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The Education and Inspections Bill

Bill 134 of 2005-06

The Bill seeks to implement proposals in the white paper, *Higher Standards, Better Schools for All*. A key proposal in the white paper was the development of trust schools in conjunction with external partners. The Bill makes provision for this. In law such schools will be foundation schools.

Other major provisions in the Bill relate to school organisation; the role of local authorities; school admissions; measures to tackle failing and under-performing schools; new specialised diplomas for 14 to 19 year olds; school discipline and the scope of parenting orders and parenting contracts; school travel arrangements; and nutritional standards for food and drink supplied on school premises. The Bill also provides for a new single inspectorate for children and learners, and empowers the Chief Inspector to investigate complaints from parents about schools.

The Bill covers England primarily. Some of its provisions apply to England and Wales, some to England only and others to Wales only. Certain general provisions extend to the UK.

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Summary of main points

The *Education and Inspections Bill* was presented on 28 February 2006 and its second reading debate is on 15 March 2006. It is a wide-ranging Bill, divided into 10 Parts, consisting of 167 clauses and 18 schedules. It seeks to implement proposals contained in the schools white paper, *Higher Standards, Better Schools for All*, and in related consultations. It also makes provision for changes announced by the Chancellor in his March 2005 Budget to reduce the number of public service inspectorates.

The main focus of political and media interest has been on three linked proposals relating to trust schools, school admission arrangements and the powers of LEAs; however, the white paper and the Bill propose many other important changes including new provisions relating to school discipline, specialised diplomas for 14 to 19 year olds, and school transport.

At the centre of the white paper is the Government's vision for a new school system with every school being able to acquire a self-governing trust, similar to academies, so that they can work with external partners. The Government want local authorities to promote greater choice and diversity within the school system while retaining their strategic role. The aim is for local authorities to play a commissioning role rather than providing schools, and for parents to be a driving force for school improvement. Trust schools will have the current freedoms of foundation schools to own their assets, employ their own staff and set their own admission arrangements within a statutory framework. Also, they will be able to acquire a trust and involve external partners. The Bill, which makes no specific reference to trust schools because in law they will be foundation schools, makes new provision for schools to acquire a foundation and to allow that foundation to appoint a majority of governors.

Those opposed to the reforms relating to trust schools have argued that the proposals will bring about a fragmentation of the school system and greater social segregation. Underlying this was a concern that trust schools will use their control over admissions to introduce either academic selection or more covert selection which would favour middle-class parents. There has been concern about the transfer of publicly-owned assets to independent trust schools, and the role that will be played by private organisations, including businesses and faith groups. Moreover, some see trust schools as an irreversible step with no clear evidence of the benefits they will bring.

The schools white paper was scrutinised by the Education and Skills Committee and its report has played a major role in the refinement of the Government's policies. The major concessions made by the Government, which are included in the Bill, are that admission authorities will be required to act in accordance with (rather than have regard to) the Code of Practice on School Admissions; there will be a statutory prohibition on interviewing for school admission; the current prohibition on selection for maintained schools, subject to current exceptions, is re-enacted in the Bill; and, local authorities would be able to propose a community school provided the Secretary of State consents.

Some commentators see the Government's concessions as meeting most if not all of their objections, while others remain deeply concerned about the 'direction of travel' of the reforms, arguing that the Government has become preoccupied with structures rather than standards. It has also been pointed out that the Government's desire to stress that the Bill

will not lead to *new* selection arrangements has underlined the fact that current selection will continue to be permitted.

Yet supporters of the proposals have urged the Government to go further in their reforms and want trust schools to be given greater independence.

The Conservative Opposition has indicated that it will support the Bill; however, the level of support that the Bill will receive from Labour backbench MPs remains uncertain. The Liberal Democrats believe that the Bill will reduce local accountability and entrench existing inequalities rather than eradicate them.

The Bill puts in place procedures for schools to acquire a foundation, and makes changes to school organisation to reinforce the role of local authorities as commissioners rather than providers of education, and to place new duties on them to promote choice, diversity and high standards.

The Bill also makes changes to school admission arrangements including strengthening the status of the Code on School Admissions, banning the use of interviews for admission, reaffirming the ban on new selection by ability, and giving new powers to school admissions forums. Other major changes include measures to tackle failing and under-performing schools more quickly; new specialised diplomas for 14 to 19 year olds; new powers relating to school discipline and provisions to extend the scope of parenting orders and parenting contracts; new arrangements for school transport including an extended duty on local authorities to provide free transport for the most disadvantaged families; and, measures to permit nutritional standards to be applied to food and drink supplied on school premises. The Bill creates a single inspectorate for children and learners. There are also provisions to empower the Chief Inspector to investigate complaints from parents about schools.

There has been widespread support for the proposed changes relating to school discipline. Although the reform of 16 to 19 education is generally welcomed, there has been a mixed reaction to the introduction of specialised diplomas and concern has been expressed about the timetable for their implementation. The school transport provisions build on those contained in the *School Transport Bill*, which fell when Parliament was prorogued for the 2005 General Election. This Bill places new duties on local authorities to promote sustainable school travel arrangements and gives new entitlements to free school travel. Like the previous Bill, this Bill makes provision to allow local authorities to pilot innovative school travel schemes that could include charging. The proposals in the previous Bill were controversial. At the time of writing there have been few comments specifically on the new school travel provisions.

This research paper provides an overview of the Bill and provides background on the Bill's most controversial provisions. It is not intended to be a clause by clause account nor can it set out the territorial extent of all of the provisions. For this information Members are referred to the Explanatory Notes, and the Regulatory Impact Assessment, on the Bill. The Bill is for England primarily. Some of its provisions apply to England and Wales, and some to England only and others to Wales only; certain general provisions extend to the UK.

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I Brief overview

The Bill seeks to implement proposals contained in the schools white paper, *Higher Standards, Better Schools for All* (the schools white paper).¹ It also makes provision for changes announced by the Chancellor in his March 2005 Budget to reduce the number of public service inspectorates.² The schools white paper followed the *DfES Five Year Strategy*.³

A. The schools white paper

Announcing the white paper on 25 October 2005, the Secretary of State for Education and Skills set out its six reform priorities:

First, to improve teaching and learning, we will provide significant new incentives for schools to tailor education to the needs of each and every child. There will be more use of small group and one-to-one tuition, particularly for those who fall behind. We will intensify our focus on literacy and numeracy, which are the keys to success in all subjects. There will be expanded opportunities for gifted and talented pupils. We will further encourage setting and grouping pupils by ability. We will continue to expand and improve provision for pupils with special educational needs, enabling far more special schools to join the successful specialist school movement and share their expertise widely with all local schools.

There will be a national delivery plan for the creation of the new specialised diplomas that I announced in February to transform educational choices for pupils beyond the age of 14. All of this will be underpinned by the Government's record investment in schools, including £335 million to be specifically earmarked for personalised learning within the new dedicated schools grant that I announced to the House last week. Work force reform and the increased use of information and communication technology will further transform the capacity of schools to meet the needs of each and every child.

Secondly, we will give all schools the independence that they need to drive radical improvements in standards and the flexibility to create real centres of excellence. Building on our successful specialist school and academies programmes, we will extend academy-style freedoms and opportunities to thousands of schools through new trust schools. These self-governing schools will be funded by local authorities but will partner with and be supported by not-for-profit trusts—established, for example, by successful educational foundations, leading schools and universities, parents' groups and voluntary organisations. These schools will bring extra dynamism to education. All schools will be eligible to be trust schools, alongside our planned 200 academies

¹ *Higher Standards, Better Schools for All*, Cm 6677, October 2005:
<http://www.dfes.gov.uk/publications/schoolswhitepaper/docs/Higher%20Standards,%20Better%20Schools%20For%20All.doc>

² Budget 2005, *Investing For Our Future*, March 2005

³ *DfES Five Year Strategy for Children and Learners*, July 2004, Cm 6272:
<http://www.dfes.gov.uk/publications/5yearstrategy/>

I am pleased to announce that a range of outstanding organisations, including Microsoft, the Open university, the Mercers Company and Thomas Telford school, the United Learning trust, the Church of England, KPMG and the Peabody trust have all agreed to work with us to develop the trust model, bringing to it extensive educational and school-management experience, together with strong links to local communities.

Thirdly, we will improve the choice of schools for parents by giving less affluent parents the means to make choice effective, and by putting in place much more rapid mechanisms for turning round and replacing failing schools. A choice between weak or failing schools is no choice at all. Schools that are still failing after a year will be closed, federated with another more successful school or replaced with an academy or another new provider. Our new inspection regime will focus on schools that are coasting as well as on those that are failing. We will raise the bar on underperformance across the system. In addition, we will improve the advice for parents on the options available. We will improve transport to school, particularly for the most deprived pupils where the cost of transport can be a barrier; and we will promote admission systems that extend access, and ensure fair admissions for all new schools.

The role of the parent does not stop with the choice of school. Education works best where schools and parents work together, with each recognising both their rights and their responsibilities. So fourthly, we will enable all parents to contribute much more fully throughout a child's school career, with better support, information and advice, especially at key transition points. We will place a new duty on governing bodies to have regard to parents' views. We will improve the quality and regularity of the dialogue between parents and schools, including reports at least once a term in place of the existing minimum of once a year. We will give parents a new right of complaint to Ofsted, if local procedures have been exhausted.

Fifthly, teachers and heads have asked us for better support to tackle disruption and ill-discipline, so we will implement Sir Alan Steer's recommendations, giving teachers a clear statutory right to discipline and giving schools an unambiguous power to set and enforce their own discipline codes. Parents will take their responsibilities seriously or face sanctions where they do not, including fixed penalty notices for parents who do not properly supervise pupils who are excluded from school. Pupils excluded for more than five days—not 15 days as now—will be expected to attend supervised education units.

Sixthly, we will underpin our reforms with a new and crucial role for local authorities. They will become the commissioner of education, the champion of the pupil and parent and the local strategic leader. They will tackle coasting and failing schools. They will oversee competitions to deliver new schools, and they will work with the office of the schools commissioner that I will create to promote new trust schools and academies in response to parental demand. Many local authorities are already pioneering that approach. We now need all our local authorities to do so.⁴

⁴ HC Deb 25 October 2005 cc 170-2

The main focus of political and media interest has been on the three linked proposals relating to trust schools, school admission arrangements and the powers of LEAs. Underlying this is a concern that trust schools would use their control over admissions to introduce either academic selection or more covert selection which would favour middle-class parents. There has been concern about the transfer of publicly owned assets to independent trust schools, and the role that will be played by private organisations, including businesses and faith groups. Moreover, some see trust schools as an irreversible step with no clear evidence of the benefits they will bring.

Labour backbench MPs and Lord Kinnock and Baroness Estelle Morris have expressed concern about the white paper's proposals for structural reform of the school system.⁵ Seven Labour MPs wrote a response to the education white paper as a basis for discussion in advance of the Bill.⁶

Ministers stressed that schools would have to operate within a fair admissions system underpinned by the DfES *Code of Practice on School Admissions*. However, the key question has been how the principles and good practice set out in the Code can be enforced. The role of the local authority as a commissioner rather than provider of schools has been highly contentious. The original proposal set out in the white paper (since revised, see below) was that all *new* schools would in future be academies, foundation schools or trusts, and that local authorities would not be able to establish new community schools.

B. The Education Select Committee's report

The Education Select Committee published a report on the white paper.⁷ The report was not supported by the three Conservative MPs on the committee. Although there was cross-party support on the 'in-school reforms,' such as those relating to school discipline, the Conservative MPs wanted the Government to have 'the courage of its own convictions' and go further in making radical structural reform.⁸ The majority report welcomed the proposals for more personalised education for pupils, measures to improve pupils' behaviour and discipline, and improvements in the quality of teaching and leadership. However, it expressed concerns about the proposals relating to trust schools, local authorities, and school admissions. While noting that the Secretary of State had said in her evidence to the committee that trust schools were not a new invention but were foundation schools, the committee called for much more detail and clarity to be provided on the process involved in becoming a trust school. It also made recommendations on admissions to ensure that core elements of the *Code of Practice on School Admissions* would be mandatory, and proposed a new role for local authorities and the proposed Schools Commissioner in ensuring that admission authorities comply

⁵ "Schools up for sale", *Guardian*, 20 February 2006, p33; "Education reforms are still on the wrong track" (by Michael Meacher MP) *Independent*, 9 February 2006, p33

⁶ *Shaping the Education Bill Reaching for Consensus*, by Estelle Morris, John Denham, Alan Whitehead, Nick Raynsford, David Chaytor, Angela Eagle and Martin Salter, 14 December 2005

⁷ *Schools White Paper: Higher Standards, Better Schools For All*, First Report of Session 2005-06, HC Paper 633-I: <http://www.publications.parliament.uk/pa/cm200506/cmselect/meduski/633/63302.htm>

⁸ The three Conservative Members' views are noted in the Committee's Formal Minutes of its meeting of 25 January 2006.

with the Code. The committee envisaged that its proposals would enhance the role of local authorities, and that local authorities would retain their provider role. The committee argued that there was no reason why local authorities should not be able to propose new community schools when there are competitions for new schools.

C. The Government's response and the Bill

The Education and Skills Secretary sought to address these concerns in her responses to the Select Committee, and elsewhere.⁹ The Government's formal response to the Select Committee's report was published alongside the Bill. Many of the main points are noted in the rest of this research paper under the headings matching the Bill's parts. In summary, the concessions which are included in the Bill are:

- Admission authorities will be required to act in accordance with (rather than have regard to) the Code of Practice on School Admissions. There will also be greater powers for School Admissions Forums;
- There will be a statutory prohibition on interviewing for school admission; and,
- A local authority will be able to propose a community school provided the Secretary of State consents. Proposals will be determined by the Adjudicator.

Also, to highlight that the Government does not support selection by ability and does not wish to see it extended, the Bill makes provision to re-enact the current prohibition on selection on the basis of ability in any maintained school, subject to current exceptions. The current permitted forms of selection will continue – i.e. those currently permitted under section 99(2) of the *Schools Standards and Framework Act 1998*, i.e. grammar schools, schools that had partial selection procedures in place in 1997-98; specialist schools that select up to 10% of their intake on the basis of aptitude in their specialist area(s), and, in certain circumstances, all-ability schools that use fair banding. Section IV, F of this paper provides further background on this, and on the other provisions in the Bill on admissions, including the prohibition on interviewing.

The Bill makes no specific reference to trust schools as such because in law they will be foundation schools with a foundation. The Bill puts in place procedures for schools to acquire a foundation, makes changes to school organisation to reinforce the role of local authorities as commissioners rather than providers of education, and, as noted above, makes changes to school admission arrangements. The Bill also proposes a wide-range of other measures including:

⁹ Letter from the Secretary of State for Education and Skills to the chairman of the Education and Skills Committee, dated 6 February 2006: <http://www.dfes.gov.uk/hottopics/docs/ruth%20kelly%20letter.pdf>; The Government's Response to the House of Commons Education and Skills Committee Report on the Schools White Paper, Cm 6747, February 2006: <http://www.dfes.gov.uk/publications/educationandinspectionsbill/docs/Response%20to%20Education%20Select%20Committee%20Cm%206747.pdf>

- measure to tackle failing schools more quickly;
- new statutory entitlements relating to science GCSEs and new specialised diplomas for 14 to 19 year olds;
- new arrangements for school transport;
- measures to permit nutritional standards to be applied to food and drink supplied on school premises;
- new powers for teachers and other staff to improve pupils' behaviour and discipline in school and to extend the scope of parenting orders and parenting contracts;
- the creation of a single inspectorate by bringing together into Ofsted, the children's social care remit of the Commission for Social Care Inspection (CSCI), the Children and Family Court Advisory and Support Service (CAFCASS) inspection remit of Her Majesty's Inspectorate of Court Administration (HMICA) and, the inspection remit of the Adult Learning Inspectorate (ALI);
- provisions to empower the Chief Inspector to investigate complaints from parents about schools;
- powers for innovation to be extended to further education institutions and qualifying foundations;
- powers to repeal references to 'local education authority' and 'children's services authority' to facilitate the integration of children's services following the *Children Act 2004*;
- provisions to enable the DfES to collect individual information about children receiving education funded by LEA other than at a school;
- regulation making powers to facilitate collaboration between maintained schools and further education institutions;
- provisions to put the governing bodies of maintained nursery schools on a similar footing to the governing bodies of other maintained schools where they are acting unreasonably or are in default of their powers;
- powers for the Learning and Skills Council for England to manage and fund particular types of support for learners;
- amendment to the leasehold reform legislation in relation to university bodies; and
- framework powers for Wales (which are a forerunner of the proposed changes in the regulation making powers of the National Assembly for Wales as proposed in the Government of Wales Bill).

A clause by clause account of the Bill is provided in the Explanatory Notes on the Bill.¹⁰ The Explanatory Notes also look in detail at the compatibility of the Bill's provisions with Human Rights legislation. The Regulatory Impact Assessment gives a cost/benefit analysis of the Bill's provisions.¹¹ In addition, there is a Race Equality Impact Assessment of the Bill, and a short DfES guide to the Bill's main provisions.¹²

¹⁰ Education and Inspections Bill, Bill 134-EN:

<http://www.publications.parliament.uk/pa/cm200506/cmbills/134/en/06134x--.htm>

¹¹ DFES, *Regulatory Impact Assessment, Education and Inspections Bill 2006*, 28 February 2006:

<http://www.dfes.gov.uk/publications/educationandinspectionsbill/docs/Regulatory%20Impact%20Assessment.pdf>

¹² <http://www.dfes.gov.uk/publications/educationandinspectionsbill/>

The Bill is primarily for England; however, some of its provisions extend to England and Wales with the exception of certain general provisions which extend to the UK. Some provisions apply to England only, to England and Wales, or to Wales only. Annex A of the Explanatory Notes sets out in detail the territorial application of the Bill's provisions, and Members are advised to consult this and the Bill itself if they wish to check the territorial application any particular provision.

D. Reaction

Press reports suggest that the Government's concessions (see above) were sufficient to allay the fears of a significant number of Labour MPs and others who were opposed to the original proposals in the white paper although it is suggested that there remain significant numbers who are still opposed to the key reforms.¹³ Some commentators remain deeply concerned about the 'direction of travel' of the reforms, arguing that the Government has become preoccupied with structures rather than standards. It has also been pointed out that the Government's desire to stress that the Bill will not lead to new selection has underlined the fact that current selection will continue to be permitted.¹⁴

Some commentators are strongly in favour of the proposals, and there are those who have urged the Government to go further in their reforms and have argued the case for trust schools to be given greater independence.¹⁵

The similarities between past Conservative education policies and the Government's proposals have been pointed out.¹⁶ The Conservative Opposition has said that it will support the Bill as a step in the right direction.¹⁷

The Liberal Democrats view the Bill as a lost opportunity, and have urged the Government if it wishes to be truly radical to address 'the outdated curriculum, lack of expert teachers and giving real choice to pupils to engage them in learning'.¹⁸ They also believe that the Bill will reduce local accountability and entrench existing inequalities rather than eradicate them.¹⁹

More generally, some commentators have pointed out that the Government's proposals for greater school autonomy may present problems for implementing the *Every Child Matters* reforms which integrate services for children. Even before the schools white paper there was concern that co-operation between schools, social services and health

¹³ "Blair buys off rebels with concessions on education plans", *Independent*, 7 February 2006, p4; "Schools Bill published with a complete absence of trust", *Times*, 1 March 2006, p4; "Blair seeks his defining moment", MPs must now vote for the Bill", *Independent*, 2 March 2006, p3 *TES*, 3 March 2006, pp17 and 18; "This is time for rejoicing", article by Roy Hattersley, *Guardian*, 6 March 2006, p31; "Blair warns Education Bill rebels not to let in the Tories", *Independent*, 8 March 2006, p16

¹⁴ e.g. "Remember 'standards not structures..?' *TES*, 3 March 2006, p2

¹⁵ e.g. "Freedom on a leash is not enough for our schools", *Financial Times*, 20 February 2006, p17; "At last, a chance for every child", *Observer*, 5 March 2006, p34

¹⁶ "Labour MPs will be voting for an old Tory education bill", *Guardian*, 1 March 2006, p31

¹⁷ "Tories agree to bail out Labour over schools Bill", *Daily Telegraph*, 1 March 2006, p2

¹⁸ "Don't risk our future, Blair tells school bill rebels", *Guardian*, 28 February 2006, p13

¹⁹ Liberal Democrat Press Notice, *Blair's plans will entrench unfairness in education system*, 24 February 2006; Liberal Democrat Press Notice, *Education Bill must focus on standards not structures*, 28 February 2006

services would not be sufficiently effective if there was no formal requirement on schools to co-operate with other agencies.²⁰

There has been general support for the proposed changes relating to school discipline. The reform of 16 to 19 education is welcomed though there has been a mixed reaction to the specialised diplomas and concern has been expressed about the timetable for their implementation. The school transport provisions build on those contained in the *School Transport Bill*, which fell when Parliament was prorogued for the 2005 General Election. The present Bill places new duties on local authorities to promote sustainable school travel arrangements and gives new entitlements to free school travel. Like the previous Bill, this Bill makes provision to allow local authorities to pilot innovative school travel schemes that could include charging. The proposals in the previous Bill were controversial. At the time of writing there have been few comments specifically on the new school travel provisions.

Few detailed responses to the actual Bill have been produced at the time of writing. The following includes a selection of initial responses.

