



RESEARCH PAPER 09/15  
18 FEBRUARY 2009

# ***Apprenticeships, Skills, Children and Learning Bill:*** **provisions for children, education and learners**

**Bill 55 of 2008-09**

The *Apprenticeships, Skills, Children and Learning Bill* was presented in the House of Commons on 4 February 2009 and is due to have its second reading debate on 23 February 2009.

This paper covers the dissolution of the Learning and Skills Council, the transfer to local authorities of responsibility for funding 16 to 18 education and training; the education of offenders; the creation of the Young Person's Learning Agency and the Skills Funding Agency; and the legal identity of sixth-form colleges. The paper also covers the new regulatory body for qualifications (Ofqual); and a new agency to carry out the non-regulatory functions currently performed by the Qualifications and Curriculum Authority. The Bill seeks to strengthen the accountability of children's services; amend intervention powers in respect of schools which are causing concern; provide for a new parental complaints service; change the school inspection arrangements; create a new negotiating body for school support staff pay and conditions; and address issues related to pupil and student behaviour. These provisions are also covered by this paper.

A separate Library Research Paper 09/14 deals with the provisions relating to apprenticeships and a right for employees to request time off for study or training.

Christine Gillie and Susan Hubble

SOCIAL POLICY SECTION

Contributions from: Paul Bolton, Grahame Danby  
Manjit Gheera, Louise Smith and Pat Strickland

HOUSE OF COMMONS LIBRARY

**Recent Library Research Papers include:**

**2008**

**08/93** Business Rate Supplements Bill [Bill 2 of 2008-09] 22.12.08

**2009**

**09/01** Economic Indicators, January 2009 09.01.09  
**09/02** Saving Gateway Accounts Bill [Bill 3 of 2008-09] 09.01.09  
**09/03** Social Indicators 14.01.09  
**09/04** Policing and Crime Bill [Bill 7 of 2008-09] 15.01.09  
**09/05** Unemployment by Constituency, December 2008 21.01.09  
**09/06** Coroners and Justice Bill: Crime and Data Protection 22.01.09  
[Bill 9 of 2008-09]  
**09/07** Coroners and Justice Bill: Coroners and Death Certification 22.01.09  
[Bill 9 of 2008-09]  
**09/08** Welfare Reform Bill: social security provisions [Bill 8 of 2008-09] 23.01.09  
**09/09** Welfare Reform Bill: disabled people, child maintenance and birth 23.01.09  
registration [Bill 8 of 2008-09]  
**09/10** Economic Indicators, February 2009 03.02.09  
**09/11** Expansion of Heathrow Airport 04.02.09  
**09/12** Business Rate Supplements Bill: Committee Stage Report 10.02.09  
**09/13** Unemployment by Constituency, January 2009 11.02.09  
**09/14** Apprenticeships, Skills, Children and Learning Bill: 18.02.09  
apprenticeship and training provisions

*Research Papers are available as PDF files:*

- *to members of the general public on the Parliamentary web site,  
URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,  
URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our papers; these should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to [PAPERS@parliament.uk](mailto:PAPERS@parliament.uk)

## Summary of main points

This paper is one of two on the *Apprenticeships, Skills, Children and Learning Bill* (Bill 55). The other paper is Library Research paper 09/14, which deals with the provisions relating to apprenticeships and a right for employees to request time off for study or training (**Part 1** of the Bill). The Bill was presented in the House of Commons on 4 February 2009 and is due to have its second reading debate on 23 February 2009. It is a joint responsibility of the Department of Children Schools and Families (DCSF) and the Department for Innovation, Universities and Skills (DIUS). It incorporates proposals originally included in the March 2008 white paper *Raising Expectations: Enabling the system to deliver*, and others previously published in July 2008 as the *Draft Apprenticeships Bill*. Many other proposals in the Bill are developed from a range of DCSF and DIUS consultation documents.

**Part 2** of the Bill transfers responsibility for funding education and training for young people over compulsory school age but under 19 from the Learning and Skills Council (LSC) to local education authorities (LEAs). LEAs will also take on responsibility for the education of young people in custodial establishments, and for the education and training of certain learners with learning difficulties or disabilities up to the age of 25. **Part 3** of the Bill creates the Young People's Learning Agency for England (YPLA), which will support LEAs in their new role. **Part 4** creates the office of Chief Executive of Skills Funding. The holder of this office will head the Skills Funding Agency (SFA). The Chief Executive of Skills Funding will be responsible for establishing and leading a new, demand-led system of skills provision for adults. To facilitate the administration of the new system **Part 5** of the Bill makes arrangements for appropriate sharing of information between various bodies. Part 5 of the Bill completes the restructuring of the education and training system with provisions to abolish the LSC. Provisions in **Part 6** of the Bill give sixth form colleges a distinct legal identity within the further education sector.

**Parts 7 and 8** of the Bill transfer the regulatory functions of the Qualifications and Curriculum Authority (QCA) to a new independent regulator with strengthened powers - the Office of Qualifications and Examinations Regulation (Ofqual). Ofqual will regulate awarding bodies and the qualifications they award or authenticate, and also regulate the assessment arrangements for the National Curriculum and the Early Years Foundation Stage. It has existed in an interim form since April 2008. QCA will be renamed the Qualifications and Curriculum Development Agency, which will retain QCA's non-regulatory functions including developing the curriculum and delivering National Curriculum tests. The aim of the changes is to ensure that there is public confidence in the qualification and assessment system. Currently, QCA both develops and regulates qualifications (which are delivered by the awarding bodies) and National Curriculum tests (which are delivered by QCA itself). The Government believes that there is an inherent conflict of interest in this structure, and, that as QCA is accountable to Ministers, it has become hard to demonstrate independence in its regulatory role.

**Part 9** seeks to strengthen the arrangements for children's trusts and sure start children's centres by putting them on a statutory footing, and makes changes to how early years providers are funded.

**Part 10** amends the current intervention powers in respect of schools which are causing concern, and makes new provision to ensure that schools comply with the *School Teachers' Pay and Conditions Document*; provides for a new parental complaints service so that complaints may be taken to the Local Government Ombudsman rather than to the Secretary of State; changes the school inspection arrangements to enable good and outstanding schools to be inspected less frequently but for interim statements to be made between inspections; and for a new negotiating body for school support staff to be established.

**Part 11** seeks to address issues related to pupil and student behaviour. It extends the power that teachers and staff in schools and FE institutions currently have to search pupils; requires schools and FE institutions to report to parents significant incidents where force is used on pupils and students aged 19 or under; requires schools to enter into partnerships with each other for the purpose of improving behaviour and attendance; changes the name of Pupil Referral Units, and provides new powers to replace a PRU.

**Part 12** contains miscellaneous provisions including a change in the way information is collected about local authority expenditure on education and children's services, provision to allow for the sharing of data, changes to the student loans arrangements so that recipients of student loans would not reduce their liability to repay loans if they entered into Individual Voluntary Arrangements; and provision to allow FE institutions in Wales to award foundation degrees in Wales.

This paper describes these provisions and provides background on them; it is not however intended to be an account of every clause of the Bill. Detailed *Explanatory Notes* on the Bill and an *Impact Assessment* (which includes an equalities impact assessment) have been prepared by DCSF and DIUS. A *Delegated Powers Memorandum* has also been published.

Library contacts for main areas covered by the Bill:

**Christine Gillie:** academies, Ofqual, QCDA, early years education, schools causing concern, parental complaints scheme, school inspection, powers to search pupils, use of force in schools, school behaviour partnerships and PRUs, transport for sixth form students.

**Susan Hubble:** LSC, LEAs' funding, YPLA, SFA, sixth form colleges, student loans, foundation degrees, FE students and transport for adult learners.

**Manjit Gheera:** Children's Trust Boards and children's centres.

**Louise Smith:** School support staff negotiating body.

**Pat Strickland:** provision for offenders.

**Grahame Danby:** data processing

**Paul Bolton:** statistics on the above subjects, and early years funding arrangements.

## CONTENTS

<b>I</b>	<b>Introduction to the Bill</b>	<b>11</b>
<b>II</b>	<b>Local education authorities' functions</b>	<b>11</b>
	<b>A. Background</b>	<b>12</b>
	<b>1. Funding for 16-19 year olds transferred to local authorities</b>	<b>12</b>
	<b>B. White paper proposals</b>	<b>13</b>
	<b>1. Regional sub-groupings</b>	<b>14</b>
	<b>2. Aim of the proposals</b>	<b>14</b>
	<b>3. Responses to the white paper</b>	<b>15</b>
	<b>C. The Bill</b>	<b>17</b>
	<b>D. Benefits and cost of the changes</b>	<b>19</b>
	<b>E. Issues</b>	<b>20</b>
	<b>1. Institutional autonomy and complexity</b>	<b>20</b>
	<b>2. Learners with learning difficulties and/or disabilities (LLDD)</b>	<b>21</b>
	<b>F. Education and training for offenders</b>	<b>23</b>
	<b>1. Background</b>	<b>23</b>
	<b>2. The current law</b>	<b>26</b>
	<b>3. Inspections and inquiries</b>	<b>26</b>
	<b>4. Policy development</b>	<b>27</b>
	<b>5. The Bill</b>	<b>29</b>
	<b>G. Transport in England</b>	<b>30</b>
	<b>1. Transport for persons of sixth-form age</b>	<b>30</b>
	<b>2. LEA provision of transport for adult learners in England</b>	<b>31</b>
	<b>H. Power of LEAs to arrange provision of education at non-maintained schools</b>	<b>31</b>
<b>III</b>	<b>Young Peoples Learning Agency (YPLA) for England</b>	<b>32</b>
	<b>A. Background</b>	<b>32</b>
	<b>B. White paper proposals</b>	<b>33</b>
	<b>1. Responses to the white paper</b>	<b>34</b>

C.	The Bill	35
1.	Structure of the YPLA	35
2.	Functions of the YPLA	36
D.	Reaction to Part III of the Bill	38
1.	NUT	38
E.	Academy arrangements	39
1.	Background	39
2.	The Bill	40
IV	The Chief Executive of Skills Funding	41
A.	White paper proposals	41
1.	Aim of the proposals	43
2.	Responses to the white paper	43
B.	The Bill	44
1.	The Office of the Chief Executive	44
2.	Administrative arrangements	45
3.	Duties of the Chief Executive	45
4.	Strategic bodies	48
5.	Funding conditions requiring co-operation	49
6.	Information sharing for education and training purposes	49
C.	Benefits and costs of the changes	49
D.	Issues	50
1.	Network of bodies	50
2.	Adult learning	52
V	Learning and Skills Council for England (LSC)	53
A.	Background: history of the LSC	53
1.	Pre the <i>Learning and Skills Act 2000</i>	53
2.	<i>Learning and Skills Act 2000</i>	53
B.	The Learning and Skills Council (LSC)	54
1.	Structure and remit of the LSC	54
2.	Agenda for Change	55
3.	LSC funding methodology	55
4.	Statistics on the LSC	56

	<b>5. Rationale for the dissolution of the LSC</b>	<b>57</b>
<b>C.</b>	<b>White paper proposals</b>	<b>57</b>
	<b>1. Responses to the proposals</b>	<b>58</b>
<b>D.</b>	<b>The Bill</b>	<b>58</b>
<b>E.</b>	<b>Issues</b>	<b>59</b>
	<b>1. Increased bureaucracy and fragmentation</b>	<b>59</b>
	<b>2. Transition from LSC to new bodies</b>	<b>60</b>
	<b>3. LSC staff</b>	<b>61</b>
<b>F.</b>	<b>Political Debate</b>	<b>62</b>
<b>VI</b>	<b>The Sixth Form College (SFC) Sector</b>	<b>62</b>
<b>A.</b>	<b>Background</b>	<b>62</b>
	<b>1. Legal status of SFCs</b>	<b>62</b>
	<b>2. Statistics on SFCs</b>	<b>63</b>
<b>B.</b>	<b>White paper proposals</b>	<b>64</b>
	<b>1. Aim of the proposals</b>	<b>65</b>
	<b>2. Responses to the white paper</b>	<b>65</b>
<b>C.</b>	<b>The Bill</b>	<b>66</b>
	<b>1. Designation as SFC corporation</b>	<b>66</b>
	<b>2. Powers and duties of SFC corporations</b>	<b>67</b>
	<b>3. Governance arrangements for SFC corporations</b>	<b>67</b>
	<b>4. Dissolution of SFC corporations</b>	<b>67</b>
	<b>5. Intervention powers</b>	<b>67</b>
<b>D.</b>	<b>Benefits and costs of the changes</b>	<b>68</b>
<b>E.</b>	<b>Issues</b>	<b>69</b>
	<b>1. Expansion of the sixth form college sector</b>	<b>69</b>
	<b>2. School sixth form and SFC funding gap</b>	<b>69</b>
<b>VII</b>	<b>The Office of Qualifications and Examinations Regulation (Ofqual)</b>	<b>71</b>
<b>A.</b>	<b>Introduction</b>	<b>71</b>
<b>B.</b>	<b>The current arrangements and the case for change</b>	<b>72</b>
<b>C.</b>	<b>The Government's proposals: a new independent regulator</b>	<b>74</b>
<b>D.</b>	<b>Reaction to the proposals and the next steps</b>	<b>76</b>

	1. Next Steps document	77
	2. Proposals for Ofqual's monitoring and enforcement powers	78
E.	Interim arrangements for Ofqual	78
F.	The Bill	79
VIII	Qualifications and Curriculum Development Agency	83
IX	Children's Services	85
A.	Children's Trusts	85
	1. A duty to co-operate	85
	2. Strengthening Children's Trusts	90
	3. The Bill	93
B.	Early childhood services and children's centres	95
	1. Childcare strategy	95
	2. Children's Centres	96
	3. The impact of Sure Start Children's Centres	98
	4. Legislating for Sure Start Children's Centres	100
	5. The Bill	101
C.	Early years provision: budgetary framework	104
	1. Background	104
	2. The Bill	107
X	Schools causing concern	108
A.	Schools causing concern: England	108
	1. Background	108
	2. Existing legislative framework for schools causing concern	109
	3. Consultation on changes to the law for schools causing concern	113
	4. Compliance with the School Teachers' Pay and Conditions Document	115
B.	The Bill	116
	1. Schools causing concern: England	116
	2. Schools causing concern: Wales	117
XI	Complaints: England	117
	1. Background	117



	2. Current provision for handling parental complaints about schools	118
	3. Consultation: A New Way of Handling Parents' Complaints About School Issues	119
	4. Reaction to the proposals	123
	5. The Bill	125
XII	School Inspections	127
	A. Background	127
	B. The Bill	130
XIII	Creation of a School Support Staff Negotiating Body (SSSNB)	132
	A. Support staff: statistics	132
	1. Numbers of support staff in England	132
	2. Pay of support staff	133
	B. Why a SSSNB is needed	135
	1. Issues with how support staff pay is currently determined	135
	2. The National Agreement on Raising Standards and Tackling Workload	139
	C. Work towards establishing the SSSNB	141
	D. The Bill	145
	E. Costs of the provisions	149
	F. Reaction to the SSSNB	149
XIV	Learners	151
	A. Background: behaviour-related provisions	151
	B. Powers to search for prohibited items	152
	1. Power of members of staff to search pupils for prohibited items: England	152
	2. Power of members of staff to search pupils for weapons: Wales	153
	3. Power of members of staff to search students for prohibited items: England	153
	4. Power of members of staff to search students for weapons: Wales	154
	C. Recording and reporting the use of force	155

	1. Recording and reporting the use of force in schools: England	155
	2. Recording and reporting use of force in FE colleges in England	155
D.	School Behaviour Partnerships	156
E.	Short stay schools	158
	1. Alternative provision and Pupil Referral Units	158
	2. Proposals for change	160
	3. The Bill	163
XV	Miscellaneous	164
A.	Information about local authority expenditure	164
B.	Support for participation in education and training	164
C.	Further education corporations in England: promotion of well-being	165
D.	Student Loans: Individual Voluntary Arrangements (IVAs)	165
	1. Background	165
	2. Statistics on student loan IVAs	167
	3. Rationale for the changes	168
	4. The Bill	168
	5. Benefits and cost of the changes	168
E.	Foundation Degrees: Wales	168
	1. Background	168
	2. Policy development in Wales	169
	3. The Bill	170
	4. Benefits and costs of the changes	171
	5. Reaction to the Bill	171
F.	Complaints: Wales	172
XVI	Data processing	172
A.	Information sharing provisions	172
	1. The Bill	172
	2. The wider context	174
	3. Data protection	174

## I Introduction to the Bill

The *Apprenticeships, Skills, Children and Learning Bill* was introduced in the House of Commons on 4 February 2009. Explanatory Notes to the Bill were published jointly by the Department of Children, Schools and Families (DCSF) and the Department for Innovation, Universities and Skills (DIUS).<sup>1</sup> An Impact Assessment was published alongside the Bill.<sup>2</sup> DCSF and DIUS have also published a memorandum on the provisions in the Bill relating to delegated legislation.<sup>3</sup> Further documents connected to the Bill are available on the Apprenticeships, Skills, Children and Learning Bill page of the DCSF website, and on the Library Bill Gateway pages.

The Bill incorporates proposals originally included in the March 2008 white paper *Raising Expectations: Enabling the system to deliver* and proposals previously published in July 2008 as the *Draft Apprenticeships Bill*.

The Bill is set out in 13 Parts and 16 Schedules. The Parts cover: apprenticeships, local authorities, the Young People's Learning Agency for England, the Chief Executive of Skills Funding, the sixth form college sector, the Office of Qualifications and Examinations Regulation, the Qualifications and Curriculum Development Agency, Children's Services, Schools, learners, and other miscellaneous provisions on individual voluntary arrangements and foundation degree awarding powers in Wales.

The intention of this research paper is to give an overview of the Bill in themes; it does not necessarily follow the exact structure of the Bill.

Most of the Bill's provisions extend to England only, England and Wales, or Wales only, with a small number of provisions extending more widely. Annex A of the *Explanatory Notes* lists the territorial extent of the Bill's provisions. The Bill contains provisions that trigger the Sewel Convention. These replicate, for the YPLA and the Chief Executive of Skills Funding, current powers enabling the LSC to make arrangements to provide services to the Scottish Executive. The Bill contains provisions that require a legislative consent motion with regard to Northern Ireland in respect of Ofqual's regulation of certain vocational qualifications in Northern Ireland. In addition, the Bill replicates the current powers that enable the LSC to make arrangements to provide services to the Northern Irish Executive.

## II Local education authorities' functions

Part 2 of the Bill places a general duty on local education authorities in England with regard to education and training for persons over compulsory school age. These

---

<sup>1</sup> [Apprenticeships, Skills, Children and Learning Bill Explanatory Notes, Bill 55 - EN](#)

<sup>2</sup> DCSF and DIUS [Impact Assessment of the Apprenticeships, Skills, Children and Learning Bill 2009](#)

<sup>3</sup> DCSF and DIUS [Apprenticeships, Skills, Children and Learning Bill Memorandum by the Department of Children Schools and Families and the Department for Innovation, Universities and Skills to the House of Lords Delegated Power and Regulatory Reform Committee](#), 4 February 2009

provisions transfer responsibility for funding education and training for young people over compulsory school age but under 19, from the Learning and Skills Council (LSC) to local education authorities. Local education authorities will also take on responsibility for the education of young people in custodial establishments, and for the education and training of certain learners with learning difficulties or disabilities up to the age of 25.

## **A. Background**

In July 2007 the Government announced changes to the machinery of Government and the creation of two new departments, the Department for Children, Schools and Families (DCFS) and the Department for Innovation, Universities and Skills (DIUS). These changes carried many implications for the future administration of post compulsory education and in particular for the local authorities and the LSC.

### **1. Funding for 16-19 year olds transferred to local authorities**

On 12 July 2007 Bill Rammell, the Minister of State for Lifelong Learning, Further and Higher Education stated that funding for the 14-19 phase of the LSC budget would transfer to local authorities:

#### **Learning and Skills Council**

**Mr. Laws:** To ask the Secretary of State for Children, Schools and Families if he will make a statement on the future of the Learning and Skills Council. [149136]

**Bill Rammell:** I have been asked to reply.

The machinery of Government changes announced last week are designed to sharpen the Government's focus on the new and very different challenges that Britain will face in the years ahead. Great strides have been made in all aspects of education and skills over the past few years. But the significant challenges posed by the future demand new approaches.

To provide strong strategic leadership for the 14-19 phase overall planning responsibilities for that phase will transfer to the Department for Children, Schools and Families as will all funding for 14-19 learners with the exception of that for apprenticeships. Subject to consultation on the details and timing, to ensure there is no disruption to schools, colleges and training providers and the introduction of new diplomas, and the need to pass the necessary legislation, funding for school sixth forms, sixth form colleges and the contribution of FE colleges to the 14-19 phase will transfer from the Learning and Skills Council (LSC) to local authorities' ring-fenced education budgets.<sup>4</sup>

Information on how the new system might be administered and references to guidance documents were given in answer to a parliamentary question on 20 November 2008:

---

<sup>4</sup> HC Deb 12 July 2007 c1608

### Further Education

**Mr. Swire:** To ask the Secretary of State for Children, Schools and Families what recent guidance he has issued to local authorities on the provision of post-16 education. [237538]

**Jim Knight:** Following the proposals set out in the White Paper Raising Expectations: Enabling the System to Deliver to transfer of funding for learning for 16 to 19-year-olds from the Learning and Skills Council to local authorities from September 2010, guidance for local authorities on the new arrangements was issued on 28 July 2008 and can be found at:

<http://www.dcsf.gov.uk/14-19>

This outlined the need for local authorities to work together in sub-regional groupings and the process by which readiness of the groupings would be reviewed. We will be issuing further guidance to local authorities on the second stage of the process which will focus on the governance of the sub-regional groupings and set out how we expect local authorities to come together with their partners e.g. schools, colleges and 3<sup>(rd)</sup> sector in delivering these reforms.

Additionally, the Department is working closely with the Local Government Association and the Association of Directors of Children's Services to support local authorities in taking on their new functions.<sup>5</sup>

## B. White paper proposals

In March 2008 the Government published a white paper on further education and skills, *Raising Expectations: enabling the system to deliver*. In this paper the Government stated its intention to transfer responsibility for the commissioning and planning of education and training for all 16 to 18 year olds from LSC to local authorities:

Our proposals mean that local authorities will assume responsibility for commissioning and funding education and training for all 16-18 year-olds. But they cannot do so successfully by acting in isolation. In the first place, we want to keep aspects of the existing national system, especially the national funding formula. And secondly, because young people so frequently travel to learn across local authority boundaries, local authorities will need to work together in order to carry out their commissioning role.<sup>6</sup>

The white paper stated that local authorities should work together to strategically commission provision and should form sub-regional groupings to provide opportunities for young people across the wider local area:

Local authorities will be expected to form groups to commission provision. This will be supplemented by a national Young People's Learning Agency, which will

---

<sup>5</sup> HC Deb 20 November 2008 c780

<sup>6</sup> Department for Children Schools and Families and Department for Innovation Universities and Skills *Raising Expectations: enabling the system to deliver*. March 2008 Cm 7348

have reserve powers to step in to secure coherence of plans and budgetary control in the event that agreement cannot be reached.

As a minimum, we would require local authorities to come together in sub regional groupings to: share their 16-18 commissioning plans; analyse together how learners move across and within their borders and make sure that their collective plans accommodate them; aggregate demand for Apprenticeships in each plan in order to commission the National Apprenticeship Service (NAS); and decide who is responsible for leading the planning, commissioning, procuring and funding for each college and provider in the region.

We will progressively devolve more power to sub-regional collaborative grouping as the strength of those groupings increases.<sup>7</sup>

Co-operation at regional and sub-regional level is deemed necessary if local authorities are to provide learners with access to a wide range of courses under the 14 to 19 entitlement.

## **1. Regional sub-groupings**

The white paper suggested that local authorities should cluster together in sub-regional groupings to commission provision and that there should be a progressive devolution of power to the sub-regional level:<sup>8</sup>

We therefore expect local authorities to form structured collaborative groups to agree their commissioning plans. These collaboratives will draw on needs analyses carried out locally – ensuring that they are based on shared data and shared analysis of movement across the sub region, to come to decisions about the match between supply and demand. The group will need to ensure that the collective plans are consistent and coherent and agree who will lead the commissioning conversation with each provider in the sub-region, making sure that they are able to do so on behalf of the whole group.

The size and nature of groupings will of course vary – reflecting local demography, geography and travel-to-learn patterns. Local authorities in metropolitan areas will sensibly group together.

Some whole regions might naturally form a single grouping. There may be some large counties which can sensibly and without damaging others approach the task alone. Where possible, we want groupings to develop from existing relationships or structures which are working well.

## **2. Aim of the proposals**

The main reason given for the transfer of powers to local authorities was the need to strengthen local provision and to make provision more flexible and responsive. Raising the participation age to 18 would mean that all young people would need to be able to access the full range of 14-19 entitlements including diplomas and apprenticeships.

---

<sup>7</sup> *ibid* page 9

<sup>8</sup> *ibid* page 26

The DCSF and DIUS report *Impact Assessment of the Apprenticeships, Skills, Children and Learning Bill 2009* (referred to in this paper as the *Impact Assessment*) gives the following reasons for the changes:

The purpose of transferring 16-19 funding to local authorities is to improve education and training outcomes for all young people. It will achieve this by delivering three main aims:

- To put 16-19 commissioning in the hands of a single body, reflecting principles of local decision making at the right spatial level to help support the delivery of raising the participation age and the Diploma and Apprenticeship entitlements;
- To enable each local authority to take a more integrated approach to all the services it provides to young people; and
- To encourage a mixed economy of local and regional planning across the country, ensuring appropriate provision is available for young people moving across local boundaries and strongly joining up with wider strategic priorities, particularly economic regeneration.<sup>9</sup>

### 3. Responses to the white paper

A twelve week consultation period which ended on 9 June 2008 followed the publication of *Raising Expectations: enabling the system to deliver*. During the consultation phase a series of nine regional events was held to canvass opinions on the proposals. An overview of the consultation process and a summary of responses is available in a document called *Raising Expectations: Enabling the System to Deliver Summary of the Events and Written Responses* (referred to in this paper as the Response Paper).<sup>10</sup>

The Response Paper said that the transfer of funding from the LSC to local authorities was generally welcomed:

The majority of respondents welcomed the commitment to increase participation, give education, skills and training a greater priority at local level, and the focus on performance and quality. They believed that local authorities have a significant role to play in providing the strategic planning for pre-19 education and training. The broad response to the consultation was cautiously positive. Most respondents flagged some concerns for the implementation of the reforms and asked for greater clarity and reassurance around building capacity and capability in local authorities, commissioning and the interaction between the Young People's Learning Agency (YPLA), local authorities and the Skills Funding Agency (SFA). Respondents also asked for clarity over the planning and management of provision, performance and quality.

42. Some respondents stressed that the pre-19 system must have at its centre a focus on the complete needs of the individual young person so that local authorities along with all of their partners can support them fully. Many

---

<sup>9</sup> DCSF and DIUS *Impact Assessment of the Apprenticeships, Skills, Children and Learning Bill 2009* page 29

<sup>10</sup> DCSF and DIUS *Raising Expectations: Enabling the System to Deliver Summary of the Events and Written Responses*.

respondents, particularly local authorities, saw the new reforms as a step closer to full integration of services for young people with wider planning and commissioning. They agreed that this focuses the system around the needs of the young person supporting the aims of Every Child Matters. They saw a particular opportunity to further support vulnerable young people including those who are Not in Education, Employment or Training (NEET) and those who are in danger of becoming NEET.

43. The first question in the White Paper asked respondents “Do you agree that transferring funding from the LSC to local authorities to create a single local strategic leader for 14-19 education and training is the right approach?” There were 401 responses to this question: 47% agreed, 20% disagreed and 32% were not sure.

44. Many respondents thought that giving the local authorities the clear strategic lead for 14-19 education and training offered a real opportunity to integrate provision between schools, colleges and employers. Many agreed that this move will improve coherence of the planning of 14-19 provision, and customise provision to the local labour market requirements. With the focus on the Diploma, the development of the 14-19 curriculum and the increase in the age of participation, local authorities are best placed to take on this role.

45. Those who disagreed or were unsure asked for an extended rationale for the changes to convince them of the case for change. Some of those who disagreed were unconvinced of the need for two agencies to replace the LSC.<sup>11</sup>

Most respondents agreed that sub-regional and regional grouping were necessary:

Respondents were asked “Do you agree that there is a need for sub-regional groupings of local authorities for commissioning?” There were 355 responses to this question: 65% of respondents agreed, 14% disagreed and 21% were not sure.

58. Some respondents stated that it will be helpful to establish sub-regional groupings as travel to learn and travel to work patterns will be important in provision planning. This is because many learners cross boundaries to study, and many unitary authorities are too small for effective decision making on provision given this free movement of learners across boundaries. However, respondents were concerned sub-regional groupings may lead to bureaucratic forums which could delay decision making.

59. Some respondents supported sub-regional groupings but only where they are appropriate. They suggested that some local authorities might be large enough to be a single “sub-region” themselves. They stressed that however the groups are arranged they must be kept as simple as possible.

60. Some respondents highlighted the following areas where further clarity or guidance would be useful: criteria for forming sub-regional groupings; recommendations for the membership of the groupings, and when the groupings will need to be formed by.

---

<sup>11</sup> *ibid* page 12



### 3.7 Regional groupings

61. Respondents were also asked “Do you agree that there is a need for local authorities to come together regionally to consider plans collectively?” There were 344 responses to this question: 75% of respondents agreed, 8% disagreed and 17% were not sure.

62. Some respondents considered it important to involve key stakeholders in planning, and vital that local authorities should work collaboratively to ensure there are consistent commissioning decisions. Respondents also mentioned the need for experienced educationalists, as well as Sector Skills Councils and Regional Development Agencies (RDAs) to be involved in considering the aggregation of plans but were unsure as to whether the RDA should be the co-chair of the regional groupings as the statutory responsibility will lie with local authorities. Some respondents believed that regional groupings would serve to make a fairer and more strategic planning system and noted that the level of regional activity would be helpful in terms of specialist provision, and provision for those with learning difficulties.

63. Some respondents felt that while guidance on the minimum membership of a regional grouping would be helpful, the arrangements for governance and leadership could be determined in each region.

64. Some respondents were concerned that local authorities coming together regionally would not be an effective way of resolving problems associated with the colleges that recruited nationally and across regions. They also reiterated that rural factors need to be given equal weighting in regional planning.

65. Further clarification was also requested about the powers of the regional groupings and who will be on the membership of these groups.

## C. The Bill

Part 2 of the Bill sets out LEA functions with regard to education and training for persons over compulsory school age.

**Clause 40** inserts new sections 15ZA and 15ZB into the *Education Act 1996*. These sections set out the core responsibilities being transferred to the LEAs from the LSC.

New sections 15ZA and 15ZB state that LEAs must secure enough suitable full and part-time education and training provision to meet the reasonable needs of persons in their area. The persons covered by these sections are given in subsection (1) as those over compulsory school age but under 19 years of age and persons aged 19 to 25 who are subject to learning difficulties assessment. The responsibility for all other learners over 19 will fall to the Chief Executive of Skills Funding. However LEAs will have powers to fund provision for the duration of a course even if that course continues after the learner has reached 19 (or 25 for a learner with a learning difficulty assessment).

Suitable education is defined in **clause 40 (3)** with reference to learners' ages, abilities and aptitudes, learning difficulties of the individual, quality and location and time of provision.

The *Explanatory Notes* to the Bill state that LEAs will have power to secure provision inside or outside a LEA's area:

Local education authorities will have powers to secure this provision either within or outside their areas to enable them to secure the most appropriate provision for young people and reflect the normal means by which learners travel to their places of learning (“travel-to-learn patterns”).<sup>12</sup>

In performing these duties LEAs must act to encourage diversity, increase opportunity for people to exercise choice and avoid disproportionate expenditure; LEAs are also directed to co-operate with each other. LEAs are further placed under a general duty to encourage education and training and this includes participation by employers:

Section 15ZC also requires local education authorities to encourage employers to participate in the provision and delivery of post-16 education and training as they will have a particular role in relation to the provision of diplomas and apprenticeships.<sup>13</sup>

**Clause 42** amends the definition of a ‘child’ found in section 84 of *the School Standards and Framework Act 1998* so that it includes children over compulsory school age but under 19 for the purposes of sections 96 and 97 in England. This enables a LEA in England to use its powers under section 96 and 97 to direct a maintained school for which it is not the admissions authority to admit a particular child to its sixth form. Subsection (3) amends section 96(3) of that Act to ensure that any permitted academic selection criteria adopted by a school (including the school sixth form) are satisfied by the child before the LEA may use its powers to direct the school to admit that child.

**Clause 43** inserts a section in the *Further and Higher Education Act 1992* which gives LEAs power to require provision of education by an institution in the further education sector if they provide education which is suitable for persons over compulsory school age but under 19. This provision replicates for LEAs the LSC’s existing powers and will only apply in England.

**Clause 44** states that LEAs must ensure that persons over compulsory school age but under 19 have access to the core and additional entitlements; the core courses are the study of English, mathematics and ICT; the additional entitlement covers diploma courses. However, in securing the additional entitlement, local education authorities are able to take into account whether providing a particular course would involve disproportionate expenditure, in which case the requirement to secure the course would not apply.<sup>14</sup> A list of core and additional entitlements is given at the end of the clause.

**Clause 45** inserts a new section 514A into the *Education Act 1996*. It enables local education authorities, when securing suitable education and training provision for young people with learning difficulties who are over compulsory school age but under 25, also to secure boarding accommodation for these learners, either within or outside their local authority area, where they consider it appropriate.

---

<sup>12</sup> Bill 55 - EN page 18 paragraph 96

<sup>13</sup> Bill 55 - EN page 19 paragraph 102

<sup>14</sup> Subsection 3

**Clause 46** inserts a new section 560A into the *Education Act 1996*, providing local education authorities with a power to secure the provision of work experience for people within their area who are over compulsory school age but under 19, and those aged 19 but under 25 for whom a learning difficulty assessment has been (or should be) conducted. This also places local education authorities under a duty to encourage these learners to participate in work experience, and to encourage employers to provide opportunities for work experience. and must encourage participation by learners and employers.

## **D. Benefits and cost of the changes**

The Impact Assessment stated that the changes would make it easier to carry out wide – ranging reforms to education and skills and deliver the raised participation age. There would also be improvements in the commissioning process:

At the heart of the new system for funding 16-18 education will be a commissioning process – a process for the planning and delivery of services to better meet the needs of young people and contribute to the improvement of outcomes. This will be led by local authorities working in partnership with other authorities and other key stakeholders; will be attuned and responsive to the needs and aspirations of young people; and will be seamlessly integrated with the commissioning of other education and services for children and young people in that area.<sup>15</sup>

There should also be efficiency benefits:

The new system is being designed, as far as is possible, to be streamlined and efficient while guaranteeing a very high-quality service to young people and adult learners. There are potentially significant savings through, for example, the integration of commissioning 16-18 education training with the commissioning of other youth services at local level.

