



Education Bill

Bill No 137 of 2010-11

RESEARCH PAPER 11/14 3 February 2011 (revised 7 February 2011)

This paper has been written for the House of Commons Second Reading debate on the *Education Bill* [Bill 137] on 8 February 2011. The Bill seeks to implement the legislative proposals in the Department for Education's schools white paper, *The Importance of Teaching*, and measures from the Department for Business, Innovation and Skills relating to skills and the reform of higher education funding. It is therefore a very wide-ranging Bill.

Measures in the Bill include proposed changes to early years provision, school discipline, public reporting on allegations made against teachers, the governance of Ofqual, and careers education and guidance. Certain duties on school governing bodies, local authorities and further education institutions would be removed, including the duty on local authorities to appoint school improvement partners. Other measures relate to school admissions, school meals, composition of school governing bodies, school inspection, school finance and permitted charges. The Bill would make changes to the arrangements for setting up new schools, and would make provision for 16 to 19 academies and alternative provision academies. Five quangos would be abolished: the General Teaching Council for England, the Training and Development Agency for Schools, the School Support Staff Negotiating Body, the Qualifications and Curriculum Development Agency and the Young Person's Learning Agency. New powers would be given to the Secretary of State as a consequence of some of these changes.

Post-16 education and training changes would affect the powers of the Chief Executive of Skills Funding, the entitlement to free education and training at level 2 and 3. The legislation relating to raising the participation age to 18 would be retained but the Bill would give the Secretary of State flexibility as to the timing of the commencement of enforcement procedures.

Reforms to the higher education funding and student finance system would enable the Government to charge a real rate of interest on higher education student loans and permit the Secretary of State for Education to place a cap on tuition fees for part-time higher education courses.

There would also be changes to the National Assembly for Wales' framework powers.

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Correction

This paper was revised on 7 February 2011 as follows. Cover sheet, third paragraph, last sentence had read “Enforcement provisions relating to raising the participation age to 18 would be removed.” Page 2, third paragraph, last sentence had read “The legislation relating to raising the participation age to 18 would be retained but the enforcement requirements would be removed.” Both places now read: “The legislation relating to raising the participation age to 18 would be retained but the Bill would give the Secretary of State flexibility as to the timing of the commencement of enforcement procedures.”

Research Paper 11/14

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Summary

This paper has been written for the House of Commons Second Reading debate on the *Education Bill* [Bill 137] on 8 February 2011. The Bill was presented in the House of Commons on 26 January 2011. It seeks to implement the legislative proposals in the Department for Education schools white paper, *The Importance of Teaching*, and measures from the Department for Business, Innovation and Skills relating to skills and the reform of higher education funding. It is therefore a very wide-ranging Bill.

The Bill is in 10 Parts. This research paper provides background on the main provisions in the Bill, and generally follows the outline of it; however, the paper is not intended to be a clause-by-clause account as the *Explanatory Notes* to the Bill provide an explanation of the individual clauses.

Part 1 of the Bill would make provision for the introduction of targeted free early years care for children under compulsory school age. It would provide the legislative basis by which the Government's free early years education policy for disadvantaged two years olds could be implemented.

Part 2 would make changes to provisions on school discipline. It would extend the powers of members of school staff to search pupils without their consent for an item that had been, or was likely to be, used to commit an offence or cause injury to the pupil or another, or damage property. Provision would also be made to search for items banned under the school rules. Similar provision is made in relation to further education institutions. The Bill also reforms the process for the review of permanent exclusions from schools, moving from appeal panels to review panels. A review of the decision-making would still be possible but the review panel would not be able to compel re-instatement of a pupil. The Bill would also repeal the duty on schools to give 24 hours' written notice of a detention to parents, and the duty on all schools to enter into behaviour and attendance partnerships with other schools in their area would be removed.

Part 3 would abolish the General Teaching Council for England (GTCE), the Training and Development Agency for Schools (TDA) and the School Support Staff Negotiating Body (SSSNB). The relevant functions of the GTCE and the TDA would be undertaken by the Secretary of State and, where appropriate, by Welsh Ministers. Provision is made for schemes relating to the transfer of staff from these bodies to the Secretary of State. The Bill would also safeguard the identity of teachers subjected to allegations of criminal offences against their pupils. The purpose of this measure is to protect teachers against malicious allegations. Unless a court directed otherwise, reporting restrictions would remain in place until such a time as the teacher concerned was charged.

Part 4 would require schools to take part in international education surveys when directed by the Secretary of State. The governance structure of the Office of Qualifications and Examinations Regulation (Ofqual) would be changed, and its standards objective revised to include international comparison. The Qualifications and Curriculum Development Agency (QCDA) would be abolished. The relevant functions of the QCDA would be transferred to the Secretary of State. Provision is made for schemes relating to the transfer of staff from these bodies to the Secretary of State. Changes would also be made to provisions relating to careers education and guidance. The duty on local authorities, schools and governing bodies to secure access to the diploma entitlement for 16 to 18 year olds would be removed.

Part 5 seeks to repeal certain duties on the governing bodies of maintained schools, local authorities and others in England. The Bill would repeal the duty on schools to co-operate with children's trusts. The requirement on maintained schools and schools forums to have regard to the Children and Young Person's Plan would be removed, as would the

requirement for maintained schools to prepare and publish a school profile. The duty on local authorities to appoint a school improvement partner for each maintained school would also be removed. The Bill would make changes to the duties of local authorities in relation to school admissions, and changes would be made in the powers of the School Adjudicator. Part 5 would also make changes relating to school meals. The Bill would also make changes to the arrangements for the establishment of new schools: precedence would be given to proposals for academies (including free school academies). Changes would be made in the composition of school governing bodies, and school federation arrangements. The Bill would make changes to the inspection arrangements for schools and further education institutions. It would also make changes to the inspection of boarding accommodation. The Secretary of State's powers of intervention where schools are a cause for concern would be amended. The Bill also contains measures on school finance, and on permitted charges. The provisions relating to parental complaints to the Local Commissioner would be repealed. Changes to the duties on further education and sixth form college corporations would be made which are intended to reduce Government intervention and bureaucracy and to increase autonomy of providers. A provision changing the name of pupil referral units to short stay schools would be repealed.

Part 6 of the Bill would amend the *Academies Act 2010* to allow the establishment of 16 to 19 academies and alternative provision academies. The requirement for academies to have a specialism would be removed. Changes would be made to the consultation requirements for setting up academies. Provision would be made relating to the permitted discrimination in employment practices for schools with a religious character converting to academy status. Additional powers would be given to the Secretary of State to transfer publicly-funded land to academies. School Adjudicators would be empowered to consider and determine objections to academies' admission arrangements.

Part 7 would make changes affecting post-16 education and training. The Young People's Learning Agency would be abolished and replaced by a non-statutory Education Funding Agency, and there would be changes to some of the powers of the Chief Executive of Skills Funding. The Bill would remove the duty, due to begin in 2013, to provide an apprenticeship place to all qualified young people who want one. Instead, a new duty would be introduced to prioritise funding for young people who have already secured an apprenticeship place. This new "apprenticeship offer" will come into effect by 2013 and applies to England only. The legislation relating to raising the participation age to 18 would be retained but the Bill would give the Secretary of State flexibility as to the timing of the commencement of enforcement procedures.

Part 8 would enact two elements of the Government's package of reforms to the higher education funding and student finance system. Provisions would enable the Government to charge a real rate of interest on higher education student loans and permit the Secretary of State for Education to place a cap on tuition fees for part-time higher education courses.

Part 9 would give the National Assembly for Wales' framework powers in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce; and in relation to the funding of pre-16 education and training.

Part 10 contains the general powers relating to orders, regulations, and the interpretation of the Act etc.

Most of the Bill's provisions apply to England only; however, there are some significant exceptions and the devolved administrations would need to seek legislative consent motions to cover the changes, as appropriate.

Introduction

The *Education Bill* was introduced into the House of Commons on 26 January 2011 and was published on 27 January 2011.¹ This research paper has been prepared for the Bill's Second Reading debate in the House of Commons on 8 February 2011. It provides background on the main provisions in the Bill, and generally follows the outline of it; however, the paper is not intended to be a clause-by-clause account as the *Explanatory Notes* to the Bill provide an explanation of the individual clauses, and include an annex that gives the territorial application of each clause.² The *Explanatory Notes* also have a section commenting on the provisions' compatibility with the European Convention of Human Rights. An *Overarching Impact Assessment* and an *Equalities Impact Assessment* for the Bill have been published. Further information is available on the Department for Education (DFE) [Education Bill website](#).

The Bill seeks to implement the legislative proposals in the DFE's schools white paper, *The Importance of Teaching*, and measures from the Department for Business, Innovation and Skills relating to skills and the reform of higher education funding.

Some of the proposals in the schools white paper depend upon the outcome of reviews (on the national curriculum, for example) and forthcoming consultations (on school funding, for example). Other changes will be achieved through administrative measures and do not require legislation; however, many of the white paper's policies require primary legislation and the *Education Bill* seeks to give effect to these changes. Some initial general reaction to the Bill from the teachers' unions has complained that the Bill will lead to greater centralisation of power.³ The Bill would also introduce:

- a new entitlement to free early years provision for two-year olds from disadvantaged backgrounds;
- measures relating to apprenticeships and would make changes to the skills entitlement;
- changes to interest rates on student loans and the regulation of fees for part-time students; and
- provision to give the National Assembly for Wales framework powers in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce; and in relation to the funding of pre-16 education and training.

School reform

The Conservative-Liberal Democrat Coalition Government's *The Coalition: our programme for government*, published on 20 May 2010, set out a package of reforms to the school system with the stated aims of tackling educational inequality, giving greater powers to parents and pupils to choose good schools, ensuring high standards of discipline in the classroom, and ensuring robust standards and the highest-quality teaching. Underlying the proposals was a belief that the state should help parents, community groups and others to improve the education system by starting new schools. A full list of the commitments on schools was given in section 26 of the programme document.

¹ Bill 137, Session 2010-11

² Bill 137-EN

³ e.g. "Education bill conceived by power 'junkies', [NASUWT, 28 January 2011](#); "Lack of accountability and omissions from the Education Bill are the main dangers, [ATL, 28 January 2011](#); [NUT comment on the Education Bill, 27 January 2011](#)

The *Academies Act 2010*, which was the first piece of education legislation introduced by the Government, provided the legislative basis for the expansion of the academies programme and new free schools.

The schools white paper 2010, *The Importance of Teaching*, published in November 2010, set out a detailed reform programme for the schools system and committed the Government to cutting away what it regards as unnecessary duties, processes, guidance and requirements on schools.⁴ The schools white paper is introduced by the Prime Minister, Deputy Prime Minister and the Education Secretary. In their forewords they advocate the need for reform to improve standards in the light of international comparisons.

The central themes underlining the school white paper are: the quality of the teaching profession, tackling poor pupil behaviour, increased autonomy for schools, an effective accountability system, and high aspirations for all regardless of background. The main proposals include:

- measures, that in the Government's view, would improve the quality of teachers and teaching. These include: raising the entrance requirements for initial teacher training by ceasing to provide DFE funding for those graduates who do not have at least a 2:2 degree; expanding Teach First⁵; offering financial incentives in shortage subjects; increasing the proportion of time that initial teacher trainees spend in the classroom, focusing on core skills and managing behaviour; developing a network of 'teaching schools' to lead in training and professional development; investing in targeted leadership development; and changing the performance management and capability procedures;
- powers for teachers to improve discipline, and proposals to pilot a new approach to exclusions;
- a new approach to the school curriculum, specifying a tighter, more rigorous model of knowledge that every child should be expected to master supported by rigorous assessment and qualifications;
- greater autonomy for schools by promoting more academies and free schools and providing a strong strategic role for local authorities;
- measures to improve accountability. More information would be put in the public domain, and changes made to school performance tables. New minimum standards ('floor standards') would be introduced for primary and secondary schools, and Ofsted inspections reformed. Changes would be made to school governance to enable schools to adopt smaller, more focused governing bodies; and
- reform of the school funding system including the introduction of a pupil premium to channel more money to the most deprived children.

Alongside the schools white paper the DFE published *The Case for Change*, looking at international comparisons in performance. The DFE also published an *Economic Impact Assessment* and an *Equalities Impact Assessment* of the schools white paper. The *Economic Impact Assessment* set out the proposals in the white paper that required legislation. In a [letter to schools dated 25 November 2010](#), Michael Gove asked for initial views on the schools white paper by 8 December 2010 and said that the DFE would publish

⁴ *The Importance of Teaching*, DFE, Cm 7980, November 2010

⁵ Teach First is a scheme to attract highly qualified graduates into teaching, and targets schools in challenging circumstances that experience high levels of poverty or underachievement amongst their pupils:
<http://www.teachfirst.org.uk/AboutUs/about.aspx>

a summary of the comments received and responses to them on the DFE website. He also noted important areas on which views are being sought over the coming months, mentioning some of the Government's intentions:⁶

- Children with special educational needs and disabilities: a call for views has recently closed, and a green paper will be published with proposals on improving the system.
- Curriculum: the curriculum review (covering both primary and secondary). The Government intends to publish the new curriculum in the autumn of 2012 with first teaching in September 2013.
- Accountability: Ofsted will consult on a new framework. Subject to legislation, the new framework will come into force in autumn 2011.
- Admissions: there will be consultation on a simplified and less prescriptive Admissions Code.
- Independent reviews and consultations are also ongoing on Key Stage 2 assessment and accountability,⁷ 14-19 education,⁸ and the Early Years Foundation Stage.⁹

The review of the national curriculum will consider what subjects should be compulsory at what age, and what should be taught in the main subjects. The Education Secretary set out the Government's intentions in a [written ministerial statement](#) on 20 January 2011. Details of the membership and remit of the review panel are provided on the [DFE website](#).¹⁰

Future of DfE's arm's length public bodies

On 14 October 2010, the Cabinet Office published its cross-government review of public bodies. This affects all government departments. Michael Gove, the Education Secretary, confirmed which of the DfE's arm's length public bodies will close 'as part of plans to improve accountability, transparency and efficiency.'¹¹ The Qualifications and Curriculum Development Agency (QCDA) and the General Teaching Council for England (GTCE) had already been told they would close. The 14 October announcement also made clear that a number of other non-statutory bodies would close. At the time, some of bodies were still under review, including the School Support Staff Negotiating Body (SSSNB); however, subsequently the Education Secretary announced that the SSSNB would also close¹², and that the Training and Development Agency for Schools (TDA) and the Young People's Learning Agency (YPLA) would be replaced.¹³ The *Education Bill* makes provision to abolish the QCDA, GTCE, SSSNB, TDA and YPLA.

⁶ DfE [letter to schools dated 25 November 2010](#)

⁷ The Secretary of State has commissioned Lord Bew to lead an external review which will look broadly at the testing and accountability system for primary schools. A call for evidence was published on 25 November 2010, and the closing date is 17 February 2011.

⁸ Professor Alison Wolf has been asked to review vocational education for 14- to 19-year-olds and to report to the Secretary of State by spring 2011.

⁹ Dame Clare Tickell, Chief Executive of Action for Children, has been asked to carry out a review of the Early Years Foundation Stage (EYFS) and to produce a final report by spring 2011.

¹⁰ <http://www.education.gov.uk/schools/teachingandlearning/curriculum/nationalcurriculum>

¹¹ Department's plans for arm's length bodies, [DFE News 14 October 2010](#)

¹² HC Deb 28 October cc14-5WS

¹³ [The Importance of Teaching](#), DfE, Cm 7980, November 2010, paragraphs 2.22 and 8.13

1 Free early years provision

Part 1 of the Bill would make provision for the introduction of targeted free early years care for children under compulsory school age.

Provision for three and four year olds

In 1998, the then Labour Government abolished the pre-school voucher scheme it had inherited and offered free early years provision to all four year old children in England. The entitlement consisted of five sessions of two and a half hours provision per week for 33 weeks per year. A target was set to increase the proportion of three year olds in free places from 34% in 1997 to 66% in 2002.¹⁴ The offer of a free place was extended to all three year olds from 2004;¹⁵ and in 2006, the entitlement for all three and four year olds was increased from 33 to 38 weeks.

In January 2010, 1.2 million three and four year olds in England were benefitting from some free early education - 95% of the three and four year old population. 40% of those places were provided by private, voluntary and independent (PVI) providers.¹⁶ From September 2010 the provision was increased to 15 hours of early education for all three and four year olds for 38 weeks of the year,¹⁷ funded by an additional investment of £80 million, £170 million, £340 million over 2008-11.¹⁸ The total planned expenditure on early years provision, excluding pupils in reception classes, was £2 billion in 2010-11.¹⁹

Childcare Act 2006

The *Childcare Act 2006* sets out a legal duty on local authorities to ensure that they meet the free places commitment.²⁰ Free places can be provided by a variety of providers in the maintained, and PVI sectors including pre-schools, playgroups and registered childminder networks. However, providers do not have to take part in the scheme – the entitlement is to provision in an area, not to provision at a particular nursery. Parents cannot be charged for any part of the free entitlement, either directly or indirectly, though providers can charge for any services that are additional to the free entitlement. The level of such fees is a matter for agreement between providers.

Extending the offer to 2 year olds

In 2008, the Labour Government announced its intention to roll-out, stage by stage, an offer of free learning to all two-year-olds across the country.²¹ The first stage of the extended offer was to provide 10 or 15 hours of high-quality childcare a week alongside family support for most disadvantaged two year olds in every local authority in the country. In 2008-10, £137 million was allocated to support the initial offer and to test differing models of delivery to inform a wider roll-out.²²

¹⁴ HC Deb 1 March 2000 c314w

¹⁵ DfEE press release *Free nursery places for all three year olds*, 27 September 2000

¹⁶ DfE, *Provision for Children Under Five Years of Age in England - January 2010*

¹⁷ The entitlement was extended in April 2006 from 33 to 38 weeks and in September 2010 from 12.5 hours to 15 hours a week

¹⁸ DCSF Written Statement, *Free Entitlement for Three and Four Year-olds*, 7 November 2007, c2-3WS

¹⁹ DfE, *Gross expenditure within the schools budget- section 251 data archive*.

²⁰ Part 1 of the *Childcare Act 2006*

²¹ The offer was made following pilots that had been running since 2006; see: DCSF, *The Children's Plan – Building brighter futures*, December 2007; Cm 7280, paras 3.41-42

²² DCSF Written Statement, *Free Entitlement for Three and Four Year-olds*, 7 November 2007, c2-3WS

When the Coalition Government came into power, it stated its support for free nursery care for pre-school children,²³ and subsequently the Deputy Prime Minister, Nick Clegg announced that free learning for disadvantaged two year olds would continue beyond 2010:

[A]ll disadvantaged two-year-olds will have an entitlement to 15 hours a week of pre-school education, in addition to the 15 hours already available to them at three and four years of age. This additional early years investment will amount to £300m a year by 2014-15.²⁴

The Bill

Clause 1 of the Bill would amend the current provisions in section 7 of the *Childcare Act 2006* to give effect to the Government's policy of providing free early years provision to a targeted group of children, for example disadvantaged two year olds. Currently, section 7 of the 2006 Act requires local authorities to make universal provision for free early years care to children of a prescribed age under compulsory school age. The legislation does not allow local authorities to target particular children within an age group. So free early years provision for all two year olds could be introduced by regulations under the current law but not specially for disadvantaged two year olds. Clause 1(2) would amend section 7 of the 2006 Act to require local authorities to provide early years care to children who are under compulsory school age and are of a description prescribed in regulations. The amendment would also provide for regulations to specify the amount and duration of the early years provisions. Currently, the framework for delivering the early years entitlement is set out in a Code of Practice.²⁵

The Bill would also introduce a new information sharing duty by which local authorities would be able to check whether a family's income entitles them to free early years provision. Clause 1(3) would insert a new section 13A into the 2006 Act, which would allow HMRC to supply information relating to tax credits; and for the Department of Work and Pensions to provide social security information to the Secretary of State, for the purpose of determining eligibility for free early years provision. The clause would allow information to be passed on to local authorities or a contractor for the same purpose.²⁶ This new data sharing section mirrors provision in section 110 in the *Education Act 2005*, which allows data to be shared for the purposes of determining eligibility for free school meals and free school milk.²⁷ A new section 13B would be inserted into the 2006 Act setting out the circumstances in which it would be a criminal offence to disclose information received under section 13A.

The [Equalities Impact Assessment](#) to the Bill explains that the decision to introduce a targeted additional investment is based on evidence that focussed early intervention amongst the most disadvantaged children makes the biggest difference to child poverty and educational attainment.²⁸ The Government states:

Despite current economic constraints, we will provide additional funding to local authorities to allow them to increase the level of free nursery places they currently provide from 20,000 (nationally) to 130,000. By 2014/15 this will amount to around £380 per annum.²⁹

²³ HM Government, *The Coalition: Our programme for Government*, May 2010

²⁴ CYPN, *Clegg pledges to spend £7bn on disadvantaged children*, 15 October 2010

²⁵ Department for Education, *Code of Practice on the Provision of Free Nursery Education places for three and Four Year Olds*, September 2010

²⁶ Clause 1(3); new section 13A(6)-(7)

²⁷ *Explanatory Notes*, HCB 137-EN, para 65

²⁸ *The Education Bill Equalities Impact Assessment*, paras 54-57

²⁹ *Ibid*, para 55

Although the funding is a targeted allocation, the estimated £2.65 billion investment over ten years for the free early years entitlement for disadvantaged two year olds would be the single largest cost to the public sector of the Bill's provisions.

2 Discipline

2.1 Background

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.³⁰ 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 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. Ruth Kelly, the then Secretary of State for Education, accepted the key recommendations of the Steer report, and a white paper set out how the then Labour government would implement the Steer group's recommendations.

Subsequently, the *Education and Inspections Act 2006* made provision to carry forward these commitments including a statutory power to enforce school discipline, and a power for members of staff to use reasonable force to prevent a pupil from committing an offence, causing personal injury, damaging property or doing something that prejudices school discipline. The Act also includes a specific statutory defence for school staff who have reasonably confiscated pupils' property.

A further review of the issues around school discipline and pupil behaviour was set up under Sir Alan Steer, and a series of reports on these issues were published.³¹ The *Apprenticeships, Skills, Children and Learners Act 2009* amended the 2006 Act to make further school behaviour-related provision (see below).

Despite the measures already taken to improve the behaviour of pupils, there remains concern that many schools continue to face discipline problems, including disruption to lessons that makes teaching and learning more difficult. The *Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2009/10* found that behaviour was good or outstanding in 89% of maintained primary schools and 70% of maintained secondary schools inspected in 2009/10. In schools where behaviour was poor, teaching was frequently also weak. The report noted that disruptive behaviour at times got in the way of progress, even for pupils who were keen to learn.³² Concern was also expressed about inadequate teaching in some pupil referral units.³³

Outline of the current statutory school discipline-related provisions

Section 88³⁴ of the *Education and Inspections Act 2006* (EIA 2006) requires the governing bodies of maintained schools to ensure that their school pursues policies designed to promote good behaviour and discipline among pupils. A school's behaviour and discipline

³⁰ *Learning Behaviour, The Report of the Practitioners' Group on School Behaviour and Discipline*, chaired by Sir Alan Steer, DfES, October 2005

³¹ For further information see: <http://www.teachernet.gov.uk/wholeschool/behaviour/steer/> and http://www.dcsf.gov.uk/behaviourandattendance/about/Sir_AlانSteer_Behaviour_Review.cfm

³² *Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2009/10*, 23 November 2010, e.g. see key findings and paragraphs 87 and 99 to 101

³³ *ibid* paragraph 82

³⁴ This re-enacted with some changes provisions that had been contained in section 61 of the *School Standards and Framework Act 1998*.

policies should make it clear what is not acceptable behaviour, including intolerance and all forms of bullying, and the sanctions for not complying with the school's policies.

More generally, section 175 of the *Education Act 2002* places a duty on local authorities and the governing bodies of maintained schools and the governing bodies of further education institutions to have arrangements to ensure that they exercise their functions with a view to safeguarding and promoting the welfare of children, and have regard to any guidance issued by the Secretary of State when drawing up those arrangements. "Safeguarding" covers more than the contribution made to child protection in relation to individual children. It encompasses issues such as pupil health and safety, and bullying. There are a number of other statutory provisions that are also relevant.

School detention

School detention has long been a measure that may be taken to discipline pupils in schools. The *Education Act 1996*, section 550(B), which was inserted by section 5 of the *Education Act 1997*, made provision for school detention. EIA 2006 replaced the previous provision with new powers to give schools greater scope and flexibility to use detentions.³⁵ Under section 92 of EIA 2006 schools must have a clear policy on the use of detentions, and parents must be given 24 hours' notice of any after school or weekend detentions. This requirement does not apply to detentions in breaks between sessions, such as lunch-times.

Use of reasonable force

Section 93 of EIA 2006 enables a member of staff to use reasonable force to prevent a pupil from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at school.

The *Apprenticeships, Skills, Children and Learners Act 2009* (ASCLA 2009) amended EIA 2006 to require schools to record the circumstances in which force is used. The then Labour Government believed that this would benefit child protection and that parents would be less likely to lodge malicious complaints about the misuse of power if they knew that full records were being kept. The 2009 Act's provisions on recording and reporting use of force (sections 246 and 247) were due to come into force on 1 September 2010 but commencement was delayed by order laid on 26 July 2010.³⁶ However, Ministers have now decided to commence these provisions from September 2011.³⁷

Commencement of two other provisions in ASCLA 2009 relating to school discipline was also delayed: provision relating to mandatory behaviour and attendance partnerships and the name change from 'pupil referral units' (PRUs) to 'short stay schools'. Clauses to repeal both these provisions are contained in this *Education Bill*.

The general power to discipline in section 91 of the EIA 2006 enables a member of staff to confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so. Provided an item is confiscated and retained or disposed of lawfully (i.e. under the powers to discipline) the member of staff will not be liable for damage to, or loss of, any confiscated item by virtue of Section 94 of EIA 2006.

³⁵ The discipline provisions contained in the 2006 Act were not implemented at the same time for England and Wales, and some provisions were commenced in England but not in Wales. Extent and commencement should be checked for each provision.

³⁶ The *Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No 2 (Amendment) and Transitional Provision) Order 2010 SI 2010/1891*

³⁷ Letter from Nick Gibb, the Schools Minister, to Dr Hywel Francis, chair of the Joint Committee on Human Rights, 20 January 2011

Powers of search

The *Education Act 1996*, as amended, makes provision for head teachers and school staff authorised by them to search pupils without their consent if there are reasonable grounds for suspecting that pupils are in possession of knives, other offensive weapons, illegal drugs, alcohol, stolen property or other items specified in regulations.

The *Violent Crime Reduction Act 2006* amended the *Education Act 1996* to introduce the new power for head teachers and other members of school staff to search, without consent, a pupil whom they reasonably suspect is carrying a knife or other offensive weapon. The then Department for Education and Skills (DfES) issued guidance on the powers: [Screening and Searching of Pupils for Weapons: Guidance for School Staff](#). The Steer review³⁸ recommended that the powers of search should be extended to cover a wide range of items. Subsequently, the *Apprenticeships, Skills, Children and Learning Act 2009* added new sections 550ZA, 550ZB, 550ZC and 550ZD to the 1996 Act.

The searching provisions extended the powers of search to cover also illegal drugs, alcohol and stolen property, and other items specified in regulations. The provisions set out who can undertake searches and the manner in which such searches can be made. This requires the search to be carried out by a person of the same sex as the person being searched and for the search to be in the presence of another member of staff who is also the same sex as the person being searched where this is reasonably practicable.

Bullying

All schools should have an anti-bullying policy as part of their behaviour policy. Under section 89(1)(b) of the *Education and Inspections Act 2006*, the head teacher must determine measures taken with a view to prevent all forms of bullying.

The Government's policy

In a [Written Ministerial Statement](#) on 7 July 2010 Nick Gibb, the Schools Minister set out plans to tackle behaviour and discipline in schools. These included steps to extend teachers' powers to search pupils, remove the 24-hour statutory notice for school detentions, and measures to protect teachers from false accusations:

The Minister of State, Department for Education (Mr Nick Gibb): I would like to announce to the House new measures to be introduced to tackle behaviour and discipline in schools. All pupils should show respect and courtesy towards teachers, towards other staff and towards each other. Head teachers help to create that culture of respect by supporting their staff's authority to discipline pupils. The role of the Government is to give schools the freedom they need to provide a safe and structured environment in which teachers can teach and children can learn.

The coalition agreement sets out this Government's intention to give heads and teachers the powers they need to ensure discipline in the classroom and promote good behaviour. It also sets out the Government's intention to give anonymity to teachers accused by pupils and to take other measures to protect against false accusations. Teachers should feel confident in exercising their authority, and pupils should not have to suffer disruption to their education caused by the poor behaviour of others.

Further to my reply in Education questions on 7 June, I can confirm that we will take steps to strengthen teachers' powers to search pupils. We intend to introduce regulations to add personal electronic devices (mobile phones, iPods and personal

³⁸ Steer report, July 2008: <http://www.teachernet.gov.uk/wholeschool/behaviour/steer/>

music players); pornography; fireworks; cigarettes and other tobacco; and "legal highs" to the list of items for which teachers can search. Our intention is for these regulations to come into effect from this autumn. In the next education Bill, we intend to give teachers a more general search power covering any item which may cause disorder or pose a threat to safety.

We will also take steps to reduce the bureaucratic burden on schools when giving pupils detentions. We intend to repeal the legislation that requires schools to give parents 24 hours written notice of detentions outside school hours. Schools will be free to determine and publicise their own rules on notice for detentions. As a result, teachers should be able to deal with misbehaviour on the day it occurs.

We will issue much shorter and clearer guidance which explicitly states that teachers can physically remove disruptive children from class and prevent them from leaving a room in situations where this is necessary to maintain order. We will seek to ensure that prosecutors, those exercising disciplinary powers and those determining complaints against teachers are aware of the new guidance. We are determined that teachers should have the protection they need and we will take all necessary steps, legislating further if necessary, to ensure this happens.

Finally, we will give teachers the strongest possible protection from false accusations. We will give anonymity to teachers facing accusations from pupils. This Government want to put an end to rumours and malicious gossip about innocent teachers which can ruin careers and even lives.

