely on the highest scores in a selection test, the admission authority must give priority in its oversubscription criteria to all looked-after children and previously looked-after children who meet the pre-set standards of the ability test

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<sup>1</sup> Department for Education, '[Types of school: Overview](#)', accessed 25 November 2022.

<sup>2</sup> As amended by section 39 of the Education and Inspections Act 2006.

<sup>3</sup> A breakdown of the 163 grammar schools in England by location are as follows: 58 in the South East; 20 in the South West; 19 in the North West; 19 in London; 18 in the West Midlands; 15 in the East Midlands; eight in the East of England; and six in Yorkshire and the Humber. House of Commons Library, '[Grammar school statistics](#)', 3 January 2020.

<sup>4</sup> Department for Education, '[Grammar schools: Schools Bill factsheet](#)', May 2022, p 3.

<sup>5</sup> Department for Education, '[Schools admissions code 2021](#)', updated 11 March 2022, p 46.

<sup>6</sup> Education (Grammar School Designation) Order 1998 (SI 1998/2219). Where a designated grammar school has converted to become an academy, the academy is permitted to continue selecting its entire intake in accordance with section 6(3) of the Academies Act 2010.

<sup>7</sup> School Standards and Framework Act 1998, section 104.

<sup>8</sup> Department for Education, '[Schools admissions code 2021](#)', updated 11 March 2022, p 13. The code defines a 'looked-after child' as a child who is either in the care of a local authority or being provided with accommodation by a local authority in the exercise of its social services functions (in accordance with Section 22(1) of the Children Act 1989) at the time of making an application to a school.

## Pre-existing or partially selective schools

Partially selective schools admit a proportion of their pupil intake by ability. The code states that where schools can partially select pupils, they must publish the entry requirements for a selective place and the process for such selection. In addition, they must offer places to other children if there are insufficient applicants who have satisfied the published entry requirements for a selective place. In accordance with section 110 of the School Standards and Framework Act 1998, partially selective schools must not exceed the lowest proportion of selection that has been used since the 1997/98 school year.<sup>9</sup>

In relation to the proportion of pupils admitted to such schools, where arrangements provide for only pupils who score highest in any selection test to be admitted, no priority needs to be given to looked-after children or previously looked-after children. Similar to grammar school pupil selection, whereby admission is not based solely on highest scores in a selection test, the admission authority must give priority in its oversubscription criteria to all looked-after children and previously looked-after children who meet the pre-set standards of the test. For the allocation of the remainder of places after selection, looked-after children and previously looked-after children must again be given priority for admission.<sup>10</sup>

## Tests for selection

Grammar and selective schools use various types of 11-plus testing to determine their admissions intake. The schools admissions code states that tests for all forms of selection must be clear, objective, and give an accurate reflection of a child's ability or aptitude, irrespective of sex, race, or disability. The admission authority decides the content of the test on the provision that it is a "true test" of aptitude or ability.<sup>11</sup> The code also notes that admission authorities must:

- ensure that tests for aptitude in a particular subject are designated only to test for aptitude in the subject concerned
- ensure that tests are accessible to children with special needs and disabilities, with reasonable adjustments made for disabled children required under equalities legislation
- take "reasonable steps" to inform parents of the outcomes of such tests before the closing date for secondary applications on 31 October, to allow parents time to make an informed choice for selecting a school

Additionally, the code states that admission authorities must not adjust a score achieved by a child in a test to account for oversubscription criteria, for example if the child sitting the test has a sibling at the school.

## 1.2 How well do grammar schools perform?

Previous data from the Department for Education on GCSE attainment reveals that grammar school

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<sup>9</sup> School Standards and Framework Act 1998, section 110.

<sup>10</sup> Department for Education, '[Schools admissions code 2021](#)', updated 11 March 2022, p 14.