Local authorities will now be able to judge for each individual child in their area the likely needs and costs of their education and or training as they progress through the education system. Thus a child with particular needs could have those needs identified at an earlier stage in their education lifetime and smaller less costly efforts to solve those needs made, thus avoiding the current situation where more expensive “retro-fit” solutions are applied. This might be equipment, capital investment, locations, transport, particular types of specialist training. All of these now come into play as the local authority becomes the single point of accountability.<sup>16</sup>

The Impact Assessment says that the ongoing costs of the new system would be revenue neutral.<sup>17</sup> However there could be transition costs and costs involved with the post – 16 transport provisions:

---

<sup>15</sup> Impact Assessment page 31

<sup>16</sup> Impact Assessment page 31

<sup>17</sup> *ibid* page 32

We do not expect the legislative proposals will lead to additional central Government costs. However, there may be additional costs to local authorities associated with implementing the changes. Specifically, there may be additional costs associated with the new duty to consult young people and parents in preparing transport policy statements. This will affect all 150 local authorities but we estimate that the additional costs will be negligible because local authorities currently consult young people and parents on a range of local policies and will have an established mechanism for doing so.

There may be additional costs associated with having to publish details of their appeals process but this is expected to be negligible as it will be a small addition to existing transport statements.

The cost of meeting the requirement to set out what provision is available for young people with LDD aged 19-25 will be negligible and, as the underlying duty will remain unchanged, this is not a new burden.

There may be longer term additional indirect costs associated with the new proposals if local authorities (and transport providers) have to make any significant changes to their transport policies – but these are difficult to estimate and will affect each local area differently.<sup>18</sup>

## **E. Issues**

### **1. Institutional autonomy and complexity**

The [Association of Colleges \(AoC\)](#) submitted a response<sup>19</sup> to the white paper in which it expressed concern about colleges' autonomy under local authorities:

Local authorities will have the task to create the environment in which every young person achieves their potential and succeeds. Their role in this area must not be confused with leadership of colleges which needs to remain as now with the governing bodies and principals. Institutional autonomy is essential to allow colleges to respond flexibly and effectively to the needs of students, employers and communities.

AoC believes this model could create unhelpful complications and the possibility of duplication and conflict between agencies. This will absorb management time, taking resources away from teaching and learning.

There is also a risk that different levels of commissioning will create a two-tier relationship in some areas with a local authority favouring one group of institutions over another.

The issue of college independence was also raised in the following article in *The Independent*:

Since 2001, the LSC has not enjoyed the warmest relationship with colleges, and is frequently accused of being too bureaucratic. But many colleges do work

---

<sup>18</sup> *ibid* page 47

<sup>19</sup> Association of Colleges AoC Response to the Raising Expectations White Paper. June 2008

successfully with their local LSC and are concerned that the re-emergence of local authorities in post-16 education could threaten the independence they have enjoyed since leaving council control in 1993.

Ioan Morgan, principal of Warwickshire College, says that further education appears to be facing more change and uncertainty than any other sector. "I think the LSC will be missed more than many colleges realise," he says. "It has always been good at getting money into colleges."

David Collins, principal of South Cheshire College, doubts that the LSC's demise will be greeted with delight. "There are dangers of local political interference and perhaps the diversion of money from a college to a small school sixth form to appease a local pressure group," says Collins, president of the Association of Colleges.<sup>20</sup>

## 2. Learners with learning difficulties and/or disabilities (LLDD)

The white paper stated that local authorities will be responsible for learners with learning difficulties and /or disabilities up to the age of 25. It is suggested that under the new system support and provision for these learners will be more integrated:

Planning of provision for LLDD will take place at local level, where local authorities will plan within their indicative budgets, as with other forms of provision, but be supported by brokerage with specialist providers at regional level:

- The local authority will analyse future demand from their resident young LLDD population using existing data and known cases – local authorities should involve other agencies in this planning, to support good commissioning.
- This will then be included as a distinct requirement in the commissioning plan – and wherever possible provision will be developed and delivered locally.
- Local authorities will share their plans in the regional planning group and agree where unmet demand can be met from non-specialist providers in another part of their region.
- Should gaps remain, requiring more specialist provision, the regional planning group will pass this requirement to a specialist team within the Young People's Learning Agency who will broker provision from specialist providers as appropriate.

Funding for such provision will flow from the Agency to the specialist provider. This means that local authorities can have access to a larger pool of specialist providers, increasing choice and value for money, and to funding for high cost, specialist LLDD provision. It also ensures an appropriate focus on the development of local provision wherever possible.<sup>21</sup>

---

<sup>20</sup> "Mixed feelings over LSC's demise" *The Independent* 10 April 2008

<sup>21</sup> White paper page 35

A DCSF and DIUS document called *Raising Expectations: Enabling the System to Deliver Update and Next Steps*<sup>22</sup> (referred to in the paper as the Next Steps document) commented that there had been much debate over the definition, delivery and commissioning of LLDD.<sup>23</sup> The Response Paper suggested that just over half of respondents agreed that local authorities should lead for LLDD for this age group:

Over half (57%) of the respondents agreed that local authorities are the correct leads for LLDD and fully supported local authorities having responsibility for LLDD learners up to the age of 25. Those who disagreed or were not sure believed that this vulnerable group would not be best served by a local approach, or that it was more sensible for the YPLA to take responsibility. Because of these reservations some respondents suggested in the first year it should be the YPLA who take responsibility for the planning and funding of provision for students with learning difficulties and/or disabilities. This role could then be devolved to local authorities in subsequent years. They believed this would ensure there was a smooth transition from the current LSC arrangements and would minimise the disruption for this vulnerable group.

Those who agreed felt that integrating 0-19 commissioning for young people with special educational needs and learning difficulties or disabilities would enable more joined up delivery.

Many respondents stated that funding arrangements for LLDD learners should be the same as for other provision and local commissioning decisions should be based on the budget for all learners. They believed if the funding was separated, then there was a risk that provision would not reflect the balance of local needs.

Respondents believed the funding and eligibility criteria for LLDD are more rigid for FE colleges than for schools, and the new arrangements must ensure there was comparability between institutions. Most respondents were clear that funding needs to be sufficient to enable young people's needs to be met effectively.

Further clarity was requested on how LLDD providers will be commissioned and how LLDD funding will flow.<sup>24</sup>

The Impact Assessment stated that LLDD could be delivered better through a more joined up system:

By creating a more integrated look at the holistic need of LLDD, we expect local authorities to improve the outcomes and the efficacy with which those outcomes are delivered.<sup>25</sup>

The [National Institute for Adult Continuing Education](#) (NIACE) expressed concerns about LLDD provision for adults:

The position of students with learning difficulties or disabilities illustrates some of the difficulties of the proposals: Local authorities have a responsibility for such

---

<sup>22</sup> DCSF and DIUS *Raising Expectations: Enabling the System to Deliver Update and Next Steps*

<sup>23</sup> *ibid* page 17

<sup>24</sup> Response Paper page 20

learners until the age of age 25 – and subregional mechanisms will allow local authorities to place them in specialist colleges where appropriate. No such planning is to be developed to help these learners access inclusive provision alongside other students in a general FE college – the college’s 19+ offer will be secured at a sub-regional level, will be demand-led and Train to Gain will dominate demand. The transition across the pre- and post-19 boundary matters to more groups than students with learning difficulties of course: the learning of offenders and ex-offenders, for example, requires similarly holistic treatment yet there is little evidence at present that consideration has been given to how the proposed changes will impact upon other vulnerable groups.<sup>26</sup>

Provisions for adults with learning difficulties are covered in **clause 111** of the Bill (found in section IV B 3.h of this paper) which requires the Chief Executive of Skills Funding to have regard to adults with learning difficulties in the performance of his duties.

## F. Education and training for offenders

Several provisions in the Bill change the arrangements for securing education and training for people in custody. These legislative changes are in part the consequence of the dissolution of the Learning and Skills Council, which currently plays a key role in the provision of education and training for both adult and juvenile offenders. The changes for juvenile offenders are also part of a drive to align education in custody more closely with that available in the mainstream sector, following consultation which took place in 2007 and 2008.

### 1. Background

Education has been provided for prisoners for just over 100 years. There are various arguments for doing so. One is that it is a good in itself in a civilised society. Another is that it is important as one of the “purposeful activities” which contribute to the safety, as well as the decency, of prison regimes. A third argument is that improving prisoners’ literacy and numeracy skills or gaining qualifications enhances prospects of getting or keeping a job after release, which in turn can help to prevent re-offending. In 2002, a seminal report by the Government’s Social Exclusion Unit (SEU) stated that “research shows that employment reduces the risk of re-offending by between a third and a half.”<sup>27</sup> The SEU report also indicated that prisoners who do not take part in education are three times more likely to be convicted than those who do, although the extent to which this correlation indicates a causal relationship is open to question.<sup>28</sup> In response to the SEU’s work, the Government’s 2004 *National Reducing Re-offending Action Plan* identified seven key areas for action and research, known as “pathways” towards reducing re-offending, one of which was education, training and employment.<sup>29</sup>

---

<sup>25</sup> Impact Assessment page 32

<sup>26</sup> *Raising Expectations: Enabling the System to Deliver A response to the White Paper (Cm 7348) from the National Institute for Adult Continuing Education* page 2

<sup>27</sup> Social Exclusion Unit, *Reducing re-offending by ex-prisoners*, July 2002

<sup>28</sup> For a discussion of this, see House of Commons Education and Skills Committee, *Prison Education*, HC14-1 2004-05, 31 March 2005, pp13-17. A more recent report also touches on this question - see Chris May et al., *Factors linked to reoffending* MOJ, 13 October 2008

<sup>29</sup> Home Office, *National Reducing Re-offending Action Plan*, July 2004

However, both the juvenile and adult prison populations present considerable challenges in terms of their educational backgrounds. The SEU report found that prisoners were very much more likely than the general population to have no qualifications and to have been excluded from school. A Written Answer in January 2007 stated that 48% of offenders were at, or below, the level expected of an 11 year old in reading, 65% in numeracy and 82% in writing.<sup>30</sup> Recently published results from a large national longitudinal survey of newly sentenced adult prisoners showed that 58% had regularly truanted from school, 40% had been excluded from school and almost half had no academic or vocational qualifications.<sup>31</sup> Similarly, compared to the general population, young people supervised by the youth justice system are far less likely to have 5 A-C grades at GCSE and far more likely to be regular truants, have had previous permanent exclusions and to have a statement of special educational needs.<sup>32</sup> A 2003 report on children and young people under 18 in custody, which was produced by Her Majesty's Inspectorate of Prisons (HMIP), reported that 83% of the boys and 65% of the girls surveyed had been excluded from school.<sup>33</sup> In addition, over 40% of the boys and girls surveyed had been aged 14 or younger when they were last in school.<sup>34</sup>

#### **a. Provision for adult offenders**

Before 1992, prison education was funded by the Home Office and delivered by local education authorities and further education colleges. There was considerable variation in provision. Then the *Further and Higher Education Act 1992* introduced contracting out, so that LEAs were no longer the providers, and instead contractors delivered services over wider geographical areas.

In 2001, oversight of prison education was moved from the Home Office to the Offender Learning and Skills Unit within what was then the Department for Children, Families and Skills.<sup>35</sup> Two years later, the Government decided that the Learning and Skills Council should take responsibility for planning and funding a new learning and skills service for offenders. The LSC took over these responsibilities in April 2004, and, following pilots, rolled out the Offender Learning and Skills Service (OLASS) across England in August 2006.

The OLASS arrangements involve a number of stakeholders, including the LSC, the National Offender Management Service<sup>36</sup> and Jobcentre Plus. From 2006, new contracts were established with 21 providers, a mixture of FE colleges and private and

---

<sup>30</sup> [HC Deb 9 January 2007 c548W](#)

<sup>31</sup> Duncan Stewart, *The problems and needs of newly sentenced prisoners: results from a national survey*, Ministry of Justice, October 2008, pp11-12. Further reports from this longitudinal survey, *Surveying Prisoner Crime Reduction*, will be published in the future and these will examine provision of custodial programmes and support to address prisoners' needs and their role in reducing the likelihood of re-offending after release.

<sup>32</sup> DfES, *Education for Young People Supervised by the Youth Justice System: A Consultation*, April 2007, pp10-11

<sup>33</sup> HMIP, *Juveniles in Custody: A unique insight into the perceptions of young people held in the Prison Service*, 2003, p7 and p21

<sup>34</sup> *Ibid*

<sup>35</sup> A similar change took place in health care, with responsibility for health care moving from the Prison Service to the Department of Health.

<sup>36</sup> NOMS was launched in 2004 and received agency status in July 2008.



not-for-profit providers.<sup>37</sup> These contracts are due to expire in July 2009. The detailed requirements for learning and skills provisions are set out in a document called the *Offenders' Learning Journey*.<sup>38</sup>

### **b. Provision for young offenders**

Statistics from the Youth Justice Board (YJB) indicate that just under 148, 000 children and young people under the age of 18 committed one or more offences resulting in a pre-court or court disposal in 2006/07.<sup>39</sup> The use of custody is low compared to other types of disposal. More than three quarters are pre-court or first tier interventions, such as reprimands, referral orders or fines.<sup>40</sup> Just over 18% are community sentences and just over 3% are custodial. At 31 December 2008, there were 2,227 juveniles in prison, 214 in Secure Training Centres and 173 in Secure Children's Homes in England and Wales.<sup>41</sup>

By far the most common custodial sentence for juveniles is the Detention and Training Order. This can last from four months to two years, with half the order spent in custody and the other half released on licence. However, there are other custodial disposals for more serious offences, including sentences under sections 90/91 of the *Powers of Criminal Courts (Sentencing) Act 2000* (which are for those committing very serious crimes) and indeterminate sentences for dangerous offenders.

There are three main types of secure accommodation for young offenders:<sup>42</sup>

- Young offender institutions for 15- 21year-olds, run by what was the Prison Service<sup>43</sup> (with 15-17 and 18-21 year-olds held separately)
- Secure training centres, privately run by contractors for young people aged 10-17
- Secure children's homes (mainly run by local authorities) for vulnerable young offenders aged 10 to 17

Currently, education in juvenile custody is provided through a complex mix of arrangements involving (amongst others) the YJB and the DCFS nationally, the Learning and Skills Council and regional offender managers.<sup>44</sup> Accountability varies in the different kinds of establishments. In young offender institutions, the YJB monitors compliance against a service level agreement between itself and the Prison Service, and the LSC contracts with a range of providers as it does in the adult secure estate. The

---

<sup>37</sup> DIUS, *The Offenders Learning and Skills Service (OLASS) in England: A Brief Guide*, 2007

<sup>38</sup> *Offenders' Learning Journey*, October 2008, available from the [Learning and Skills Council Website](#)

<sup>39</sup> YJB, *Youth Justice Annual Workload Data 2006/07* undated, p14

<sup>40</sup> *Ibid*, p21

<sup>41</sup> Ministry of Justice, *Population in custody monthly tables*, December 2008

<sup>42</sup> Section 107 *Powers of Criminal Courts (Sentencing) Act 2000*

<sup>43</sup> It is technically now part of the National Offender Management Service Agency (see *National Offender Management Service Agency Framework Document* July 2008) although it still widely referred to as the Prison Service.

<sup>44</sup> Further details are given in DfES, *Education for Young People Supervised by the Youth Justice System: A Consultation*, April 2007, pp37-42

requirements are set out in the *Offenders' Learning Journey (Juveniles)*.<sup>45</sup> In secure training centres, contracts managed by the YJB set out expectations for the provision of education. The YJB has on-site monitors to ensure that contractors are complying with their obligations. In secure children's homes, there is a self-reporting system with spot checks from the YJB. Inspection of education also varies according to the type of institution.<sup>46</sup>

## 2. The current law

Currently, under section 562 of the *Education Act 1996*, the LEA's duty to educate children does not extend to those in detention in pursuance of a court order. However, they may make arrangements for those in custody to receive the benefit of the educational facilities they provide.

Section 47 of the *Prison Act 1952* gives the Secretary of State the right to make regulations concerning the welfare of prisoners including the "training of persons". Education is voluntary for adults but compulsory for children. Regulation 32 of the *Prison Rules*<sup>47</sup> and regulation 38 of the *Young Offender Institution Rules*<sup>48</sup> require provision to be made for the education of inmates and for at least 15 hours participation in education or training courses for those of compulsory school age. In addition, the YJB sets requirements for education in Young Offender Institutions (YOIs) and requires that 90% of young people receive 25 hours or more education, training and personal development activity per week.<sup>49</sup> The *Secure Training Rules* require minimum participation in education or training courses of 25 hours per week.<sup>50</sup>

## 3. Inspections and inquiries

Her Majesty's Inspectorate of Prisons (HMIP) regularly inspects individual prisons in conjunction with Ofsted (amongst others). The most recent annual report noted a "steady improvement in the quality of what is provided, as measured by the education inspectors" in recent years. A quarter of prisons were found to be inadequate over all, but this was a significant improvement on previous years; for example in 2004, 82% were found to be inadequate.<sup>51</sup> However, there were still considerable deficits in the quality of activity available, with rising prison populations inhibiting progress.

HMIP also produces thematic reports from time to time, and some have dealt with the quality of prison education in the juvenile estate. A 2004 report looked at education for girls in prison, who have particular problems with education, partly because their low numbers mean that they are generally held in adult prisons. The report notes that prisons were "still unable to provide sufficient quantity and quality of training and education" despite improvements, but that this inadequate provision was still better than

---

<sup>45</sup> Available from the [Learning and Skills Council Website](#) [on 13 February 2009]

<sup>46</sup> *Ibid*

<sup>47</sup> SI 1999/728 as amended

<sup>48</sup> SI 2000/3371 as amended

<sup>49</sup> HC Deb 1 November 2008 c1081w

<sup>50</sup> Regulation 28, SI 1998/472

<sup>51</sup> HM Chief Inspector of Prisons, [Annual Report 2007-08](#), 2009

the girls had received before custody, or would be likely to receive on return to the community.<sup>52</sup>

There has been a considerable amount of parliamentary scrutiny of the adult prison education system in the past five years. In a 2004 report, the Home Affairs Select Committee looked at it as part of a wider inquiry into the *Rehabilitation of Prisoners*.<sup>53</sup> This recognised that impressive progress had been made in reaching education targets, but found a “disturbing degree of variation” and an overly narrow focus on basic education. The Education and Skills Committee produced a report on *Prison Education* shortly afterwards. This was critical of a number of aspects of current provision, and its main finding was that progress in the provision of education and training was being “hampered by a lack of an effective overarching strategy”.<sup>54</sup> The Government rejected this in its response.<sup>55</sup>

In March 2008, the National Audit Office reported on the performance of the new Offenders’ Learning and Skills Service.<sup>56</sup> This noted considerable structural problems, including: the fact that provision in prisons reflected historic allocations rather than assessed need; the complexities of partnership working, the effects of population pressure and prisoner moves; and the lack of data on the impact of the service. It concluded that many of the problems which led to the establishment of OLASS had not been substantially overcome since its introduction.<sup>57</sup> The Public Accounts Committee report which followed was similarly critical:

Delivering learning and skills to offenders is challenging, because the operational requirements of the Criminal Justice System take priority, and because offenders often have other problems such as mental health difficulties and dependence on alcohol or drugs. Nevertheless, the new Service set out to overcome many of the long standing problems with providing offenders with effective and useful skills training. In practice it has not succeeded.<sup>58</sup>

#### 4. Policy development

In 2005, the Government published a Green Paper, *Reducing Re-Offending through Skills and Employment*, which proposed a greater emphasis on employment, including more involvement with employers, and a continuation of the drive to integrate offender learning with mainstream education delivery arrangements.<sup>59</sup> A *Next Steps* document in 2006 responded to the consultation and set out detailed plans for engaging employers,

---

<sup>52</sup> Ofsted and HMCIP, *Girls in Prison The education and training of under-18s serving Detention and Training Orders*, 2004, p3

<sup>53</sup> Home Affairs Committee, *Rehabilitation of Prisoners*, HC 193-1 2004-05, 21 December 2004, pp62-8

<sup>54</sup> Education and Skills Committee, *Prison Education*, HC 114-1 2004-05, 21 March 2005

<sup>55</sup> *Government response to the House of Commons Education and Skills Committee Report – Prison Education*, Cm 6562, June 2005

<sup>56</sup> NAO, *Meeting Needs? The Offenders’ Learning and Skills Service*, HC 310 2007-08, 7 March 2008

<sup>57</sup> p7

<sup>58</sup> Public Accounts Committee, *Meeting Needs? The Offenders’ Learning and Skills Service*, HC 584 2007-08, 30 June 2008

<sup>59</sup> HM Government, *Reducing Re-Offending through Skills and Employment*, Cm 6702, December 2005

developing an “employability contract” with offenders and more flexible access to skills and employment support.<sup>60</sup>

Then in 2007, the Government issued a consultation document on the education of juveniles which asked for views on appropriate roles, responsibilities and accountability mechanisms for young offenders’ education, as well as on ways of ensuring participation and workforce development.<sup>61</sup> According to the DSCf’s summary of responses:

A large number of respondents thought that local authorities needed to take more responsibility for young people in the youth justice system, especially young people in custody. Some felt that the local authority in which the custodial institution sat should be responsible for its education provision; others believed that each young person’s ‘home’ local authority should maintain an element of responsibility with regards to their education, in liaison with the ‘host’ local authority.<sup>62</sup>

Following this consultation, the Government’s *Children’s Plan*, published in December 2007, promised further consultation on whether and how local authorities should lead on education and training for young people in custody.<sup>63</sup> This consultation took place within the context of the wider reforms announced for mainstream 16-18 education funding and commissioning as part of the March 2008 white paper, *Raising expectations: Enabling the System to Deliver*.<sup>64</sup> Responses to this consultation also demonstrated support for moving responsibility for the education of juveniles in custody:

113. Just over half the respondents (55%) agreed that local authorities should be responsible for commissioning provision for juvenile young offenders in custodial institutions and said that commissioning for young people in custodial institutions was currently weak and should be a much higher priority. Some said it was important that when young offenders returned to their locality there was a seamless, one stop support service. They believed a consistency of education and skills provision was important as it could facilitate transition out of custody and into the community.

114. Those who did not agree, or were unsure, thought this would be difficult to administer for organisations working across different regions, and it could lead to unfair provision as different local authorities had different working practices.<sup>65</sup>

The Government’s Youth Crime Action Plan, published in July 2008, confirmed that the Government would “place new duties on local authorities to lead on the education and training of young offenders in custody.”<sup>66</sup>

---

<sup>60</sup> HM Government, *Reducing Re-Offending through Skills and Employment*, 2006

<sup>61</sup> DCFS, *Education for Young People Supervised by the Youth Justice System: A Consultation*, April 2007

<sup>62</sup> DCFS, *Education for Young People Supervised by the Youth Justice System: A Consultation - Summary of responses*, 2007

<sup>63</sup> DCSF, *The Children’s Plan Building brighter futures*, December 2007, p13

<sup>64</sup> DCSF/DIUS, *Raising expectations: Enabling the System to Deliver*, March 2008,

<sup>65</sup> DCSF/DIUS *Raising expectations: Enabling the system to deliver Summary of the events and written responses*, 2008, p21

<sup>66</sup> HM Government, *Youth Crime Action Plan 2008*, July 2008

## 5. The Bill

Under the Bill, the education of young offenders under 18 becomes the responsibility of LEAs, whilst that of those aged 19 or over becomes the responsibility of the Chief Executive of Skills Funding. Responsibility for educating 18 year olds will depend on where they are detained; those in “adult” Young Offender Institutions (which cater for 18-21 year olds) or in adult wings of YOIs, will be covered by the Chief Executive for Skills Funding. LEAs will be responsible for those aged 17 and under, and for those aged 18 who are close to the end of their sentences, and will therefore not transfer to adult prisons. The aim is to avoid sharing responsibility for learning delivery between LEAs and the Chief Executive in the same establishment.<sup>67</sup> The exception to the rule is responsibility for those under 25 with learning difficulties, which goes to LEAs.

Where a person aged 18 in adult detention has already begun education or training, the Chief Executive for Skills Funding must have regard to the desirability of their continuing their programmes whilst in custody.<sup>68</sup>

### a. Young offenders

The provisions concerning young offenders are contained in Part 2 of the Bill, which deals with LEA functions. **Clauses 47-50** amend the *Education Act 1996* to give both the “home” education authorities and the “host” ones (i.e. the authorities where the children are being detained) new responsibilities towards young offenders.

**Clause 47** gives local education authorities with “relevant youth accommodation” in their area – the “host” authorities - a duty to secure enough suitable education to meet the reasonable needs of children subject to youth detention. It also gives them a duty to provide such education to those over compulsory school age but under 19. However, these duties only apply where the children or young people are detained in “relevant youth accommodation”, and this is defined, in clause 48, to exclude accommodation in a young offender institution, or part of a YOI, that is used wholly or mainly for the detention of persons aged 18 or over.” So in a YOI where 15-17 year olds are kept in one wing and 18-21 year olds in another, the LEA would be responsible for the education of the younger offenders. The education of the older offenders would be the responsibility of the Chief Executive of Skills Funding, or of Welsh Ministers in Wales (see below).

**Clause 49** gives the “home” local authorities (where the young person is ordinarily resident when not in detention) a duty to monitor the education or training of a detained young person. They will have to take steps which “they consider appropriate to promote the person’s fulfilment of his or her learning potential” while they are in custody and upon release. **Clause 50** requires youth offending teams (who are multidisciplinary teams based in each local authority) to notify the child or young person’s home LEA when they become aware that the young person is detained in youth accommodation.

---

<sup>67</sup> Explanatory Notes, paragraph 230

<sup>68</sup> Clause 92 (4) (g)

**Clause 49** also gives the Secretary of State (in England) and Welsh Ministers the power to make regulations to modify the provisions of the *Education Act 1996* in relation to children and young people in detention.

**b. Adult offenders**

The provisions which cover adult offenders are in Part 4 of the Bill, which deals with the duties of the Chief Executive of Skills Funding. As explained above, currently Learning and Skills Councils provide education for this group through OLASS. **Clause 92** gives the Chief Executive the duty to secure provision of reasonable education facilities and training for this group, taking account of a range of factors, including the need to make best use of resources and avoid disproportionate expenditure. **Clause 96** sets out the Chief Executive's duty to encourage participation in education and training by adult detainees and employers. Under **clause 112**, he must perform his functions with regard to the needs of people in adult prisons.

## **G. Transport in England**

### **1. Transport for persons of sixth-form age**

The *Education Act 2002* introduced new duties in relation to transport for students of sixth-form age, which were added to the *Education Act 1996* as sections 509AA, 509AB and 509AC. Under the provisions, every LEA must draw up and publish a policy statement setting out the provision of, and support for, transport for 16 to 18 year olds and those completing courses started before their 19th birthday. The policy statement should include the arrangements that the authority considers necessary for the provision of financial assistance for reasonable travelling expenses of persons of sixth-form age receiving education or training. Section 83 of the *Education and Skills Act 2008* introduced a new requirement on LEAs to have regard to journey times in preparing their statements.

The 2008 Act's provisions to raise the age of participation in education or training, and the introduction of diplomas for 14 to 19 year olds, may have travel implications for post-16 students.

**Clauses 51 to 53** amend the provisions in the 1996 Act so that LEAs must consult young people and their parents when drawing up transport policy statements, so that the statements provide sufficient information and are published in good time to inform young people and their parents when they are choosing an establishment, and so that the statements may be revised in response to complaints.

**Clause 53** inserts new section 509AE into the *Education Act 1996*, to make provision for complaints about how an LEA has carried out (or failed to carry out) its transport responsibilities in relation to people of sixth-form age. A complaint may be made by a person who is (or will be) of sixth form age when the matter complained of has effect, or by that person's parent.

The *Impact Assessment* of the Bill states that there may be additional costs to local authorities associated with implementing the changes, though it notes that the additional

costs will be negligible as local authorities currently consult young people and their parents on a range of local policies. There may however be longer-term additional costs associated with the changes if local authorities have to make significant changes to their transport policies. The *Impact Assessment* says that these are difficult to estimate and will affect each authority differently.

## 2. LEA provision of transport for adult learners in England

**Clause 54** inserts two new sections into the *Education Act 1996*. New section 508F re-enacts section 509 of the 1996 Act (which is repealed) in respect of LEAs' travel duties towards adult learners. It continues to impose a duty on LEAs to make any transport or other arrangements that they consider necessary, or that the Secretary of State directs, for the purpose of facilitating the attendance of learners who are aged 19 and over at certain education institutions. The transport must be provided free of charge. The LEA must have regard to the age of the learner, and the nature of the route, when considering what arrangements to make. Also, the authority may pay all or part of the reasonable travel expenses of a learner for whose transport no arrangements are made.

New section 508G places a duty on LEAs to make available a transport policy statement containing information on provisions for people aged 19 to 24 (inclusive) with learning difficulty assessments (or people under a duty to be assessed). When preparing the statement, the LEAs are required to consult other LEAs, education institutions, affected learners and their parents. The authority must also have regard to guidance about the preparation of the statement. Subsection (5) of that section states that the statement must be published by the end of May before the start of the relevant academic year, in line with the sixth form transport policy statement duty. This measure is designed to ensure that young people with learning difficulties aged 19 to 24 (inclusive) and their parents are able to access information about what transport is available, so that they are able to make informed choices between institutions.

## H. Power of LEAs to arrange provision of education at non-maintained schools

**Clause 55** repeals a provision that has never been commenced - section 128 of the *School Standards and Framework Act 1998*. Section 128 amended section 16 of the *Education Act 1996* and substituted a new section 18 in that Act. The purpose of new section 18 was to restrict the power of LEAs to give financial assistance to a non-maintained school. At the time, the Government made it clear that the intention was to prevent the replication of the Assisted Places Scheme by LEAs. Stephen Byers, the then Minister for School Standards, explained the provision when it was introduced during the Commons Standing Committee debate on the *Schools Standards and Framework Bill* on 3 March 1998:

As I said earlier, the intention behind new clause 12 is to ensure that local authorities do not seek to replace the assisted places scheme with a local variation of an assisted places scheme. By that we mean local authorities buying places in the independent sector, thereby taking children out of the maintained sector and offering them a different type of education. That is

not partnership, but the creation of divisions in the school sector. We therefore believe it would be wholly inappropriate.<sup>69</sup>

The section has never been commenced. The effect of the repeal is that the original section 18 remains in force. This means that LEAs will continue to retain powers under sections 16 and 18 of the *Education Act 1996* to assist, and arrange provision of education at, non-maintained schools.

### **III Young Peoples Learning Agency (YPLA) for England**

Part 3 of the Bill establishes the Young Peoples Learning Agency (YPLA) for England and sets out the main functions of the body. The YPLA will support LEAs and enable them to carry out their new duties.

#### **A. Background**

In the white paper on FE and skills, *Raising Expectations: enabling the system to deliver*, the Government announced its intention to dissolve the Learning and Skills Council (LSC) by 2010 and replace it with two new bodies - the YPLA and the Skills Funding Agency (SFA). The white paper was presented to Parliament in a written ministerial statement by Ed Balls, Secretary of State for Children, Schools and Families, which outlined the proposals:

The key proposals in the document will help to deliver our ambition to raise the participation age and transform attainment by age 19 and underpin our aim of a demand led system and the integration of employment and skills.

Local Authorities are in the best place to lead the implementation of the new participation age locally. They are already responsible for schools and are taking responsibility for advising young people. We are now giving them new duties to ensure that the right range of provision is in place for young people to continue in education or training until age 19 and for funding it. In doing so, we are making sure that they have the ability to deliver in full the new curriculum and qualifications entitlement for young people, and to raise standards.

The consultation document sets out how for young people, we aim to place leadership of the system, accountability for outcomes, duties and the funding to deliver, at a local level – local authorities will have the responsibility and duties to deliver for everyone from birth to 19. Our proposals include:

[...]

Creating a Young People's Learning Agency to carry out a small number of national level functions such as developing a national funding formula and

---

<sup>69</sup> House of Commons Standing Committee "A" Debate, 3 March 1998 c778



helping to ensure that regional proposals are affordable and deliver universally high quality provision regardless of where a young person lives.<sup>70</sup>

A brief overview of the role of the two new bodies was given by David Lammy, Parliamentary Under-Secretary of State for Skills, in answer to a parliamentary question on 22 May 2008:

### Vocational Training

**Mr. Pickles:** To ask the Secretary of State for Innovation, Universities and Skills what role the (a) Skills Funding Agency and (b) Young People's Learning Agency will play in local authority involvement in skills training. [205439]

**Mr. Lammy:** The White Paper 'Raising Expectations: enabling the system to deliver' published March 2008 sets out plans to respond to the education and skills challenges for young people and adults. It outlines the roles of the Skills Funding Agency (SFA) and the Young People's Learning Agency (YPLA).

The SFA will be responsible for the demand-led services for adults and employers incorporating Train to Gain and skills accounts. It will underpin a new Adult Advancement and Careers Agency, the National Employer Service and the National Apprenticeship Service. The SFA will have a national and regional presence as well as having a role sub-regionally, working with local authorities and other partners to support local area agreements (LAAs) and Employment and Skills boards.

The YPLA will be responsible for supporting local authorities in discharging their new strategic commissioning role for 16 to 18 education and training. We anticipate that the YPLA will be established as a non-departmental public body (NDPB) and that its governance will include representatives of the key delivery partners, including local authorities. Its primary role will be to moderate the commissioning plans of local authorities for the purpose of budgetary control and ensuring that the new curriculum entitlement is delivered across every area of the country. Similar to the SFA, the YPLA will have both a national and regional presence.

Further details of the roles of the Skills Funding Agency (SFA) and the Young People's Learning Agency (YPLA) are set out in the White Paper. The consultation period for the White Paper ends on 9 June 2008 and we are currently running consultation events in each region with a range of stakeholders including local authorities.<sup>71</sup>

## B. White paper proposals

The structure and remit of the YPLA was set out in the white paper:

We anticipate that the Young People's Learning Agency will be established as a Non- Departmental Public Body (NDPB) and that its governance will include

---

<sup>70</sup> Department for Innovation Universities and Skills Press Release "New reforms to improve the delivery of adult and young peoples' skills" 17 March 2008.

<sup>71</sup> HC Deb 22 May 2008 c 395

representatives of the key delivery partners, including local authorities. It will operate nationally and regionally and we anticipate that its governance regionally would reflect the importance of local authorities having a strong sense of ownership of services provided to them by the Agency.<sup>72</sup>

The Young People's Learning Agency will:

- establish and agree with local authorities a national planning and commissioning framework;
- provide a strategic analysis service which supplies consistent data to support local authorities to carry out their commissioning duties;
- manage the national funding formula and work with the new qualifications development agency, which will evolve from the Qualifications and Curriculum Authority, to advise on qualifications funding;
- deliver all learner support for young people and adults, as the LSC does now, nationally to 2013 – the end of the current contract. Beyond 2013 we will take a view on managing the youth and adult learner support systems separately;
- manage national and regional contracts, for the few providers that operate across the whole country or provide highly specialised services;
- secure budgetary control and delivery of statutory entitlements if these would not otherwise be delivered; and
- be responsible for the flow of 14-19 management information to meet commissioning needs.<sup>73</sup>

A document published by the DCSF called *The 16 – 19 Transfer Part 1: The Young People's Learning Agency and how it fits in the system* provides a blueprint of the operational model and business functions of the YPLA.

## 1. Responses to the white paper

The contributions in the Response Paper suggested that most respondents felt there was a need for a YPLA:

66. Respondents were asked "Do you agree that there is a need for a slim national 14-19 agency with reserve powers to balance the budget and step in if needed?" There were 345 responses to this question: 66% of respondents agreed, 9% disagreed and 26% were not sure.

67. Those who disagreed or were unsure feared the YPLA would increase bureaucracy, and would be costly and overly complicated.