We will be announcing further measures in due course, including measures to tackle bullying, head teachers' powers to exclude children and the reform of alternative provision.³⁹

The school white paper, *The Importance of Teaching*, argues that no issue is more important when it comes to attracting good people into teaching than tackling poor pupil behaviour. It refers to relevant research:

3.1 We know that no issue is more important when it comes to attracting good people into teaching than tackling poor pupil behaviour. Among undergraduates considering becoming teachers, the most common reason for pursuing another profession is the fear of not being safe in our schools.⁴⁰

3.2 And poor discipline is forcing good people out of the classroom. Two thirds of teachers say that negative behaviour is driving people out of the profession⁴¹, and the most frequent factor cited as a cause of classroom stress is pupils' lack of respect towards teaching staff.⁴² in 2007, almost 18,000 pupils were permanently excluded or suspended for attacking a member of staff.⁴³ Only around half of teachers believed that there was appropriate support available in their school for teachers struggling to

³⁹ HC Deb 7 July 2010 c12WS

⁴⁰ S Freedman., B Lipson and D Hargreaves, *More Good Teachers*, Policy Exchange, 2008

⁴¹ NFER, 2008

⁴² Teachers TV/YouGov Online Poll, February 2007 <http://www.teachers.tv/pressreleases/32707>

⁴³ DfE (2010e), *Permanent and Fixed Period Exclusions from Schools and Exclusion Appeals in England 2008/09*

manage pupil behaviour.⁴⁴ Far too many teachers are also exposed to false or even malicious allegations of misconduct by pupils or parents.⁴⁵

Some commentators, however, questioned the conclusions drawn from some of this research. The Association of Schools and College Leaders (ASCL) said that workload and pressure of league tables were bigger factors affecting teachers.⁴⁶ The National Union of Teachers (NUT) believed that the only way pupil behaviour would be 'properly dealt with' would be to give teachers control of the curriculum and abolish league tables because, it argued, as long as they exist 'there may be some pupils perceived as less desirable.'⁴⁷

The Government wants to restore the authority of teachers, and ensure that they are clear about the powers they have to deal with disruption in the classroom. The schools white paper stated that the Government would:

- increase the authority of teachers to discipline pupils by strengthening their powers to search pupils, issue detentions and use force where necessary;
- support teachers to challenge behaviour by legislating to grant them anonymity when accused by pupils, and speeding up investigations;
- strengthen head teachers' authority to maintain discipline beyond the school gates and improve exclusion processes;
- expect head teachers to take a strong stand against bullying – particularly prejudice-based racist, sexist and homophobic bullying;
- focus Ofsted inspections more strongly on behaviour and safety, including bullying, as one of four key areas of inspection;
- change the current system of independent appeal panels for exclusions so that they take less time and ensure that pupils who have committed a serious offence cannot be re-instated;
- ensure that all children being educated in alternative provision get a full-time education;
- improve the quality of alternative provision by giving existing providers more autonomy and encouraging new providers, including new alternative provision free schools; and
- pilot a new approach to permanent exclusions where schools have the power, money and responsibility to secure alternative provision for excluded pupils.⁴⁸

The schools white paper proposed a general power for teachers to search for any item which they reasonably believe is going to be used to cause harm to others or break a law; for

⁴⁴ NASUWT (2010), *Taking Abuse: The experiences of teachers working with pupils with challenging behaviours in alternative provision*

⁴⁵ NASUWT (2009), *NASUWT evidence Inquiry into the Allegations Against School Staff House of Commons, Children, Schools and Families Select Committee*. ATL (2009b), *ATL primary school behaviour survey last retrieved 27th October 2010* from: http://www.atl.org.uk/Images/ATL_per_cent20primary_per_cent20school_per_cent20behaviour_per_cent20survey.pdf and <http://www.atl.org.uk/media-office/media-archive/primarybehaviour-survery.asp>

⁴⁶ "Pressure not safety deters the gifted from teaching", *Times Educational Supplement*, 7 January 2011, p7

⁴⁷ "More than 500 pupils excluded for assault or abuse every day", *Guardian*, 24 November 2010, p4

⁴⁸ *The Importance of Teaching*, paragraph 3.6

example, items such as phones or cameras which they believe are going to be used in this way.⁴⁹

The *Economic Impact Assessment* of the schools white paper noted that there is a risk that no-notice school detention could impose costs on families if they have to arrange alternative transport, or if the pupils care for younger children or other family members. However, it said that teachers would be expected to use their professional judgement and to take into account each child's circumstances when deciding to issue a no-notice detention.⁵⁰

The proposals on head teachers' powers to ensure discipline beyond the school gates and the proposed changes to bullying policy are non-statutory changes. New statutory guidance will be issued to strengthen head teachers' powers to punish pupils who misbehave on their way to and from school.⁵¹ The schools white paper says that existing anti-bullying guidance is too long and fragmented, and that therefore the Government will rationalise and simplify it.⁵²

2.2 The Bill's provisions

Power of members of school staff to search pupils

Clause 2 extends the powers of head teachers and authorised staff to search pupils for prohibited items by inserting into section 550ZA of the *Education Act 1996* any 'article that the member of staff reasonably suspects has been, or is likely to be, used to commit an offence or to cause personal injury to, or damage to the property of, any person', including the pupil being searched. The power of search is also extended to cover any other item which the school rules identify as an item for which a search can be undertaken. The *Explanatory Notes* state that the powers to use reasonable force in carrying out a search apply to the prohibited items covered by section 550ZA(3)(a) to (f) but do not extend to items which the school rules identify as items for which a search may be made.

The provisions in section 550ZB of the 1996 Act relating to the way that searches may be conducted would be amended by the Bill to enable searches in certain circumstances to be carried out by a member of staff who is of the opposite sex to the pupil being searched, and for searches to be carried out without another member of staff being present in certain circumstances. This would be permitted where the member of staff carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search urgently and that it is not reasonably practicable for the search to be carried out by a member of staff of the same sex as the pupil, or for the search to be witnessed by another member of staff.

New subsections would be inserted into section 550ZC of the 1996 Act relating to the subsequent treatment of items seized in a search. New subsections provide specific powers regarding electronic devices seized under the provisions. The person who has seized the item may examine any data or files if they believe there is a good reason to do so. Data or files from the device may be erased if the person has decided to return it to its owner, retain it or dispose of it and thinks there is a good reason to do so. In determining whether there is a good reason to examine any data or files, or erase data or files, regard must be had to guidance issued by the Secretary of State.

⁴⁹ *The Importance of Teaching*, paragraph 3.10

⁵⁰ *Economic Impact Assessment* of the schools white paper, paragraph 26

⁵¹ *The Importance of Teaching*, paragraph 3.17

⁵² *ibid* paragraph 3.21

Power of members of staff at further education institutions to search students

Clause 3 provides similar powers of search in relation to further education institutions as clause 2 provides for schools; this clause therefore gives further education institutions power to search students for alcohol, controlled drugs and stolen articles. The only substantive difference to the powers for schools is that powers given to further education institutions do not include the power to search for items identified by school rules.

The Association of Colleges (AoC) has said in [Briefing for MPs: Education Bill – 2011](#) that they were consulted about these proposals and that they are pleased that college students and school pupils will be treated in a similar manner.

School detentions

Clause 5 amends section 92 of EIA 2006 by removing the requirement on members of staff in schools in England to give to a parent, guardian or carer a minimum of 24 hours' written notice that their child is required to attend detention outside of normal school hours.

2.3 Comment on the school discipline proposals

There are mixed views on the discipline-related proposals outlined in the white paper and those taken forward in the Bill.

Teaching unions have welcomed a continuing focus on pupil indiscipline but have expressed concern about the provisions on powers of search, the use of reasonable force and non-notice detentions. Dr Mary Bousted, general secretary of the Association of Teachers and Lecturers (ATL), said that teachers are worried that encouraging them to search pupils and confiscate items such as mobile phones, weapons, drugs and cigarettes will damage their relationship with their pupils. She said that it was not the teacher's job to search pupils, and that they worry that handling pupils will lead to complaints from parents; however, she also said that teachers think that learning would improve in the classroom if pupils do not have these items. The majority of teachers questioned by ATL, thought that allowing staff to give immediate detentions would damage their relationship with their pupils and parents.⁵³ NASUWT⁵⁴ thought that while same-day detentions and clarity around the use of reasonable force were viewed as 'superficially attractive', in reality 'the provisions have the potential to bring schools and teachers into serious conflict with parents and the law.'⁵⁵

Brian Lightman, general secretary of the Association of School and College Leaders (ASCL), welcomed the Bill's strong emphasis on schools' powers to keep order and discipline, but stressed that it is wrong to portray behaviour in schools as in chaos and 'broken down'. While welcoming the extended powers of search to cover mobile phones to help tackle cyber-bullying, he stressed that the Government should not forget that the majority of schools are calm and orderly places with a model of behaviour that is a model to many other areas of society.⁵⁶

Voice⁵⁷ welcomed greater disciplinary powers and clear guidance on their enforcement, both to improve pupil behaviour and to protect staff; however, it stressed that it is essential that funded training is provided on physical restraint and that the training is consistent in terms of who provides it and what it involves. "It is crucial that staff, pupils and parents know what the

⁵³ [ATL comment ahead of the publication of the Education Bill, 27 January 2011](#)

⁵⁴ NASUWT is a teachers' union: <http://www.nasuwt.org.uk/index.htm>

⁵⁵ [NASUWT summary of the schools white paper and initial comments: http://www.nasuwt.org.uk/Whatsnew/NASUWTNews/Nationalnewsitems/VoteForEducation/EducationWhitePaper/index.htm](http://www.nasuwt.org.uk/Whatsnew/NASUWTNews/Nationalnewsitems/VoteForEducation/EducationWhitePaper/index.htm)

⁵⁶ ASCL, "School behaviour not 'broken down' ", [news release 27 January 2011](#)

⁵⁷ Voice, a union for educational professionals: http://www.voicetheunion.org.uk/index.cfm/page/why_voice.cfm/ncid/1055

powers are, and that they are interpreted and used in the same way across the country, to avoid accusations being made against staff, or litigation threatened by parents.” It wanted searches of pupils to be undertaken by trained and willing staff (ideally security staff), and stressed that the guidance needs to be absolutely clear that staff must not be required to undertake searches. “Widening the scope of searches could potentially lead to staff being put at risk of confrontation or even assault or injury.”⁵⁸

The fairness of no-notice detentions, particularly where young people have caring responsibilities, had been raised during oral evidence taken by the Education Select Committee. Responding, Nick Gibb, the Schools Minister stressed that this would be a permissive power:

Q263 Lisa Nandy: I want to ask you about your decision regarding no-notice detention. Do you consider that decision to be fair to children who have caring responsibilities at home?

Mr Gibb: This isn't a prescriptive policy - "You shall not give a detention without 24 hours' notice." This is a permissive power that says that if you do not wish to give 24 hours, as a school, you do not have to. Schools are public bodies and as a public body they have to behave reasonably, so I don't believe that any school would - well, any school would simply not be permitted to act unreasonably in giving a detention to a child who has caring needs, or who lives, as was pointed out by Tom Trust, in the middle of a rural area with transport problems. Of course, those schools will take the appropriate measures, but do you think it is right for the House of Commons to pass a law telling a school how to run detention? It does seem extraordinary. We need to get away from this prescriptive approach to our schools.

Q264 Lisa Nandy: I've worked with young people who have caring responsibilities for several years. One of the most striking features about that is that they are often very reluctant to tell people-friends, peers, teachers, anybody - about what's going on at home. So my question for you is, if you're expecting schools to behave reasonably, how can those schools behave reasonably if they simply don't know that those young people have those responsibilities?

Mr Gibb: Well, perhaps they ought to know. If a school decided to give a no-notice detention to a child who had these responsibilities, and it did prove a problem, so the child simply left, it would soon become clear to the school that that child had other issues. I think most schools are aware of these issues. I think we have to trust professionals who run our schools - trust the head teachers, trust the teachers. They are professional people, and I believe they know what they are doing in running a school. What we have to do-certainly the approach of this Government-is to liberate them to run the schools as they see fit, and not always to prescribe every dot and comma on when and how they can run detentions and how they can run their schools.⁵⁹

2.4 Exclusions from school in England

Background

The legislation governing the exclusion of pupils from maintained schools is contained in section 52 of the *Education Act 2002*, which should be read in conjunction with sections 88 to

⁵⁸ [White Paper full of contradictions, Voice press release, 24 November 2010](#)

⁵⁹ [Behaviour and discipline in schools, uncorrected oral evidence taken before the Education Committee, 17 November 2010, to be published as HC516-iv](#)

92 of the *Education and Inspections Act 2006* (EIA 2006) and associated regulations. The following gives a brief outline of the current arrangements.⁶⁰

Head teachers, school governing bodies, LAs and appeal panels must have regard to guidance issued by the Secretary of State when carrying out their functions in relation to exclusions. Guidance on exclusions has been revised on several occasions and is set out on the former [DCSF teachernet exclusions website](#).⁶¹

There are two categories of exclusion: fixed-period or permanent. Only the head teacher (or acting head teacher) has the power to exclude a pupil from school. In relation to fixed-period exclusions, the guidance states that a decision should be taken on the balance of probabilities, and only in response to breaches of the school's behaviour policy, including persistent disruptive behaviour (where these are not serious enough to warrant a permanent exclusion and lesser sanctions such as detention are not considered appropriate).

The 2008 guidance states that a decision to exclude a child permanently is a serious one, and should only be taken where the basic facts have been clearly established on the balance of probabilities. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies which have been tried without success.⁶² However, the guidance indicates that there may be circumstances where, in the head teacher's judgement, it is appropriate to permanently exclude a child for a first offence. These circumstances might include:

- serious actual or threatened violence against another pupil or a member of staff
- sexual abuse or assault
- supplying an illegal drug
- carrying an offensive weapon⁶³

The guidance sets out the procedure for excluding a pupil, including the responsibilities of a school governing body and of the independent appeal panel. The school governing body has no power to exclude a pupil; rather its role is essentially one of reviewing the head teacher's exclusion decision.

Chapter 5 of the guidance gives full details on the appeal process. Where the governing body upholds a permanent exclusion, the parents may appeal against the decision to an independent appeal panel. The independent appeal panel may decide to uphold the exclusion; to direct reinstatement; or decide that because of exceptional circumstances or other reasons, it is not practical to direct reinstatement, but that it would otherwise have been appropriate to do so.⁶⁴ The panel must give its decision in writing to the parent, the local authority, the governing body and the head teacher. The decision of the panel is binding on the parties.

The Secretary of State has no powers to quash or amend the decision of an appeal panel. If the parent considers that there was maladministration by the appeal panel, he or she may make a complaint to the Local Government Ombudsman (LGO). The LGO cannot look at a school's decision to exclude a child, or the governing body's decision to confirm it. However, the LGO can look into complaints about maladministration by an appeal panel (i.e. complaints about things that have gone wrong in the way the panel has operated or the way

⁶⁰ Further introductory information about exclusion and the appeal process is provided on the [Directgov school discipline and exclusions website](#).

⁶¹ <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/2008guidance/>

⁶² <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/2008guidance/part2a/> paragraph 16

⁶³ <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/2008guidance/part2a/>, paragraph 17

⁶⁴ *Guide to the Law for School Governors*, DCSF, January 2010, chapter 13 paragraphs 19 to 24

a decision has been made). The Ombudsman can make recommendations if s/he finds that there has been maladministration. He or she might recommend a fresh hearing if this were practical, and the local authority would normally be expected to comply.⁶⁵

Exclusion from school does not mean exclusion from education; local authorities have a duty to provide suitable full-time alternative education for any permanently excluded pupil of compulsory school age from the sixth day of the exclusion.⁶⁶

Pupils who have been excluded from school, or for some other reason cannot attend mainstream school, receive their education in alternative provision which includes local authority-run Pupil Referral Units (PRUs). There are about 450 pupil referral units in England. The majority of PRUs offer education to pupils on a temporary basis.

Recent research published by Civitas suggested that, although DFE statistics show a fall in permanent exclusion, there is increasingly a use of further education colleges and other off-site provision for disruptive pupils. The Civitas report called for a ban on permanent exclusions and proposed that schools should be given extra funds to buy off-site provision for pupils they want to remove but that they should retain responsibility for the quality of provision. It also called for pupils to be given the right to choose what form of education they receive as soon as a school wishes to remove them from normal lessons.⁶⁷

The Government's policy

Problems with the current exclusion appeal process were identified by the schools white paper, which proposed moving from independent appeal panels to independent review panels:

3.29 The current process for appeal against an exclusion, where cases are referred to Independent Appeal Panels, is problematic in several ways. By its nature the appeal process can become unduly adversarial, rather than encouraging schools and parents to continue to work together in the interests of the child. And the possible reinstatement of an excluded pupil – however rarely this happens – can undermine the head teacher's authority. We will legislate to reform independent appeals panels, so that there is still an independent review of decision-making, but the review will not be able to compel re-instatement. If the review panel judges that there were flaws in the exclusion process they can request that governors reconsider their decision and schools may be required to contribute towards the cost of additional support for the excluded pupil. But schools will not be forced to re-admit children who have been excluded.

It is expected that there would be minimal administrative costs associated with the change.⁶⁸

The schools white paper included some details of the Government's plans to trial a new approach to finding and funding alternative provision for pupils excluded from school. Schools would retain the power to exclude pupils, but they would be responsible for finding and funding alternative provision. The white paper said that the Government would explore shifting the money for alternative provision from local authorities to schools. This would enable schools to purchase the alternative provision they think will best suit excluded children. Schools would be held accountable for the pupils they excluded. The outcomes of

⁶⁵ Further information is provided on the [LGO factsheet on complaints about exclusion from school](#).

⁶⁶ HC Deb 2 December 2010 c1034W

⁶⁷ Tom Ogg with Emily Kaill, *A New Secret Garden? Alternative Provision, Exclusion and Children's Rights*, Civitas, November 2010; "PRU numbers double despite exclusions halving", *Times Educational Supplement*, 12 November 2010, p12

⁶⁸ *Economic Impact Assessment* of the schools white paper, paragraph 30

attainment of excluded children would count in the school's performance data; the schools white paper states that this would ensure that the decision to exclude was never abused. (This would, it states, create a strong incentive for schools to avoid exclusion where possible, and ensure that where it did happen pupils would receive good alternative provision.⁶⁹) The trial would be used to assess the effect of the change.⁷⁰

The Bill's provisions

Clause 4 inserts a new section 51A into the *Education Act 2002* providing for the exclusion of pupils from maintained schools and pupil referral units (PRUs). Subsections (1) and (2) of new section 51A would keep the current power in section 52 for head teachers of maintained schools and teachers in charge of PRUs in England to exclude any pupil from school on disciplinary grounds for a fixed period or permanently. The Secretary of State would be empowered to make regulations regarding the procedure relating to the exclusion of pupils. The *Explanatory Notes* state that these regulation-making powers broadly mirror those in the current section 52, though the powers of the proposed new review panels are significantly different from those of the current independent appeal panels.

The powers of a review panel are set out in new section 51A (4). A review panel would be able to uphold the decision of a 'responsible body' (a maintained school or a PRU); or recommend that the responsible body reconsiders the case. If it considers that the decision of the governing body was flawed when viewed in the light of the principles of judicial review it could direct the responsible body to reconsider the matter, but the review panel would not have the power to order reinstatement. The Secretary of State would be empowered to make regulations in relations to the review panel.

New section 51A (6) and (7) provide that where a review panel has quashed a decision of the responsible body and directed that it considers the decision again, then, in prescribed circumstances, an adjustment of a school's budget may be made. In effect this would mean that the review panel could specify that where the school reconsiders its decision but decides to go ahead with the exclusion, then the school would pay a financial penalty (achieved by a deduction from its budget share) to recognise the costs of providing alternative provision for the excluded child. The Secretary of State would be required to make regulations setting out how the amount of such a payment would be determined and what effect such adjustments would have on the budget shares of other maintained schools.

A regulation-making power contained in new section 51A (12) would allow the Secretary of State to apply new section 51A (and regulations made under it) to academies, or a description of academy, with or without modifications.

Clause 4(3) makes amendments to section 52 of *Education Act 2002* which will only apply now to Wales. **Clause 4 (4)** gives effect to Schedule 1 which makes amendments to other legislation consequential on the changes.

Comment

The Local Government Association believes that in a system with more autonomy, schools should take more responsibility, including responsibility for finding and fully funding alternative provision, and that schools should retain accountability for the attainment of permanently excluded pupils. For these reasons the LGA supports the proposal to trial

⁶⁹ [The Importance of Teaching](#), paragraphs 3.39

⁷⁰ [Economic Impact Assessment](#) of the schools white paper, paragraph 34

alternative approaches. It also welcomes the retention of rights of appeal for excluded pupils.⁷¹

Serious concerns have been expressed about the proposals to make schools responsible for pupils after they are excluded. Brian Lightman, the general secretary of the Association of School and College Leaders, has pointed out that schools cannot be held accountable ‘for things over which they have no control’, and that ‘if they are not educating the child, then it is quite unreasonable for them to be held accountable for what is going on with the pupil in alternative provision.’⁷² ASCL believes that the proposals would have a detrimental effect on the ability of schools to maintain discipline, and could result in a financial penalty on schools, leaving them with a choice between excluding badly behaved pupils or employing teachers.⁷³ NASUWT and ATL have also expressed concern about the proposal.⁷⁴

2.5 Behaviour and attendance partnership

The purpose of behaviour and attendance partnership is to encourage schools to work together to improve behaviour, tackle persistent absence, and improve the outcomes of pupils. A report from the Steer review on pupil behaviour recommended that these partnerships should be enshrined in legislation and that all state-funded schools should be required to participate. The Labour Government accepted the recommendation and made statutory provision for this in section 248 of the ASCL Act 2009.

The present Government wants to remove what it regards as unnecessary mandatory requirements on schools.

Clause 6 removes the requirement in section 248 of ASCLA 2009 that the governing body of a maintained secondary school, or the proprietor of an academy, city technology college or city college for the technology of the arts (referred to in the section as "relevant partners") must co-operate with at least one other relevant partner in their area for the purpose of promoting good behaviour, discipline and attendance amongst pupils.

3 School workforce

3.1 Abolition of the General Teaching Council for England

Background

The General Teaching Council for England (GTCE) was established under the *Teaching and Higher Education Act 1998* (THEA 1998). Its main functions are to maintain a register of qualified teachers in England, regulate the teaching profession, and provide advice to government and other agencies on issues affecting the quality of teaching and learning. Further information on its role is available on the [GTCE website](#).

The Government's policy

On 2 June 2010, Michael Gove said that he was ‘deeply sceptical’ about the purpose of the General Teaching Council for England:

This Government trusts the professionals. That's why we want to give teachers greater freedoms and reduce unnecessary bureaucracy. Since I have been shadowing education and more recently held the brief in Government there has been one

⁷¹ Local Government Group, Briefing, *The Importance of Teaching – The Schools White Paper*, 28 November 2010, p2

⁷² “PRU numbers double despite exclusions halving”, *Times Educational Supplement*, 12 November 2010, p12

⁷³ “Gove under fire as heads rebel over plans to keep unruly pupils”, *Times Educational Supplement*, 3 December 2010, p22

⁷⁴ “Rule change ‘will stop schools from expelling worst pupils’”, *Daily Telegraph*, 3 January 2011, p1

organisation of whose purpose and benefit to teachers I am deeply sceptical - the General Teaching Council for England. I believe this organisation does little to raise teaching standards or professionalism. Instead it simply acts as a further layer of bureaucracy while taking money away from teachers. I want there to be stronger and clearer arrangements in relation to teacher misconduct and I am not convinced the GTCE is the right organisation to take these forward. I intend to seek authority from Parliament to abolish the General Teaching Council for England.⁷⁵

The current cost of the GTCE to the exchequer is estimated to be around £16 million a year.⁷⁶

Nick Gibb, the Schools Minister, said in a written answer to a parliamentary question on 18 October 2010 that the Government was considering a range of options for handling GTCE's current functions, including how its regulatory and disciplinary functions should operate in the future.⁷⁷ The closure date for the GTCE is expected to be 31 March 2012.⁷⁸

Commenting on the arrangements that will replace the GTCE, the schools white paper said the DFE will be able to bar teachers from the profession, where necessary, and that there will be a 'simple list of those who have been barred which employers and the public will be able to access,' and that the disciplinary process will be 'simplified further by reducing the current range of sanctions to a ruling that a teacher will be either barred or not.'⁷⁹

Clause 7 of the Bill seeks to amend section 1 of THEA 1998 to abolish the General Teaching Council for England by removing all references to it. However, the General Teaching Council for Wales will continue unaffected.

Clause 8 inserts new sections 141A to 141E into *Education Act 2002*, providing for the Secretary of State to provide regulatory functions for the teaching profession in England. The Secretary of State would be empowered to consider allegations of unacceptable professional conduct, conduct that may bring the profession into disrepute or convictions of a relevant offence and to decide whether to prohibit the person from teaching. The Secretary of State would be required to keep a list (available for the public to view) of teachers who are subject to a prohibition order (barred from teaching) or teachers who have failed the teacher induction period in circumstances that may be prescribed. The Secretary of State would be able to include a person on the list who has been barred from teaching in Wales, Scotland or Northern Ireland. Where a teacher has been dismissed for serious misconduct (or where they would have been dismissed had they not resigned) the employer must consider whether to refer the case to the Secretary of State. There is provision to ensure that the same applies in respect of teachers employed through supply agencies or contractors.

A new Schedule 11A would be inserted into the 2002 Act to make provision about the regulations to be made by the Secretary of State relating to the procedures to be followed in making decisions about prohibiting a person from teaching, and to allow for a right to appeal.

Clause 9 inserts new sections into EA 2002 that largely reproduce section 19 of the *Teaching and Higher Education Act 1998* (THEA 1998) regarding teachers' induction periods, and transfer existing provisions regarding induction from the GTCE to the Secretary of State as far as these relate to England. Arrangements for Wales are unaffected and remain covered by section 19 of THEA 1998.

⁷⁵ DFE News, 2 June 2010, [General Teaching Council for England \(GTC\) to be scrapped](#)

⁷⁶ HC Deb 6 September 2010 c349W

⁷⁷ HC Deb 18 October 2010 cc475-6W

⁷⁸ [GTC closure in 2012, GTC website, 5 November 2010](#)

⁷⁹ [The Importance of Teaching](#), paragraph 2.36

Clause 10 makes transitional provisions in respect of certain functions currently undertaken by the GTCE. **Clause 11** gives effect to **Schedule 2** which makes consequential amendments to other enactments to reflect the changes made by provisions of this Bill. **Clause 12** gives effect to **Schedule 3** which enables the Secretary of State to create a scheme whereby members of GTCE staff can have their contracts of employment transferred to the Secretary of State, with appropriate civil service terms and conditions, unless they give notice of objection. The Explanatory Notes state that the Secretary of State may also create a property transfer scheme, through which the GTCE's assets and liabilities may transfer to the Secretary of State.

Comment

The chief executive of GTCE was said to be 'shocked and bewildered' by the decision to abolish the GTCE.⁸⁰ The chief executives of the GTCE for Scotland and the GTC for Wales raised the issue of how information about teachers who are guilty of misconduct will be shared across the UK when the GTCE is abolished.⁸¹

Lord Puttnam, who was closely associated with establishing the GTCE and served as its first chairman, described the decision to abolish the GTCE as 'incredibly short-sighted'.⁸²

Some commentators have questioned the effectiveness of the GTCE in regulating poorly performing teachers and seriously misbehaving teachers,⁸³ and were not surprised at the decision to abolish it.⁸⁴ Nevertheless, some have pointed out that its abolition sits uneasily with the Government's commitment to raise the status of the teaching profession.⁸⁵ Commentators have stressed that whatever replaces it should be the outcome of consultation and deliberation rather than 'Ministerial whim'.⁸⁶

The National Association of Head Teachers (NAHT) said that while it understood the motivation behind the dismantling of agencies such as the GTC and TDA, it thought that the teaching profession would need convincing that an increase in the powers and responsibilities of the Secretary of State would not signal a decrease in accountability and effectiveness.⁸⁷

The NUT has said that it will be a problem if the GTCE is replaced by the Secretary of State acting as both judge and jury for the teaching profession.⁸⁸

Concern has also been expressed that the GTCE may not be able to fulfil its functions during the transitional period as significant numbers of staff leave, and that this could affect the collection of remaining registration fees.⁸⁹

⁸⁰ "'Bewildered' GTC mulls legal fight for survival" *Times Educational Supplement*, 11 June 2010, p4; "Gove's haste to axe GTC greeted with disquiet", *Times Educational Supplement*, 11 June 2010, p4 and pp 28 and 29

⁸¹ "Gove warned that GTC closure could see incompetent staff sneak across the border", *Times Educational Supplement*, 27 August 2010, p7

⁸² "Puttnam slams GTC abolition as 'shortsighted'", *Times Educational Supplement*, 8 October 2010, p9

⁸³ "Gove's haste to axe greeted with disquiet", *Times Educational Supplement*, 11 June 2010, pp 28 and 29

⁸⁴ "Save England's GTC? It's useless at getting rid of bad apples and costs too much. But at least it's worth a laugh", *Times Educational Supplement*, 15 October 2010, p27

⁸⁵ e.g. "The abolition of the GTCE", *Education Journal*, Issue 124, p18

⁸⁶ "GTC dismissal is no more than a crowd-pleaser", *Times Educational Supplement*, 11 June 2010, p2

⁸⁷ [NAHT, 27 January 2011](#)

⁸⁸ [NUT press comment on the Education Bill, 27 January 2011](#)

⁸⁹ "Discipline hearings may go as GTC struggles to cope", *Times Educational Supplement*, 22 October 2010 p13

3.2 Restrictions on reporting alleged offences by teachers

Teaching unions have long campaigned for anonymity for teachers accused of abuse until charged with a criminal offence. An ATL survey, which was quoted in the schools white paper, found that 50% of staff questioned reported that they or a colleague had had a false allegation made against them.