<sup>11</sup> Department for Education, '[Schools admissions code 2021](#)', updated 11 March 2022, p 15.

pupils, on average, perform better than pupils at non-selective schools.<sup>12</sup> Examining data from 2017/18, the department reported that the difference in attainment was greatest between grammar schools and non-selective schools in highly selective areas<sup>13</sup>:

**Table 1: Attainment data at GCSE between grammar schools and non-selective schools in highly selective areas, 2017/18**

Type of school	Average attainment 8 score per pupil	Percentage of pupils who achieved 9–5 grades in English and mathematics
Selective schools	71.1	92.9
Non-selective schools in highly selective areas	42.3	32.0

(Department for Education, [‘Key stage 4 and multi-academy trust performance 2018 \(revised\): National tables’](#), updated September 2019, table 2b)

However, there have been several studies by different education think tanks and organisations into attainment at grammar schools which have reported mixed findings. In 2016, the Education Policy Institute examined the impact of grammar schools on social mobility. It found that once prior attainment and pupil background had been taken into consideration, there had been no overall attainment impact of grammar schools, either positively or negatively.<sup>14</sup> Similarly, a 2018 study by the Institute of Education found that grammar school pupils “do not gain any advantage over children who do not attend a grammar school by age 14”.<sup>15</sup>

In contrast, the Higher Education Policy Institute (HEPI) published a paper in 2019 examining the impact of selective secondary education on pupil progression to higher education. In its paper, HEPI reported that areas with grammar schools sent a higher proportion of pupils to highly selective universities. It argued that this meant that grammar schools “significantly increase[d] the chances of disadvantaged pupils reaching highly selective universities” and, therefore, were positive for social mobility.<sup>16</sup>

<sup>12</sup> Using the following measures: Attainment 8, which is an average score based on a pupil’s best eight grades in a group of GCSEs; and the proportion of pupils achieving 9–5 grades in English and mathematics at GCSE.

<sup>13</sup> The Department for Education defines highly selective areas as “local authorities where 25% or more of state-funded secondary places are in state-funded selective schools”. Department for Education, [‘Key stage 4 and multi-academy trust performance 2018 \(revised\): National tables’](#), updated September 2019, table 2b, footnote 8.

<sup>14</sup> Jon Andrews et al, [‘Grammar schools and social mobility’](#), Education Policy Institute, 23 September 2016.

<sup>15</sup> Institute of Education, [‘Government’s grammar school funding won’t improve children’s outcomes, say experts’](#), 23 May 2018.

<sup>16</sup> Higher Education Policy Institute, [‘Grammar schools significantly increase the chances of disadvantaged pupils reaching highly selective universities, especially Oxbridge’](#), 10 January 2019.

## 2. What would the bill do?

The School (Reform of Pupil Selection) Bill [HL] would seek to prohibit state-funded schools from admitting students wholly or partially based on criteria relating to ability or aptitude. Setting out the purpose of the bill, Baroness Blower argued that:

Around 19% of England's secondary school pupils feel the impact of academic selection. This is because an effect of concentrating higher-attaining pupils in particular schools is to depress overall GCSE results in the surrounding area. As research shows, the advantage of mixing low, middle and higher-attaining pupils, as in comprehensive schools, is that children of all attainment levels achieve, and higher attaining pupils continue to attain highly. Kent's lower than the national average GCSE results confirms that selective schools do not guarantee improved results.<sup>17</sup>

Selective education also produces social segregation. The proportion of disadvantaged pupils, pupils with special educational needs and disability and looked-after children is extremely low in grammar schools, leaving surrounding schools with a disproportionate number of such pupils. The law needs to change to end the unnecessary division of children into different types of schools by means of the outdated and unreliable 11-plus testing system. My bill offers a phased plan to bring admission policies for England's remaining selective schools into line with every other state-funded secondary school and ensure that England's education system, as in Scotland and Wales, is fully comprehensive.<sup>18</sup>

### 2.1 Provisions of the bill

The bill consists of four clauses.

**Clause 1** sets out the "comprehensive principle". Subsection 1 states that admission authorities must, in performing their duties relating to the admission of pupils for secondary education, "have regard" to the principle that education is to be provided only in schools where the admission of pupils is not based either wholly or partially on ability or aptitude. Subsection 2 details that subsection 1 does not apply to provisions for:

- pupils in special schools or otherwise, who have education, health and care plans
- selection by ability under section 101 of the School Standards and Framework Act 1998 relating to permitted selection and pupil banding

**Clause 2** would place requirements on admission authorities to create arrangements for the admission of pupils in accordance with clause 1.

Subsection 1 of clause 2 states that each admission authority must report to the secretary of state by 1 September 2023 on whether their admissions arrangements comply with the comprehensive

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<sup>17</sup> As of January 2020, there were 32 grammar schools in Kent (excluding Medway). House of Commons Library, '[List of grammar schools by location](#)', 3 January 2020.