68. Some respondents thought a slim national body was essential in order to ensure equity of approach and coherent planning and funding and that it was sensible for Central Government to maintain reserve powers so as to provide local authorities with real incentive to secure the capacity and capability to take on the new responsibilities. Many respondents stressed that this body must be

---

<sup>72</sup> White paper page 29

<sup>73</sup> White paper page 29

kept as slim as possible to ensure that decision making is not slowed or affected by many layers of agencies.

69. It was seen to be important that the YPLA should be seen as a strong body with the power and speed to respond to and resolve issues effectively, and ensure equity of provision between local authority areas. Respondents suggested that the YPLA should have additional responsibilities for students with learning difficulties under 25, and young people in juvenile custody during the initial years of the reforms.

70. Other respondents felt that all commissioning capacity should be transferred to local authorities and that this should take place by 2010. They also felt that local authorities should have a strong voice within the YPLA.

71. Clarity was requested on: what the roles and responsibilities of the YPLA will be; how the YPLA will interface with local authorities and the SFA; and what commissioning powers it will hold.<sup>74</sup>

## C. The Bill

Part 3 Chapter 1 of the Bill establishes the YPLA as a corporate body that will perform its functions in England only, except under the powers to provide services and assistance (clauses 65 to 67) where it may exercise functions in relation to, and within, the devolved administrations' areas.

### 1. Structure of the YPLA

Details of the structure of the body are set out in **Schedule 3** of the Bill. **Schedule 3** states that the YPLA is not to be regarded as an agent of the Crown and its staff will not be civil servants. The body will have a chair, between 5 and 15 other members and a chief executive. All of these members will initially be appointed by the Secretary of State; subsequent chief executives and members will be appointed by the YPLA. In appointing members the Secretary of State must have regard to the relevant experience of the members.

**Schedule 3** makes provision for the tenure and remuneration of members, staffing of the body, the establishment of committees, regulation of procedures, and delegation of functions. The YPLA has the power to establish a committee jointly, and any joint committee is given power to regulate its own proceedings. This power may be used, for example, to enable the YPLA to create a joint committee with the Qualifications and Curriculum Development Agency. Under paragraph 10, the Secretary of State, or a representative of the Secretary of State, is given the right to attend meetings of the YPLA and YPLA committees (including joint committees).

**Schedule 3** also states that the YPLA must make and publish plans for each academic year, as well as annual reports and accounts. The annual report is to be laid before

---

<sup>74</sup> Response Paper page 15

Parliament and the accounts must be sent to the Secretary of State and the Comptroller and Auditor General.

Paragraph 18 sets out that the YPLA will receive its funding from the Secretary of State, subject to any conditions that the Secretary of State thinks appropriate. Conditions may require the YPLA to use the grant for specified purposes, but may not impose conditions relating to the YPLA's provision of financial resources to a particular person or organisation.

## 2. Functions of the YPLA

### a. Funding

Clause 58 states that the YPLA must secure the provision of financial resources for persons providing or proposing to provide suitable education and training for persons over compulsory school age but under 19, or persons aged 19 to 25 with learning difficulties. In addition subsection (3) empowers the YPLA to secure financial resources in respect of learners of and under compulsory school age, and learners aged 19 and over (who have not had a learning difficulty assessment) who started their courses before they were 19. The *Explanatory Notes* give the following reason for these provisions:

These powers will enable provision to be secured, for example, for:

- young people under the age of 16 who are attending courses in a 16 to 19 institution, whether this is because they are starting a course early, or because the course is specifically designed for those under 16, for example, young apprenticeships;
- young people who start a course before they reach 19 which ends after their 19th birthday;<sup>75</sup>

Under subsection (4) the YPLA will have power to pay grants and allowances to learners of all ages. These powers enable the YPLA to secure, for example, Care to Learn grants (which are provided to young people who begin their course or learning programme before their 20th birthday), Education Maintenance Allowances (EMAs) (provided to 16 to 18 year olds) and the Adult Learning Grant (a means tested grant provided to adults of all ages). Subsection (8) gives the YPLA the power to take account of fees, charges, and other matters such as the cost of travel or childcare when securing these grants.

Subsection (4) also gives the YPLA the power to secure the provision of financial resources for other purposes, such as facilitating and encouraging participation in education and training, providing goods and services, carrying out research, providing work experience, carrying out means tests and providing information.

In the performance of these functions the YPLA must make the best use of resources and avoid provision that might give rise to disproportionate expenditure. **Clause 58 (6)** explains that provision should not be considered as disproportionately expensive only because it is more expensive than comparable provision.

---

<sup>75</sup> Bill 55 - EN page 29

**Clause 59** allows the YPLA to attach conditions to any financial resources provided. These may relate to the charging of fees, allocation of awards, or the recovery of payments from providers.

**b. Assessment**

Under **clause 60** the YPLA may adopt or develop schemes for the assessment of the performance of providers of education and training. The YPLA may take these assessments into account when allocating funding.

**c. Means tests**

**Clause 61** enables the YPLA to carry out, or to arrange for others to carry out on its behalf, tests against eligibility criteria (financial or otherwise) which may be taken into account when the YPLA is securing financial resources for those receiving, education and training under its powers in **clause 58**. The *Explanatory Notes* give the following reason for this provision:

This will enable the YPLA to administer grants or allowances to learners or prospective learners according to clearly defined criteria. For example, it will enable the YPLA to administer the Education Maintenance Allowance scheme to 16 to 19 year olds.<sup>76</sup>

**d. Prohibition on charging**

**Clause 62** states that the YPLA must ensure that no charges are made for certain courses referred to as 'relevant education or training'; relevant education or training' is defined as full or part-time education or training which is suitable for the requirements of persons over compulsory school age but under 19 other than education provided by at a school maintained by the local authority.

The *Explanatory Notes* states that this provision aims to 'to ensure, so far as is practicable, that no charge is made for education or training funded by the YPLA that is provided for young people over compulsory school age'.<sup>77</sup>

**e. Securing provision**

**Clause 63** gives the YPLA the power to commission education or training for persons aged 16 or over but under 19, or for learners aged 19 but under 25 for whom a learning difficulty assessment has been made. This power will enable the YPLA to secure provision directly. The *Explanatory Notes* provide examples of when this power may be used, such as when it may be more appropriate to commission at national rather than local level, where sub-regional groups of LEAs are not yet ready to take on this role; or where a local education authority is failing or is likely to fail to fulfil its duty under **clause 40** of this Bill to commission suitable education or training.

---

<sup>76</sup> Bill 55 - EN page 31

<sup>77</sup> *ibid*

**f. Intervention role**

**Clause 64** gives the YPLA the power to make directions where it is satisfied that a local education authority is failing, or likely to fail, in its new duty under *section 15ZA* of the *Education Act 1996* (**clause 40**) to secure enough suitable education and training for young people aged over compulsory school age but under 19, and those aged 19 or over but under 25 for whom a learning difficulty assessment has been conducted.

The directions may be for the purpose of ensuring that the LEA secures suitable education and training, or may require the LEA to permit specified action to allow the YPLA itself, or another body, to take on the local education authority's functions on its behalf. The YPLA must consult the Secretary of State before giving a direction, and this direction may be enforced by mandatory order on application by the YPLA.

**Clause 70** requires the YPLA to publish a statement that sets out the circumstances under which it will intervene and the nature of that intervention.

**g. Provision of services**

**Clause 65** gives the YPLA the power to provide and receive payment for services to those persons or bodies listed in subsection (4) in connection with any of the recipient's functions relating to education and training. Those listed include the Secretary of State, the Welsh Ministers, the Scottish Ministers, a Northern Ireland department, the Chief Executive of Skills Funding, any person wholly or partly funded from public funds who has functions in relation to education or training, and any other person specified by order made by the appropriate national authority.

In Wales, Scotland and Northern Ireland, arrangements for such services will be made only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service. The YPLA will also need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

**h. Guidance**

The YPLA must issue guidance to local authorities about the performance of their duties and local authorities must have regard to such guidance. The main guidance to be issued under this power will be the *National Commissioning Framework and Supporting Guidance*, which will cover how local education authorities should work independently and together in sub-regional groupings to develop commissioning plans that will set out how they intend to secure education and training provision for learners within their area.

## **D. Reaction to Part III of the Bill**

### **1. NUT**

We are concerned about the creation of a plethora of new agencies, with the Skills Funding Agency and the Young People's Learning Agency. We are in danger of exchanging the bureaucracy of the LSC for two new agencies.

“The proposal to require the YPLA to enter into funding arrangements with the Government indicates that the Government wants to divest itself of direct control of academies. I wish the Government would come to the obvious conclusion. The way forward for academies is not through being controlled by a non-accountable Government agency but to become members of the democratically accountable local authority of schools.<sup>78</sup>

## E. Academy arrangements

### 1. Background

The Government is committed to opening 400 academies. Academies are independent publicly-funded schools. They are established and managed by sponsors, and mostly funded by the Government. No fees are paid by parents. The academies programme is a major part of the Government’s strategy to improve educational standards particularly in disadvantaged communities and areas of poor educational performance. The idea is that academies will have innovative approaches to governance, management, teaching and the curriculum. Academies are inspected by the Office for Standards in Education (Ofsted).

The first academies opened in 2002. Academies developed out of the previous City Technology Colleges (established in the 1980s) and City Academy programmes. The *Learning and Skills Act 2000* made provision for the creation of city academies, subsequently renamed academies.<sup>79</sup> Statutory provisions relating to academies are contained in Part IV of the *Education Act 1996* as amended by the *Education Act 2002*.

Academies have to operate within the law and in accordance with the funding agreement between the individual academy and the Secretary of State for Children, Schools and Families.<sup>80</sup> Capital grant is provided for buildings, and recurrent funding for academies is provided by the DCSF at a level intended to be comparable with local maintained schools. Academies are charitable companies and are required to prepare and file annual accounts with the Charity Commission.

In a [statement](#) to the House of Commons on 10 July 2007, the Secretary of State for Children, Schools and Families highlighted the importance the Government attaches to the academies programme, and announced a relaxation of the sponsorship requirements to encourage more universities to become involved in the programme.<sup>81</sup>

The Department for Children, Schools and Families and the Department for Innovation, Universities and Skills have produced a prospectus for universities wishing to take part in the programme, [Academies, Trusts and Higher Education; prospectus](#). There is a

---

<sup>78</sup> National Union of Teachers “Apprenticeships, Skill, Children and Learning Bill” 5 February 2009 <http://www.teachers.org.uk/story.php?id=4587>

<sup>79</sup> under the *Education Act 2002*

<sup>80</sup> Examples of individual funding agreements can be viewed via the DCSF’s Freedom of Information site on <http://www.dcsf.gov.uk/foischeme/> by putting the word ‘academies’ in the search box

<sup>81</sup> [HC Deb 10 July 2007 cc1321-2](#)

separate prospectus for schools, sixth forms and further education colleges: [Academies and Trusts: Opportunities for schools, sixth-form and FE Colleges prospectus](#). There is also a prospectus for independent schools wanting to become involved in the academy programme: [Academies and independent schools: prospectus](#). It sets out the case for sponsoring or supporting an academy, and explains how a successful independent day school might itself become an academy in order to broaden its intake and spread educational opportunity to all local children where there is a need for more high-quality school places. Recent press reports suggest that, in the current economic conditions, more independent schools may seek academy status if they are faced with falling rolls.<sup>82</sup>

Concern has been expressed about the role of sponsors in education, and some commentators have pointed out that in return for a relatively small amount of funding sponsors acquire influence over schools, particularly the curriculum and ethos of the school. The matter has been raised particularly in relation to religious sponsorship. The Government has stressed that sponsorship is philanthropic, and that sponsors do not make profits from academies, but that they bring personal commitment, energy, drive and experience from outside and, in some cases, greater stability to a school.<sup>83</sup> Information on the number of academies, their pupil characteristics and evaluations of their performance is provided in Library Standard Note SN/SG/4719, [Academies: Statistics](#).

Some concern has been expressed about the pace of the academies programme in the light of problems experienced by the Richard Rose Central Academy in Carlisle and the Oasis City Academy in Southampton.<sup>84</sup>

## 2. The Bill

**Clauses 74 to 76** make provision to enable the transfer from the Secretary of State of certain functions in relation to academies, city technology colleges (CTCs) and city colleges for the technology of the arts (CCTAs) to the proposed new YPLA. The YPLA would carry out such functions on the Secretary of State's behalf. The *Explanatory Notes* to the Bill state that the YPLA may be required to carry out the following functions, for example: calculating and paying grants; supervising budgets; managing specific cases concerning admissions, exclusions and special educational needs; monitoring, enforcing and terminating funding agreements; monitoring the standard of performance of pupils; and managing school building work.<sup>85</sup> It is intended that changes would take effect from September 2010. **Clause 75** allows the secretary of State to pay grants to the YPLA for it to carry out the functions specified, and for the Secretary of State to make the payment of grant subject to conditions. Provision is made in **clause 76** for information sharing between the persons and bodies listed, in order to carry out a 'relevant function'. Any information sharing must be carried out in accordance with the *Data Protection Act 1998*.<sup>86</sup>

---

<sup>82</sup> "Government to nationalise failing private schools", [Guardian](#), 31 January 2009

<sup>83</sup> [DCSF school standards website on academies](#)

<sup>84</sup> "Balls pushes ahead with academies", [BBC News Education](#), 30 January 2009

<sup>85</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, Bill 55-EN, paragraph 197

<sup>86</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, Bill 55-EN, paragraph 200



The Government has stressed that the proposed change is in line with wider Government policy to separate the Secretary of State's decision-making role from front-line service delivery. The *Impact Assessment* of the Bill notes that, as the programme expands, the Government believes that is right to consider how the programme can be most effectively supported, and that the necessary arrangements need to be in place before the 400 target is reached. Over 300 academies are expected to be open by 2010. It is intended that the YPLA will, at a regional level, take on support and performance monitoring of academies. The YPLA will have a presence in all local government regions, and so will be expected to be able to provide a more personalised service to academies, and have a more detailed understanding of the local context of education services. The *Impact Assessment* makes it clear that the DCSF will retain responsibility for brokering new academies and their formation.

Commenting on the provisions Christine Blower, Acting General Secretary of the National Union of Teachers (NUT) said:

The proposal to require the YPLA to enter into funding arrangements with the Government indicates that the Government wants to divest itself of direct control of academies. I wish the Government would come to the obvious conclusion. The way forward for academies is not through being controlled by a non-accountable Government agency but to become members of the democratically accountable local authority of schools.<sup>87</sup>

## IV The Chief Executive of Skills Funding

Part 4 of the Bill establishes the office of the Chief Executive of Skills Funding and sets out the main duties of the Chief Executive. The holder of this office with his or her staff will constitute the Skills Funding Agency (SFA) which will take on responsibility for funding post-19 education and training.

### A. White paper proposals

The white paper outlined the role and functions of a new body called the Skills Funding Agency (SFA):

The new body will be a focused, streamlined agency, close to Government and with an operational role. It will have national and regional presence.

The key role of the new Skills Funding Agency is to ensure that public money is routed swiftly, efficiently and securely to accredited colleges and providers following the purchasing decisions of customers. It will build on the success of the LSC. Coupled with making payments, the agency will also manage the framework and the development of the FE service. This includes responding to strategic skills pressures and bottlenecks; securing dynamic market exit and entry; creating a funding and incentive structure that prioritises responsiveness to

---

<sup>87</sup> NUT News Release, 5 February 2009: <http://www.teachers.org.uk/resources/word/pr1209-ASCL-Bill.doc>

customers; and ensuring availability of good public information. It will be a funding body, not a funding and planning body.

The agency will provide a coherent structure for managing other key functions of the skills landscape. Principal amongst these will be the National Apprenticeship Service (NAS), and the adult advancement and careers service. It will also manage the National Employer Service (NES), which serves large employers (5,000+ employees). These services managed from within it each will have a strong, accessible presence targeted on their different audiences, and strong interfaces with each other, consistent with the Government's business support simplification programme.

Overall, the funding agency will be responsible for ensuring that public funds are best used to complement and leverage the much larger private investment which is made in adult skills and training. It will be responsible for ensuring the overall environment or 'trading conditions' in FE created by Government are highly supportive of upskilling to meet the nation's needs. This includes, crucially, ensuring that individuals have the information and support they need to be informed, empowered consumers; and colleges and providers have the freedom they need to meet the requirements of employers and learners, drawing down public funding as part of that service where appropriate.<sup>88</sup>

The white paper stated that the SFA would be a funding agency and it would not have a formal planning role.<sup>89</sup>

The governance arrangements of the SFA were also set out in the white paper:

The Skills Funding Agency will be a Next Steps Agency, giving it a closer relationship to Government than now exists between DIUS and the LSC, more analogous to the DWP/ Jobcentre Plus relationship, so as to minimise the need for sponsoring and oversight functions in DIUS, and get the tightest connection between policy and delivery.

The Chief Executive of the agency will be the Accounting Officer, and as such will be accountable directly to Parliament for the expenditure of the agency's budget.

The Chief Executive will be a member of the DIUS Executive Board, and as such will be accountable directly to the Secretary of State and the Permanent Secretary of DIUS for performance management purposes.

The Executive Board of the Agency will comprise the Directors of the NAS, the adult advancement and careers service and the NES, together with the Chief Executive. Other board members will be appointed as deemed necessary.<sup>90</sup>

A document on the LSC website called [Post – 16 Further Education and Skills Organisation and Landscape and the role and creation of the Skills Funding Agency January 2009](#) gives detailed information on the structure and functions of the proposed new agency and its working relationships.

---

<sup>88</sup> White Paper page 60

<sup>89</sup> Next Steps document page 19

<sup>90</sup> *ibid*

## 1. Aim of the proposals

The main reason given for the changes has been the need to develop a demand-led system to deliver the skills agenda. The Government aims to improve the skills of the workforce by ensuring that funding for training is flexible and responsive to the needs of employers and learners. The rationale for the changes was given in the Impact Assessment as:

The main aims of these proposals are:

- To give the adult skills system the dedicated agency it needs and deserves; and
- To reflect the vital importance of the skills agenda to our economy and society.<sup>91</sup>

## 2. Responses to the white paper

The majority of respondents supported the creation of a SFA for adult learning and acknowledged the importance of these reforms with regard to the Leitch agenda<sup>92</sup>:

141. Respondents were asked "Do you agree with the proposal to create a new Skills Funding Agency to replace the Learning and Skills Council post- 19?" There were 327 responses to this question: 62% agreed, 15% disagreed and 22% were unsure.

142. The majority of respondents recognised the need for a national body to oversee post-19 funding and delivery, with a clear focus on demand-led funding and performance management. Some respondents believed that the transition from the LSC to the SFA was a major undertaking, and suggested that the potential risks of this transfer could be minimised by locating the SFA in Coventry and using existing mechanisms as a starting point.

143. Of those who disagreed, 10% were of the opinion that the LSC should be left in place, preferring evolution of existing systems to wholesale changes. This position was based upon concerns over instability and the need for a large change management exercise.

144. Some respondents were concerned that the creation of a largely local led system for pre-19, but a nationally led system for post-19, would result in an inconsistent, more complex approach to funding and fragmented the governance of the system. 7% of respondents preferred that funding for adults be transferred to local authorities, to create a single strategic leader for both 14-19 and adults. Others queried whether the Government had considered other models, such as the RDA.

145. Some respondents (5%) noted the need for local contact within the SFA. Others were also concerned that there was a gap in the consideration of the links

---

<sup>91</sup> [Impact Assessment](#) page 29

<sup>92</sup> Overview of Leitch Review of Skills available on the DIUS website at <http://www.dcsf.gov.uk/furthereducation/index.cfm?fuseaction=content.view&CategoryID=21&ContentID=37>

between further education and higher education in this proposal, and the impact that this could have on progression between the two sectors.<sup>93</sup>

## **B. The Bill**

Part 4 Chapter 1 establishes the office of the Chief Executive of Skills Funding. The Chief Executive is to be appointed by the Secretary of State and will perform the functions of the office in relation to England only.<sup>94</sup> The *Explanatory Notes* give an overview of the office;

The Chief Executive will be responsible for funding post-19 education and training, for exercising the apprenticeships functions, including securing provision of apprenticeship places for suitably qualified young people aged 16-18; and for the education and training of those in adult custody.

The Government intends that the Chief Executive will be supported by a new Skills Funding Agency, which will administer the funding system, and make payments to colleges, training providers and others based on the course selections of learners and employers and on a set of entitlements to learning, advice and financial support. The Skills Funding Agency will also manage the new Adult Advancement and Careers Service (AACCS), the National Apprenticeship Service and the Train to Gain service.

The Skills Funding Agency will also oversee the development of the Further Education Sector, working with the aim of ensuring that the supply of learning provision meets the needs of learners and employers.

The Skills Funding Agency is not defined in this Bill - instead the Government intends that it will operate through the powers and duties of the Chief Executive of Skills Funding, as described in Part 4 of the Bill. The detailed role and functions of the Skills Funding Agency will be set out in a Framework Document which will be issued by the Secretary of State.<sup>95</sup>

### **1. The Office of the Chief Executive**

**Clause 78** provides for there to be a Chief Executive of Skills Funding; **schedule 4** sets out the administrative details of the office.

**Schedule 4** paragraph 1 states that the Chief Executive is to be a servant of the Crown. It also provides that the office itself will be a corporation sole, so that any contracts entered into, or property owned by, the Chief Executive will pass automatically from one holder of the office to the next. The tenure of the Chief Executive and terms of appointment are given in paragraph 2 of the schedule. The Chief Executive may appoint staff and the appointed staff will be civil servants; the staff of the Chief Executive will form the Skills Funding Agency.

---

<sup>93</sup> *Ibid* page 25

<sup>94</sup> except for sections 103 to 105

<sup>95</sup> Bill 55 - EN page 37

## 2. Administrative arrangements

The administrative arrangements of the office are contained in **Schedule 4**. Paragraph 6 states that the Secretary of State may make grants to the Chief Executive.<sup>96</sup> The grants are to be made at such times as the Secretary of State thinks appropriate and may be subject to conditions; these conditions may include setting the Chief Executive's budget, requiring the Chief Executive to use the grant for a specified purpose or requiring the Chief Executive to comply with various requirements.<sup>97</sup> The Secretary of State may also require that the Chief Executive impose specified conditions when providing specified funds.

Paragraph 7 states that the Chief Executive must prepare annual reports and accounts. Copies of which must be laid before Parliament. The accounts must also be sent to Comptroller and Auditor General.

## 3. Duties of the Chief Executive<sup>98</sup>

The Chief Executive has numerous duties towards learners aged 19 and over. The main duties are with regard to the provision of facilities<sup>99</sup>, the payment of tuition fees,<sup>100</sup> funding of providers,<sup>101</sup> assessment,<sup>102</sup> and formulation of strategy.<sup>103</sup> The Bill further states that the Secretary of State may direct the Chief Executive to impose a condition of co-operation on any financial resources provided. This provision aims to ensure that local authorities, the YPLA and other education providers work together.

Below is an overview of the main duties of the Chief Executive:

### a. *Provision of facilities for learners aged 19 and over*

**Clauses 93, 94 and 95** re-enact section 86 of the *Education and Skills Act 2008*, but confers functions on the Chief Executive rather than the LSC.

**Clause 93** states that the Chief Executive must secure the provision of proper facilities for relevant education and training for specified persons which are suitable to their requirements. Specified persons are defined in subsection (3) as persons aged 19 or over and who are not persons under 25 with a learning difficulties assessment and persons who do not already have a qualification of the same or higher level. The *Explanatory Notes* state that this clause gives priority to some persons over others:

This clause effectively gives higher funding priority to those adults who lack certain particular skills to enable them to obtain relevant qualifications. The duty

---

<sup>96</sup> Schedule 4 paragraph 6

<sup>97</sup> Schedule 4 paragraph 6(3)

<sup>98</sup> The duties of the Chief Executive with regard to apprenticeships are dealt with in a separate library research paper.

<sup>99</sup> Clause 93

<sup>100</sup> Clause 94

<sup>101</sup> Clause 97

<sup>102</sup> Clause 99

<sup>103</sup> Clause 108 - 110

will apply only to a learner's first qualification at the specified level. For example, the Chief Executive will not be under a duty to secure the provision of proper facilities for a learner with a level 2 National Vocational Qualification (NVQ) in Beauty Therapy who then applies for a level 2 course in Hairdressing.<sup>104</sup>

Facilities are deemed to be 'proper' if they are of a sufficient quantity and quality to meet reasonable needs; and 'relevant' education and training is defined in Schedule 5 paragraph 1 as specified qualifications in literacy, numeracy and vocational level 2 qualifications.

In performing the duty, the Chief Executive must take account of a number of factors, such as the education and training needs in different sectors of employment. The Chief Executive must also act with a view to encouraging diversity of education and training and to increasing opportunities for individuals to exercise choice; and must make the best use of resources, particularly with a view to avoiding provision which might give rise to disproportionate expenditure.

**b. Payment of tuition fees**

**Clause 94** places a duty on the Chief Executive to ensure that learners will not be liable to pay fees for courses of study provided as a result of **clause 93**. The *Explanatory Notes* state that there are two categories of learners that the Government intends will not have to pay fees for their courses:

- Subsection (2) covers those that are at least 19 years of age and are following a course of study for their first specified qualification in literacy, numeracy, or a specified vocational qualification at level 2;
- Subsection (4) covers those that are at least 19 but less than 25 who are following a course to get their first specified level 3 qualification (for example, two A-levels).

**Clause 95** allows for some persons to be treated as having or not having a particular qualification for the purposes of meeting the entitlement. It also provides that **clauses 93** and **94** do not apply to people detained in prisons or adult young offender institutions.

**c. Provision of financial resources**

**Clause 97** states that the Chief Executive may provide financial resources to numerous persons including: persons providing or proposing to provide education and training, persons providing goods and services in connection with education and training, persons receiving education and training, persons carrying out research related to education and training and persons providing information and guidance related to education and training.

The Chief Executive may provide resources directly or by making arrangements with other bodies.<sup>105</sup> The resources provided by the Chief Executive may be secured by

---

<sup>104</sup> Bill 55 - EN page 43

<sup>105</sup> Clause 97 (2)

charges to those receiving education and training: these may be fees or for other costs such as childcare.

The Chief Executive may not make excluded payments – these are set out in section 127 and cover qualifications awarded by higher education institutions.

**d. Assessment**

**Clause 99** re-enacts the performance assessment elements of section 9 of the *Learning and Skills Act 2000*, replacing references to the LSC with references to the Chief Executive of Skills Funding. It enables the Chief Executive to adopt or develop schemes for assessment of the performance of providers<sup>106</sup> and to take these assessments into account when providing funds.

**e. Provision of services**

**Clause 103** re-enacts section 11 of the *Further Education and Training Act 2007*, replacing references to the LSC with references to the Chief Executive of Skills Funding. It provides the powers for the Chief Executive to provide services for individuals and to bodies exercising education and training functions in relation to those functions. It enables the Chief Executive to offer support services such as management information systems, software management systems, payroll administration, human resources functions, finance services and procurement services, including to people and to bodies outside England where that is appropriate, and required by the devolved administrations. Such services may include the provision of accommodation or facilities where that is appropriate to the delivery or provision of the service.

The Chief Executive may provide these services to: publicly-funded education and training providers (including schools and universities); publicly-funded institutions that have functions relating to the provision of education and training; and persons or bodies specified by order (who may or may not be publicly funded but have functions relating to education or training).

**Clauses 104 and 105** allow the Chief Executive of Skills Funding to enter into arrangements to provide services in Scotland, Wales and Northern Ireland. Equivalent powers for the LSC are currently provided for by sections 12 and 13 of the *Further Education and Training Act 2007*. Any such arrangements would require the approval of the Secretary of State and of devolved administrations. The Career Development Loan (CDL) scheme is an example of a scheme currently operated across Great Britain by the LSC under the existing powers.

**f. Research and information**

**Clause 106** states that the Chief Executive may carry out programmes of research in connection with the functions of the office and provide the Secretary of State with information and advice. The Chief Executive must establish systems for collecting

---

<sup>106</sup> Clause 99

information about education and training and may secure the provision of services for information advice and guidance on education and training.

**g. Guidance**

The Chief Executive must have regard to guidance given by the Secretary of State in performing his/her duties. In particular, guidance may relate to consultation with learners, potential learners (who fall within the Chief Executive's remit) and employers; and taking advice from such persons or descriptions of persons as may be specified in the guidance. In relation to consultation with learners and potential learners, the guidance must provide for the views of such persons to be considered in the light of their age and understanding.<sup>107</sup>

**h. Persons aged 19 or over with learning difficulties**

**Clause 111** provides that in performing the functions of the office, the Chief Executive must have regard to the needs of persons who are aged 19 or over who have learning difficulties, but who are not subject to a learning difficulty assessment (under section 139A of the *Learning and Skills Act 2000*). A person with a learning difficulty is defined in subsections (2) and (3) as, a person having a significantly greater difficulty in learning than the majority of persons of the same age, or a person having a disability which either prevents or hinders the person from making use of facilities of a kind generally provided by institutions providing education or training.

**4. Strategic bodies**

**Clause 108** re-enacts with modifications, existing powers under section 24A of the *Learning and Skills Act 2000* which states that the Secretary of State may specify an area in England as an area for which a specified body may formulate a strategy, setting out how the functions of the Chief Executive are to be carried out in that area. The *Explanatory Notes* state that this area would 'typically be a city region for which a specified body – for example, an Employment and Skills Board – is able to set out a strategy for the Chief Executive in that particular area'.<sup>108</sup>

**Clause 109** establishes that London will have its own strategic body – the London Body. This section re-enacts with modifications section 24B of the *Learning and Skills 2000* (which was inserted by the *Further Education and Training Act 2007*). The body that is established must include the Mayor of London, who will be the chairman, and other members appointed by the Mayor. The Secretary of State may give directions and guidance to the strategic bodies in relation to the form and content of strategies and other factors such as the matters to which a body is to have regard when formulating or reviewing their strategies.

**Clause 110** states that the Chief Executive must carry out any functions specified under a strategy in accordance with that strategy. However if following a strategy would

---

<sup>107</sup> Bill 55 - EN page 52

<sup>108</sup> Bill 55 - EN page 50



conflict with provisions in any other strategy, or is unreasonable or, would give rise to disproportionate expenditure then the Chief Executive is permitted to depart from the strategy.

## **5. Funding conditions requiring co-operation**

The Secretary of State may direct the Chief Executive that financial resources provided to a provider are subject to a condition of co-operation. Under such a condition the provider must co-operate with any specified provider or person. Persons in this case include bodies such as the London Body, a local education authority or the YPLA.

## **6. Information sharing for education and training purposes**

**Clause 119** will allow the Chief Executive of Skills Funding, the YPLA, and LEAs, to share information to enable or facilitate the exercise of their functions.

The clause does not allow information to be passed on if doing so would be an offence, nor where there are other statutory restrictions which prohibit its disclosure.

## **C. Benefits and costs of the changes**

The Impact Assessment stated the following benefits of changing the adult training system:

- Employers and individuals will be better informed about what education and skills training they need and can access, and colleges will have to respond with high quality responsive courses if they are to access Government funding. This creates a real incentive structure that prioritises responsiveness to customers
- Money will be routed more quickly to colleges and providers, because it will be based on real demand, not complex planning decisions. But the SFA will step in where colleges do not meet nationally agreed minimum standards or in areas of market failure
- The SFA will give increased focus to ensuring that the strategic needs of local areas are being met; ensuring that employer needs are addressed more promptly and effectively.
- The administrative costs of back office functions will be reduced in the SFA because some of the functions, which are currently undertaken in different ways across the country, will be streamlined into a single function for example single account management of every college and learning provider.
- There will be savings from the much closer integration of the Skills Funding Agency with central government, including more flexible and effective performance management and interflow of staff. .
- The SFA will have fewer premises and therefore reduced premises costs.
- The system will be supported by new management systems and processes which will enable information about the labour market, colleges and other providers and the learning opportunities available to

be shared more effectively so that services to learners and employers are radically improved.<sup>109</sup>

The Impact Assessment also says that economies could be made on administration by sharing services between the YPLA and the SFA. Overall it is anticipated that the new system will be revenue neutral.

## **D. Issues**

### **1. Network of bodies**

Under the proposed new system further education providers will have to work with a network of bodies: local authorities, the SFA, the YPLA and the National Apprenticeship Service. An overview of how these bodies would interact was given in answer to a parliamentary question on 15 December 2008:<sup>110</sup>

#### **Learning and Skills Council: Reorganisation**

**Mr. Hayes:** To ask the Secretary of State for Innovation, Universities and Skills what the status of Learning and Skills Council (LSC) local partnerships will be following the reorganisation of the LSC. [243375]

**Mr. Simon:** The White Paper 'Raising Expectations: enabling the system to deliver', set out proposals to ensure that the needs of learners (young people and adults) and employers are met by a more responsive system. Responsibility for the planning, commissioning and funding for education and training for 16 to 19 year-olds will transfer to local authorities, supported by a new Young People's Learning Agency. For adults we propose to build on the demand led approach, including through the creation of a new Skills Funding Agency and strengthened advice and support services for adults and employers.

In respect of young people, local partnerships, such as the 14 to 19 Partnerships and Children's Trusts, are all being strengthened ahead of the dissolution of the LSC. At the same time the Government are working to develop stronger local area agreements and multi area agreement proposals to ensure that all partners are clear on roles, responsibilities and outcomes. Building stronger links between local, regional and national bodies is vital to ensure the outcomes for young people, adults and employers are continuously improved. That is why local authorities will be expected to work collaboratively with one another supported by a slim line Young People's Learning Agency.

In respect of adult skills, the Skills Funding Agency will also work with and develop existing local partnerships. It will work, for example, in partnership with the Young People's Learning Agency, regional skills and employment boards and other local and regional skills bodies to respond quickly and flexibly to national, regional and local skills needs, including drawing up statements of regional priorities and ensuring that these are reflected in multi area agreements and local

---

<sup>109</sup> Impact Assessment page 32

<sup>110</sup> HC Deb 15 December 2008 c537

area agreements. The SFA will also work with regional development agencies and local authorities in relation to economic development and worklessness.

We are also encouraging colleges and learning providers to co-operate with each other and with other key partners in order to meet the needs of employers in relation to skills training, and also to ensure that local strategic skills needs are met.

Our proposals will require legislation, which will be introduced early in 2009, as part of the Children, Skills and Learning Bill. Until the new arrangements are in place, the Learning and Skills Council will continue to be responsible for securing the effective delivery of post 16 learning. More detail on the pre 19 proposals can be accessed via this link,

<http://www.dcsf.gov.uk/publications/14-19nextsteps/>.

More detail on the Skills Funding Agency can be found in the recently published 'Adult Skills Reforms: An Update', accessible via this link:

[http://www.dius.gov.uk/policy/raising\\_expectations.html](http://www.dius.gov.uk/policy/raising_expectations.html).

The Next Steps document outlined how the bodies would work together:

The YPLA and SFA will have clearly defined roles in their interaction with each other including in their interaction vis-à-vis performance management of the FE sector and the SFA's sponsorship role of the FE system in general. The front facing services of the SFA, including the National Apprenticeship Service, will have a critical role in meeting the objectives of the YPLA and local authorities in securing sufficient apprenticeships for young people.<sup>111</sup>

Once the new bodies are established, FE colleges will receive payments from two different sources rather than just the LSC:

***Will FE colleges have multiple funding streams?*** FE colleges do not currently receive all of their funding from the LSC and so they are already used to dealing with multiple funding streams. FE colleges will have a single commissioner for pre-19 provision and a single commissioner for post-19 provision through the DIUS sponsored agency. We intend to bring these discussions into line so they are held together but the actual payment would come from two different sources.<sup>112</sup>

Respondents to the consultation expressed their uncertainty in the Responses Paper about how the agencies would interact:

#### **Interface between agencies**

Respondents were asked "Do you agree that we have described the way that these bodies would function in broadly the right way? Is the balance of responsibilities between them right?" There were 330 responses to this question: 22% of respondents agreed, 33% disagreed and 45% were not sure.