Councillor Alison King, chair of the Local Government Association children and young people board, said:

"Our discussions with the Government have been fruitful and we're pleased with the concessions. It is good that the bill emphasises the importance of the strategic commissioning role of the local authority, including the recognition that local authorities should be able to open community schools, where this is what parents want. However we object to the introduction of a potential veto from the Secretary of State.

"Many of our initial fears on a divisive admissions free-for-all have been eased and the tighter safeguards that have been added should ensure pupils get a fairer chance of choosing the schools they want.

"Local authorities must be in the front line in ensuring admissions policies meet the needs of all children, not the needs of schools. The Government has accepted that an unregulated admissions system is not the way forward, but its measures do not go far enough.

"All schools must face the same rules. Academies need to be an integral part of the local family of schools - taking hard-to-place pupils, and those with special educational needs."²¹

The revised proposals as set out in the Bill have had a downbeat response from teaching unions.²² Some of the proposals, notably on school discipline, have been welcomed but there remains concern about trust schools.

²⁰ Select Committee report on the schools white paper, paragraphs 76 to 78

²¹ LGA Press Notice, *Fears on admission free-for-all eased*, 28 February 2006, <http://www.lga.gov.uk/PressRelease.asp?Section=0&id=SXE5A-A7837B73>

²² BBC News Education, <http://news.bbc.co.uk/1/hi/education/4758554.stm>

The National Association of Head Teachers (NAHT) has commented:

The Education Bill is likely to be good in parts, but we still have grave concerns about the Government's obsession with structures when we believe that they should be putting all their efforts into ensuring that our schools have permanent and supported leadership teams.

We welcome the underlining of the schools' powers to disciplinary sanctions. The basis of a well run school is good discipline administered in a fair and just manner. It is of deep concern that there is a cohort of children and young people determined to undermine the authority of schools. The disciplinary measures contained within the Bill will support schools in taking the tough action required to ensure good behaviour.

So far as Trust Schools are concerned, once you strip away rhetoric, one must ask what are the freedoms available to Trust Schools that are not already enjoyed by Community and Foundation schools. There is no requirement for schools to purchase services from the local authority at present. However, there are some issues that need to be defined on a local basis such as admissions and the provision of special educational needs. The NAHT does not wish to see those structures removed.

We are concerned that not only has the Government lost the confidence of some of its parliamentary party, but also a large section of the education community. There is much work to be done to repair this damage.²³

The National Union of Teachers (NUT) sees the Bill as a 'missed opportunity':

Commenting on the new Education Bill published today, Steve Sinnott, General Secretary of Europe's biggest teachers' organisation, the National Union of Teachers, said:

"This Bill is a missed opportunity rather than a defining moment. A Labour government in its third term could have built on its successes in funding and in establishing universal nursery education. "Instead it has chosen to pursue the dead end of more structural reform insisting on trust schools when there is no evidence that they will do anything to raise standards.

"The proposals in the Bill which support teachers' efforts in tackling bad pupil behaviour are overshadowed by the Government's obsession with so-called choice and diversity.

"The Government's claim that specialist schools represent a model for trust status is false. Specialist schools are community schools happy to work with their local authorities and value the support they provide.

²³ NAHT, *Education Bill (Schools White Paper): Government Loses The Confidence Of The Education Community*, 28 February 2006:
<http://www.naht.org.uk/themes/campaign-item-view.asp?ID=2767&sid=47>

“If the Government had really wanted to tackle selection, it should have wiped out schools’ ability to select by aptitude. The retention of such procedures allows the Conservatives to propose, in effect, a return to the 11-plus.

“Unchecked school expansion will be costly and wasteful, leading to other schools closing resulting in damage to surrounding communities.”²⁴

The Association of Schools and College leaders (ASCL) commented:

“We have made it very clear to the prime minister and education ministers which elements of the bill will have a favourable impact in schools and which we are most concerned about.

We are very pleased to see that the recommendations to support headteachers in personalising the curriculum and in improving pupil behaviour have remained intact.

We will welcome trust schools if they are used to promote partnerships and collaboration, but we are extremely concerned at the proposal for individual schools to acquire trust status. If an obligation to collaborate were placed on these schools, it would ensure that we avoid returning to a two-tier system.

The vast majority of school and college leaders strongly support collaboration but the government needs to put in place stronger incentives to encourage collaboration and partnership work.

There has been no great interest in trust status from headteachers and it is unlikely that many schools will go down this route, since it is so similar to foundation status already held by several hundred schools.”²⁵

The NASUWT commented in advance of the Bill:

“We are not expecting any big surprises in the Bill but clearly we will be looking carefully at the developments with regard to certain issues such as trusts and admissions, following the heated internal debate in the Labour Party which surrounded the publication of the White Paper.

“NASUWT is well prepared to deal with the Bill. Having comprehensively analysed the White Paper, the Union’s National Executive has already determined the policy direction for making representations on the Bill.

“The Bill presents the opportunity to make progress on a number of important issues, not least the nature of the relationship between local authorities and all state funded schools in their area. The present relationship lacks clarity and cohesion. It allows schools to dispose of public money, manage the workforce and in some cases flout the law outwith the necessary democratic accountability. Getting this relationship right will be a key priority for NASUWT.

²⁴ NUT, *Government misses opportunity with new Education Bill*, 28 February 2006: <http://www.teachers.org.uk/resources/pdf/pr1006.pdf>

²⁵ ASCL, *Dr John Dunford, General Secretary, comments on the education bill*, 28 February 2006: <http://www.ascl.org.uk/default.aspx?id=NewsItem&cmnID=4269>

“Superficial debate through the media has been the main forum for the discussion on the White Paper. Its time to move to more serious and detailed consideration to ensure that the Bill enhances and protects the concept of state education. “NASUWT will be using the Parliamentary process and the opportunities presented by working in social partnership with the Government to engage in constructive dialogue and pursue our policy objectives.”²⁶

The Professional Association of Teachers (PAT) described the Bill as ‘depressingly familiar’:

PAT General Secretary Philip Parkin said: “I’m sure I’m not the only one experiencing a sense of déjà vu. It seems that nothing has changed since the minor tweaks made to the White Paper’s proposals earlier this month. It’s all depressingly familiar.

“Our serious concerns about admissions, the future of local authorities and the role of Trust Schools and their backers remain.

“Encouraging competition between schools in this way will mean that some will fail, with dire consequences for pupils and staff.

“The Government should not be in the business of building failure into the education system or experimenting with schools and children for ideological reasons.”

Commenting on the discipline measures in the Bill, Philip Parkin said: “Before I became PAT General Secretary, I was on the Practitioners’ Group on Pupil Behaviour and Discipline (Steer Group). I am therefore pleased to see that the Bill has taken on board the Group’s key recommendations to clarify teachers’ rights in disciplining pupils.

“Parents and pupils have rights but they also have responsibilities. Maintaining good order, whether in the classroom, in the playground or on the school bus, is essential to enable teachers to teach and children to learn.

“Good behaviour is something that can be taught and learned.”²⁷

Mike Baker, the BBC’s education correspondent, has asked why the Government sees the Bill as ‘pivotal’ to its modernisation reforms, and answers the question as follows:

Yet the question remains: why does Labour feel it has to do this?

Talk to insiders in the so-called “new Labour project” and you realise the importance to the whole strategy of getting the middle-classes to use the public services.

As one former Downing Street adviser put it: “we have to persuade the critical mass of people to switch from private to public services”.

²⁶ NASUWT Press Notice, *End superficial media debate and focus on the real issues*, 28 February 2006

²⁷ PAT Press Notice, *Education Bill depressingly familiar*, 28 February 2006

II Education functions of local authorities (Part 1 of the Bill)

Part 1 of the Bill places new duties on local education authorities (LEAs) to promote the fulfilment by children of their educational potential, to promote diversity and choice in the provision of schools, to consider representations from parents about school provision in their area, to identify children not receiving education, and to provide for the appointment of School Improvement Partners (SIPs). It also places new duties on LEAs relating to access to recreational activities for young people.

A. Duties in relation to high standards and the fulfilment of potential

At present sections 13 and 14 of the *Education Act 1996* place general duties on LEAs to secure education to meet the needs of the population of their areas, and to promote high standards.

The schools white paper envisages local authorities undertaking a commissioning role through which they will promote choice and diversity as well as high standards. The aim is to ensure that all local authorities actively seek to maximise choice for parents and ensure that there is a diverse range of schools to meet local needs. Clauses 1, 2 and clause 3 (see below) seek to ensure that when local authorities are carrying out their strategic duties they promote choice and diversity and respond to parental demand.

Clause 1 of the Bill re-enacts, with amendments, section 13A of the 1996 Act to require LEAs to exercise their functions with a view to promoting the fulfilment of every child of his educational potential as well as with the view to promoting high standards.

B. Duties in relation to diversity and choice

Clause 2 amends section 14 of the 1996 Act to require LEAs to exercise their powers with a view to securing diversity in the provision of schools and to increase opportunities for parental choice.

Commenting on the schools white paper, the Local Government Association (LGA) said that the proposed duty on local authorities to provide diversity and choice ‘illustrates the Government’s fixation with structures rather than standards.’ It also noted that the existing legislation already places an obligation on authorities to act in the best interests of the community they represent, and that local authorities want to be held accountable for that and not whether they have the ‘right’ number of academies and trust schools.³¹

³¹ *Memorandum submitted by the LGA to the Education and Skills Committee*, The schools white paper, First report of Session 2005-06, Volume II, Oral and written evidence, HC Paper 633-II, Ev 14

C. Duty to consider parental representations

Under clause 3 parents will be able to make their views known to the LEA and the LEA will be required to consider what action to take in response to such representations, having regard to guidance from the Secretary of State.

In its comments on the schools white paper, the LGA acknowledged that it is important that parents are consulted on and involved in changes to schools in their area. However, it noted that local authorities have to make strategic decisions based on the concerns of all parents rather than having to meet the demands of the loudest and most eloquent. More generally, it said that it did not think that the white paper's proposals move the balance of power from schools to parents.³²

D. Duty to identify children not receiving education

Clause 4 places a new duty on LEAs to make arrangements to identify children of compulsory school age missing education in their area. There is no official figure for the number of children missing education - i.e. children of compulsory school age who are neither on a school roll nor being educated otherwise (for example, at home or in alternative provision). An estimate that has been quoted by Ofsted is 10,000.³³

E. School improvement partners

New lighter-touch school inspection arrangements were introduced under the *Education Act 2005*. The changes followed *A New Relationship with Schools*, published in June 2004 by the Office for Standards in Education (Ofsted) and the Department for Education and Skills (DfES). At the heart of the new inspection regime is the school's self-evaluation and School Improvement Partners (SIPs). The idea is that SIPs will act as a professional critical friend to a school, and play a central role in improving the school and helping to find the support a school may need. SIPs are expected to be serving or recent head teachers or other professionals who have relevant experience.³⁴ They are accredited by the National College for School Leadership. The schools white paper gave commitments that all secondary schools would have a SIP by Autumn 2006.³⁵ SIPs for primary schools will be phased in nationally thereafter.

Clause 5 requires LEAs to appoint School Improvement Partners (SIPs) to all their maintained schools (except nursery schools), and empowers the Secretary of State to make regulations for other requirements on LEAs and schools in relation to SIPs.

Generally speaking, the principles underlying *A New Relationship with Schools* were welcomed at the time and subsequently. However, some concern has been expressed

³² *ibid.*, paragraphs 37 to 39

³³ DfES, *Regulatory Impact Assessment: Education and Inspections Bill 2006*, paragraph 2.2: <http://www.dfes.gov.uk/publications/educationandinspectionsbill/docs/Regulatory%20Impact%20Assessment.pdf>

³⁴ HL Deb 19 January 2005 WA109

³⁵ Schools white paper, p38 paragraph 2.62

about whether SIPs can provide the same level of support that schools have received in the past from external advisers.³⁶

F. Functions in respect of recreation etc.³⁷

Clause 6 of the Bill amends the Education Act 1996 by introducing duties on local authorities in England in respect of recreational facilities for children under the age of 13, leisure-time activities for young person aged 13-19, and persons with learning difficulties aged 20-24.

The new provisions will be inserted into the 1996 Act as sections 507A and 507B. Each local authority is under a duty to publicise information about its leisure-time activities and keep this information up to date (new section 507B(9)). Clause 6 also amends the current provisions relating to recreational training in section 508 of the 1996 Act, by limiting them to Wales.

The provisions in clause 6 of the Bill stem from the Government's Green Paper, *Youth Matters*.³⁸ In the consultation document the Government stated:

Local Authorities, working through children's trusts, have a key role to play in commissioning and providing activities and facilities for young people. To help ensure that activities are of a more consistent quality and that they meet the needs of young people we propose:

- to legislate to clarify Local Authorities' duty to secure positive activities for all young people;
- to provide statutory guidance for Local Authorities setting out a new set of national standards for the activities that all young people would benefit from accessing in their free time;
- that each Local Authority, working, through children's trust arrangements, should, within existing resources, develop an annual local officer to communicate clearly the national standards available locally.³⁹

The current provisions for youth recreation services are provided by local authorities under section 508 of the 1996 Act. However the Regulatory Impact Assessment to the Bill describes the quality and capacity of the current provision of services as "highly variable".⁴⁰ It is intended that the statutory guidance under the Bill will "help ensure quality and consistency".⁴¹

³⁶ *Memorandum submitted by the National Governors' Council to the Education and Skills Committee*, The schools white paper, First report of Session 2005-06, Volume II, Oral and written evidence, HC Paper 633-II, Ev 91, paragraph 4.9

³⁷ This section was written by Manjit Gheera, Social Policy Section

³⁸ Department of Education and Skills (July 2005); Cm 6629

³⁹ *Ibid*, pg 6

⁴⁰ Para 4.3, Regulatory Impact Assessment to the Education and Inspections Bill 2006

⁴¹ *Ibid*, para 4.2

III Establishment, discontinuance or alteration of schools (Part 2 of the Bill)

A. Background

1. Current categories of schools in England

The *School Standards and Framework Act 1998* established a new framework for the organisation of schools.⁴²

Briefly, **community schools** are similar to former county schools. The LEA employs the school's staff, owns the school's land and buildings and is the admissions authority.

At **foundation schools** the governing body is the employer and the admissions authority. The school's land and buildings are either owned by the governing body or by a charitable foundation. Foundation schools with a foundation are not a separate category of school. It has been estimated that currently 96 foundation schools have foundations, comprising about 11% of the total number of foundation schools.⁴³

Voluntary schools are either voluntary aided or voluntary controlled.

Voluntary aided schools are similar to the former aided schools. The governing body is the employer and the admissions authority. The school's land and buildings (apart from playing fields which are normally vested in the LEA) will normally be owned by a charitable foundation. The governing body contributes to the capital costs of establishing the school and subsequent capital building work.

Voluntary controlled schools are very similar to former controlled schools. The LEA is the employer and the admissions authority. The school's land and buildings (apart from the playing fields which are normally vested in the LEA) will normally be owned by a charitable foundation.

Foundation, voluntary-aided and voluntary controlled schools may be designated by the Secretary of State as having a religious character. Such schools provide denominational collective worship. Faith schools have been supported by the Prime Minister on the grounds of their distinctive ethos and perceived academic success. The *Education Act 1944* provided for religious schools to be part of the maintained sector. Schools were designated as voluntary-aided (mainly Catholic) and voluntary controlled (mainly Church of England). In the maintained faith school sector, Roman Catholic and Church of England schools dominate, though there is now a small but increasing number of Muslim, Sikh and Jewish maintained schools.⁴⁴

⁴² The Definitions of the different categories of school are given on the DfES Edubase: <http://www.edubase.gov.uk/Glossary.aspx>

⁴³ HC Deb 27 February 2006 c 532W

⁴⁴ House of Commons Education and Skills Committee, *Secondary Education: Diversity of Provision, Fourth Report of Session 2002-03*, HC Paper 94, 22 May 2003, paragraphs 25 and 26: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmmeduski/94/9402.htm>

The composition of governing bodies varies between school categories. Between March 2003 and 31 August 2006, school governing bodies had to choose and adopt a new constitutional model.

Where a school governing body wishes to change category it must follow a statutory process. Detailed guidance is available on the DfES school organisation website.⁴⁵ *The Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2005*, which came into effect on 1 August 2005, made provision for a fast-track procedure for foundation school status.⁴⁶ A DfES Explanatory Memorandum on the regulations explains the legislative and policy background to them.⁴⁷ The Regulations were debated in the House of Lords on 26 October 2005.⁴⁸

For detailed information about the operation of community, foundation and voluntary schools see the DfES *Guide to the Law for School Governors*.⁴⁹

As at January 2005, there were 21,027 maintained schools in England, of which 13,154 were community schools, 4,313 were voluntary-aided, 2,681 were voluntary controlled, and 879 were foundation schools.⁵⁰

The term **grammar school** is applied to a maintained school (community, foundation or voluntary) that had selective admission arrangements on the basis of high ability for all or a substantial proportion of its intake at the beginning of the 1997-98 school year. There is no provision for new grammar schools to be established. Existing grammar schools may become non-selective through a parental ballot under the *School Standards and Framework Act 1998*.

Other descriptions of maintained schools are not statutory categories - for example, **specialist schools**. The specialist school programme started in 1994 and was restricted to an elite group of grant-maintained schools and voluntary-aided schools that wished to specialise in technology. Subsequently the initiative was extended to other specialisms. Maintained secondary schools in England can apply for specialist status in one of the permitted specialisms. Acquiring specialist school status does not change a school's formal category – community, foundation, voluntary. Schools that acquire specialist status receive additional funding to implement their development plans, and as part of their applications they have to find sponsorship funding. The specialist schools initiative is a major part of the Government's policy to raise standards by creating a more

⁴⁵ <http://www.dfes.gov.uk/schoolorg/>

⁴⁶ SI 2005 No. 1731: <http://www.opsi.gov.uk/si/si2005/20051731.htm>

⁴⁷ http://www.opsi.gov.uk/si/em2005/uksiem_20051731_en.pdf

⁴⁸ HL Deb 26 October 2005, cc 1278-62:

http://pubs1.tso.parliament.uk/pa/ld200405/ldhansrd/pdvn/lds05/text/51026-26.htm#51026-26_d10

⁴⁹ There used to be separate versions of the guidance for each type of school but the 2006 version incorporates the separate versions into a single document:

<http://www.governornet.co.uk/publishArticle.cfm?topicAreaId=9&contentId=1133>

⁵⁰ DfES Statistical First Release, *Schools and Pupils in England*, SFR 42/2005, 28 September 2005

diverse secondary school system. However, the Education Select Committee has questioned the expansion of the programme.⁵¹

There are also publicly-funded independent schools:

- **City Technology Colleges** (CTCs) are publicly funded independent all-ability, non fee-paying schools for pupils aged 11-18. They were established in urban areas with the help of private sector sponsors. CTCs were a flagship policy of the Conservative governments of the late 1980s and 1990s. CTCs offer a broad curriculum but place emphasis on science, technology or on technology in its application to the performing arts. CTCs are run in accordance with their funding agreements and schemes of governance. There are no new CTCs but existing CTCs may become academies.
- **Academies** (formerly called City Academies), introduced by the Labour Government, are publicly funded independent schools established by sponsors from business, faith or voluntary groups working in partnership with central government. Sponsors and the DfES provide the capital costs for the Academy. Running costs are met in full by the DfES.⁵² Academies usually replace one or more local education authority maintained schools but they may be established as entirely new schools. They may be established in urban or rural areas and cover any pupil age group. They offer a broad curriculum but place an emphasis on one or two areas. Academies operate under individual contracts with the Secretary of State. The admission arrangements for each Academy are agreed with the Secretary of State as a condition of the funding agreement. Like other schools, academies may introduce up to 10% selection by aptitude if they have a specialism in a prescribed subject (see section IV, F2 of this paper for background on selection by aptitude).

As at January 2005, there were 14 City Technology Colleges and 27 Academies.⁵³ The Government's aim is that by 2010 at least 200 Academies will be open or in the pipeline in areas of traditionally low standards.

2. School organisation and decision-making

Complex statutory provisions govern the opening, closing and changing of maintained schools. Generally speaking, decisions are for local determination. The current provisions are set out in the *School Standards and Framework Act 1998*, and in regulations made under the Act. DfES guidance on the arrangements is contained in *Guidance on School Organisation*.⁵⁴ Significant changes in the organisation of schools may not be made without the publication and approval of statutory proposals.

⁵¹ *Secondary Education: Diversity of Provision*, Fourth Report Session 2002/03, HC Paper 94, available electronically at: <http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmmeduski/94/94.pdf>

⁵² http://www.standards.dfes.gov.uk/academies/what_are_academies/?version=1

⁵³ DfES Statistical First Release, *Schools and Pupils in England*, SFR 42/2005, 28 September 2005

⁵⁴ <http://www.dfes.gov.uk/schoolorg/>

a. School Organisation Committees

The School Organisation Committee (SOC) decides statutory proposals for changes to schools. If the SOC cannot agree unanimously, proposals are decided by the Schools Adjudicator. The current roles of the SOC the Schools Adjudicator and the Secretary of State are set out in the DfES school organisation guidance.

SOCs were established under the *School Standards and Framework Act 1998*, and each SOC consist of five groups: the LEA, Church of England and Roman Catholic dioceses for the area, schools, and the Learning and Skills Council. A sixth group can be added to cater for particular local interests.