<sup>18</sup> Text provided by Baroness Blower on request from the House of Lords Library.

principle detailed in clause 1. Subsection 2 outlines that those authorities not complying with the principle must submit proposals in conjunction with their local authority (if the admission authority itself is not the local authority) to the secretary of state by 1 September 2024 detailing how they intend to amend their admissions arrangement to comply with the principle by 1 September 2027. Subsection 3 sets out that, before submitting proposals, the admission authority and local authority must consult:

- parents
- any affected educational institutions in the area, including primary, secondary and special schools
- other interested parties

Lastly, subsection 4 states that any proposals submitted to the secretary of state must refer to the consultation detailed in the previous subsection.

**Clause 3** details the process for approving and implementing proposals set out in clause 2 of the bill. Subsection 1 states that the secretary of state must consider proposals and either approve, amend or reject them. Subsection 2 notes that any proposals that have been approved or amended must be implemented by 1 September 2027. Subsection 3 states that for those proposals that have been rejected by the secretary of state, the admission authority must submit alternative proposals within a year. Subsection 5 states that should these alternative proposals be either approved or amended, they must be implemented by 1 September 2028. Subsection 6 states that if these proposals are rejected, then the secretary of state must, after consultation, substitute their own proposals.

Lastly, **clause 4** covers territorial extent and commencement. The bill would extend to England and Wales and come into force at royal assent.

### **3. What has been the policy of successive governments on grammar schools and selective education?**

The Boris Johnson government had previously described grammar schools as “amongst the best performing schools in the country”.<sup>19</sup> It also said that these schools would “play an important role in the future school system”. In recent years, it sought to support grammar and selective schools through statutory protections in the Schools Bill [HL] and by launching the selective schools expansion fund.

#### **3.1 Schools Bill [HL] 2022–23**

In May 2022, the then government introduced the Schools Bill in the House of Lords. In the bill, the government sought to protect grammar school academies by placing a duty on the secretary of state to designate the 143 academy grammar schools in England as grammar schools, which would put them on “the same legal footing” as the 20 maintained grammar schools.<sup>20</sup> The bill would also:

- prescribe that selecting pupils based on ability can only be removed from these schools

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<sup>19</sup> Department for Education, ‘[Grammar schools: Schools Bill factsheet](#)’, May 2022, p 6.

<sup>20</sup> Department for Education, ‘[Grammar schools: Schools Bill factsheet](#)’, May 2022, p 3.

- following a parental ballot in favour of removing selection
- take an order-making power to revoke the designation of a grammar school after a parental ballot in favour of removing selection
- take a regulation-making power to prescribe in which school year a school which has been the subject of a ballot in favour of removing selection needs to end selection

In a factsheet published alongside the bill, the government stated that the Schools Bill would align the regimes for maintained grammar schools and grammar academies. It noted that by ensuring that both were on a statutory footing, “a future government could not amend the arrangements without bringing forward further primary legislation”.<sup>21</sup>

During the bill’s committee stage in the House of Lords in June 2022, Lord Hunt of Kings Heath (Labour) gave notice of his intention to oppose the question that clause 28 (relating to grammar schools) should stand part of the bill. His explanation for opposing the clause was to enable a debate on the government’s approach to grammar schools and their potential expansion. Responding to the member’s concerns about the government’s policy on grammar schools, a government whip, Baroness Penn, stated that it was not government policy to “open further grammar schools” and that the provision “makes sure that only a parental ballot can trigger an end to selection”.<sup>22</sup> The House agreed that clause 28 should stand part of the bill.<sup>23</sup>

At the time of writing, a date for the bill’s third reading in the House of Lords has yet to be announced.<sup>24</sup>

### 3.2 Selective schools expansion fund

Launched by the government in 2018, the selective schools expansion fund (SSEF) supported the expansion of existing selective schools whereby:<sup>25</sup>

- there was a need for additional places, both in terms of a shortfall of secondary places in the local area and a demand from parents for more selective places
- schools had “ambitious but deliverable plans” for increasing access for disadvantaged pupils (those eligible for the pupil premium)
- schools had plans to work with other local schools to increase access for disadvantaged pupils and to raise attainment

The government stated that for schools to obtain funding, they had to “submit cost-effective expansion proposals which address a need for additional places in their areas”. Schools were also required to set out deliverable plans to increase applications from and admissions of children eligible for the pupil premium.<sup>26</sup>

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<sup>21</sup> Department for Education, ‘[Grammar schools: Schools Bill factsheet](#)’, May 2022, p 4.