---

<sup>111</sup> Next Steps document page 12

<sup>112</sup> *ibid* 20

In the new system there will need to be interactions between the local authorities, YPLA and the SFA inside which the National Apprenticeship Service (NAS) will be housed. Many of the respondents said the White Paper did not provide enough information about how these bodies would function, and how the balance of responsibilities would be delegated for them to be able to offer an opinion at this stage.

Some respondents felt that the new system would create a new divide at 19 and that it may have been more helpful for the proposals to allow local authorities and other strategic partners to have a single point of contact for all post-16 learners.

Further information about the roles and responsibilities, and the points at which these organisations interact is needed. Specific information on the division of responsibilities between the performance management of school sixth forms, sixth form colleges and FE colleges is also needed.

Respondents called for clarity on the relationship between the YPLA, the SFA, the NAS, and local authorities.<sup>113</sup>

## 2. Adult learning

[The National Institute of Adult Continuing Education \(NIACE\)](#) response to the white paper expressed concerns about the future of adult education:

The changes outlined in the consultation mean that colleges of further education will be able to plan and operate in a secure and stable environment for their younger learners (not dissimilar to arrangements for schools and universities). With adults, however, they face an unstable, demand-led, marketised system. Under such conditions, (and in the light of the rapidly changing priorities of recent years) it is entirely rational for a risk adverse college to minimise its exposure to adult learning activities. The changes proposed simply make providing for young people a safer bet while the market process (not least the numerous changes in adult funding and curricula set by Government), encourages providers of all sorts to focus on those easiest to serve. There is a real risk that provider organisations,, seeking to create public value from learning at local level will further concentrate on providing for learners under 19 rather than bothering to compete for contracts for adult provision where margins are depressed by low-overhead operators whether from the private or third sector. NIACE believes that this could have a substantial detrimental impact upon widening participation and improving equality and diversity in adult learning – not least because FE colleges had, until the latest funding changes, the proudest record of any UK educational institution in reaching and securing under-represented groups.

Recent years have seen a massive shrinkage of the category of work defined as 'other further education' yet this includes much of the most responsive provision that has helped adults making a learning journey from less formal learning into courses within the national qualifications framework. Such courses include much provision (for example foreign language learning) valued by employers. The

---

<sup>113</sup> Response Paper page 16.

proposed new structures risk losing some of the flexibility and innovation that has characterised learner-centred further education provision for adults.<sup>114</sup>

## V Learning and Skills Council for England (LSC)

### A. Background: history of the LSC

#### 1. Pre the *Learning and Skills Act 2000*

Until 1991 FE colleges were funded by local education authorities through the local Government finance settlement. In 1991 the Government published a white paper *Education and Training for the 21<sup>st</sup> Century: The Challenge to Colleges*.<sup>115</sup> In this paper the Government proposed giving FE and sixth form colleges more autonomy and freeing them from local authority control; colleges would be funded directly from the Government through funding councils. The white paper led to the *Further and Higher Education Act* (FHEA) 1992 under which FE colleges and sixth form colleges became independent incorporated bodies free from local authority control.

In July 1992, under provisions in the FHEA, the Further Education Funding Council (FEFC) was established as an executive Non-Departmental Public Body. It assumed its full responsibilities on 1 April 1993. Under this new regime further education and training was funded by local authorities, the FEFC and Training and Enterprise Councils (TECs).<sup>116</sup> An outline of the roles of the FEFC, TECs and LEAs for the planning and funding of post-16 education and training is available in library research paper RP 00/39 [The Learning and Skills Bill](#) [HL].<sup>117</sup>

#### 2. *Learning and Skills Act 2000*

In June 1999, the Government published a white paper, *Learning to Succeed: a new framework for post-16 learning*, which proposed reforms to modernise and simplify arrangements for the planning, funding, delivery and quality assurance of post-16 education and training.

The white paper's proposals were subsequently presented to Parliament in the *Learning and Skills Bill 2000* on 24 March 2000. At the heart of the Bill was the establishment of a new non-departmental public body, the Learning and Skills Council for England (LSC), which would be responsible for post -16 learning. The LSC would take over functions performed by the FEFC and TEC and would take on the duties of LEAs in respect of adult and community learning. The Bill was enacted as the *Learning and Skills Act* on 28 July 2000. Further details on the Act can be found in the [Learning and Skills Act 2000 Explanatory Notes](#).<sup>118</sup>

---

<sup>114</sup> *Raising Expectations: Enabling the System to Deliver A response to the White Paper (Cm 7348) from the National Institute for Adult Continuing Adult Education* page 2

<sup>115</sup> *Education and Training for the 21<sup>st</sup> Century: The Challenge to Colleges* CM 1536

<sup>116</sup> RP 00/39 gives an outline of the role of these bodies

<sup>117</sup> RP 00/39 *The Learning and Skills Bill* [HL].

<sup>118</sup> *Learning and Skills Act 2000 Explanatory Notes*

## B. The Learning and Skills Council (LSC)

The LSC was created in 2000 as a non departmental public body under provisions in the *Learning and Skills Act 2000*. It is responsible for the strategic development, planning, funding, management and quality assurance of all post-16 further education and training in England. The establishment of the LSC was intended to simplify funding arrangements and to create a regime that included all funding streams outside higher education.

### 1. Structure and remit of the LSC

Under the 2000 Act the LSC was governed by a national council of between 12 and 16 members, the role of the council is outlined in LSC document *Learning Skills: Changing Lives, Improving Work Learning and Skills Council's Annual Report and Accounts for 2007-08*:

Our national teams work with DIUS, other Government departments and a range of partners and stakeholders, including Sector Skills Councils to make sure that we develop policies that support the delivery of our strategies and meet the local and regional needs of young people, adults and employers.<sup>119</sup>

The national council currently works with nine regional offices to support the implementation of policies. The work of the regional team is summarised in the Annual Report and Accounts 2007-08:

Our nine regional directors work with organisations such as the Regional Development Agencies, local authorities and Government Offices to provide a framework for the work of our local partnership and area teams.<sup>120</sup>

Until February 2008, 47 local LSC councils exercised functions within their local areas; these local bodies however were abolished by the *Further Education and Training Act 2007*. Nine regional councils came into effect in September 2008. The nine regional councils are led by employers. It was hoped that these regional bodies would establish links to businesses and deliver new solutions to regional skills issues. Regional councils will take on some of the national council's functions and will inform the LSC's decision-making at a regional level.

The remit of the LSC is set out in a list of duties in the *Learning and Skills Act 2000* sections 2 to 4; the remit of the LSC can be summarised as the duty to secure the provision of proper facilities for education and training for persons aged 16 to 19 and 19+. The LSC also has a further duty to encourage persons to participate in education and training and to encourage employers to contribute towards the provision and cost of training. In performing these duties the LSC must have regard to the different abilities and aptitudes of persons, the different requirements of different sectors of employment and the avoidance of disproportionate expenditure.

---

<sup>119</sup> LSC *Learning Skills: Changing Lives, Improving Work Learning and Skills Council's Annual Report and Accounts for 2007-08* HC 783 page 29.

<sup>120</sup> *ibid*

## 2. Agenda for Change

The LSC has undergone a series of restructurings since its creation. In November 2004 the LSC announced the *Agenda for Change* strategy.<sup>121</sup> This initiative aimed to bring about fundamental reform of the FE sector, to change the way the LSC worked in various areas and to simplify and reduce bureaucracy. Since the announcement of this strategy the LSC has undergone a period of reform which has included restructuring at local level.

The *Further Education and Training Act 2007* made further changes to the structure of the LSC by reducing the size of the national council from 12 members to 10, abolishing the 47 local LSCs and creating 9 regional bodies. The Act also removed the requirement that the LSC should establish statutory committees for young people and adults. Details of the changes to LSC can be found in Library research paper *RP 07/35 Further Education and Training Bill [HL]*.<sup>122</sup>

## 3. LSC funding methodology

Every year the LSC sets out its annual funding aims in a document called the LSC Statement of Priorities.<sup>123</sup> The Statement of Priorities is fixed in line with national targets set out in Public Service Agreements and other Government strategy documents; the 2009-10 statement is *Investing in our future through learning and skills*.<sup>124</sup>

### a. The national funding formula

The LSC is responsible for the distribution of more than £10 billion a year; the overall amount of funding allocated to the LSC is set out annually in a letter sent from the Secretary of State to the LSC. The latest *LSC Grant Letter: 2009-10* gives details of the available funding:

In summary, the funding for 09-10 will be £12,157,882,000 (£12.157bn), which is a 4.5% increase compared with 2008-09. This increase will fulfil our ambition and support our young people's learning and adult skills ambitions.

The LSC allocates funding to individual providers of post-16 education. The specific institutional funding allocations for further education providers are calculated using a national funding formula. The formula takes into account the standard number of learners (SLNs) at a particular institution and the relative cost of provision (the provider factor) by the institution. The provider factor is designed to take into consideration the cost of providing different types of learning programmes and the costs associated with providing courses in different socio-economic areas to students of different abilities.

---

<sup>121</sup> LSC News Issue No 235 *LSC launches major change programme in collaboration with FE sector* 1 November 2004

<sup>122</sup> *RP 07/35 The Further Education and Training Bill [HL]* Bill 75 of 2006-07

<sup>123</sup> LSC Strategy Statement of Priorities.

<sup>124</sup> DCSF and DIUS *Government Investment Strategy 2009-10 LSC Grant Letter and Statement of Priorities* November 2008

The funding formula is set out in a document called *LSC Funding Guidance 2008/09: Funding Formula April 2008*<sup>125</sup> on page 5:

Funding = (SLN × Rate per SLN × Provider factor) + Additional learning support.

#### 4. Statistics on the LSC

In 2007-08 the LSC employed an average of 3,451 people, 2,720 (79%) of whom were employed in regional and local LSCs. Total administration costs, excluding certain accounting items such as depreciation, were £196 million in the same year.<sup>126</sup> In the academic year 2007/08 the LSC funded 4.1 million learners, 1 million of whom were 16-18 year olds and just over 3 million were adult learners (aged 19+). Within the overall total there were 225,000 starts on LSC-funded apprenticeships and around 330,000 starts on Train to Gain courses.<sup>127</sup>

Details of LSC expenditure (made before the 2009-10 Grant Letter) are given below split by the areas associated with DCSF and DIUS functions. Total expenditure in 2008-09 is planned to be £11.6 billion; £9.6 billion (83%) of this is for participation – the ongoing costs of running courses. The remainder is learner support and development, capital funding and LSC administration. Total expenditure increased by 16% in real terms in the four years to 2008-09.

---

<sup>125</sup> *LSC Funding Guidance 2008/09: Funding Formula.*

<sup>126</sup> *Learning and Skills: Changing Lives, Improving Work The Learning and Skills Council's Annual Report and Accounts for 2007–08*, LSC

<sup>127</sup> *Post-16 Education: Learner participation and outcomes in England 2007/08*, The Data Service



**LSC expenditure<sup>a</sup> by Department and type**

£ million cash

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
<i>DCSF</i>							
Participation funding							
School sixth forms	1,655	1,783	1,944	2,040	2,054	2,082	2,101
16-19 FE	2,297	2,802	3,063	3,132	3,300	3,416	3,556
16-18 apprenticeships	615	592	587	593	637	705	776
Other funding	371	369	357	401	381	422	467
Total participation	4,938	5,546	5,951	6,166	6,372	6,625	6,900
Other funding	176	596	746	918	921	887	905
<b>DCSF total</b>	<b>5,114</b>	<b>6,142</b>	<b>6,697</b>	<b>7,084</b>	<b>7,293</b>	<b>7,512</b>	<b>7,805</b>
<i>DIUS</i>							
Participation funding							
19+ FE	1,902	2,011	1,915	1,874	1,785	1,719	1,741
Other	752	838	906	1,086	1,476	1,633	1,904
Total participation	2,654	2,849	2,821	2,960	3,261	3,352	3,645
Other funding	954	852	816	952	821	943	943
LSC administration <sup>b</sup>	244	290	216	237	215	210	206
<b>DIUS total</b>	<b>3,852</b>	<b>3,991</b>	<b>3,853</b>	<b>4,149</b>	<b>4,297</b>	<b>4,505</b>	<b>4,794</b>
<b>Total LSC expenditure</b>							
<b>£ million cash</b>	<b>8,967</b>	<b>10,134</b>	<b>10,550</b>	<b>11,233</b>	<b>11,590</b>	<b>12,017</b>	<b>12,599</b>
<b>£ million 2007-08 prices<sup>c</sup></b>	<b>9,681</b>	<b>10,721</b>	<b>10,865</b>	<b>11,233</b>	<b>11,225</b>	<b>11,467</b>	<b>11,700</b>

(a) Expenditure within Departmental Expenditure Limits. Figures to 2005-06 are outturn, 2006-07 provisional, 2004-08 forecast and planned thereafter

(b) Includes the costs of fixed assets and provisions for liabilities and charges

(c) Adjusted using 30 September GDP deflators

Source: DIUS Departmental Report 2008

**5. Rationale for the dissolution of the LSC**

In July 2007 the Government announced changes to the machinery of Government and the creation of two new departments: DCFS and DIUS. These changes impacted particularly on the Learning and Skills Council as this body found itself somewhat positioned between the two departments. The Impact Assessment on the current Bill says that the structure of the LSC is not right for a demand-led system.<sup>128</sup>

**C. White paper proposals**

In the white paper on FE and skills, *Raising Expectations: enabling the system to deliver*, the Government announced its intention to dissolve the LSC by 2010 and replace it with two new bodies: the Young People's Learning Agency (YPLA) and the Skills Funding Agency (SFA).

<sup>128</sup> Impact Assessment page 29

## 1. Responses to the proposals

Responses to the dissolution of the LSC have been mixed. The DIUS summary of responses document stated that 47 per cent of consultation respondents agreed that transferring funding for 14-19 education from the LSC to local authorities was the right approach.<sup>129</sup> Respondents were more certain about the benefits of replacing the LSC with the SFA. Ten per cent of respondents who disagreed with establishing the SFA said that the LSC should be left in place.<sup>130</sup> Some respondents were concerned about potential problems caused by creating a locally focused YPLA and a national SFA.

The Innovation, Universities, Science and Skills Committee's report *Re-skilling for recovery: After Leitch, implementing skills training and policies* expressed concern about abolishing the LSC:

The abolition of the LSC and the establishment of the Skills Funding Agency is likely to lead to considerable further disruption and the reward for this is as yet uncertain. The Government must be clear on the role of the SFA, including at regional level, and communicate this vision to its partners in skills delivery to avoid disaster. It is difficult to see how the regional LSCs set up recently can operate effectively without a definite transition plan, and the LSC as a whole will struggle to avoid being regarded as lame duck partner, unable to make long-term commitments or start new initiatives with any credibility. We recognise that the Government is determined to push ahead with this change but we believe that maintaining stability within the system should now be the prime consideration. We recommend that the Government move quickly to resolve the issues around the role, organisation and relationships of the new SFA and that it redouble its efforts to communicate this information to the LSC's regional partners, who need early and absolute clarity. Each region needs to be assisted in developing a plan for how the structures will work under the new arrangements post-2010. We also note that even if the Skills Funding Agency and National Apprenticeship Service are co-located in Coventry, effective mechanisms must be put in place to ensure that they work together.<sup>131</sup>

## D. The Bill

Part 5 **clauses 120** and **121** will dissolve the LSC. **Clause 120** states that the LSC will cease to exist on the day that this section comes into force. **Clause 121** contains provisions relating to the transfer of staff, properties, and liabilities from the LSC to other persons.

In relation to staff, the Secretary of State may make a scheme providing for designated employees of the LSC to become employees of 'a permitted transferee' or to become members of the civil service. The Government envisages that some of the LSC staff will become civil servants as a result of transferring to DIUS and the Chief Executive of Skills Funding. In relation to property, the scheme may provide for the transfer from the LSC

---

<sup>129</sup> Responses Paper page 12

<sup>130</sup> Responses Paper page 25

<sup>131</sup> Innovation, Universities, Skills and Science Committee *Re-skilling for recovery: After Leitch, implementing skills training and policies* 15 December 2008 HS 48-1 2008-09 page 82 paragraph 12

of designated property, rights or liabilities to the Secretary of State, the Chief Executive of Skills Funding, or to a permitted transferee. 'Permitted transferee' is defined in paragraph 7 as an English LEA, the YPLA or any other person specified by the Secretary of State by order.

## E. Issues

### 1. Increased bureaucracy and fragmentation

The National Association of Head Teachers (NAHT) response, *Promoting Achievement Valuing Success*, expressed concern about the ability of local authorities to cope with post – 16 funding and the greater complexity of the proposed system:

The Learning and Skills Council, for a number of reasons, is being abolished but the functions which it fulfilled still need to be undertaken, not the least, the one of arbitration and overall strategy for significant parts of the post 16 sector. Consequently, the consultation document appears to propose a number of ways in which the LSC is to be reinvented, with greater bureaucracy, more confusion and less efficiency.

In terms of the management of finance, a complex area in itself, Local Authorities have no recent experience of funding post 16 and no experience whatsoever of the current LSC approach.

NAHT believes that a National Funding Formula is both practical and necessary and that the approach should be activity led. It is for the Government to decide on this funding formula; it should not be left to individual partnerships or local authorities.<sup>132</sup>

Some commentators have suggested that the demise of the LSC and the advent of the YPLA and the SFA could cause the college sector to fragment into pre-19 or adult education:

The proposals have led to speculation that colleges will focus on either pre-19 or adult education. "Many colleges will be looking at whether they should be in one camp or another," says Collins

This move would alarm lecturers, as it could mean staff on separate pay scales and conditions of service. Barry Lovejoy, head of FE at the University and College Union, is concerned at the prospect of fragmentation, but says that local-authority involvement in 16-19 education should help to close the funding gap between sixth forms and colleges, and the pay gap between teachers and lecturers.<sup>133</sup>

---

<sup>132</sup> National Association of Head Teachers (NAHT) *Promoting Achievement, Valuing Success* June 2008

<sup>133</sup> "Mixed feelings over LSC's demise" *The Independent* 10 April 2008

## 2. Transition from LSC to new bodies

Information given in answer to a parliamentary question on 3 September 2007 stated that the LSC would continue to act as the funding body for post 16 education and training outside higher education until 2010/11:

**Paul Holmes:** To ask the Secretary of State for Innovation, Universities and Skills what proportion of Learning and Skills Council (LSC) funding will be diverted to local authorities as a result of changes to the machinery of Government announced on 28 June; what assessment he has made of the likely effect this will have on the number of staff the LSC employs; and if he will make a statement. [152438]

**Bill Rammell:** As set out in “Machinery of Government: Departmental Organisation”, in order to provide strong strategic leadership for the 14-19 phase, overall planning responsibilities for that phase will transfer to the Department for Children, Schools and Families, as will all funding for 14-19 learners. Subject to consultation on the details and timing, to ensure there is no disruption to schools, colleges and training providers and the introduction of new diplomas, and the need to pass the necessary legislation, funding for school sixth forms, sixth form colleges and the contribution of FE colleges to the 14-19 phase will transfer from the Learning and Skills Council (LSC) to local authorities’ ring-fenced education budgets. No decisions have yet been made about the proportion of LSC funding which will transfer to local authorities’ ring-fenced education budgets and I estimate that it will be 2010/11 when the necessary legislative changes can take effect. In the three years until then, the LSC retains the legal responsibility for securing and funding all forms of post-16 education and training outside higher education, including 16-19 provision. We will be working closely with the LSC and other national partners, along with schools, colleges and training providers, to ensure that the changes are well managed, including any impact on the deployment of staff.<sup>134</sup>

Further information on the LSC transition provisions was given in answer to a series of questions in the Next Steps document:

### **How will the skills of the LSC staff be retained?**

We wish to retain as much LSC staff expertise as possible. We recognise that the potential impact upon the retention of this valuable expertise is a key risk and a crucial component of the continued performance and delivery during the transition period. We will continue to work with the LSC and other key stakeholders to ensure that issues that could affect retention are addressed through the Machinery of Government governance arrangements that have been established; and officials will work with the LSC and stakeholders within this framework to ensure that the new structures and processes are implemented in a consistent and coordinated manner.

### **How will LSC staff be given certainty during the transition period?**

There has been uncertainty about the detail of the changes that will affect LSC staff following the Machinery of Government announcement in June 2007. The Raising Expectations consultation outlined the vision of the system required to

---

<sup>134</sup> HC Deb 3 September 2007 c1765

meet the needs of the changing education and skills landscape and the LSC expects to move to interim arrangements to provide further certainty for staff about the new arrangements. We are committed to ensuring that staff involved in any transfers are treated fairly and consistently and in line with best practice.

**Will the LSC be moving to new interim arrangements?**

Once the organisational design is developed to sufficient detail and we have clarity on the proposed sub-regional groupings from local authorities, the LSC expects to move to an initial interim structure which reflects the planned new arrangements and provides staff with further information on how the changes will apply to them. We expect interim structures to be in place by the end of 2008.

The National Institute for Adult Continuing Education (NIACE) has also expressed concern about the transition phase in their [white paper consultation response](#):

When many of the functions of the Further Education Funding Council and Training and Enterprise Councils were reconfigured into the LSC, there was a hiatus of some three years before the new structures were ready to identify and meet the needs of marginalised minority groups of learners. Bigger issues had to be addressed first. If this pattern is not to be repeated, careful planning for the new Skills Funding Agency will be required to ensure that policy momentum is not lost. This will be a complex task – whereas the LSC had to configure itself to a national council with 47 local councils, the new SFA will need to negotiate its relationship with 150 local authorities and 26 Sector Skills Councils as well as with Regional Development Agencies, 378 colleges, Special Designated Institutions and other learning providers at the same time as it works out local regional and national arrangements.<sup>135</sup>

### 3. LSC staff

Information on staffing provisions for the SFA and the YPLA was given in answer to a parliamentary question on 3 November 2008:

**Learning and Skills Council**

**Mr. Willis:** To ask the Secretary of State for Innovation, Universities and Skills how many staff employed by the Learning and Skills Council (LSC) he expects will become employed by (a) local authorities, (b) the Young People's Learning Agency, (c) the Skills Funding Agency and (d) the National Apprenticeship Service in 2010; and whether all current LSC staff will be offered alternative employment [246252]

**Mr. Simon:** We have identified that there will be some 3,300 full-time equivalents in 2010, which is in line with existing LSC staffing levels.

We expect to transfer around 1,000 posts to local authorities. This will be supported by the Young People's Learning Agency (YPLA), a non-departmental public body which will have approximately 500 posts in total, with around 200 at the national office and 300 in the regions. The YPLA will support local authorities

---

<sup>135</sup> *Raising Expectations: Enabling the System to Deliver A response to the White Paper (Cm 7348) from the National Institute for Adult Continuing Adult Education page 3*

in their new role in the commissioning process and delivery of good outcomes for young people.

The Skills Funding Agency (SFA) will be an agency of DIUS and will have approximately 1,800 posts, including the 400 posts in the National Apprenticeship Service.

We are committed to retaining the expertise of LSC staff in the new arrangements. DCSF and DIUS officials are working with the LSC and wider further education sector to finalise the details of these plans and processes over the coming months.<sup>136</sup>

Information was also given in parliamentary questions on 12 January 2009 about staff pensions<sup>137</sup> and the use of LSC buildings.<sup>138</sup>

## F. Political Debate

The [Conservative Election Manifesto 2005](#)<sup>139</sup> gave a commitment to replace the LSC:

We will simplify funding, replace the bureaucratic Learning and Skills Councils, ensure that money follows the student and allow colleges to apply for “Super college” status with greater freedom to manage budgets, specialise and innovate.

The Liberal Democrat leader Nick Clegg has said that the Liberal Democrats would also make changes to the LSC:

Quangos that strive to improve the population's skills, such as the Learning and Skills Council and Train to Gain, would be closed down or have their budgets cut.<sup>140</sup>

## VI The Sixth Form College (SFC) Sector

Part 6 of the Bill makes provisions about the sixth form college sector and creates a new legal status for sixth form colleges (SFCs).

### A. Background

#### 1. Legal status of SFCs

Since their introduction in the 1960s SFCs have been part of the further education sector. The Impact Assessment provides the following overview of SFCs:

---

<sup>136</sup> HC Deb 12 January 2009 c61

<sup>137</sup> *ibid*

<sup>138</sup> *ibid* c59

<sup>139</sup> Conservative Election Manifesto 2005 *More Police, Cleaner Hospitals, Lower Taxes, School Discipline, Controlled Immigration, Accountability. Are You Thinking What We Are Thinking?* page 9

<sup>140</sup> “Lib Dems promise to scrap tuition fees” *The Guardian* 9 February 2009 at <http://www.guardian.co.uk/education/2009/feb/09/tuitionfees-liberaldemocrats>

Sixth form colleges (SFCs) mainly provide for students aged 16-19 although many have diversified since they were first incorporated in the FE sector in 1993. The 94 SFCs have maintained a distinct identity within the FE sector, although there are few objective criteria that differentiate precisely between SFCs and FE colleges. SFCs have a reputation for high standards. They tend to offer Level 3 provision, are often seen as a bridging phase into higher education and negotiate pay and conditions that take account of school teachers' pay and conditions. They are represented by the Sixth Form Colleges Forum, of which all existing SFCs are members.<sup>141</sup>

## 2. Statistics on SFCs

At the start of 2009 there were 94 sixth form colleges open in England out of a total of 367 further education sector colleges of all types. There were sixth form colleges in all the English regions, but the largest number were in the North West (21) and South East (20).<sup>142</sup> In 2007/08 there were 146,500 learners aged 16-18 at sixth form colleges in England. This was around one in seven of all learners in that age group on FE courses<sup>143</sup> in that year,<sup>144</sup> or around one in nine of all 16-18 year olds in any form of education. Since the mid-1980s sixth form colleges have grown at a faster rate than either school sixth forms or other types of FE college. Between 1985 and 2007 the number of 16-18 year olds pupils in sixth form colleges increased by 130%, compared to a 30% increase across all institution types.<sup>145</sup>

The size of sixth form colleges in 2007/08 varied from just over 400 to almost 2,900 students. The average size was just over 1,500 students. 66 of the (then) 96 colleges had between 1,000 and 2,000 students, 13 had fewer than 1,000 and 17 had more than 2,000.<sup>146 147</sup>

A large majority of students at sixth form colleges (91%) were studying at level 3 (A-Level equivalent) in 2007/08. They made up 28% of all 16-19 year olds studying at this level in the FE sector.<sup>148</sup> Success rates<sup>149</sup> in sixth form colleges have been above those of other types of FE institution; they increased from 81% in 2004/05 to 84% in 2006/07. The average success rate across the sector for 16-18 year olds was 77% in 2006/07. Performance of sixth form college students in A-Level and equivalent examinations in 2007/08 in England was better than maintained school sixth form students on average points score and proportion achieving two or more passes. However, a higher proportion of students in school sixth forms achieved three A grades.<sup>150</sup> These figures look at outcomes only and take no account of differences in student intake.

---

<sup>141</sup> Impact Assessment page 45

<sup>142</sup> Edubase, DCSF (downloaded January 2009)

<sup>143</sup> Includes further education courses taught outside the sector, but excludes school sixth forms

<sup>144</sup> *Post-16 Education: Learner participation and outcomes in England 2007/08*, The Data Service

<sup>145</sup> *Participation in Education, Training and Employment by 16-18 Year Olds in England*, DCSF

<sup>146</sup> *16-18 year olds only*

<sup>147</sup> *School and College (post-16) achievement and attainment tables*, DCSF

<sup>148</sup> *Post-16 Education: Learner participation and outcomes in England 2007/08*, The Data Service

<sup>149</sup> Number of learning aims achieved divided by the number of starters.

<sup>150</sup> *GCE/VCE/Applied A/AS and Equivalent Results in England, 2007/08 (Revised)*, DCSF

## B. White paper proposals

The white paper stated that SFCs be given a distinct legal category:

We would expect that in relation to many forms of provider, the home local authority will straightforwardly lead for all local authorities the relationship with the provider. This will be true for School Sixth Forms, Sixth Form Colleges and many third sector organisations. In these cases, the home local authority will have the lead role in commissioning, in performance management (including intervention if necessary) and the key powers of the LSC in this respect will transfer to the home local authority.

In order to achieve this, we will identify Sixth Form Colleges as a distinct legal category for the first time. Currently, all incorporated colleges are treated as a single group in law. In practice there are few objective criteria which can differentiate precisely between Sixth Form Colleges and all other colleges: some Sixth Form Colleges have diversified to a considerable extent into adult provision, while many other colleges, not formally identified as Sixth Form Colleges, are very clearly focused on young people.

Therefore, we propose that a college should be deemed to be a Sixth Form College if:

- it predominantly caters for students aged 16-19; and
- it is designated as a Sixth Form College by the Secretary of State<sup>151</sup>

This would create a closer relationship between SFCs and their local authority:

We anticipate that the key differences in the system between the position of Sixth Form and FE Colleges will be a closer relationship between Sixth Form Colleges and their home local authority and a single commissioning and performance management relationship with that authority. We hope that bringing Sixth Form Colleges back within the local authority family will give added impetus to the growth of the sector. We will look to mechanisms such as 16-19 competitions to consider much more actively the option of creating or enlarging a Sixth Form College where new 16-19 places are needed.<sup>152</sup>

Governance arrangements for SFCs will stay as they are currently; they will remain fully independent autonomous corporations and the corporation will remain responsible for the institution.<sup>153</sup>

Further information about the reclassification of SFCs was given in answer to a parliamentary question on 13 January 2009:

**Rob Marris:** To ask the Secretary of State for Children, Schools and Families what tasks he has asked each Government Office to undertake relating to the

---

<sup>151</sup> White paper page 33 paragraph 3.33 – 3.34

<sup>152</sup> *ibid* paragraph 3.36

<sup>153</sup> Next Steps page 15



proposed changes to the funding and management of sixth form colleges; and if he will make a statement. [244171]

**Jim Knight:** Government offices (GOs) will have no direct role in funding and management of sixth form colleges in the new system. Local authorities will be accountable for the performance management of sixth form colleges in the new system where there will be a legally distinct Sixth Form College sector.

Responsibility for the planning, commissioning and funding for education and training for 16 to 19-year-olds will transfer to local authorities; supported by a new Young People's Learning Agency. GOs will contribute to discussion of regional priorities and support local authorities in undertaking their new responsibilities. They are, and will continue to be, a conduit for information to flow from sub-regional groupings (SRGs) to the Department. During the transition to the new system GOs are playing an important role in supporting local authorities and working with other regional bodies to prepare. In particular they have been supporting the development of SRGs in preparation for the transfer of 16 to 19 funding from the Learning and Skills Council to local authorities. The Department will be allocating funding via Government offices to SRGs to help build their capacity through this process.<sup>154</sup>

## 1. Aim of the proposals

The Impact Assessment gave the reason for the proposals as:

Ministers want to recognise the strength of SFCs and their contribution to the education of young people by identifying the SFC sector as a distinct legal category.

The main objective of the proposals is to create a separate legal identity for sixth form colleges, which will be based on a single commissioning and performance management relationship between the SFC and its home local authority.<sup>155</sup>

## 2. Responses to the white paper

The contributions in the Responses Paper suggested that there were several concerns about the proposals:

### **Sixth form colleges**

The White Paper proposed that for the first time colleges will be legally designated as sixth form colleges or FE colleges. Some respondents felt that they lacked clarity over the need for this designation and over whether there are any benefits in being designated as a sixth form college rather than an FE college or vice-versa.

Colleges will remain autonomous bodies. In the new system the difference between sixth form colleges and FE colleges will be who acts as their performance manager. Sixth form colleges will be performance managed by their home local authority, where as FE colleges will be managed by the SFA. Respondents felt that the different performance management systems could

---

<sup>154</sup> HC Deb 13 January 2009 c660

<sup>155</sup> Impact Assessment page 45

potentially lead to local authorities having a more distant relationship with FE colleges.

Concerns were also raised about payment of value added tax in sixth form colleges, different financial and funding years, and the differences in staff costs in FE compared with sixth form colleges.

Respondents asked for further clarity about how the designation process will work and details about the new performance management arrangements.

## C. The Bill

Part 6 and **Schedule 8** of the Bill contain provisions for a new sixth form college sector.

**Clause 123** removes the power to establish sixth form schools under section 16 of the *Education Act 1996*; these schools are maintained schools for 16 to 19 year olds. This clause prevents LEAs from establishing additional sixth form schools, but does not affect existing school sixth forms.

**Schedule 8** contains the details of the provisions. Paragraph 3 of **Schedule 8** inserts new provisions for sixth form college (SFC) corporations in England into the *Further and Higher Education Act 1992*. Sections 33 A to N contain the Secretary of State's powers over designation of SFC corporations and state other powers and duties of the new SFC corporations.

### 1. Designation as SFC corporation

Section 33 A gives the Secretary of State a power to designate by order a specified existing further education (FE) corporation as a 'sixth form college corporation'. The initial designation power will take the form of a list of institutions. Designation will take effect from the date on the order. The designation order may provide for the continuity of governance and may specify the name of the new institution. The SFC corporations designated under this section will include FE corporations established under the *Further and Higher Education Act 1992* and institutions established by orders under the *Learning and Skills Act 2000*.

The power to designate an institution as a SFC corporation is exercisable only once and not after a date to be specified by order. After this date the Secretary of State may designate other existing bodies using powers in section 33B. Section 33B states that FE corporations may be considered for designation as SFC corporations if on the date of application at least 80 per cent of the total enrolment number at the institution is aged 16 or over but under 19.

Section 33C allows for the establishment of new bodies and SFC corporations. An application for a designation order may be made by the governing body of the institution and the local authority must publish proposals. On establishment at least 80 per cent of the total enrolment number at the institution must be 16 to 18.

Provisions in section 33D allow existing SFCs to convert to FE colleges. The governing body of the SFC must apply to the Secretary of State and he must be satisfied that it is no longer appropriate for the college to remain as an SFC. To provide stability in the

sector the provisions prevent SFCs from seeking to convert their status for five years from the date that it was designated or established as SFC.

## **2. Powers and duties of SFC corporations**

The powers set out in sections 33F and 33G reflect the powers of FE corporations in sections 18 and 19 of the *Further and Higher Education Act 1992*. SFC corporations may provide secondary, further or higher education and participate in the provision of secondary education in school provided that they have consulted with local education authorities.

Section 33H creates a new duty of the promotion of well-being of a local area. This section places a duty on SFC corporations to take account of the way in which they contribute to the economic and social well-being of people who live and work in an area when they are providing education and training.

## **3. Governance arrangements for SFC corporations**

Sections 33I to L make provisions for the constitutions and conduct of SFC corporations. Under section 33I all SFCs must have instruments and articles of government. Section 33J allows SFCs of a particular character – mainly faith based institutions – to preserve their character by reflecting those characters in their trust deeds and membership of their governing bodies.