The schools white paper said the Government would legislate to give anonymity to teachers accused by pupils and that the progress of investigations would be speeded up.⁹⁰ The *Economic Impact Assessment* said that legislation would introduce reporting restrictions to prevent a teacher's identity being revealed until the point at which a person is charged with a criminal offence. Similarly, children and parents who are linked to the allegations would not be able to voice their views in the press until the teacher is charged or dismissed. No added burdens or costs to the schools are anticipated by the measure.⁹¹

The proposals have been widely welcomed by the teachers' unions. However, the Newspaper Society, which represents and promotes the interests of Britain's regional and local media, expressed concerns over the proposals:

... these are potentially very wide ranging reporting restrictions, which would apparently curtail even the report of the arrest of a teacher and anyone in the 'wider children's workforce'. Yet protection is already given by the laws of libel and contempt, as well as the Code of Practice upheld by the [Press Complaints Commission].

Moreover, some commentators say that restrictions upon media reporting of accurate information from official authoritative sources might well allow local rumour and speculation to go unchecked.⁹²

Clause 13 is limited to applying reporting restrictions about alleged misconduct by teachers, though this will include supply and peripatetic teachers.⁹³ The clause would insert three new sections (141F, 141G and 141H) into the *Education Act 2002*.

New section 141F would restrict the publication in any medium of an allegation of a relevant criminal offence made by or on behalf of a registered pupil against a teacher. Relevant criminal offences are those where the victim is a pupil at the school. Restrictions on reporting that could identify the teacher concerned would only come to an end either on commencement of court proceedings or by a court order dispensing with the restrictions. Any person could apply to an appropriate criminal court, with the possibility of an appeal in the Crown Court, to have reporting restrictions lifted.

New section 141G would make it an offence to publish any information in breach of new section 141F. Publication on the internet would be captured. For newspapers, periodicals, television and radio programmes the new section identifies the people (for example, the editor) to whom the offence would apply. Newspaper proprietors and publishers would also be so covered. A person guilty of an offence under this section would be liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000). New section 141H would place an onus on a person charged with such an offence to prove that one of specified defences applied. These defences include the written consent (freely given) of the teacher against whom an allegation has been made. Other defences might be styled ones of reasonable ignorance that an offence was being committed by publication.

⁹⁰ *The Importance of Teaching*, paragraphs 3.11 to 3.15

⁹¹ *Economic Impact Assessment* of the schools white paper, paragraphs 27 and 28

⁹² "Government vows to restrict reporting of allegations against teachers", *Journalism.co.uk*, 25 November 2010

⁹³ Bill 137 – EN

3.3 Abolition of the Training and Development Agency for Schools

The Training and Development Agency for Schools (TDA) was created under the *Education Act 2005*. It is the national agency and recognised sector body responsible for the training and development of the school workforce. The TDA receives an annual remit letter from the DFE that sets out its priorities and objectives for the coming year. Further information is provided on the [TDA website](#).⁹⁴

The schools white paper, *The Importance of Teaching*, published on 24 November 2010, announced:

2.22 Subject to legislation, the key functions of the Training and Development Agency (TDA), some of which are outlined above, will transfer to the Department for Education, where they will be exercised by an executive agency that is directly accountable to Ministers.

The Education Secretary wrote to the chair of the TDA on 24 November 2010 acknowledging the contribution it had made, and stressing that its responsibilities should be carried out in a different way in the future. The precise scope of the new executive agency's responsibilities has yet to be finalised. The [letter](#) goes on to say that there will be an extended transition to the new arrangements but that the process is expected to be completed by 2012.⁹⁵

Clause 14 would abolish the TDA by repealing sections 74 to 84 and Schedule 13 of the *Education Act 2005*.

Under **Clause 15**, which would amend the *Education Act 2002* and the *Education Act 2005*, the Secretary of State would have the power to exercise the functions that the TDA currently exercises, and to confer functions on the Welsh Ministers in relation to teacher training. Provision is made relating to financial support for the purposes of teacher training, and the Explanatory Notes state that the Secretary of State will not be able to impose terms and conditions on higher education institutions relating to the admission of students or the selection of staff as a condition of funding. This is to ensure that the autonomy of higher education institutions is not compromised.

Clause 16 gives effect to **Schedule 4** which makes consequential amendments to other legislation; and **clause 17** gives effect to **Schedule 5** which provides for the transfer of staff and property from the TDA to the Secretary of State.

Voice has said that the abolition of the TDA raises a big question about the future of the professional development of teachers and its possible politicisation through direct departmental control.⁹⁶

3.4 Abolition of the School Support Staff Negotiating Body

The *Apprenticeships, Skills, Children and Learning Act 2009* established a new body known as the School Support Staff Negotiating Body (SSSNB), which became a statutory advisory body in January 2010. Its remit was to consider and seek agreement on matters relating to the remuneration and conditions of employment relating to the duties or working time of school support staff who work in maintained schools in England. Background on it is provided in [Library Research Paper 09/15](#), which was prepared for the Commons second

⁹⁴ <http://www.tda.gov.uk/about.aspx>

⁹⁵ http://www.tda.gov.uk/about/~media/resources/about/secretary_of_state_letter_241110.pdf

⁹⁶ Voice, press release on the Education Bill, 27 January 2011

reading debate on the *Apprenticeships, Skills, Children and Learning Bill*. Details of the work of the SSSNB were set out on the [Local Government Employers website](#).⁹⁷

On 28 October 2010, the Education Secretary announced in a *Written Ministerial Statement* that the SSSNB would be abolished as it 'does not fit well with the Government's priorities for greater deregulation of pay and conditions arrangements for the school workforce,' and that school support staff will continue to have their pay and conditions determined at the local level by employers:

The Secretary of State for Education (Michael Gove): The SSSNB was established by the previous Government to develop a national pay and conditions framework for school support staff working in maintained schools in England. The Government have conducted a review of the future policy direction for determining school support staff pay and conditions, including the role of the SSSNB, and have concluded that the SSSNB does not fit well with the Government's priorities for greater deregulation of the pay and conditions arrangements for the school workforce. I therefore propose to introduce legislation to abolish the SSSNB at the earliest opportunity.

This decision means that school support staff will continue to have their pay and conditions determined in accordance with existing arrangements whereby decisions are taken at a local level by employers.

In reaching this decision the Government have considered very carefully the views of the SSSNB trade union and employer member organisations, and the SSSNB independent chair. I will be writing today to the independent chair and lead representatives of the SSSNB member organisations to notify them of the Government's decision.⁹⁸

The Education Secretary wrote to the SSSNB's independent chair on [28 October 2010](#) confirming the intention to abolish SSSNB.⁹⁹ The letter withdrew with immediate effect the matters referred to SSSNB by the former Secretary of State (in his referral letter of 29 July 2009). These matters included producing a core contract of employment to cover remuneration, duties and working time; designing national job profiles to cover core support staff roles; developing and producing a method for converting those job role profiles into a salary structure; and a strategy to effectively implement the national pay and conditions' framework in all school maintained by local authorities in England.

Clause 18 seeks to abolish the SSSNB. The *Impact Assessment* on the Bill says that as the SSSNB had not implemented any initiatives to change the way that pay for support staff is decided, the costs and benefits associated with its abolition only relate to its running costs, which are very small.

Unison, which represents 200,000 teaching assistants, opposes the abolition of the SSSNB.¹⁰⁰ The GMB has called on the Government to change its mind as it believes that the abolition of SSSNB will leave school support staff 'between a rock and a hard place without the necessary protection afforded to teachers.'¹⁰¹ Voice has said that scrapping SSSNB is

⁹⁷ http://www.ome.uk.com/example/School_Support_Staff_Negotiating_Body.aspx

⁹⁸ HC Deb 28 October cc 14-5WS

⁹⁹ http://www.ome.uk.com/example/School_Support_Staff_Negotiating_Body.aspx

¹⁰⁰ "Support staff debate strike over the axing of pay body", *Times Educational Supplement*, 5 November 2010

¹⁰¹ [GMB comment on the Education Bill, posted on ePolitix.com members respond to the Education Bill, 27 January 2011](#)

hugely disappointing and an insult to dedicated support staff, and has asked that since teachers have an independent pay review body why not support staff?¹⁰²

3.5 Staffing of maintained schools: suspension of delegated budget

A local authority may suspend a maintained school's right to a delegated budget under certain circumstances. The main effect of suspension of the right to a delegated budget is that the governing body loses the right to decide on how the budget should be spent and loses most staffing powers. The power of the local authority to suspend a delegated budget contained in section 17 of the *School Standards and Framework Act 1998* originally applied to England and Wales; however, section 17 was replaced by section 66 of the EIA 2006 in relation to England.

Clause 19 would make minor changes so that the effect on staffing of a suspension of a school's delegated budget should be the same for schools in England and Wales.

4 Qualifications and the curriculum

The schools white paper sets out a range of measures with the stated aim of reducing unnecessary prescription in the curriculum while making sure that standards match the best internationally. The measures include those aiming to:

Review and reform the National Curriculum so that it becomes a benchmark outlining the knowledge and concepts pupils should be expected to master to take their place as educated members of society.

Ensure that all children have the chance to follow an enriching curriculum by getting them reading early. That means supporting the teaching of systematic synthetic phonics and introducing a simple reading check at age six to guarantee that children have mastered the basic skills of early reading and also ensure we can identify those with learning difficulties.

Hold an independent review of assessment at the end of primary school to improve the current system so that parents have the information they need and schools can be properly accountable without feeling that they must drill children for tests.

Encourage schools to offer a broad set of academic subjects to age 16, by introducing the English Baccalaureate.

Following Professor Alison Wolf's review of vocational education, make necessary reforms so that vocational qualifications support progression to further and higher education and employment.

Support more young people to continue in education or training to age 18.

Obtain an honest view of our national performance by ensuring pupils take part in international tests of literacy, mathematics and science.

Ask Ofqual to measure qualifications against the best in the world so that, at age 16 and beyond, students are able to choose from a range of high-quality and rigorous qualifications respected and valued by universities and employers.¹⁰³

¹⁰² [Voice, press release on the Education Bill, 27 January 2011](#)

¹⁰³ [The Importance of Teaching](#), paragraph 4.6

4.1 International comparison surveys

Alongside the schools white paper the DFE published *The Case for Change*, which set out the Government's analysis of international data on educational performance. The appendix to this research paper looks at some of the evidence.

The Government want to ensure that English standards can be compared with those of international competitors, and schools to be required to take part in international tests such as PISA¹⁰⁴, TIMMS¹⁰⁵ and PIRLS.¹⁰⁶

Clause 20 would insert a new section 538A into the *Education Act 1996* to empower the Secretary of State to direct the governing body of a community, voluntary and foundation schools in England to participate in international education surveys as specified.

Some commentators have argued that while it is true that we can learn from other countries and their education systems, we must also appreciate flaws in other systems and not get caught in a trap of seeing complete emulation as praiseworthy.¹⁰⁷

4.2 Ofqual

The Office of Qualifications and Examinations Regulation (Ofqual) was established under *Apprenticeships, Skills, Children and Learning Act 2009*. The *Third Report of the Chief Regulator* was published in December 2010. Under the 2009 Act, the title of Chief Regulator is held by the Chair.

The Government wants the Chief Executive of Ofqual to be made the Chief Regulator so that there is a single figurehead within Ofqual who can act as the guardian of qualification and examination standards.¹⁰⁸ **Clause 21** and **Schedule 6** seek to give effect to these proposals by amending Schedule 9 to ASCLA 2009.

The Government also wants to change the remit of Ofqual to ensure that when considering the quality of qualifications, Ofqual takes into account international comparisons as well as historical performance.

During the debates on the *Apprenticeships, Skills, Children and Learning Bill*, Session 2008-09, there was a wide-ranging debate about Ofqual's role in relation to educational standards. Unsuccessful amendments tabled by the Liberal Democrats sought to add to Ofqual's objectives overall responsibility for educational standards and performance, and to place a duty on Ofqual to carry out sample testing annually in selected subjects; to report on changes in educational standards over time, not only comparing the standards in any one year with those of previous years, but also comparing standards in the UK with those in other OECD countries.¹⁰⁹ Nick Gibb, then Conservative spokesman on schools referred to studies which, he said, demonstrated that standards in the main public exams had been slipping over the years. He unsuccessfully tried to amend the Bill to require Ofqual to set out a range of comparators with qualifications in other countries.¹¹⁰

Section 128 of ASCLA 2009 sets out the objectives for Ofqual in discharging its functions; subsection (2) contains a 'qualifications standards objective'.

¹⁰⁴ The OECD Programme for International Student Assessment

¹⁰⁵ The Trends in International Mathematics and Science Study

¹⁰⁶ Progress in International Reading Literacy Study

¹⁰⁷ "Initiative overload carries a cost", *NASUWT*, 24 November 2010

¹⁰⁸ The *Economic Impact Assessment* of the schools white paper, paragraph 39

¹⁰⁹ *Apprenticeships, Skills, Children and Learning Bill*, PBC Deb 24 March 2009 cc581-90

¹¹⁰ *Apprenticeships, Skills, Children and Learning Bill*, PBC Deb 24 March 2009 c5c93-98

Clause 22 would replace section 128(2) of ASCLA 2009 with a new subsection setting out Ofqual's qualifications standards objective. The new objective would be for Ofqual to secure that regulated qualifications (a) give a reliable indication of knowledge, skills and understanding, (b) indicate a consistent level of attainment (including over time) between comparable qualifications and, (c) indicate a consistent level of attainment (but not over time) between regulated qualifications and comparable qualifications which Ofqual does not regulate, including qualifications awarded outside the UK. (Objective (c) would be a new requirement.) The aim is to ensure that regulated qualifications indicate a consistent level of attainment with comparable qualifications not regulated by Ofqual whether from outside the UK or from other parts of the UK. The *Explanatory Notes* on the Bill state that it is for Ofqual to decide which qualifications are comparable, and to decide the action that it has to take, in the context of the totality of their objectives, to ensure that comparable qualifications indicate a consistent level of attainment.¹¹¹

4.3 Abolition of the Qualifications and Curriculum Development Agency

The Qualifications and Curriculum Development Agency (QCDA) was created by the Labour government to develop the curriculum and administer tests. The *Apprenticeships, Skills, Children and Learning Act 2009* made provision for the replacement of the then Qualifications and Curriculum Authority by the new QCDA, and for regulatory functions regarding examination and assessment boards to be transferred to the new regulatory body called Ofqual.

Currently QCDA collaborates with the Scottish Qualifications Authority (SQA), the Qualifications, Curriculum and Assessment Authority for Wales (ACCAC) and the Council for the Curriculum, Examinations and Assessment in Northern Ireland (CCEA).

On 27 May 2010, the Education Secretary, Michael Gove, announced that QCDA would close. He wrote to the chairman of the QCDA to say he would bring forward the necessary legislation.¹¹² A [revised remit letter](#) from the DFE was sent to QCDA on 15 September 2010.¹¹³

QCDA will carry out its statutory functions until the legislative changes are made. The [revised remit letter](#) from the DFE to QCDA on 15 September 2010 explained that some functions currently carried out by QCDA would be discharged differently, some would continue, and others would stop completely. The letter set out funding details including savings, and arrangements for the transitional period.¹¹⁴

On 5 November 2010, commenting on the review of Key Stage testing, the Education Secretary announced new arrangements for delivering national curriculum tests following the abolition of QCDA. The [DFE news website](#) stated:

The Education Secretary also announced today new arrangements for delivering National Curriculum tests and assessments following the abolition of the QCDA. Working within the Department, an executive agency will oversee statutory tests and assessments for children up to age 14. Its exact remit will be confirmed following consideration of the recommendations of Lord Bew's review.

Michael Gove said:

¹¹¹ *Explanatory Notes*, paragraph 136

¹¹² Letter from the Education Secretary to Christopher Trinick, chair of QCDA, Library deposited paper: Dep 2010/1258

¹¹³ <http://www.qcda.gov.uk/news/7173.aspx>

¹¹⁴ A [revised remit letter](#), DFE, 15 September 2010

It is essential that the statutory assessment arrangements put in place following our review are delivered in a timely and effective way. It is right that accountability for ensuring this rests with ministers, and that is why I am establishing an executive agency within my department that will be accountable to me for the secure delivery of its functions.

As the independent regulator, Ofqual will continue to have an important role, as it does now, in keeping under review the agency's functions relating to National Curriculum tests and assessments.¹¹⁵

Clause 23 seeks to repeal of sections 175 to 191 of, and Schedule 11 to, ASCLA 2009. In effect this would abolish QCDA, which continued in existence as the Qualifications and Curriculum Development Agency under that Act. **Clause 24** gives effect to **Schedule 7**, which removes references to the QCDA from other legislation, and enables the Secretary of State to make further changes to subordinate legislation by order in consequence of clause 23. **Clause 25** gives effect to **Schedule 8**, giving power to the Secretary of State to make a scheme to enable the transfer of staff, property, rights and liabilities from the QCDA to Ofqual and the Secretary of State.

Critics of the proposed abolition of QCDA have stressed the need to retain a body with responsibility for curriculum matters to sit between the government and the teaching profession. However, commentators have also pointed to problems when relations between such a body and the government of the day become strained, noting that the department had set up groups to review the curriculum in parallel to QCDA.¹¹⁶

4.4 Career education and guidance

Education and training support services in England

Section 68 of the *Education and Skills Act 2008* (ESA) requires local authorities in England to make appropriate services available to young people¹¹⁷ and relevant young adults¹¹⁸ to encourage, enable or assist them to engage with and remain in education or training. Despite this requirement, an Ofsted report in 2010, *Moving through the system: information, advice and guidance*, alleged that the quality of career advice and access to careers education varied considerably. Reports have also suggested that the Connexions Service does not always provide high quality career guidance or value for money. Alan Milburn's Panel on Fair Access to the Professions has also identified careers guidance as failing to overcome the effects of social and economic disadvantage on young people. The provisions in **clause 26** aim to give local authorities greater flexibility to provide targeted support in a way that meets the needs of local young people.

Clause 26 subsection 2, removes the Secretary of State's power under section 69 of the ESA to give local authorities directions in relation to the exercise of their functions under section 68. This section retains the provision for local authorities to have regard to any guidance issued by the Secretary of State.

Subsection (4) omits the duty in section 73 of ESA which requires schools and other educational institutions to allow persons involved in providing education and training support services (such as Connexions personal advisers) access to pupils or students and facilities on their premises.

¹¹⁵ [DFE news website](#) 5 November 2010

¹¹⁶ "Scrapping the QCDA", *Education Journal*, Issue 124: "So, who will decide on the curriculum now?" *Independent* 3 June 2010, p4

¹¹⁷ A "young person" means a person who has attained the age of 13 but not the age of 20

¹¹⁸ A "relevant young adult" is a person aged 20 to 24 years who has a learning difficulty within the meaning of subsections (6) and (7) of section 15ZA of *Education Act 1996*.

Subsection (5) changes provisions which relate to the supply of information obtained in connection with education and training services. Information on the participation of young people in education and training is held on a database known as the National Client Caseload Information System (NCCIS). *Subsection (5)* repeals section 76A(5) of ESA which prevents the Secretary of State or the NCCIS contractor from disclosing information to each other in a way that reveals, or could reveal, the identity of an individual. The Government intends to use this power to generate data about the kinds of activities that pupils go on to when they leave education. This will be done by "matching" information from the NCCIS (which contains information about where individuals go on to work or study) with information that the Secretary of State holds on individuals' education outcomes in the National Pupil Database. Published information will not identify individuals. Both the NCCIS contractor and the Secretary of State will continue to be required to comply with the *Data Protection Act 1998* which protects the use of individuals' personal data.

The Association of Colleges said that they welcomed the new proposals for independent careers advice and guidance contained in the Bill, however, they said that they had concerns as to whether there would be sufficient independent careers advisers available. They also said that they would be interested to know how the Government would monitor the effectiveness of the new duty.¹¹⁹

Careers guidance in schools in England

Currently section 43 of the *Education Act 1997*, as amended, makes provision for careers education in schools. Not all of the provisions have yet been brought into force.

Since April 2008, local authorities have had responsibility for the Connexions service in England which provides young people with careers information, advice and support.

The *Impact Assessment* to the Bill highlights evidence which, it states, shows inconsistent quality and access to careers education and information, advice and guidance, and which also suggest that the Connexions Service is not consistently providing high-quality guidance for all young people and value for money. The Government's want to place a single, simplified duty on schools requiring them to secure access to independent and impartial careers guidance. The *Impact Assessment* states that the Government will:

- remove the Secretary of State's direction making powers in relation to local authority services to promote participation and revise guidance on the targeted services that local authorities would be expected to deliver. These new arrangements will see LAs no longer providing a universal careers guidance offer;
- place a single, simplified duty on schools requiring them to secure access to independent and impartial careers guidance for all pupils in the third and fourth keystages of their education;
- bring together guidance resources for young people and adults in an all-age careers service, as a source of expert advice and guidance on careers; and
- reduce bureaucratic provisions to achieve a more efficient, cost-effective service.¹²⁰

The *Impact Assessment* notes that not all of this reform will require changes to primary legislation, but the net effect is a reduction in central government intervention.

¹¹⁹ AoC *Briefing for MPs: the Education Bill – January 2011*

¹²⁰ *Impact Assessment*, p18

As local authorities will no longer be providing universal careers guidance, most young people will access careers guidance through their school. Consequently, the Government want to make it clear to all schools that they have a responsibility to secure access to independent, impartial careers guidance for their pupils. However, schools would have freedom to determine how they do that.

Clause 27 would insert a new section 42A into the 1997 Act to require maintained schools and pupil referral units in England to secure independent careers guidance for pupils in the school year in which they reach the age of 14 until they have ceased to be of compulsory school age. Such guidance would have to be impartial and, as is currently set out in section 43(2ZB) (which has not been brought into force), it would also have to include information on all 16 to 18 education or training options, including apprenticeships.

4.5 Repeal of diploma entitlement

The Labour Government's 14-19 education and skills white paper, which was published in February 2005, proposed new specialised diplomas in 14 broad subject areas, reflecting key sectors of the economy, to be available at levels one (foundation), two (GCSE) and three (advanced). They were to be phased-in by 2013 and the first diplomas were introduced from September 2008. On 23 October 2007, the then Secretary of State for Children, Schools and Families announced plans to expand the diploma programme to include subject-based diplomas in science, languages and the humanities.¹²¹

Section 74 of the EIA 2006 inserted a new section 85A into the *Education Act 2002* (EA 2002) to provide an entitlement for all 14 to 16 year olds to follow a course of study that would lead to a specialist diploma in an 'entitlement area' specified by the Secretary of State by order. No order has been made; the legislation is not yet in force. Had it been, it would have placed duties on local education authorities, governing bodies and head teachers of maintained secondary schools to secure the entitlement. Nevertheless, a great deal of work had been undertaken to deliver the diplomas in keeping with the previous government's public commitment to the programme.

On 7 June 2010 the new Schools Minister Nick Gibb announced that development of the new diplomas in science, humanities and languages, due to be introduced from September 2011, would cease immediately. He said that this would mean instant savings of around £1.77 million, plus further savings in future years. Explaining the decision, Mr Gibb said:

It's not for Government to decide which qualifications pupils should take, or to force the development of new qualifications, which is why we are stopping development of the state-led 'academic Diploma' in humanities, sciences and languages from today. Instead, we will devote our efforts to making sure our existing qualifications are rigorous, challenging and properly prepare our young people for life, work and study.¹²²

Clause 29 would remove the diploma entitlement contained in section 85A of the EA 2002. Education institutions would still be able to secure the offer of a diploma but there would be no requirement on them to do so. The *Impact Assessment* on the Bill states that the diploma entitlement would place a duty on local authorities and maintained schools to make every type of diploma accessible, regardless of local priorities or practical constraints, and that the Government wants to remove such government intervention in local delivery of provision so that there can be greater flexibility in local provision.¹²³

¹²¹ HC Deb, 23 October 2007, c6WS

¹²² [DFE Press Notice, 7 June 2010](#)

¹²³ [Impact Assessment](#), pp19 and 20

5 Education institutions: other provisions

Part 5 of the Bill would repeal certain duties of school governing bodies, local authorities and further education institutions. It would also make changes to a range of duties on teachers and schools.

5.1 Children's trusts and the duty to co-operate

Lord Laming's report into the murder of Victoria Climbié in 2001 highlighted the lack of priority given to safeguarding by agencies involved in the case, making it difficult for professionals to work together effectively.¹²⁴ Following the report's recommendations for better working between organisations, the Labour Government introduced a duty on children's services authorities¹²⁵ in England to co-operate to improve the well-being of children. Section 10 of the *Children Act 2004* provides that authorities must make arrangements to promote co-operation with key partners and local agencies, and pool together goods and resources to improve the well-being of children in the authority's area. A list of the current relevant partners on which the duty to co-operate applies is set out overleaf.

Although the 2004 Act created a statutory framework for local co-operation, it did not, at the time, impose a duty to set up a children's trust. In fact the phrase 'children's trust' did not appear in the Act. At the time, the Government explained that the *Children Act 2004* did not specifically legislate for children's trusts in order to allow local authorities a degree of flexibility in their arrangements:

Introducing a duty to set up children's trusts in the Children Act 2004 would have necessitated outlining a specific and prescriptive strategic model. However, setting up a children's trust is more of an organic process which will develop in response to local circumstances. Children's trusts require a degree of flexibility in their development that would not have been possible had they been legislated for directly in the Children Act through the duty to cooperate arrangements. Instead this flexibility remains intact. This is why there will be 150 individual local change programmes to develop and deliver children's trusts.¹²⁶

Following a Government consultation in 2008 to strengthen the children's trusts arrangements, legislation was introduced which placed a statutory duty on all local authorities to establish children's trusts boards and extend the duty to co-operate to schools.¹²⁷ During the consultation process preceding the change, Ed Balls, the then Secretary of State for Children, Schools and Families said:

Schools are key partners for children's trusts at the local and neighbourhood level, and are well placed to give early warning when things are going wrong for young people. To achieve the objectives of the children's plan, schools must be effectively supported by wider children's services and involved in determining the strategic direction and commissioning arrangements for those services at board level. Strong collaborative working of this kind is generally welcomed in principle, but in practice can be difficult to achieve. This was a key message from our recent consultation on our draft supplementary guidance to local authorities and others on the 'duty to co-operate' (children's trust guidance).

¹²⁴ Lord Laming, *The Victoria Climbié Inquiry*, Cm 5730, January 2003

¹²⁵ A children's services authority was defined in s 65 of the *Children Act 2004*. It was a high-level authority, e.g a county council, or a London Borough. The Act has since been amended to place the duty on local authorities.

¹²⁶ Every Child Matters, *Children's trusts FAQs: Why is there no duty to set up children's trusts in the Children Act 2004?*

¹²⁷ *Apprenticeships, Skills, Children and Learning Act 2009*, sections 193-194

The 2004 Act, as amended,¹²⁸ requires a local authority to make arrangements to promote co-operation between it and the relevant partners. In 2009, schools and the further education sector were included in the list of relevant partners to which the duty to co-operate applies. The relevant partners of a local authority are:¹²⁹

- the district council (where applicable);
- the local police authority and chief officer of police;
- a local probation board and other providers of probation services;
- a youth offending team;
- a Strategic Health Authority and Primary Care Trust;
- a provider of education and training support services for young adults;¹³⁰
- governing bodies of maintained schools;
- proprietors of non-maintained special schools;¹³¹
- proprietors of a city technology colleges, city colleges for the technology of the arts or Academies situated in the authority's area; and
- the governing bodies further education sector institutions.

In November 2010, Ofsted published the results of a [small scale survey](#) it conducted to evaluate the impact of children's trusts on improving the lives of children and young people, particularly those whose circumstances made them potentially vulnerable. In the six local authorities visited, inspectors found that:

- The capacity to improve services for children and young people in those local authorities was crucial in providing a firm foundation for ways of working in wider partnership. The leadership skills of the members of the Children's Trust Boards were paramount in tackling a complex agenda, driving forward change and combining efforts to deliver better outcomes for children and young people.
- The children's trusts visited had been responsive to a range of government initiatives by developing ways of providing more integrated front-line services that were linked closely to and responded to local needs.
- The children's trust boards, together with senior officers of partner agencies, showed considerable flexibility and willingness to find common ground from which to move services forward. They showed a strong commitment to early intervention and prevention. They worked effectively in a complex environment which involved different performance targets, priorities and ways of providing services.¹³²

The study found that 'good relationships and effective cooperation existed between schools, the local authorities' education and social care services, the police, health services and the voluntary sector.'¹³³ However, one of the trusts found that it was difficult to engage schools if

¹²⁸ By the *Apprenticeships, Skills, Children and Learning Act 2009*

¹²⁹ Section 123 of the *Apprenticeships, Skills, Children and Learning Act 2009* removed the Learning and Skills Council from the list of relevant partners

¹³⁰ The Connexions Partnership

¹³¹ As approved by the Secretary of State under section 342 of the *Education Act 1996*

¹³² Ofsted, *Improving outcomes for children and young people through partnerships in Children's Trusts* November 2010

¹³³ *Ibid*, p4

they chose not to participate in initiatives, for example relating to sexual health, relationships and drugs awareness.¹³⁴

The Coalition Government's proposals for children's trusts

In July 2010, the Coalition Government announced its intention to remove the duty on local authorities to form children's trusts and to legislate to remove schools as statutory partners.¹³⁵ It proposed that schools should be able to choose whether they engaged in local partnership arrangements. Following the announcement, the Secretary of State for Education, Michael Gove, in an interview with *Children & Young People Now* magazine, called children's trusts 'bureaucratic' and said that they took professionals away from what they should be doing. He added:

I see no evidence that children's trusts help in any way. I have the testimony of lots of head teachers and others that the last thing they need is to spend lots of time in long meetings.¹³⁶

Subsequently, the Government withdrew statutory guidance for children's trusts and revoked regulations relating to the duty on trusts to make children and young people's plans.¹³⁷

The Bill

The Bill would repeal the duty on schools to co-operate with children's trusts. **Clause 30** would amend the list of relevant partners in section 7 of the 2004 Act by removing the following local partners with which local authorities must co-operate to improve the well-being of children:

- governing bodies of maintained schools;
- proprietors of non-maintained special schools;¹³⁸
- proprietors of city technology colleges, city colleges for the technology of arts, or Academies situated in the authority's area; and
- governing bodies of further education sector institutions.¹³⁹

The above partners were added to the list by section 193 of the *Apprenticeships, Skills Children and Learning Act 2009*. Clause 30 would effectively reverse those changes.