<sup>22</sup> [HC Hansard, 13 June 2022, col 1399.](#)

<sup>23</sup> [HC Hansard, 13 June 2022, col 1462.](#)

<sup>24</sup> UK Parliament, ‘[Schools Bill \[HL\]: Stages](#)’, accessed 25 November 2022.

<sup>25</sup> Department for Education, ‘[Selective schools expansion fund: Information for applicants on how to apply for this funding](#)’, February 2019, p 4.

<sup>26</sup> Department for Education, ‘[Selective schools expansion fund](#)’, updated 10 December 2020.

The SSEF provided funding totalling £63.6mn for 22 school expansion projects (16 in 2018 and six in 2019).<sup>27</sup> The Department for Education said in July 2022 that it would not be running further rounds of the fund.<sup>28</sup>

In September 2020, Schools Week published the outcome of its investigation into the fund. Examining admissions data from 14 of the 16 schools that had split the fund in 2018, it had found that despite the number of places in those schools increasing by 367 in three years, 77 (21 percent) of those were additional pupil premium places. Schools Week stated that this meant that each additional place for a “disadvantaged pupil” had cost more than £630,000. Despite this, Schools Week reported that the fund had some success. This included at Queen Mary’s Grammar School in Walsall, which saw the proportion of pupils in receipt of the pupil premium at the school increase from 7.3% to 22.8%.<sup>29</sup>

Responding to the investigation, a spokesperson at the Department for Education stated that it would “continue to work with the sector to encourage all grammar schools to do more to increase access for disadvantaged children”.<sup>30</sup> Additionally, some headteachers of grammar schools that had received a proportion of the fund argued that the coronavirus pandemic had impacted its outreach plans. Graeme Wright, the headteacher at Altrincham Grammar School for Boys, said that outreach work “takes time to have an impact and the coronavirus disruptions have hindered our work”. Similarly, the headteacher of Bournemouth School for Girls, Alistair Brien, argued that the pandemic had “got in the way” of progress.

In contrast, the organisation Comprehensive Future—of which Baroness Blower is a patron—argued that the fund had “failed as a policy”. In an article on its website, the organisation’s chair, Nuala Burgess, said that the fund had “appear[ed] to have achieved exactly the opposite of its original purpose: it has provided more grammar school places for the middle classes”.<sup>31</sup> Similarly, Ryan Shorthouse, the chief executive of the think tank Bright Blue, argued that the findings revealed that grammar schools “never will be the kind of great engines of social mobility that advocates want them to be”.<sup>32</sup> Instead, he called for government resources to be allocated elsewhere to “improve excellence and equity in the education system”.

### 3.3 The return of grammar schools?

During his Conservative Party leadership election campaign, Rishi Sunak stated that he would allow the opening of new grammar schools should he become prime minister. Speaking at the Conservative Party’s leadership hustings in July 2022, Rishi Sunak confirmed that he would support the move and that he “believe[d] in educational excellence”. Despite this, Mr Sunak also said that “there’s lots we can do with the school system as we have it”.<sup>33</sup>

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<sup>27</sup> Department for Education, ‘[Selective schools expansion fund: successful applications, 2018 to 2019](#)’, updated 14 February 2020; and ‘[Selective schools expansion fund: successful applications, 2019 to 2020](#)’, updated 10 December 2020.

<sup>28</sup> House of Commons, ‘[Written question: Selective schools expansion fund](#)’, 26 July 2022, 38863.

<sup>29</sup> Freddie Whittaker, ‘[£50m for expansion, but some grammars get less inclusive](#)’, Schools Week, 18 September 2020.

<sup>30</sup> Freddie Whittaker, ‘[£50m for expansion, but some grammars get less inclusive](#)’, Schools Week, 18 September 2020.

<sup>31</sup> Comprehensive Future, ‘[The selective school expansion fund has failed as a policy](#)’, accessed 25 November 2022.

<sup>32</sup> Freddie Whittaker, ‘[£50m for expansion, but some grammars get less inclusive](#)’, Schools Week, 18 September 2020.

<sup>33</sup> Aisha Rimi, ‘[Sunak says he would bring back grammar schools as prime minister](#)’, Independent, 29 July 2022.

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