The first instruments and articles of government of new SFC corporations are to be drawn up by the YPLA. The YPLA may also modify the instruments and articles of government in consultation with a SFC corporation.

Under section 33M SFC corporations are designated as charities within the meaning of the *Charities Act 1993*.

## **4. Dissolution of SFC corporations**

Section 33N gives power to the Secretary of State to dissolve a SFC corporation and transfer the property, rights and liabilities of the corporation to another person or corporation which may include the responsible LEA. Before making any such order the Secretary of State must consult with the corporation and the LEA.

## **5. Intervention powers**

Paragraphs 4 to 7 of **Schedule 8** make amendments to the *Further and Higher Education Act 1992* to distinguish SFC corporations from FE colleges. Paragraph 11 of **Schedule 6** requires a LEA or the YPLA to notify the Chief Executive of Skills Funding about concerns that they have about FE colleges other than SFC corporations.

### **a. Intervention by LEAs**

Section 56E replicates for LEAs the intervention powers previously held by the LSC. Subsections (1) and (2) set out the matters that would trigger consideration of intervention. They include: mismanagement by the SFC governing body, failure by the

governing body to discharge an imposed duty, unreasonable action by the governing body and poor performance by the SFC. Subsections (4) and (5) set out the procedures to be followed when intervention is considered. Firstly the LEA must notify the Secretary of State, the YPLA and the SFC of their intention to intervene and give their reasons for doing so. The LEA may then take any of the following actions set out in subsection (6): remove all or members of the governing body, appoint new members of the governing body, give the governing body directions. Directions may include instructions to collaborate or to dismiss a member of staff (if the governing body has the power under the instruments and articles of government).

***b. Intervention by YPLA***

Section 56I allows the YPLA to intervene in the running of a SFC if action is required under the matters for intervention set out in 56E (1) and (2). The YPLA's intervention powers correspond to the powers of the LEA.

***c. Intervention policy***

Under section 56G the YPLA must prepare a statement of the policy to be followed by LEAs with regard to the exercise of intervention powers. The YPLA must consult on the powers and send a copy of the statement to the Secretary of State which is to be laid before Parliament. The approved statement must be published as policy.

Section 56J requires the Chief Executive of Skill Funding to notify the responsible LEA and YPLA if he has concerns about post – 19 provision in a SFC. The LEA and the YPLA must have regard to the Chief Executive's view in deciding whether to intervene.

## **D. Benefits and costs of the changes**

The Impact Assessment gives the following as the benefits and cost of the provisions:

**Benefits**

The benefits of a separate SFC sector will be in student outcomes: SFCs are among the highest performing post-16 settings (as shown by attainment data and in Ofsted reports) and the strengths of a developing SFC sector will help raise standards. The presence of high performing institutions within 14-19 partnerships will help to secure better 14-19 outcomes in local areas. SFCs are generally popular with parents and students and a strong and separate SFC sector will add to quality, choice, diversity and learner satisfaction – all indicators of a successful post-16 system.

**Costs**

This is largely an administrative change with few associated costs to the public sector. There will be minimal costs for LAs in performance managing SFCs; as the SFCs will remain independent corporations, the LA role will be comparatively light touch except in the rare instances where intervention is required. The YPLA

will have a strategic role in developing an intervention strategy for SFCs, the costs of which will be part of the initial establishment cost.<sup>156</sup>

## E. Issues

### 1. Expansion of the sixth form college sector

A recent Ofsted report stated that, of all the different types of institutions serving the 16-19 sector, SFCs were by far the most effective.<sup>157</sup> These colleges have proved very popular with students and parents. Information given in answer a parliamentary question on 26 July 2007 stated that Government policy was to foster more SFCs:

#### Sixth-form Colleges

**Paul Holmes:** To ask the Secretary of State for Children, Schools and Families whether his Department has lead responsibility for sixth form colleges; what role the Learning and Skills Council has in overseeing their work; what role it will have in the future; and if he will make a statement. [152429]

**Jim Knight:** The Department for Children, Schools and Families has responsibility for school sixth forms and sixth-form colleges within its wider responsibility for policy and funding for the education of children and young people up to age 19. The new Department will work closely with the Department for Innovation, Universities and Skills to ensure the successful delivery of our 14-19 reform programme through schools, colleges and training providers.

The changes to planning and funding for post-16 education that were announced in June 2007 will be subject to consultation and will require new legislation. I estimate that we will not be able to give effect to the full legislative changes until the academic year 2010-11. Until then, the LSC will retain the legal responsibility for securing and funding all forms of post-16 education and training outside higher education, including sixth-form colleges. It will continue to work with the FE sector as a whole to raise standards and to ensure that it plays a full and effective part in driving forward our 14-19 reform agenda.

Government policy is to foster more sixth-form colleges; they do an outstanding job and are generally popular with students and parents. The same is true of larger

school sixth forms, formed either by an individual school or a consortium. To overcome England's unacceptably low education participation rate beyond GCSE, more provision will be required of both types, working in partnership with other local providers to provide a wide range of high quality opportunities for learners aged 14-19.<sup>158</sup>

### 2. School sixth form and SFC funding gap

Local authorities will be accountable for the planning, commissioning, funding and performance management of sixth form colleges. This could move the SFCs away from

---

<sup>156</sup> Impact Assessment page 45

<sup>157</sup> "Teenage fanclub" *The Guardian* 9 December 2008

<sup>158</sup> HC Deb 26 July 2007 c1414

the college sector and towards the school sector; this repositioning could further highlight the differences between school sixth forms and SFCs:

Colleges within the LA family will be treated separately from schools. The downside is that this allows the funding gap between the two to be perpetuated. SFCs and general further education colleges will do the same work as school sixth forms, but get less public money for it. Nor will they have access to Building Schools for the Future cash.

People sense that one advantage to joining "the family" might be favouritism in commissioning. Among FE colleges, there is a suspicion that sixth-form type work will go more smoothly from an LA to SFCs, rather than through sub-regional grouping arrangements, however well monitored these are.<sup>159</sup>

Information given in answer to a parliamentary question on 4 June 2008 gave details of the difference in funding between school sixth forms and SFCs:

### **Sixth Form Education: Per Capita Costs**

**Mr. Laws:** To ask the Secretary of State for Children, Schools and Families how much per pupil funding there was for children taught in (a) school sixth forms and (b) sixth form and further education colleges in 2007-08; what the cost would have been of equalising funding per pupil at the level of school pupils in that year; and if he will make a statement. [200998]

**Jim Knight:** The Learning and Skills Council (LSC) Statement of Priorities, published in November 2007, set out that there will be a simpler, more transparent, common 16-18 funding system for schools, colleges and providers. This will be based on a common measure of the size of qualifications or learning programmes, standard learner numbers, 22 learning hours per week and a provider factor that is unique to every institution. On the basis of information provided by the LSC, under this new funding system the national funding rate per pupil for 2008/09 will be £2,945 for school sixth forms and £2,860 for FE colleges. The equivalent figures for 2007/08 have been estimated at £2,884 for school sixth forms and £2,790 for FE colleges.

The LSC hold the information required to calculate what the cost would have been of aligning funding rates between 16-18 pupils in school sixth forms and sixth-form colleges/FE colleges in 2007/08. Mark Haysom, the LSC's Chief Executive has written to the hon. Member and a copy of his response has been placed in the Libraries.

*Letter from Mark Haysom, dated 22 May 2008:*

Further to your question to the SOS for Children, Schools and Families and the reply by Jim Knight, Minister for Schools I would like to add the following piece of information.

In his response Mr Knight mentioned our new 16-18 funding system which comes into effect for 2008/09 and gave you the equivalent funding rates per standard

---

<sup>159</sup> "Will sixth -form colleges gain from a return to the fold?" *The Guardian* 9 September 2008 at <http://www.guardian.co.uk/education/2008/sep/09/furthereducation.sixthform>.

learner number (SLN, a measure of the number of learners and the breadth of their learning). These are £2,945 for school sixth forms and £2,860 for FE college learners (including Sixth Form Colleges).

As this is a new system there are no equivalent figures for 2007/08 but one may use the difference between the two figures £85 as a proxy for the difference in funding in 2007/08 given that the rates would notionally have increased by 2.1% in both cases. The additional piece of information required to make the estimation that you have asked for is the number of SLNs in 2007/08. We estimate this figure to be 1,002,322. Therefore the cost of equalising the base funding rate per learner in schools and colleges would be approximately £85 million per year. In addition, there are a number of other factors influencing the funding differences between school sixth forms and FE, which are explored in more detail in a report undertaken for the LSC by KPMG, published on 6 May. This is available on the LSC's website at:

<http://readingroom.lsc.gov.uk/lsc/National/nat-fundinggap-may08.pdf>

We are working with DCSF and schools and colleges to review this funding difference and to look at ways of equalising funding.<sup>160</sup>

## VII The Office of Qualifications and Examinations Regulation (Ofqual)

### A. Introduction

In its draft legislative programme for 2008/09 the Government announced legislation to transfer the regulatory powers for qualifications from the Qualifications and Curriculum Authority (QCA) to a new independent regulator for England, and to establish a Qualifications and Curriculum Development Agency to continue QCA's remaining non-regulatory functions.

Detailed proposals for the new structure were consulted on, and interim arrangements were made for the new regulator. The Bill establishes Ofqual and sets out its functions. It provides the framework for how Ofqual will regulate awarding bodies and the qualifications they award or authenticate, and the regulation of arrangements for National Curriculum assessments and the Early Years Foundation Stage.

Ofqual's remit will cover public examinations (such as GCSEs, A levels and Diplomas), vocational qualifications and non-vocational qualifications. It will not have responsibility for regulating first degrees or other qualifications offered under degree-awarding powers. It is intended that Ofqual will also have responsibility for regulating vocational qualifications in Northern Ireland, and will work closely with the bodies which regulate qualifications in Wales and non-vocational qualifications in Northern Ireland.

---

<sup>160</sup> HC Deb 4 June 2008 c965

The aim of the changes is to increase public confidence in the standards of public examinations and tests, and to put beyond question the independence of the regulator.

## **B. The current arrangements and the case for change**

The Qualifications and Curriculum Authority (QCA) is a non-departmental public body established under the *Education Act 1997*. It replaced two predecessor bodies, the National Council for Vocational Qualifications and the School Curriculum and Assessment Authority. The 1996 Review of Qualifications for 16 to 19 year olds by Sir Ron Dearing recommended that a single body should oversee both academic and vocational qualification. The then Conservative Government supported the recommendation. The 1997 Act provided for the Secretary of State to appoint the chair and first chief officer of QCA, and for subsequent chief officers to be appointed by the Authority with the approval of the Secretary of State. The *Education Act 2002* extended the powers of QCA. In April 2004 the National Assessment Agency (NAA) was set up, as a division of the QCA, to safeguard and modernise the delivery of exams and assessment including the national curriculum assessments. However, the NAA has been reintegrated into the QCA following last summer's furore over the delays in the marking of national curriculum tests, and the findings of the Sutherland inquiry into the matter (see below).<sup>161</sup>

QCA performs a wide range of functions relating to curriculum, qualifications and assessment. It receives an annual remit and funding settlement from the Government, including remits from both the Department for Children, Schools and Families (DCSF) and the Department for Innovation, Universities and Skills (DIUS). It is accountable to Ministers but its regulatory functions are undertaken at arm's length from Ministers.

On 26 September 2007, the Secretary of State for Children, Schools and Families announced that the Government intended to reform the arrangements for regulating qualifications.<sup>162</sup> A new model of regulation of qualifications was set out in a paper attached to the DCSF press notice of 26 September.<sup>163</sup> This set out the case for reform:

2. Qualifications and tests are central to ensuring that young people make good progress at all stages of schooling; to raising standards and participation at 14-19; and to improving the skills of our adult workforce to meet the economic challenges of the future. We need to make sure that the qualifications and tests taken both by young people and adults are not only relevant, engaging and of high quality, but that they continue to command the full confidence of employers, further and higher education institutions and the wider public. We must ensure that young people and their teachers feel that their hard work and achievements are properly recognised.

3. With our partners at all levels of the education system, we must continue to raise standards and to close achievement gaps. As part of this, it is important that the information we have about the performance of

---

<sup>161</sup> QCA News, 18 December 2008, [NNA to be fully integrated into QCA](#)

<sup>162</sup> "New independent regulator for the exam and qualifications system", *DCSF Press Notice*, 26 September 2007

<sup>163</sup> [A new model of regulation of qualifications](#), DCSF September 2007



the system is trusted and transparent, so that we can identify areas for development and recognise success.

4. Over the last ten years, the Qualifications and Curriculum Authority (QCA), which is responsible for regulating qualifications and tests, has shown robust independence in its work as a regulator and has developed a system for assuring standards which is recognised internationally for its quality and reliability – as an independent report by the Education Director of the OECD<sup>164</sup> put it in 2004, “no examination system, at the school or other level, is so tightly or carefully managed”. And confidence in the system among teachers and students has improved over the past few years.<sup>165</sup> The hard work of the QCA, and its fellow regulators, means that we can be confident that standards have been maintained.

5. Yet once again, this summer, we had a public debate about standards in qualifications and tests – even as the QCA provided reassurance that standards had been maintained, and that improved results reflected the hard work of students and teachers and higher levels of investment. This kind of debate undermines the achievements of millions of students.

6. In the light of this the Government has concluded that there are two barriers to securing full confidence in the standards of qualifications and tests:

firstly, the fact that QCA as an organisation reports to Ministers can make it harder to demonstrate that in carrying out its regulatory function it is acting wholly independently;

secondly, there is an inherent conflict of interest between QCA’s existing functions. QCA is responsible for developing the content of public qualifications and tests and for the actual delivery of National Curriculum tests, as well as for regulating those qualification and tests. It is in certain significant respects a service provider to the awarding bodies which it also regulates. QCA has provided robustly independent assurance about standards in all qualifications and tests. However, it is increasingly difficult for the Authority to be seen as a truly independent guarantor of standards in qualifications which it itself delivers or develops.

7. Now is the right time to address this issue. We need to put beyond question the independence of the public guardian of standards. Moreover, we are developing new qualifications, such as 14-19 Diplomas, and piloting new tests. We need to make sure not only that they are of the highest quality, but that they are seen to be so by employers, universities and the public. The awarding body market is changing, and we need to ensure that it develops in a way that promotes innovation, reduces burden and increases efficiency. Technology has the potential to make a big impact on assessment in the coming years, in ways we have only just started to explore.

---

<sup>164</sup> *Examination Standards: Report of the independent committee to QCA* (QCA, December 2004): [http://www.qca.org.uk/qca\\_9810.aspx](http://www.qca.org.uk/qca_9810.aspx)

<sup>165</sup> *GCSEs and A level: the experiences of teachers, students, parents and the general public* (QCA, November 2006): <http://www.qca.org.uk/libraryAssets/media/2006-MORI-Perceptions-A-levels-and-GCSEs-report.pdf>

The [Report of the Sutherland Inquiry into the delivery of national curriculum tests in 2008](#) found that the primary responsibility for the failure to mark the tests rested with ETS Global BV, which won the public contract to deliver the tests; however, the report also said that QCA had failed to deliver its remit. The report made recommendations to the Secretary of State and Ofqual on how test delivery could be improved in future years, and included advice on the proposed legislation on the statutory powers to regulate the quality and delivery of National Curriculum tests.<sup>166</sup> The Government accepted the recommendations and the Bill reflects them.<sup>167</sup>

### **C. The Government's proposals: a new independent regulator**

The new model document attached to the DCSF press notice of 26 September 2007<sup>168</sup> outlined the Government's proposals to create a distinct independent regulator of qualifications and tests. It said that it was not enough simply to make the QCA as it stands more independent of Ministers; the regulator must not be given functions (such as responsibility to develop qualifications) which conflict with its core role, and that there must be a clearer accountability framework for the regulator. The role of the proposed new regulator was outlined:

10. The new body will build on the achievements of QCA in developing its regulatory role. The independent regulator will be responsible for securing the standards of qualifications, tests and assessment, and for ensuring that public investment in qualifications provides good value for money. In particular, it will accredit qualifications, monitor and report on standards of tests and qualifications, recognise awarding bodies and regulate the awarding body market.

11. We propose that it should be required to make regular reports, which would be laid before Parliament, to:

- assess how well the systems for maintenance of standards and delivery of exams are working;
- make recommendations for improvement; and
- report on whether previous recommendations have been acted upon.

12. The role of Ministers would be limited to making senior appointments (subject to the usual rules of public appointments), setting the remit for the regulator, and asking the regulator to investigate particular issues where appropriate. Within its remit, the regulator would have freedom to act as necessary to uphold standards.

#### **a. Consultation Document, December 2007**

A joint DCSF and DIUS consultation document was issued in December 2007.<sup>169</sup> This set out in detail the current responsibilities of QCA, the proposed scope and powers of

---

<sup>166</sup> HC paper 62, December 2008

<sup>167</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 414

<sup>168</sup> *A new model of regulation of qualifications*, DCSF September 2007

<sup>169</sup> *Confidence in Standards: Regulating and Developing Qualifications and Assessment*, Department for Children, Schools and Families and Department for Innovation, Universities and Skills, Cm 7281

the new regulator of Ofqual, and the proposed role for the new agency to take over the non-regulatory part of QCA (which, it was subsequently announced, would be known as the Qualifications and Curriculum Development Agency (QCDA)). An Impact Assessment of the proposals was published alongside the consultation document. The consultation document said that the regulator would have the power to regulate at three different levels, and went on to explain what would be involved at the system level, organisation level (regulating individual awarding organisations), and qualification level (regulating the detail of some qualifications and their components or units).

On the governance of the new body and the role of the Secretary of State, the consultation document stated:

#### Governance of the regulator

2.42 The Office of the Qualifications and Examinations Regulator will be a Non-Ministerial Department. The Chair of the organisation will be known as the Chief Regulator of Qualifications and Examinations and will be a Crown appointment; the Chair will be the public face of the organisation. The regulator will have a non-executive Board appointed by the Secretary of State for Children, Schools and Families. The executive head of the organisation, the Chief Executive, will be the Accounting Officer and will also be appointed by the Secretary of State.

#### The role of Ministers

2.43 The regulator will be regulating the delivery of government policy – in particular National Curriculum assessments and public qualifications. We therefore propose that Ministers should have the opportunity to give guidance to the regulator on their policy aims and objectives. Any guidance of this type will be published. Ministers may also follow the regulator's annual report to Parliament by asking it to investigate areas of specific interest to them. This will not prevent the regulator from investigating areas of its own choice, including issues where there may be a risk of controversy.

The consultation document said that the changes would apply principally to England. QCA has some responsibilities in Northern Ireland, and the consultation document noted that DCSF would work with the relevant Department in Northern Ireland to consider the effect of the reforms on those functions, and with the devolved administrations in Northern Ireland and Wales to ensure that the qualifications framework is maintained as the regulatory structures in England are reformed.

The consultation closed in March 2008. On 2 April 2008 the Secretary of State for Schools, Children and Families said that the proposals had been generally well-received; that the Government would reflect on the many points made as the detailed proposals were developed; and that a formal response to the consultation would be published in June (see below). He said that he would be proceeding with the reforms including bringing forward new legislation.<sup>170</sup>

---

<sup>170</sup> Written Ministerial Statement, [HC Deb 2 April 2008 c51WS](#)

## D. Reaction to the proposals and the next steps

QCA welcomed the decision to set up the new regulatory body:

QCA warmly welcomed the decision in September 2007 to separate its functions by the setting up of a new independent regulatory authority reporting to parliament. The regulatory arm within the authority has guarded its independence, but we have long argued that it is important for the maintenance of public confidence that the body responsible for the suitability and fairness of exams and assessments is seen to be separate from the government and from those involved in the design and delivery of qualifications.<sup>171</sup>

On 24 June 2008<sup>172</sup>, the Secretary of State for Children, Schools and Families announced that he had published a further progress report<sup>173</sup> and a summary of responses to the December 2007 consultation document.<sup>174</sup> The Secretary of State said that the proposals had been broadly welcomed, and that respondents had agreed that a separation between developing qualifications and regulating them helped maintain the reputation of the regulatory body.

The consultation summary provided an overview of responses, followed by an analysis of responses to each question, and a statistical analysis of responses by type of respondent. The overview section noted that the majority of respondents had welcomed the proposals to establish an independent regulator but that many had said that, since the regulator would be appointed by the Government, more clarity was needed about how and in what context the regulator would report to Ministers. Most believed that regulation should take place at the organisational level, with the focus on the competence of awarding bodies to offer qualifications, rather than on the micromanagement of qualifications design and accreditation. Many respondents thought that there could be a potential conflict with the regulator being the guardian of standards and also ensuring value for money.

Amongst other things, concern was expressed about proposed changes relating to the deregulation of awarding bodies and operating a 'risk-based approach' to accreditation for different qualifications. Some respondents felt the principle that some qualifications were 'high' or 'low risk' was flawed. There was concern that this approach could send out a message that vocational qualifications were not as important as general qualifications if they were not scrutinised in the same way. The majority of respondents thought that there should be a national body to oversee the post-19 qualifications system. Some respondents thought that the proposed new post-19 agency should take on this responsibility.

---

<sup>171</sup> *QCA Annual Review 2007*, p27

<sup>172</sup> *Written Ministerial Statement* c5WS

<sup>173</sup> *Confidence in Standards: Regulating and Developing Qualifications and Assessment – Next Steps*, June 2008

<sup>174</sup> *Analysis of responses to the consultation document*, DCSF, June 2008  
<http://www.dcsf.gov.uk/consultations/downloadableDocs/Confidence%20in%20Standards%20consultation%20report.doc>

Some commentators questioned whether Ofqual would be genuinely independent if the Secretary of State is responsible for appointments (other than the chair, who will be a Crown appointment). Mike Baker, the BBC's education correspondent, suggested two alternative approaches for appointments. One was for the entire board of Ofqual to be appointed by the Crown, not by the Secretary of State, and for the board itself to choose the chief executive through an open and transparent competitive process. The other approach suggested was for the Secretary of State to propose several candidates to head Ofqual but for the final selection process to be run by the House of Commons Select Committee on Children, Schools and Families, which has cross-party membership.<sup>175</sup> In the event, the Bill as presented makes provision for the chair to be a Crown appointment (as expected), and for the Secretary of State to appoint members of the board and the first chief executive, but for subsequent chief executives to be appointed by Ofqual, subject to the approval of the Secretary of State (see below).

### 1. Next Steps document

As noted above, on 24 June 2008 the Secretary of State published a progress report setting out the next steps for pressing ahead with the reforms.<sup>176</sup> Chapter 2 of the document explained what will be new about Ofqual – how it will operate independently of Ministers and report direct to Parliament, and commented on its proposed functions and powers. The *Next Steps* document said that Ofqual's purpose will be to ensure that standards of assessment are maintained across the qualifications and assessments system in England. This will include National Curriculum assessments and the Early Years Foundation Stage Profile, public qualifications (e.g. GCSEs, A levels and diplomas) and vocational and non-vocational qualifications. As with QCA, it will not have responsibility for regulating first degrees or other qualifications offered under degree awarding powers. The document went on to explain that Ofqual will also take over QCA's responsibility for vocational qualifications in Northern Ireland, and will work closely with the bodies which regulate qualifications in Wales and Northern Ireland.<sup>177</sup>

The *Next Steps* document also set out in detail the proposed arrangements for:

- regulating awarding organisations;
- removing the current 'externality' requirement that prevents a body teaching and awarding its own regulated qualifications. This will mean that employers and training providers, for example, will be able to award their own qualifications if they can demonstrate to the regulator that they have the capability to do so.
- setting qualification requirements, and the relationship between Ofqual and the new development agency (QCDA);

---

<sup>175</sup> "How independent is independent?", BBC News Education, 5 December 2008

<sup>176</sup> *Confidence in Standards: Regulating and Developing Qualifications and Assessment – Next Steps*, June 2008

<sup>177</sup> For Wales this is the Department for Children, Education, Lifelong Learning and Skills (DCELLS), a department of the Welsh Assembly Government; for school qualifications in Northern Ireland, the Northern Ireland Council for the Curriculum, Examinations and Assessment (CCEA).

- providing a risk-based approach to accreditation – with ‘high stakes qualifications’, such as GCSEs, A Levels and diplomas, being subject to scrutiny by Ofqual before they are accredited. For other qualifications, recognised awarding organisations could be allowed to add to the list of accredited qualifications after following internal quality assurance processes that have been checked by the regulator.
- Ofqual’s role in regulating National Curriculum assessments and the Early Years Foundation Stage Profile;
- managing appeals and complaints

## 2. Proposals for Ofqual’s monitoring and enforcement powers

The *Next Steps* document noted that the responses to the December consultation had expressed a range of opinions about the monitoring and enforcement powers of the regulator. Ministers had subsequently decided that, while some of the proposed powers in the December consultation would be unnecessary, Ofqual’s powers would nevertheless need to be strengthened in some areas, and that this should take account of the views of the awarding bodies. Therefore a further consultation on Ofqual’s powers was announced (*Next Steps* document, p.12).

In October 2008 the DCSF wrote to awarding bodies and other interested parties seeking views on the monitoring and enforcement powers that Ofqual should have, including a power to direct a recognised awarding body and a power to withdraw recognition.<sup>178</sup> Ofqual’s response to the consultation was set out in a letter to DCSF, dated 24 October 2008.<sup>179</sup> The Department for Employment and Learning in Northern Ireland also consulted its stakeholders on parallel proposals.<sup>180</sup>

## E. Interim arrangements for Ofqual

As a first step, the Office of the Qualifications and Examination Regulator (Ofqual) was set up on an interim basis, under existing legislation, in advance of the 2008 summer exams season. Kathleen Tattersall was appointed the first chair of the interim body. She will become chair of the new statutory body, subject to the passage of the Bill. On 15 May 2008 the Secretary of State for Children, Schools and Families wrote to Kathleen Tattersall about the launch of Ofqual.<sup>181</sup> Ofqual started its interim work in April 2008 – details are provided on its website.<sup>182</sup> Kathleen Tattersall spoke about the challenges facing Ofqual in an interview with the *Guardian* on 22 July 2008.<sup>183</sup>

---

<sup>178</sup> [DCSF letter to awarding bodies recognised by Ofqual and other interested parties, dated 10 October 2008](#)

<sup>179</sup> [Ofqual’s letter to DCSF responding to proposals on the monitoring and enforcement powers, dated 24 October 2008](#)

<sup>180</sup> [Enforcement powers of Ofqual; Consultation document, new regulatory arrangements for vocational qualifications in Northern Ireland](#)

<sup>181</sup> Written Ministerial Statement, HC Deb 15 May 2008 c 63WS; Letter dated 15/05/2008 from Ed Balls to Kathleen Tattersall regarding Office of the Qualifications and Examinations Regulator

<sup>182</sup> <http://www.ofqual.gov.uk/35.aspx>

<sup>183</sup> “Declaring independence”, *Guardian*, 22 July 2008

## F. The Bill

**Clauses 124 to 165 and associated schedules 9 and 10** contain the provisions relating to Ofqual. The *Explanatory Notes* on the Bill describe the provisions in detail; the following highlights some of the main changes, and then notes the intended main effects of the provisions.

The *Explanatory Notes* observe that currently there is no prohibition on any person offering a qualification without having been recognised by Ofqual, and the regulation of qualifications will remain voluntary; however, there are strong incentives for bodies to seek recognition by Ofqual and have the qualifications they award regulated by it. Being regulated shows that the body has been checked as being fit to award trustworthy qualifications; and the Government will normally only approve qualifications for funding by maintained schools or in colleges if they are regulated.<sup>184</sup>

**Clause 124** establishes the Office of Qualifications and Examinations Regulation as a body corporate, specifies that the body will be referred to as “Ofqual”, and gives effect to **schedule 9**, which makes provision about the constitution and governance. It will be a Non-Ministerial Government Department. The Chair of Ofqual (the Chief Regulator of Qualifications and Examinations) is appointed by the Crown. Paragraphs 2 to 5 set out the arrangements for appointing the Chief Regulator and members of Ofqual. The first chief executive will be appointed by the Secretary of State (because Ofqual will not exist at that stage, it may not appoint); thereafter the appointment will be for Ofqual. Ofqual may appoint staff; the numbers of staff and their conditions and remuneration are to be agreed with the Secretary of State. **Schedule 10** empowers the Secretary of State to make a scheme to enable the transfer of staff and property from QCA to Ofqual.

Under **clause 125** Ofqual will have five objectives in discharging its functions:

- the qualifications standards objective,
- the assessments standard objective,
- the public confidence objective,
- the awareness objective, and
- the efficiency objective.

The *Explanatory Notes* on the Bill explain in detail what each of the five objectives will cover. The qualifications standards objective requires Ofqual to secure that regulated qualifications: (a) give a reliable indication of knowledge, skills and understanding; and (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications. The assessment standards objective requires Ofqual to promote the development and implementation of regulated assessment arrangements which: (a) give a reliable indication of achievement, and (b) indicate a consistent level of attainment (including over time) between comparable assessments. The *Explanatory Notes* state that the ultimate responsibility for regulated assessment arrangements, which are statutory assessments, lies with the Secretary of State, so Ofqual’s role is to monitor and report on those arrangements.

---

<sup>184</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 325



Ofqual will be required to promote public confidence in regulated qualifications and regulated assessment arrangements. It will also be required to promote awareness and understanding of regulated qualifications. The efficiency objective requires Ofqual to ensure that regulated qualifications are delivered efficiently and that fees payable for the award or authentication of a regulated qualification represent value for money. Ofqual's remit includes a power to cap examination fees.

**Clause 126** (general duties) makes provision for the matters that Ofqual must have regard to in performing its functions. This includes a requirement for Ofqual to have regard to the need to ensure that the number of regulated qualifications is appropriate. The types of qualifications that Ofqual has the power to regulate are described in **clause 127**, and the types of assessment that Ofqual has the duty to keep under review are described in **clause 128**.

Although the focus of Ofqual's regulation will be at organisational level, Ofqual will still be able to require individual qualifications to be accredited, either where it judges that this is required in relation to a particular qualification, or where it is concerned about the performance of a specific awarding body. **Clauses 129 to 134** contain the detailed requirements relating to the recognition of awarding bodies, and **clauses 135 to 137** relate to the accreditation of certain qualifications.

Under **clause 138** the Secretary of State is empowered to determine the minimum requirements in respect of skills, knowledge, or understanding that someone must be able to demonstrate to gain a particular qualification or type of qualification. An example in the *Explanatory Notes* is that the power could be used to ensure that the content of GCSEs properly reflects the National Curriculum Key Stage 4 Programmes of Study, such as specifying which authors' works needed to be studied for someone to gain a GCSE in English. (The clause does not allow the Secretary of State to make determinations relating to parts of the qualification such as grading or assessment.) The Government intends that this power would be used only in exceptional circumstances, and the Secretary of State intends to put in place a Memorandum of Understanding with Ofqual about the use of this power, setting out a clear process to ensure that the regulator's independence and ability to maintain standards are not compromised.<sup>185</sup> On 10 February 2009 letters exchanged between Ed Balls and Kathleen Tattersall, Ofqual chair, were published. Amongst other things, these comment on the proposed powers of the Secretary in relation to setting minimum requirements for public examinations, and Ofqual's independence.<sup>186</sup>

The *Education and Skills Act 2008* imposes a duty on people under 18 to participate in education or training, unless they have attained a level 3 qualification (the level of attainment demonstrated by obtaining A levels in two subjects). The Government's intention is to commence the duty in 2013. **Clauses 139 and 140** make further provision in relation to the number of hours for guided learning for the purposes of the 2008 Act.

---

<sup>185</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 389

<sup>186</sup> [Letter from Ed Balls to Kathleen Tattersall](#), 10 February 2009 and [letter from Kathleen Tattersall to Ed Balls](#), 10 February 2009



A register of recognised bodies, and the qualifications they offer, must be maintained by Ofqual (**clause 141**). Ofqual's monitoring and enforcement powers in relation to recognised bodies are contained in **clauses 142 to 146**. These include powers to give directions and powers to withdraw recognition. **Clause 146** makes provision for a qualifications regulatory framework to be published by Ofqual.

**Clauses 151 to 156** set out Ofqual's functions and powers in relation to regulated assessment arrangements.

Under section 87 of the *Education Act 2002* the Secretary of State is responsible for specifying the arrangements for pupil assessments in relation to each of the key stages of the National Curriculum. The Secretary of State is also responsible for specifying the arrangements which are required for assessing the achievements of children in relation to the learning and development requirements of the Early Years Foundation Stage (*Childcare Act 2006*, sections 39 to 42). In this context, the Secretary of State may impose functions on other bodies in relation to developing, implementing or monitoring assessment arrangements. Ofqual's role under the Bill's provisions is to keep these assessment arrangements under review and to report to Parliament on the assessment arrangements and how well they are achieving their purposes. The arrangements are intended to strengthen the assessment system, and to help improve public confidence following the problems with delivery of NC tests in 2008.<sup>187</sup> Reflecting the recommendations of the Sutherland Inquiry report on the 2008 NC tests (see above), **clause 155** places a duty on Ofqual to inform the Secretary of State and any responsible body if it has concerns about the assessment arrangements for the National Curriculum or the Early Years Foundation Stage (EYFS). Ofqual must publish and keep under regular review two documents: the "NC assessments regulatory framework" and the "EYFS assessments regulatory framework" (**clauses 156 and 157**).

Under **clause 162** Ofqual must publish an annual report, which must be laid before Parliament and (so far as it relates to Northern Ireland) the Northern Ireland Assembly. Ofqual may choose to publish a single document or separate documents in relation to England and Northern Ireland.

**Schedule 12** makes minor and consequential amendments resulting from the establishment of Ofqual and QCDA. Some of the provisions amend the legislation governing the regulation of qualifications in Wales, and keep the regulatory powers of Welsh Ministers broadly in step with those of Ofqual. Other changes include amendments relating to legislation governing eligibility for public funding for qualifications in maintained schools, National Curriculum and EYFS assessments, exemptions from the National Curriculum and EYFS, and consultation relating to the National Curriculum. The *Explanatory Notes* provide a detailed account of the changes.<sup>188</sup>

---

<sup>187</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 414

<sup>188</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraphs 482 to 510

**a. The intended overall effect of the changes**

The *Impact Assessment* of the Bill said that improving public confidence in qualification standards was the main benefit of the proposals, and noted that there would be benefits for the qualifications market, the education market and the labour market. In the qualifications market, for example, removal of the 'externality' requirement is expected to encourage more organisations to become recognised awarding bodies, lead to greater diversity in accredited qualification, and provide greater choice for learners. This may increase the overall competitiveness of the qualifications market, and may lead to an increased demand for UK qualifications. There are around 140 recognised awarding bodies offering regulated qualifications, and a further 400-500 offering unrecognised qualifications. The vast majority of the awarding bodies offer vocational or occupational qualifications.

In terms of the education market, the Government expect the changes to improve the quality of regulated qualifications to equip learners more effectively with the skills and knowledge. The statutory duty on Ofqual to ensure that the number of different types of regulated qualifications in similar subjects or serving similar functions is not excessive is expected to give learners clearer information about the difference between qualifications, and better equip learners to make choices. Effective regulation of quality standards would help further and higher education institutions assess candidates for particular courses, and education institutions would be able to award their own qualifications.

The ultimate benefits of the proposed changes are expected to be felt through the labour market. Employers are expected to have greater confidence in assessing the standard of particular qualifications, and would have the opportunity to award their own qualifications. In addition, Ofqual will be in effect an economic regulator ensuring that charges in relation to qualifications, such as examination fees, represent value for money.