Reaction

Following the initial announcement that changes would be made to children's trusts, children's organisations were quick to dispute the Education Minister's claims that the arrangements did not provide any added value. Marion Davis, the president of the Association of Directors of Children's Services (ADCS), described the Minister's remarks as 'extraordinary'. She explained:

Children's trusts have been vital in sending out a strong message that it's everyone's responsibility to boost child safeguarding and educational attainment. To draw back

¹³⁴ *Ibid*, p10

¹³⁵ Department for Education, *Reform of Children's Trusts*, 22 July 2010

¹³⁶ Children & Young People Now, *Scholarly Gove to wage war on bureaucracy*, 6 April 2010

¹³⁷ Department for Education, *A new approach for children's trusts*, 3 November 2010

¹³⁸ As approved by the Secretary of State under section 342 of the *Education Act 1996*

¹³⁹ *Children Act 2004*, sections 7(4)(fa) –(fd)

from that commitment would be a retrograde step and risk undermining the strong partnerships that local areas have built up.¹⁴⁰

Sir Paul Ennals, chief executive of the National Children's Bureau, also disagreed with the Minister stating that 'evidence does in fact show that joined-up working improves outcomes and efficiency.'¹⁴¹

The National Autistic Society raised concerns over the impact on vulnerable children of the abolition of the statutory guidance for children's trusts. Chief executive Mark Lever said:

The needs of children with autism are widely overlooked in local service planning, which means that they don't get the support they need. After our members campaigned on this issue, the recent statutory guidance represented a significant step forward in addressing the problem, so we are hugely frustrated that it could be repealed.¹⁴²

He added that if the legal obligation for local agencies to work together was removed there would be a risk that children with autism could increasingly find themselves at the mercy of a 'postcode lottery' in terms of the support they receive.¹⁴³

The ADCS reportedly urged all children's trust partners, particularly schools, to continue working together, warning councils against making any hasty decisions to dismantle current arrangements. Its vice-president, Matt Dunkely, argued that:

Schools play a key role in the lives of most children and young people, and children's ability to learn is affected by their lives outside schools and their wider needs.... This is why it is vital that schools are represented at the strategic table when decisions are made about services for children in the area.¹⁴⁴

He warned that the proposals could lead to agencies seeing integration 'as a luxury rather than a financial necessity'.¹⁴⁵ Mike Welsh the president of the National Association of Head teachers agreed that many schools were likely to take advantage of the opt-out. He said:

With the upcoming period of austerity, increased pressure on schools just isn't going to assist that process. If society wants to expect this role from schools, they have to provide the resources for it.¹⁴⁶

5.2 Children and Young People's Plan

The *Guide to the Law for School Governors* explains that the Children and Young People's Plan (CYPP) is 'a single, strategic, overarching plan for all services which affect children and young people in an area. It is a local authority plan led by the Director of Children's Services but developed with the active involvement of other partners on the children's trust board or governing body, who should set the strategic vision and jointly develop the plan with partners and stakeholders.'¹⁴⁷

¹⁴⁰ Children & Young People Now, [Tories to abolish children's trust obligations if they win election](#), 6 April 2010.

¹⁴¹ *Ibid*

¹⁴² Children & Young People Now, [Schools urged to stick with children's trusts despite plans to end requirement](#), 23 July 2010.

¹⁴³ *Ibid*

¹⁴⁴ *Ibid*

¹⁴⁵ Community Care, [Directors blast plans to downgrade children's trusts](#), 26 July 2010

¹⁴⁶ *Ibid*

¹⁴⁷ *Guide to the Law for School Governors*, DCSF, January 2010, chapter 25, paragraph 11

Under Section 21 of the *Education Act 2002*, as amended, maintained schools have a duty to have regard to the CYPP when undertaking duties to promote well-being, community cohesion and high standards of educational achievement. Section 47A of the SSFA 1998 also places a duty on Schools Forums to have regard to the CYPP. (A Schools Forum represents the governing bodies and head teachers of maintained schools as well as the interests of other persons, and advises the local authority on matters relating to the schools budget and carries out certain functions.)

Clause 31 would amend these provisions to remove the requirement for maintained schools and Schools Forums in England to have regard to the CYPP. However, the duty would remain for maintained schools in Wales.

The change is part of the Government's commitment to reduce prescription for schools.¹⁴⁸

5.3 School Profile

Information is currently published about schools' performance in the Achievement and Attainment Tables, Ofsted inspection reports, the online School Profile, and in school prospectuses.

The *Education Act 2005*¹⁴⁹ inserted section 30A into the *Education Act 2002* to require governing bodies of maintained schools, except maintained nursery schools, to complete a School Profile. The School Profile has three elements: performance data supplied by the DFE; a summary of the school's latest Ofsted report; and a narrative section written by the school including an outline of the school's successes and what the school is trying to improve.

The [Department for Education Business Plan for 2011-2015](#), which was published in November 2010, highlights data that will be published to 'help people make informed choices' about schools, including 'qualifications held by teachers, by school' and 'number of teachers who are full/part-time, teachers' pay, and teacher absence, by school.'¹⁵⁰ The decision to make such information public was condemned by teaching unions.¹⁵¹

Alongside proposals for a more autonomous school system, the schools white paper outlines measures to give parents, governors and the public access to more information about schools and how they perform, and to make it easier for parents and the public to hold schools to account. The Government said that it wants to make 'direct accountability more meaningful, making much more information about schools available in standardised formats to enable parents and others to assess and compare their performance'.¹⁵² The current school profiles would therefore not be needed.

Clause 32 would repeal the duty in section 30A of *Education Act 2002* for maintained schools in England to prepare and publish a school profile.

5.4 School Improvement Partners

Section 5 of the *Education and Inspections Act 2006* requires local authorities in England to appoint SIPs to each of the maintained schools in their area. Only persons accredited or appointed by the Secretary of State can be SIPs. Most SIPs are experienced head teachers.

¹⁴⁸ [Economic Impact Assessment](#) of the schools white paper, paragraph 16

¹⁴⁹ Section 104 of the 2005 Act

¹⁵⁰ Precisely how this will be achieved, including finding the right balance between publishing aggregated or more personal data, is still under consideration and will be finalised when the Department's final Business Plan is published in April 2011 (source: DFE official).

¹⁵¹ "[Gove bid to link performance to pay ires unions and irritates sceptics](#)", *TES*, 12 November 2010, p10

¹⁵² [The Importance of Teaching](#), paragraph 2.6

Advice and guidance on the role of SIPs was set out in *A New Relationship with Schools - the School Improvement Partner's Brief*.¹⁵³ This explained that the role of a SIP is to provide professional challenge and support to the school, helping its leadership to evaluate its performance, identify priorities for improvement, and plan effective change.

The Labour Government believed that the role of SIPs was not always correctly interpreted and that it needed to be more clearly defined and extended to focus on the wider goals of the Every Child Matters agenda, and not only on educational attainment. Provisions to give effect to this policy were included in the *Children, Schools and Families Bill* but were dropped from the bill immediately before the general election.¹⁵⁴

The Government's policy

The schools white paper said that over recent years, centralised approaches to improving schools have become the norm, with central government tending to lead, organise and systematise improvement activity. The Government believes that this is the wrong approach. While it acknowledges the importance of having the structures and processes which challenge and support schools to improve, it wants the school system to become more effectively self-improving. It notes that the primary responsibility for improvement rests with schools, and that it wants the wider system to be designed so that the best schools and leaders can take on greater responsibility, leading improvement work across the system. To this end the Government wants to make clear that schools – governors, head teachers and teachers – have responsibility for improvement.

The schools white paper announced the Government's intention to end the requirement for every school to have a School Improvement Partner.¹⁵⁵

The Government intends to increase the number of National and Local Leaders of Education (head teachers of excellent schools committed to supporting other schools) and develop Teaching Schools to make sure that every school has access to highly effective professional development support. More data will be published to enable schools to identify similar schools in their region from which they can learn. A new Education Endowment Fund to raise standards in underperforming schools will distribute money to local authorities, academy sponsors, charities and other groups that bring forward innovative proposals to improve performance in the most challenging schools.

The Government envisages that in a much more autonomous school system, schools will be responsible for setting their own priorities. It wants to support 'a new market of school improvement services with a much wider range of providers'.

Clause 33 would repeal section 5 of EIA 2006 to remove the duty on a local authority to appoint a school improvement partner for each school they maintain. The *Impact Assessment* said that the rationale for the change was to remove central prescription and leave it to schools as to how to 'drive their own improvement'.¹⁵⁶

Christine Blower, general secretary of the NUT, observed that the role of SIPs as a 'critical friend' was distorted so badly that some SIPs resembled Ofsted inspectors. She felt it had been a mistake to use serving heads as SIPs as they were under a lot of pressure themselves, and lacked the all-round knowledge needed to identify a school's problem. Emma Knight, chief executive of the National Governors' Association said that in some cases

¹⁵³ DCSF, 2007

¹⁵⁴ Background on the Labour Government's policy on SRCs was provided in [Library Research Paper 09/95](#)

¹⁵⁵ *The Importance of Teaching*, paragraph 6.4; *Economic Impact Assessment* of the schools white paper, paragraph 69

¹⁵⁶ *Impact Assessment*, p22

SIPs had been a great help, although in others less so. She stressed the importance of schools having access to school improvement services. John Chowcat, general secretary of Aspect, thought that SIPs had been a good link between the local authority and the school. However, Marion Davis, president of the Association of Directors of Children Services, observed that ending the requirement to have a SIP would not mean that no school would have one, nor that local authorities would not drive improvements in, and maintain relationships, with maintained schools.¹⁵⁷

5.5 School admissions

Overview of the current system

The key legislation and guidance relating to school admissions is contained in the *School Standards and Framework Act 1998* (SSFA 1998), as amended, in associated regulations, and in statutory guidance issued by the Secretary of State in the *School Admission Code 2010*. The latest version came into force on 10 February 2010, and, unless otherwise stated, applied with immediate effect. There is also a *School Admission Appeals Code*, which was issued in 2009.¹⁵⁸

Generally speaking, if a school is a community school or voluntary controlled, the local authority is the admissions authority and it decides on the admission arrangements. If the school is a foundation school (including a trust school) or voluntary aided school, the school governing body is the admissions authority it decides the admission arrangements, and which children best meet its oversubscription criteria if it has more applicants than places.

The school governing body is the admission authority for an academy. Admission arrangements for academies are approved by the Secretary of State as part of the individual academy's funding agreement, which will require compliance with admissions legislation and relevant codes. New faith academies that do not replace an existing faith predecessor school will be required to admit at least half of their intake without reference to faith.¹⁵⁹

Parents may make an application for any maintained school they choose and, with the exception of designated grammar schools, schools that have enough places available must offer a place to every child who has applied for one.¹⁶⁰ However, schools that are oversubscribed use oversubscription criteria to determine admissions provided such criteria are fair and comply with the mandatory requirements set out in the *School Admissions Code*, and other statutory requirements. Parents, therefore, have a right to express a preference for a particular school, rather than a right to a place at a particular school.

Where a school is oversubscribed the admission authority must decide applications for places against its published oversubscription criteria. It is for each admission authority to decide what criteria are appropriate in the local circumstances. However, chapter 2 of the Admissions Code sets out what are regarded as fair and unfair oversubscription criteria; it does not seek to list preferred criteria but rather it discusses the criteria commonly used to give priority. The Code also provides detailed guidance on religious-based admission criteria for religious schools, and on admission to selective schools and partly selective schools.

Local authorities are required to operate a co-ordinated admissions scheme for all types of state school. This requirement does not apply to maintained special schools, maintained nursery schools and school sixth forms. The *School Admission Code 2010* provides detailed

¹⁵⁷ *Children & Young People*, 7 December 2010 to 10 January 2011, p14

¹⁵⁸ The current Codes (and some of the earlier versions) and related information is available on the former [DCSF school admissions website](#).

¹⁵⁹ HC Deb 6 September 2010 c348W

¹⁶⁰ *School Standards and Framework Act 1998*, section 86

information on co-ordinated admission schemes.¹⁶¹ Appendix 2 of the Code sets out the statutory requirements of co-ordinated admission schemes in 2010. This covers primary and secondary admissions.

Offers of secondary school places must be sent to parents each year on 1 March (or the next working day) in the year during which the child will be admitted to a school. This is commonly referred to as National Offer Day. Local authorities are required to submit data to the department on the number of secondary school applications made and offers met.

Where an application for a place is unsuccessful, parents must be informed in writing of the reasons for the decision, and told about their statutory right to appeal. The [School Admission Appeals Code](#) outlines the law on admission appeals. Where there is evidence that a school place has been refused because of some unfairness or mistake by the admissions authority and/or a school admissions appeal has been handled incorrectly, a complaint may be made to the Local Government Ombudsman (LGO). However, the Ombudsman is not another level of appeal and cannot question decisions if they were taken properly and fairly by the admissions authority or the appeal panel. The [LGO website](#) provides information about making complaints in relation to school admissions.¹⁶²

Admission Forum

Currently, all local authorities are required to establish an Admission Forum.¹⁶³ This is a vehicle for admission authorities and other interested parties to discuss the effectiveness of local admission arrangements, to consider how to deal with difficult local admission issues and to advise admission authorities on how arrangements can be improved. Their key role is to ensure a fair admission system. The Forum must consist of representatives of schools, religious bodies, parents and community groups. Further information is provided in chapter 4 of the *School Admissions Code*.

Schools Adjudicator

The Schools Adjudicator enforces the mandatory requirements placed on admission authorities. Where someone believes that an admission authority has unlawful admission arrangements, an objection can be made to the Schools Adjudicator. The five main functions of Schools Adjudicators are to:

- determine objections to school admission arrangements;
- decide on requests to vary determined admission arrangements;
- resolve disputes relating to school reorganisation proposals (including the provision of new schools);
- resolve disputes on the transfer and disposal of non-playing-field land and assets; and
- determine appeals from schools against a direction from a local authority to admit a particular pupil.

The Secretary of State may ask the Chief Schools Adjudicator to undertake other relevant tasks. Further information is given on the [Office of the Schools Adjudicator website](#).

Under the *School Standards and Framework Act 1998*, local authorities are required to provide the adjudicator with reports on admissions to schools in their area.

The [Annual Report 2010](#) of the Chief Schools Adjudicator for England was published on

¹⁶¹ [School Admission Code 2010](#), Chapter 3

¹⁶² <http://www.lgo.org.uk/complaints-about-school-admissions/>

¹⁶³ *School Standards and Framework Act 1998*, as amended, section 85A

1 November 2010. Amongst other things, the report noted that local authorities were asked whether or not admission arrangements for schools in their area complied with the mandatory requirements of the Code and admissions law. 134 (88%) said that all schools were compliant. However, 18 (12%) reported that some schools were not and were asked to state what action they were taking to deal with this. 14 (9%) of these said that they had either already referred, or were proposing to refer schools to the OSA (a total of 44 referrals). The remaining four LAs confirmed that they were, at the time of writing their report, working with the non-compliant schools and were confident that compliance would be achieved by 1 September 2010.¹⁶⁴

The Government's policy

A written answer to a parliamentary question on 27 September 2010 said that the Government was considering the school admission framework, including the Admissions Code.¹⁶⁵ Commenting on the annual report by the Chief Schools Adjudicator, the Education Secretary said that he intended to make the school admissions framework, including the School Admissions Code, simpler and fairer, and that he had asked DFE officials to start discussions with key stakeholders.¹⁶⁶

The schools white paper set out the strategic role of local authorities, which would include ensuring fair access to schools for every child.¹⁶⁷ The Local Government Association has welcomed the recognition that local authorities should have a strong role in ensuring fair access to all local schools, including free schools and academies.¹⁶⁸

The school white paper said that legislation would remove requirements for local authorities to establish an Admissions Forum and provide annual reports to the Schools Adjudicator. Instead the Government want local authorities to set up arrangements that work best for their area.

The schools white paper said that the Schools Adjudicator will focus on specific complaints about admission arrangements for all schools, including academies and free schools. The Admissions Code will be simplified to make it easier for schools and parents to understand and act upon, while maintaining fairness as the Code's guiding principle. However, the principles and priorities of the current Code will be retained, and 'looked after children' (i.e. children in care) and pupils with a statement of Special Education Needs which names a particular school (including academies and free schools) will continue to be guaranteed a place at the school. In order to promote fair access to high-performing schools, the white paper said that there will also be consultation on whether academies and free schools should be allowed to choose to prioritise children from disadvantaged backgrounds in their oversubscription criteria if they wish. Changes to the Code will be subject to consultation so that a revised Code is in place by July 2011.¹⁶⁹

Ian Craig, the Chief Schools Adjudicator, has warned against slimming down the Admissions Code:

Removing the non-binding guidance would risk "throwing the baby out with the bathwater", he warned.

¹⁶⁴ [Annual Report 2010](#) of the Chief Schools Adjudicator for England, paragraphs 106 to 108

¹⁶⁵ HL Deb 27 September 2010 c531WA

¹⁶⁶ [Michael Gove responds to Chief Schools Adjudicator report](#), DFE, 1 November 2010

¹⁶⁷ [The Importance of Teaching](#), paragraph 5.30

¹⁶⁸ Local Government Group, Briefing, [The Importance of Teaching – The Schools White Paper](#), 28 November 2010, p4

¹⁶⁹ [The Importance of Teaching](#), paragraphs 5.34 and 5.35

"I don't think it should necessarily be cut down in terms of its requirements, but it needs to be more accessible," he said.

"I think we need to be very careful that while we're making it more accessible we don't simplify it to such an extent where it becomes a useless document," he said.¹⁷⁰

There is concern that a new Code could give schools more power in setting their own admission criteria and that this could deepen the divide between the top-performing schools and their neighbours.¹⁷¹

Martin Johnson, deputy general secretary of the Association of Teachers and Lecturers, has pointed out that there is a lot of difference between 'allowing' and 'requiring' popular schools to give preference to children receiving free school meals.¹⁷²

The Bill's provisions

Clause 34 seeks to make a number of changes to the school admission provisions contained in Part 3 of the SSFA 1998. The requirement on English local authorities to establish an Admission Forum for their area would be removed. The powers of the School Adjudicator would be restricted by repealing section 88J of the SSFA 1998 so that the School Adjudicator's remit is limited to direct complaints about an admission policy. Currently the Schools Adjudicators, upon referral of a specific matter concerning a maintained school's admission arrangements, is required to consider whether it would be appropriate for changes to be made to any aspect of those admission arrangements in consequence of the matter referred. They can also consider whether any other changes to the arrangements are appropriate.

The requirement under section 88P of SSFA 1998 for local authorities to provide to the School Adjudicator reports on admissions to schools in their area would be removed. The power of the Secretary of State to make regulations prescribing the content of such reports is also removed, and the *Explanatory Notes* state that instead the *School Admissions Code* will contain the requirements for reports on school admissions in their area. **Schedule 9** makes amendments that are consequential on the repeals and amendments made by clause 34.

Clause 60 of the Bill amends Chapter 1 of Part 3 of SSFA 1998 to allow School Adjudicators to consider and to determine eligible objections or referrals relating to the admissions arrangements of academies, as they do in respect of maintained schools.

5.6 School meals

Statutory provisions relating to school meals are contained in the *Education Act 1996*, sections 512 to 513, and 533, as amended. Local authorities may charge for school meals. Currently, they must charge every person the same price for the same quantity of the same item. Eligibility for free school meals is dependent upon receipt of certain benefits or tax credits.

Clause 35 amends sections 512ZA (power to charge for meals etc) and 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc) of *Education Act 1996*. Clause 35 (2)(a) and (3)(a) will prohibit local authorities and governing bodies of maintained schools in England from charging more than the cost of providing milk, meals or other refreshments to pupils. Subsection (2)(b) and (3)(b) repeal the requirement in section 512ZA that any charge made for the provision of milk, meals and other refreshments

¹⁷⁰ "School places watchdog warns over simplifying code", [BBC News Education, 1 November 2010](#)

¹⁷¹ "Enemy at the gates; admissions code risks new inequalities". *Times Educational Supplement*, 3 December 2010, pp30-31

¹⁷² "School admissions changes considered to favour poor", [BBC News Education, 14 September 2010](#)

in a school must be the same for every person for the same quantity of the same item. The repeal of this requirement will, in effect, allow them to charge different prices for the same quantity of the same item. The *Explanatory Notes* state that such flexible charging will, for example, enable local authorities and governing bodies in England to charge less for school meals provided to children in reception classes at the start of term or children of families on low incomes not eligible for free school meals, in order to encourage them to take school meals. Use of flexible charging would be optional and subject to local circumstances. The change would not affect the provision of free school meals (and free milk) to eligible pupils.

The *Impact Assessment* of the Bill notes that ‘intelligence from schools and local authorities’ had told the DFE that the requirement to charge the same price for the same meal to every school child is inhibiting schools and local authorities from giving discounts to certain pupils (such as siblings) to encourage families to use the school meals service. The Impact Assessment acknowledged that there is a ‘theoretical risk’ that some schools may charge too much but it said that there would be a safeguard in the form of ‘a simple capping scheme’ that will ensure that charges are no more than the cost of providing the meal.¹⁷³

5.7 Establishment of new schools

Current provision

Under the *Education and Inspections Act 2006* (EIA 2006) there are specific requirements for the establishment of any new maintained schools – whether they are to be brand new schools or to replace existing ones as part of school reorganisation. Local authorities are required by section 7 of EIA 2006 and the *School Organisation (Establishment and Discontinuance) (England) Regulations 2007*¹⁷⁴ to invite proposals from potential providers for any proposed new school. The arrangements are commonly referred to as a new school ‘competition’. The local authority can enter its own ‘bid’ in a competition for either a foundation or a foundation special school or (in specified circumstances) a community or a community special school.

The Labour government’s white paper *Higher Standards, Better Schools for All*,¹⁷⁵ which preceded the EIA 2006, had envisaged a new school system with every school being able to acquire a self-governing trust so that they could work with external partners. Closely linked to this was the aim for local authorities to promote greater diversity in provision, playing a commissioning role rather than a provider role. At the time, the proposals were controversial and one concession that the then government made was to allow local authorities to propose their own new school in certain circumstances.

The current competition process and associated requirements are described in statutory guidance issued by the former DCSF, *Establishing a New Maintained Mainstream School*, last updated on 1 February 2010. The guidance sets out the circumstances in which a competition is required, and describes the decision making process.

The Government’s policy

The Government’s ambition is that academy status should be the norm for state schools, and it wants to ensure that all schools, whatever their status, have greater autonomy. The Government intend to expand the academies programme dramatically and actively to support those who want to open free schools.¹⁷⁶ The underlying premise is that more

¹⁷³ *Impact Assessment*, p23

¹⁷⁴ SI 2007 No 1288, as amended

¹⁷⁵ Cm 6677, October 2005

¹⁷⁶ Free schools will be new schools set up in response to parental demand. Providers may be charities, universities, business, community or faith groups, teachers or groups of parents. Free schools will operate as academies.

parental choice can increase standards by encouraging competition among schools; popular schools will gain pupils and additional funding, while unpopular schools will lose pupils and money.¹⁷⁷

The schools white paper envisages a new role for local authorities. This would be to:

- support parents and families through promoting a good supply of strong schools – encouraging the development of Academies and Free Schools which reflect the local community;
- ensure fair access to all schools for every child;
- use their democratic mandate to stand up for the interests of parents and children;
- support vulnerable pupils – including Looked After Children, those with Special Educational Needs and those outside mainstream education;
- support maintained schools performing below the floor standards to improve quickly or convert to Academy status with a strong sponsor, and support all other schools which wish to collaborate with them to improve educational performance; and
- develop their own school improvement strategies – they will be encouraged to market their school improvement services to all schools, not just those in their immediate geographical area.¹⁷⁸

Where there is a need for a new school, as the schools white paper made clear, the first choice will be a new academy or free school. It said that legislation would be introduced to simplify the competition process currently required to open a new school.¹⁷⁹ The *Economic Impact Assessment* of the schools white paper said:

55. We will legislate to favour Academies, Free Schools and other self-governing schools where new provision is needed. The current competitions and exemptions regime is lengthy and unwieldy - changes to the process for establishing a new school will encourage local authorities to encourage competition, and will decrease barriers to entry for Academies and Free Schools, while also reducing bureaucracy and allowing for LAs to provide community schools in those cases where other options have been exhausted. This intervention will enhance the role of competition in school markets and decrease barriers to entry, enabling new providers to enter the system to increase parental choice, improve efficiency and drive up standards. It will also streamline processes, resulting in less bureaucracy for both LAs and potential school providers.

56. Changes to the school competition process should be at least cost neutral and may lead to considerable administrative savings for LAs in some cases. The changes to the exemption from competition process will result in administrative savings for both LAs and the Department.

The Bill's provisions

Clause 36 gives effect to Schedule 10 which would make amendments to Part 2 of EIA 2006 in order to give precedence to proposals for academies where there is a need for a new school. The *Explanatory Notes* set out in detail the effect of the many amendments. The changes include a new section 6A inserted into EIA 2006, placing a duty on local authorities

¹⁷⁷ The *Economic Impact Assessment* of the schools white paper, paragraphs 49 and 50

¹⁷⁸ *The Importance of Teaching*, paragraph 5.30

¹⁷⁹ *The Importance of Teaching*, paragraph 5.31 and 5.32

to seek proposals for the establishment of an academy where there is a need for a new school in their area. The local authority must specify a date by which proposals must be submitted, and after that date must notify the Secretary of State of the steps taken to satisfy this duty, and the proposals that have been submitted or there have been no proposals. The notification to the Secretary of State must identify a site for the school and any other matters prescribed by regulations.

Before publishing proposals for a competition for the establishment of a new school, the local authority would be required to obtain the consent of the Secretary of State. In addition, the ability of the local authority to publish any of its own proposals for a new foundation or community school in a section 7 competition would be removed. Section 8 of EIA 2006, which currently prescribes the circumstances in which the local authority can enter its own proposals for a new school in a competition, would be repealed.

The Bill would also amend sections 10 and 11 of EIA 2006 which deal with publication of proposals outside a competition. The *Explanatory Notes* state:

The amendments to section 10 (proposals that require the Secretary of State's consent) provide that the following proposals for a new school can be published with the consent of the Secretary of State:

- local authority proposals for a community or foundation school to replace one or more maintained schools (except infant and junior amalgamations, which do not now require consent), excluding those providing education suitable only for persons over compulsory school age;
- proposals for foundation, and voluntary controlled schools by other proposers (except those within section 11(2) as amended).

And:

Under the amended section 11 of EIA 2006 the following proposals will be able to be made without the Secretary of State's consent:

- Local authority proposals for a new community or foundation primary school to replace a maintained infant and a maintained junior school;
- Proposals for the establishment of a new voluntary aided school;
- Proposals for a new foundation or voluntary controlled school resulting from an existing religious school changing or losing its religious designation; and
- A new foundation or voluntary controlled school with a religious character replacing an existing religious school, resulting from the reorganisation of faith schools in an area.
- Local authority proposals for a new community or foundation school where following publication of a section 7 notice no proposals are approved by the local authority, no Academy arrangements are entered into, or no proposals are received.

Changes would also be made to the approval process for establishing a new school, and these are summarised in the *Explanatory Notes*.

Both the *Economic Impact Assessment* of the schools white paper and the *Impact Assessment* for the Bill said that the changes would encourage competition in the school

system and enable new providers to enter the system which would increase parental choice, improve efficiency and drive up standards for pupils.

Comment

Commenting on the schools white paper, the NUT reiterated its criticisms of the expansion of the academies and free schools programme, pointing out that there was no evidence to show that this was the solution to raising standards.¹⁸⁰ The NASUWT also emphasised a lack of evidence that structural change raises standards. It added that there was no evidence that the model of autonomy being proposed improves school performance, and said that it 'removes national frameworks and local democratic accountability'.¹⁸¹ The NAHT stressed its opposition to free schools, and said that it was 'sceptical' about the power of structural reform to make a real difference.¹⁸²

Commenting on the Bill, the ATL said that it was 'incredibly concerned about the lack of accountability of academies'.¹⁸³ The NUT said that the presumption that any new school would be an academy makes it clear that, regardless of wishes of the local community, the Government intends to 'railroad this costly, unproven and unnecessary programme through'.¹⁸⁴ Voice pointed to the mixed results that academies had achieved so far, and said that changing the organisation and governance of schools was not a guarantee of better education.¹⁸⁵

The LGA was concerned that the presumption that any new schools established would be academies should not reduce the ability of parents, education providers and councils to respond quickly and effectively to new demand, and said that local choice and diversity of provision should be maintained.¹⁸⁶

5.8 Governing bodies: constitution and dissolution

School governors serve as volunteers. Under section 19 of the *Education Act 2002* every maintained school in England must have a governing body. The membership of the governing body is determined according to the instrument of government for the school, produced under section 20 of the 2002 Act. The content of the Instrument and the composition of the governing body are prescribed in regulations.¹⁸⁷ Guidance is provided in [The Statutory Guidance on the Constitution of School Governing Bodies](#).¹⁸⁸

The [Guide to the Law for School Governors](#)¹⁸⁹ outlines the current arrangements and explains that the size of the governing body ranges from a minimum of 9 to a maximum of 20 people, except in voluntary-aided schools and qualifying foundation schools where the minimum size of the governing body is to be 10 and 11 respectively. Within this range, each governing body can adopt the model of their choice, provided it complies with guiding principles that prescribe which categories of governor must be represented on the governing body and what the level of representation is for each of the categories. The guide describes each of the categories and provides a table showing the proportion of places for each category that should be allocated to a governing body.

¹⁸⁰ NUT press release on the schools white paper, 24 November 2010

¹⁸¹ [NASUWT summary of the schools white paper, initial comments, 25 November 2010](#)

¹⁸² NAHT, 24 November 2010:

¹⁸³ [ATL, comment on the Education Bill, 27 January 2011](#)

¹⁸⁴ [NUT comment on the Education Bill, 27 January 2011](#)

¹⁸⁵ [Education Bill chaotic and contradictory, Voice, 27 January 2011](#)

¹⁸⁶ [Local Government Group Briefing on the schools white paper, 28 November 2010](#)

¹⁸⁷ [The School Governance \(Constitution\) \(England\) regulations 2007, SI 2007 No 957](#)

¹⁸⁸ HC Deb 13 December 2010 c571W

¹⁸⁹ DCSF, last updated in January 2010

The schools white paper said that the time and expertise of school governors needs to be better deployed. It proposed smaller school governing bodies with appointments reflecting the skills needed.¹⁹⁰ The *Economic Impact Assessment* of the schools white paper said that there was significant evidence that more flexibility, with smaller, more focused governing bodies was effective in promoting good governance and rapid improvement in schools.¹⁹¹

Clause 37 seeks to reduce the number of categories of governor required for governing bodies of a maintained school in England. The requirements in relation to Wales remain unchanged.