Part of the rationale for setting up SOC was to increase local decision-making, and to make it easier for providers to put forward proposals for establishing or changing schools. However, the schools white paper said that SOC had added to the bureaucracy and were biased in favour of the status quo. Therefore the white paper announced that they would be abolished and their decision-making powers transferred to local authorities. The white paper said that guidance to local authorities would make it clear that there should be no arbitrary obstacles preventing good school expansion or federation.⁵⁵

There has been some concern about the abolition of SOC. For example, NAHT opposes the change pointing out that SOC are a useful local decision making body.⁵⁶ Similarly, the NGC does not support their abolition. It said that it was unfair of the Government to suggest that SOC always support the status quo against new providers, and noted that while removing the SOC may appear to reduce bureaucracy, it would remove one of the checks and balances in the system.⁵⁷ The Audit Commission has pointed out the abolition of SOC will remove a potential line of accountability and a source of challenge. In the absence of SOC, the Audit Commission has suggested that the Government should acknowledge explicit advisory levels of acceptable levels of surplus places within an area.⁵⁸

b. Schools Adjudicators

Schools Adjudicators are appointed by the Secretary of State but operate independently. The Adjudicator looks afresh at proposals and like the SOC must have regard to the guidance issued by the Secretary of State. The current powers of Adjudicators are set out in section 90 of the 1998 Act.

⁵⁵ Schools white paper, paragraph 9.12

⁵⁶ *Memorandum submitted by the NAHT to the Education and Skills Committee*, The schools white paper, First report of Session 2005-06, Volume II, Oral and written evidence, HC Paper 633-II, Ev 70, chapter 9

⁵⁷ *Memorandum submitted by the NGC to the Education and Skills Committee*, Ev 93, paragraph 11.3

⁵⁸ Audit Commission. *Consultation response to Higher Standards, Better Schools for All*, January 2006, paragraph 13

3. Proposals for new schools and the role of the LEA

The Government is keen to encourage the widest possible range of promoters to come forward with proposals for schools, and it wants local authorities to be commissioners of school provision rather than providers of schools.

Section 70 of the *Education Act 2002* requires local authorities to invite proposals for new schools where there is a need for an additional secondary school. The regulations currently in force on the arrangements under section 70 are *The Education (Additional Secondary School Proposals) Regulations 2003*, as amended.⁵⁹ This legislation applies only to brand new schools (essentially to meet new demand) and not replacement schools, and only to secondary schools. The main guidance on the procedures is contained in the *Additional Secondary School Promoter Guide*. The guidance states:

7. The Government believes that promoters have a valuable role to play in achieving a high performing, dynamic and diverse secondary education system. It has reflected this belief in new legislation that gives promoters a right to put forward their proposals for a new secondary school whenever there is a need for an additional secondary school in an area.

8. The Education Act 2002 (“the Act”) introduced a new requirement on LEAs where there is a need to set up an additional secondary school. From June 2003, where an LEA decides that an additional, wholly new secondary school is needed, it has to publish a notice inviting other interested parties to bring forward proposals for that school before publishing any proposal of its own. The LEA has then to publish a summary of all proposals put forward giving all local people the opportunity to comment on the options. The Secretary of State, in the light of any comments by the School Organisation Committee (“the SOC”) following this local consultation, will make the final decision on which proposal to support. Further details on the role of the SOC and the decision making process are given in Annex 1 of this guidance.

Promoters might include parent and community groups, private and charitable companies, voluntary groups including church and faith communities, those offering distinctive education philosophies, and existing schools or consortia of schools. Some promoters may already have extensive experience in running schools; those with less experience may decide to work with educational advisors to support them. All promoters should be committed to the highest standard of education for all pupils, including those with SEN. They will be expected to help raise educational standards, promote community cohesion and inclusiveness and contribute to the LEA’s strategic plans to increase diversity in secondary provision.⁶⁰

However, the Government wanted to make it easier for new promoters to open schools in response to local demand.⁶¹

⁵⁹ SI 2003 No 1200: <http://www.opsi.gov.uk/si/si2003/20031200.htm> and SI No 1421 (which corrected an error in the principal regulations): <http://www.opsi.gov.uk/si/si2003/20031421.htm>

⁶⁰ *Additional Secondary School Promoter Guide*, which is part of the DfES guidance on school organisation, and is available at <http://www.dfes.gov.uk/schoolorg/guidanceview.cfm?Expand=True&id=47>

⁶¹ Cm 6272, July 2004: <http://www.dfes.gov.uk/publications/5yearstrategy/docs/DfES5Yearstrategy.pdf>

Section 66 of the *Education Act 2005* extended the requirement for competitions to all new secondary schools, whether as an additional school or as a replacement for one or more existing schools. (Provision is made under section 65 of the Act for the Secretary of State to consent to the publication of proposals outside a competition.) The school competition provisions in the 2005 Act have not yet been brought into force.

The DfES has been consulting on regulations and guidance on the provisions. The consultation package, *School Organisation: Consultation on Secondary School Competitions and Guidance Changes*, was issued on 16 February 2006, and is available on the DfES website.⁶² The consultation is to implement the changes resulting from the 2005 Act and does not reflect further developments in the schools white paper. The schools white paper envisages extending the competitive requirements to all maintained schools, including primary schools (see below).

To date there have been no competitions held by local authorities to find alternative providers for new schools under the 2002 Act and, as noted above, the regulations implementing the 2005 Act's provisions are currently out for consultation.⁶³

Under the 2002 Act competitions for schools would be decided by the Secretary of State. However, under the 2005 Act the SOC would make the decision. (Where the SOC cannot reach a unanimous decision the matter would be referred to the Schools Adjudicator.) As the Bill will abolish SOCs it is proposed that competitions will be decided by the local authority (or the Schools Adjudicator if the local authority itself enters the competition – see below).

The schools white paper envisaged a new role for local authorities as the champions of parents and pupils in getting the school system they want, and it proposed that the provision of schools should be opened up to greater competition with local authorities rather than SOCs being responsible for school organisation decisions. The local authority would promote choice, diversity, fair access as well as high standards; ensure a sufficient supply of school places - letting popular schools expand or federate, and closing schools that are poor or fail to improve; and help all schools improve standards through SIPs, and take decisive action where schools fall below expectations.

The white paper had proposed that all new schools would in future be academies, foundation schools or trust schools, and that there would be no new community schools. This has been highly controversial. The Education Select Committee and backbench MPs made the case for local authorities retaining their powers to propose new community schools. In response, the Government has accepted that there may be occasions where a community school may be the best option to meet local needs. Therefore under the Bill local authorities will be able to propose a community school provided the Secretary of State gives her consent. Proposals will be decided by the Adjudicator. This concession has been welcomed though there remains concern about

⁶² *School Organisation: Consultation on Secondary School Competitions and Guidance Changes*: <http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1391>

⁶³ HC Deb 27 February 2006 cc 574-5W

the Secretary of State's power to veto proposals.⁶⁴ The Government's response to the Education Select Committee report notes that the Secretary of State will not normally intervene where a local authority with a good track record in education proposes a community school which will command the support of parents.⁶⁵

The Education Select Committee questioned the Government's distinction between schools as independent providers and local authorities as commissioners and enablers. Evidence to the committee suggested a lack of enthusiasm for trust schools and the Committee noted that if many community schools remain community schools, local authorities are going to remain in their present position. However, the Committee also noted that since the introduction of local financial management of schools, local authorities do not have close control over the running of the schools in the way that the white paper implies. Moreover, the Committee observed that LGA had pointed out that local authorities have been operating in a strategic commissioning role for some time.⁶⁶

4. Trust schools

a. The schools white paper's proposals

The white paper envisaged a new school system with every school being able to acquire a self-governing trust similar to those supporting academies, and to have the freedom to work with external partners to develop their ethos and raise standards. It proposed a national Schools Commissioner to 'drive change, matching schools and new partners, promoting the benefits of choice, access and diversity, and taking action where parental choices are being frustrated'.⁶⁷

The white paper said that all self-governing schools (foundation, voluntary-aided and trust school) would be 'free to use the approach to fair admissions as they think will best meet their local circumstances, as long as it is compatible with the Admissions Code'.⁶⁸

Where a school is underperforming becoming a trust school would be one option for a local authority to consider.⁶⁹

The white paper stated that where a trust appoints a majority of the governing body this will mean a reduction in the number of elected parent governors, and that the trust school will be required to establish a Parent Council with an advisory and consultative role to enable parents' views to be taken into account.⁷⁰

⁶⁴ "Kelly refuses to budge on veto for new local authority schools", *Guardian*, 27 February 2006, p12

⁶⁵ paragraph 38

⁶⁶ Education Select Committee report on the schools white paper, paragraphs 67 and 79 to 82

⁶⁷ Cm 6677, October 2005, p 8:

<http://www.dfes.gov.uk/publications/schoolswhitepaper/docs/Higher%20Standards.%20Better%20Schools%20For%20All.doc>

⁶⁸ paragraph 3.22

⁶⁹ paragraph 2.55

⁷⁰ paragraph 5.21

The DfES published a *Trust School Prospectus*, which outlined the process for becoming a trust school and how such schools will operate.⁷¹ This noted that it would be for the governing body of an individual school to decide, following local consultation, whether to acquire a trust. Local authorities would be able to refer a school's decision to acquire a particular trust to the Schools Adjudicator for decision 'if it is clear that the school has not taken proper account of the views of the majority of parents, or if there are serious concerns about the impact of the acquisition of the trust on school standards.' Trust schools would continue to be local authority maintained schools funded by the local authority, on the same basis as other schools. As with existing foundation schools, trust schools will manage their own assets, and the governing bodies of trust schools will employ their own staff, and will set their own admission arrangements following the law and the *Code of Practice on School Admissions*. The aim is that by acquiring a trust the schools will strengthen their leadership by involving external partners in their governance and development.

The Prospectus set out the characteristics of trust schools:

The Trust will appoint governors for Trust schools

Schools' governing bodies set the strategic direction for the school. Many schools already gain benefits from governors appointed by external partners - sponsors of specialist schools; the foundations behind voluntary controlled and voluntary aided schools; and those Foundation schools which already have a foundation which appoints a minority of the governors.

These governors bring leadership skills, particular expertise and a commitment to raising standards and improving opportunities for young people. Where the partner appoints several governors to one school and/or governors to several schools, they are able to provide a common sense of direction and ethos and to share and spread effective practices and innovations.

Schools will acquire a Trust if (following consultation with parents and others) they think it will help the school. As part of this they will be able to choose whether to have a minority or majority of Trust-appointed governors on the governing body. No school will be forced to acquire a Trust, this is a voluntary decision for the existing governing body. Although, where a school is underperforming Trusts should be one option for a local authority to consider.

They are local authority maintained schools

Funding - Trust schools will be funded by the local authority, on exactly the same basis as other schools. Like Foundation and voluntary-aided schools, they remain a full part of the planning process for capital spending, including Building Schools for the Future (BSF).

Admissions - the governing bodies of Trust schools will set their own admissions arrangements. As outlined in the White Paper, like other schools, they will have to follow the Admissions Code of Practice, and will not be allowed to introduce selection by ability. Local authorities or other schools will be able to object to the

⁷¹ <http://www.dfes.gov.uk/publications/schoolswhitepaper/pdfs/Trust%20School%20Prospectus.pdf>

Schools Adjudicator if they think the arrangements contravene the Code. Adjudicator decisions about admissions will be legally binding for three years for all schools compared to one year currently.

Trust Schools will be represented on the local admissions forum which considers how local arrangements work for the most vulnerable groups, such as looked after children. They will also have to take part in co-ordinated admissions arrangements.

Staff - as with foundation and VA schools, the governing bodies of Trust schools will employ their own staff. But teachers will still be paid in accordance with the School Teachers' Pay and Conditions Document.

Interventions - local authorities will be able intervene in a Trust school as in any other school if it is failing or underperforming.

Local authorities could be involved in brokering Trust schools in several ways. They might want to encourage and support collaboration to raise standards and improve provision generally. Where a school is underperforming Trusts should be one option for a local authority to consider. Because of their strategic overview, they are able to look at the support that different schools need and want and are well placed to help broker links with potential Trusts, including local business foundations and other partners.

Trusts Schools will manage their own assets

Trust schools will have same flexibility as Foundation schools to manage their own assets, while remaining part of the local authority planning process for capital spending.

The stiff requirements relating to the disposal of playing fields will also apply to Trust schools. Trust schools will only be able to use assets to invest in improving education provision and if the local authority objects to any such proposals then they can appeal to the Schools Adjudicator who will balance the school's aims against the wider public interest.

If a Trust school closes, the land and assets will revert to the original owner - normally the local authority.

Trusts can apply for the Power to Innovate on behalf of their schools

All schools can currently apply for the Power to Innovate if they can show that their proposals will raise standards. For example, Blackburn and Darwen local authority used flexibility around the governance of seven maintained nursery schools to develop integrated Children's Centres.

Trusts will be able to make a single application for the Power to Innovate, which will then be available to all the schools they support. These schools will then benefit from being able to spread innovation easily and quickly.

Safeguards

Trusts will be bound by the Race Relations Act and by the Disability Discrimination Act. They will be under a duty to promote community cohesion and good race relations. They will be not-for-profit charities, with particular charitable

aims and as with any other charity if there are concerns the Charities Commission will be able to intervene. Certain groups of people will not be allowed to be involved in Trusts in the same way that they could not be school governors.

Local authorities will be able to refer a school's decision to acquire a particular Trust to the Schools Adjudicator for decision, if it is clear that the school has not taken proper account of the views of the majority of parents, or if there are serious concerns about the impact of the acquisition of the Trust on school standards. One of the factors the Adjudicator will consider is the likely impact on social cohesion.

Existing rules for governors about conflicts of interest mean that Trust-appointed governors will not be involved in decisions relating to the Trust and any governor with an interest in an organisation which might for example provide services to the school cannot be involved in such decisions.

The Prospectus summarised the process for becoming a trust school. If a school is already a foundation school it would be for the governing body of the individual school to decide whether it wanted to acquire a trust. This may be a pre-existing charitable body or it may be necessary to establish a trust, in which case it would be for the school to decide with whom it wanted to work and who will therefore form the trust. Following local consultation, the governing body will take the decision to acquire the trust. Where it would be useful, the Schools Commissioner could help broker arrangements.

The Government's response to the Select Committee report went into some detail about the safeguards in relation to the disposal of trust school assets, and the arrangements were summarised as follows in a written answer to a parliamentary question:

Jacqui Smith [*holding answer 9 February 2006*]: Trust schools will be responsible for managing their own estate and assets and will be able to dispose of surplus land in the same way as foundation and voluntary schools can now. At present foundation and voluntary schools require the Secretary of State's consent before they can dispose of any land or buildings provided at public expense. We are proposing to strengthen local decision making by removing this requirement. Instead schools, including trust schools, will be expected to inform their local authority of any proposals to dispose of non-playing field land. Any disputes arising from the sale of such land will be determined by the schools adjudicator. Trust schools disposing of non-playing field land will be required to use any sale proceeds for capital purposes connected with education. Local authorities will potentially be able to claim a share of any excess sale proceeds either by agreement with the school or determined by the adjudicator.

The proposed disposal, or change of use, of playing field land will continue to be subject to the existing arrangements which require all local authorities and schools to obtain the prior consent of the Secretary of State. There is a strong expectation that any sale proceeds will be recycled for sport or education purposes.⁷²

⁷² HC Deb 27 February 2006, c574W

The Government has had discussions about trust schools with a number of schools and organisations. They are listed in an answer to a written parliamentary question.⁷³

b. Reaction

Those opposed to the proposals have been concerned about the selection of pupils for admission to trust schools, the transfer of publicly-owned assets to independent trust schools, and the role of the private organisations, including businesses and faith groups, which may form the trusts. Moreover, trust schools are seen by some as an irreversible step that will lead to the fragmentation of the school system with no clear evidence of the benefits they will bring.⁷⁴ There is also concern that encouraging schools to be more autonomous could make it more difficult to implement integrated services for children under the *Every Child Matters* reforms.

More generally, some commentators questioned the evidence base for the reforms.⁷⁵

The Education Select committee report on the schools white paper noted that the Secretary of State had said in her evidence to the Committee that trust schools were not a new invention but were foundation schools in everything but name, and that she preferred the term self-governing schools in trying to draw a distinction: “Foundation schools will be called self-governing and foundation schools with a foundation will be trust schools”.⁷⁶

On the question of whether schools would be offered inducements to become trusts, or be put under pressure to do so, the Secretary of State stressed that schools will not be bribed or coerced into becoming trust schools.⁷⁷

The Committee called for much more detail and clarity to be provided on the process involved in becoming a trust school. It noted that the Prospectus had emphasised the collaborative potential of trusts in bringing schools together, and the Committee stressed that it would be essential for trust schools to operate in a collaborative fashion. The Committee wanted the Government to put into legislation a requirement for such collaboration to be monitored at local and national level. It also called on the Government to publish a list of bodies it considers appropriate to act as trust sponsors. A range of practical issues surrounding the operation of trust schools was identified by the Committee. For example, the white paper says that the governing body of a school would first consult parents if it wishes to form a trust, but which parents would be consulted - those of children currently at the school; those of children who might go to the school over the next few years; or all parents who live in the area?

⁷³ HC Deb 27 February 2006 c605-7W

⁷⁴ e.g. see, *Shaping the Education Bill Reaching for Consensus*, by Estelle Morris, John Denham, Alan Whitehead, Nick Raynsford, David Chaytor, Angela Eagle and Martin Salter; “Schools up for sale”, *Guardian*, 20 February 2006, p33; “Education reforms are still on the wrong track” (by Michael Meacher MP) *Independent*, 9 February 2006, p33

⁷⁵ e.g. see *Memorandum submitted by the NUT to the Education and Skills Committee*, The schools white paper, First report of Session 2005-06, Volume II, Oral and written evidence, HC Paper 633-II, Ev 753-54

⁷⁶ First Report of Session 2005-06, HC Paper 633-I, paragraph 61:
<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmmeduski/633/63302.htm>

⁷⁷ *ibid.*, paragraph 63

The Committee recommended that if trust schools are formed then it should be a requirement that all parent governors on a trust school governing body should be elected by parents of children at the school.

The Committee noted the Government's view that specialist schools and academies are successful because of their independence and the positive effect of external partnerships. However, the Committee felt that evidence in support of this was not clear, and said that no causal link had been demonstrated between external partners and the success of a school, or between the independence of a school from local authority control and its success.⁷⁸

The Committee noted the considerable diversity of school types in England and saw such diversity as a strength provided all maintained schools abide by common rules on admissions, fair access and social composition. It observed that while becoming a trust school may be attractive to some schools, it should be one option in a pluralist school system, and that the promotion of trust schools should not be an overriding policy objective.

Conservative Members of the committee supported trust schools and called for measures to increase their autonomy. They urged the Government to have 'the courage of its own convictions' and go further in making radical structural reform.⁷⁹

c. The Government's response

The Secretary of State sought to address the concern expressed about trust schools in her letter dated 6 February 2006 to Barry Sheerman, the chairman of the Education Select Committee, and in the Government's formal response to the committee's report on the schools white paper.⁸⁰ The documents highlighted the following:

- Trust schools in law will be foundation schools and will have the same freedoms as foundation schools. In addition a trust would be able to apply to the Secretary of State for additional freedoms under the power to innovate and that would then be available to all schools associated with it.
- It will be for the governing body of a school to decide whether or not a school acquires a trust.
- Where a local authority believes that the acquisition of a trust may have a detrimental impact on standards or that proper consultation has not been held, it may refer the decision to the Adjudicator.

⁷⁸ *ibid.*, paragraphs 49 and 50

⁷⁹ The three Conservative Members' views are noted in the Committee's Formal Minutes of its meeting of 25 January 2006.

⁸⁰ Letter from Ruth Kelly, the Secretary of State for Education and Skills, to Barry Sheerman, the chairman of the Education and Skills Committee, dated 6 February 2006: <http://www.dfes.gov.uk/hottopics/docs/ruth%20kelly%20letter.pdf>; The Government's Response to the

- The Schools Commissioner will be able to advise schools and local authorities on trusts, including on their previous track record. The Secretary of State will also have a reserve power to remove trustees.
- Where the school wants it, a trust will be able to appoint the majority of governors. (Currently where a foundation school has a foundation the foundation may appoint a minority of the governing body. The Bill would allow a majority of governors to be appointed by the foundation.)
- Local authorities will be able to remove a trust in circumstances of school failure.
- There will be safeguards to protect trust school publicly-funded assets (detailed information on this is contained in the Government's response to the Select Committee's report, paragraphs 24 to 28).
- There will be changes to school admission requirements, including a requirement that admission authorities must act in accordance with (rather than have regard to) the Code of Practice on School Admissions, and interviewing will be prohibited.

The Select Committee recommended that the Schools Commissioner should be established at arm's length from the DfES, reporting to Parliament through the Select Committee as well as to Ministers. In its response to the committee the Government said that it did not want the Schools Commissioner to be a large bureaucratic body and said that there would not be a statutory Office as it would be unusual to create a statutory office holder purely to offer advice to schools. Therefore, the Schools Commissioner would be located within the DfES.⁸¹

B. The Bill

Part 2 of the Bill:

- re-enacts much of the current law relating to school organisation for England. Clause 14 (4) is a new statutory requirement. It requires the body proposing the closure of a rural primary school to have regard to the specific factors laid down in the Bill. Currently, these factors are specified in guidance
- extends the requirement for a competition for new schools to special and primary schools
- re-enacts provisions contained in the *Education Act 2005* relating to proposals for the establishment of federated schools (schools federated under one governing body)

House of Commons Education and Skills Committee Report on the Schools White Paper, Cm 6747, February 2006

⁸¹ The Government's Response to the Education and Skills Committee, p14

- requires the Secretary of State's consent for proposals for new community schools. Where there is a competition for the establishment of a new school, the local authority may, with the consent of the Secretary of State, publish proposals to establish a community school (Clause 7 (5) (b) (ii)). Schedule 2 provides for the proposals to be decided by the Schools Adjudicator)
- creates a new statutory framework for school governing bodies to acquire foundations and for the removal of foundations (see below). Clause 21 provides for regulations to include provision enabling the local authority to require proposals to be referred to the adjudicator, and the regulations may restrict the matters to which a local authority may have regard in deciding whether to require a proposal to be referred to the Adjudicator (clause 21 (1) (3))
- places school organisation decisions with local education authorities rather than the School Organisation Committees (SOCS)
- abolishes SOCs (clause 27)

The whole of Part 2 applies to England only.