In financial year 2007-08 the QCA received £157.4 million in grant-in-aid from the DCSF. It employed an average of 581 staff in the same year.<sup>189</sup> Funding is planned to increase to £176 million in 2008-09.<sup>190</sup> This increase is in part to cover the costs of voluntary redundancies of the 300 QCA and Ofqual staff who are expected to leave because of relocation to Coventry. It has been estimated that this will cost £15.5 million.<sup>191</sup> The Government has estimated that the one-off costs of establishing Ofqual and the QCDA will be around £4 million and there will be additional annual running costs of around £2.5 million per year. There are also expected to be additional costs to Ofqual linked to the likely increase in recognised awarding bodies.<sup>192</sup>

---

<sup>189</sup> *Annual report and accounts 2007-08, QCA*

<sup>190</sup> HC Deb 21 November 2008 c1423-5W

<sup>191</sup> HC Deb 7 July 2008 c140-11W

<sup>192</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment, DCSF, pp100-101*

## VIII Qualifications and Curriculum Development Agency

The Bill replaces the QCA with the Qualifications and Curriculum Development Agency (QCDA). The main difference is that the new body will not have any regulatory functions - these will be carried out by Ofqual (see above).

### a. *Background*

As noted above, the Government announced in its draft legislative programme for 2008/09 that it intended to transfer the regulatory powers for qualifications from the Qualifications and Curriculum Authority (QCA) to a new independent regulator for England, and to establish a Qualifications and Curriculum Development Agency to continue QCA's remaining non-regulatory functions. Detailed proposals for the new structure were consulted on (see the sections on Ofqual above). On 26 September 2007, the Secretary of State for Children, Schools and Families announced further details and published a new model for the regulation of qualifications.<sup>193</sup> The model document proposed that QCA would continue to be responsible for:

- curriculum monitoring and development;
- delivering National Curriculum Tests and supporting exams officers, through the National Assessment Agency;
- pushing forward the reforms to vocational qualifications for young people and adults; and
- developing the criteria for public qualifications (such as GCSEs, A-levels and 14-19 Diplomas) which will be regulated by the new qualifications regulator and awarded by awarding bodies to which it has given formal recognition.<sup>194</sup>

The joint DCSF and DIUS consultation document issued in December 2007 set out in detail the current responsibilities of QCA, the proposed scope and powers of the new regulator, and the proposed role for QCDA to take over the non-regulatory part of QCA.<sup>195</sup> Chapter 3 of the consultation document described in detail the future direction for QCA, once the regulatory responsibilities have been transferred. Subsequently it was announced that the new agency would be known as the Qualifications and Curriculum Development Agency (QCDA). In June 2008 a further progress report<sup>196</sup> was published and also a summary of responses to the December 2007 consultation document.<sup>197</sup> The summary of responses noted that there were mixed views on the creation of a curriculum and assessment development agency. Although most respondents thought there was a

---

<sup>193</sup> *A new model of regulation of qualifications*, DCSF September 2007

<sup>194</sup> paragraph 13

<sup>195</sup> *Confidence in Standards: Regulating and Developing Qualifications and Assessment*, Department for Children, Schools and Families and Department for Innovation, Universities and Skills, Cm 7281

<sup>196</sup> *Confidence in Standards: Regulating and Developing Qualifications and Assessment – Next Steps*, June 2008

<sup>197</sup> *Analysis of responses to the consultation document*, DCSF, June 2008:

<http://www.dcsf.gov.uk/consultations/downloadableDocs/Confidence%20in%20Standards%20consultation%20report.doc>

need for a single effective and coherent overseeing body, many said the purpose of the new agency was unclear, and questioned the need to create another 'agency'. Most respondents asked for further clarification of the role of the new development agency. They were of the opinion that the proposed functions for the agency were already delivered by other existing agencies, or could be added to their remit, including the Sector Skills Councils.

The *Next Steps* document emphasised the clear split there will be in responsibilities for developing qualifications criteria and maintaining standards:

The creation of the regulator and the new agency will allow for a clear split of responsibilities between development of qualifications criteria and the maintenance of standards. We consulted on the following roles for the two organisations in development of public qualifications:

the new agency will develop qualifications and subject criteria against which qualifications are developed by awarding organisations. Qualifications design criteria will include the number of units, the grading structure and methods of assessment for the qualification. The agency will work closely with its counterparts in Wales and Northern Ireland in doing this;

the regulator will approve the agency's proposed criteria after satisfying itself that they are appropriate and enable maintenance of standards; and

the regulator will adopt the criteria and accredit and monitor qualifications against them.

Most respondents to "Confidence in Standards" were in favour of the proposal to separate the roles of development and regulation of qualifications criteria, and agreed that the new agency was the right body to develop the criteria. A small number of respondents suggested that these functions could be carried out by existing bodies including Sector Skills Councils (SSCs) and employers.

Given the general support for the proposed relationship between the new agency and the regulator with regard to development of qualifications criteria, we will now press on with working through the detail of how these respective roles will be carried out in practice. We do not think that the proposed role for the agency in respect of qualifications such as GCSEs could be undertaken by SSCs.

On the issue of post-19 qualifications *Next Steps* said:

Most respondents to the consultation believed that there should be one national body which would oversee the qualifications system for post-19 learners. Those who were less sure about the proposal questioned whether this was a role for the agency or the regulator, or for the UK Commission for Employment and Skills.

We have decided not to make any changes in the current arrangements at this stage. This means that QCDA will be able to focus on the important tasks which need to be carried out between now and 2010: tasks related to reform of vocational qualifications, and developments which impact both on 14–19 and 19-plus provision such as Functional Skills and the Foundation Learning Tier.

We should make an informed decision about the future role of the QCDA and the need for a single agency to have oversight of all post-19 qualifications once the planned Skills Funding Agency is operational and the UK Commission for Employment and Skills has had time to make an impact. We expect to be in a position to make a decision closer to 2010. The legislation will allow QCDA to take this role, but will allow the Secretary of State to withdraw it should that be the decision that is taken.

#### **b. The Bill**

QCA will be re-named the Qualifications and Curriculum Development Agency (QCDA) (**clause 166**). Schedule 11 contains detailed provisions with respect to the constitution and proceedings of QCDA. It will remain a Non-Departmental Public Body, accountable to Ministers, and will continue only with the non-regulatory functions of QCA. **Clauses 169 to 171** set out QCDA's functions in relation to qualifications. Its functions in relation to curriculum and assessment are contained in clauses 172 to 174. The *Explanatory Notes* on the Bill describe the provisions in detail. As noted above, Schedule 12 makes minor and consequential amendments resulting from the establishment of Ofqual and QCDA.

## **IX Children's Services**

Part 9 of the Bill would strengthen the arrangements for Children's Trusts and Sure Start Children's Centres by putting them on a statutory footing. It would also make changes to how early years providers are funded.

### **A. Children's Trusts**

#### **1. A duty to co-operate**

Lord Laming's inquiry into the murder of Victoria Climbié in 2001 identified a lack of priority given to safeguarding measures by local authorities, and also deficiencies in the existing structures to effectively detect and respond to cases of child abuse.<sup>198</sup> Although the report concluded that the child protection framework under the *Children Act 1989* was fundamentally sound, it found gaps in its implementation. The report made 108 recommendations for change including fundamental changes to the national and local structures for children's and family services to ensure they are properly co-ordinated, accountable and managed effectively.<sup>199</sup>

In its substantive response to Lord Laming's report entitled, *Keeping children safe*<sup>200</sup> the Government agreed that there were serious weaknesses in the way in which the

---

<sup>198</sup> Lord Laming, *The Victoria Climbié Inquiry*. Cm 5730, January 2003

<sup>199</sup> *Ibid*, para 1.97

<sup>200</sup> Department for Education and Skills, Department of Health and the Home Office, *Keeping children safe – The Government's response to The Victoria Climbié Inquiry Report*. September 2003, Cm 5861 and Joint Chief Inspectors' Report Safeguarding Children

Children Act 1989 system was interpreted, resourced and implemented. Particular problems that were highlighted included:

- The different levels of priority given by organisations to the safeguarding of children, making it difficult for professionals to work together effectively.
- Leading on from this, Area Child Protection Committees were often weak, with no authority and few resources to carry out their functions. In addition, they often suffered from lack of senior representation from organisations other than social services.

In addition to increased investment in prevention and early intervention, the Government said that 'by raising the priority given to safeguarding children within all organisations, by giving a wider range of organisations and professionals greater responsibilities to provide support, and by helping practitioners and their managers to work together better, children should be better safeguarded, and the lessons learnt from Victoria's death'.<sup>201</sup>

The response was published alongside the Green Paper, *Every child matters*,<sup>202</sup> in which the Government set out the case for change, citing local and national fragmentation of responsibilities for children which led to duplication, but also children slipping through the net.<sup>203</sup> At the time, the then Department for Education and Skills added that:

Children who need help from social services very often need help from other services as well. But the boundaries between the different organisations – which are there to help them – and the different processes and bureaucracies mean that too often those services don't join up. It's the young person and their parents and carers who have to adapt to the needs of the services, not the other way round. This is wasteful of time and resource, frustrating for the people trying to deliver the services and is not delivering for the children who most need help.<sup>204</sup>

The Green Paper proposed changes to policy and legislation to create clear accountability for children's services, to enable better joint working and to focus services more effectively around the needs of children, young people and families. A key part of the proposals was the creation of Children's Trusts:

Children's Trusts integrate local education, social care and some health services for children and young people. They incorporate an integrated commissioning strategy delivered through a wide range of providers that is designed to meet local evaluations of need. Trusts can also include other services such as Connexions, Youth Offending Teams and Sure Start. A range of other local partners - such as the Police, voluntary organisations, housing and leisure services - can also become involved.

Children's Trusts are a key organisational vehicle in the drive to achieve the five main outcomes for children identified in the recent Green Paper 'Every Child

---

<sup>201</sup> *Keeping Children Safe*, p26, para 123

<sup>202</sup> Department for Education and Skills, *Every child matters*. Cm 5860, September 2003

<sup>203</sup> *Ibid*, pp68–9.

<sup>204</sup> Posted on the then Department for Education and Skills website. No longer available.

Matters' - being healthy, staying safe, enjoying and achieving, making a positive contribution and economic well-being.<sup>205</sup>

At the time the Government expected that most areas should have a Children's Trust by 2006 and 'all areas to have a children's trust by 2008.' It added:

By 2008, local authorities are required to have in place arrangements that produce integrated working at all levels, from planning through to delivery, with a focus on improving outcomes. Local authorities may choose not to call this a 'children's trust', but the important point is that the way of working is in place and committed to.<sup>206</sup>

It is section 10 of the *Children Act 2004* that enshrines the duty on children's services authorities<sup>207</sup> in England to co-operate to improve the well-being of children. The 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. The relevant partners to the children's services authority, on which a duty to co-operate is placed, are set in section 10<sup>208</sup> as:

- 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;<sup>209</sup>
- the Learning and Skills Council for England.

The 2004 Act creates a statutory framework for local co-operation between local authorities and key partners but it does not impose a duty to set up a Children's Trust. In fact the phrase "Children's Trust" does 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

---

<sup>205</sup> *Ibid.*

<sup>206</sup> Department of Education and Skills, *Children's trusts FAQs: Will we be forced to have a children's trust?*

<sup>207</sup> A children's services authority is defined in s 65 of the *Children Act 2004*. It is high-level authority, e.g a county council, or a London Borough.

<sup>208</sup> As amended

<sup>209</sup> The Connexions Partnership

this flexibility remains intact. This is why there will be 150 individual local change programmes to develop and deliver children's trusts.<sup>210</sup>

*Statutory guidance on inter-agency co-operation to improve the wellbeing of children: children's trusts* was published in 2005. It described 'the duties placed on local authorities and other key partners to co-operate to improve the wellbeing of children and young people.'<sup>211</sup> The essential features of a Children's Trust were set out as:

- *A child-centred, outcome-led vision*: a compelling outcome-led vision for all children and young people, clearly informed by their views and those of their families;
- *Integrated front line delivery* organised around the child, young person or family rather than professional boundaries or existing agencies;
- *Integrated processes*: effective joint working sustained by a shared language and shared processes;
- *Integrated strategy (joint planning and commissioning)*: joint assessment of local needs; the identification of all available resources; integrated planning to prioritise action and a move towards preventative services; and joint commissioning of services from a range of providers, supported appropriately by shared resources and pooled budgets;
- *Inter-agency governance*: whilst each partner is responsible for the exercise of its own functions, robust arrangements for inter-agency co-operation are needed to set the framework of accountability for improving and delivering effective services.<sup>212</sup>

Although schools are not currently set out in section 10 of the *Children Act 2004* as one of the relevant partners of Children's Trusts, the 2005 statutory guidance envisaged that they would have a key role in inter-agency working:

Schools are critical to ensuring every child has the opportunity to fulfil their potential. Raising standards and inclusion go hand in hand and are key contributors to improving children's well-being. It is critical therefore that the DCS [Director of Children's Services] plays a lead role, within the development of children's trusts, in facilitating the engagement of schools with the wider children's service agenda.<sup>213</sup>

---

<sup>210</sup> Every child matters, *Children's trusts FAQs: Why is there no duty to set up children's trusts in the Children Act 2004?*

<sup>211</sup> Department for Education and Skills, *Statutory guidance on inter-agency co-operation to improve the wellbeing of children: children's trusts*, 2005

<sup>212</sup> Department for Education and Skills, *Statutory guidance on inter-agency co-operation to improve the wellbeing of children: children's trusts*, pp6–7, para 1.11

<sup>213</sup> Para 6.15



The statutory guidance was revised in November 2008<sup>214</sup> to reflect the ‘development of new policies and programmes to support the drive for better outcomes for young people.’<sup>215</sup> The revised guidance sets out in detail what a Children's Trust is and what it does. The Government explained that the guidance is statutory guidance which all local authorities and “relevant partners” must have regard to in exercising functions under section 10 of the *Children Act 2004*.<sup>216</sup>

The statutory guidance explains that a Children's Trust is:

... the embodiment of the local partnership between all commissioners and current and potential providers of services for children, young people and their families. It exists to help make a reality of our commitment to make Britain the best place in the world for children to grow up – improving their prospects for the future and redressing inequalities between the most disadvantaged children and their peers.

The Children's Trust is in part a planning body which informs commissioning decisions and ensures, (through a range of sometimes agency-specific approaches) that front line services work together to improve outcomes. It is underpinned by the duties in section 10 (1) and (5) of the Children Act 2004 on local authorities and their ‘relevant partners’ to cooperate in the making of arrangements to improve well-being for local children. Well-being is defined as the five Every Child Matters outcomes: that all children should be healthy, stay safe, enjoy and achieve, make a positive contribution and enjoy economic well-being.<sup>217</sup>

Children's Trusts are only part of the legislative framework for safeguarding children. The *Children Act 2004* also provides the legal basis for the Government's *Every Child Matters: Change for Children* programme to build services around the needs of children and young people to maximise opportunity and minimise risk. Local authorities are required to appoint a director of children's services (DCS),<sup>218</sup> and designate a lead member to children's services (LM).<sup>219</sup> Each DCS is under a duty to work with key partners to produce a children and young people's plan<sup>220</sup> - a single, strategic, overarching plan for all services affecting children and young people - and to appoint a local safeguarding board.<sup>221</sup>

*Statutory guidance on the roles and responsibilities of the Director of Children's Services and Lead Member for Children's Services*<sup>222</sup> was published in 2005. The guidance explains how the roles of the DCS and LM are distinct and complementary and how by working together as a team, they can be most effective in driving clear improvements in

---

<sup>214</sup> Following a commitment made in the December 2007 Children's Plan.

<sup>215</sup> Department for Children, Schools and Families, *Children's Trusts: Statutory guidance on inter-agency cooperation to improve well-being of children, young people and their families*. November 2008. Para 0.2

<sup>216</sup> *Ibid*, para 0.1

<sup>217</sup> *Ibid*, paras 1.1-1.2

<sup>218</sup> Section 18, *Children Act 2004*

<sup>219</sup> *Ibid*, s9(1)

<sup>220</sup> *Ibid*, s17. [New guidance on CYPP](#) was issued in January 2009.

<sup>221</sup> Sections 13-16.

<sup>222</sup> Department for Education and Skills, 2005

outcomes for children and young people. The Government has recently consulted on [revised statutory guidance](#) for the roles.<sup>223</sup>

The Department for Children Schools and Families (DCSF) does not collect information on how many local authorities meet their obligations under the *Children Act 2004* to promote co-operation in the provision of children's services through a Children's Trust. However, all local authorities with social services responsibilities in England have a DCS and have published a Children and Young People's Plan. An Audit Commission fieldwork report, which assessed the progress of Children's Trusts up to April 2008, found that 96% (of the 150 local authorities) had created a partnership of some kind to promote co-operation between agencies; all expected to have one in place during 2008/09. While there is a variety of alternative names for the partnerships, two-thirds call them Children's Trusts.<sup>224</sup>

The Audit Commission report also found that, although Children's Trust arrangements were improving relationships and joint working between partners, progress was 'less than anticipated at the start of this study':

Children's trust arrangements should be half way through a ten year change programme: they still face significant challenges for the future.

As yet there is little evidence that the children's trusts boards are making a substantial difference to outcomes.<sup>225</sup>

## 2. Strengthening Children's Trusts

The statutory guidance on Children's Trusts was revised following a commitment to do so in the December 2007, [Children's Plan: Building brighter futures](#),<sup>226</sup> - a 10 year strategy to make 'England the best place in the world for children and young people to grow up.'<sup>227</sup> Among the proposals for change there was a commitment to monitor the difference Children's Trusts were making and to examine whether the arrangements needed to be strengthened to improve outcomes, including by further legislation.

The Government set out the steps that would be taken for 'Children's Trusts to drive collaboration' between those interested in the well-being of children:

7.17 It is the role of the Children's Trust to concert local action in the interests of better outcomes for children and young people, recognising that no one agency or interest can do that alone and that all have a common commitment to the wellbeing of children. To that end, the Children's Trust will consult widely, assess how well children in the locality are doing, prioritise and plan action, and commission services. Increasingly we expect the Children's Trust to look beyond

---

<sup>223</sup> The consultation ran from 18 November 2008 to 10 February 2009

<sup>224</sup> Audit Commission, *Are we there yet? Improving governance and resource management in children's trusts*. October 2008, para 58

<sup>225</sup> *Ibid*, para 152-3

<sup>226</sup> Department for Children, Schools and Families, [Children's Plan: Building brighter futures](#). Cm 7280, December 2007,

<sup>227</sup> *Ibid*, Executive summary

direct local authority or other statutory service provision to a wide range of potential providers, in the voluntary and community sector and in the social enterprise and private sectors.

[...]

Going forward in the light of the Children's Plan, we expect greater consistency in the involvement of all relevant statutory agencies, the full involvement of the voluntary and community sector in the commissioning function and as providers, stronger mutual relationships between Children's Trusts and all schools and the fuller engagement of the wider community, including parents. (7.18)

[...]

7.23 Through these steps, we expect to strengthen the operation of Children's Trusts, looking in particular at the quality of partnerships at a local level and the extent to which trusts are accountable for all services for children. This includes reciprocal accountability to partners such as schools which are not bound by duties to co-operate. If a greater degree of consistent high quality is needed, **we will examine whether Children's Trust arrangements need to be strengthened, including by further legislation.**<sup>228</sup>

In the summer following the publication of the *Children's Plan*, the Government launched a consultation seeking views on how to strengthen Children's Trust.<sup>229</sup> Announcing the consultation, the Secretary of State for Children, Schools and Families, Ed Balls, said:

A great deal is being achieved by leading local areas within the existing framework, and the challenge now is to ensure that good practice is widely implemented and deeply embedded. There is now a strong case for strengthening the statutory basis of children's trusts on the model of existing good practice.

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).

The [consultation] document proposes a number of changes to the current framework for children's trusts. These include extending responsibility for children and young people's plans and being clearer about what they should cover, extending the 'duty to co-operate' to schools, and requiring through statute the creation of children's trust boards with a defined set of functions and responsibilities. Our proposals include:

---

<sup>228</sup> *Children's Plan*, Cm 7280

<sup>229</sup> Department for Children, Schools and Families, *Strengthening Children's Trusts: legislative options*. 2008

- requiring all areas to have a children's and young people's plan, and extending ownership of the plan to all statutory partners. Children's and young people's plans are currently local authority plans, although they must consult with other partners and the plans must cover the full range of outcomes for children. Extending responsibility for the plan to all partners covered by the 'duty to co-operate' would mean that the plan becomes the shared responsibility of the children's trust board;
- strengthening the statutory framework for children's and young people's plans through secondary legislation. This could include clarifying that plans must be agreed by all partners, set out the arrangements for early intervention, including for the children's workforce and specify the spend of each partner on areas such as child health and youth offending, in particular those covered by local joint commissioning arrangements. This would establish a higher baseline for the quality of plans in line with the best practice already established in many areas;
- extending the 'duty to co-operate' to schools, to schools forums and to sixth form and further education colleges, with future academies brought within scope through their funding agreements. This duty currently applies to local authorities, primary care trusts and other strategic partners. Extending the duty to front line providers of education would give them corresponding rights within trusts to a stronger voice, more influence over their strategic arrangements, and better support from other statutory partners;
- establishing a stronger statutory basis for children's trust boards, on the model of existing good practice and with significant local flexibility. Leading local areas have already put in place children's trust boards which have the representation and functions that primary or secondary legislation could prescribe for all. Setting out core membership and functions in legislation could help secure more consistent performance and more robust operation of children's trusts. An alternative would be to create reserve powers for Ministers to direct areas when local arrangements are not operating successfully.

I have invited comments on these proposals, and also on what other changes to primary or secondary legislation should be considered in this area, for example to ensure the voluntary and third sectors can play a full role in local children's services.<sup>230</sup>

At the end of last year, the Government published a summary analysis of the responses to the consultation.<sup>231</sup> Nearly all those who responded to the question on whether the duty to co-operate should be extended thought it should be, and particularly to schools and Further Education colleges. The analysis document added:

Over a third of the responses to this question pressed for extension of the duty to also apply to new and existing Academies, so that children attending such

---

<sup>230</sup> HC Deb 3 July 2008 cc54-5WS

<sup>231</sup> Department for Children, Schools and Families, *Delivering the Children's Plan - Strengthening Children's Trusts: legislative options. Analysis of responses to the consultation document.* December 2008

institutions are in settings covered by a duty to promote their well-being, the institution can take advantage of local provision, and can access better support through clear channels. A significant minority of the respondents suggested the duty should apply to independent special schools and colleges.<sup>232</sup>

In response to proposals to strengthen Children's Trusts:

Two thirds of responses said that strengthening the existing legislative framework within which Children's Trusts operate in line with these proposals would deliver the raised ambition in the Children's Plan. Other comments included the importance of the role of parents and families as partners in children's well-being; that other national agendas are not always directly aligned, so local flexibility can be affected; extending the duty to co-operate to a wider range of partners, such as independent specialist colleges and independent non-maintained schools could be beneficial; and strengthened links between the Children's Trust and justice partners, other children's services, and other front-line providers would be beneficial.<sup>233</sup>

On the basis of the consultation responses, the Government announced that it would be introducing legislation to strengthen Children's Trusts.<sup>234</sup>

### 3. The Bill

The Bill introduces *statutory* Children's Trusts Boards (CTBs), each of which would be required to prepare, publish and monitor a Children and Young People's Plan (CYPP). The new legal basis of Children's Trusts would reinforce the need for other partners to fulfil their 'duty to co-operate' and extend the to duty schools, further education colleges and Jobcentre Plus. The new duties, set out in clauses 184 and 185 of the Bill, would amend Part 2 of the *Children Act 2004: Children's Services in England*.<sup>235</sup>

**Clause 184** would amend the duty to co-operate set out in section 10 of the *Children Act 2004* by adding the following local bodies as additional relevant partners of the children's services authorities:

- Maintained schools;
- Non-maintained special schools;
- Colleges and academies;
- Further education institutions, including sixth form colleges<sup>236</sup>;
- Jobcentre Plus.

Clause 184(2) would also amend the list of relevant partners by omitting the Learning and Skills Council (LSC). This is a consequence of other provisions in the Bill which would dissolve the LSC.<sup>237</sup>

---

<sup>232</sup> *Ibid*, p3

<sup>233</sup> *Ibid*, p4

<sup>234</sup> *Ibid*, p5

<sup>235</sup> Sections 10-23

<sup>236</sup> *Explanatory Notes to the Apprenticeships, Skills and Learning Bill 2009*, Bill 55 –EN, January 2009, para 512

Clause 184(3) clarifies the arrangements to co-operate under section 10 of the 2004 Act. It would allow a relevant body or person<sup>238</sup> to:

- pool resources such as staff, goods, services and accommodation with another relevant person or body; and
- make contributions to a fund from which expenses can be paid out.

Proposals to include additional statutory partners for Children's Trusts were generally welcomed by respondents when consulted in 2008.<sup>239</sup> Following publication of the Bill, the National Day Nurseries Association stressed that, although the Bill does not include private, voluntary and independent (PVI) day nurseries in the list of relevant partners, their input is vital:

The Bill does not propose to make PVI day nurseries full statutory partners in children's trusts, but we hope further guidance from the Department for Children, Schools and Families will underline to children's trusts the significance of working in partnership with local childcare providers who add value to early education, identification of special needs, and of course, on safeguarding.<sup>240</sup>

**Clause 185** would make a number of amendments to Part 2 of the 2004 Act. A new section 12A would be inserted into the Act to place a legal duty on each children's services authority to establish a CTB for their area. Membership of the CTB would have to include a representative of the children's services authority and each of the relevant partners, unless otherwise specified in regulations.<sup>241</sup> Members of the CTB would be able to pool their resources for purposes connected with the functions of the Board. In addition, two or more CTBs would be able to establish a pooled fund for the purposes of their functions.<sup>242</sup> Children's services authorities and relevant partners would be required to supply information to the CTB, if the CTB so requested. The information would only be able to be requested and used for the purpose of enabling or assisting the CTB to carry out its functions.

The functions of the CTB would be set out in new sections 17 and 17A of the 2004 Act. Section 17 of the 2004 Act currently allows the Secretary of State to publish regulations requiring a children's services authority to prepare and publish a CYPP. A new section 17 would be inserted by clause 185 which would transfer the responsibility for CYPPs to the CTBs. The CYPP would set out the strategy of the bodies represented on the CTB for co-operating with each other to improve the well-being of children in the children's services area. Essentially, the CYPP would set out how the duty to co-operate under section 10 would be fulfilled.

A new section 17A would require persons or bodies represented on the CTB to have regard to the CYPP in exercising their functions. The CTB would be under a duty to

---

<sup>237</sup> See clauses 120-121

<sup>238</sup> A relevant body or person is defined in clause 184(5) as a children's services authority in England or a relevant partner to that authority.

<sup>239</sup> Department for Children, Schools and Families, *Delivering the Children's Plan - Strengthening Children's Trusts: legislative options. Analysis of responses to the consultation document*. December 2008

<sup>240</sup> NDNA, *NDNA comment on Part 9 of the Bill*. 10 February 2009

<sup>241</sup> New section 12A(2)

<sup>242</sup> New section 12C

monitor compliance with the CYPP and prepare and publish an annual report on the extent of the compliance.

## **B. Early childhood services and children's centres**

### **1. Childcare strategy**

In December 2004, the Government's published its 10 year strategy for childcare, *Choice for Parents, the best for children*.<sup>243</sup>

The Government's vision was of a childcare system where:

parents are better supported in the choices they make about their work and family responsibilities;  
 childcare is available to all families and is flexible to meet their circumstances;  
 childcare services are among the best quality in the world; and all families are able to afford high quality childcare services that are appropriate for their needs.<sup>244</sup>

The *Childcare Act 2006* is the legislative framework which realises the Government's vision for early years and childcare set out in the 10 year strategy. The Act requires local authorities and their NHS and Jobcentre Plus partners to work together to improve the outcomes of all children up to five years and reduce inequalities between them, by ensuring early childhood services are integrated to maximise access and benefits to families.<sup>245</sup> Local authorities are under a duty to assess the local childcare market<sup>246</sup> and to secure sufficient childcare for working parents.<sup>247</sup> Childcare will only be deemed sufficient if it meets the needs of the community in general and, in particular, those families on lower incomes and those with disabled children. Local authorities take the strategic lead in their local childcare market, planning, supporting and commissioning childcare. Local authorities are not expected to provide childcare direct but are expected to work with local private, voluntary and independent sector providers to meet local need.

The Department has issued statutory guidance under the Act which explains:

Securing 'sufficiency' does not mean local authorities providing childcare themselves (although they may do so in certain circumstances). The 2006 Act sets the local authority role as one of market facilitation and support across the sector to ensure that childcare provision is sufficient to enable parents to work or make the transition to work. In accordance with section 8(3), local authorities should only provide new childcare themselves when there is no other person or provider

---

<sup>243</sup> Departments for Education and Skills; and Work and Pensions, *Choice for parents, the best start for children: a ten year strategy for childcare*. December 2004

<sup>244</sup> *Choice for Parents, the best for children*, para 1.10

<sup>245</sup> Section 3, *Childcare Act 2006*

<sup>246</sup> *Ibid*, s11

<sup>247</sup> *Ibid*, s6



willing to provide it. If another provider is prepared to make provision, the authority may only make the provision itself if there is good reason for it to do so.<sup>248</sup>

Accordingly, local authorities are required to provide childcare when sufficient provision does not already exist in its area.

## 2. Children's Centres

Sure Start Children's Centres (SSCCs) are just one way in which local authorities can choose to provide integrated early childhood services to meet their duties under the *Childcare Act 2006*. SSCCs have no statutory basis but were developed from earlier Sure Start funded settings, including Sure Start Local Programmes, Neighbourhood Nurseries and Early Excellence Centres.<sup>249</sup> Other existing providers, such as maintained nursery schools, primary schools and other local early years provision, including voluntary and private settings, have also provided the basis for SSCCs. Children's centres are models of integrated service provision, where primary care trusts, local authorities, Jobcentre Plus, education and childcare providers, social services, and community and voluntary agencies work together to deliver services. Governance arrangements vary between centres, but all are managed through partnerships that reflect local need and diversity and represent all agencies involved in delivery as well as the users of services themselves. So although some children's centres will provide childcare, provision will depend on the needs of the local area.

The first group of early years settings providing early education and childcare; parenting support and employment advice; and child and family health services were designated children's centres in June 2003.<sup>250</sup> Budget 2004 announced funding to provide 1,700 children's centres by March 2008.<sup>251</sup> In the period to 2006, they were limited to the most disadvantaged wards in the country. In 2006-08 this was extended to the most disadvantaged 30% of Super Output Areas<sup>252</sup>. There are currently just over 2,900 SSCCs in England with at least one in all 150 Local Education Authorities.<sup>253</sup> The Government does not collect data on the number of children and families who directly benefit from children's centre services, but does estimate the population who can access them. They currently provide access to services for 2.3 million children aged under five and their families.<sup>254</sup> The Government has made a commitment to have a children's centre in every local community by 2010; a total of 3,500 centres.<sup>255</sup>

SSCCs in the most disadvantaged areas will offer the following services:

- good quality early learning combined with full day care provision for children;

---

<sup>248</sup> Department for Children, Schools and Families, *Securing sufficient childcare*, July 2007, para 2.7

<sup>249</sup> From around 2005 all Sure Start Local Programmes were functioning as Children's Centres

<sup>250</sup> Department for Education and Skills press notice, *Sure Start Children's Centres to act as model for the future*, 23 June 2003

<sup>251</sup> *Budget 2004*, HM Treasury

<sup>252</sup> Around 32,000 small geographies with a population of around 1,500

<sup>253</sup> Sure Start Children's Centres:

<http://www.surestart.gov.uk/surestartservices/settings/surestartchildrenscentres/>

<sup>254</sup> HC Deb 14 January 2009 c839W

<sup>255</sup> Sure Start press release of 15 October 2007, *Children's Centre in every community by 2010*



- good quality teacher input to lead the development of learning within the centre;
- child and family health services, including ante-natal services;
- parental outreach;
- family support services;
- a base for a childminder network;
- support for children and parents with special needs; and
- effective links with Jobcentre Plus to support parents and carers who wish to consider training or employment.

Children's centres outside the most disadvantaged areas may include early years provision on site but they do not have to. The decision will be left to local authorities operating through Children's Trust arrangements and based on the extent to which the existing supply of early years provision in the area meets the needs of parents.<sup>256</sup> All SSCCs will however have to provide a minimum range of services including:

- appropriate support and outreach services to parents, carers and children who have been identified as in need of them;
- information and advice to parents and carers on a range of subjects, including: local childcare, looking after babies and young children, local early years provision (childcare and early learning) education services for 3 and 4 year olds;
- support to childminders;
- drop-in sessions and other activities for children and carers at the centre;
- links to Jobcentre Plus services.<sup>257</sup>

The *Childcare and Early Years Providers Survey 2007*<sup>258</sup> gave more information on the services offered by children's centres. The childcare part of the report focused on full day care within children's centres. At the time there were 950 such providers, most of which were run by the local authority or schools. Compared to other full day care providers, staff were similarly qualified but paid around one-third more, fees were slightly lower, vacancy rates were around the same (17-18%), opening hours were around one hour per day longer and a greater proportion of providers were operating at a loss (52% compared to 18%). Children's centres were also asked about the range of services they offered. 77% offered full day care and 73% offered sessional care for the under fives. A smaller proportion offered childcare facilities for older children; 30% holiday care, 25% after school and 23% before school. As a large proportion of children's centres were in more deprived areas, most offered support for disadvantaged groups. The table below illustrates the range of these services.

---

<sup>256</sup> Department for Education and Skills and the Department of Health, *Sure Start Children's Centres Practice Guidance*, sections 03-13

<sup>257</sup> [www.surestart.gov.uk](http://www.surestart.gov.uk)

<sup>258</sup> Research Report DCSF-RR047

**Support services offered in Children's Centres, 2007**

Proportion offering services for:

Family outreach and/or home visiting	91%
Employment advice links to Jobcentre Plus	90%
Parents with disabled children	87%
Literacy/numeracy programmes for parents/carers	87%
Lone parents	86%
Teenage parents	83%
Families with drug or alcohol related problems	79%
Relationship support	76%
People with mental health problems	76%
Particular minority ethnic groups	75%
Families of asylum seekers	68%
Families with a parent in prison or involved in crime	66%
Any other services	66%

Source: *Childcare and Early Years Providers Survey 2007, DCSF*

Around half the children's centres that did not offer these services planned to do so in the future. In some cases provision was shared through links with other organisations.