The NUT has expressed concern that if school governing bodies are not required to have staff and local authority elected governors on their boards, it will lead to schools becoming less democratically accountable in how they are run.¹⁹²

Clause 38 relates to the discontinuation of federated governing bodies. A federated governing body is a single governing body for two or more maintained schools. Under current provision a federated governing body would be dissolved on the occasion of one of the schools in the federation being discontinued. **Clause 38** would prevent dissolution from happening in circumstances where two or more schools will remain in the federation after the school concerned has discontinued. The *Explanatory Notes* state that this will enable a school to close or convert to an academy, without having to first undertake a statutory procedure to leave the federation in order to avoid dissolving the federated governing body.

5.9 School Inspection

Background

The *Education Act 2005* reformed the school inspection system in England to provide for regular, shorter, lighter-touch inspections based on the school's own self-evaluation. The changes followed *A New Relationship with Schools*, and *A New Relationship with Schools – Next Steps*, published in June 2004 and 2005 respectively, by the Office for Standards in Education (Ofsted) and the Department for Education and Skills (DfES). At the heart of the reformed inspection regime was the school's self-evaluation and School Improvement Partners (SIPs).

The *Education and Inspections Act 2006* created a single inspectorate for children and learners by extending Ofsted's remit to create the Office of Standards in Education, Children's Services and Skills. The 2006 Act also empowered the chief inspector to investigate complaints by parents about schools. In April 2007 the new Ofsted brought together the various different regulatory and inspection systems. The general principles and processes underpinning Ofsted inspection are contained in a framework document: *Ofsted Inspects: A Framework for all Ofsted Inspection and Regulation*.¹⁹³

School inspections vary in their frequency and intensity. Schools that are perceived to be doing well have only short inspections, but schools that are perceived to be in difficulty have more intense inspections. The aim is for inspection to be proportionate by adjusting the frequency of inspection according to the outcomes of previous inspection reports and risk assessment so that resources are concentrated in where improvement is most needed. From September 2009 the frequency of inspections depended upon the results of the

¹⁹⁰ *The Importance of Teaching*, paragraphs 6.28 to 6.30

¹⁹¹ *Economic Impact Assessment* of the schools white paper, paragraphs 64 and 65

¹⁹² NUT comment on the Education Bill, posted on ePolitix.com members respond to the Education Bill, 27 January 2011

¹⁹³ Ofsted, March 2009

previous inspection and an annual assessment of performance including an analysis of performance data.

The *Framework for the Inspection of maintained schools in England from September 2009*¹⁹⁴ sets out the statutory basis for inspection and summarises the main features of school inspections carried out under section 5 of the *Education Act 2005* from that date. The legal requirements are outlined as follows:

10. Under section 5 of the Education Act 2005, schools are required to be inspected at prescribed intervals and inspectors must report on:

- the quality of the education provided in the school
- how far the education meets the needs of the range of pupils at the school
- the educational standards achieved in the school
- the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed effectively
- the spiritual, moral, social and cultural development of the pupils at the school
- the contribution made by the school to the well-being of those pupils
- the contribution made by the school to community cohesion.

11. In addition, the Education and Inspections Act 2006 requires Ofsted to carry out its work in ways which encourage the services it inspects and regulates to:

- improve
- be user-focused
- be efficient and effective in the use of resources.

12. Regulations that apply from September 2009 require all maintained schools to be inspected within five school years of the end of the school year in which they were last inspected. This inspection framework applies to all maintained schools, including special schools and pupil referral units. It also covers academies, city technology colleges, city colleges for the technology of the arts and some non-maintained special schools in England. It does not apply to any other independent schools.

...

17. If Ofsted decides that a school previously judged good or outstanding is not to be inspected three school years from the end of the school year in which its last section 5 inspection took place, Ofsted will publish an interim assessment. The interim assessment will be published after a factual accuracy check by the school and the school will be required to send the assessment to others (see paragraphs 86–87). It provides a summary of key information about the school and explains why the school will not be inspected for the year following the date of the interim assessment. This interim assessment may be superseded by the proposed School Report Card.¹⁹⁵

¹⁹⁴ Ofsted, January 2011

¹⁹⁵ Note that the proposals for a SRC were not implemented under the Labour Government.

18. Schools which were judged satisfactory at their previous inspection are inspected within three school years from the end of the school year in which that inspection took place. A significant proportion of these schools will receive monitoring inspections to check on their progress following their last full inspection.

19. Schools judged inadequate in their overall effectiveness continue to receive monitoring visits. They are reinspected after a specific period.

School self-evaluation has been a well-established part of the inspection process. However, the Education Secretary announced that the school self-evaluation form is to be withdrawn with effect from September 2011. Teachers' unions supported the change.¹⁹⁶

All school inspections carried out by Ofsted use the same grading scale: outstanding, good, satisfactory, or inadequate.

Following the introduction of the new framework there were press reports of schools' dissatisfaction with how the framework was operating and an increase in the proportion of schools judged to be inadequate.¹⁹⁷

The Education Select Committee is currently carrying out an inquiry into the role and performance of Ofsted.¹⁹⁸ It has taken evidence from teachers, union leaders, academics, charities, Her Majesty's Chief Inspector and other senior inspection officials, inspection service providers, and others.¹⁹⁹

The Government's policy

The Government intends to make inspection more proportionate, including freeing the best schools from routine inspection, and targeting school inspections in future on four things:

- pupils' achievement,
- the quality of teaching,
- leadership and management, and
- pupils' behaviour and safety.

The schools white paper said that the current framework inspects schools against 27 headings, and that instead a new framework would focus on the four core functions; the change would come into effect in autumn 2011, subject to legislation.²⁰⁰

Ofsted will cease routine inspection of schools and sixth-form colleges previously judged to be outstanding. Subject to legislation, primary schools, secondary schools and sixth-form colleges which have been judged to be outstanding will be exempt from routine inspection from autumn 2011 and re-inspected only if there is evidence of decline or widening attainment gaps. The Government plans to extend the same principle to outstanding special schools and PRUs. However, it notes that, as risk assessment of these schools will be more

¹⁹⁶ "Unions back Gove's call to scrap Ofsted self-evaluation forms", *Children & Young People Now*, 24 September 2010

¹⁹⁷ e.g. see "MPs in cross-party attack on Ofsted's 'arbitrary' judgement", *Times Educational Supplement*, 2 April 2010, p 13

¹⁹⁸ New inquiry announced: The role and performance of Ofsted, [Education Committee news release, 29 July 2010](#)

¹⁹⁹ The published evidence to-date can be found on the [Education Select Committee website](#).

²⁰⁰ *The Importance of Teaching*, paragraphs 6.16 to 6.20

complex, work will be carried out with Ofsted to identify suitable triggers which might indicate a need for re-inspection. The weaker the school, the more frequent the monitoring: schools judged to be inadequate will receive termly monitoring visits to assess improvement. Other changes are proposed to help with this approach. The schools white paper notes that where a school feels that its last Ofsted judgement is out of date and does not reflect the improvement it has made since its last inspection, it should be able to request an inspection. It therefore proposes that, subject to legislation, all schools will be able to request an Ofsted inspection from autumn 2011. Ofsted will be able to charge schools for this service, and will decide when and how many 'requested' inspections it carries out each year, and how it will prioritise requests.²⁰¹

The *Economic Impact Assessment* of the schools white paper said that refocusing the Ofsted inspection framework on four key areas is not intended to save time or money; the administrative cost of introducing a new framework is limited – it was estimated to cost around £60,000 to redevelop the Ofsted risk-assessment process.²⁰²

The Bill's provisions

Clauses 39 amends the current requirement for the Chief Inspector to inspect and report on every school in England at intervals prescribed in regulations, and provides for the regulations to stipulate that certain schools (to be known as 'exempt schools') would be exempt from routine inspections carried out under section 5 of the *Education Act 2005*. Exempt schools would however remain eligible for inspection under section 8 of 2005 Act and therefore could be subject to inspection as part of surveys of curriculum subjects and thematic reviews. Exempt schools may also be inspected where the Chief Inspector or the Secretary of State has concerns about the performance of the school.

Charges for the cost of an inspection may be made where the Chief Inspector inspects a school in response to a request from that school and the Chief Inspector is not required to inspect the school. Such an inspection must be treated as if it were 'section 5' inspection (i.e. a routine inspection). The *Explanatory Notes* state that this provision is likely to be particularly relevant in cases where an exempt school is seeking an updated independent assessment of its performance, or where a school believes its performance has improved and wants an early assessment of this.²⁰³

The *Impact Assessment* to the Bill emphasises that exempting outstanding schools from routine inspection would free staff time and lead to savings by reducing the number of inspections.²⁰⁴

Clause 40 redefines the areas upon which the Chief Inspector is under a general duty to report as part of an inspection conducted under section 5 of the 2005 Act. In addition to the general duty of the Chief Inspector to report on the quality of education provided in the school, the report must focus on:

- the achievement of pupils at the school;
- the quality of teaching in the school;
- the quality of leadership in and management of the school; and
- the behaviour and safety of pupils at the school.

²⁰¹ *The Importance of Teaching*, paragraphs 6.21 to 6.23

²⁰² *Economic Impact Assessment* of the schools white paper, paragraph 62

²⁰³ *Explanatory Notes to Bill 137*, paragraph 197

²⁰⁴ *Impact Assessment*, p26

In reporting on the quality of education provided in a school, including in relation to the four specified areas above, the Chief Inspector must consider the school's provision for the spiritual, moral, social and cultural development of pupils; and how well a school provides for different groups of pupils, particularly for pupils with a disability and those with special educational needs (Clause 40, new subsection 5B in the EA 2005).

Clause 41 amends the current requirement in section 125 of *Education and Inspections Act 2006* for the Chief Inspector to inspect and report on all institutions within the further education sector. The clause makes provision to exempt outstanding sixth form and further education colleges from routine inspections.

The AoC said that they welcomed the provisions in **clause 41** and said that they would like to see it extended to independent specialist providers which provide education to students with learning difficulties and/or disabilities.²⁰⁵

Clause 42 relates to the inspection of boarding accommodation. It amends sections 87 and 87A to 87D of the *Children Act 1989*. The meaning of providing accommodation is extended to include where a school or college arranges boarding accommodation for a child otherwise than on its own premises or a residential trip. The *Explanatory Notes* give the example of providing accommodation with host families. The Secretary of State would be empowered to direct the Chief Inspector to take steps to determine whether a child's welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in England. Separate provision is made in relation to Wales.

The clause also makes provision in respect of independent inspectorates. Ofsted would be required to monitor the work of independent inspectorates appointed to conduct welfare inspections of boarding schools under section 87, and to report annually to the Secretary of State on those inspectorates. The *Explanatory Notes* indicate that both of these provisions mirror existing provisions in sections 106 and 107 of *Education and Skills Act 2008* for independent inspectorates conducting inspections of education provision in independent schools in England.

Comment on the school inspection proposals

Appearing before the Education Select Committee, Christine Gilbert, the Chief Inspector of schools, welcomed the schools white paper's focus on teaching and learning, and noted that a lot of the schools white paper builds on the work that Ofsted had already set in train with the new inspection framework introduced in September 2009. However, she had some anxiety about not inspecting outstanding schools routinely although she accepted the logic, given the resources available. She also pointed out that Ofsted's thematic surveys involve outstanding schools, and that Ofsted will do data analysis (in effect a risk analysis) of all outstanding schools; she noted that if there were cause for concern Ofsted would carry out an inspection.²⁰⁶

Mike Butler, chair of the Independent Academies Association, was reported to have warned against ceasing routine inspection of outstanding schools.²⁰⁷

The Association of School and College Leaders (ASCL) has called for a complete overhaul of the school accountability system including cutting the number of Ofsted ratings, and

²⁰⁵ AoC *Briefing for MPs: the Education Bill – January 2011*

²⁰⁶ [Uncorrected transcript of oral evidence taken before the Education Committee, 12 January 2011, Q386 and Q397](#)

²⁰⁷ "Inspect outstanding schools when heads leave", *Times Educational Supplement*, 15 October 2010, p21

adopting a more modest system of descriptions with “above expected level of performance” for top-rated schools.²⁰⁸

The NSPCC said that all schools should be regularly assessed, regardless of the type of school or any prior Ofsted judgement as it said that this ensures national consistency and helps drive up standards of safeguarding in schools across the whole country.²⁰⁹

5.10 Schools causing concern: powers of Secretary of State

In England schools inspected under sections 5²¹⁰ or 8²¹¹ of the *Education Act 2005* may reveal an unsatisfactory situation and the 2005 Act divides these into: schools ‘requiring significant improvement’ and schools ‘requiring special measures’. The latter category is worse than the former. These schools are described in the *Education and Inspection Act 2006* (EIA 2006) as schools ‘eligible for intervention’. There is a third category of school eligible for intervention where a school is failing to comply with a warning notice under section 60 of EIA 2006. The Act sets out the legal framework for tackling maintained schools causing concern in England. These schools will be inspected more frequently and the local authority has specific powers and duties to tackle the problem. The eventual outcome will depend upon the circumstances. Under sections 67 to 71 of EIA 2006, the Secretary of State has specific powers of intervention. The Secretary of State may direct that a school be closed where Ofsted has judged it as ‘requiring special measures’.

The Government wants to ensure that action is taken quickly to tackle schools causing concern. The schools white paper said that the very lowest-performing schools (attaining poorly and in an Ofsted category, or not improving) will be partnered with sponsors or outstanding schools and converted to academies. If necessary, it said, the powers in the *Academies Act 2010* would be used to require conversion, and that the Government would legislate to extend the Secretary of State’s closure powers to schools subject to a notice to improve.²¹² The schools white paper also said that where academies or free schools are failing then action would be taken to ensure improvements.²¹³

Clause 43 amends EIA 2006. The clause makes provision for the Secretary of State to direct a local authority to issue a warning notice to a school on grounds of performance or safety concerns, and extends the Secretary of State’s powers to direct a local authority to close a school to all schools eligible for intervention, rather than (as at present) only those deemed by Ofsted to be in need of special measures.

5.11 Parental complaints about schools

The *Apprenticeships, Skills, Children and Learning Act 2009* made provision for a new complaints service operated by the Local Commissioner (i.e. the Local Government Ombudsman) to replace the Secretary of State’s role in relation to parental complaints about schools.

Under the 2009 Act a complaint against a ‘qualifying school’²¹⁴ could be made where a pupil or parent claims to have suffered an injustice because of the actions, or omissions, of the school governing body or by the head teacher exercising, or failing to exercise, a prescribed

²⁰⁸ “We don’t want Ofsted ‘outstanding’ label, says heads”, *Times Educational Supplement*, 13 August 2010 p14

²⁰⁹ [NSPCC, parliamentary briefing on the Education Bill, January 2011](#)

²¹⁰ Schools inspected at prescribed intervals

²¹¹ Other inspections

²¹² [The Importance of Teaching](#), paragraphs 5.15 and 7.18

²¹³ [The Importance of Teaching](#), paragraph 7.19

²¹⁴ A ‘qualifying school’ is defined as a community, foundation, or voluntary-aided school, community special school or foundation special school, maintained nursery school or short stay school (i.e. a Pupil Referral Unit). The Secretary of State may add to or amend this definition by order.

function. Complaints about matters that already have their own independent appeal process, such as school admissions and exclusions, were to remain outside the remit of the new system.

There was a phased introduction of new complaints system from April 2010,²¹⁵ and the arrangements were expected to apply nationally from September 2011. 14 local authorities have been operating the new system. (For further information on the phased introduction see the [LGO website on schools](#).)

The Government wants to remove the new LGO complaints service on the grounds that it is not cost effective in the longer term; instead complaints about schools may be made to the Secretary of State under sections 496 and 497 of the *Education Act 1996*.²¹⁶

Clause 44 repeals the powers in the ASCL Act 2009 for parents to make complaints about schools to the Local Commissioner. The clause also amends the Secretary of State's powers of intervention²¹⁷ (where he is satisfied that the school's governing body has acted, or is intending to act, unreasonably, or in breach of a duty) to provide that those powers may not be exercised in respect of a matter that has, or in his opinion could be, complained about to the Local Commissioner. The *Explanatory Notes* state that the effect of the repeal is that the Secretary of State's powers of intervention are no longer so restricted. It also notes that the clause makes a number of other consequential amendments to remove the duty on local authorities in England to consider complaints relating to the curriculum (although local authorities in Wales retain this duty) and to remove the restrictions on the Secretary of State's intervention powers.

5.12 Finance

Local authorities' financial schemes

Each local authority must prepare and maintain a scheme that sets out the arrangements for financing their schools. Section 48 of *School Standards and Framework Act 1998* (SSFA 1998) makes provision for this, and regulations prescribe the matters which must be dealt with in local authority schemes. Schedule 14 of SSFA 1998 allows a local authority to revise their scheme provided they:

take into account any guidance given by the Secretary of State;

consult the governing body and head teacher of every school maintained by them; and

the revisions are approved by their schools forum.

The schools white paper said that the Government wants all schools to be funded transparently, logically and equitably. It said that while the majority of schools are local authority maintained schools, funding will continue to pass to them through the local authority. But as academy status becomes the norm with funding being given directly rather than through the local authority, the requirement for a greater degree of transparency and consistency in allocating school funding becomes more pressing. Therefore the Government's long term aspiration is to move to a national funding formula. It plans to publish a consultation on this in the spring of 2011. The white paper also announced that, subject to the Education Bill's passage through Parliament, the Young People's Learning Agency would be replaced by a new Education Funding Agency as an executive agency of

²¹⁵ *The Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No. 2 and Transitional and Saving Provisions) Order 2010 SI 2010 No. 303*

²¹⁶ *Impact Assessment*, p27

²¹⁷ section 496 or 497 of *Education Act 1996*

the DFE with responsibility for the direct funding of academies and free schools and all 16-19 provision. The need for greater value for money and making savings was highlighted, particularly the need to make savings on procurement and to use energy efficiently.²¹⁸

Clause 45 amends Schedule 14 of SSFA 1998, enabling the Secretary of State to revise the whole or any part of a local authority scheme by giving a direction. It also requires the Secretary of State to consult the relevant local authority and such other persons as the Secretary of State thinks fit before a direction is given. The *Impact Assessment* to the Bill notes that the change would enable the Secretary of State to implement national policies on school financial management to save money, for example, in the replacing the Financial Management Standard in Schools (FMSiS) or ensuring schools use national framework contracts for procurement. The *Impact Assessment* states that the greater use of national procurement contracts should lead to economies of scale and gives national procurement of energy costs as an example. Replacing FMSiS with a simpler standard is also seen as a way of saving schools' and local authorities' time.²¹⁹ As the change could be used to provide for standardisation across schemes on various matters then presumably this could help pave the way towards a national funding formula.

Payments in respect of dismissal

Section 37 of *Education Act 2002* sets out how the costs of premature retirement, dismissal or securing the resignation of school staff in maintained schools are funded. The section re-enacted the provisions in section 57 of the SSFA 1998 and included an additional provision related to the payments in respect of dismissal of staff employed for community purposes. Currently, where a local authority incurs costs in relation to school staff employed for community purposes, such as an adult education tutor, the costs must be recovered from the governing body of the school, unless the local authority agrees otherwise. However, the costs cannot be met out of the school's budget share. The *Explanatory Notes* state that this means that these costs must be met by the governing body out of grants which can be used for community purposes or other external income. It notes that Section 4 of *Children, Schools, and Families Act 2010* amended section 50 of SSFA 1998 to enable governing bodies of maintained schools to use their budget shares to finance the provision of community facilities or services under section 27 of EA 2002; this amendment comes into force on 1 April 2011.

Clause 46 would amend section 37 of *Education Act 2002* to provide that a local authority must still recover costs in relation to school staff employed for community purposes from the governing body of a maintained school in England, but that they may be met by the governing body out of the school's budget share. The *Explanatory Notes* state that the change would provide consistency in relation to the funding of the costs of premature retirement, dismissal and securing the resignation of staff employed for community purposes.

Permitted charges

The *Impact Assessment* for the Bill said that there is uncertainty about whether maintained nursery schools and primary schools with nursery provision are able to charge for nursery provision beyond the current 15 hours free entitlement. The Government want to make it clear that such schools are permitted to charge for early years provision over and above that delivered free of charge under section 7 of *Child Care Act 2006*.

Section 451 of *Education Act 1996* prohibits charges for education for registered pupils during school hours; however, regulations can be made under section 451(2A) to lift this prohibition on charging for early years provision where this is for a pupil who is below

²¹⁸ [The Importance of Teaching](#), paragraphs 8.9 to 8.23

²¹⁹ [Impact Assessment](#), DFE, p29

compulsory school age and it is additional to the hours which must be made available free of charge under the duty on local authorities to secure a certain amount of early years provision free of charge. The *Explanatory Notes* to the Bill state that the Government intends to make these regulations so that a school governing body will then be able to charge for early years provision as an 'optional extra'.

Section 456 of *Education Act 1996* deals with charges that maintained schools are permitted to make for 'optional extras' provided by a school. Optional extras currently include education outside of school hours, entry for certain public examinations, some school transport, and board and lodging provided on residential trips.

Clause 47 would make changes in relation to permitted charges for optional extras. Clause 47(2) would insert a new provision into section 456 of the 1996 Act clarifying that the charges for all optional extras can also include an amount attributable to the costs relating to the buildings and accommodation used, for example, heating and lighting costs, and maintenance. Currently, under section 456(4), the charges for all optional extras can include the costs of any materials, books, instruments or other equipment used for the purposes of or in connection with the provision of the optional extra, and the use of non-teaching staff or teaching staff engaged under contracts for services for the purposes of providing the optional extra.

Clause 47 would also insert new subsection (6A) into section 456 where the optional extra is education which is early years provision. It provides that the charges for early years provision imposed by the school may include costs attributable to teaching staff who are employees of the school and who provide the early years provision. Currently this is prohibited by section 456(5) and only the costs attributable to any self-employed staff with whom the school has contracted can be included.

The NUT has warned that allowing maintained nursery schools and classes to charge for any provision over the 15 hours free entitlement would widen the gap between schools serving affluent areas where parents can afford to pay, and the rest. It said that the change may well lead to closures where provision is most needed.²²⁰

5.13 Further education institutions

Clause 48 gives effect to **Schedule 11** which makes amendments to the duties on further education corporations and sixth form college corporations. The aim of these amendments is to reduce Government intervention and bureaucracy and to give colleges greater autonomy. Some of the amendments are a consequence of the dissolution of the Young People's Learning Agency (YPLA) and involve amendments to *Further and Higher Education Act (FHEA) 1992*, other provisions transfer powers of the YPLA to other bodies.

Paragraphs 2, 8 and 9 amend sections 19, 33F and 33G respectively of FHEA 1992 and remove the requirement for further education corporations in England and sixth form college corporations to gain the consent of the relevant body (the local authority or the YPLA or the Chief Executive of Skills Funding), before they exercise their powers to borrow money and form (or invest in) a company or a charitable incorporated organisation for educational purposes. It is intended that removing the need for colleges to seek consent from the local authority before borrowing money should increase colleges' independence and also speed up financial transactions.

Schedule 11 also repeals the duty on colleges contained in *Apprenticeships, Skills, Children and Learning Act 2009* (ASCLA) section 256 to promote the economic and social wellbeing

²²⁰ [NUT comment on Education Bill, 27 January 2011](#)

of their local area when carrying out their functions and to have regard to guidance issued by the Secretary of State in this area. The *Overarching Impact Assessment of the Education Bill 2011* states that this provision is being removed because it is unnecessary; colleges already play an important role in local areas by virtue of the education they provide.

Schedule 11 contains changes to provisions relating to the dissolution of sixth form college corporations and further education corporations. **Paragraph 4** removes the requirement for the Secretary of State to consult the YPLA before making an order to dissolve a further education corporation. **Paragraph 13** allows sixth form college corporations to make an application for closure directly to the Secretary of State and allows the Secretary of State to instigate the process for dissolution.

Paragraph 7 changes provisions relating to the establishment of new sixth form college corporations; the change will enable any person or body to make a direct application to the Secretary of State, to establish a sixth form college corporation.

Paragraphs 11,12 and 14 make amendments which are necessary as a result of the abolition of the YPLA, these paragraphs transfer powers of the YPLA to the Secretary of State. **Paragraphs 11 and 12** transfer YPLA's responsibility for the drawing up and modification of the initial instruments and articles of government of a new sixth form college corporation to the Secretary of State. **Paragraph 14** transfers to the Secretary of State the YPLA's power to make payments to local authorities in respect of any excepted loan liability of the authority.

Paragraph 15 removes the requirement for governing bodies of sixth form and further education colleges to have regard, when exercising their functions, to the content of any guidance that has been issued by the Secretary of State about consulting certain groups in connection with decisions that affect them; these groups are people who are, or are likely to become, students and employers. The *Overarching Impact Assessment* states:

taking away this duty will free sixth-form and further education colleges from the administrative burden of having to comply with specific legislation and enable them to develop student participation in a way that addresses their unique needs, rather than following a prescribed path.²²¹

It is expected that colleges will continue to consult young people and employers as a matter of course where the governing body considers this to be appropriate or necessary, whether or not they are subject to a particular duty.

Paragraphs 16,17,19 and 22 make amendments in relation to the governing bodies of sixth form and further education colleges. **Paragraph 16** removes the power of the Chief Executive of Skills Funding to direct the governing body of a further education college to consider taking disciplinary proceedings against a senior post holder; **paragraph 19** contains a similar provision for sixth form colleges. **Paragraphs 19 and 22** also remove the powers of the local authority and the YPLA to intervene in sixth form college corporations. They transfer these powers to the Secretary of State who must provide a notice to the trustees of the college detailing the nature of the planned intervention and the reasons for it before exercising his intervention powers.

Paragraph 17 removes the power of the Chief Executive of Skills Funding to appoint up to two additional members of the governing body of a further education corporation. **Paragraphs 20 and 23** remove the corresponding powers of the local authority and the

²²¹ *Overarching Impact Assessment of the Education Bill 2011* p 21

YPLA in respect of sixth form college corporations. Paragraphs 5, 6 and 30 respectively make consequential amendments to remove references to the two additional members of the governing body appointed by the Chief Executive of Skills Funding or the local authority and the YPLA.

Paragraph 18 repeals section 56D of FHEA 1992, removing a legal duty from the local authority and the YPLA to notify the Chief Executive of Skills Funding where they have concerns about provision delivered at a further education college. **Paragraph 24** contains a corresponding duty for the Chief Executive to notify the local authority and the YPLA about any concerns the Chief Executive has about provision delivered at a sixth form college.

Paragraph 21 removes the duty on the YPLA to produce and publish an intervention policy.

Reactions to the proposals

The AoC said that they welcomed the repeal of various duties placed on further education and sixth form colleges in recognition of the autonomy of the college sector.

5.14 Repeal of provision to change the name Pupil Referral Units

Pupils who have been excluded from school, or for some other reason cannot attend mainstream school, receive their education in alternative provision which includes local authority-run pupil referral units (PRUs). There are about 450 pupil referral units in England. They are established by local authorities and are part of the (local authority) maintained school system; however, they have their own legal identity as schools. The majority of PRUs offer education to pupils on a temporary basis.

The Labour Government decided to change the name of pupil referral units to short stay schools to reflect the policy proposals set out in its *Back on Track* white paper. This change was contained in section 249 of *Apprenticeships, Skills, Children and Learning Act 2009*. The provisions were due to be brought into force on 1 September 2010; however the Coalition government decided not to proceed with the name change.²²²

Clause 49 would repeal section 249(1) and (2) of ASCLA 2009, which have not yet been brought into force.

6 Academies

Background

Academies are state-funded schools, independent of the local authority; they receive their funding from central government, operating in accordance with the funding agreement between the Secretary of State and the academy trust.²²³ The requirements relating to an academy's admission arrangements are set out in its agreement.

The academies programme was a major part of the Labour Government's strategy to improve educational standards in secondary schools in disadvantaged communities and areas of poor educational performance. It built on the Conservative government's City Technology Colleges programme introduced under the *Education Reform Act 1988*.

The first academies opened in 2002. They had sponsors from a range of backgrounds. By March 2010 there were 203 academies open in 83 local authority areas, and a further 100

²²² HC Deb 20 July 2010 c266W

²²³ Some commentators have taken issue with the description of academies as state-funded independent schools, see, for example, a letter to the *Guardian* from Peter Newsam, a former chief schools adjudicator, who argued that academies should be described as government-controlled schools: "[Democracy at issue in the creation of academy schools](#)", *Guardian*, 11 June 2010

were planned to open in 2010.²²⁴ Although Labour wanted to expand the programme, it did not believe that all schools should become academies. Ministers stressed that academies could not be the solution for all secondary schools.²²⁵

From May 2010 the Conservative-Liberal Democrat Coalition Government extended the programme to all schools, fast-tracking 'outstanding' schools. In effect, the change created two types of academy: 'sponsored' academies, usually those opened to improve standards in deprived areas; and 'converters' created from other types of school, with 'outstanding' schools converting first (see below). By January 2011, there were 407 academies consisting of 271 sponsored and 136 converters.²²⁶

The Government's policy

The 2010 Conservative Election Manifesto proposed a 'schools revolution', drawing on the Swedish 'free schools' model and the 'charter school' movement in the US, to allow parents, charities, teachers and others to set up new schools. The manifesto also said that a Conservative government would enable all existing schools to have the chance to acquire academy status; that 'outstanding' schools would be pre-approved; and that the academy programme would be extended to primary schools.

While the Liberal Democrats wanted all schools to be free to innovate, their 2010 Manifesto favoured replacing academies with 'sponsor managed schools', commissioned by and accountable to local authorities, with educational charities and private providers involved.²²⁷

The Conservative-Liberal Democrat Coalition Government's [The Coalition: our programme for government](#), published on 20 May 2010, proposed school reform to ensure that new providers could enter the state school system in response to parental demand, and to provide that all schools would have greater autonomy.

On 26 May 2010, the Education Secretary wrote to schools saying that he wanted to open up the academies programme to all existing schools - including, for the first time, primaries and special schools. He invited schools to register their interest in becoming an academy. Schools rated 'outstanding' by Ofsted were fast-tracked through the process.