The Regulatory Impact Assessment of the Bill explains the background and rationale to the changes relating to trust/foundation schools:

The Government has already implemented, through changes to regulations, a fast-track route for community and VC⁸² secondary schools to change category to foundation and has consulted on extending this to primary schools. The Government deferred implementation of the proposals for foundations to appoint a majority of governors, pending legislation to create a process for the acquisition of a foundation and put in place safeguards around that process. There is currently no statutory procedure for a foundation school without a foundation to acquire one: the governing body simply resolve to do so. If, however, a community school intended to change category to foundation and to acquire a foundation at the same time, the governing body would need to give details of the foundation in their proposals. A VC or VA⁸³ school which changed category would retain its existing foundation.

6.2. Building on the five-year strategy, the White Paper envisages the creation of trust schools – that is, self-governing schools with trusts (foundations) that will be able to appoint a majority of their governing bodies. The White Paper envisages safeguards around the acquisition of trusts: in particular, schools wishing to acquire trusts will have to consult and publish proposals, and where there are concerns about the impact of a particular trust the local authority may refer the proposals to the Schools Adjudicator to determine.

6.3. In addition, the Government intends to put in place procedures for governing bodies to publish proposals for the removal of trusts, or to reduce the proportion of governors appointed by a trust from a majority to a minority. Governing bodies

⁸² Voluntary controlled

⁸³ Voluntary-aided

will be required to publish such proposals where a certain proportion of governors, or the school's parent council, pass a resolution to that effect.

6.4. The White Paper made clear that trust status for special schools would raise a number of complex issues and gave an undertaking that we would work further with the sector to decide the best way forward. We have now consulted with the sector and other interested parties and, in light of those consultations, have decided to extend the trust status arrangements to the special schools sector on the same basis as the mainstream sector.

Rationale for government intervention

6.5 These provisions will create a statutory framework for the acquisition and removal of trusts. They will ensure that in all circumstances where a school governing body wishes to acquire a trusts; or give an existing trust the power to appoint a majority of governors; or remove a trust; or reduce the proportion of governors appointed by the trust from a majority to a minority, they must consult on and publish detailed proposals. This will ensure that parents and other stakeholders are given the opportunity to make their views known about what is proposed. In addition, the Bill will provide for trusts to have certain characteristics – they will be charities with specific charitable objects – and for the disqualification of unsuitable persons from membership of trusts.⁸⁴

Annex B to the Regulatory Impact Assessment sets out the differences between foundation schools and community schools if the Bill is passed. It covers the composition of the governing body, ownership of land and buildings, building projects, employment of staff, appointment of the head teacher and other staff, admission arrangements, proposals to change the school, decisions about term dates, and religious character.

IV Further provisions about maintained schools (Part 3 of the Bill)

A. Requirements as to foundations

Clause 31 creates certain requirements as to foundations. New sections are added to the *Schools Standards and Framework Act 1998* to provide for foundations and the trustees of certain foundation and foundation special schools to have specified characteristics, and gives the Secretary of State power in certain circumstances (to be specified in regulations) to remove and appoint trustees of such schools. A foundation must be incorporated and must also be a charity. The regulations may impose requirements as to the objects or purposes of a foundation and as to the people who are to be disqualified from acting as trustees.

⁸⁴ Regulatory Impact Assessment, pp82-83

B. Parent councils

The Government want to ensure that parents in all trust schools where the trust appoints a majority of the governors are able to influence the running of the school. Clause 32 requires the governing body of a foundation school in England to establish a parent council where the foundation appoints the majority of governors to the school's governing body. The members of the parent council must be parents of registered pupils at the school and its purpose is to advise the governing body on matters relating to the conduct of the school, and the provision of community facilities.

C. Funding for voluntary-aided schools: capital expenditure

Voluntary-aided schools are required to make a 10% contribution to capital expenditure. The current definition of capital expenditure is set out in the *Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002*.⁸⁵ The Order contains a list of expenditure that is to be treated as capital expenditure. Clause 33 provides that capital expenditure in respect of voluntary-aided schools will be expenditure which is capitalised in accordance with proper accounting practices. The Explanatory Notes to the Bill state that the clause is intended to ensure that the definition of capital expenditure reflects modern accounting practice and that optimal procurement arrangements are available to voluntary-aided schools. And the Regulatory Impact Assessment provides further background on the rationale for the change, stating that the aim is to put voluntary aided schools on an equal footing with other maintained schools, and remove any doubt that PFI contracts can be met from revenue income without a statutory 10% contribution.⁸⁶

D. Disposals and changes of land use

Currently, under Schedule 22 of the *School Standards and Framework Act 1998* the governing body of a foundation or voluntary school is required to obtain the Secretary of State's prior consent before disposing of any land or buildings held by them which were provided or enhanced at public expense. Section 77 of the 1998 Act requires a local authority in England, and in certain circumstances, the governing body of a maintained school or a foundation body, to obtain the Secretary of State's consent before disposing of school playing fields.

Clause 34 of the Bill introduces Schedule 4 which inserts a new Part A1 into Schedule 22 to the 1998 Act and amends section 77 of that Act. These provisions are concerned with the disposal, and change of use, of land by maintained schools. In relation to foundation, voluntary and foundation special schools, the procedures in England for the disposal of playing fields and non-playing field land are separated. Responsibility for decisions relating to non-playing fields land is being transferred from the Secretary of State to the Schools Adjudicator. There are no proposals to change the existing provisions relating to the protection of school playing fields.

⁸⁵ S.I.2002 No. 906, regulation 13

⁸⁶ Regulatory Impact Assessment, paragraph 8.5

E. General duties of governing body of maintained school

Under the *Children Act 2004* local authorities must have a Children and Young People's Plan (CYPP), which encompasses all children's services including school organisation. Clause 35 imposes two new duties on the governing bodies of maintained schools. The first requires the governing bodies of maintained schools in England and Wales to have regard to any CYPP. The second requires governing bodies of schools in England to have regard to the views expressed by parents of registered pupils. Under the new school inspection framework introduced in September 2005 all schools have to demonstrate that they have had regard to views expressed by parents.

F. School admissions

1. Current arrangements and the Code of Practice on School Admissions

The right of parents to express a preference for a school place was set out in the *Education Act 1944*. Local authorities had a responsibility to take these preferences into account when allocating school places. The commitment was carried through in section 9 of the *Education Act 1996*, which was a consolidation Act. The *Education Act 1980* gave parents a right of appeal against non-admission. The *Education Reform Act 1988* brought the concept of open enrolment, preventing schools from rejecting pupils unless they were full to capacity.

Section 84 of the *School Standards and Framework Act 1998* required the Secretary of State to publish a code of practice on schools admissions. This was introduced in 1999. Two other major changes relating to school admissions made by the 1998 Act were the creation of the Office of the School Adjudicator, and the introduction of parental ballots on the future of grammar schools.

Any new or increased partial selection for school admissions on the ground of ability was made unlawful under section 99 of the *School Standards and Framework Act 1998*, except in very limited circumstances, including the pre-existing arrangements authorised under section 100.

Government policy since 1997 has been to seek to extend parental choice through promoting greater diversity in the school system. The *Education Act 2002* sought to clarify the law on parental preference, so that it is clear that admission authorities must consider any parental preference and comply with that preference unless certain reliefs apply. The Act introduced a requirement for LEAs to coordinate admissions within and across their boundaries.

a. Admissions Forums

The 2002 Act also introduced a statutory requirement for each LEA to set up an Admissions Forum (previously these had been voluntary under the 1998 Act). Admissions Forums are organised by, but are independent from, the LEA. They are a vehicle for admission authorities and other interested parties to discuss the effectiveness of local admission arrangements, seek agreement on how to deal with difficult admission issues, and advise admission authorities on ways in which their arrangements can be improved. Admission authorities and Academies must have regard to any advice given

by the Forum for their area. The arrangements are set out in detail in the *Code of Practice on School Admissions*.

b. School Admissions Codes of Practice

The current *Code of Practice on School Admissions* was issued in 2003.⁸⁷ It sets out the law on admissions and provides guidance on good practice. LEAs, governing bodies of maintained schools, admission appeal panels and the Schools Adjudicator must have regard to the Code's provisions in discharging their function. Academies are also required under their funding agreements to have regard to the Code's provisions.

Some commentators have stressed that the Code is not binding on admission authorities, and some critics of the white paper argued that all school admission authorities should be required to comply with the Code's provisions. The issue was raised in the House of Commons on 24 November 2005:

Mr. Cameron: Three weeks ago, the Secretary of State said that the code of practice on admissions would not be made a statutory code. Today, she said that she did not think that that was necessary. Can I ask her to go a bit further and rule out that change?

Ruth Kelly: I can tell the hon. Gentleman that the code achieves its ends of ruling out selection by ability on its current statutory basis. He is confused—the code already operates on a statutory basis. Schools take it into account, and then the adjudicator, which is also statutory, can use its discretion to say whether the school has interpreted it correctly. Interpretation of the code, however, is very important for schools that want to create their own distinctive ethos.⁸⁸

In its 2004 report on secondary school admissions, the Education Select Committee concluded that many parents found the school admission process a frustrating and time-consuming cause of much distress. While the committee supported the Government's aims of greater fairness, co-ordination and parental preference in the allocation of school places, it said that the Government's attempt to realise these aims through a system based on guidance rather than regulation means that it can have no assurance that its objectives will be widely met. The committee concluded that fairness in public policy should not be a matter of luck but a matter of course. It recommended that the Code of Practice should be supported by revised regulations and that, in particular, acceptable admissions criteria should be identified and clearly defined in regulations or primary legislation along with guidance on implementation.⁸⁹

In July 2005, the DfES launched a consultation on a new draft School Admissions Code of Practice, School Admission Appeals Code of Practice and associated draft regulations.⁹⁰ The consultation closed on 18 October 2005.

⁸⁷ <http://www.dfes.gov.uk/sacode/>

⁸⁸ c 1644

⁸⁹ *Secondary Education - School Admissions*, HC paper 58-I, July 2004

⁹⁰ (the Draft Education (Looked After Children) Regulation; Draft Education (Aptitude for Particular Subjects) Amendment Regulations; Draft Education (Admission Appeals Arrangements) Amendment Regulations: <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1336>)

The draft Code sought to address some of the matters raised by the Education Select committee in its 2004 report on secondary school admissions. The main changes proposed from the previous Codes were:

- clearer guidance on good practice and poor practice in oversubscription criteria;
- an annex with a list of appropriate and acceptable oversubscription criteria;
- guidance on operation of 'first preference first' admission arrangements;
- an expanded section on fair banding;
- a revised section on co-ordination of admission arrangements;
- a new section on 'hard-to-place pupils' protocols;
- an annex added to the Appeals Code summarising the law; and,
- guidance on infant class-size appeals has been revised in line with the proposed change to Regulations

The DfES consulted on other matters including the new duty to give priority to looked after children; amending regulation on selection by aptitude to prevent new selection by aptitude for ICT and Design & Technology.⁹¹

The draft Code sought to address some of the admissions criteria that had caused grievances – for example:

- admission arrangements that give priority to those parents who name a school as their first preference over those who do not;
- the use of interviews as part of the admission process - the draft Code stated that it was poor practice to interview parents or children as any part of the application or admission process, in any school except a boarding school;
- parental preference for grammar schools – the draft Code made provision for parents to be able to receive the results of a child's test for a selective school before expressing school preference.

Chris Waterman, chief executive of ConfEd, a body representing local education authority leaders, argued that the draft code was weaker than the 2003 version in transparency and fairness. Mr Waterman pointed out that the draft Code would only require schools and LEAs to have regard to the Code, and that it should be binding.⁹²

In a Written Ministerial Statement on 13 December 2005, Jacqui Smith, the Schools Minister, said that the Government had decided not to lay the revised code before the House at this time as the Government wished to reflect further:

We consulted on the codes of practice with the intention of having new codes in place from January 2006 for effect from September 2007 admissions onward. The consultation ran from 26 July to 18 October 2005. There has been a wide range of views and some points on which we wish to reflect further, particularly

⁹¹ <http://www.dfes.gov.uk/consultations/downloadableDocs/Consultation%20-%20covering%20letter%20final.doc>

⁹² "Which is the fairest path of all?", *TES*, 21 October 2005, p19 <http://www.tes.co.uk/2145239>

on the respective roles of local authorities, schools, admission forums and the schools adjudicators. Therefore, we have decided not to lay the revised codes at this time. The existing codes of practice will remain in force. We will, however, take forward the regulations on subjects approved for new aptitude selection and giving priority to looked after children in admission arrangements. We remain fully committed to a system of fair admissions for all children.⁹³

In its response to the Education Select Committee's report on the schools white paper, the Government announced that the status of the *Code of Practice on School Admissions* would be strengthened so that admission authorities have to act in accordance with the Code rather than, as at present, simply having regard to it (see section F5 below), and that the content of the Code would be reconsidered and consulted on again after the passage of the Bill.⁹⁴

2. Selection

a. *Current statutory provisions on selection, partial selection and banding*

The current legislation allows some admission authorities to select pupils in four ways:

- designated grammar schools are allowed to select all or almost all of their pupils by general ability;
- schools that had partial selection procedures in place in 1997-98 may continue to select their intake by ability or aptitude provided that there is no change in the methods of selection or the proportion of pupils selected;
- specialist schools may select up to 10% of their intake on the basis of aptitude in their specialist area(s); and,
- all-ability schools in certain circumstances may use fair banding to achieve a balanced intake (i.e. the bands are representative of all levels of ability).

Section 99 of the *School Standards and Framework Act 1998* prohibits maintained schools from operating arrangements under which pupils are selected for admission by ability or aptitude unless the school is a grammar school designated under section 104 of the Act or the school has adopted a permitted form of selection. The permitted forms of selection by ability are those authorised by section 100 of the 1998 Act (pre-existing arrangements, i.e. arrangements in place in 1997-98), section 101 (pupil banding), and for the admission of pupils for education suitable for those over compulsory school age. The permitted forms of selection by aptitude are those authorised by section 100 (pre-existing arrangements - arrangements in place in 1997-98) and by section 102 (aptitude for particular subjects). The admission authority of any maintained secondary school that has a specialism in a prescribed subject may select up to 10% of its intake on the basis of aptitude in that subject. The prescribed subjects are contained in the *Education*

⁹³ HC Deb 13 December 2005, c135WS

⁹⁴ Government's response to the Education and Skills Committee report on the schools white paper, p21

(*Aptitude for Particular Subjects*) Regulations 1999.⁹⁵ In practice, only a small number of designated specialist schools use selection by aptitude.

Fair banding under section 101(1) of the 1998 Act allows admission authorities to adopt arrangements which select pupils by reference to general ability, so long as the arrangements are designed to secure that in any year children admitted into a normal year of entry are fully representative of the range of ability amongst children applying to the school for that year of entry, and that no level of ability is substantially over- or under represented. Banding which is not compatible with the conditions set out in section 101(1) may continue provided the arrangements were in place at the beginning of the 1997-98 school year and have been in place continuously since then, provided there is no change in the proportion of children selected or the basis of selection. Currently, statutory proposals are required if an admission authority wishes to introduce banding. There is a right of objection under the procedures. Admission authorities that admit pupils on the basis of ability for the purposes of banding may also admit up to 10% of pupils in total on the basis of aptitude in one or more of the prescribed subjects.⁹⁶

There is no provision for new grammar schools to be established. Existing grammar schools may become non-selective through a parental ballot under the *School Standards and Framework Act 1998*.

The 2004 Select Committee report, *Secondary Education - School Admissions*, looked at the issue of selection in admissions. It also noted that there are 164 grammar schools in England, and although there is no provision to enable more to be created, the numbers and proportion of pupils in grammar schools had increased, and that in areas where the school population is falling there could well be further increases. The Committee noted that in opposition, David Blunkett, the then education spokesman had promised at the 1995 Labour Party Conference, 'read my lips: no [more] selection, either by examination or interview, under a Labour government.' Subsequently Mr Blunkett clarified that he had meant to say 'no *more* selection'.⁹⁷

The Education Select Committee in its recent report on *Secondary Education* commented on the continuing partial selection arrangements⁹⁸:

61. Partial selection forms part of the admission arrangements for an unspecified number of schools to select up to 50% of their intake on grounds of ability or aptitude. Schools which had these selection procedures in place in 1997-98, are permitted to continue to select pupils provided that there is no change in the methods of selection or the proportion of pupils selected.^[55] Our inquiry revealed that the DfES holds no information on the arrangements that were in place in 1997-98, making it difficult for any objection against admission by partial selection to be investigated. We therefore recommended that the DfES undertake an immediate audit of schools selecting on this basis, to establish a baseline position from which schools adjudicators could work when investigating objections.^[56]

⁹⁵ SI 1999 No. 258

⁹⁶ DfES, *School Admissions Code of Practice*, p 58

⁹⁷ *Secondary Education - School Admissions*, HC paper 58-I, July 2004

⁹⁸ *Secondary Education: Education and Skills Committee's Fifth Report of Session 2004-05*, HC Paper 86, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmmeduski/86/8602.htm>

62. In their response, the Government rejected this recommendation, stating: "the Department does not have a reliable means of collecting data on partially selective schools. While schools might designate themselves as partially selective in the PLASC census, we have found in the past that this is unreliable [...] where there is existing partial selection on the basis of academic ability, its continuance should be a matter for local discussion and resolution".^[57]

This response misses the point. Partial selection introduced or increased since 1997-98 is unlawful, not a matter for "local discussion". The DfES needs to act to ensure that the facts are available when objections to partial selection are raised. Without this action, objections cannot be properly investigated by the schools adjudicator.

In its response to the report, the Government noted that the DfES does not routinely collect data on schools continuing to use partial selection but that after consulting local authorities it was aware of 32 schools which operate pre-existing partial selection:

The Government agrees that it would be unlawful for a school to introduce new selection of that type, or to try to increase the proportion of pupils it selects. However, the Department did not collect information when schools introduced partial selection and does not routinely collect data on schools continuing to use it. After consulting Local Authorities we are aware of 32 schools which operate pre-existing partial selection.

Responsibility for demonstrating that a school, prior to 1997, had arrangements that selected on the basis of academic ability, rests with the admission authority. The onus is on the admission authority to prove that the use of partial selection is entitled to continue, rather than on the Department to prove that it is not. If the admission authority cannot prove that the partial selection it wishes to use is allowed, then it would be illegal and should not continue.⁹⁹

A London School of Economics (LSE) study has found one in four secondary schools in London used at least one 'potentially selective' admissions criterion (selection on the basis of ability/aptitude, interviews or pre-admission meetings with pupils/parents, family connection with the school, child of an employee or a child of a former pupil, for example). More of these schools were voluntary-aided or foundation than community or voluntary controlled (46% and 35% compared with 10%). The report also found a slight increase in the proportion of schools selecting some of their pupils on the basis of aptitude/ability for a subject - up from 5% in 2001 to 7% in 2005. However, there was a decrease in the use of other potentially selective discriminatory admission criteria.¹⁰⁰

The *Times Educational Supplement* (TES) has analysed the funding agreements between academies and the DfES, and reports that almost half of the 27 academies select some pupils by aptitude compared with only 6% of specialist schools. However,

⁹⁹ *Secondary Education: Government Response to the Committee's Fifth Report of Session 2004-05*, HC Paper 725, p 18, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmmeduski/725/725.pdf>

¹⁰⁰ Hazell Pennell, Anne West, and Audrey Hind, *Secondary School Admissions in London*, London School of Economics Centre for Educational Research, Clare Market Papers No.19, February 2006; and <http://news.bbc.co.uk/1/hi/education/4712382.stm>

the analysis also revealed the extensive use by academies of lotteries and banding systems to ensure that selection is not skewed towards gifted or middle class pupils.¹⁰¹ A written answer to a parliamentary question noted that 11 of the 27 academies use selection by aptitude.¹⁰²

b. The difference between selection by aptitude and by ability

The 2003 Education Select Committee report, *Secondary Education-Diversity of Provision*, concluded that it was 'not satisfied that any meaningful distinction between aptitude and ability has been found and we have found no justification for any reliance on the distinction between them.'¹⁰³

The matter was considered again in the committee's 2004 report, *Secondary Education - School Admissions*. It noted the comments of the Chief Schools Adjudicator, Dr Philip Hunter, writing on the distinction, and stressed that the committee was not aware of any means by which aptitude could be assessed without reference to ability:

197. The Chief Schools Adjudicator, Dr Philip Hunter, writing on the distinction between aptitude and ability, has commented that "finding a difference between the meanings of two such words is the sort of exercise lexicographers get up to when they haven't enough to do."^[191] Given that Parliament has established these concepts in the legislation regarding school admissions, Dr Hunter has offered a working definition: "It denotes a potential or propensity to develop an ability given appropriate teaching or preparation. In other words aptitude + preparation = future ability." ^[192] We asked Dr Hunter whether he was confident that the range of approved and legally permitted tests of ability or aptitude were capable of accurately predicting future levels of attainment Mr Hunter was clear: "No, I am not" he told us.^[193]

198. This is significant. Evidence commissioned by the DfES^[194] observed that "the measure of aptitude is an assessment of a pupil's capacity to be trained or developed... its usefulness can arise from the accuracy with which it predicts later success."^[195] We have repeatedly sought evidence from the DfES of the link between tests of aptitude and achievement and have repeatedly drawn a blank. Despite the department's own commissioned research highlighting that the link between testing aptitude in a subject and attainment in that subject is perhaps the key indicator of the effectiveness of aptitude testing no such research has been undertaken or initiated by the DfES.