Central funding for Sure Start from the DCSF for local authorities is given in the table below:

**DCSF funding for Sure Start**

£ million cash

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Resource	604	728	929	1,060	1,160	1,278	1,506	1,626
Capital	116	193	310	287	602	295	383	315
<b>Total</b>	<b>721</b>	<b>921</b>	<b>1,240</b>	<b>1,346</b>	<b>1,762</b>	<b>1,573</b>	<b>1,889</b>	<b>1,941</b>
<i>Total in 2007-08 prices<sup>a</sup></i>	<i>800</i>	<i>994</i>	<i>1,312</i>	<i>1,386</i>	<i>1,762</i>	<i>1,523</i>	<i>1,803</i>	<i>1,803</i>

(a) Adjusted using 30 September 2008 GDP deflators

Note: Data are outturn to 2006-07, estimated for 2007-08 and plans thereafter

Source: *DCSF Departmental Report 2008***3. The impact of Sure Start Children's Centres**

DCSF has commissioned a National Evaluation of Sure Start (NESS) to measure the ongoing and sustained impact of the programme. The NESS programme has centred around understanding the impact over time of former Sure Start Local Programmes (SSLPs), across the population and on particular groups. Those SSLPs have now become children's centres.<sup>259</sup>

<sup>259</sup> To date 27 reports have been published which can be accessed via the National Evaluation website at [www.ness.bbk.ac.uk](http://www.ness.bbk.ac.uk)

The most recent NESS Impact Study was published in March 2008 and tracked the individual child and family level outcomes for over 8,000 children and the impact of Sure Start on three year old children.<sup>260</sup> It found a positive impact in seven of 14 tracked child and family outcomes. Five of these seven were attributed to a positive “Sure Start effect.” The evaluation found that parents of three year old children showed less negative parenting and provided their children with a better home learning environment. Three year old children displayed better social development and higher levels of positive behaviour and independence and self regulation. The Sure Start effect appeared to be a consequence of Sure Start benefits upon parenting. Additionally, families in Sure Start areas used more child and family-centred services than those living elsewhere. There was evidence that these outcomes, fostered by centres, help establish the building blocks for success in school and later life.

The National Audit Office (NAO) publication *Sure Start Children's Centres*<sup>261</sup> reported on the challenge of children's centre outreach services to disadvantaged families. The NAO study concentrated on 30 children's centres set up since September 2005 and interviewed staff and parents in the 27 local authorities in which the children's centres were located. By concentrating on children's centres, the report aimed to complement the work carried out by the NESS. The study found that centres were raising the quality of services and making them more relevant to the needs of lone parents, teenage parents and ethnic minorities in communities with large minority populations. However, less than a third of centres were proactively identifying and taking services out to families with high levels of need in their area, including lone and teenage parents, disabled children's parents and parents from some ethnic minorities in areas with small minority populations. These groups are typically the hardest to reach and are least likely to visit a children's centre to use the services provided there. Furthermore, not all the local authorities had developed effective partnership with health and employment services. 19 of the centres reported problems working with health services and six with Jobcentre Plus.

Since the publication of the NAO report the Government has committed extra funding for children's centres to ensure that two additional outreach workers in centres in the 1500 most disadvantaged areas.<sup>262</sup>

A recent Ofsted report on children's centres inspected between September 2006 and April 2007,<sup>263</sup> also looked at the services provided and their impact, particularly on vulnerable groups. On provision, the inspectors found a good or better range of services at more than three-quarters of centres and all integrated childcare and education effectively. In around three-quarters of centres children's progress was good or better. The report praised the services received by children and families which ‘were reported to have transformed the lives of some parents and had positive effects on their children.’ However, this only extended to those who were receiving support or services as the

---

<sup>260</sup> *National Evaluation Report: The Impact of Sure Start Local Programmes on Three Year Olds and Their Families*. Report 027, March 2008

<sup>261</sup> National Audit Office, *Sure Start Children's Centres*. HC 104 Session 2006-2007, 19 December 2006

<sup>262</sup> Department for Children, Schools and Families press release 2008/0037 , *Sure Start shows positive impact on lives of children and families - but Ministers say more to do*. March 2008

<sup>263</sup> Ofsted, *How well are they doing? The impact of children's centres and extended schools*. January 2008

centres were not always sufficiently active at reaching out to some groups including fathers, some minority ethnic groups and people living beyond the immediate neighbourhood. Uncertainties about long-term funding arrangements with partners, particularly health authorities, were said to threaten some services and staffing.

#### 4. Legislating for Sure Start Children's Centres

The Government's *Children's Plan* strategy,<sup>264</sup> published in December 2007, contained a number of proposals to ensure that SSCC services were reaching families requiring intensive support. The *Children Plan's* proposed to improve outreach services by:

- committing additional funding to support outreach activities with the most disadvantaged families;
- ensuring that there are a minimum of two outreach workers in SSCC in the most disadvantaged areas; and
- engaging fathers and offering them support in strengthening their parenting skills.<sup>265</sup>

The commitment to develop and build upon the SSCC programme continued in 2008 when the Government launched a public consultation on proposals to put SSCCs on a statutory footing. The consultation document *Legislating for Sure Start Children's Centres*<sup>266</sup> explained the implications of the policy:

Local authorities, working with their statutory partners, would be required to assess the need for SSCCs in their area, and to establish and maintain sufficient SSCCs to meet that need, as one way of meeting their *Childcare Act 2006* duties. A statutory definition will also enable safeguarding and accountability requirements to be formalised.

However, the requirement on local authorities to establish and maintain sufficient SSCCs does not imply that SSCCs or their constituent services should be provided directly by the local authority. Local authorities will continue to be under a statutory duty to determine whether a PVI provider can provide childcare and be encouraged to consider PVI providers as managers of entire SSCCs or as providers of other services within centres.

The intention is to reflect in the legislation and associated statutory guidance current practice in localities:

- local consultation by local authorities before a SSCC is established, closed or the services significantly altered;
- local authorities, PCTs and Job Centre Plus to consider whether to provide their early childhood services through SSCCs;

---

<sup>264</sup> Department for Children, Schools and Families, *Children's Plan: Building brighter futures*. Cm 7280, December 2007

<sup>265</sup> *Ibid*, paras 1.19-1.21

<sup>266</sup> Department for Children, Schools and Families. The consultation ran from 11 September to 6 November 2008

- the local authority and its statutory partners in the Children's Trust, in the context of preparing or reviewing Children and Young People's Plan annually, should consider the case for providing early childhood services in SSCCs;
- an advisory board for every SSCC representing parents/carers of young children, service providers and the local community;
- regular arrangements for consulting all parents and the whole community;
- all staff working in SSCCs to be checked under the new Vetting and Barring Scheme and no barred staff employed;
- Ofsted to inspect SSCCs at the request of the Secretary of State.

A summary of the responses was published by DCSF.<sup>267</sup> The consultation revealed that 97% of respondents were in favour of giving SSCCs a legislative basis:

Many said that it would give a greater sense of security and a degree of permanence to SSCCs, which in turn would lead to improvements in long-term planning, efficiency and effectiveness. Others commented on the benefits of SSCCs and the positive impact they had on children and families and how legislating seemed a sensible approach to safeguard what they viewed as an essential service.

Respondents also suggested legislation should provide for stronger links between SSCCs and Children's Trusts; and a greater emphasis on joined up strategies and shared decisions by partners, including parents. There were also some concerns that legislating would mean a loss of flexibility for local authorities to tailor SSCC services to meet local need. The Government confirmed that the current position would not be affected:

We [...] believe each centre should be tailored to meet local need and level of deprivation and fit around existing provision. SSCCs will need to incorporate/involve health services, Jobcentre Plus, private, voluntary and independent sector providers, parents and others in the local community to be able to do this. While local authorities need to have in place clear and robust systems of decision making at every level we recognise that models of governance will vary to reflect the flexibility of provision. Our proposals to legislate will not change that position.<sup>268</sup>

## 5. The Bill

Clauses 186 to 188 of the Bill would amend the *Childcare Act 2006* to give children's centres a specific statutory basis, make provision for the inspection of children's centres; and place new duties on local authorities to establish and maintain sufficient numbers to meet local needs. Clause 189 would require local authorities to consider additional factors under the duty to secure early childhood services in an integrated manner. The

---

<sup>267</sup> Department for Children and Schools and Families, *Response to the consultation on Legislating for Sure Start Children's Centres*. December 2008

<sup>268</sup> *Ibid*

Government has said that the Bill 'reflects current good practice, rather than creating any new requirements on local authorities or other service providers.'<sup>269</sup> The Impact Assessment to the Bill adds:

By establishing Sure Start Children's Centres in legislation, we are securing their future as part of mainstream universal provision for children and their families so that better integrated services will be on offer to all young children.<sup>270</sup>

**Clause 186** would insert a new section 5A into the *Childcare Act 2006* which would require English local authorities, in securing integrated early childhood services, to include, as far as reasonably practicable, arrangements for the sufficient provision of children's centres. In determining the sufficiency of children's centres the local authority would be permitted, under new section 5A(3), to have regard to children's centres provided, or expected to be provided, outside the authority's area. A children's centre is defined in clause 186 as a place or group of places:

- (i) managed by, or under arrangements with, an English local authority, with a view to securing early childhood services in an integrated manner;
- (ii) through which each of the early childhood services is made available; and
- (iii) at which activities for young children are provided.

Where a children's centre is provided under the duty to secure early childhood services pursuant to section 3(2) of the *Childcare Act*, the centre would be known as a Sure Start Children's Centre.

Clause 186 would also make provision for:

- setting up advisory boards for the purposes of providing advice and assistance on the effective operation of children's centre's within its remit;<sup>271</sup>
- ensuring that local authorities consult before:
  - (i) making provisions for children's centres;
  - (ii) any significant changes are made to services in a children's centre;
  - (iii) closing a children's centre;<sup>272</sup> and
- ensuring that local authorities consider whether early childhood services should be provided by SSCC.<sup>273</sup>

**Clause 187** sets out an inspection regime for children's centres, which would become new Part 3A of the *Childcare Act 2006*. The Impact Assessment of the Bill reveals that the inspection regime will be piloted in order to assess its impact and cost. The Government provides:

---

<sup>269</sup> Department for Children Schools and Families, *Summary of Proposals in the Bill*

<sup>270</sup> *Impact Assessment of the Apprenticeships, Skills, Children and Learning Bill 2009*, January 2009. Page 93

<sup>271</sup> New section 5C

<sup>272</sup> New section 5D

<sup>273</sup> New section 5E

We have identified that there may be non-monetised costs for institutions, such as the time taken to prepare for inspection but we are not yet at a stage to quantify any costs. We will prepare an Impact Assessment on the cost/benefits of inspections later in the legislative process, either during the passage of the Bill or when Regulations are being developed, depending on when information is available.<sup>274</sup>

Under a new section 98A, the Chief Inspector of Ofsted<sup>275</sup> would have to inspect centres at intervals prescribed in regulations; if requested to do so by the Secretary of State; or at any other time if the inspector considers it appropriate. Following an inspection, Ofsted would be required to report its findings to the local authority, and where requested, to the Secretary of State. The local authority subject to the inspection would be required to publish a statement setting out the action to be taken in light of the report and the timescale in which that action will be taken.

Clause 187 also prescribes the powers of entry that would be given to Ofsted inspectors for the purpose of inspecting children's centres. It would be an offence to obstruct an inspector seeking entry to a children's centre for the purposes of an inspection under the 2006 Act. It would be possible for Ofsted to apply for a warrant authorising a constable to assist an inspector in cases where an inspection has been prevented or is likely to be prevented.<sup>276</sup>

The Daycare Trust's response to the Bill questioned whether inspections would be appropriate for all children's centres:

We would welcome clarification on which aspects of a children's centre will be inspected. Only a proportion of children's centres provide childcare, so this would not be an appropriate inspection for all children's centres. Many provide other services to families such as stay and play sessions, midwife and health visitors clinics and toy libraries, but do not provide childcare or early education. It is likely that inspection of children's centres would be a new undertaking for many Ofsted inspectors and would require substantial training and clear criteria for assessment.<sup>277</sup>

**Clause 188** would amend Schedule 4 to the *Safeguarding Vulnerable Groups Act 2006*. The Act provides for a new Vetting and Barring Scheme under which individuals who wish to engage in certain "regulated" activities with children or vulnerable adults will have to apply to be subject to monitoring by the Secretary of State. Paragraph 3 of Schedule 4 to the Act sets out the establishments providing regulated activities that are subject to that duty. Clause 188 would insert children's centres into the list of establishments so that all staff working in children's centres would have to be checked under the Vetting and Barring Scheme and no barred staff could be employed.

---

<sup>274</sup> *Impact Assessment of the Apprenticeships, Skills, Children and Learning Bill 2009*, January 2009 p93

<sup>275</sup> Office for Standards in Education, Children's Services and Skills

<sup>276</sup> New section 98F

<sup>277</sup> Daycare Trust, *Apprenticeships, Skills, Children and Learning Bill – initial comment from the Daycare Trust*. 10 February 2009.



**Clause 189** would amend the section 3 of the *Childcare Act 2006*, which places a duty on children's services to make arrangements to secure early childhood services in an integrated manner to maximise access and benefits for families. In determining the arrangements to be provided under section 3, a new subsection 4A would require an authority to have regard to the quantity and quality of early childhood services which are provided, or expected to be provided, and the location. The Explanatory Notes provide:

So where a local authority decides that it needs to establish a new children's centre, it may determine that the children's centre does not need to provide an early childhood service such as childcare, given the availability, quality and location of existing early childhood services. However, in such a case the children's centre would still be required to provide advice and assistance on gaining access to local childcare provision, and directly provide other activities on site for young children.<sup>278</sup>

## **C. Early years provision: budgetary framework**

### **1. Background**

All four-year-olds have been entitled to a free early education place since 1998 and from April 2004 this entitlement was extended to all three-year-olds. The entitlement consists of a free part-time place for 12.5 hours per week for 38 weeks of the year. (The entitlement was extended in April 2006 from 33 to 38 weeks.) The Government published a Code of Practice on the provision of free nursery education places for three and four year olds in February 2006.<sup>279</sup> Parents cannot be charged for any part of the free entitlement either directly or indirectly<sup>280</sup> though providers can charge for any services that are additional to the free entitlement, and the level of such fees will be a matter for agreement between the provider and parents.

The Government intends that the entitlement will rise to 15 hours per week for 38 weeks of the year from 2010.<sup>281</sup> As a step towards this, from September 2009 all local authorities will be required to make the offer available to 25 per cent of their most disadvantaged 3-and 4-year olds. Interim guidance on this was published in July 2008.<sup>282</sup>

Funding to deliver the free nursery education entitlement in all settings is distributed to local authorities through the Dedicated Schools Grant (DSG) which is a ring-fenced grant to local authorities to cover all pre-16 education. Annual DSG allocations for individual local authorities are largely based on their previous year's funding per pupil across all ages, uprated by a standard national percentage increase, and multiplied by their full-time equivalent number of pupils age 3-16. Subject to a requirement to pass a

---

<sup>278</sup> Bill 55-EN, para 580

<sup>279</sup> [A Code of Practice on the provision of Free Nursery Education Places for Three and Four Year olds](#), February 2006

<sup>280</sup> Section 7, *Childcare Act 2006*

<sup>281</sup> see, for example, HC Deb 24 June 2008 cc280-1W

<sup>282</sup> [The Extension to the Free Early Education Entitlement Offer for 25% of 3- and 4-year-olds: Interim Guidance for LAs](#), DCSF, July 2008



proportion of such funding to schools (through the Individual Schools Budget) the DCSF does not require local authorities to allocate DSG funding to private, voluntary and independent early education providers (PVI) in a particular way. School funding regulations do not apply to funding of PVI providers. However, the Code of Practice makes clear that local authority funding to providers delivering the free entitlement should be fair and equitable and take account of local circumstances.<sup>283</sup> Local authorities, after consultation with delivery partners,<sup>284</sup> pay a locally determined amount per child per term to providers who wish to provide free places.

At present, maintained sector early years education providers are funded by local authorities through the Individual Schools Budget (ISB), which is the sum of the delegated budgets of all schools in a local authority. Allocations are made in accordance with the school finance regulations. Most local authorities, though not all, base funding of maintained early years education provision on the number of places offered, not on take-up of places. In 2008-09 funding for maintained providers was based on places (wholly or partially) in 53% of authorities. Funding for PVI providers was based on participation (wholly or partially) in all but one local authority.<sup>285</sup> <sup>286</sup> (Currently PVI providers are funded for the free entitlement from the local authority's centrally retained Dedicated Schools Grant, and the school funding regulations do not apply to that. Such funding is for the number of places taken up.) As noted above, parents are not required to contribute towards the free early education entitlement but they may be charged fees for any additional childcare services which exceed the free part-time entitlement. (DCSF funding to local authorities for maintained and PVI early years provision is based on the number of pupils aged 3 to 16 years.)

The DCSF has published benchmarking data on planned early years expenditure for 2007-08 and 2008-09. In 2008-09 average (mean) delegated funding per pupil in the relatively small number of maintained nursery schools was £3,800. Most early year pupils were in nursery classes in maintained primary schools or in PVI settings where delegated funding per pupil was £1,800 and £1,830 respectively. There are differences in the average number of hours of provision per week and funding per pupil per hour was £6.80 for nursery schools, £4.33 for nursery classes in primary schools and £3.72 for PVI settings. The PVI rate of funding was between £3 and £4 per pupil per hour in 87% of local authorities. 7% of authorities were calculated as having funding levels for this sector of more than £5 per pupil per hour.<sup>287</sup> Total planned funding for education for the under fives in PVI settings was £770 million in 2008-09.<sup>288</sup>

A survey in 2007 found that the vast majority of local authorities had a flat-rate of funding for all their local PVI settings; only 3% varied funding by type of setting. In the same survey just over three-quarters of local authorities based annual funding on past funding

---

<sup>283</sup> [A Code of Practice on the provision of Free Nursery Education Places for Three and Four Year olds](#), Annex B para 1

<sup>284</sup> Maintained, private, voluntary and independent providers of the free entitlement

<sup>285</sup> Includes funding based on headcount or sessions alone or in combination with places.

<sup>286</sup> *Benchmarking tables of LA planned expenditure 2008-09 –early years table*, DCSF

<sup>287</sup> *Benchmarking tables of LA planned expenditure 2008-09 –early years table*, DCSF

<sup>288</sup> *Section 52 data archive. Budget summary 2008-09*, DCSF

levels<sup>289</sup> up-rated for cost pressures. 3% based funding on an analysis of the actual costs of delivery.<sup>290</sup>

**a. Size of the PVI sector**

The PVI sector has grown substantially over time as the majority of the expansion in early years education was met by PVI providers rather than the maintained sector. In January 2008 450,000 three and four year olds in England benefited from free early years education in PVI settings. This was 40% of all children receiving free early education and around 38% of all three and four year olds in England. The majority of children in PVI settings are aged three as the large majority of four year olds are in maintained settings. There were 333,000 three year olds receiving some free early education in PVI settings in January 2008; around 55% of all three year olds.<sup>291</sup>

**b. A single funding formula**

The National Day Nurseries Association has campaigned for consistency in funding across the maintained and PVI sectors.<sup>292</sup>

In June 2007 the Government announced that local authorities would be required to use a single local formula for funding early years provision in the maintained and PVI sectors from 2010-11. The intention is that the single formula will ensure that decisions about funding for maintained and PVI providers are transparent, and based on the same factors. Local authorities are being encouraged to introduce this formula from April 2009 wherever possible.

The Every Child Matters Early Years Funding Reform website set out the rationale for the change:

The single local formula is intended to support the extension of the free entitlement for 3-and 4-year-olds, and to address inconsistencies in how the offer is currently funded across the maintained and PVI sectors. This will help to ensure that decisions about funding for maintained and PVI providers are transparent, and based on the same factors. While funding levels and funding methodologies do not have to be exactly the same for all providers, any differences must be justifiable and demonstrable.<sup>293</sup>

Since November 2007 six pilot local authorities have been implementing the single formula early and, in the light of their experience, interim guidance to help local authorities begin to develop their own single formula was issued in July 2008.<sup>294</sup> The DCSF is expected to issue final guidance in 2009 though it does not anticipate that the core content will change. Under the single funding formula, the free early years entitlement will be based primarily on participation levels, not on places, across all

---

<sup>289</sup> Either the previous year's funding or former Nursery Education Grant levels.

<sup>290</sup> *Early years funding reform: free entitlement survey results*, DCSF

<sup>291</sup> *Provision for Children Under Five Years of Age in England: January 2008*, DCSF

<sup>292</sup> <http://www.ndna.org.uk/ONESTOPCMS/Core/CrawlerResourceServer.aspx?resource=9282209A-1025-4415-8D16-4A152EC0634E&mode=link&guid=7c359fc399ad465d8d2423921d41deed>

<sup>293</sup> *Every Child Matters Early Years Funding Reform website*

<sup>294</sup> DCSF, *Implementation of a single local formula for early years: interim guidance for local authorities*, July 2008, <http://www.everychildmatters.gov.uk/resources-and-practice/IG00334/>

settings. The interim guidance explains that the single formula will not mean that all provision must be funded at the same cash value; rather that the same principles must be applied to all settings within the formula. Therefore, where there are obvious unavoidable additional costs in a particular type of provision, it would be legitimate for that cost to be recognised in the single formula.

The interim guidance sets out three stages on the way to a single formula:

**2008-09:** Establishing a robust understanding of costs, across all providers (see Section 5) and starting to consider the shape of the new formula. Those LAs with non-schools members on the Schools Forum will be required to have PVI representation by September 2008.

**2009-10:** Counting on the basis of participation, rather than places. LAs are not required to fund on that basis until 2010, although they can move to participation-led funding in 2009, if they wish to do so. To reflect this shift, the Early Years Census (from 2008) and the School Census (from 2009) will also count the hours taken up by children.

Also during 2009-10, working on the development of a single formula in partnership with providers from the PVI and maintained sector, undertaking formal consultation with the Schools Forum, and securing buy-in from all stakeholder groups.

Those LAs who currently do not have non-schools members on the Schools Forum will be required to have PVI representation (subject to the passing of the current Education and Skills Bill).

**2010-11:** Introducing a new single formula, based on a clear impact assessment and underpinned by appropriate transitional arrangements.

A number of issues have been raised in relation to maintained provision, in particular how the changes may affect maintained nursery schools that provide full-time places. Appendix 10 of the interim guidance examined these issues and noted that some LAs have expressed concern that they currently provide free provision for pupils on a full-time basis (that is for up to 25 hours per week, in line with the school day), whereas the free entitlement is currently for either 12.5 or 15 hours depending upon where the LA is in the roll-out of the free entitlement programme. The interim guidance said that LAs can choose to fund additional hours, but the DCSF advise that these decisions should be made on clear and justifiable reasons such as support for children with additional needs.<sup>295</sup> The interim guidance also states that before implementing a new early years formula, LAs must conduct an assessment of the effect the formula and any associated changes it may have on each of its early years providers, and further consider what transitional arrangements, if any, may be required.

## 2. The Bill

**Clause 190** seeks to amend the school funding provisions in the *School Standards and Framework Act 1998* to provide the necessary budgetary framework for the use of a

---

<sup>295</sup> *Ibid.* pp 55-56

single funding formula for all early years settings. The changes are necessary to enable PVI settings to be funded from the Individual Schools Budget (ISB) - this is the sum of the delegated budgets of all schools in a local authority - and for the school funding regulations to apply to PVI providers. These regulations include, among other things, the factors and criteria which local authorities have to take into account when distributing funding between individual schools, and the operation of the Minimum Funding Guarantee (MFG). The MFG is the minimum per-pupil increase in funding that schools can expect to receive. It has been set for the three years 2008-11 at 2.1%. This figure is based on an assessment of the average cost pressures faced by schools, less an assumed 1 percentage point efficiency saving.<sup>296</sup>

In order for local authorities to be able to fund childcare providers out of their ISB under the 1998 Act, the duty imposed on local authorities by section 7 of the *Childcare Act 2006* (to secure prescribed early year provision free of charge) needs to be treated as though it were an education duty. The clause makes provision for this. Provision is made for local authorities to make allocations to such providers, and for regulations to apply to those allocations. These technical provisions are explained in detail in the *Explanatory Notes* on the Bill.

The *Impact Assessment* notes that, overall, a small amount of funding would be transferred away from the maintained sector in settings where there are unfilled places; and in some cases there would be increased funding for PVI providers (though not where there are falling rolls). The Government expect to see greater competition as the funding for PVI providers is brought into line with maintained schools. However, the *Impact Assessment* states that the overall effect is difficult to calculate because of the variation between how authorities will implement the policy locally. Estimates of local authority costs of moving to the proposed framework are given. The Government plans to commission an assessment of the process and effect for local authorities.

## **X Schools causing concern**

### **A. Schools causing concern: England**

#### **1. Background**

The *Children's Plan* set out ambitious goals for educational achievement by 2020.<sup>297</sup> The Government has introduced strategies to help schools where fewer than 30% of pupils achieve 5 A\* to C GCSEs including English and Maths, and to challenge schools that get reasonable GCSE results but where pupils' progress overall is unimpressive. The minimum target is that by 2011 all secondary schools should have at least 30% of pupils achieving 5 A\* to C GCSEs including English and Maths by the end of Key Stage 4.<sup>298</sup>

---

<sup>296</sup> *Operation of the Minimum Funding Guarantee for 2008-09, 2009-10 and 2010-11*, DCSF

<sup>297</sup> Cm 7280, December 2007, chapter 3

<sup>298</sup> [Schools Facing Challenging Circumstances](#) (targets to 2011). Key Stage 4 covers pupils aged 14 to 16 and includes the final year of compulsory schooling.

In 2007/08 440 secondary schools (15%) failed to meet this target. The number has fallen steadily from 912 in 2004/05. At a local authority level in 2007/08, 27 of 149 had no schools below the floor target, 20 had more than 30% of their schools below the target and one had more than half below.<sup>299</sup> In primary schools the floor target is 65% of pupils achieving level 4 or above in Key Stage 2 English and Maths. In 2006/07 1,484 primary schools did not meet the floor target in English (11%) and 2,026 did not meet it on maths (15%). 19% failed to meet one or both of these targets.<sup>300</sup>

In June 2008 the Government launched the National Challenge to focus greater attention, help and resources on schools achieving less than the target of 30% of students obtaining five GCSEs at A\* to C (including English and mathematics).<sup>301</sup> Details of the plans were set out in *Promoting excellence for all: school improvement strategy: raising standards, supporting schools* (DCSF, 2008) and *National Challenge: A toolkit for schools and local authorities* (DCSF 2008). Amongst other things, various possible structural interventions were examined in the toolkit document.<sup>302</sup> These included closing the school, and possibly replacing it with an academy, where a local authority judges that a clean break with the past is needed to effect a transformation. In other cases, where the problems are more specific or less deep-seated, the authority might decide, for example, that the school should form part of a school federation with a high performing school; that the school should become a trust school to secure external involvement in its governance; or the authority might replace the school governing body with an interim executive board. Other interventions were explored in the toolkit document. In a *Written Ministerial Statement on 13 November 2008*, Ed Balls, the Secretary of State for Children, Schools and Families gave an update on the Government's school improvement strategy for secondary schools.<sup>303</sup> Further background information on the National Challenge is provided in [Library Standard Note SN/SP/4902](#), dated 26 November 2008.

## 2. Existing legislative framework for schools causing concern

Local authorities have a strategic role to promote high standards in education, and they have a range of powers to intervene where schools have failed Ofsted inspections. If a school is found to be inadequate when it is inspected, Ofsted will decide whether the school requires significant improvement or special measures.

A school requires special measures where it is failing to give its pupils an acceptable standard of education and the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school.

A school requires significant improvement where it does not require special measures but is nevertheless performing significantly less well than might reasonably be expected. Schools may require significant improvement in relation to their main school or their sixth

---

<sup>299</sup> *GCSE and Equivalent Results in England, 2007/08 (Revised)*

<sup>300</sup> DCSF performance data

<sup>301</sup> [Written Ministerial Statement, HC Deb 10 June 2008, cc8-9WS](#)

<sup>302</sup> [National Challenge: A toolkit for schools and local authorities](#), paragraphs 41 to 45

<sup>303</sup> cc61-63WS

form, while other parts of the school may be performing satisfactorily. Requiring significant improvement is also sometimes referred to as having a notice to improve.<sup>304</sup>

Local authorities also have a power to issue formal warning notices enabling the authority to intervene even where Ofsted has not graded the school inadequate.

The current legal framework for schools causing concern is contained in the *Education and Inspections Act 2006* (EIA 2006). Many of the provisions in Part 4 of the 2006 Act are re-enactments of previous legislation, but some significant new measures were introduced by the 2006 Act. Comprehensive details about the powers are contained in *Statutory Guidance on Schools Causing Concern*, published by the DCSF in May 2007, and revised in September 2008. The following draws on this guidance to highlight some key provisions; it is not intended to be a comprehensive account.

Sections 59 to 62 of the EIA 2006 define when local authorities can intervene in maintained schools:

- when the school has not complied with a valid warning notice (section 60);
- when the school requires significant improvement (section 61);
- when the school is in special measures (section 62).

Section 60 of EIA 2006 amended the previous legislation for local authority warning notices. It extended the definition of a low standard of school performance to include schools that are badly underperforming in relation to the nature of their pupil intake or the school's general context, and schools at which absolute standards of attainment are unacceptably low. Under Section 60(2) of the EIA 2006, a local authority may give a warning notice to the governing body of a maintained school where the authority is satisfied that

- (a) the standards of performance of pupils at the school are unacceptably low, and are likely to remain so unless the authority exercises its statutory intervention powers,
- (b) there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
- (c) the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).

For the purposes of section 60(2) 'low' standard of performance is defined further in section 60(3) as meaning that the standards are low by reference to any one or more of the following:

- a) the standards that the pupils might in all the circumstances reasonably be expected to attain,
- (b) where relevant, the standards previously attained by them, or

---

<sup>304</sup> *Guide to the law for school governors*, DCSF, September 2008, chapter 15, paragraph 10

(c) the standards attained by pupils at comparable schools.

The statutory guidance referred to above sets out where it is justified to use warning notices. Paragraph 44 of the guidance says that local authorities must draw on a suitable range of quantitative and qualitative information to form a complete picture of the school's performance before deciding to issue a warning notice; appropriate forms of evidence are set out in the guidance.

The guidance goes on to note circumstances that may affect the interpretation of available data on pupil performance. Guidance is also provided on the use of data that may indicate evidence of a breakdown in leadership or management. Paragraph 58 of the guidance refers to circumstances where the local authority might refrain from issuing a warning notice even where evidence exists in relation to low standards or breakdown in leadership or management – these include where the school acknowledges the problem and is working effectively to rectify the problem; when the authority has requested that Ofsted bring forward the inspection of the school; and where the school has recently been judged “satisfactory” by Ofsted, and is taking positive steps to rectify the areas identified for improvement.

When giving a warning notice, the local authority must set out the action it is contemplating if the school does not respond satisfactorily. It must also tell the school that it has the right to appeal to Ofsted, and must give at the same time a copy of the warning notice to Ofsted. The school must respond to the warning notice, or appeal to Ofsted, within 15 working days. Detailed information on the warning notice process is given in Chapter 2 of the statutory guidance.

Sections 63 to 66 of EIA 2006 set out local authorities' intervention powers. Section 63 was a new power to require such a school to enter into a contract or other arrangement with another school, F.E. college, or other named person for the purpose of school improvement. Section 64 was a re-enactment of previous legislation to allow the local authority to appoint additional governors. Section 65 was a re-enactment of previous legislation to empower the local authority to apply to the Secretary of State to replace the entire governing body with an Interim Executive Board (IEB). Section 66 was a re-enactment of previous legislation to empower the local authority to take back the school's delegated budget. Each of these powers is explained in detail in Chapter 5 of the statutory guidance.

Sections 67 to 69 of EIA 2006 re-enacted the Secretary of State's powers of intervention. The Secretary of State may appoint additional governors if the school requires special measures or significant improvement (section 67); put an IEB in place if the school requires special measures or significant improvement (section 69); or may close a school in special measures (section 68). Annex 1 of the statutory guidance provides further information on the Secretary of State's powers.



The summary table below<sup>305</sup> shows who can currently intervene in schools causing concern, and how:

School	Local authorities	Secretary of State
School in special measures	Full range of powers - closure, forced federation, IEB, additional governors, de-delegation	Closure, IEB, additional governors
School needing significant improvement	Full range of powers - closure, forced federation, IEB, additional governors, de-delegation	Can appoint IEB or additional governors
School with valid warning notice	Full range of powers - closure, forced federation, IEB, additional governors, de-delegation	No current powers
School without warning notice (but with evidence of current concern)	None apart from general power to close, merge or otherwise re-organise	No current powers
All Schools	LAs have a general power to request an Ofsted inspection	Secretary of State can require Ofsted to inspect any school

In an article in the *Times Educational Supplement*, Maggie Atkinson, president of the Association of Directors of Children's Services, suggested that the Government had always told local authorities that their powers should only be used in 'dire circumstances', and in the same article the *Times Educational Supplement* said that its enquiries suggested that the Secretary of State had barely used his intervention powers.<sup>306</sup>

The Government has not published the number of school warning notices that have been issued by local authorities, but has stated that their number has been 'relatively small [...] despite a large number of potential candidates.'<sup>307</sup> Trends in the number of schools in special measures or deemed as requiring significant improvement are illustrated in the following table.

<sup>305</sup> [Delivering the Children's Plan: Proposals for Revisions to Legislation for schools Causing Concern](#), DCSF, July 2008, p5

<sup>306</sup> "Mr Balls doesn't flex his muscles", *TES*, 25 July 2008, p5

<sup>307</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment*, DCSF, p115



**Schools causing concern, by type**

At 31 August each year

	Primary	Secondary	Special	PRU	Total
<b>Special measures</b>					
2004	201	94	22	15	<b>332</b>
2005	123	90	21	8	<b>242</b>
2006	137	54	6	11	<b>208</b>
2007	181	47	9	9	<b>246</b>
2008	157	50	14	12	<b>233</b>
<b>Requiring significant improvement</b>					
2004	..	..	..	..	..
2005	..	..	..	..	..
2006	205	93	3	11	<b>312</b>
2007	203	86	7	10	<b>306</b>
2008	168	70	2	1	<b>241</b>

Source: Data on schools causing concern, summer term 2008 and earlier, Ofsted

There is some evidence that their number has fallen over this period, but annual variations are quite erratic. The category of 'requiring significant improvements and given a notice to improve' was introduced in September 2005. At the end of August 2008, 2.1% of all schools were in either of these categories. The average duration in special measures of schools coming out of special measures in 2007/08 was 18 months for primary and 20 months for secondary schools.<sup>308</sup>

### 3. Consultation on changes to the law for schools causing concern

In July 2008 the DCSF issued a consultation document *Delivering the Children's Plan: Proposals for Revisions to Legislation for schools Causing Concern*. The consultation document said that, since EIA 2006 was implemented in April 2007, there was evidence that local authorities were not using warning notices in line with the statutory guidance. The evidence included

- Cases where a school has fallen into special measures on inspection some 18 months to two years after the local authority first documented the grounds for concern, which were then confirmed by the Ofsted judgement. While it may be reasonable for the local authority to spend a few months negotiating with the senior leaders and governors on the changes necessary in the school, it is difficult to justify a cause of concern lasting for 18 months without intervention, or sign of improvement.
- The apparent absence of local authority action in cases of long-standing low attainment, both primary and secondary. Some low attaining schools have been stuck at unacceptable levels of performance for several years. For example, there are currently 104 primary schools where Key Stage 2 level 4 attainment rates in both English and mathematics have been below the Government's 65% floor target for five or more years. Most of these schools are not in a formal Ofsted category of concern; the majority have low

---

<sup>308</sup> HC Deb 14 January 2009 c849-50W

contextual value added scores, suggesting that the persistently low attainment cannot be fully explained by difficult local circumstances.

- The relatively small number of valid warning notices issued since April 2007, despite a large number of potential candidates. Although it may be argued that the small number of such warnings reflects authorities' successful negotiations with their schools, the evidence above for long-standing problems suggests that more warnings could have been used appropriately.<sup>309</sup>

The consultation document emphasised that decisive action may also need to be considered for two groups of schools:

- schools that are badly and sharply declining in performance, including some of those currently just above the Government's 'floor targets' for primary and secondary schools, but are in imminent danger of dropping below; and,
- schools that have been stuck with low attainment and little or no improvement for several years.