The *Academies Act 2010* provided the legislative basis for the expansion of the programme and paved the way for new 'free' schools to operate as academies (see below). [Library Research Paper 10/48](#), prepared for the Commons second reading debate on the *Academies Bill*, provided background on the proposals including a brief account of how the academies programme developed under the previous Labour governments and the current Government's proposals. It also included comment on the main differences, and provided a selection of comment on the Government's policy for academies and free schools.

On 17 November 2010, the Education Secretary announced that alongside outstanding schools, all schools that are ranked good with outstanding features by Ofsted will automatically be eligible for academy status. All other schools – primary or secondary – will also be eligible, providing they work in partnership with a high-performing school that will help drive improvement. In addition, for the first time, special schools will be able to apply to convert to academies.²²⁸

²²⁴ HC Deb 8 March 2010 c15

²²⁵ HC Deb 8 March 2010 c16

²²⁶ [The Academies Programme](#), Public Accounts Committee, Seventeenth Report Session 2010-11, HC Paper 552, 27 January 2011

²²⁷ [Liberal Democrat Manifesto 2010](#)

²²⁸ "Academy model extended so every school can benefit", [DFE press release, 17 November 2010](#)

Information on the academies approved since the Government came to power is available on the DFE's [academies](#) website.²²⁹

Free schools, referred to in the *Academies Act 2010* as 'additional schools', will usually be brand-new schools set up in response to parental demand. Providers may be charities, universities, business, community or faith groups, teachers or groups of parents. Free schools will be state-funded and will operate as academies. The first free schools are expected to open in September 2011. Independent schools may apply to become free schools and receive state funding; however, such schools would need to meet certain criteria including an agreement that their admissions policy will be in line with the *School Admissions Code*, and that they can demonstrate they have a good record of success as an education provider, and financial viability. Independent schools applying to become free schools will not be able to retain any existing academic selection admission arrangements. Background on the government's policy on free schools and information on applications made to establish them is provided on the DFE's [free schools](#) website.²³⁰

An article in the *Guardian* on 1 October 2010 quoted the Education Secretary as saying that he wanted voluntary groups and city academies such as Ark schools to take over local authority-controlled Pupil Referral Units (PRUs) as he regarded PRUs as 'the weak link in the chain, without an accountable person responsible for making sure these children progress'. He emphasised that 'It is striking that there are people who want to play a greater role in this market.'²³¹

The schools white paper outlined how the Government intended to rapidly expand the academies programme and encourage free schools. It announced that legislation would be introduced to allow PRUs to become academies. The Government believes that there is not enough diversity in alternative provision, and therefore wants to encourage new providers into the market:

3.34 We will open up the alternative provision market to new providers and diversify existing provision by legislating to allow PRUs to become Academies, encouraging Free Schools that offer alternative provision, and supporting more voluntary sector providers alongside Free Schools. Alternative provision Free Schools in particular will be a route for new voluntary and private sector organisations to offer high-quality education for disruptive and excluded children and others without a mainstream school place. Local authorities will be expected to choose the best provision and replace any that is unsatisfactory. We will, if necessary, use the Secretary of State's powers to close inadequate PRUs and specify what sort of provision will replace it. In doing so, we will use competitions to open the way for high quality new providers to enter the market.

The Government wants to remove what it sees as unnecessary restriction on academy provision and enable a more diverse 16 to 19 sector in response to parental demand. The *Economic Impact Assessment* (of the white paper) said that in order to remove restrictions to market entry, the Government would legislate to allow academies and free schools to offer alternative provision²³² and 16 to 19 education. It noted that the number of new schools

²²⁹ <http://www.education.gov.uk/schools/leadership/typesofschools/academies>

²³⁰ <http://www.education.gov.uk/schools/leadership/typesofschools/freeschools>

²³¹ "Michael Gove promises 'new deal' for teachers on classroom discipline", *Guardian*, 1 October 2010

²³² Alternative education is for children of compulsory school age who are not in school because of illness, exclusion or other reason

offering such provision would depend upon local demand and proposals from schools, charities and others.²³³

The *Impact Assessment* to the Bill describes the proposals as particularly significant where a new 16 to 19 institution would fill a gap in provision and increase the opportunities for young people in an area.

The Bill's provisions

Clause 50 removes the requirement²³⁴ that academies providing secondary education must have a specialism in a particular subject area or particular subject areas. The *Explanatory Notes* state that the removal of section 1(6)(b) would mean that new schools which are set up as academies and existing schools which convert to become academies would no longer be required, where they provide secondary education, to have an emphasis on a particular subject area or subject areas. However, an academy can specialise if it chooses to do so.

Section 1 of the AA 2010 would be further amended by **clause 51** to provide for two new types of academies: 16 to 19 academies, and alternative provision academies. These would have broadly the same characteristics as existing academies. 'Academy' would be the generic term for all the three different types of educational establishment. Consequential amendments to section 1 of the 2010 reflect the fact that academies will not necessarily be 'schools'.

16 to 19 academies must be educational institutions that are principally concerned with providing full-time or part-time education suitable to the requirements of those over compulsory school age but under 19 years old. The *Explanatory Notes* indicate that the Government intends to use this legislation to allow providers to set up free schools for those aged 16 to 19.

Alternative provision academies must be principally concerned with the provision of full-time or part-time education for children of compulsory school age who are not in school because of illness, exclusion or other reason and who would not receive suitable education unless alternative provision was made for them. 'Alternative provision' means arrangements made under 19(1) of *Education Act 1996*.

Clause 52 gives effect to **Schedule 12** which reflects the fact that there would be three different types of academies (i.e. academy schools, 16 to 19 academies, and alternative provision academies). Many of the changes are needed because academies would no longer necessarily be schools.

Section 4(1)(b) of the AA 2010 empowers the Secretary of State to make an academy order in respect of a school if the school is 'eligible for intervention'. **Clause 53** would insert a new subsection into section 4 of the AA 2010 to provide that before making an academy order under section 4(1)(b) in respect of a foundation or voluntary school that has a foundation, the Secretary of State must first consult the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body. Other changes would provide for information relating to academy orders to be given to the trustees of a foundation or voluntary school with a foundation and, in the case of schools with a religious character, the appropriate religious body.

New provision would be made relating to consultation on conversion to an academy, including where a school is eligible for intervention, and in the case of a federated school

²³³ The *Economic Impact Assessment* of the schools white paper, paragraph 54

²³⁴ contained in section 1(6)(b) of the *Academies Act 2010* (AA 2010)

(clause 54). A federated school would be able to apply for an academy order without requiring the agreement of the whole federated governing body **(clause 55)**. The clause also makes further provision in relation to federated schools converting to academy status.

The Bill would also make changes relating to the transfer of property, rights and liabilities when a school is converting to an academy **(clause 56)**.

Clause 57, which relates to new and expanded educational institutions, would make new provision in relation to sections 9 and 10 of the AA 2010; the term ‘additional school’ is removed to reflect the fact that educational institutions may cater for a wider age range than the institution it replaces.

Currently, there is provision for foundation or voluntary controlled school to have a number of ‘reserved’ teachers who have been selected to give religious education in accordance with the tenets of the religion or religious denomination of the school. A voluntary aided school may apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school. **Clause 58** would insert a new section 124AA into the SSFA 1998 that would apply to staff at academies with religious character. It would provide that voluntary controlled and foundation schools with a religious character that convert to academy status must include ‘reserved’ teachers, subject to a limit of up to one-fifth of the total number of teachers. The Secretary of State would be able to make an order for a specific school that would disapply section 124AA for that individual school.

Clause 59 gives effect to Schedule 13 which would replace Schedule 1 to AA 2010 with a new Schedule to make provision about land in relation to academies. Additional powers would be given to the Secretary of State to transfer the publicly funded land of maintained schools to academies, whilst ensuring that the public interest in land at academies continues to be protected. The arrangements are complex, and the *Explanatory Notes* to the Bill describe the provisions in detail.

As noted in the section of this research paper on school admissions, **Clause 60** of the Bill amends Chapter 1 of Part 3 of SSFA 1998 to allow School Adjudicators to consider and to determine eligible objections or referrals relating to the admissions arrangements of academies, as they do in respect of maintained schools.

Comment

Comment on the Government’s policy towards academies and free schools generally was included in [Library Research Paper 10/48](#) prepared for the Commons second reading debate on the *Academies Bill*. Labour Opposition spokesmen have pointed out repeatedly that the Government’s academies policy is very different from the previous government’s policy. In the House of Commons debate on the Queen’s Speech Ed Balls, the then Shadow Education Secretary, claimed that the Government’s policy was a perversion of Labour’s academies programme.²³⁵

NASUWT believes that the opening of alternative provision to a market of new providers has the potential ‘to increase costs, undermine the ability of schools to access local authority support and provisions and put at risk the skills and expertise of teachers and other staff who work in PRUs.’²³⁶

²³⁵ HC Deb 2 June 2010 cc 476-78

²³⁶ [NASUWT summary of the schools white paper and initial comments: http://www.nasuw.org.uk/Whatsnew/NASUWTNews/Nationalnewsitems/VoteForEducation/EducationWhitePaper/index.htm](http://www.nasuw.org.uk/Whatsnew/NASUWTNews/Nationalnewsitems/VoteForEducation/EducationWhitePaper/index.htm)

Several commentators have drawn attention to the findings of the recent report by the Public Accounts Committee (PAC) on academies.²³⁷ Although the report found that sponsored academies have performed impressively in improving educational attainment, it warned that the expansion of the academies programme poses substantial potential problems relating to their financial management. The NUT, for example, believes it is reckless for the Government to press ahead with the expansion of the programme when, it says, the PAC report shows that the DFE is ‘struggling’ with the administration of a relatively small number of academies at present.²³⁸ However, the Education Secretary welcomed the report, stressing that it recognised the success of the programme; a DFE spokesperson said that the Government recognises the issues raised, and that this was one reason why the schools white paper announced the creation of the Education Funding Agency to replace the YPLA.²³⁹

7 Post-16 Education and Training

7.1 Abolition of the Young People’s Learning Agency for England

Background

The ASCLA dissolved the Learning and Skills Council (LSC) and established the Young People’s Learning Agency (YPLA) as a non-departmental public body sponsored by the Department for Children, Schools and Families. The YPLA’s function is to support the delivery of training and education to all 16 – 19 year olds in England, it took over from the LSC in April 2010.

Details of the establishment of the YPLA, its structure and functions are available in Library Research Paper 09/15, [Apprenticeships, Skills, Children and Learning Bill: provisions for children, education and learners](#).²⁴⁰

The YPLA funds academies, general further education colleges, sixth form colleges and other 16-19 providers and supports local authorities in commissioning suitable education and training opportunities for 16-19 year olds. It also provides learner support funding such as the Education Maintenance Allowance (EMA).

A House of Lords written answer on 11 January 2011 gave information on the funding role of the YPLA:

Young People's Learning Agency

Question

Asked by Lord Laird

To ask Her Majesty's Government what payments have been made in the last three years to the Young People's Learning Agency; for what reason; and whether the agency will continue.[HL5381]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford):

The Young People's Learning Agency for England began operation on 1 April 2010 following the dissolution of the Learning and Skills Council. Its principal functions are to fund academies, to fund learning opportunities for 16 to 18 year-olds (and for 16 to 24

²³⁷ Public Accounts Committee, [The Academies Programme](#), HC Paper 552, 27 January 2011

²³⁸ NUT press release on the PAC academies report, 27 January 2011

²³⁹ “MPs warn over academies finances”, ePolitix, 27 January 2011

²⁴⁰ RP 09/15 [Apprenticeships, Skills, Children and Learning Bill: provisions for children, education and learners](#) 18 February 2009

year-olds with a learning difficulty or disability) and to fund support for young learners. The agency's grant for 2010-11 is £9.6 billion;

[...]

On 24 November 2010, the White Paper, *The Importance of Teaching*, set out the Government's intention, subject to legislation, to replace the Young People's Learning Agency, a non-departmental public body, with a new Education Funding Agency, which will be an executive agency within the Department for Education. We anticipate that the new agency will begin operation in April 2012.

YPLA grant funding 2010-11, £ millions

Further Education for 16-18 year olds	3,964
Schools	4,298
<i>Academies</i>	1,882
<i>Maintained School Sixth Forms</i>	2,213
<i>Sixth Form Academies</i>	203
Learning opportunities for learners with learning difficulties or disabilities	282
Support	667
<i>Education Maintenance Allowance</i>	564
<i>Learner Support</i>	98
<i>Childcare support</i>	5
Administration	49
Capital Programmes	231
Other	108
Total	9,599

Source: HL Deb 11 January 2011 c 439WA

Further information on the work of the [YPLA](#) is available on the organisation's website.

Government proposals

The Government intends to abolish the YPLA and to replace it with a new body: the Education Funding Agency. This proposal was contained in [The Importance of Teaching](#):

Subject to legislation, we intend to replace the existing Young People's Learning Agency and set up a new Education Funding Agency (EFA) as an executive agency of the Department with responsibility for the direct funding of the growing number of Academies and Free Schools and all 16–19 provision. This will include the funding of 16–19 provision in FE colleges, sixth form colleges and independent provision.²⁴¹

The [Impact Assessment](#)²⁴² published alongside the schools white paper stated that abolishing the YPLA would streamline the system and reduce costs:

The creation of an executive agency will improve the transparency, accountability and efficiency of the funding of education up to age 19. We would expect providers of education and training to benefit from a more streamlined system, and the reductions in bureaucracy concomitant with a more streamlined approach to the management of

²⁴¹ *The Importance of Teaching*, p 82, paragraph 8.13

²⁴² *Economic Impact Assessment of the schools white paper*

funding. There will also be cost savings and efficiencies in the administration, calculation and management of funding for 3-19 education. While some efficiency savings may be realised pre-transfer the majority of benefits and efficiencies will be realised from April 2012 onwards.²⁴³

These changes are also a necessary step towards the Government's plan to create a national funding formula for all provision up to age sixteen.²⁴⁴ It is anticipated that the new body will take effect in April 2012.

The Education Funding Agency (EFA)

The EFA will be a non-statutory executive agency within the Department for Education. The agency will be independently accountable, produce its own accounts and reports and will be directly accountable to Ministers. The [Overarching Impact Assessment for the Education Bill 2011](#) outlines the perceived benefits of the EFA:

We would expect providers of education and training to benefit from a more streamlined system, and the reductions in bureaucracy associated with a more streamlined approach to the management of funding. We would expect efficiencies and savings to be delivered in the following ways

- Increased transparency and accountability will provide ministers with a stronger direction over functions and a better understanding of how the money is spent, with the potential for better targeting of resources.
- There will be efficiencies from the consolidation of grant calculation activities as result of the national funding formula.
- Greater efficiencies will be achieved through shared services, including staffing, audit and IT, on Academy and Free School grant calculations and payments.
- There will be potential to rationalise administrative costs of carrying out similar functions across capital and revenue.
- There will also be scope to merge and rationalise corporate functions between ALBs which are currently distinct.²⁴⁵

An article in *Children & Young People Now* discussed the establishment of the EFA and issues surrounding the transition from the YPLA to the new body:

But a DfE spokesman said: "The agency will administer the national funding formula for young people up to 19, ensuring the maximum amount of money goes to schools, colleges and independent providers in a fair and transparent way, with the minimum of bureaucratic burden."

Nick Hudson, chair of the Association of Directors of Children's Services educational achievement policy committee, admitted directors would need to work closely with the YPLA to ensure a smooth transition, but argued that the introduction of the national funding formula would require even more delicate negotiations.

²⁴³ *Ibid* p 33

²⁴⁴ *The Importance of Teaching: Schools White Paper 2010 Impact Assessment* p 34

²⁴⁵ *The Overarching Impact Assessment for the Education Bill 2011* p 35

"Any move to a national funding formula must be carefully handled to avoid significant disruption to the ability of schools to plan for the future," he explained.

Staff jobs at the YPLA appear to be secure, but Kathy Prendiville, industrial officer at the Public and Commercial Services Union (PCS), which represents former Learning and Skills Council staff, said she would be seeking further assurances that all members will transfer into the new organisation.

"The announcement means yet more change for our members, at a time when the organisation has only just settled into its new role as the YPLA in April of this year," she said. "It will be essential for the success of the EFA that staff feel secure in the transition."

Les Walton, chair of the YPLA, will continue to lead the organisation through its changeover to the EFA. "The staff are very good at managing change, we've been managing change for 18 months," he said.²⁴⁶

The Bill

Clauses 62-63 of the Bill will abolish the YPLA and repeal the relevant provisions in the ASCLA. The functions of the YPLA will be discharged by the Secretary of State through a new non-statutory agency within the Department for Education, as proposed in *the schools white paper*.

Clause 63 gives effect to **Schedule 15** which removes references to the YPLA from some legislation and amends other legislation to replace references to the YPLA with "the Secretary of State". This clause also enables the Secretary of State by order to make further changes to other primary and subordinate legislation which may be necessary as a consequence of **clause 62**. **Clause 74** has the effect of making any amendments to primary legislation made under **clause 62** subject to the affirmative procedure

Schedule 15 paragraph 2 will require local authorities to have regard to guidance issued by the Secretary of State when exercising their duties in respect of education and training for young people. **Paragraphs 6** and **7** enable the Secretary of State, rather than the YPLA, to share information with certain bodies to facilitate the exercise of their functions.

Clause 64 gives effect to **Schedule 16**, giving the Secretary of State power to make schemes for the transfer of staff, property, rights and liabilities from the YPLA to the Secretary of State (to provide, for example, for transfers to the Department for Education).

Issues

The *Overarching Impact Assessment for the Education Bill 2011* states that there may be redundancy costs in the transfer of functions from the YPLA to the EFA:

The Education Funding Agency will build on the efficient delivery model developed by the YPLA, whose 2010-11 budget is approximately £9.5 billion, of which £48m is YPLA administration. Stripping out duplicated functions across organisations may create surplus posts which in turn may result in redundancy costs. In determining the structure of the Agency, including its roles and responsibilities, the Department will look for further scope for reduction and rationalisation while minimising these costs.

In most cases, YPLA offices are in premises managed by the Skills Funding Agency on a shared service basis. We have already asked the YPLA to develop a strategy for reducing its premises costs, and this expectation will remain in place through the

²⁴⁶ "School funding reforms blasted for creating more bureaucracy" *Children & Young People Now* 30 November 2010

period of transition. Our expectation is that the costs of this accommodation will not rise as a result of establishing the EFA.²⁴⁷

Reaction to the proposals

The abolition of the YPLA has been welcomed by the Local Government Group, but the organisation expressed concern that the new Education Funding Agency would create needless bureaucracy:

The LGG welcomed the dissolution of the YPLA, but argued that the creation of the agency is unnecessary, particularly given plans to introduce a national funding formula for schools.

An LGG briefing explained: "The abolition of the YPLA is welcome and we called for its functions to transfer to local authorities. We do not see the need to replace it with the EFA."²⁴⁸

The AoC made the following statement on the proposals:

In its short life the YPLA has, for the most part, communicated effectively with providers of post-16 education and ensured the voice of Colleges, schools and academies is heard via its Board. We will seek assurances that transferring the responsibilities of the YPLA to the Secretary of State, via a non-statutory agency, will not diminish in any way or prevent full involvement and consultation with the College sector as to the implementation of post-16 funding policy and changes in the 16-19 infrastructure, including free schools, academies and University Technical Colleges.

7.2 Apprenticeships

The Bill amends the definition of the "apprenticeship offer" to young people, which was created in the ASCLA 2009 and has not yet come into effect. Instead of placing a duty on the Chief Executive of Skills Funding to provide an apprenticeship place to all suitably qualified young people who wanted but did not have one, the offer will instead prioritise funding for young people who have already secured an apprenticeship place. The apprenticeship offer will come into effect by 2013 and applies to England only.

John Hayes, the Minister responsible for apprenticeships, explained the rationale behind the change:

This new duty will constitute a much more robust deal for these young people because it will ensure that the chief executive of skills funding gives priority for funding apprenticeship training to those eligible for the "redefined offer". We will continue to work with those key stakeholders representing vulnerable and disadvantaged young people to ensure that they have equal access to "redefined offer". This new duty will be more straightforward, more meaningful and less bureaucratic than the apprenticeship offer set out in sections 91-99 of the Apprenticeships, Schools, Children and Learners Act 2009 "apprenticeship offer".²⁴⁹

²⁴⁷ *Overarching Impact Assessment of the Education Bill 2011*, p 35

²⁴⁸ "School funding reforms blasted for creating more bureaucracy" *Children & Young People Now* 30 November 2010

²⁴⁹ [HC Deb 21 Dec 2010, c161-2WS](#)

Government policy

Each apprenticeship framework is made up of three elements; a national vocational qualification (NVQ), a technical certificate and key skills. There are currently over 190 different types of apprenticeships in a wide variety of different sectors.²⁵⁰

The National Apprenticeship Service (NAS) was created in April 2009 and has responsibility for apprenticeships in England. The NAS is responsible for promoting apprenticeships, both to employers and learners, supporting employers through the process of recruiting and training an apprentice, and maintaining the national online apprenticeship vacancy matching system.²⁵¹

Apprenticeships in England are funded by the Department for Education (DfE), which funds apprenticeships for under 19s, and the Department for Business, Innovation and Skills (BIS), which funds adult apprenticeships for those aged 19 and over.

The Government in its October 2010 Spending Review committed to increasing the budget for adult apprentices by up to £250 million a year by 2014/15 “compared with the previous government’s level of spending.”²⁵² This £250 million includes the £150 million increase the Government has already implemented for the current year (2010/11). The total budget for apprenticeships in 2011/12 will be £1,404 million (£799 million from the DfE for under 19s and £605 million from BIS for 19+). In 2009/10 the comparable figure was £1,072 million.²⁵³

The planned £250 million a year increase in funding for adult apprentices will add approximately 75,000 apprenticeship places each year by 2014/15. To provide some context, in 2009/10 there were 276,900 apprenticeships started in England.

This Bill focuses on apprenticeships for young people (aged under 19), funded by the DfE. The YPLA estimates that there will be 230,000 apprenticeships starts by young people in 2011/12, an increase of 20% on 2009/10 (191,000).²⁵⁴

The Bill

The ASCLA 2009 introduced the “apprenticeship offer” which placed a duty on the Chief Executive of Skills Funding to secure sufficient number of apprenticeship places for all suitably qualified young people who wanted one. This duty has not yet come into effect (this would have commenced in 2013).

The Bill’s Impact Assessment states that the commitment to give all qualified young people an apprenticeship “may not have been possible in practice” as apprenticeships are work-based and the Chief Executive of Skills Funding cannot force employers to take on new apprentices against their will. The then Children, Schools and Families Select Committee made similar observations about the duty to secure places when scrutinising *The Draft Apprenticeships Bill* in 2008:

We have grave doubts about whether a statutory duty on the Learning and Skills Council (and in due course the National Apprenticeship Service) to secure sufficient apprenticeship placements can be met, or met without compromising on quality.[...]²⁵⁵

²⁵⁰ National Apprenticeship Service website, [Types of apprenticeships](#)

²⁵¹ National Apprenticeship Service website, [Our responsibilities](#)

²⁵² HM Treasury, [Spending Review 2010](#), October 2010, page 51

²⁵³ BIS, [Investing in Skills for Sustainable Growth](#), November 2010, Annex 1 page; and Young Person’s Learning Association, [16-19 Funding Statement](#), December 2010, page 9

²⁵⁴ Young Person’s Learning Association, [16-19 Funding Statement](#), December 2010, page 5

Clause 65 removes the duty, as introduced by the ASCLA 2009, to provide an apprenticeship place to all qualified young people who did not have one and wanted one. This duty is also known as the “apprenticeship offer”. In its place a new duty on the Chief Executive of Skills Funding will be introduced to prioritise funding for young people who have already secured an apprenticeship place. This new “apprenticeship offer” will come into effect by 2013 and applies to England only.

The relevant age groups are the same as those defined in ASCLA 2009:

- All those aged 16-18
- Those aged 19-24 who are care leavers
- Those aged 19-24 with a disability or learning difficulty

This clause gives the Secretary of State the power to change who is eligible for the new apprenticeship offer by affirmative resolution.

This clause also limits the scope of the offer by restricting it to those who have not already completed an apprenticeship at that apprenticeship level (or who have experience or attainment equivalent to that level). For example, if someone has already completed a level 2 apprenticeship they will not be covered under the offer for any other level 2 apprenticeship; they will, however, be covered for level 3 apprenticeships.²⁵⁶

This clause also gives the Secretary of State the power to suspend the apprenticeship offer in relation to a specific skill, trade or occupation for up to two years by order under a negative resolution procedure. This power is very similar to that contained in the ASCLA 2009 and which is scheduled to be repealed by this Bill. The Explanatory Notes suggest that circumstances where this power may be used includes when economic difficulties would not allow the duty to be fulfilled and when there is an oversupply of qualified people in a particular occupation.

This clause must be commenced by the day after the school leaving date in 2013.

Clause 66 provides that the certifying authority for apprenticeships in England will be designated by the Secretary of State. It is intended that this authority will be delegated to the relevant sector skills councils who issue apprenticeship frameworks for their sector.

7.3 The Chief Executive of Skills Funding

Background

The ASCLA established the office of the Chief Executive of Skills Funding and set out the framework for the operation of the Skills Funding Agency – the body that funds and regulates the adult learning and skills sector. Information on the establishment of the office of the Chief Executive and powers and duties of the office holder are set out in Library Research Paper 09/15 *Apprenticeships, Skills, Children and Learning Bill: provisions for children, education and learners*.

Further information on the work of the [Skills Funding Agency can be found on the Agency's website](#).

²⁵⁵ Children, Schools and Families Select Committee, *The Draft Apprenticeships Bill*, 5 December 2008, HC 1082 2007-08, para 47

²⁵⁶ An explanation of what the different skills levels mean is available from the [Directgov website](#).

The Bill

Clauses 67 and **68** of the Bill make changes to the powers of the Chief Executive of Skills Funding.

Clause 67 alters the power of the Chief Executive of the Skills Funding with regard to the conduct of consultations. It inserts a new section into ASCLA which will give the Secretary of State power to direct the Chief Executive to consult with specified people on matters associated with the performance of his functions. The direction can set out the way in which a consultation is to be carried out; for example the direction could state that a formal advisory group is to be established and specify the individuals and representative groups to be included. This section does not stop the Chief Executive from carrying out other forms of consultation. It is intended that this change will provide the Chief Executive with a more effective process for engaging with the sector, employers and students.

Changes to level 2 and 3 entitlement

As part of the Labour Government's Skills Strategy in September 2006, the Government introduced a national entitlement to fee remission for eligible adults of 19 years and over to study for a first full level 2 qualification.²⁵⁷ Subsequently, in August 2007 the Government introduced a national entitlement to free education for 19-25 year-olds studying for their first level 3 qualification (two 'A' levels or equivalent).²⁵⁸

The most recent skills strategy document, [Skills for Sustainable Growth Strategy 2010](#) proposed changes to the entitlement:

We will fully fund a first full Level 2 or Level 3 qualification for those aged 19 up to 24 who don't yet have one, and support them in making the transition from education to work.²⁵⁹

Clause 68 of the Bill amends section 88 of ASCLA and brings into effect the proposal in the Skills Strategy document, so that the entitlement to fee remission for a first full vocational qualification at level 2 and specified qualification at level 3 is *restricted* to those aged over 19 and under 24.

Financial impact

The Bill's *Impact Assessment*²⁶⁰ states that the proposed changes look to maximise the effect of the reduced levels of Government funding by targeting it where it has maximum impact. It does not quantify the financial implications of this decision, but refers readers to the impact assessment which was published alongside the *Skills for Sustainable Growth Strategy*.²⁶¹ This estimated the benefits of the policy (reductions in public expenditure and in foregone output from those in further education) against the costs (lost increases in productivity from a less well educated workforce and higher fees). Calculations were made of the impact of carrying out the policy for three years, rather than the conventional 10 year period used for most impact assessments. This is due to the uncertainty around funding after the end of the current Spending Review period in 2014-15.

²⁵⁷ Level 2 standard is 5 GCSEs at grades A* - C, an NVQ at Level 2 or an equivalent qualification

²⁵⁸ Department for Children, Schools and Families News Release "[Free training for under 25s – Rammell](#)" 22 May 2007

²⁵⁹ Department for Business, Innovation and Skills, *Skills for Sustainable Growth Strategy* November 2010 p 9

²⁶⁰ Department for Education *Overarching Impact Assessment for the Education Bill 2011*, 10 January 2011

²⁶¹ Department for Business, Innovation and Skills *Amending legislative skills entitlements. Impact assessment*, September 2010

Remove the entitlement to a first full level 2 qualification for those aged 24 and above

The savings to public spending from this policy are estimated to be £160 million in 2012-13 rising to £255 million in 2014-15. There will be an additional benefit to the wider economy estimated at £170 million per year from the reduction in lost output for those who will now work rather than study. All the cost and benefit estimates are expressed in present value terms; after inflation and an annual discount rate of 3.5% are applied.