199. As the Department is unable to support its policy on selection by aptitude with evidence as to its efficacy and is unwilling to commission research on the subject, it is difficult to understand why the practice should be allowed to continue. Without such research we cannot know whether pupils selected by aptitude achieve at a higher level, either in the specialist area or across the board, than their unselected peers.

¹⁰¹ "Nearly half of academies select their students", *TES*, 10 February 2006, p1; "Academy power to run free", *TES*, 10 February 2006, pp15 to 17

¹⁰² HC Deb 17 February 2006 c498W

¹⁰³ HC Paper 94, Session 2002-03, paragraph 139

200. Given the well established links between social class and attainment, and the Government's stated commitment to social inclusion and equity, the integrity of the Government's commitment to aptitude testing is hard to defend without clear evidence of its educational benefits. We have not been made aware of any such educational benefits. Nor have we been made aware of any means by which aptitude can be assessed without reference to ability.

201. Aptitude tests are an additional and unnecessary complication in the school admissions process. Moreover, the resources invested by schools in running these tests are significant both financially and in terms of staff time. It is our view that these costs, to families and to schools, cannot at present be defended. We recommend that the facility for state funded schools to admit pupils on the basis of aptitude tests should be withdrawn.¹⁰⁴

The Government's response was:

We have taken particular note of the Committee's concerns about aptitude selection. The Government wants all secondary schools to play to their strengths and provide a flexible curriculum able to meet the needs of individual pupils. Selection by aptitude allows a small number of pupils with particular gifts and talents to benefit from particular curriculum strengths.

The Schools Adjudicator has taken the view that it is possible to assess aptitude – rather than academic ability – in subject areas such as sport, the visual and performing arts and languages. The Government believes there is general acceptance that such a distinction is possible and will continue to allow admission authorities that wish to do so to select up to 10% of their pupils in these subjects. Of course the local decision making process, including consultation and the right of others to object would continue to apply. However, we are intending to prohibit new aptitude selection in other subjects – design and/or information technology. We are not intending to introduce selection by aptitude in any other area.

There has, of course been a debate about academic selection over a number of years with various researchers reporting their findings. We want to raise standards for all pupils and improve performance in all schools. Our position is clear. We do not support academic selection at age eleven and we do not wish to see it extended. That is why the School Standards and Framework Act prohibits any new academic selection. However, we do believe that it is right that where selection by academic ability exists, it should be for local people to decide its future.¹⁰⁵

The matter was again raised in the Committee's 2005 report on secondary education, and in the Government's response to it. The Government said that while it has no plans to extend the use of aptitude selection, it does not think it should be removed, and will continue to allow schools that wish to give priority for up to 10% of their total places to

¹⁰⁴ <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmmeduski/58/5807.htm#a35>

¹⁰⁵ *The Government's Response to the Education and Skills Committee Report on Secondary Education; School Admissions*, CM 6349, November 2004, <http://www.dfes.gov.uk/sacode/pdf/Cm6349.pdf>

pupils with aptitudes for particular subjects.¹⁰⁶ In its response to the Select Committee report on the schools white paper, the Government said that it would examine the School Admissions Code of Practice and consider whether there are any practices that should be encouraged or discouraged.¹⁰⁷

c. Interviews

The use of interviews for school admission has been a contentious issue. The current Code of Practice appears to rule out interviews (except to assess a child's suitability for boarding school provision), and the draft Code had stated that it was poor practice to interview parents or children as any part of the application or admission process, in any school except a boarding school. The previous Admissions Code allowed church schools to interview parents/and or prospective pupils, but only for the purpose of assessing religious or denominational commitment where this was provided for in their admission arrangements and oversubscription criteria. (The 2003 Code made it clear that the guidance on interviewing should not be read as ruling out auditions which are part of objective testing for aptitude conducted by a school with a specialism in a prescribed subject, in accordance with published admission arrangements.)

The DfES does not survey school admission arrangements nationally. However, a recent London survey showed that three schools currently have interviewing as part of their admission arrangements – the London Oratory school in Hammersmith and Fulham, and St. Joseph's college and St. Coloma convent school in Croydon.¹⁰⁸ The use of interviews was raised recently in relation to the London Oratory School, when the school's interviewing and admission arrangements were challenged by Peterborough Primary School on the ground that the Oratory's arrangements were counter to the Code. However, the Secretary of State for Education and Skills determined on 18 October 2005 that the use of interviewing in order to assess religious commitment was appropriate.¹⁰⁹

An objection to interviewing at Gunnersbury Catholic School was upheld. Details on both cases were referred to in a written answer to a PQ on 6 February 2006:

Lynne Jones: To ask the Secretary of State for Education and Skills pursuant to the answer of 23 January 2006, *Official Report*, column 1927W, on schools admissions, if she will list the schools where there have been objections to schools' proposals to interview parents and pupils as part of their admissions process; which objections were considered by (a) the Schools Adjudicator and (b) the Secretary of State; and what the outcome was in each case. [47535]

¹⁰⁶ Education and Skills Committee, *Secondary Education*, Fifth Report of Session 2004-05, HC Paper 86, March 2005:
<http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmeduski/86/8602.htm>
 The Government's Response to the Committee's report on secondary education, HC Paper 725, December 2005:

<http://www.parliament.the-stationery-office.co.uk/pa/cm200506/cmselect/cmeduski/725/725.pdf>

¹⁰⁷ *ibid.*, p21

¹⁰⁸ HC Deb 9 February 2006 c999

¹⁰⁹ <http://www.londonoratory.org/London%20Oratory%20determination%2018Oct2005%20doc.pdf>

Jacqui Smith: The two schools that had objections to proposals to interview parents and pupils were The London Oratory School (in 2004 and 2005) and Gunnersbury Catholic School (in 2005).

In April 2004, the Schools Adjudicator determined part of the objection to the London Oratory School's admission arrangements for 2005 on the issue of the practice of interviewing prospective parents in a general sense. The Adjudicator upheld this part, but the determination was quashed at Judicial Review and permission to appeal was refused.

In 2004, the Secretary of State decided on the second part of the above objection to the lack of clarity, fairness and objectivity of the admission arrangements relating in part to a person's religion. The Secretary of State partially upheld this part and the school modified that section of its admission arrangements.

In 2005, two objections were made to the proposed admission arrangements to Gunnersbury Catholic School and The London Oratory School and were referred to the Secretary of State as both cases involved interviewing to determine religious affiliation.

The objection to interviewing at Gunnersbury School was upheld as the school proposed to interview only to verify that an applicant was a practising Catholic and this information could be verified by documentary evidence.

The objection to interviewing at the London Oratory was not upheld as the school was able to provide thorough and sufficient proof that its interviewing arrangements were the only appropriate way of assessing the degree of an applicant's religious commitment as set out in their admission arrangements.¹¹⁰

3. The white paper's proposals on school admissions

The white paper stressed that the proposed new schools system would be underpinned by fair admissions and that self-governing schools (foundation, trust and voluntary-aided) would be free to use the approach to fair admissions that they think will best meet their local circumstances, as long as it is compatible with the Admissions Code of Practice. While recognising that there are a number of alternative approaches to admissions including using traditional catchment areas, the white paper said that the Government wanted to make it easier for schools that wish to do so to introduce banding. The white paper said that the Government would legislate to:

- Allow for banding in schools' admission arrangements;
- Prevent new and expanded schools from amending their admission arrangements for three years from the date on which they open; and
- Prevent admission authorities, which have had an objection against their admission arrangements upheld by the Schools Adjudicator or Secretary of State, from amending that aspect of their admission arrangements for three years.

¹¹⁰ HC Deb 6 February 2006 c1020W

4. The Select Committee's proposals

The Education Committee's report on the white paper recommended that some of the core elements of the School Admissions Code of Practice should be mandatory. It also proposed a new role for local authorities and the Schools Commissioner to ensure that admission authorities comply with the Code:

161. The admissions process is a key issue and it needs to be strengthened in order to ensure fairness and to ensure confidence in the system. Many have expressed concern that an increase in the number of admissions authorities will lead to a greater degree of covert selection and that greater safeguards are needed. On the other hand, we recognise that the School Admissions Code of Practice cannot simply be made mandatory as it stands. **We recommend that the Secretary of State brings forward as soon as possible new regulations to bar the use of interviewing in the admissions process. We also recommend that the DfES examines the Code to see whether any other provisions might also be the subject of regulations.**

162. **We recommend that under the forthcoming legislation all local authorities should be given the statutory duty to monitor admissions practices in their areas and make an objection to the Schools Adjudicator where it appears they do not comply with the Code.** The effectiveness with which authorities do this should be monitored by the Schools Commissioner.

163. **We welcome the Government's decision to increase the length of time for which the Adjudicator's decisions are binding from one year to three years. We consider that this, together with the duty on local authorities to monitor the process systematically, will make the admissions process considerably more effective.**

164. Given concerns about social segregation in schools and the ways in which schools engineer the admissions process, **we recommend that local authorities be required to provide benchmarks for each of the secondary schools in their areas for the number of pupils they should be admitting in Year 7 eligible for free school meals or working families tax credit. They should make annual reports to the Schools Commissioner, who in turn should report to Parliament through this select committee.**

165. Taken together, these recommendations on admissions and social composition, giving new duties to the Schools Commissioner, empowering local authorities and strengthening the Code of Practice with regulations provide the effective practical means to ensure that the Government's aspirations on fair access can be realised.¹¹¹

5. The Government's response

In response to the Select Committee's observations and recommendations the Government has stressed that no trust school or any other maintained school would be

¹¹¹ Conclusions: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeduski/633/63310.htm#a21>

able to undertake any further selection by academic ability. Banding to achieve a comprehensive intake would be permitted, and the existing arrangements for partial selection by aptitude set out in the *Schools Standards and Framework Act 1998* would be retained. (As noted above, the white paper had announced that it would be made easier for schools to introduce banding into their admissions policies.)

In response to concern about its proposals for trust schools the Government has agreed that it will make provision to ensure that admission authorities have to act in accordance with the *School Admissions Code of Practice* rather than, as at present, simply having regard to it; and that there will be a prohibition on interviewing for admissions.

The Government believe that the best way of ensuring fair access to schools is through the existing Admissions Forums, and proposes to increase their powers, widen their membership and strengthen their decision-making process. In future, all schools in an area will be entitled to be members of the Admission Forum. Where an Admissions Forum considers that a school is not following the Admissions Code, the Forum would have a new power to refer a school's admission arrangements to the Schools Adjudicator.

Admissions Forums will have the power to produce an annual report on local admission arrangements, and on how the arrangements affect fair access and particular groups. It is envisaged that the Schools Commissioner would draw upon those reports and other data to provide a national review of fair access.

The schools white paper stressed the importance of parents having access to good quality advice when expressing their preferences, and proposed that there should be dedicated choice advisers to help the least well-off parents make choices. The Government intend to publish guidance for local authorities on choice advice which will cover a range of issues including the role of the choice adviser, potential delivery models, and the training and skills necessary to perform the role.¹¹²

Generally speaking, the Government's revised proposals relating to school admissions have been widely welcomed. However, some commentators do not feel that they go far enough and would like to see the Government remove existing permitted forms of selection.¹¹³

6. The Bill

Clauses 36 to 43 of the Bill relate to schools admissions. The Bill

- re-enacts the current prohibition on selection on the basis of ability in any maintained school, subject to the current exceptions contained in section 99(2) of the *School Standards and Framework Act 1998* (the exceptions are described above in section IV, F2 (a) of this research paper)

¹¹² HC Deb 13 February 2006, c1560W

¹¹³ e.g. "Remember 'standards not structures..?' *TES*, 3 March 2006, p2

- modifies sections 84 and 85 of the 1998 Act to strengthen the status of the *School Admissions Code of Practice*. Currently the legislation refers to the Code as containing practical guidance and guidelines, which relevant bodies, such as governing bodies of maintained schools, are required 'to have regard to.' Clause 37 of the Bill amends the 1998 Act to strengthen the force of the code by requiring relevant bodies to act in accordance with it, and to provide that it may impose requirements and may include guidelines. Also Admission Forums are included within the list of bodies to whose functions the code applies
- amends the 1998 Act to extend the role of Admission Forums. They are given the power to prepare and publish reports on matters connected with admissions to maintained schools in their area. The local education authority, neighbouring authorities, and governing bodies must comply with requests for information from the Admission Forums. Admission Forums in England are empowered to refer an objection about the admission arrangements of any maintained school in its area to the Adjudicator
- requires local education authorities in England to provide advice and assistance to parents to help them express their school preference for their child
- prohibits interviewing as part of the admission process in any maintained school in England and Wales. The prohibition does not apply in relation to interviews which are intended to assess suitability for a boarding place at a school with boarding accommodation, and it does not prevent schools with permissible selective admission arrangements from conducting assessments to ascertain an applicant's aptitude
- amends sections 89 and 90 of the 1998 Act in relation to admission arrangements in maintained schools in England to ensure that admission arrangements approved for new and expanding schools remain in place for a prescribed period. The Government's intention is that approved arrangements remain in place unchanged for three years. Also the section 90A of the 1998 Act is amended to ensure that the determinations by the adjudicator will generally remain effective for a prescribed number of school years
- makes various amendments to section 90 of the 1998 Act including the repeal of section 90(10) so that the Schools Adjudicator in England is no longer required to refer to the Secretary of State objections concerned with admissions criteria relating to a person's religion or religious denomination. The Schools Adjudicator and the Secretary of State (in Wales) may consider any aspect of admission arrangements that are the subject of an objection
- modifies sections 101 to 103 of the 1998 Act to allow for additional forms of banding

G. Other provisions within Part 3 of the Bill

1. School funding

Clause 44 introduces *Schedule 5* which contains detailed provisions relating to the duties and powers of local education authorities in relation to the financing of maintained schools and the role of schools forums. Under section 48 of the *School Standards and Framework Act 1998* LEAs are required to establish a scheme which deals with matters connected to the financing of maintained schools. All LEAs have existing schemes. Schools forums represent the views of schools (and any other organisations that the LEA includes in the forum) on the authority's schools budget. The changes made by Schedule 5 are described in detail in the Explanatory Notes on the Bill. The changes include an amendment to the duty on LEAs to establish a financial scheme to one that requires a LEA to maintain a scheme, and enables regulations to be made governing the approval of revisions to such schemes. This includes arrangements under which schools forums may approve revisions with or without modifications and the circumstances under which such revisions may be submitted to the Secretary of State or National Assembly for Wales for approval. It also removes the power of the Secretary of State or Assembly to impose a scheme on a local education authority.

2. Repeal of the Code of Practice on LEA and school relations

Clause 45 removes the requirement for the Secretary of State to have a statutory *Code of Practice on Local Education Authority – School Relations*, to which local authorities and maintained schools must have regard. The Code was first published in April 1999 to provide statutory guidance on how LEAs and schools should work together. It was revised in 2001 and is now out of date. The Government believe that the Code has served its original purpose and is no longer needed.

V Schools causing concern (Part 4 of the Bill)

The *Education Act 2005* introduced a new school inspection system with schools taking greater responsibility for their self evaluation, inspections being more frequent, shorter and with minimum advance notice, and the new School Improvement Partners being given a key role in improving a school's performance. Inadequate schools receive an Improvement Notice or, in cases of severe problems, they are placed in special measures. Ofsted began a new three-year school inspection cycle in September 2005.

As part of the inspection process, inspectors are required to judge whether a school falls into the category of a school causing concern. There are two categories of such schools:

- Schools requiring special measures – this is the most serious category. Schools will be judged to require special measures if it is failing to give pupils an acceptable standard of education, and if the school has not demonstrated the capacity to secure the necessary improvement.
- Schools requiring a Notice to Improve – a school will be given a notice if it is performing significantly less well than it might reasonably be expected to do so in

its circumstances. A school that is currently failing to provide an acceptable standard of education, but has the capacity to improve, will be placed in this category.

The white paper said that the Government would amend the existing legislation governing formal warning notices to enable local authorities to tackle school failure and underperformance more quickly and effectively. It also announced that a duty would be placed on local authorities (in relation to maintained schools) and on the proprietors of independent schools to consider the full range of their powers immediately on receipt of an adverse Ofsted report on a school. The white paper said that where a school is in special measures it should have one year only to demonstrate real progress, and that if it fails the presumption will be that it will close, and that normally a replacement school or academy will open on the same site. Similarly, a school issued with an improvement notice would have a year to demonstrate progress and if it fails to do so it would be placed in special measures:

2.55 Where a school is placed in Special Measures, action must be fast and decisive. A school in Special Measures will have one year only to demonstrate real progress. If it fails, the presumption will be that the school will be closed if necessary using the Secretary of State's reserve powers, with a replacement school or Academy normally opened on the same site. Similarly, a school issued with an Improvement Notice will have one year to demonstrate progress. If it has not done so, it will be placed in Special Measures.¹¹⁴

Some commentators said these proposals might be too rigid and could lead to good teachers being driven away from schools that receive these designations.¹¹⁵

The Regulatory Impact Assessment states the rationale for the changes as follows:

13.7. It is unacceptable for any school to provide a low standard of education for its pupils, irrespective of location or background of the pupils. There are a small number of schools that have been in special measures for over twelve months (currently 47 of the 132 primary schools in special measures and 43 of the 78 secondary schools in special measures). Of those schools in special measures (232 schools in total as of 12 January 2006), only 6 (5%) primary schools and 4 (5%) secondary schools are deemed to be making good progress overall and are on course to get out of special measures in the near future. 16 (7%) of primaries and 15 (19%) of secondaries are making inadequate progress overall. Unless further radical action is considered soon for those schools making inadequate progress to date, it is unlikely that the school will come out of special measures for a considerable amount of time.

Part 4 of the Bill re-enacts existing legislation relating to schools causing concern, in some places with modification, and makes provision for some significant new powers. In summary Part 4 of the Bill:

¹¹⁴ Schools white paper, chapter 2

¹¹⁵ e.g. see *Memorandum submitted by the NUT to the Education and Skills Committee*, and HC Paper 633-II, Ev 58. paragraph 64; *Memorandum submitted by the National Governors' Council to the Education and Skills Committee*, Ev 91, paragraph 4.8.2

- amends the procedures under which local authorities may take action in relation to schools in categories of concern. The aim is to make the existing duties more specific and to secure more decisive action. The provisions clarify that the duties extend to underperforming schools in relation to the nature of their intake as well as in relation to the standards at comparable schools (clause 47 (3))
- provides a new power to require failing and underperforming schools to federate or take a partner for the purposes of securing school improvement (clause 50)
- re-enacts with modifications existing legislation empowering the LEA to appoint additional governors at a maintained school which is subject to special measures, in need of significant improvement, or where the governing body has not complied with a formal warning
- re-enacts with amendments the powers of the LEA to appoint a specially constituted governing body with the consent of the Secretary of State
- re-enacts the power of the LEA to suspend a school's right to a delegated budget if the school is eligible for intervention under the Bill's provisions
- re-enacts the existing legislation, with amendments, that confers powers on the Secretary of State to appoint additional governors to a governing body that is eligible for intervention
- re-enacts existing legislation which gives the Secretary of State power to direct the closure of a school if the school requires special measures (clause 55)
- re-enacts existing legislation that enables the Secretary of State to appoint a special constituted governing body (Interim Executive Board) to conduct the school in place of the normal governing body. It is only applicable if a school requires significant improvement or special measures. Other provisions relating to Interim Executive Boards are re-enacted
- amends existing provision dealing with measures that need to be taken by a LEA following the receipt of an inspection report stating that a school requires special measures or significant improvement (Schedule 7). Some of the changes are minor and consequential; others make revisions or new provision. The changes include: new requirements for LEAs to consider consulting parents of children at the school about improving the school; new powers for the Secretary of State to give a notice to a local education authority that, in the light of evidence presented by Ofsted through an interim inspection, the case of a particular school has become urgent; and powers for the Secretary of State to issue a notice requiring the local education authority to produce a written statement explicitly considering the action to be taken in the light of the recent interim inspection
- places a duty on local authorities to have regard to guidance issued by the Secretary of State. Presumably the guidance will refer to the white paper's expectation that where a school is in special measures it should have one year to

demonstrate real progress. If it fails, the presumption will be that it will close, and that normally a replacement school or academy will open on the same site. Presumably, in practice, the period may not be precisely a year but may depend upon whether the school has demonstrated real progress and other circumstances such as the timing of Ofsted's monitoring visit.