The estimated costs resulting from the policy are in higher fees and the lost output in the future from a less well qualified workforce. There are no costs to the public sector. Higher fee contributions paid by individuals and firms are estimated to cost £170 million in 2014-15. The impact assessment assumes that 524,000 learner places will be affected by the policy, or 345,000 starts per year. It is estimated that 114,000 or around one-third of these potential learners would not be prepared to pay higher fees. The impact assessment also assumes that in half of these cases colleges will not collect the full-fee for co-funded courses. This leaves an estimated 57,000 learners 'lost' to the system each year as a result of the policy. The additional lifetime value added²⁶² from a level 2 qualification is given as £43,000 to £54,000. Multiplying these numbers together the impact assessment estimates the cost at £3 billion for each year the policy is carried out. This is an estimate of the present value of the long-term cost to the economy for each cohort. The impact assessment also lists other non-monetised benefits associated with adult learning that could be affected by this policy; these include better health and civic engagement, lower levels of crime and improved parenting skills.²⁶³

Remove the entitlement to a first full level three qualification for those aged 24

The costs and benefits of this policy are much smaller. The impact assessment assumes that it will affect 3,000 learners per year and fewer than 500 will be 'lost' to the system. The net annual cost, using a similar methodology as the level 2 changes, is estimated at £13 to 18 million.²⁶⁴

Overall impact

Summing these costs and benefits over the three years included in the assessment gives a 'best estimate' of the net lifetime cost of both policies of £7.9 billion. The long-term costs to the economy are by far the largest element. These policies will bring a net benefit to the public sector on its own as they reduce public spending. The total cost is much greater than any other cost or benefit quantified in the Bill's *Overarching Impact Assessment* over the same time period. Were the policy to continue past the three years included in the impact assessment then costs would increase accordingly. These figures are a best estimate only. The impact assessment says 'In reality, the range of costs and benefits is significant'.²⁶⁵ The main alternative assumption included in these estimates was around how colleges would react to these changes. The impact assessment of this policy acknowledges that it is very difficult to predict their response. If they fully passed on the funding cuts, the number of learners lost would double, as would the gross costs of the policy. Alternatively, a different response from employers and learners and a change in the 'culture' towards paying fees could reduce the number of learners lost and the costs of the policy.²⁶⁶

Reaction to the proposals

The AoC has made the following statement:

²⁶² The additional contributed to GDP by, in this case, a more highly educated individual

²⁶³ *Ibid.* p 12-17

²⁶⁴ *Ibid.* p 17-19

²⁶⁵ *ibid.* p 20

²⁶⁶ *ibid.* p

Colleges understand the desire of Government to prioritise certain levels of qualifications over others but question whether it needs to set the rules on the face of the Bill.²⁶⁷

7.4 Raising the participation age

Background

Part 1 of the *Education and Skills Act 2008* (ESA 2008) placed a new duty on young people above compulsory school age but under 18 years to participate in a form of education or training. The new duty applies to a young person who has not yet reached 18 and has not attained a Level 3 qualification as defined in section 3 of the Act (i.e. a level of attainment equivalent to GCE at advanced level in two subjects). This does not necessarily mean that young people will stay at school until age 18. The eligible forms of education or training include appropriate full-time education, an apprenticeship, or part-time education or training towards an accredited qualification as part of employment (for details see section 4 of the Act.) Section 173 of the Act provides for commencement. Under section 173 (10) the participation duty will be commenced in two stages: to 17 years in 2013 and to 18 years in 2015.

The proposal to phase in the increase was made in the then Labour Government's 2007 *Raising Expectations* white paper.

We propose first to introduce a requirement to participate until age 17, then later to require participation until 18. We judge that the best moment to raise the participation age to 17 would be 2013. This is the first year in which we will have in place a national entitlement to the new qualifications we plan to introduce. It would mean that the extended requirement would first apply to pupils who start Year 7 in September 2008 – creating a clear expectation of continued participation for those young people right from the start of their secondary schooling. These proposals would apply to all 16 and 17 year olds resident in England.

[...]

we estimate that if we introduce compulsory participation to age 17 in 2013 there would be around 5000 more 16 and 17 year olds in schools that year than there will be next year (the 07/08 academic year), and in 2015, when the age would be raised to 18, there would be around 15,000 more in schools than in 07/08.²⁶⁸

During the debates on the *Education and Skills Bill* in 2008 Conservative and Liberal Democrat spokesmen argued against compulsion and unsuccessfully tried to remove it. Resisting opposition amendments, Labour Ministers argued that they wanted a system that would provide for 100% participation and that compulsion was needed to bring about an essential culture change.²⁶⁹

The Government's policy

The decision to increase the participation age was reaffirmed by the Coalition Government.²⁷⁰ However, the Government want to allow more time for the education system to embed the change, and therefore the enforcement process will be introduced progressively over a

²⁶⁷ AoC Briefing to MPs: Education Bill - 2011

²⁶⁸ Department for Education and Skills, *Raising Expectations: staying in education and training post-16*, March 2007, Cm 7065, p6, paragraph 9 and p31, paragraph 4.43

²⁶⁹ e.g. see *Education and Skills Bill*, Public Bill Committee debates, 31 January 2008 and 7 February 2008

²⁷⁰ [HC Deb 27 July 2010 cc1226W–1227W](#); Treasury, *Spending Review 2010*, Cm 7942, October 2010, paragraph 2.4

longer period. The aim is to allow schools, colleges and local authorities to develop ways to implement the change with the minimal need for enforcement.²⁷¹

Clause 69 would amend section 173(9) and (10) (the commencement provisions) of ESA 2008 to give the Secretary of State flexibility as to the timing of the commencement of elements of Part 1 of that Act. The *Explanatory Notes* state that this change would not affect the commencement of sections 1 to 10 of ESA 2008, including the duty on young people to participate in education and training and the duty on local authorities to promote fulfilment of that duty. These sections would still be brought into force in part by 2013, and fully by 2015. However, the amendment would enable the enforcement provisions to be commenced at a point decided by the Secretary of State. The *Explanatory Notes* comment that the Secretary of State intends to keep under review the appropriateness of commencing these, which provide for a mechanism involving local authority enforcement notices, panels, penalty notices, and ultimately a criminal offence for failure to comply with an attendance notice. The commencement of other duties may also be affected, including those on employers, parents, and the requirement on local authorities to identify those young people not meeting the central duty.

8 Student Finance

8.1 Overview: The Browne Review

The *Higher Education Act 2004* increased university tuition fees and brought in a system of deferred repayment of tuition fees. When the Higher Education Bill was presented in the House of Commons, the Labour Government undertook to review the operation of the new system three years after its introduction. This commitment was fulfilled in November 2009 when the Labour Government appointed an independent panel to review higher education funding and student finance under the chairmanship of Lord Browne of Madingley. The panel's report, *Securing a Sustainable Future for Higher Education*, was published on 12 October 2010.

Library Standard Note SN/SP/5739, *The Browne Review of Higher Education Funding and Student Finance* gives an outline of the review and its recommendations.

8.2 Government response to the Browne Review

The Government's response to the Browne Review was given in a statement by the Secretary of State for Business, Innovation and Skills, Vince Cable, on 12 October 2010, "[Higher Education and Student Finance](#)".²⁷² In the response, he said that the Government endorsed the thrust of the report.

On 3 November 2010, David Willetts, the Minister of State for Universities and Science, made a statement in the House of Commons, "[Higher Education Funding](#)", setting out the Government's proposals for changes to the higher education funding and student finance system.²⁷³ Further detail was given in a [written statement](#) on 8 December 2010.²⁷⁴

Information on the Government's planned reforms to the higher education system is set out on the Department for Business, Innovation and Skills webpage "[Reform for Higher Education and Student Finance](#)".

²⁷¹ *The Importance of Teaching*, paragraph 4.55; The *Economic Impact Assessment* of the schools white paper, paragraph 42 to 45

²⁷² HC Deb 12 October 2010 c155

²⁷³ HC Deb 3 November 2010 c924

²⁷⁴ HC Deb 8 December 2010c19WS

Library Standard Note SN/SP/5791, *The Government's proposals on higher education funding and student finance and their impact on access* outlines the Government's response to the Browne Review and provides comment on their proposals.

8.3 Student loans: interest rates

Background

The first student loans were brought in by the *Education (Student Loans) Act 1990*. These loans were known as mortgage-style loans as repayments were made in fixed instalments over a five year period. Subsequently the *Teaching and Higher Education Act 1998* introduced a new type of student loan – the income contingent loan. Income contingent loans are repaid by graduates when they are in work and earning over a threshold which is currently £15,000 a year.

Library Standard Note SN/SG/1079, *Student Loan Statistics*, gives further background on the current system and provides details on student loan uptake, value owed, repayment and includes arguments for reform.²⁷⁵

The legislation establishing student loans sets out provisions regarding the charging of interest on loans. Section 22(4) of the *Teaching and Higher Education Act* specified that the interest charged on loans should maintain the value of the loan in real terms:

- (4) In relation to loans under this section—
 - (a) the rates prescribed by regulations made in pursuance of subsection (3)(a)—
 - (i) shall be no higher than those which the Secretary of State is satisfied are required to maintain the value in real terms of the outstanding amounts of such loans, and
 - (ii) shall at no time exceed the specified rate for low interest loans; and

One of the recommendations of the Browne Review was that the interest rate charged on student loans should be more progressive and that some graduates should pay a higher, real rate of interest on their loans:

Students with higher earnings after graduation will pay a real interest rate on the outstanding balance for the costs of learning and living. The interest rate will be equal to the Government's cost of borrowing (inflation plus 2.2%). Students earning below the repayment threshold will pay no real interest rate. Their loan balance will increase only in line with inflation. Those earning above the threshold whose payments do not cover the costs of the real interest will have the rest of the interest rebated to them by Government.

The repayment threshold will be reviewed regularly and increased in line with average earnings. As the threshold has not been increased since 2005, there will be a one-off increase at the start of our new system from £15,000 to £21,000.²⁷⁶

Changing the interest rate on student loans affects the amount of interest which is added to the outstanding debt. This means that, for income contingent loans, changing the interest rate has an impact on the length of time it takes to repay a loan and on the total amount repaid. It does not affect the monthly repayments of graduates who are repaying loans. Monthly repayments depend on whether the borrower earns above the repayment threshold and by how much. Currently the repayment threshold is £15,000 and borrowers repay 9% of any income above this. Higher interest rates therefore mean that some graduates will be

²⁷⁵ SN/SG/1079 *Student Loan Statistics* 25 November 2010

²⁷⁶ *Securing a Sustainable Future for Higher Education* p 35

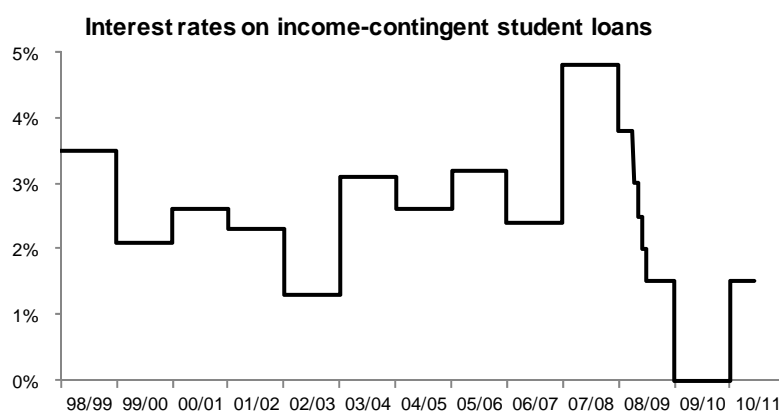
repaying their loans for longer other factors remaining equal. Thus the negative effects of any increase in interest rates falls on graduates who earn over the repayment threshold and would otherwise have repaid their loan in full. Graduates who earn below the income threshold are not affected by *any* change in the interest rate.

Current interest rates

The interest rate on student loans is subsidised by the Government, which allows the rate to be set below commercial levels. The interest rate subsidy cost the Government almost £900 million in financial year 2009-10.^{277 278} The interest rate on student loans is normally set in line with past levels of inflation to ensure that student loan debts retain their real value before any repayments are made. The real value of the loan will only change when repayments are made.

The interest rates for income contingent loans for an academic year are normally based on the rate of RPI inflation in the year to the preceding March.²⁷⁹ There are exceptions to this, such as where the 'low interest cap' applies and when the Secretary of State decides not to charge any interest. Both have happened in recent years

The low interest cap is one percentage point above the highest base rate of a specified group of major banks. This cap is applied to student loans when the cap is below the 'standard' RPI-based interest rate. The large falls in the Bank of England base rates at the end of 2008 and start of 2009 meant that this cap was triggered for the first time. The interest rate on income contingent loans was reduced from 3.8% to 3.0% on 4 December 2008, to 2.5% on 9 January 2009, to 2.0% on 6 February 2009 and to 1.5% on 5 March 2009.²⁸⁰ Past variations in rates are illustrated below:



The all-items RPI was -0.4% in the year to March 2009. The regulations stated that *if* an interest rate were to apply in academic year 2009/10 it would be set at this level.²⁸¹ However the Secretary of State subsequently decided that no interest rate was to apply to income contingent student loans in 2009/10. Previously the Government had stated that it had 'no plans to abandon the consistent use of RPI in calculating interest on student loans'.²⁸² The interest rate in academic year 2010/11 has so far been 1.5% as the low interest cap has

²⁷⁷ Calculated as a percentage of new fee and maintenance loans issued to English domiciled students and EU students studying at English institutions.

²⁷⁸ *BIS resource accounts 2008-09*

²⁷⁹ Taken out by students who started higher education from 1998/99

²⁸⁰ SLC *Income Contingent Loans (ICL) - Maximum Loan Rates*

²⁸¹ *The Education (Student Loans) (Repayment) Regulations 2009*, (SI 2009/470)

²⁸² HC Deb 9 July 2008 c1716W

applied rather than the rate of RPI inflation in the year to March 2010 (4.4%²⁸³). Any increase in the base rate could mean immediate increases in the student loan interest rate.

Arguments for charging higher rates

It has been argued that the interest rate element of the loan subsidy (rather than the write-off part²⁸⁴) is poorly targeted. In *Interest subsidies on student loans: A better class of drain*²⁸⁵ Professor Nicholas Barr says that the subsidy is a poor use of public funding; it is poorly targeted, expensive to Government and 'crowds out' spending on other areas which would improve the efficiency of the system. His calculations show that the 20% of graduates with the lowest lifetime earnings (a group dominated by women) gain most of their benefit from the 25 year write-off and very few low earners gain anything from the interest rate subsidy.

At higher income levels most graduates repay their loans, so they benefit from the interest subsidy - it reduces the duration and total amount of repayments. The very highest earning graduates do not benefit to the same extent, as they pay off their loans much more quickly. The subsidy element on its own becomes 'regressive' overall as most of the benefit goes to the better off. The loan write-off aspect is strongly progressive and makes the overall loan terms progressive.

Professor Barr says that charging a real interest rate equal to the Government's cost of borrowing (currently 2.2%) would reduce this aspect of public spending which could be used to improve the efficiency of the overall system in some of the following ways:

- increasing the number of students
- expanding maintenance loans to cover the full cost of going to university
- increasing fee loans to cover the higher fee cap
- extending loans to part-time students and postgraduates
- offering loans to students in other tertiary education and training more generally

The Government's proposals

Library Standard Note SG/SP/5753, *Changes to higher education funding and student support from 2012/13* summarises the Government's proposals, compares them to the Browne recommendations and the current situation and sets out the impact on different groups of graduates.

Within the wider higher education reform package, the real interest rate is one aspect that will, taken on its own, make offering each £1 of loan cheaper for the public sector. It reduces the percentage of the face value of the loan which is counted as public expenditure. Other changes to the loan terms, particularly the higher repayment threshold, will make each £1 of loan more expensive. Overall the reforms are expected to increase the cost of loans in public expenditure terms from around 28% to around 30%.²⁸⁶ Charging a real interest rate makes it less expensive for the Government to expand the loan system (mainly to cover higher tuition fees as student numbers are set to remain constant²⁸⁷) and to cut much direct public funding for the costs of higher education tuition.

²⁸³ Office of National Statistics series CHAW

²⁸⁴ Loan write-offs for death/disability and incomes not reaching the repayment threshold.

²⁸⁵ N Barr and A Johnson, *Interest subsidies on student loans: A better class of drain*, (CEE DP 114) LSE Centre for the Economics of Education

²⁸⁶ HC Deb 12 January 2011 c379-80W

²⁸⁷ BIS, *Higher education funding for 2011-12 and beyond*, 20 December 2010

Applying a real rate of interest on student loans creates a financial incentive for some graduates to repay their loans early and hence reduce the real value of their repayments. The Government plans to consult on the operation of early repayments to ensure that higher earning graduates cannot buy their way out of loan interest payments without a penalty.²⁸⁸ It is unclear whether or how this might apply to students who do not take out fee loans at all because they have chosen to pay their fees upfront.

Operation of the proposed variable rate

The Browne Report recommended charging an interest rate of 2.2% above inflation for graduates earning above the repayment threshold (raised to £21,000 in 2016) with a cap to ensure that where repayments do not cover interest charges debts do not increase in real terms.²⁸⁹

The Government plans to introduce a variable real interest rate to be charged on top of inflation. This will start at 0% for graduates on the repayment threshold and rise to 3% at a higher threshold of £41,000 starting from 2016. The BIS *Student Loan Repayment Ready Reckoner* assumes a straight line increase (illustrated opposite). This change will affect higher earners to a greater extent as they will face the highest interest rates. It means that any graduate making repayments will see their outstanding debt fall in real terms. However, a graduate with a £30,000 loan would need to earn around £42,000 in 2016/17 to see the outstanding balance fall in cash terms.²⁹⁰ The loan model also assumes that the maximum real interest rate will apply to loans between when they are taken out and the date when repayment is due (April after the course is completed). This would mean the real value of debt when repayments become due would be just over 6% above the value of the loans when taken out.²⁹¹ As with other changes to loan amounts and interest rates, the greatest impact of this will be on middle and higher earning graduates.



The Institute for Fiscal Studies has said that, compared to the proposals set out by Lord Browne, the Government's proposals were both more progressive and more complex.²⁹²

The Bill

Clause 70 amends the power given to the Secretary of State in section 22(4) of THEA 1998 to make regulations setting interest rates. Section 22(4)(a) provides that the rates set must be no higher than the rates required to maintain the value of the loan in real terms or the amount specified for low interest rate loans, whichever is the lower.

The clause gives Secretary of State wider power to set interest rates in regulations, provided that the rates set do not exceed those commercially available. This new cap will ensure that section 8 of the *Sale of Student Loans Act 2008*, which exempts student loans from the regulatory regime in the *Consumer Credit Act 1974*, continues to be compliant with EU law.

²⁸⁸ BIS, *Reform for higher education and student finance*, 3 November 2010

²⁸⁹ *Securing a sustainable future for higher education* –An independent review of higher education funding & student finance

²⁹⁰ Assumes a debt at the statutory repayment date of £33,500 after 3% real interest applied to loan on top inflation linked rate of 2.75%.

²⁹¹ *BIS Student Loan Repayment Ready Reckoner*

²⁹² Institute of Fiscal Studies *Higher Education Reforms: Progressive but Complicated with an Unwelcome Incentive*, briefing note 113

Subsection (3) sets out the general rule that the new limits on interest rates will only apply to borrowers starting courses on or after 1 September 2012, except in prescribed circumstances.

Reaction to the proposals

The Russell Group have published a [Comment on the Education Bill student proposals](#) which is in favour of a progressive interest rate:

A mechanism of variable interest rates, where higher earning graduates pay a real rate of interest, whilst lower earners continue to enjoy a lower, subsidised interest rate, will be more progressive than a single rate of interest for all, whilst also making the scheme more affordable for the government.²⁹³

University Alliance have provided a response to the Bill [The 2011 Education Bill: a higher education perspective](#) which is in favour of a real rate of interest:

To be clear, a system that charges real interest rates to cover the cost of borrowing to graduates earning over £21,000, whilst providing targeted subsidies to protect low earners is fairer and more progressive than the current system.²⁹⁴

However other bodies have been critical of the way these proposals have been put into a Bill which is largely a schools bill. The 1994 Group has made the following response:

Today's news on student loans has been quietly slipped into a bill largely unconcerned with higher education, and leaves many questions unanswered. The 1994 Group had recommended a real rate of interest be applied to student loans so that subsidies could be targeted towards the lowest earning graduates. The measures in today's legislation look like they uphold these principles. However, we need to see more of the detail. In particular, the rate of interest applied while students are still studying needs to be made clear. All of us in the sector need to be able to scrutinise the government's proposals on interest rates, so we look forward to seeing more on the full scope of the changes."²⁹⁵

The Universities and Colleges Union (UCU) has also commented on the inclusion of these proposals in the Education Bill:

UCU today accused the government of ducking further scrutiny of its 'punitive' plans for university funding after it added reforms to the student loans system in England to an education bill that is dominated by school reforms.

[The bill](#), tabled in the House of Commons this morning, primarily concerns itself with bad behaviour in the classroom and new powers for teachers to exclude unruly pupils. However, the government has added on legislation that allows variable rates of interest on student loans.

UCU general secretary, Sally Hunt, said: 'The general public will see this for what it is – a stealth tax on learning and achievement – and it doesn't matter what piece of legislation the government tries to hide it in. Sneaking these plans into a schools bill is yet another indication that the government has lost the argument on student funding and is terrified of further scrutiny of such a punitive policy.

'Graduate unemployment is at a 10-year high, yet the government has introduced

²⁹³ Email sent to the Library from the Russell Group

²⁹⁴ Email sent to the Library from University Alliance

²⁹⁵ Email sent to the Library from 1994 Group

policies to increase student debt to record levels and then charge even higher rates of interest. Surely now the government will stop trying to spin these damaging and unfair policies as progressive.²⁹⁶

The National Union of Students has been critical of the changes:

Aaron Porter, president of the National Union of Students, said higher interest rates would hit the poorest students the hardest.

"Wealthier students, who do not have to take out loans, will escape higher interest charges," he said.

He warned that the new system also breaks Islamic teachings which forbid taking out loans that incur interest charges. Ministers risked punishing those with certain religious beliefs, Porter said.²⁹⁷

Million + (a university think tank which represents modern universities) has criticised the proposals for creating uncertainty about the rates to be applied in the future:

Pam Tatlow, chief executive of university think tank million+, said: "The plans tagged on to the Education Bill give the Secretary of State free rein to set uncapped and commercial rates of interest on student loans.

"There is no commitment to protect the poorest graduates from commercial rates and no promise, as previously announced, to cap the interest rate at 3% plus RPI or set a tapered rate of interest for those earning between £21,000 per annum and £41,000 per annum so that only the very highest-earning graduates will be subjected to higher interest rates.

"Students and their parents are being left in the dark about what interest rates might be applied to their loans once they graduate. An interest rate of RPI alone could add well over £1,000 a year to a student's debt, given the much higher levels of tuition fees that Parliament voted through at the end of last year."²⁹⁸

The AoC made the following statement:

Colleges provide higher education to 168,000 students, often from 'widening participation' backgrounds and therefore will want to be sure that the interest rate reflects the income of these students when they graduate.²⁹⁹

8.4 Limit on student fees: part-time courses

Background

In 2009/10 there were just under 750,000 part-time students enrolled on higher education courses at higher education institutions in England; they made up 36% of all students at these institutions. In the last two years their numbers have increased by 6.4% compared to 10.4% for full-time students. Just over 30% of these part-time students were postgraduates and almost 7% of all part-time students were overseas students.³⁰⁰ In 2008/09, 37% of part-

²⁹⁶ Universities and Colleges Union "[Government ducking scrutiny of university funding plans by hiding loan reforms in schools bill](#)" 27 January 2011

²⁹⁷ "[Education bill lets government order closure of failing schools](#)", *Guardian*, 27 January 2011

²⁹⁸ "[Student loan changes hidden in schools bill](#)" *Independent* 27 January 2011

²⁹⁹ AoC *Briefing to MPs: Education Bill - 2011*

³⁰⁰ Higher Education Statistics Agency *Higher Education Student Enrolments and Qualifications Obtained at Higher Education Institutions in the United Kingdom for the Academic Year 2008/09*

time undergraduate students at English higher education institutions were on first degree courses.

There are notable differences in the background of part-time students compared to full-time students. Part-timers are more likely to be aged over 25 years, female, white and studying for 'other' postgraduate or 'other' undergraduate qualifications. Open University students made up 23% of all part-time students in the UK in 2008/09.³⁰¹

In the academic year 2008/09, there were just under half a million part-time home and EU students on undergraduate courses at English higher education institutions.³⁰² This is the group which could potentially be affected by the Bill's provisions. Their combined course fees were worth £256 million.³⁰³ In academic year 2007/08, the average (median) annual tuition fee for part-time English-domiciled students was £800.³⁰⁴

Currently there are significant differences between support for part-time students and full-time students. Tuition fees for full-time students are capped at £3,290 per year and full-time students have access to loans for tuition fees which can be repaid on a deferred basis. In contrast part-time students pay unregulated fees, they are not eligible for student loans and fees have to be paid up-front.

Information on student support for part-time students is available in a publication by Student Finance England called [A guide to financial support for part-time students in higher education 2010-2011](#).³⁰⁵ Part-time students may be eligible for a fee grant of up to £1,230 and a course grant of up to £265 depending on their household income and intensity of study. Students currently have to study for 50% or more of the full-time equivalent course to receive student support and students must study 75% or more of the full-time equivalent course to receive the maximum student support.

The Browne Review criticised support for part-time students and made recommendations:

The lack of support for part time study makes it much more difficult for this country to catch up with other countries on the skill levels of the existing workforce. Individuals who are already in work and do not have a higher education qualification are usually unlikely to give up their jobs and enter full time study. Part time study may be a realistic option for them, but access to part time study is hampered by the lack of Government support.³⁰⁶

[...]

We recommend that the same upfront support for the costs of learning is extended to part time students as well. Higher education will be free at the point of entry for all students, regardless of the mode of study, giving them more choice about how they choose to study – and where.

[...]

³⁰¹ Higher Education Statistics Agency *Students in higher education institutions 2008/09*

³⁰² *Ibid*

³⁰³ Higher Education Statistics Agency *Resources of higher education institutions 2008/09*

³⁰⁴ Department for Innovation, Universities and Skills research report 99/05, *Student Income and Expenditure Survey 2007/08 English-domiciled Students*, Johnson C et al, National Centre for Social research

³⁰⁵ Student Finance England [A guide to financial support for part-time students in higher education 2010-2011](#)

³⁰⁶ [Securing a sustainable future for higher education](#) p 22

We propose therefore that entitlement to support for costs of learning will begin at an intensity equivalent to one third of the full time equivalent – 33%. This is a simpler measure for students and institutions than the 30% threshold mentioned in the evidence as it can be readily translated into an equivalent number of modules of study. The maximum period of support will be nine years.³⁰⁷

Government proposals on part-time students

Information in the *Overarching Impact Assessment of the Education Bill 2011* states that the Government plan to cap the amount that higher education institutions can charge part-time students for tuition fees; the Government is proposing an upper cap of £6,750 and a lower cap of £4,500 on fees.³⁰⁸ The *Overarching Impact Assessment* comments that ‘the purpose of these measures is not to reduce the amount that higher education institutions (HEIs) currently charge part-time students, but to mitigate the risk that HEIs sharply increase their charges, following the proposed changes to the loan arrangements for part-time students’.³⁰⁹

As part of Government’s package of higher education reforms the Government plans to extend fee loans to part-time undergraduate students. This funding will replace means-tested tuition grants which around 15% of all part-time students currently receive.³¹⁰ It is estimated that around 175,000, or one-third, of all part-time students could be eligible for a fee loan.³¹¹

The cuts to direct public funding for HEIs channelled through the higher education funding council will also apply to part-time students. Currently just over £400 million is paid through the funding council for 109,000 full-time equivalent part-time students.³¹² The funding council provides direct support for around 240,000 part-time students (headcount).³¹³ It is possible that cuts in funding could result in fee rises.

In December 2010, in response to concerns expressed by institutions, the Government announced that they would reduce the intensity of study required to access part-time student support:

These changes have been welcomed by many as a critical measure in redressing long-standing discrimination against part-time students. However, discussion with the higher education sector has highlighted that the proposed threshold of 33% intensity for full loan entitlement may inadvertently deprive a significant number of learners from receiving support. We therefore propose that the level of intensity be reduced to 25%—that is, any eligible student studying for more than a quarter of their time will be eligible for full loan support for their tuition costs. This will better reflect the way that many part time courses are structured.³¹⁴

The increasing number of mature students returning to higher education and the on-going need for upskilling of the workforce has made reform of part-time student support an increasingly important aspect of Government higher education policy.

³⁰⁷ *Ibid* p 36

³⁰⁸ *Overarching Impact Assessment for the Education Bill 2011* p 39

³⁰⁹ *Ibid*

³¹⁰ Department for Business, Innovation and Skills (BIS) [Interim equality impact assessment –Urgent reforms to higher education funding and student finance](#)

³¹¹ *Ibid*; HC Deb 18 January 2011 c763-764W

³¹² *October 2010 grant announcement*, HEFCE

³¹³ *Student numbers from HESES and HEIFES surveys 2009*, HEFCE

³¹⁴ HC Deb 8 December 2010 19WS

The Bill

Clause 71 amends the definition of "course" in section 41(1) of the *Higher Education Act 2004* to remove the exclusion of part-time courses from that definition. The effect of this amendment is that references to "course" in Part 3 of the *Higher Education Act 2004* will include part-time courses. This change will allow the Secretary of State to cap the amount that higher education institutions can charge part-time students in fees, as can currently be done in relation to full-time courses.

The Secretary of State will be able to specify in regulations under section 24 the amounts which can be charged for part-time courses, and to prescribe the type of part-time courses which are subject to these amounts. This will ensure that part-time undergraduate students can be treated in a way which is commensurate with the treatment of full-time undergraduate students. The maximum amount that higher education institutions may charge part-time undergraduate students will be set through annual regulations.

Subsection 2 states that these provisions will only apply to students entering higher education on or after September 2012. Part-time students will be able to defer contributing towards tuition costs until they are in employment and earning over £21,000 a year.

Issues

Inadequate support for part-time students

For many years commentators have been critical of the support available for part-time higher education students. An article in the *Times Higher Education* on 10 June 2010 summarised the long running debate over support for part-time students:

Forgotten, ignored and stuck "at the bottom of the food chain", they are the Cinderellas of the higher education sector.

Part-time students make up almost 40 per cent of the UK's student population and more than half a million of them study in England's universities.

But, despite their numbers, those who care about the subject have argued for many years that part-time undergraduates get a raw deal, often suffering from inadequate financial support and a lack of attention to their needs.

Until recently, the government had shown little interest in part-time students. They were left on the sidelines: Labour's 2003 White Paper, *The Future of Higher Education*, for example, gives them relatively little attention.

This does not mean that there have not been repeated attempts to bring them to the government's notice.

In 2007, MPs on the Education and Skills Committee called for the government to review the position of part-time students "as a matter of urgency".

In the same year, Lord Dearing, who led the influential 1997 review of higher education, expressed disappointment that his committee's proposal for a student support system that would underpin lifelong learning by making choices between full-time and part-time study "financially neutral" had not been adopted a decade on.

The response from the government grew familiar: Labour had "substantially" increased support for part-time students since coming to power, and many part-time students had financial support towards the cost of their education from their employers.