VI Curriculum and entitlements (Part 5 of the Bill)

A. Background

The schools white paper, *Higher Standards, Better Schools for All*, said that the Government would legislate to prescribe curriculum entitlements for learners aged 14 to 19.¹¹⁶

The 14-19 Education and Skills White Paper, which was published in February 2005, set out proposals for the reform of post-14 curriculum and qualifications with the aim of ensuring that all pupils benefit from the style and pace of learning that suits them.¹¹⁷ The white paper followed the green paper, *14-19: extending opportunities, raising standards*, which was published in February 2002, and the report of a working group on 14 to 19 reform under the chairmanship of Sir Mike Tomlinson, which was published in October 2004. The green paper set out proposals designed to deliver a range of academic, vocational and mixed options to ensure that something relevant and attractive was offered to all pupils, not just the academically able. The rationale for the policy was both social (to raise young people's participation in education and training, reduce their likelihood of exclusion and increase their employability) and economic (meeting certain skill shortages, and creating savings by reducing social exclusion).

a. Tomlinson Report

The report of a working group on 14 to 19 reform – the Tomlinson Review – proposed that the existing system of examinations for 14 to 19 year olds should be replaced by a framework of diplomas at entry, foundation, intermediate and advanced levels.¹¹⁸ The Tomlinson report envisaged 20 'lines of learning' within the diploma framework, which would cover a wide range of academic and vocational disciplines. All 14 to 19 programmes would include core and main learning. Tomlinson recommended that the core learning should include specified levels of achievement in functional mathematics, functional literacy and communication and ICT; completion of an extended project appropriate to the level of the diploma; development of a range of common knowledge and skills such as personal awareness, problem-solving, creativity, team working and moral and ethical awareness; an entitlement to wider activities; and, support for learners in planning, reviewing and making future choices about further learning and careers.

¹¹⁶ *Higher Standards, Better Schools for All*, p115

¹¹⁷ *14 to 19 Education and Skills*, Cm 6476, February 2005:

<http://www.dfes.gov.uk/publications/14-19educationandskills/>

¹¹⁸ *14-19 Curriculum and Qualifications Reform, Final Report of the Working Group on 14-19 Reform*, October 2004: <http://www.dfes.gov.uk/14-19/documents/Final%20Report.pdf>

It was envisaged that the successful completion of a programme at a given level would lead to an award of a diploma recognising achievement across the whole programme. The diplomas were to be interlocking so that achievement at one level provided the basis for progression to the next, with the extended project at the advanced level providing 'greater stretch and differentiation'. Tomlinson proposed that existing qualifications such as GCSEs and A Levels would cease to be free-standing qualifications but would evolve to become components of the new diploma framework.

Many of the Tomlinson proposals were accepted but not the replacement of A Levels and GCSEs with a single, over-arching qualifications framework for both academic and vocational qualifications.

b. Government's proposals

On 23 February 2005, Ruth Kelly, the Secretary of State for Education and Skills, announced the Government's response to the Tomlinson report and published the 14-19 Education and Skills White Paper. The Secretary of State made it clear that the current system of GCSEs and A Levels would not be scrapped. However, GCSE and A Levels would be strengthened. The curriculum would be revised to make space for extra help and support in English and Maths. English and Maths GCSEs would be restructured so that it would not be possible to get a C grade or above without passing a new functional skills unit in Maths and in English. Coursework would be reviewed. Maths and science would be promoted including implementing new science GCSEs with the expectation that students should do two science GCSEs. At A Level, changes would include a new section in papers covering Advanced Extension Award type material and an Extended Project requiring a high degree of planning, preparation, research and independent work.

A new general GCSE diploma would be introduced for all students gaining 5 A* to C grades in subjects including maths and English. The change would be reflected in performance tables. Vocational opportunities would be transformed through new specialised diplomas in 14 broad subject areas reflecting key sectors of the economy. The diplomas would be available at levels 1 (foundation), 2 (GCSE) and 3 (advanced). Employers would take a lead through Sector Skills Councils in designing the specialised diplomas. Apprenticeships would be integrated into the diploma framework. All diplomas and A Levels would offer optional, more challenging questions for the brightest students.

Other measures included a pilot of the extended project; the use of HE modules in schools and colleges; and, improving employment-based training. It was also proposed that more information about A level grades in individual modules and marks would be made available for university admissions, and a new programme was announced for work-related learning for 14 to 16 year olds.¹¹⁹

¹¹⁹ HC Deb 23 February 2005 c 312:
http://www.publications.parliament.uk/pa/cm200405/cmhansrd/cm050223/debtext/50223-04.htm#50223-04_head0

The majority of the educational establishment had supported Tomlinson's proposals, and some commentators expressed disappointment with the Government's proposals, seeing them as a missed opportunity. The main criticism was that the new system would retain the academic/vocational divide in qualifications, and that GCSEs and A Levels would be retained rather than Tomlinson's single overarching diploma framework. David Bell, the then Chief Inspector of Schools, was quoted as being concerned about continuing the GCSE and A Level structure as it risked continuing the historic divide between academic and vocational courses. However, the CBI and the Institute of Directors welcomed the package of reforms.¹²⁰ For additional reaction to the proposals, see Library Standard Note, *Reform of 14 to 19 Learning*, dated 24 February 2005.¹²¹

The Secretary of State's remit letter to the Qualifications and Curriculum Authority (QCA) of 29 March 2005 set out how the QCA would take forward the 14 to 19 reforms. The letter stressed that the Secretary of State did not underestimate the size and complexity of the reform programme, with its many interdependencies. QCA was therefore asked to provide advice on the prioritisation, sequencing and timescale of the required work. The work related to functional English and Maths units and the new specialised diplomas was to be given priority.¹²²

The *14 to 19 Implementation Plan*, which was published on December 2005, sets out what the Government's reform programme will mean in practice. Ruth Kelly's Written Ministerial Statement on 14 December 2005 outlined the main changes:

We are aiming to create an education system that is not merely good but world class and which is built around the needs of all young people, employers and our society. We are guaranteeing more choice about what young people can learn so that they have a head start for a rewarding future. Our recent White Paper "Higher Standards, Better Schools for All" proposed reforms to ensure that every school is a good school and that every child receives increasingly tailored support. A continued focus on improving standards, especially in English and maths, in developing more personalised learning and in creating greater flexibility are strong components of both the 14–19 reform agenda and of our strategy for schools.

At the heart of this system is a new curriculum entitlement which will offer each young person a choice of high quality learning pathways—including the option of more theoretical or more practical approaches at an appropriate level for them—which can be the basis for progression to further learning, higher education and employment. Delivering this entitlement will require profound change in the education system with collaboration of all players a key requisite for success.

¹²⁰ e.g. see "Teachers award Kelly black marks for rejecting reforms" *Times*, 24 February 2005; "Outcry at Kelly's exam reforms" *Guardian*, 24 February 2005; "Exam 'overhaul' that retains A level criticised on all sides" *Independent*, 24 February 2005; "Kelly's vocational plans 'will turn the clock back 50 years'", *Daily Telegraph*, 25 March 2005, p4; "Tomlinson test ignored", *TES*, 20 May 2005, p8; "Morris tells Kelly to go for diploma", *TES*, 19 August 2005, p4

¹²¹ SN/SP/3406, dated 24 February 2005
http://10.160.3.10:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snsp-03406.pdf

¹²² DfES letter to Sir Anthony Greener, Chair of the QCA, Library deposited paper 05/933

At the local level, a coherent 14–19 system will need excellent partnerships between Local Authorities and local Learning and Skills Councils. The role of Local Authorities as the integrators of services of children up to the age of 19 will be crucial.

This Plan sets out how we will strengthen the role of local Government in 14–19 education, and pilot better models of partnership working between Local Authorities and the local LSCs to ensure the strategic development of 14–19 provision in their area, particularly in relation to local skill needs.

The Implementation Plan sets out three key priorities: developing new qualifications and the curriculum; supporting every local area to deliver; and improving the system for today's young people.

The agenda is a long-term one and we are working closely with key delivery partners to make it a reality. In taking work forward we will continue to consult with a wide range of individuals and organisations.¹²³

The first five specialised Diplomas will be available in 2008, the next five in 2009 and the final four in 2010. Following a three-year evaluation programme, all fourteen lines of study will be a national entitlement by 2013. The new national entitlement for all 14 to 19 year olds as set out in the Implementation Plan will be as follows:

The new national entitlement for 14-16 year olds

Every young person will study:

- *National Curriculum core subjects:* English, maths and science;
- *National Curriculum foundation subjects:* ICT, PE and citizenship;
- work-related learning and enterprise;
- religious education; and
- sex, drug, alcohol and tobacco education and careers education

The choice available to young people must include:

All 14 specialised Diplomas: engineering; health and social care; ICT; creative and media; construction and the built environment; manufacturing; hair and beauty; business administration and finance; hospitality and catering; public services; sport and leisure; retail; travel and tourism.

AND:

At least one course in each of the following areas: the arts; design and technology, the humanities; modern foreign languages; with an opportunity to take a course in all four areas if they wish to.

The national entitlement for 16-19 year olds

There will be a new national entitlement for 16-19 year olds to study towards any one of the specialised Diplomas as well. In addition, there will be an entitlement

¹²³ HC Deb 14 December 2005 c 150WS – for the full text see: http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm051214/wmstext/51214m02.htm#51214m02.html_sbhd0

to study functional English, functional maths and functional ICT to age 19 until at least level 2 is achieved. This may be as part of a Diploma programme, within an Apprenticeship or a general programme, or separately.¹²⁴

The *14 to 19 Implementation Plan* recognises that the proposed entitlement could not be delivered by individual schools acting alone, and that many colleges could not offer it in full. Every area will develop a system in which schools and colleges will work together in different ways to deliver the entitlement. 14 to 19 partnerships will decide how to deal with local delivery issues. The *Implementation Plan* states that the 2006 Education Bill will put duties on the local authority (in relation to 14 to 16 year olds) and on the Learning and Skills Council (in relation to 16 to 19 year olds) to ensure that there is sufficient provision in the local area. It also said that the Bill will seek to place a duty on schools to ensure that young people on their roll have access to all the diplomas available locally. Also, every area will be expected to establish a 14 to 19 partnership, led by the local authority and the local learning and skills council. Local authorities and local learning and skills councils will be expected to draw up a prospectus that sets out in full the courses available in their area. The *Implementation Plan* states that the duties will be 'framed so as to ensure that there is no requirement to incur unreasonable or disproportionate costs.'¹²⁵

The Government's ambition is that the changes will ensure the post-16 participation rate in education or training will rise from the current 75% to 95% by 2015.¹²⁶

The 14 to 19 pathfinder programme has been examining different models of collaborative working in different circumstances in order to test out a range of ideas and develop best practice for 14 to 19 education and training so that a coherent 14 to 19 phase can be achieved using a variety of locations with different social circumstances and different mixes of schools and colleges.¹²⁷

c. Reaction

While the attempts to improve 14 to 19 provision have been welcomed, some commentators have noted that the changes set out in the *Implementation Plan* will be at least as complicated as those suggested in the Tomlinson report. There is concern about the timetable for the introduction of the first new diplomas, and whether there will be sufficient funding to implement such far-reaching changes. With the first vocational diplomas to be launched in 2008, there is concern that the preparatory work needs to be completed quickly so that the details would be with schools by September 2007. Some commentators have warned that this is a tight timetable and recall the problems that occurred when AS Levels were introduced in 2002. It has also been pointed out that

¹²⁴ *14 to 19 Implementation Plan*, Figure 1.1, p16; <http://www.dfes.gov.uk/14-19/index.cfm?sid=26>

¹²⁵ DfES, *14 to 19 Reform: Implementation Plan*, 14 December 2005: http://www.dfes.gov.uk/14-19/documents/14-19_implementation_plan05.pdf

¹²⁶ DfES Press Notice, *Driving Forward 14 to 19 Reform: Implementation Plan*, 14 December 2005: http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2005_0157

¹²⁷ <http://www.dfes.gov.uk/14-19/index.cfm?sid=9&pid=258&lid=236&ctype=Text&ptype=Single>

while the continuation of GCSE league tables emphasises competition between schools, the introduction of the new diplomas will need collaboration between schools.¹²⁸

B. The Bill

Clause 61 substitutes two sections for section 85 of the *Education Act 2002* setting out the curriculum requirements for key stage 4 for pupils aged between 14 and 16. The Explanatory Notes to the Bill state that it is intended that all key stage 4 students will have a new entitlement to study science programmes leading to at least two GCSEs. The DfES propose to make an order under new section 85(5)(b) specifying the combinations of GCSEs that would meet the entitlement and that will adequately prepare students for physics, chemistry and biology "AS" and "A" levels.

As an alternative to the current key stage 4 entitlement all key stage 4 students will be able to choose to follow a course of study which will lead to a specialised diploma in an 'entitlement area' specified by the Secretary of State. New duties are placed on local education authorities, governing bodies and head teachers to exercise their functions with a view to securing that courses of study within the diploma entitlement are made available. This duty does not apply in relation to a particular diploma entitlement area if the local education authority has determined that its provision would lead to disproportionate expenditure.

A school may collaborate with another school or further education institution to secure courses of study within the diploma entitlements, and LEAs are given new powers to make arrangements to secure provision of courses in diploma entitlement areas from further education institutions. The Learning and Skills Council for England is required to co-operate with local education authorities in making arrangements to secure the provision of courses of study in the diploma entitlement areas.

Clause 62 inserts new sections into the *Learning and Skills Act 2000* to give young people who are over compulsory school age, but have not yet had their 19th birthday, two new entitlements. Young people may exercise either or both of the entitlements. The core entitlement is to a course of study in maths, English and information and communications technology, and the additional entitlement is to a course of study in a diploma entitlement area specified by the Secretary of State.

A duty is placed on the Learning and Skills Council for England (LSC) to exercise its functions with a view to securing that courses of study within all the specified diploma entitlement areas are made available in each local learning and skills area unless the provision of a particular diploma would lead to disproportionate expenditure. Section 13 of the *Learning and Skills Act 2000* is amended to ensure that the LSC must have regard to the needs of persons with learning difficulties in discharging its functions in relation to the new diploma entitlements.

¹²⁸ "Teenage timetable goes back to basics", *TES*, 16 December 2005, p4; "Struggle to usher in 14 to 10 reforms", *TES*, 18 November 2005, p4; "Fiasco looms over diplomas", *TES*, 18 November 2005, p4; "Rushed diplomas run risk of deja-vu" *TES*, 18 November 2005, p18

VII School travel and school food (Part 6 of the Bill)

A. Travel to schools

1. Current statutory provisions governing LEAs' duties and powers

The duties and powers of local education authorities (LEAs) to provide home-to-school transport are governed by sections 509 and 444 of the *Education Act 1996*, as amended. The 1996 Act was a consolidation Act; the provisions date back to the *Education Act 1944*, and the legislation has been largely unchanged although there have been dramatic changes in education, transport and attitudes. There is a considerable amount of case law on the interpretation of the provisions.

Under section 509(1) LEAs must provide free school transport if they consider it necessary to enable a pupil to attend school, and they have discretionary powers under section 509(3) to pay the whole or part of a pupil's travelling expenses. When deciding whether or not free transport is necessary the LEA must take account of the pupil's age, the nature of the possible routes to school and any parental wish for denominational education provided that is the denomination to which the parent adheres. Section 509 is linked to section 444, which provides a statutory defence for non-attendance at school if a child lives beyond the statutory walking distance to the nearest school and the authority has not made provision for free school transport. The statutory walking distance, which has remained the same since 1944, is two miles for pupils aged up to eight and three miles for those aged eight and over.

The courts have ruled that free transport must be provided for a pupil of compulsory school age (five to sixteen years) who attends the nearest suitable school if it is beyond the statutory walking distance. The statutory walking distance is measured by the shortest route along which a child, accompanied as necessary, may walk with reasonable safety. The courts have held that a route does not cease to be available because of the dangers that would arise if the child were unaccompanied.

LEAs do not have a duty to provide free transport for a pupil whose parents have chosen to send their child to a school that is not the nearest suitable school and is beyond the statutory walking distance. Statutory school transport is provided to ensure that children can attend school. Ministers have stressed that it is not, and never was, intended to be an all-inclusive transport service providing free travel for those who could reasonably walk or who have chosen not to attend the nearest suitable school.¹²⁹ However, LEAs have broad discretionary powers and some LEAs provide transport over and above the minimum statutory requirements.

Where a denominational school has been designated as the nearest suitable school and it is beyond the statutory walking distance the LEA must provide free transport. Where a pupil lives closer to a non-denominational school, the LEA will provide free transport to a denominational school if they consider that transport is necessary, and they may

¹²⁹ For example, speech by Ivan Lewis, Parliamentary Under-Secretary of State, Department for Education and Skills, HC Deb 2 December 2001, cc 123 - 130WH

otherwise provide assistance with travel costs. This is an area where LEAs exercise local discretion, taking into account the religious beliefs of parents and local circumstances. Practices vary significantly from authority to authority.

LEAs arrange free school transport for children with special educational needs (SEN) for whom transport is necessary. The *Special Educational Needs Code of Practice* provides guidance to LEAs about the home–school transport for children with SEN.¹³⁰ Where a parent wants their child to attend a school further away from the child’s home than a nearer school that can meet the child’s special educational needs, the LEA may name the nearer school if that would be compatible with the efficient use of the LEA’s resources. However, it would also be open to the LEA to name the school preferred by the child’s parents on condition that the parents agreed to meet all or part of the transport costs. The Code explains that transport need only be recorded in part 6 of a statement of SEN in exceptional circumstances where a child has particular transport needs. Where transport is recorded in part 6 of a statement, it must be provided free of charge. Where the LEA names a residential provision which is some distance from the parents’ home the LEA should provide transport or travel assistance. The Code recommends that LEAs have clear general policies relating to transport for children with SEN.

The *Transport Act 1985* permits local authorities outside London, to allow pupils not eligible for free school transport to occupy spare seats on school buses, either free or at a subsidised rate. In London, Transport for London provides free bus passes for children under 16, and it intends to extend this to under-18s in full-time education from September 2006.

It is for each authority to decide whether and how to exercise its discretionary powers to offer free or subsidised transport to pupils not entitled to statutory free transport. However, the increasing cost of statutory provision has meant that discretionary provision has been decreasing. LEAs must publish annually their policies on free and discretionary transport.

The *Education Act 2002* introduced new duties in relation to transport for post-16 year old students. Every LEA must draw up and publish a policy statement setting out the provision of, and support for, transport for 16 to 19 year olds. The policy statement should include the arrangements that the authority considers necessary for the provision of financial assistance for *reasonable* travelling expenses of persons of sixth form age receiving education or training. The provisions were brought into force in England on 20 January 2003 for implementation of transport policies from the beginning of the 2003/04 academic year. In Wales the provisions were brought into force on 1 September 2003 for implementation in the 2004/05 academic year.

¹³⁰ DfES, November 2001, paragraphs 8.87 to 8.90:
<http://www.teachernet.gov.uk/doc/3724/SENCodeOfPractice.pdf>

2. Proposals for change

In recent years there has been growing pressure for change. Local government and other bodies argue that the arrangements are out of date. There is concern about the environmental and health problems associated with increased car use for school journeys, and about the cost, fairness and safety of the current arrangements. The Local Government Association, the Audit Commission and the Social Exclusion Unit urged the Government to try alternatives to the current arrangements.

In October 2004 the Government presented the *School Transport Bill* in the House of Commons. Library research paper 04/08 provided background on the Bill.¹³¹ The main aim of the Bill was to reduce car use on the home-school journey. It sought to enable local authorities in England and Wales to pilot new arrangements for school transport – school travel schemes – tailored to the needs of their area. Under home-school travel schemes authorities would have been able to charge for school travel although children from very low-income families who attend their nearest suitable school would be exempt. Local authorities would still have been required to make transport arrangements for any child who attended a school beyond the statutory walking distances unless other suitable arrangements had been made.

Conservative and Liberal Democrat Front-Bench spokesmen were strongly opposed to charging parents for school transport that is currently free. The Bill had been preceded by a draft Bill which had been scrutinised by the Education and Skills Committee, and also considered by the Transport Committee. The Education Select Committee had called for a more radical overhaul of the legislation. The Bill completed its committee stage in the House of Lords shortly before Parliament was prorogued for the General Election.

The schools white paper announced that legislation would be introduced to widen access to free school transport for disadvantaged pupils (i.e. children entitled to free school meals, children whose parents are entitled to the maximum level of Working Tax Credit and children in local authority care) to enable them to attend any of three suitable secondary schools closest to their home, where these schools are more than two and less than six miles away. The white paper also proposed that the powers of the LSC would be extended to provide home to school/college transport for students between 16 and 19.

3. The Bill

Clauses 63 to 72 of the Bill build on those included in the *School Transport Bill*, which fell when Parliament was prorogued for the 2005 General Election. The Bill includes:

- a general duty on LEAs in England to assess the travel and transport needs of all pupils, and to promote sustainable methods of travel to school. LEAs will be required to prepare and publish a sustainable modes of travel strategy to meet

¹³¹ http://10.160.3.10:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/RESEARCH_PAPER/rp04-078.pdf

the school travel needs of their area. Details of how the assessment of school travel needs in the area is to be carried out will be included in guidance issued by the Secretary of State;

- new sections inserted into the *Education Act 1996* to place on LEAs in England duties relating to home school travel arrangements for 'eligible children' to facilitate their attendance at relevant educational establishments. Travel arrangements may be made by the authority itself or by another body but the arrangements must be free of charge. The aim is to introduce greater certainty and flexibility into the arrangements of home to school travel. As the Explanatory Notes on the Bill observe in London, for example, Transport for London provides free bus passes for all children under the age of 16, and in most circumstances, London LEAs therefore consider that they do not need to make any additional arrangements for the majority of the children living in their area. The Explanatory Notes on the Bill state that travel arrangements may include the provision of a seat on a bus provided by the LEA, a seat on a bus provided by the local education authority; the provision of a bus pass on a public service bus; provision of an escort; mileage allowances for travel by car; cycling allowances; and so on. Further details will be provided in guidance issued by the Secretary of State;
- schedule 8 of the Bill inserts new schedule 35A into the 1996 Act, which defines 'eligible children'. The definition includes the current categories of children entitled to free transport (either under the *Education Act 1996*, through case law, and best practice), and extends the right of free transport to two new categories (see the next two bullet points below);
- an extension of the right to free transport for the most disadvantaged pupils of secondary school age (those entitled to free school meals and those whose parents are in receipt of their maximum level of Working Tax Credit) to include transport to any one of their three nearest schools between 2 and 6 miles from their home;
- an extension of the right to free transport for right to free transport to the most disadvantaged primary school pupils aged 8 and over (those entitled to free school meals and those whose parents are in receipt of the maximum level of Working Tax Credit) to include transport to their nearest suitable school more than 2 miles from their home (the current cut off is 3 miles);
- LEAs are empowered to make discretionary arrangements to facilitate attendance at school for children not meeting the definition of 'eligible children'. For example, local education authorities may wish to make travel arrangements for children, attending schools preferred on strong religious or philosophical grounds, or for children below compulsory school age or living within statutory walking distance;
- provisions to allow local authorities in England to make innovative school travel schemes tailored to the needs of their area. As with the previous Bill, provision is made for charging except in relation to 'protected children'. School travel schemes must be piloted in accordance with regulations made under the Bill;

- new provisions relating to the circumstances in which a parent will not have a defence to the charge of failing to secure their child's regular attendance at school, for example, where an authority operates a school travel scheme and makes charges;
- amendments to existing legislation to transfer from the Secretary of State to the Learning and Skills Council responsibility for managing operational arrangements in relation to the provision of transport by LEAs and their partners for 16 to 19 year olds;
- provision to clarify the duties of LEAs to have regard to the religion or belief of parents in exercising their travel functions. References to religion and belief must include references to a lack of religion or belief.

4. Reaction

Some reaction to the proposals contained in the previous Bill on school transport is noted in the library research paper on the Bill. The schools white paper's school transport proposals attracted relatively few comments, and at the time of writing the focus of initial reaction to the Bill has been on other provisions in the Bill.

In its evidence to the Select Committee's examination of the white paper, Confed (the Confederation of Children's Services Managers) commented on school transport. Amongst other things, it said that it was unclear how sending a child to a school further away from home would help parents' to engage with their child's school and in their education. It felt that the white paper's proposals were based on an urban model of school provision and would not meet needs in rural areas where secondary education may be dispersed over a large area. It also raised the issue of how the proposal fitted with the *Every Child Matters* agenda – particularly, the ECM outcomes of 'staying safe' and 'being healthy' - if pupils are transported up to six miles away from their home.¹³²

B. Food and drink provided on school premises

1. Background

National nutritional standards for school meals were reintroduced in April 2001. However, since then it has become apparent that these standards are not sufficient to ensure healthy eating in schools.

On 6 September 2004 the Government published the *Healthy living blueprint for schools*. This provided guidance on a whole-school approach to food and nutrition, and announced that the Government would revise the nutritional standard for secondary school dinners, review the standards for primary schools, and seek to provide better training and support for catering staff working with schools.¹³³

¹³² Memorandum submitted by Confed to the Education and Skills Committee, The schools white paper, First report of Session 2005-06, Volume II, Oral and written evidence, HC Paper 633-II, Ev 174-175

¹³³ <http://www.teachernet.gov.uk/wholeschool/healthyliving/?section=5033&CFID=6469941&CFTOKEN=ce95e8-ea95a475-b399-4a13-b9ab-432228320125>

Against the background of growing concern about the poor quality of school meals, and following Jamie Oliver's Channel 4 programme, *Jamies's School Dinners*¹³⁴ and his 'Feed Me Better' campaign, the Government announced on 30 March 2005 a £280 million package to transform the quality of school meals, and the measures included proposals to ensure tougher nutritional standards.¹³⁵

The School Food Trust (SFT) has been set up by the DfES to support schools and authorities improve the quality of meals. Following a recommendation of the Schools Meals Review Panel, which represents a cross section of stakeholder groups and organisations, that standards should apply to food and drink other than meals, the SFT has recommended that mandatory standards should also apply to all food sold in schools throughout the day and to food provided in schools. This would include food sold through vending machines, tuck shops, breakfast clubs and after school. On 2 March 2006 the Government announced a consultation with stakeholders on the proposals.¹³⁶

2. The Bill

Clause 73 of the Bill replaces section 114 of the *Schools Standards and Framework Act 1998* to extend the power to make regulations in connection with nutritional standards for school meals to cover all food and drink provided on the premises of maintained schools.

Clause 74 replaces the current duty on LEAs and governing bodies to charge for food and drink provided by them with a power to charge for such provision. The Explanatory Notes to the Bill state that the relaxation is intended to help those LEAs and governing bodies who would like to provide pupils with food and drinks free of charge.

VIII Discipline, behaviour and exclusion (Part 7 of the Bill)

Despite measures to improve the behaviour of pupils there remain concerns that many schools continue to face discipline problems, including low-level disruption to lessons that makes teaching and learning more difficult. The Government is concerned that some parents do not take their responsibilities seriously enough, and question the teacher's right to discipline their child. A leadership group on behaviour and discipline, under Sir Alan Steer, was established to advise the Government on effective school discipline. Following the Steer report, the schools white paper, *Higher Standards, Better Schools for All*, announced new measures, and the DfES subsequently carried out a consultation on the proposals. The Bill provides new powers for teachers and other school staff to discipline pupils, extends the scope of parenting orders and parenting

¹³⁴ "Jamie's dinners push healthy school food up political menu", *Times*, 19 March 2005, p13; "Cool dinners", *Guardian* (Education), 15 February 2005, pp 2-5

¹³⁵ DfES Press Notice, *Healthy food in schools – Transforming School Meals*, 30 March 2005: http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2005_0044

¹³⁶ DfES Press Notice, *Standards for food other than in lunch in school – consultation*, 2 March 2006: http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2006_0022

contracts, and requires parents to take responsibility for excluded pupils in their first five days of exclusion.

A. Background

1. Current statutory responsibilities of school governing bodies and head teachers for discipline

Sections 61 and 62 of the *School Standards and Framework Act 1998* Act places duties on school governing bodies and head teachers of maintained schools to take certain steps to promote good behaviour and discipline at their school. In brief, a school governing body must make, after consultation with the head teacher and parents, a written statement of general principles to guide the head teacher. The head teacher must be told of any views the governing body may have as regards particular measures to achieve the objective of good behaviour and discipline. The head teacher determines measures within this framework.

Section 62 of the 1998 Act gives LEAs reserve powers, in certain circumstances, to prevent a breakdown of discipline at a maintained school in their area.

Section 61 (4) (b) makes specific provision to combat bullying at school. (The DfES teachernet website has a page on bullying. This gives links to the main guidance, the Government's anti-bullying strategies, and other references).¹³⁷

2. Use of force

Corporal punishment is not permitted in schools.¹³⁸ However, reasonable force to avert immediate danger to persons or property is not corporal punishment.

Under section 550A of the *Education Act 1996* schools have a power to use reasonable force to restrain pupils to prevent them, for example, from committing a crime, causing injury to themselves or others, causing damage to property, or causing serious disruption. DfEE (now the DfES) Circular 10/98, *The Use of Force to Control or Restrain Pupils*, provides guidance on section 550A.¹³⁹ Paragraph 17 points out that there is no legal definition of reasonable force. This will always depend on the circumstance of the case though the guidance gives examples of situations where the use of reasonable force may be appropriate or necessary to control or restrain a pupil.

Guidance for staff working in special schools catering for pupils with severe behavioural difficulties is provided in a joint DfES/Department of Health Circular.¹⁴⁰

¹³⁷ <http://www.teachernet.gov.uk/wholeschool/behaviour/tacklingbullying/>

¹³⁸ Section 548, *Education Act 1996*

¹³⁹ http://www.dfes.gov.uk/publications/guidanceonthelaw/10_98/contents.htm see paragraph 14

¹⁴⁰ DfES Circular 0242/2002, *Guidance on the use of restrictive physical interventions for staff working with children and adults who display extreme behaviour in association with learning disability and/or autistic spectrum disorders*, <http://www.teachernet.gov.uk/docbank/index.cfm?id=6059>

3. Detention

School detention is a measure that may be taken to regulate the conduct of pupils. Provisions concerning detention can be found in section 550(B) of the *Education Act 1996*, as inserted by section 5 of the *Education Act 1997*. DfEE (DfES) Circular 10/99, *Social Inclusion: Pupil Support*, provides guidance on the use of detentions.¹⁴¹ This is still current.¹⁴² Information about it is available on the DfES website.¹⁴³

4. Exclusion

The head teacher of a maintained school may exclude a child from school for a fixed period or permanently. The statutory framework for exclusions is now contained in the *Education Act 2002*. DfES guidance on the exclusions, which was revised in 2004, is on the DfES website.¹⁴⁴ There is also DfES guidance on dealing with drugs in schools.¹⁴⁵

a. Dealing with offensive weapon on school premises

The *Offensive Weapons Act 1996*, as amended, makes it an offence to possess a knife or other offensive weapon on school premises, and empowers the police to enter and search for such weapons on school premises. DfES guidance on the use of these powers was provided in *School Security – Dealing with Troublemakers*, section 6 of which covers offensive weapons.¹⁴⁶ The Violent Crime Reduction Bill, which is currently before Parliament, seeks to make new provision to enable head teachers and other authorised members of staff to search a pupil for an offensive weapon.

5. Parental behaviour

Legislation has been introduced to try to influence the behaviour of parents of children who have been excluded from school or who fail to attend school regularly. The *Anti-social Behaviour Act 2003* made provision for education-related parenting contracts, parenting orders and penalty notices.

A parenting contract is a voluntary agreement between a parent or carer and either the LEA or the governing body of a school. A parenting contract may be offered where a child is truanting or has been excluded from school. It is not intended to be a punishment but is meant to be a way for the school or LEA working with parents to help improve their child's behaviour or attendance.

A parenting order is a court order which compels a parent to attend parenting classes or some other form of counselling and to fulfil other requirements as determined necessary

¹⁴¹ <http://www.dfes.gov.uk/publications/guidanceonthelaw/10-99>

¹⁴² HC Deb 12 October 2005 c 529W

¹⁴³ <http://www.teachernet.gov.uk/management/atoz/d/detention/>

¹⁴⁴ <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/>

¹⁴⁵ DfES, *Drugs: guidance for schools*, 2004:

<http://publications.teachernet.gov.uk/eOrderingDownload/DFES-0092-2004.doc>

¹⁴⁶ DfES, *School security – dealing with troublemakers*, 1997

http://www.dfes.gov.uk/schoolsecurity/dwt6offensive_weapons.shtml

by the court for improving their child's behaviour, e.g. ensuring that the child arrives for school on time.

Parents of registered pupils who fail to attend school regularly are committing an offence under section 444(1) Education Act 1996. Penalty notices provide an alternative to prosecution and enable parents to discharge potential liability for conviction for that offence by paying a penalty of up to £100.

The DfES has issued detailed guidance on education-related parenting contracts, parenting orders and penalty notices.¹⁴⁷

B. Government proposals for change

In February 2005, Ruth Kelly, the Education and Skills Secretary, underlined her support for schools to take a "zero tolerance approach" in tackling classroom indiscipline.¹⁴⁸ On 20 May 2005 Jacqui Smith, the Schools Minister, announced that a practitioners' group on behaviour and discipline under the chairmanship of Sir Alan Steer would advise the Government on effective school discipline practice, how to improve parental responsibility for their children's behaviour, and on how to promote a culture of respect in schools..¹⁴⁹

In his speech to the Labour Party Conference 2005, the Prime Minister said that head teachers would be given the 'full disciplinary powers they want.'¹⁵⁰ And Ruth Kelly, in her Conference speech said that 'if heads tell me that they need extra powers to maintain good discipline, I will not hesitate to grant them'.¹⁵¹

The NUT drew up a document, *Learning to Behave: the NUT's Charter on Pupil Behaviour*, calling for a national charter to clarify teachers' powers to tackle unruly behaviour.¹⁵²

In October 2005, Sir Alan Steer's Practitioners' Group on Behaviour and Discipline published a detailed report that provided practical suggestions on what kinds of approaches may work in schools, and made policy recommendations.¹⁵³ Effective leadership was seen as central in creating a climate of good order. The group recommended that schools set high expectations for pupils and staff. It also called for a National Behaviour Charter. The group called for a number of new powers focusing particularly on the overall legal right to discipline pupils; rights to search pupils; and tackling behaviour problems arising from the misuse of mobile phones. The report noted

¹⁴⁷ <http://www.teachernet.gov.uk/doc/6430/DFES-0234-2004.pdf>

¹⁴⁸ DfES Press Notice, *Zero tolerance to indiscipline in schools: redrawing the line*, 1 February 2005

¹⁴⁹ DfES Press Notice, *Respect in schools: leadership group on pupil behaviour and discipline*, 20 May 2005

¹⁵⁰ [http://www.labour.org.uk/index.php?id=news2005&ux_news\[id\]=ac05tb&cHash=d8353c3d74](http://www.labour.org.uk/index.php?id=news2005&ux_news[id]=ac05tb&cHash=d8353c3d74)

¹⁵¹ [http://www.labour.org.uk/index.php?id=news2005&ux_news\[id\]=ac05rk&cHash=774f34c861](http://www.labour.org.uk/index.php?id=news2005&ux_news[id]=ac05rk&cHash=774f34c861)

¹⁵² <http://www.teachers.org.uk/story.php?id=3498&PHPSESSID=f1427e46c7d790c825189e1115680405>

¹⁵³ *Learning Behaviour*, The Report of the Practitioners' Group on School Behaviour and Discipline, DfES, October 2005, available at: http://www.dfes.gov.uk/behaviourandattendance/about/learning_behaviour.cfm

that as long ago as 1989 the Elton Committee of Enquiry into Discipline in Schools called for the legal basis of teachers' authority to discipline pupils to be clarified:

We share the concerns expressed by the Elton Committee. The basis for teachers' legal authority is commonly understood to be the *in loco parentis* principle, which gives teachers the same authority over their pupils as parents have over their children. This is an ancient doctrine of the common law. The Elton Committee noted that most of the legal judgements which support it are also very old – predating the introduction of compulsory education and including one judgement from 1865. Since the Elton Committee reported, we understand that the *in loco parentis* principle has been reaffirmed, with recognition of it as the basis for the right to discipline, in the Williamson case of 2003. However legislation on specific aspects of school discipline such as exclusions and detentions has modified the broad *in loco parentis* principle. The Gillick competence principle²³ means that the risk of legal challenge identified by Elton is now even greater. Indeed, for 18 year old pupils, the *in loco parentis* principle no longer applies as they are adults. Moreover, the trend for parents to challenge schools at law, noted in the Elton Report, has continued and intensified.

223. We recognise that there would be difficulties to overcome in framing satisfactory new legislation. For example, putting the right to discipline on a statutory footing might raise issues of “due process” – standards of proof, appeals and so on. Moreover, the right of the teacher to discipline would need to be set in the broader context of the right of other staff, governors and parents to impose sanctions and foster self discipline. Despite the technical and conceptual difficulties, on balance, our view is that the creation of a clear new legal right would be helpful. Indeed, we see an even stronger need than at the time of the Elton Report for a single new piece of legislation to clarify the overall basis.¹⁵⁴

Ruth Kelly accepted the key recommendations of the Steer group, making it clear she wanted to see rapid progress.¹⁵⁵ The schools white paper said that the Government would implement the Steer group's recommendations by:

- introducing a clear and unambiguous legal right for teachers to discipline pupils;
- extending parenting contracts and orders to force parents to take responsibility for their children's bad behaviour in school;
- requiring parents to take responsibility for excluded pupils in their first five days of suspension from school, with fines for parents if excluded pupils are found unsupervised during school hours;
- expecting head teachers to develop on or off-site provision for pupils excluded for longer than five days (instead of the fifteen days at present) and insisting that all exclusions are properly recorded;
- making reintegration interviews following exclusions of five days or more mandatory for parents; and
- making discipline a key factor in evaluating school performance.¹⁵⁶

¹⁵⁴ *ibid.*, extract from paragraph 222 and 223

¹⁵⁵ DfES Press Notices dated 21 October 2005, http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2005_0122 and 25 October on the education white paper http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2005_0124

Subsequently, the DfES carried out a consultation specifically on what a new legal power to discipline pupils might look like. The consultation closed on 2 December 2005.¹⁵⁷

The white paper also announced that the Steer group's recommendations on appeal panels would be implemented so that panels would have to accept the judgement of head teachers and governors where it is clear that a pupil has committed an offence. The white paper also said that panels would have to emphasise the need for head teachers and governors to be from the same phase of education as the excluded pupil, and make training mandatory for clerks and chairs.¹⁵⁸

In a speech on 8 February 2006, Jacqui Smith, the Schools Minister, said that the proposed new legal right for teachers and support staff will ensure that staff can insist on order confidently and without fear of challenge, and will take discipline beyond the school gate, allowing schools to punish pupils for unacceptable behaviour on the way to and from school.¹⁵⁹

1. Reaction

The Government's proposals on school discipline have been generally welcomed though some concerns have been raised. It has been pointed out that the proposals do not mention the school's duty under section 175 of the *Education Act 2002* to promote and safeguard the welfare of pupils.¹⁶⁰

The House of Commons Education and Skills Committee's (majority) report on the schools white paper welcomed the Steer report and the Government's response to it. However, the Committee questioned whether it is reasonable to expect parents to stay at home with their children for the first five days of an exclusion, and also asked whether it might not be better to require schools and local authorities to make provision from the first day. The Committee expressed concern particularly about the effect of the proposal on disadvantaged families and single parents:

29. We take the point the Minister of State makes about parents taking responsibility and about pupils understanding that exclusion is serious and means they are kept away from school for a period. However, we remain concerned about the effects of this proposal on some of the most disadvantaged families and on single parents. We do not believe that it is realistic to expect parents in low paid or insecure employment to take time off work in these circumstances without the risk of losing their job. We also believe that it would be difficult to enforce such a policy. One of the concerns about excluded children is that they can drop out of education altogether. The fact that alternative provision has to be found after a week will certainly help to address that issue, but the DfES should monitor the situation to gauge whether that drop out continues to be a problem and if so whether provision from the first day of exclusion might be an appropriate

¹⁵⁶ *Higher Standards, Better Schools for All*, Cm 6677, October 2005:
<http://www.dfes.gov.uk/publications/schoolswhitepaper/docs/Higher%20Standards.%20Better%20Schools%20For%20All.doc>

¹⁵⁷ DfES *Legal power to discipline: consultation paper* (not available on the DfES website)

¹⁵⁸ *Higher Standards, Better Schools for All*, paragraph 7.17

¹⁵⁹ Speech at an IPPR event, 8 February 2006:
<http://www.dfes.gov.uk/speeches/media/documents/autonomy.doc>

¹⁶⁰ "The legal power to discipline pupils", *Childright*, January 2006, p 13-14

response. It should also evaluate what has been the effect of local authorities having responsibility for excluded pupils from the first day of their exclusion in the areas running the behaviour improvement programme.¹⁶¹

2. The Bill

Clauses 75 to 97 relate to school discipline, behaviour and exclusion. The Explanatory Notes to the Bill state that the provisions on enforcement of school discipline have been considerably developed since the white paper was published, through consultation and discussion with key stakeholders. As a result, the Bill includes specific new provisions on detentions (replacing section 550B of the 1996 Act 1996) and on items confiscated from pupils. In line with the consultation paper, the Bill also re-enacts other existing legal provisions on the responsibilities of governing bodies for discipline and determination by the head teacher of a behaviour policy (section 61 of the 1998 Act) and on physical restraint of pupils (section 550A of the 1996 Act).

Clauses 77 and 78 provide a new statutory power to discipline pupils. This will give all staff in lawful charge of pupils the power to discipline pupils. 'Disciplinary penalties' may be imposed on pupils where their conduct falls below what can reasonably be expected. Clause 77(2) makes it clear that 'conduct' includes conduct off school premises. Clause 78 specifies the conditions that make lawful the imposition of a disciplinary penalty on a pupil. Clause 78(10) makes it clear that corporal punishment would not be permitted.

Clause 79 replaces existing provision on detention with new powers giving schools greater scope and flexibility to use the sanction.

Clauses 84 to 86 amend the *Anti-social Behaviour Act 2003* so that voluntary parenting contracts can be used not only in cases of exclusion from school or truancy but also in cases of misbehaviour where the pupil has not been excluded. The scope of parenting contracts is extended so that they can be used where a pupil has seriously misbehaved but has not been excluded from school. The Bill also allows schools to apply for orders.

Currently there is no requirement on schools to provide education to excluded pupils. Clause 87 introduces a duty for school governing bodies to provide suitable full-time education to temporarily excluded pupils. The Secretary of State is empowered to prescribe exceptions to the duty. Currently, section 19 of the *Education Act 1996* requires local education authorities to make suitable education available to children who are out of school for any reason. However, section 19 does not specify that such education should be full-time in the case of excluded pupils. Clause 88 requires local education authorities to provide permanently excluded pupils with suitable full-time education. The clause also requires local education authorities to make suitable full-time education available to pupils excluded for fixed periods from a pupil referral unit.

Clause 89 introduces a new power for regulations to specify the circumstances and procedures for reintegration interviews with the parents of temporarily excluded pupils.

¹⁶¹ The House of Commons Education and Skills Committee report, *The Schools White Paper: Higher Standards, Better Schools for All*, First Report of Session 2005-06, HC Paper 633-I, 27 January 2006 available at: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmmeduski/633/63306.htm#a3>

Clauses 90 to 92 require parents to take responsibility for excluded pupils in their first five days of exclusion, and provides for prosecution or penalty notices issued to parents where excluded pupils are found in a public place in school hours without reasonable excuse.