It is true that before 1997 part-time students were ineligible for any government-funded financial support whatsoever.³¹⁵

A report by Universities UK in July 2010, *The supply of part-time higher education in the UK*³¹⁶ recommended that support for part-time students should be reformed:

The final, and very clear message from this study is the need to reform financial support for students. This is needed not only to encourage students to participate but also to expand part-time higher education.

Only a very few students (around 15 per cent) receive government-funded financial support, and for a sizeable proportion of them, it is not enough. Universities are aware that part-time students struggle to pay their fees and many institutions have up till now refrained from increasing fees pro-rata to full-time fees.

Arguably, many part-time providers have already lost out of the increased revenue arising from the introduction of variable fees for full-time students in 2006. If tuition fees for full-time students are increased following the current review universities will be under even more pressure to raise the fees that they charge part-timers.³¹⁷

The BIS *Interim Impact Assessment - Urgent reforms to higher education funding and student finance* acknowledged the possibility that the withdrawal of direct funding for part-time courses might lead to an across the board increase in part-time fees.^{318 319} Some potential part-time students could therefore be faced with higher fees and no fee loans.

Cost of loans for part-time students

It has frequently been suggested that part-time students should have access to student loans. However as there are currently no regulations stating how much universities or colleges can charge in tuition fees for most part-time students, extending student loans to part-time students could therefore be costly to the public purse if fees for part-time students remain uncontrolled.

The net effect of the changes to funding for part-time students will be to cut public expenditure. The total saving was estimated at just over £300 million by the end of the current spending review period.³²⁰ The Government estimate that the decision to extend eligibility from courses of 33% or above, to those of 25% or above will have reduced these savings by a small amount.³²¹

Information on the resource cost³²² of extending loans to part-time students was given in answer to a Parliamentary Question on 19 January 2011:

³¹⁵ "The Cinderella students" *Times Higher Education* 10 June 2010

³¹⁶ Report produced by Professor Claire Callender, Anne Jamieson - Birkbeck, University of London, and Geoff Mason - National Institute of Economic and Social Research and for Universities UK

³¹⁷ *Ibid* page 64

³¹⁸ BIS *Interim impact assessment –Urgent reforms to higher education funding and student finance*, 26 November 2010, Table 9

³¹⁹ BIS *Interim equality impact assessment –Urgent reforms to higher education funding and student finance*, November 2010, p18

³²⁰ BIS *Interim equality impact assessment –Urgent reforms to higher education funding and student finance*

³²¹ Written ministerial statement 8 November 2010 *Higher education funding and student finance* (HC Deb 8 December 2010 19WS)

³²² The subsidy element of the loan or the proportion of the face value which is counted as public spending

Students: Finance

Mr Thomas: To ask the Secretary of State for Business, Innovation and Skills what estimate he has made of the cost to the public purse of offering tuition fee loans to part-time students in each of the next four years; and what proportion of the face value of those loans this cost represents in each such year. [33949]

Mr Willetts: The costs of extending tuition fee loan access to part time students will depend in large measure on the decisions higher education institutions take in setting their charges for tuition. These costs will be offset by the deficit reducing savings made through the phased withdrawal of direct teaching grant for part-time students.

Taking the extension fee loans to part times students in conjunction with all the other changes being made to the student finance system, we estimate the resource account budget (RAB) charge will be around 30% overall. However this will be dependent on the level of fees that institutions decide to charge.³²³

Professor Callender warns in the Universities UK report *The supply of part-time higher education in the UK* that changes to higher education funding could result in rising fees for part-time students:

[...] she warned that part-time students ineligible for loans under the new system could see their fees increase at a faster rate than their full-time counterparts because many universities currently do not charge a "pro rata" price.

In addition, thousands of part-time places are currently subsidised by teaching-grant money that is going to be cut.³²⁴

Universities UK have said that extending loans to part-time student could have unintended consequences:

Extending loans could be a risky strategy and may have unintended consequences, especially if full-time fees rise considerably. A 2006 study for Universities UK found that part-time students had very mixed attitudes towards loans; their take-up of loans is likely to be lower than that of their full-time peers. If take up is low but students and employers are faced with far higher tuition fees this could reduce the numbers of part-time enrolments and employer-sponsored part-time provision, and eventually mean that provision gets cut back.³²⁵

Effect of changes on demand for part-time courses

It has been suggested that introducing loans for part-time students could greatly increase the number of part-time students:

Patrick McGhee, vice-chancellor of the University of East London, said staff had already seen an increase in inquiries about [part-time courses](#), and expected to see more from students who had been unable to secure full-time places this year.

[...]

³²³ HC Deb 19 January 2011 c834

³²⁴ "[Part-time pain: only one third of students will be eligible for loans and support](#)" *Times Higher Education* 9 December 2010

³²⁵ Universities UK *The supply of part-time higher education in the UK* page 64

The total number of applications for part-time undergraduate degrees was up 9% over the last year, but among the under 25s the increase was 22%.³²⁶

However the BIS *Interim Impact Assessment* of the higher education reforms said the effects of the changes on demand for part-time study were difficult to gauge, it also commented that as many students would not be eligible for fee loans demand for places might even go down:

The exact consequences of these policy changes and reductions in Government spending are difficult to assess, and will crucially depend on the reaction of part-time students and institutions to the proposed changes. As mentioned above, there is some evidence to suggest that the effect of withdrawing fee and course grants for part-time students will not have a massive impact on the demand for part-time study as the main cost of part-time study are the earnings foregone whilst studying. At the same time, there is evidence from Full-Time students to suggest that participation is not adversely affected by increases in tuition fees (which are likely to happen if teaching grant for institutions is reduced) as long as loans are provided to cover the tuition fees and no one has to pay up front. So, as far as students eligible for the fee loan are concerned, we would not expect a negative impact on the demand for part-time study.

However, we estimate that around two thirds of part-time students will not be eligible for fee loans. At the same time, the withdrawal of teaching grant might mean that fees are increased across the board (including for students not eligible for fee loans). This could have a negative impact on part-time participation overall.³²⁷

Information given in answer to a parliamentary question on 1 November 2010 also stated that future demand was difficult to forecast:

Higher Education: Part-time Education

Mr Thomas: To ask the Secretary of State for Business, Innovation and Skills what forecast he has made of the number of part-time students studying at universities in England in each of the next five years; and if he will make a statement. [19758]

Mr Willetts: We have no reliable basis to make such estimates. HEFCE-funded student places are allocated in full-time equivalent terms with the mix of students between full-time and part-time courses being an institutional decision. The Higher Education Funding Council for England (HEFCE) will receive its annual grant letter for 2011-12 by January 2011. It will set out the number of funded places for that year. Plans for the longer term will be set out in the Higher Education White Paper this winter. We share Lord Browne's conclusion that we should extend the exemption from upfront fees to part-time students who have been unfairly discriminated against hitherto³²⁸

Reaction to the proposals

Million+ published a report *Fair Funding for All* which called for increased support for part-time students:

The blueprint submitted by Million+ calls for a system that reflects the changing student population - in particular the more than two-in-five students who are part-time.

³²⁶ "Universities expect surge in part-time studying with potential relaxing of student loan rules" *Guardian* 16 August 2010

³²⁷ BIS *Interim Impact Assessment Urgent Reforms To Higher Education Funding And Student Finance* page 21

³²⁸ HC Deb 1 November 2010 c619-620

The current funding arrangements have paid little attention to part-timers.

While full-time students are not expected to pay back tuition fees until after they graduate, part-timers are expected to pay tuition fees up-front.

The report, *Fair Funding for All*, says part-time students receive an average grant of £360 per year - while full-time students receive an average of £1,405.

Full-time students receive an average maintenance loan of £3,758, while part-time students do not have access to student loans.

Les Ebdon, chair of Million+, criticised the "inequality" of the funding system and says this has stood in the way of broadening entry to university and expanding more flexible ways of studying.³²⁹

The proposals on support for part-time students have been welcomed Universities UK:

Professor Steve Smith, President of Universities UK, said: "Universities UK was pleased with Lord Browne's recommendation that loans for tuition should be expanded to part-time students, so that higher education is free at the point of entry for these students as well.

"We recommended to Lord Browne that some or all of the financial support available to full-time undergraduate students should be extended to those studying part-time. Part-time students will have a vital role to play in meeting the skills needs of the economy over the coming years, so it's essential they receive adequate support."³³⁰

The AoC has said:

The vast majority of the higher education students in FE Colleges study part-time therefore we would welcome further discussion with Government regarding this proposal.³³¹

The Open University has said that it warmly welcomes the commitment in the Education Bill to ensuring "that part-time undergraduate students can be treated in a way which is commensurate with the treatment of full-time undergraduate students". However they have concerns with some of the details of the new system:

We are greatly encouraged by Lord Browne's recommendation to establish parity for the four in ten students in England who study part-time; the subsequent cross-party backing this received and the government's decision in December 2010 to reduce the study intensity at which loans for the costs of study become available from 33% to 25%. We do however, have three primary issues which we would draw to the attention of Parliamentarians and urge the government to clarify:

1. Paragraph 346 of the Explanatory Note which accompanies the Education Bill reads: "These [loans] will be available to pay tuition costs in the case of eligible part-time students who are on designated courses". Ministers have made a commitment to creating a 'mode-blind' system of funding and we would therefore, urge that the Higher Education White Paper which comes before the House this Spring makes it explicit that the part-time courses eligible for

³²⁹ "Universities say that part-time students deserve fairer deal", *BBC News*, 13 January 2010

³³⁰ Birkbeck University News Release "*Part-time study could grow following university funding proposals*" 26 October 2010

³³¹ AoC *Briefing for MPs Education Bill – January 2011*

support are consistent with the full-time sector to ensure a truly flexible system in the future.

2. A later sentence in paragraph 346 of the Education Bill Explanatory Note reads: "Part-time students entering from 2012 will be able to defer contributing towards tuition costs until they are in employment and earning over £21,000". This creates a level of uncertainty with regards to the position of part-time students who are in employment and earning £21,000 during their study. In order to uphold the principle of higher education being free at the point of study, we would be keen for the Government to assure the sector that part-time students will be treated on a par with full-time higher education in relation to repayment arrangements.³³²

9 Powers of National Assembly for Wales

Part 3 of the *Government of Wales Act 2006* gives the Assembly the power to pass legislation known as Assembly Measures. Assembly Measures are able to make any provision that could be made by an Act of Parliament, subject to the restrictions contained in the 2006 Act. The Assembly may pass Measures in relation to the "matters" which are listed in the "fields" in Part 1 of Schedule 5 to the 2006 Act.

Clause 72 would amend part 1 of schedule 5 to the *Government of Wales Act 2006* to give the Welsh Assembly Government the power to make measures in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce.

Clause 73 gives the Welsh Assembly Government the powers to make measures in relation to the funding of pre-16 education or training. The *Explanatory Notes* to the Bill state that this would enable the National Assembly for Wales to legislate in relation to the financing of the entire education system in Wales apart from higher education: with this framework power the Assembly will be able to make a measure that would allow for the funding of the education functions of a local authority, the funding of schools and the funding of independent schools in Wales.

The Welsh Assembly Government has tabled a [Memorandum on Framework Provisions for the National Assembly for Wales](#), which sets out in detail the background and context relevant to clauses 72 and 73 of the *Education Bill*.

A referendum is due to take place in Wales on 3 March 2011 to decide whether to extend the subject matter over which the National Assembly for Wales can pass laws. If this results in a 'yes' vote, then the Assembly will be able to legislate on education in broad terms, including the matters devolved by the Bill. However, if the result is a 'no' vote, then the framework powers in the Bill will allow the Assembly to legislate on regulation of teachers and the education workforce in Wales, and on the funding of the pre-16 education system in Wales.

³³² Email to the Library from the Open University

Appendix 1 - International evidence used in the schools white paper

The schools white paper, its supporting evidence document *The Case for Change*³³³ and the impact assessments for the Bill and the white paper all make use of international evidence, particularly the OECD's Programme for International Student Assessment (PISA). This evidence is used in three broad areas: to support the case that standards in England have fallen behind those in other countries, to highlight relatively large gap in performance between the best and worst performing pupils in England and to identify policies that are linked to better performance in other countries.

PISA was first carried out in 2000 and there have been subsequent assessments in 2003, 2006 and 2009. Over this period the number of countries included in the assessments and whose results were published has grown from 32 to 65. The OECD set up PISA to monitor student achievement on a regular basis and within a common framework that is internationally agreed upon. Its main purpose is to assess the knowledge and skills of 15 year olds in three broad areas or subject domains: reading, mathematics and science. It aims to assess the extent to which young people have attained important knowledge and skills needed in adult life, rather than just how well they have mastered particular school subjects.

The headline results of PISA give average scores for each country in each subject domain, the proportion of pupils at each performance level, the range of scores within country and much more analysis of the results on their own. Alongside pupil assessments PISA also collects detailed information about pupil characteristics, their family background, family type, their views and attitudes, details of what happens in the classroom, school types, school resources and policies and practices at a school and national level. This means that as well the detailed results of pupil performance, PISA also produces a substantial amount of analysis on the links between these underlying factors and pupil performance. All the PISA reports and underlying data can be found at www.pisa.oecd.org.

PISA results are published at both a national (UK) level and for England on its own. Here the national levels figures are generally used so that national results for the UK are compared with other nations. The exception is part of the section on gaps in performance.

9.1 Evidence on the UK's relative position

The schools white paper said:³³⁴

In the most recent PISA survey in 2006, England fell from 4th to 14th in science, 7th to 17th in literacy, and 8th to 24th in mathematics.

This was repeated in *The Case for Change* and the Bill's Overarching Impact Assessment.³³⁵

The White Paper was published before the latest PISA results were published from the 2009 assessment. The headline 2009 results showed that England was ranked 16th out of 65 on science, 25th on reading (literacy) and 28th on mathematics.³³⁶ A summary of the 2009 headline results are included in a table at the end of this section. The OECD estimates a range of ranks to account for the intrinsic variability in survey-based results. These give the following ranges³³⁷ for the UK in 2009: 19th-27th for reading, 23rd-31st for mathematics and

³³³ DfE, *The Case for Change*, November 2010

³³⁴ DfE, *The Importance of Teaching. The Schools White Paper 2010*, para. 4.36

³³⁵ DfE, *Overarching Impact Assessment for the Education Bill 2011*, January 2011

³³⁶ OECD, *PISA 2009 Results: What Students Know and Can Do: Student Performance in Reading, Mathematics and Science (Volume I)*, December 2010




³³⁷ 95% confidence range for rankings

14th-19th for science.³³⁸ These are a more accurate indication of what can be concluded about the UK's relative position in 2009, albeit one which is less precise. The rankings tell us little on their own. The OECD has said in the past that 'PISA is much more than just a ranking'.³³⁹ The number of countries taking part in PISA and whose results were published has grown from 32 in 2000 to 65 in 2009. Most but not all of the new countries have been from outside the OECD and have had below average results. For instance the 2009 assessment included high performing Singapore and Shanghai for the first time.

Some of the innate limitations of country rankings can be overcome by also looking at a country's average score for each subject. These are compared to the OECD average and a calculation is made to judge whether the difference is statistically significant³⁴⁰ or not. The 2009 results for the UK were not significantly different from the OECD average in reading and mathematics and above the average in science. The table below shows that the UK's 2009 headline results were broadly the same as in 2006, but clearly below the levels achieved in 2000. In the past, the then Department for Children, School and Families has repeated OECD by saying that comparisons of results between different PISA years is not strictly valid as the nature of tests has varied.³⁴¹

Summary of headline UK PISA scores and relative position

	2000	2003	2006	2009
Reading				
Score	523	-	495	494
Simple rank	7/32	-	17/57	25/65
Range of ranks	3-10	-	14-22	19-27
Mathematics				
Score	529	-	495	492
Simple rank	8/32	-	24/57	28/65
Range of ranks	3-9	-	22-27	23-31
Science				
Score	532	-	515	514
Simple rank	4/32	-	14/57	16/65
Range of ranks	2-7	-	12-18	14-19

	Statistically significantly above the OECD average
	Not statistically significantly different from the OECD average
	Statistically significantly below the OECD average

Note: 2000 ranks based on the 32 countries which initially took part
The 2003 results were not deemed sufficiently robust to publish alongside results from other countries

Source: www.pisa.oecd.org

There have been ongoing problems with UK school and pupil participation rates in PISA. Clause 20 of the Bill is intended to address these by giving the Secretary of State powers to require schools to take part in PISA and other international surveys. In 2003 the UK sample response rate fell below OECD standards and it was judged that the results could not be relied upon to give an accurate comparison with other countries or the UK's scores from 2000.³⁴² This is why the UK's 2003 results are not included in the PISA reports. There were similar problems with response rates in the first assessment in 2000. The response rates for this survey were below the OECD standards, but after further investigation into possible bias

³³⁸ OECD, *PISA 2009 Results: What Students Know and Can Do: Student Performance in Reading, Mathematics and Science (Volume I)*, December 2010

³³⁹ OECD press release 27 November 2007, *Finland takes number one spot in OECD's latest PISA survey, advance figures show*

³⁴⁰ Unlikely to be down to chance

³⁴¹ DCSF, *Statement on PISA 2006*, 4 December 2007

³⁴² DfES, *Programme for International Student Assessment (PISA) 2003: England Sample and Data*

in the results the PISA Technical Advisory Group and the OECD concluded that the results could be published.³⁴³ Subsequently the OECD has excluded the UK's 2000 PISA results from their analysis which compares results over time. They state:³⁴⁴

For PISA 2006 and PISA 2009, more stringent standards were applied, and PISA 2000 and PISA 2003 data for the United Kingdom are therefore not included in comparisons

The gap in 2003 mean the UK's results in 2000 stand out as noticeably different from the 2006 and 2009 findings. This, along with the problems with response rates in 2000 and the OECD comments, have led some to conclude that the higher performance shown in 2000 was a 'statistical' blip and not a real difference.³⁴⁵ This debate is about whether or not the UK's results have slipped from generally above (OECD) average to around average, or have remained around average for the whole period. Taking the last two assessments on their own, while performance the UK is not below average, it is clearly behind levels in some other PISA countries.

Other international comparisons

PISA is not the only well-respected comparison of international education standards. The International Association for the Evaluation of Educational Achievement runs two studies which England has taken part in that are particularly aimed at looking at trends in standards:

- Trends in International Mathematics and Science Study (TIMSS) which has looked at pupils after four and eight years of formal schooling in four year intervals since 1995
- Pupils International Reading Literacy Study (PIRLS) which has looked at pupils after four years of schooling in 2001 and 2006

Results and background of these studies can be found at: timss.bc.edu/

There have again been some problems with the response rate among schools and pupils in England for these studies, but none that stopped the results being published. As with PISA much of the value of this research is in the detail they give, but looking at similar types of indicators as the headline PISA results, they show.³⁴⁶

- In 2007 average pupil achievement in England in mathematics and science was above the international average among pupils in fourth grade (aged 10-11) and eighth grade (14-15). England ranked in the top ten countries on both measures. 36 countries were included in the fourth grade results and 49 in the eighth grade results.
- Mean science scores of fourth grade pupils improved between 1995 and 2007 and this was judged to be statistically significant.
- Mean maths scores improved significantly for both fourth and eighth grade pupils between 1995 and 2007. Performance was below average in 1995 and significantly above in 2007. England's ranking improved on both despite the increased number of participating countries.
- England's mean reading literacy score for 4th graders fell significantly between 2001 and 2006 and its ranking went from among the highest to just above median.

³⁴³ *Knowledge and skills for life: First results from PISA 2000*, annex A OECD

³⁴⁴ OECD, *PISA 2009 Results: What Students Know and Can Do: Changes in student performance since 2000 (volume V)*, December 2010

³⁴⁵ See for instance "World domination: it's a nice idea, but is it the right one for us?" *The Times Educational Supplement*, 28 January 2011, pp30-31

³⁴⁶ IEA, *Progress in International Reading Literacy Study (PIRLS) 2001*; IEA, *Trends in International Mathematics and Science Study (TIMSS) 2007*; IEA; *Overview of PIRLS 2006 Results*

Only the PIRLS finding was quoted in the schools white paper in this context.³⁴⁷

The countries taking part in these studies tend to be less dominated by the OECD and include some from Africa and Asia (other than Japan, Korea and China) therefore ranks cannot be compared to PISA rankings. The headline findings set out above cover only a tiny fraction of the comparisons that could be made. They show a somewhat different relative level of performance and trends in results for England than the UK results in PISA. More fundamentally they illustrate that the international evidence of this type is substantial and results from one study will not always back up those in another. Using a single measure or source will only give a partial picture.

9.2 Gaps in attainment in the UK

The schools white paper and associated documents highlighted the wide variation in school attainment in England and in some cases used international evidence for this or to put it in context. These gaps were also linked to the social background of pupils. *The Case for Change* said:

...the gap between rich and poor in Finland was much narrower than in England. England had one of the highest gaps between high and low performing pupils and a strong relationship between social background and performance. 13.9% of the variance in performance of pupils in England could be explained by their social background, as compared to just 8.3% in Finland and 8.2% in Canada. For a very long time in this country, the 'long tail of underachievement' has been tolerated; sometimes it has been seen as an inevitable consequence of a system which does a very good job for some. Too often in England it has been thought that there is a choice between an excellent system for the most able and one which serves the least able well; or else that in order to narrow gaps and expand the number who succeed, it is necessary to 'dumb down' the standards expected. But the international evidence shows that it is not so: in Finland, Canada, Japan and Korea, for example, not only are average standards higher than those here, but so too achievement gaps are narrower.³⁴⁸

The Bill's Equalities Impact Assessment said:

We have one of the most stratified and segregated school systems in the world, with a gap between our private schools and the state system wider than in almost any other developed country. In 2006, England came near the bottom of a list of 57 countries for educational equality in an OECD report, and the gap is still vast. It is simply unacceptable that in the most recent year for which we have data, of the 80,000 students in one year eligible for free school meals, just 40 went on to Oxford or Cambridge universities – fewer than some private schools manage to send by themselves.

On an ethical level this gap between the rich and the poor is indefensible. But reducing inequality is not only the guiding ethical imperative of our education policy; it is an absolute necessity if we are to compete economically on the global stage. The truth is that many other countries in the world are improving their schools faster than we are. Many other countries have much smaller gaps between the achievements of rich and poor than we do. But most importantly, the very best-performing education systems show us that there need be no contradiction between a rigorous focus on high

³⁴⁷ *The Importance of Teaching*, para. 4.36

³⁴⁸ *The Case for Change*, para. 3

standards and a determination to narrow gaps between pupils from different backgrounds.³⁴⁹

The 2006 PISA results showed that on some, but not all measures the UK had a greater variation in results and/or a closer connection between socio-economic background and results. For instance the statistical ‘fit’³⁵⁰ between these two variables in the UK was no different in statistical terms from the OECD average on any of the three subject domains. However, another measure based how much performance varied with differences in socio—economic status³⁵¹ was above average and among the highest in the OECD in reading and science. Some countries with high overall performance, especially Finland, Canada and Korea had consistently low levels of variation/inequality.³⁵²

There is some evidence that the overall gap in performance in England fell between the 2006 and 2009 PISA studies. There are many different ways to measure this gap, but the difference in scores between the 5th and 95th percentiles in each subject domain fell between 2006 and 2009. Those for science and reading remained above the OECD average while the gap in mathematics was below average. Analysis by the National Foundation for Educational Research suggests that the smaller gaps in reading and science were linked to a reduction in the proportion both low- and high-attaining pupils. The smaller gap in mathematics was linked to a fall in the number of high-attaining pupils only.^{353 354}

The 2009 PISA results for reading showed little differences between different measures of education equity in the UK and the OECD average. On a small number of indicators the UK results were less equal than average. Korea, Finland, Japan, Canada and New Zealand all had above average reading literacy scores and above average equity results on most measures.³⁵⁵ The relationship between reading scores and socio-economic status in the UK remained very similar to that shown in the 2006 results.³⁵⁶

9.3 Policies and practices linked to more successful school systems

Alongside other international evidence *The Case for Change* uses PISA data to support its case about the importance of school autonomy and accountability:³⁵⁷

There is strong evidence that the most effective systems in the world seek to combine significant operational independence for schools with effective accountability. OECD analysis of PISA data considered system factors affecting student performance. This found that school autonomy in selecting teachers for hire and standards-based external examinations were the two system factors which made the most significant positive difference to student achievement in PISA. The combination of the two factors – autonomy and accountability – had an even greater positive impact on PISA scores (63 points on the PISA scale). A system in which schools are free to decide how things should be done and are then accountable for the results appears to be the most effective in raising achievement.

³⁴⁹ DfE, *The Education Bill Equalities Impact Assessment*, January 2011, para. 2-3

³⁵⁰ Percentage of variance in performance explained by social background. These are the percentage figures referred to in *The Case for Change* quote.

³⁵¹ The slope of the regression line or the difference in scores associated with a one ‘unit’ change in socio-economic status

³⁵² OECD, *PISA 2006 Science Competencies for Tomorrow's World (volume I analysis)*

³⁵³ *ibid.*

³⁵⁴ Bradshaw, J., Ager, R., Burge, B. and Wheeler, R. (2010). *PISA 2009: Achievement of 15-Year-Olds in England*. Slough: NFER

³⁵⁵ OECD, *PISA 2009 Results: Overcoming Social Background. Equity in learning opportunities and outcomes (volume II)*, December 2010, Table II.A

³⁵⁶ *ibid.* Figure II.3.2

³⁵⁷ *The Case for Change*. p20

The quote uses different combinations of measures as proxies for autonomy and accountability. Subsequent analysis from PISA 2009 has confirmed these broad findings, but the features shared by high performing systems were not limited to these two. The OECD says that:³⁵⁸

Successful school systems - those that perform above average and show below-average socio-economic inequalities - provide all students, regardless of their socio-economic backgrounds, with similar opportunities to learn.

...

Most successful school systems grant greater autonomy to individual schools to design curricula and establish assessment policies, but these school systems do not necessarily allow schools to compete for enrolment.

...

School systems considered successful spend large amounts of money on education, and tend to prioritise teachers' pay over smaller classes.

...

Schools with better disciplinary climates, more positive behaviours among teachers and better teacher-student relations tend to achieve higher scores in reading.

Different aspects of autonomy are separated out in this report. Greater freedom in designing curricula was associated with a clearly higher performance for schools systems as a whole, but not always at the level of individual schools. There was a less clear relationship between performance and autonomy over school budgets (such as setting teacher salaries). In countries with such freedoms *and* accountability through posting achievement data publicly there was a positive relationship. But the reverse was true where there were no such accountability arrangements. Analysis showed no link between competition³⁵⁹ (seen as a proxy for school choice) and performance at a country level. There was some positive relationship within countries, but this disappeared for nearly all countries when socio-economic background was taken into account.

Countries which used standards-based external examinations tended to perform better than other countries, even after relevant factors were taken into account. No link was found for standardised tests (voluntary implemented by schools with no direct consequences for students). PISA also looked at how student attainment data was used and communicated.³⁶⁰ It found no link between overall performance and how such data is used.

A generally weak relationship was found by between the financial resources devoted to education and school performance across the system after differences in national income are taken into account. This echoes other research findings. The one area that proved an exception was teachers' pay (relative to national income) where there was a positive relationship. Where spending levels are similar there can be a trade-off between higher salaries and smaller class sizes. This suggests that systems that prioritise higher salaries over smaller class sizes tend to do better.

Taken on their own, the characteristics with the strongest links to reading performance were making students repeat years, grouping students by ability in all subject, transferring poor

³⁵⁸ OECD, *PISA 2009 Results: What Makes a School Successful? (Volume IV)*, December 2010

³⁵⁹ The proportion of schools that compete with each other for student enrolment

³⁶⁰ Posted publicly, communicated to parents, used to make decisions regarding the allocation of resources, or tracked by administrative authorities




performing or 'problem' pupils (all negative), greater school responsibility for setting the curriculum and higher teacher salaries compared to GDP per head (both positive).³⁶¹

It is important to realise that the statistical associations or links highlighted by PISA are not necessarily causal. They may be linked to other factors not included in the analysis, despite extensive attempts to rule out the most likely confounding factors. Even if the associations are seen as causal, the direction of cause to effect could be in either direction or mutually reinforcing. For instance in the link between repeating grades and overall less successful schools highlighted above.

³⁶¹ OECD, *PISA 2009 Results: What Makes a School Successful? (Volume IV)*, December 2010, table iv.2.1

Summary of performance in PISA 2009: Average student performance

	Reading	Mathematics	Science
Shanghai-China	556	600	575
Korea	539	546	538
Finland	536	541	554
Hong Kong-China	533	555	549
Singapore	526	562	542
Canada	524	527	529
New Zealand	521	519	532
Japan	520	529	539
Australia	515	514	527
Netherlands	508	526	522
Belgium	506	515	507
Norway	503	498	500
Estonia	501	512	528
Switzerland	501	534	517
Poland	500	495	508
Iceland	500	507	496
United States	500	487	502
Liechtenstein	499	536	520
Sweden	497	494	495
Germany	497	513	520
Ireland	496	487	508
France	496	497	498
Chinese Taipei	495	543	520
Denmark	495	503	499
United Kingdom	494	492	514
Hungary	494	490	503
Portugal	489	487	493
Macao-China	487	525	511
Italy	486	483	489
Latvia	484	482	494
Slovenia	483	501	512
Greece	483	466	470
Spain	481	483	488
Czech Republic	478	493	500
Slovak Republic	477	497	490
Croatia	476	460	486
Israel	474	447	455
Luxembourg	472	489	484
Austria	470	496	494
Lithuania	468	477	491
Turkey	464	445	454
Dubai (UAE)	459	453	466
Russian Federation	459	468	478
Chile	449	421	447
Serbia	442	442	443
Bulgaria	429	428	439
Uruguay	426	427	427
Mexico	425	419	416
Romania	424	427	428
Thailand	421	419	425
Trinidad and Tobago	416	414	410
Colombia	413	381	402
Brazil	412	386	405
Montenegro	408	403	401
Jordan	405	387	415
Tunisia	404	371	401
Indonesia	402	371	383
Argentina	398	388	401
Kazakhstan	390	405	400
Albania	385	377	391
Qatar	372	368	379
Panama	371	360	376
Peru	370	365	369
Azerbaijan	362	431	373
Kyrgyzstan	314	331	330

	Statistically significantly above the OECD average
	Not statistically significantly different from the OECD average
	Statistically significantly below the OECD average

Source: OECD PISA 2009 database.