In addition, there are the provisions relating to the removal of excluded pupils from a public place, and to make it an offence for a parent to fail to ensure that their child who has been temporarily excluded attends full-time education provided.

IX Inspections (Part 8 of the Bill)

A. Background

The decision to create a single inspectorate for children and learners is part of wider proposals to reduce the number of public sector inspectorates, and followed on from a commitment made by the Chancellor in his Budget announcement of March 2005¹⁶², and from a DfES consultation in July 2005, *A Single Inspectorate for Children and Learners: A Consultation*.¹⁶³

The Government's green paper, *Every Child Matters*, proposed that Ofsted should lead the inspection of children's services, and the *Children Act 2004* made provision for the Secretary of State to require various inspectorates to conduct reviews of children's services. The Chief Inspector for schools was required to devise a Framework for the Inspection of Children's Services.¹⁶⁴ Under the reforms a large and complex sector is being added to Ofsted's remit. In July 2005 Ofsted and HMI published a framework for the inspection of children's services.¹⁶⁵

On 13 December 2005, the Secretary of State for Education and Skills announced that Ofsted would be expanded as the Office for Standards in Education, Children's Services and Skills. The creation of the single organisation will be achieved by bringing into Ofsted's remit the children's social care remit of the Commission for Social Care Inspection (CSCI), the Children and Family Court Advisory and Support Service (CAFCASS) inspection remit of Her Majesty's Inspectorate of Court Administration (HMICA) and, the inspection remit of the Adult Learning Inspectorate (ALI). The enlarged Ofsted will have a non-executive chair and board. In her announcement the Education Secretary stated:

Inspection and regulation are powerful levers for improvement in services for children and learners and I am confident that the new enlarged Ofsted will continue to drive up quality and standards.

¹⁶² Budget 2005, *Investing For Our Future*, March 2005

¹⁶³ *A Single Inspectorate for Children and Learners: A consultation*, DfES, July 2005: <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1364>

¹⁶⁴ *Children Act 2004*, sections 20 and 21

¹⁶⁵ *Every child matters: framework for the inspection of children's services*, DfES/HMI 2433, July 2005

There are many benefits in having a single organisation responsible for looking at a wide range of services as they affect children, young people, adult learners and families.

It will be able to follow learning from early years right through to adult and work-based settings, and to understand and support the needs of employers and business whilst at the same time sustaining focused, high-quality inspections of standards in our schools and across wider services for children.

I am convinced that this change will bring benefits to users and providers of services, further reduce bureaucracy and cut the burden of inspection for those who deliver services. This will allow more resources and effort to be targeted to the front-line.¹⁶⁶

It is intended that the inspectorate will be operational from April 2007. The enlarged inspectorate will continue to be known as Ofsted. The current Chair of the ALI, Richard Handover, will head a Strategy Board to oversee the initial stages of the transition and to work with Ofsted and the other inspectorates to bring about the change. The post of Children's Rights Director will transfer from CSCI to Ofsted to help safeguard and promote the life-chances of the most vulnerable children, especially those in care.¹⁶⁷

The main statutory functions of the current inspectorates affected are noted in the July consultation paper (see Annex A for details). The core statutory inspection and regulatory functions were summarised as follows:

- Ofsted (the brand name of the Office of Her Majesty's Chief Inspector of Schools) inspects schools, leads joint (with ALI) inspections of further education colleges and 14-19 provision, inspects teacher training and local education authorities, regulates and inspects child-minding and day-care, and leads Joint Area Reviews of children's services;
- CSCI (alongside its work on adult services) inspects local authority social care services for children, assesses and monitors the performance of local authorities both as providers and commissioners of such services, and regulates and inspects children's homes, residential family centres, boarding and residential provision in schools, and adoption and fostering services and agencies. CSCI has the general function of encouraging improvement in local authority and regulated social care services;
- the CAFCASS Inspection Team within HMICA inspects the work of the Children and Family Court Advisory and Support Service, whose 1300 practitioners support children and their families through family court proceedings. CAFCASS is, however, as a single national organisation, a much smaller service provider than those within Ofsted's, ALI's and CSCI's remits;
- the Adult Learning Inspectorate (ALI) is responsible for inspecting a wide range of government-funded learning, including work-based learning for

¹⁶⁶ DfES *Press Notice, Kelly announces new arrangements for inspection to give a better deal to children and learners*, 13 December 2005

¹⁶⁷ *ibid.*

everyone aged over 16, provision in further education colleges for people aged 19 and over, learndirect provision, adult and community learning, training funded by Jobcentre Plus, and education and training in prisons at the invitation of Her Majesty's Chief Inspector of Prisons. Also ALI carries out commissioned work for private companies and other government departments, including the Department of Health and Ministry of Defence, to evaluate the quality of their training on a non-profit, cost-recovery basis.¹⁶⁸

The consultation paper set out the case for change:

(ii) The case for change

The boundaries between the remits of the inspectorates do not now match the current pattern of provision and (given the pace of change) even in areas where there has been recent reform they are already becoming out of date. This has already led to a number of separate statutory arrangements for joint working:

- College inspection – joint Ofsted/ALI, led by Ofsted
- 14-19 area-wide reviews – joint Ofsted/ALI, to be subsumed in Joint Area Reviews;
- JARs¹⁶⁹ of children's services – led by Ofsted, involving CSCI and ALI as well as six other inspectorates

Planned changes in the pattern of provision for children and learners, and the planned pattern of other inspectorates, increasingly built around the needs of users, call increasing into question the current boundaries between inspectorate remits:

- the Children Act 2004 brings together the education and children's social care responsibilities of local authorities, under a single accountable Director and Lead Member of children's services. This matches the bringing together in June 2003 of the relevant national responsibilities under the Minister for Children within the Department. As services are reconfigured around the needs of children, young people and families, the distinctions between these local authority services will be increasingly hard to define, observe and assess. That is why the new responsibilities under the Act were conferred upon local authorities, referred to in the Act as 'Children's Services Authorities', and why a single children's services assessment for the Comprehensive Performance Assessment (CPA) of top tier councils is being introduced;
- the ambition to see all schools as extended schools open from 8 am to 6 pm and offering access to a range of services will not only require coordinated inspection of education and day care (already within Ofsted's remit) but also those social care services which local authorities or children's trusts may choose to offer on school sites;

¹⁶⁸ *A Single Inspectorate for Children and Learners: A consultation*, DfES, July 2005, paragraph 2.1.16

¹⁶⁹ joint area reviews

- the development of new patterns of post-14 provision in which school pupils have increasing access to work-based learning will mean that the quality of their school experience cannot in future be adequately assessed without the ability to judge the work-based element;
- CAFCASS is the largest employer of child and family social workers in the country, working with some of the most vulnerable children with whom local authority social care services are very likely to be involved, as well as with large numbers of children who are subject to private law proceedings – its work falls within the responsibilities of the Minister for Children rather than DCA. HMICA's remit for its inspection of CAFCASS is much more like that currently carried out by CSCI than its duty to inspect the business of the courts.¹⁷⁰

The remit of the new inspectorate will include inspections of:

- schools, including boarding, special and independent schools
- further education and sixth-form colleges
- local authority children's services
- employers and work-based learning settings
- social-care providers, including the private, voluntary and community sectors
- CAFCASS services
- day-care and nursery education
- childminding¹⁷¹

The DFES policy statement setting out its response to the consultation was published on 13 December 2005.¹⁷² This noted the views expressed in support and against the Government's proposals.

a. Comment on the proposals affecting Adult Learning Inspectorate¹⁷³

Regarding the ALI, the Government response to the consultation reported that submissions from key stakeholders¹⁷⁴ were "fairly evenly matched" between those supporting the proposal to incorporate its functions into the new single inspectorate and those rejecting it. Notably, "many respondents were prepared to support the proposal if safeguards could be put in place to ensure the best of ALI's work and the strong links with and understanding of the needs of employers could be retained within the single inspectorate".¹⁷⁵ However, the consultation also highlighted some key areas of concern

¹⁷⁰ *ibid.*, paragraphs 2.1.18 and 2.1.19

¹⁷¹ Education and Inspections Bill Regulatory Impact Assessment, p327, paragraph 20.26

¹⁷² *A Single Inspectorate for Children and Learners: The Government's Response to Consultation*, DfES, December 2005: <http://www.dfes.gov.uk/consultations/downloadableDocs/SingleInspect4Children.pdf>

¹⁷³ Section (a) was written by Edward Beale, Economic Policy & Statistics Section

¹⁷⁴ Key stakeholders included employers, providers of training, schools and sixth forms, local authorities, national organisations, and inspectorates.

¹⁷⁵ *A Single Inspectorate for Children and Learners: The Government's Response to Consultation*, DfES, December 2005, p4

regarding the proposals. These centred on how adult learning would feature in a predominantly child-focused inspectorate:¹⁷⁶

[...] respondents feared that in a single inspectorate it would almost be inevitable that the current focus on adult skills would be diminished and, consequently, policy and practice of future inspections would reflect a school mindset, with adult inspection left as an “also-ran” within the single inspectorate. Linked to this was the fear of a loss of focus and expert knowledge currently utilised by two separate organisations. There was unease on the part of some at whether providers would feel comfortable being inspected by an organisation perceived as a children’s inspectorate.

Some concluded that the proposal would put the successful delivery of the national skills strategy at risk. A few respondents believed the quality of delivery would suffer, especially in adult provision, as a result of the merger.

Many respondents felt the sectors currently inspected by ALI and Ofsted – academic and vocational education – were very different, perhaps even fundamentally so and therefore should not be brought together into a single inspectorate.

In response, the Government stated that:¹⁷⁷

[...] we want to ensure adult learners do not lose out, and want to preserve the adult learning and employer focus. We are sensitive to the concerns that the focus ALI has rightly placed on meeting the needs of employers and business and focusing on work-based learning should not be lost, and plan to put in place a number of safeguards to ensure this does not happen. In particular, we will change Ofsted’s governance to introduce a non-executive board with appropriate membership.

The Government proposals were supported in Sir Andrew Foster’s report, *Realising the Potential: A Review of the Future Role of FE Colleges*, which stated that:¹⁷⁸

Whilst Ofsted and ALI have made considerable efforts to coordinate their on-site visits to colleges, the overall burden is unnecessarily high. The proposal to create a single post-compulsory education Inspectorate would bring coherence, economies of scale and reduce some of the inherent bureaucracy felt by colleges, but better co-ordination with other regimes is also needed ... [we] support the integration of Ofsted and ALI into a single Inspectorate would clarify and simplify the inspection landscape and combine their different strengths. It would also improve information about the performance of providers for users.

Since the publication of the bill, the Institute of Directors has reiterated the main concern of stakeholders regarding the abolition of the ALI, as identified during the consultation

¹⁷⁶ *ibid.* p6

¹⁷⁷ *ibid.* p7

¹⁷⁸ Sir Andrew Foster, [Realising the Potential: A Review of the Future Role of FE Colleges](#), November 2005, pp57-59

process, stating that it is "... vital that the new inspectorate pays due attention to adult learning and training".¹⁷⁹

B. The Bill

Clauses 98 to 144 and associated schedules of the Bill make detailed provision for the Office for Standards in Education, Children's Services and Skills and a new office of Her Majesty's Chief Inspector of Education, Children's Services and Skills. The new arrangements bring together the existing remit of HM Chief Inspector of Schools in England, the children's social care remit of the Commission for Social Care Inspection, the Children and Family Court Advisory and Support Service inspection remit of Her Majesty's Inspectorate of Court Administration and the inspection remit of the Adult Learning Inspectorate. A clause by clause account of these provisions is given in the Explanatory Notes on the Bill.

The Office for Standards in Education, Children's Services and Skills will comprise a chairman and between 5 and 10 members (all to be appointed by the Secretary of State) and the Chief Inspector. The office of Her Majesty's Chief Inspector of Schools in England is abolished (clause 99 (8)) and the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills is created (clause 99). The Chief Inspector is appointed to office by Her Majesty by Order in Council, though the person in post as Her Majesty's Chief Inspector of Schools in England at the time the clause comes into force will be the first Chief Inspector (Clause 99 (9)). Specific provision is made for the post of the Children's Rights Director as an employee of the Office. The post replaces that of Children's Rights Director in the Commission for Social Care Inspection.

A framework or frameworks for inspections will be published by the Chief Inspector, and these will lay out a common set or sets of principles which will cover all inspections (clause 119). As with Ofsted now, the Chief Inspector of the new Office will be required to report annually to Parliament (clause 107).

The Regulatory Impact Assessment on the bill includes details of the monetary cost and savings from the transfer of the inspection functions of CSCI, ALI, and CAFCASS into the remit of Ofsted. These are summarised in the table below:

¹⁷⁹ Institute of Directors Press Release, *Education and Inspections Bill: why all the fuss?*, 28 February 2006

Costs and savings of a single inspectorate for children and learners

£ millions

	Transition costs(a)	Annual savings(b)
CSCI	£5.9 - £10.6	£3.7
ALI	£7.6 - £9.1	£2.7
CAFCASS(c)
Total	£13.5 - £19.7	£6.4

Notes: (a) Costs comprise: data migration; IT investment and harmonisation; staff relocation; and estates vacation.

(b) Savings comprise: reduction in business-support staff; reduction in services staff; estates savings; internal staff and external communications; and consultancy.

(c) Given the small scale of CAFCASS inspection activity inside HMICA, it is believed the transfer will be cost neutral.

Source: DfES, RIA: Education and Inspections Bill 2006, p329

The DfES estimates that these costs and savings will equate into a payback period (i.e. once cumulative savings have covered any transitional costs) of between two years nine months and three years eight months.

X Miscellaneous (Part 9 of the Bill)

A. Power of Chief Inspector to investigate complaints by parents about schools

Currently, Ofsted's powers are limited to school inspection. A small number of parents each year complain to Ofsted.¹⁸⁰ However, it has no formal role in investigating complaints from parents and has no power to intervene other than to inspect the school, which may not be an appropriate response. Establishing the right of parents to complain to Ofsted was proposed in the schools white paper as one way of ensuring that parents' voices are heard. The white paper observed that at present parents can feel frustrated and powerless where they have serious and well-founded concerns about their child's school – where there has been a breakdown in discipline or standards are low, for example. The white paper said that parents would be expected to have exhausted local complaints procedures before contacting Ofsted.

Clause 145 of the Bill inserts new sections into the *Education Act 2005* which would enable the Chief Inspector to investigate a 'qualifying complaint' about a prescribed condition. The conditions prescribed may require that the complainant has taken advantage of other procedures for dealing with the complaint. The Chief Inspector may decide to call a meeting of parents at the school. The governing body of the school and the local authority must co-operate in arranging the meeting.

The schools which are covered are: community, foundation and voluntary schools; community and foundation special schools; maintained nursery schools; academies; city technology colleges; city colleges for the technology of the arts; and special schools

¹⁸⁰ The Regulatory Impact Assessment notes that Ofsted receives between 100 and 200 complaints each year from parents, p336, paragraph 21.3

which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the 1996 Act.

The Regulatory Impact Assessment on the Bill notes that the complaints that Ofsted will consider should relate to the work of the school as a whole, and that while Ofsted's remit will not be to resolve individual grievances it may well resolve matters raised by an individual in considering the quality and standards of education and well-being of all pupils at the school.¹⁸¹

The Audit Commission, in its comments on the schools white paper, observed that the proposed new role for Ofsted to investigate complaints from parents seemed to be 'a recipe for complaint escalation, a confusion of role, and a serious strain on capacity'.¹⁸² The NAHT made a similar point in its evidence to the Education Select Committee, saying that the provisions were 'likely to be of greater interest to articulate middle class parents than to the disadvantaged and disempowered'.¹⁸³ Confed suggested that the provisions would be 'a stretch too far in the Ofsted brief'.¹⁸⁴

B. Powers to facilitate innovation

The *Education Act 2002* allows schools and local authorities to apply to the Secretary of State to grant exemptions, relaxations or modifications to existing education legislation, for a limited time, to allow the school or local authority to pilot innovative proposals. The power to innovate (PTI) in the Act were to last for 4 years. The Bill seeks to remove this restriction. It will also extend those eligible to apply for a PTI order to further education institutions, a foundation and, with the agreement of the governing body, the head teacher.

C. References to "local education authority" and "children's services authority" etc.

Following the *Children Act 2004*, the traditional social services and education departments within local authorities are being transformed into Children's Services Authorities. Clause 147 is intended to enable the completion of the statutory measures to facilitate the integration of children's services in local authorities. It gives the Secretary of State and the National assembly for Wales powers to repeal references in primary legislation and secondary legislation to the terms "local education authority" and "children's services authority". The power will enable the Secretary of State or the Assembly to replace such references with references to a local authority, or to make other appropriate modifications to the references. The Explanatory Notes on the Bill state that such modifications might include modifications to legislation requiring local authorities to consult or cooperate with local education authorities, depending, for example, on whether or not the local authorities and local education authorities

¹⁸¹ Regulatory Impact Assessment, p 335, paragraph 21

¹⁸² Audit Commission, Consultation Response, January 2006, paragraph 20

¹⁸³ *Memorandum submitted by the NAHT to the Education and Skills Committee*, The schools white paper, First report of Session 2005-06, Volume II, Oral and written evidence, HC Paper 633-II, Ev 70

¹⁸⁴ *Memorandum submitted by the Confed to the Education and Skills Committee*, Ev 176, paragraph 7.4

concerned were intended to be one and the same authority, or different authorities within two-tier areas, or neighbouring authorities; or the repeal of provisions that are spent or have ceased to be of any practical utility.

D. Provision of information about children receiving funded education outside school

Funding to local authorities is provided on the basis of pupil numbers. With the introduction of ring-fenced Dedicated Schools Grant from April 2006, the Government want to ensure that more accurate information is available. Since 2002 the Government has been collecting pupil level information from maintained schools through the Pupil Level Annual Schools Census (PLASC). Clause 148 will enable the DfES to collect individual information about children whose education is funded from the local authority's schools budget but does not take place in maintained schools (for example, provision in further education institutions, hospital schools or by voluntary providers). The aim is to bring the collection of information about pupils in alternative provision into line with that collected for other children in the maintained sector.

E. Collaboration arrangements: maintained schools and further education bodies

The 14 to 19 white paper (see section VI above) announced that the Government would legislate to increase the scope of joint governance arrangements between schools and FE colleges to strengthen collaborative activity. Clause 149 seeks to fulfil this commitment. It provides that regulations may enable the governing bodies of maintained schools to make collaboration arrangements with further education bodies, and further education bodies to make collaboration arrangements with schools and with other further education bodies.

F. Maintained nursery schools: amendment of sections 496 and 497 of Education Act 1996

Clause 150 seeks to put the governing bodies of maintained nursery schools on a similar footing to the governing bodies of other maintained schools by making it possible for the Secretary of State or the National Assembly for Wales to issue a direction under section 496, or make an order under section 497, if the governing bodies of maintained nursery schools are acting unreasonably or are in default of their functions.

G. Support for students under 16 at further education institutions¹⁸⁵

Clause 152 confers on the Learning and Skills Council (LSC) a power to fund and manage certain types of student support for learners between the ages of 10 and 15. This provision aims to rationalise some of the current arrangements, by allowing the LSC

¹⁸⁵ Section G was written by Susan Hubble, Social Policy Section

to fund and support the needs of learners under 16 following vocational courses at further education institutions. Currently learner support for students under 16 is provided by the Secretary of State for Education. This change should assist young students taking a mixture of academic and vocational courses in further education institutions by providing funding for items such as childcare or transport costs.

H. University bodies and leaseholds¹⁸⁶

Clause 153 amends section 29 of the *Leasehold Reform Act 1967*. Section 29 enables tenants to acquire the freehold, or to extend the lease of a property owned by a local authority; this includes university bodies. The amendment to the legislation will allow universities, who are landlords under these circumstances, to impose restrictive covenants on the property which would allow the property to be reserved for development, without first obtaining consent. Previously consent had to be obtained from the Secretary of State or the National Assembly of Wales.

XI Framework power relating to Wales (Part 10 of the Bill)

The Wales Office's white paper: *Better Governance for Wales* contains the Government's proposals for developing the devolution settlement in Wales.¹⁸⁷ It confirmed the Government's intention to delegate to the Assembly maximum discretion in making its own provisions using secondary legislative powers. Library research paper 05/92, *The Government of Wales Bill*, provides background on the framework legislation.

Clauses 154 to 156 of the Bill make provision for the exercise of the framework powers in relation to the matters covered in this Bill. Amongst other things, the NAW will be able to make regulations to make provision for Wales in relation to categories of maintained schools; establishment, discontinuance and alteration of maintained schools; school admissions; the curriculum in maintained schools; attendance, discipline and exclusion; entitlement to education and training, and services to encourage, support or assist young people with regards to education and training; travel of persons receiving education and training; and food and drink provided for children.

Clause 155 places restrictions on the exercise of these powers. In particular, the Assembly cannot make any provision that increases taxation.

As noted in the overview section of this paper, the Welsh Assembly Government has welcomed the Bill.

Part 10 of the Bill also contains other provisions relating to general interpretation, repeals, commencement and the extent of the Bill. The Explanatory Notes on the Bill summarise these.

¹⁸⁶ Section H was written by Susan Hubble, Social Policy Section

¹⁸⁷ Cm 6582, June 2005: <http://www.walesoffice.gov.uk/bqfw.html>