In the case of academies, the consultation document made it clear that the Secretary of State would apply similar principles in relation to warning and intervention when academies are not responding to the need to raise standards (paragraph 21 of the consultation document).

The consultation document proposed the following main changes:

- a further criterion in the definition of when a school may be warned (for the avoidance of any doubt) indicating that a school with persistently poor rates of pupil progress may be eligible for a warning notice.
- new powers for the Secretary of State to require local authorities to consider the use of their warning notice powers, and for the Secretary of State to receive a copy of the warning notice issued by the local authority.
- the powers of the Secretary of State to be widened so that he can appoint additional governors or an IEB after a warning notice has been given.
- an extension of the Secretary of State's current powers to require authorities to take additional advisory services so that the power could apply not only to schools in Ofsted categories of concern but also where an authority maintains a large number or proportion of schools with very low levels of attainment or poor performance relative to their circumstances. For this purpose, the consultation document proposed that the trigger point should link to the legal definition of low standards set out in section 60 of the EIA 2006. The consultation document said that the Secretary of State did not envisage that the power would be used extensively but that it could have an important role in securing improvements where, for example, a local authority has a very high percentage of schools with

---

<sup>309</sup> *ibid.*, paragraph 19

low standards compared with authorities of a similar size and context, and where most of those schools are failing to make satisfactory progress.

The consultation closed on 25 September 2008. The results of the consultation and the DCSF's response will be published on the DCSF e-consultation website.<sup>310</sup>

#### 4. Compliance with the School Teachers' Pay and Conditions Document

The statutory requirements for teachers' pay and conditions in maintained schools in England and Wales are set out in the School Teachers' Pay and Conditions Document (STPCD). School governing bodies and local authorities must abide by these requirements, and are also required to have regard to statutory guidance on the provisions.<sup>311</sup>

In January 2003 the *National Agreement on Raising Standards and Tackling Workload*<sup>312</sup> was designed to improve school standards and tackle workload issues - particularly inappropriate administrative burdens on teachers, and the lack of time for planning and lesson preparation. The changes, which were incorporated into teachers' contracts of employment through the STPCD, mean that teachers should not be routinely required to carry out administrative and clerical tasks which do not call for the exercise of their professional skills and judgement, nor should they be required to invigilate external examinations. In addition there is a limit on the hours teachers provide cover for absent colleagues and teachers in any school year. Teachers must also have guaranteed time for planning, preparation and assessment. Headteachers must have regard to the desirability of teachers being able to achieve a satisfactory work-life balance when allocating duties to them. Teachers with leadership or management responsibilities are entitled, so far as is reasonably practicable, to a reasonable amount of time to carry out those duties, and headteachers are entitled to a reasonable amount of dedicated headship time to discharge their leadership and management responsibilities. The changes also had significant implications for the roles of support staff and other professional staff in schools as they took on new and expanded roles.

The Government is concerned that a small minority of schools is not fully implementing the National Agreement and therefore not complying with the STPCD. The Bill seeks to introduce a system of teachers' pay and conditions warning notices to ensure that the governing bodies of maintained schools comply with the provisions in the STPCD. The *Impact Assessment* of the Bill acknowledged that the evidence on non-compliance is mixed. On the one hand, for example, it cited an Ofsted report in October 2007, which found that most schools it had visited had met the statutory requirements. On the other hand, however, it referred to surveys carried out by some of the teachers' unions that had found evidence of some schools not complying. The *Impact Assessment* noted that, at the moment, the only means of enforcing compliance are through legal action brought by individual employees or groups of individuals. The Government believes that these

---

<sup>310</sup> *ibid.*, paragraph 4.1 (in word version of the consultation document)

<sup>311</sup> *School Teachers' Pay and Conditions Document 2008 and Guidance on School Teachers' Pay and Conditions*, DCSF 2008

<sup>312</sup> This was drawn up between the Government, employers and school workforce unions (apart from the NUT)

arrangements are inappropriate not only because individual action would be costly and time-consuming but also because the STPCD has statutory force and therefore it would be unreasonable to expect teachers themselves to have sole responsibility for enforcing the provisions.

## **B. The Bill**

### **1. Schools causing concern: England**

**Clause 191** introduces **Schedule 13** which contains amendments to Part 4 of EIA 2006. Paragraph 4 of Schedule 13 inserts a new section 60A in the EIA 2006. The new section introduces a system of teachers' pay and conditions warning notices which allows LEAs to issue a notice to the governing body of a maintained school where the LEA is satisfied that the governing body has failed to comply, or failed to secure compliance by the head teacher, with the provisions of an order under section 122 of the *Education Act 2002* relating to teachers' pay and conditions (including the *School Teachers' Pay and Conditions Document*). If a teachers' pay and conditions warning notice is given and, after a compliance period, the governing body has not complied with it or successfully made representations to the LEA against it, the school will become eligible for intervention. The *Explanatory Notes* summarise the powers of intervention that would be available.<sup>313</sup>

Paragraphs 8 and 9 of schedule 13 extend the Secretary of State's power to appoint additional governors or interim executive members after a performance and safety warning notice or a teachers' pay and conditions notice has been issued. Currently this reserve power is only available in relation to a school in the categories requiring special measures or requiring significant improvement.

Paragraph 10 of Schedule 13 inserts new sections 69A and 69B in the *Education and Inspections Act 2006*. Section 69A gives the Secretary of State power to direct an LEA to consider giving a performance standards and safety warning notice to a governing body school if he or she thinks that there are reasonable grounds for the LEA to do so. New section 69B gives the Secretary of State a power to direct an LEA to consider giving a teachers' pay and conditions warning notice to a governing body if he or she thinks that there are reasonable grounds for the LEA to do so.

**Clause 192** amends section 62A of the *Education Act 2002*, which currently gives the Secretary of State the power to require LEAs in England to obtain advisory services in certain circumstances. These are where a LEA has schools in either of the categories requiring special measures or requiring significant improvement, and the LEA does not appear to be effective or likely to be effective in improving those schools or other schools in their area which may be placed in these categories. Clause 192(2) allows intervention when there are a disproportionate number of low-performing schools within the LEA's remit, and it appears to the Secretary of State that the LEA are unlikely to improve standards in those schools or in other schools in their area which may in the future become low-performing. In assessing standards of performance for this purpose, the

---

<sup>313</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraphs 595 to 599

standards of pupils when they joined the school, and the standards achieved by pupils at similar schools, may be taken into account.

The *Impact Assessment* assumes that the Bill's provisions could cut by around 25% the number of schools being placed in special measures or significant improvement.<sup>314</sup>

## 2. Schools causing concern: Wales

**Clause 193** gives effect to **schedule 14**. This makes provision for Wales corresponding to that contained in Schedule 13 for England. The *Explanatory Notes* state that the amendments are to the *School Standards and Framework Act 1998*, and have broadly the same effect as those made in relation to teachers' pay and conditions in England by Schedule 13, except that the Welsh Ministers rather than the Secretary of State have reserve intervention powers.

# XI Complaints: England

## 1. Background

The *Children's Plan*<sup>315</sup> committed the Government to look at ways of improving the current arrangements for parents' complaints, and to strengthen the way that complaints about bullying are dealt with in the light of the Children's Commissioner's report on the handling of bullying complaints in schools.<sup>316</sup>

In July 2008 the report by Sir Alan Steer on pupil behaviour was published.<sup>317</sup> It made recommendations for new arrangements for handling parents' complaints where these could not be resolved at school level. The report recommended that the right to refer a complaint to the Secretary of State should be replaced by a local referral system which would provide for the decision of the governing body to be reviewed independently of the school. In his response to the report, the Secretary of State undertook to include these proposals in a consultation on parental complaints. In addition, the Government asked Brian Lamb to advise on the most effective ways of increasing parental confidence in the special educational needs assessment process.<sup>318</sup>

The proposals for an improved complaints system are part of the more general context of increasing interest in public administration, and improving complaints handling, accountability and responsiveness of public services. In March 2008 the Public Administration Committee published its report, *When Citizens Complain*.<sup>319</sup>

---

<sup>314</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment*, DCSF, pp115-116

<sup>315</sup> *Children's Plan*, paragraphs 2.41 and 3.2

<sup>316</sup> *Bullying in Schools: A review of the current complaints system and recommendations for change*, Children's Commissioner for England, 2007

<sup>317</sup> The *Steer Report*, July 2008 (this link is via the DCSF website and provides additional information).

<sup>318</sup> *Written Ministerial Statement by the Parliamentary Under-Secretary of State for Children, Schools and Families*, HC Deb 13 March 2008 c19WS

<sup>319</sup> Fifth Report of Session 2007–08, HC Paper 409

## 2. Current provision for handling parental complaints about schools

Under section 29 of the *Education Act 2002* all governing bodies of maintained schools in England must establish and publicise a complaints procedure for the school. The *Education (Independent Schools Standards) (England) Regulations 2003* requires independent schools, including Academies and City Technology Colleges, to draw up complaints procedures.<sup>320</sup>

Most complaints are resolved at the school level though in some cases further steps are taken, and some complaints are referred to the Secretary of State for Children, Schools and Families (see below). Local authorities are required to set up a procedure for dealing with certain types of complaints, for example, complaints about the curriculum or collective worship in a school. The governing bodies' complaints procedure will not replace the arrangements made for those types of complaint. In addition, there are certain complaints that fall outside the remit of the governing bodies' complaints procedure, for example, staff grievances or disciplinary procedures.

Under sections 496 and 497 *Education Act 1996*, a complaint may be made to the Secretary of State where a governing body or local authority is considered to be acting "unreasonably," or is failing to carry out its statutory duties properly. However, intervention can occur only if the governing body or the LA has failed to carry out a legal duty or has acted unreasonably in the performance of a duty. Intervention would have to be expedient in the sense that there would have to be something that the Secretary of State could instruct either party to do to put matters right. The Secretary of State must be satisfied that a decision is unreasonable in the sense that no reasonable authority or governing body, acting with due regard to its statutory responsibilities, would have reached that decision.<sup>321</sup>

The Secretary of State's role in considering complaints from parents of pupils at academies is to ensure that the academy is meeting its statutory obligations and the requirements of its funding agreement with the Secretary of State. If the academy fails to do so, the Secretary of State can enforce compliance with the funding agreement, if necessary through a court order.

The Local Government Ombudsman (LGO) considers complaints about services provided by local authorities, and can, for example, consider certain complaints about local authority provision of services to pupils with special educational needs and about provision for home to school transport. He can also consider complaints about the administrative arrangements of independent admissions and exclusions appeals panels, and complaints about governing bodies of schools when they are carrying out their admissions functions<sup>322</sup>. However, at present the LGO cannot consider complaints about the conduct, curriculum, internal organisation, management or discipline in a school<sup>323</sup>.

---

<sup>320</sup> [The Education \(Independent Schools Standards\) \(England\) Regulations 2003](#), SI No. 1910, paragraph 7. The [Education \(Independent Schools Standards\) \(England\) \(Amendment\) Regulations 2008](#), SI 2008 No. 3253 amends paragraph 7 to require independent schools to not only draw up a complaints policy but to implement it.

<sup>321</sup> [The Guide to the Law for School Governors 2008](#), Department for Children, Schools and Families

<sup>322</sup> Section 25(5)(d) of the Local Government Act 1974

<sup>323</sup> Schedule 5 to the *Local Government Act 1974*

This means the LGO cannot consider everyday issues relating to the conduct of a school, for example, complaints about bullying, school uniform policy etc. Tables showing the number of complaints to the LGO for England and their outcomes for schools, local authorities and other bodies from 1998-99 to 2006-07 are given in a paper deposited in the Library by the Department for Communities and Local Government.<sup>324</sup>

The *Education and Inspections Act 2006*, section 160, makes provision for Ofsted to investigate certain complaints (“qualifying complaints”) from the parents of registered pupils at a school. The *Education (Investigation of Parents’ Complaints) (England) Regulations 2007*<sup>325</sup> sets out the type of complaint that can be dealt with by Ofsted, and restricts complaints to those matters where there is no alternative statutory route other than the school’s complaints procedure. The complaint must be about the school as a whole, not about a child’s individual circumstances.

### **3. Consultation: A New Way of Handling Parents’ Complaints About School Issues**

On 26 September 2008 the Government announced that a new duty would be placed on schools to record all incidents of bullying, and that there would be consultation on proposals for a new independent complaints service to deal with most complaints from parents about school issues.<sup>326</sup> A Department for Children Schools and Families (DCSF) consultation document proposed ways to improve the handling of complaints at school level, and new arrangements for independent reviews of complaints that cannot be resolved at school level.<sup>327</sup> This included two possible options to replace the current role of the Secretary of State in considering complaints from parents – either an independent complaints review service operated by an existing organisation to look at complaints, or an independent local referrals system in which a panel convened by the local authority would be able to require a governing body to reconsider a complaint.

The Government said that the new arrangements could apply to the different types of publicly funded schools in England, and that it would be best if the new arrangements were implemented in stages, piloting them first with maintained mainstream schools in some areas, with the scope to extend them to other areas and to other types of school.

The consultation document made it clear that the proposals would not apply to complaints about non-school local authority services for children which cannot be resolved by the local authority. These are for the Local Government Ombudsman (LGO) to consider and there are no plans to change this. Neither would the proposals replace the existing arrangements for independent appeals and panels which consider admissions and permanent exclusions. These issues were not therefore covered by the consultation. The consultation did, however, cover aspects of complaints about governing bodies’ operation of the school exclusion process. The proposals did not seek to change the arrangements for considering disputes about special educational needs and disabilities which fall within the remit of the Tribunal dealing with special educational needs and disability cases, though the consultation proposed that the new parental

---

<sup>324</sup> Library deposited paper: Dep2008-0663, 6 March 2008

<sup>325</sup> SI 2007 No 1089

<sup>326</sup> DCSF Press Release, *Fairer, more transparent complaints procedure for parents*, 26 September 2008

<sup>327</sup> *A New Way of Handling Parents’ Complaints About School Issues*, DCSF, 26 September 2008

complaints system should be able to consider complaints that an individual child with a statement of SEN is not receiving the provision specified in the statement. Currently, these complaints go either to the LGO or to the Secretary of State and the consultation document noted that there is often confusion about the most appropriate route.

The consultation covered:

- the case for guidance on good complaints procedures and other ways to improve the handling of complaints at school level;
- the place of mediation and reconciliation services for resolving disagreements at an early stage and for helping to promote good parent/school relationships in the wake of complaints;
- the case for new arrangements to consider complaints that cannot be resolved at school level. Two possible approaches are put forward in this consultation document and both of these would replace the current role of the Secretary of State in considering complaints from parents to him under sections 496 and 497 of the Education Act 1996. The first would involve an **independent complaints review service** to be hosted by an existing organisation to look at complaints. The second option would provide an **independent local referrals system** in which a panel convened by the relevant local authority would be able to require a governing body to reconsider a complaint;
- ways to improve links between different complaints handling systems, so that parents only have to complain to one place with the complaint then being routed automatically to the organisation that can consider it;
- arrangements for piloting the new procedures.<sup>328</sup>

The rationale for replacing the current arrangements for complaints to the Secretary of State was explained in the consultation document:

15. So far as complaining to the Secretary of State is concerned, the Secretary of State has powers under sections 496 and 497 of the Education Act 1996 to consider complaints that a governing body of a maintained school is or has been acting illegally or unreasonably in respect of a statutory power or duty conferred on the governing body by education law. He may make a declaration of default (under section 497 only) and give directions. For the Secretary of State to uphold a complaint, he must be satisfied that:

- a. there has been a breach of a specific education duty by the governing body of the school; or
- b. the governing body is acting or proposing to act unreasonably in the strict legal sense of the word (ie in a way in which no reasonable governing body would act in the circumstances).

---

<sup>328</sup> Executive summary of consultation document



16. For the Secretary of State to give a direction he must also be satisfied that it is expedient for him to do so. In other words, he must be satisfied that there is a sensible remedy available to him. In practice, this means that except where there is a clear breach of a specific duty (for example, a school failing to have a complaints policy or a behaviour policy) there are few occasions when the Secretary of State is empowered to intervene. The complainant may have strong grounds for complaint, but their case is hampered if there is no readily identifiable education duty to which the complaint can be attached. Or, the governing body may have acted in a way which is unsatisfactory, but the behaviour was not so unreasonable that it would meet the strict legal threshold. The Secretary of State's powers are thus limited. In addition, to this, he has to consider whether to exercise his powers in relation to every complaint he receives. He has no discretion not to give any consideration to a complaint that is evidently vexatious or frivolous – he must at least consider whether to exercise his powers in relation to all complaints which come to him, even though his powers to take action are limited as described above.

The consultation document established a set of principles to govern the handling of complaints:

21. First, any new arrangements would **not impose any additional burdens on school staff, leaders or governing bodies.**

22. Second, the arrangements would provide, as far as possible, one route for complaints and one tier of review above the level of the school governing body in the interests of transparency, accountability and timely response.

23. Third, **all complaints**<sup>329</sup> **would first be considered at school level**, including by the governing body. It would not be possible to access the new service until the complaint has been considered by the governing body. In addition, in line with the recommendations of the Children's Commissioner – more might be done to promote the availability and use of mediation and reconciliation to try and resolve disagreements and complaints at school level and to ensure that schools and parents are able to enjoy good relations in the aftermath of any complaint.

24. Fourth, the new arrangements would provide an **increased element of independence** in judging actions by governing bodies against relevant policies and procedures. It is this principle that leads the Government to believe that there should be a service which is independent of central Government.

25. Fifth, the service would be able to **discourage vexatious or frivolous complaints** by having the discretion to refuse to consider such complaints or to terminate its consideration of complaints which undermine the principle of the governing body's accountability.

26. Sixth, the review service would be able to **consider the substance of the complaint as well as the processes followed.** But it would not be able to substitute its own decision for a sensible and lawful decision

---

<sup>329</sup> Except where a parent is complaining about a failure by the local authority (see paragraph 17)

properly made. This principle would only be relevant if the option of an independent complaints review service were adopted. A referrals service would not consider the substance of the complaint but would refer the complaint back to the governing body to consider again.

26. Seventh, the review service would have a **range of remedies** available when it upholds a complaint and complainants should have confidence that its decisions will be acted upon. This principle would only be relevant if the option of an independent complaints review service were adopted. A referrals service would not consider remedies.

28. Eighth, it is important that there is **effective co-ordination between different bodies that consider complaints** so that where one body receives a complaint that is outside its remit, that complaint can be referred on to the body that can deal with it. Similarly, the new arrangements would support better co-ordination in cases where a complaint is relevant to more than one body and where a body such as HSE or Ofsted also has an interest.

The role that an outside person could play in bringing the school and parents together in order to reach agreement/resolution on disagreements at an early stage was highlighted.

The consultation document made it clear that both parents (and others with parental responsibilities) and young people themselves should have access to any new service to handle complaints that cannot be resolved at school level.

Those consulted were invited to express a preference for one of the two options for a new approach – an independent complaints review service or an independent local referrals service. Both options were examined in detail in the consultation document.

The consultation document said that a new body for an independent complaints review service would not be necessary as this could be operated by an existing body, possibly the LGO or the Office of the School Adjudicator (OSA). The merits of both were considered in detail in the consultation document. The consultation also made detailed proposals on the remit of an independent complaints review service, and the remedies to be at its disposal. It envisaged that the new service would be able to enquire into 'poor performance of functions, deviation from school policies and professional guidance, delay, mistakes or bias'. The complaints service would consider the substance of the complaint as well as the way in which the school had dealt with it. The consultation document proposed a list of criteria against which a complaint would be considered, and said that the service would not consider the complaint afresh and would not substitute its own judgement for that of the governing body.<sup>330</sup> The range of remedies could include those where the school should apologise, change policies or procedures, adopt new or different practice, stop a particular practice, make amends, refer a teacher to the General Teaching Council for England (but only in line with the proposals), and train staff (see paragraphs 50 to 62 of the consultation document). The consultation document notes that this list does not include financial compensation; however, it goes on to observe that the relevant ombudsmen may recommend awards for cases in health and local authority services including SEN, admissions and other education matters (paragraph 52).

---

<sup>330</sup> Consultation document, Paragraph 49

An independent local referrals service was outlined as an alternative to an independent complaints review service. Under such a system complaints that were not resolved at school level could be referred back to the governing body to reconsider. Local authorities would take formal responsibility for considering all parents' complaints once the school-level process had been exhausted, though the consultation document acknowledged that this would not be appropriate for some matters, notably those that are the responsibility of the LA.

The consultation document made it clear that, overall, the existing arrangements for independent appeal panels and tribunals for admissions and permanent exclusion panels, and the tribunal service for special educational needs and disability, should be outside the scope of the new arrangements. Nevertheless, it said that the aim should be for different complaints systems to align over time to provide a seamless service for parents. This, it said, implied a single point of entry – a portal which routes people dissatisfied with a service to the appropriate body and gives them the information they need to decide on their course of action.

Another issue considered in the consultation relates to 'section 409 complaints'. Under section 409 of the *Education Act 1996*, local authorities must make arrangements to deal with any complaint of unreasonableness on the part of the local authority or governing body of a maintained school in relation to such matters as the national curriculum, religious education and collective worship, and exemptions from non-curricular sex education. The consultation document proposed that complaints about such matters that are the responsibility of school governing bodies, and which cannot be resolved at the school level, should be referred to the new complaints service and not to the local authority.

The Government wish to limit as far as possible the number of routes of appeal while preserving rights of parents. The consultation document therefore proposed that a new service would not consider complaints where there is a right of appeal to a Minister or tribunal, where there is remedy by way of proceedings in a court, or where there are ongoing court proceedings (paragraph 83).

[Library Standard Note SN/SP/4953](#) provided further background information on the proposals, and also outlined the existing arrangements for the separate systems for complaints about school admissions, exclusions, and special educational needs provision.

#### **4. Reaction to the proposals**

The Administrative Justice and Tribunals Council (formerly the Council on Tribunals) welcomed the proposals and strongly supported the Local Government Ombudsman (LGO) as the body to undertake the new complaints service.<sup>331</sup>

There was a mixed reaction from teachers. For example, the National Association Schoolmasters Union of Women Teachers (NASUWT) favoured a single streamlined system but stressed that whatever system is established must not result in additional

---

<sup>331</sup> [AJTC response to DCSF consultation on proposals for a new way of handling parents' complaints about school issues](#), 21 November 2008

bureaucratic burdens on school leaders and staff. It thought that existing tried and tested systems such as the LGO would be suitable for the purpose.<sup>332</sup> But the National Association of Head Teachers (NAHT) questioned whether it would be necessary to have a new service as well as the offer of mediation. It believed that governing bodies should be able to deal with parental complaints and should be given adequate advice and guidance to do so without having to go beyond that level. However, NAHT said that if it is considered essential to put such a new service in place, then the LGO model probably demonstrates best fit.<sup>333</sup>

In its response to the consultation, the National Governors' Association (NGA) noted that opinions within the NGA were divided as to whether the LGO or OSA would be best placed to provide the proposed new complaints service. It stressed that the key issue for the NGA is that, whichever organisation is chosen, it should be provided with sufficient resources and appropriately trained staff to carry out the role effectively. NGA felt that a referral system would be a mistake. It argued that it would be difficult to see how parents would have confidence in a system in which a complaint is simply referred back to the body they were unhappy with.<sup>334</sup>

The Anti-Bullying Alliance<sup>335</sup> welcomed the proposal for an independent complaints service and said that it would support the new service being hosted by the LGO or the OSA. Like other respondents it emphasised the importance of having appropriate support for the new service.<sup>336</sup>

The Advisory Centre for Education (ACE)<sup>337</sup> generally welcomed the attempt to improve ways of handling parents' complaints at school level, and possible new arrangements for considering those that cannot be resolved at school level. However ACE raised a number of specific concerns including the need for any new review body to be able to look again at the substance of the complaint, rather than referring the matter back to the school. It also expressed concern about the possible implications of the suggestion that complaints could not be brought to the new body if there is a remedy by way of court proceedings. ACE noted that no information had been given in the consultation document about time limits for hearing complaints (this is, however, covered in the Bill – see below). It also sought clarification of where a 'single-point of entry' for making a complaint would be. It said that this should be at the start of the process, and that parents should have a right to information about further rights to complain. ACE emphasised that decisions of any new complaints body should be subject to judicial review in the normal way.<sup>338</sup>

---

<sup>332</sup> [NASUWT comments on DCSF consultation on a new independent system of parental complaints](#), 29 September 2008

<sup>333</sup> NAHT response (internet link not available)

<sup>334</sup> [NGA response](#)

<sup>335</sup> The Anti-Bullying Alliance (ABA) was founded the National Children's Bureau and the NSPCC in 2002. It is an alliance of over 60 members and brings together a wide range of national organisations.

<sup>336</sup> [Anti-Bullying Alliance response](#)

<sup>337</sup> ACE is a registered charity independent of central or local government which seeks to empower parents and presses for a fairer and more responsive education system

<sup>338</sup> ACE magazine, ASKACE, Vol.2. No.2. Winter 2008, p13

The DCSF has published a report on the consultation responses and the next steps to be taken.<sup>339</sup> This noted that the majority of respondents to the consultation had opted for an independent complaints review service to be hosted by the LGO, and that the Government intended to legislate to extend the LGO's remit accordingly. The report said that respondents generally agreed with the proposed set of principles for the new service, though there were comments about additional burdens on schools and governing bodies, as well as other suggestions for improving the principles. Respondents supported proposals to pilot the service before national implementation. The document confirmed that this approach will be taken, and that DCSF will carry out an evaluation of the service before extending it nationally. There was general support for statutory guidance. The report confirmed that there will be statutory guidance which will give direction on the handling of complaints, including timescales and other points of process. It will also look at the place of mediation/reconciliation services for early resolution of disputes. There was also support for a single point of entry, and the report noted that the pilot will be able to test effective relations between the existing and proposed arrangements. The report confirmed that independent appeal panels and tribunals (admissions and permanent exclusion panels, and the work of the First-Tier Tribunal, previously known as SENDIST) will be outside the scope of the new service. However, it said that DCSF recognises that it will be critical to the effective delivery of the new service for the alignment of the different systems over time to provide a seamless service for parents and young people. To this end DCSF intend to look at establishing clear protocols for signposting parents/young people to the correct body. The report provides an analysis of the responses to each of the questions posed in the consultation.

## 5. The Bill

**Clauses 194 to 209** make provision for the new scheme for complaints. The intention is that the Secretary of State's role will be replaced by a new parents' and young person's independent complaints service, referred to in the clauses as the Local Commissioner (commonly known as the Local Government Ombudsman). As noted above, the Government intends to introduce the scheme as a pilot. **Clause 255** allows the provisions to be commenced for different purposes or areas. As noted below, under **clause 207** the Secretary of State may add to or amend the definition of schools covered by the scheme.

**Clause 194** specifies who, and in what circumstances, a complaint may be made under the scheme. It covers a 'qualifying school', which is defined as a community, foundation, or voluntary aided school, community special or foundation special school, maintained nursery school or a short stay school (these are the newly named schools to replace Pupil Referral Units under clause 236 of the Bill). The Secretary of State may add to or amend the qualifying school definition by order (made under **clause 207**), which would be subject to the affirmative resolution procedure.

Under **clause 194(2)** a complaint against a school may be made where a pupil or parent claims to have suffered injustice because of the actions, or omissions, of the governing body or by the head teacher exercising, or failing to exercise, a prescribed function.

---

<sup>339</sup> *A New Way Of Handling Parents' Complaints About School Issues: Consultation Outcome*, DCSF February 2009

Complaints about school admissions or matters in respect of which the complainant has or had a prescribed right of appeal cannot be referred to the Local Commissioner (clause 194(3)). Under **clause 208** the Local Commissioner will be able to consider complaints relating to the National Curriculum where it affects an individual pupil. As noted earlier, local education authorities currently have a role in the complaints process under section 409 of the *Education Act 1996* and paragraphs 6(3) and (4) of Schedule 1 of the 1996 Act. These sections will be repealed so that complainants are able to approach the Local Commissioner under the new scheme.

The *Explanatory Notes* on the Bill explain that people acting on behalf of the governing body can be complained about. Where a governing body contracts out services a complaint about that service could be made, for example, where a school contracts out services for an after-school club despite the fact that the club is not run directly by the governing body.

**Clause 195** empowers the Local Commissioner to investigate complaints. Provision is made to enable a head teacher or governing body that has considered a complaint to refer the matter to the Local Commissioner, with the complainant's consent. Before investigating a matter the Local Commissioner must be satisfied that the governing body had notice of the matter complained about, and an opportunity to investigate and respond, or that it is not reasonable in the circumstances to expect the matter to be brought to the attention of the governing body (clause 195(3)). Complaints must normally be made in writing within 12 months of the incident occurring (clause 196).

**Clause 197** sets out procedures for considering a complaint. Amongst other things, it ensures that the governing body or head teacher about whom the complaint was made, and any other person involved, are allowed the opportunity to comment. Various powers are given to the Local Commissioner under clause 198. Provision is made for statements to be issued by a Local Commissioner when he decides not to investigate or to discontinue an investigation, and when an investigation is completed (clause 199). When an investigation is completed, the statement must set out the Commissioner's conclusions and any recommendations. The statement may be published in full or in part (clause 201).

Under **clause 199** the Commissioner may make recommendations for action which, in the Commissioner's opinion, the governing body needs to take to remedy any injustice sustained by the person affected. Under clause 199(6) the governing body may make a payment if, after considering a statement, it appears to the governing body that a payment should be made.

**Clause 200** makes provision for adverse finding notices. The governing body will be required to consider any statement containing recommendations by a Local Commissioner, and to notify the Commissioner within the "required period" of the action which the governing body has taken or proposes to take. If by the end of that period, the Local Commissioner has not received this notification, or is satisfied before the period expires that the governing body has decided to take no action, the Local Commissioner may require a governing body to publish an adverse findings notice. The Commissioner may also do this if s/he is not satisfied with the action which the governing body has taken or proposes to take; or, if, after a further month following the end of the "notification

period” (or any longer period agreed in writing by the Local Commissioner), the Commissioner has not received satisfactory confirmation that the governing body has taken the proposed action.

An adverse findings notice will include details of any action recommended in the Local Commissioner’s statement which the governing body has not taken, any supporting material required by the Local Commissioner, and an explanation of the governing body’s reasons for not having taken the recommended action (if the governing body wishes). Provision is made for publication of adverse findings notices.

Sections 496 and 497 of the *Education Act 1996* are amended so that the Secretary of State can no longer make a direction in relation to complaints against governing bodies of schools that have or could have been made to the Local Commissioner (clause 206). The Secretary of State can make a direction to a governing body that has not complied with a recommendation from the Local Commissioner (clause 205).

Provision is made to restrict the disclosure by the Local Commissioner of information obtained during the course of an investigation (clause 202). **Clause 204** makes provision for the Local Commissioner to produce reports including an annual report which must be laid before Parliament.

Currently there is no central collection of data on parental complaints, but the DCSF has stated that research will be carried out to look at practices, costs and effectiveness. The DCSF estimates that it deals itself with around 2,200 complaints per year that would go to the new complaints service. Assuming that this number of complaints would go to the Local Commissioner, annual costs are estimated at £1.65 million. Start-up costs are estimated at £2 million.<sup>340</sup>

## XII School Inspections

### A. 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 inspection cycle is normally every three years, and schools are given very short notice of the inspection. Schools will be inspected more frequently if Her Majesty’s Chief Inspector (HMCI) considers it necessary, for example where a school has been placed in special measures. By September 2009 all maintained schools will have been inspected under the current inspection framework.

Ofsted has consulted on proposals for new maintained school inspection arrangements.<sup>341</sup> These include proposals for a more differentiated school inspection system under which the frequency of inspection for good and outstanding schools would fall so that such schools would be inspected every six instead of every three years. The

---

<sup>340</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment*, DCSF, p106

<sup>341</sup> *A focus on improvement: proposals for maintained school inspections from September 2009*, Ofsted, May 2008

Government has said that this is consistent with Government policy that inspection should be proportionate to risk.<sup>342</sup> However, six years is a long time between inspections even for the best schools. Therefore Ofsted proposes to publish an interim statement, commonly referred to as a 'health check' statement, after three years of the last inspection of a good or outstanding school, to provide parents and others with information about the school.

The consultation document outlined the key differences between the current arrangements and the proposed changes:

Inspections will be more tailored to the needs of the school. All schools judged to be satisfactory or inadequate in their most recent full inspection will be inspected within three years; in general, schools judged good or outstanding will be inspected within six years, although one 'health check' report will be published in the intervening years.

Inspectors will take more account of the views of parents in deciding when a school needs to be inspected.

There will be increased focus on the progress made by different groups of children and young people which could include those most likely to underachieve, the most vulnerable and the most able. The well-being of learners, the quality of learning and the quality of teaching will feature strongly in the inspection.

Inspectors will take more account of the capacity of the school to improve than in the current arrangements.

Schools' senior managers will be involved more consistently in the inspection process.

The inspection of federations and partnerships will be coordinated.

Some inspections will have a specific focus, such as looked after children.

Criteria for outstanding and good schools will be more explicit and standards for satisfactory and inadequate will be defined so that schools are much clearer about what they need to do to improve.

We will report more explicitly on whether the school provides good value for money.

We will explore whether 'no notice' inspection is feasible.

On the 'health check' statements the consultation stated:

25. Six years is a long time between inspections even for the best schools. We believe that parents need more regular information about the progress of the school that their child attends and more up-to-date information for choosing the right school for their child. All schools that do not have an inspection – that is a visit by an inspector – will have a published health

---

<sup>342</sup> HC Deb 30 October 2008 c1314W



check on their progress within three years of their most recent full inspection, to give parents the information they require.

26. The Ofsted health check may make use of a range of material, including published data, the views of parents and pupils, the school's self-evaluation and local authority information. This information will be analysed and interpreted by an inspector to ensure that it is translated into a meaningful commentary where the school appears to be making appropriate progress.

Ofsted has published an evaluation report summarising the responses to the consultation. This notes that, overall, the proposals were received very positively. The detailed analysis of responses noted the response to having a six-year cycle and raised the possibility of having a five-year cycle instead:

Is it appropriate to leave the inspection of good and outstanding schools for an interval of six years between inspections?

Three quarters of all headteachers and nearly as many teachers supported this proposal; nearly half of parents (48%) either disagreed or strongly disagreed. Nevertheless, it is generally accepted that by concentrating on those schools that most need improvement Ofsted will be making better use of inspection resources, while reducing the stress of 'preparing for inspection' for effective schools. The charts provide figures for overall response rates.

Common arguments against the proposal were that six years between inspections was too long; much could change in that period and standards could slip. However, recognising that parents should be offered more regular information about schools, our proposals envisage three yearly health check reports for good and outstanding schools to ensure high standards are maintained. Many respondents agreed with this proposal provided the proposed annual risk assessment and three yearly health check were robust. Risk assessments and health checks were generally considered helpful to identify schools facing difficulty and to prevent complacency. Some respondents believed this arrangement would work well in the context of increased challenge and support to schools by school improvement partners (SIPs).

Many who agreed with the proposed six-year interval between inspections of good and outstanding schools would like to see inspections triggered sooner when there is a change in headteacher and/or leadership team, or a drop in results/RAISE online.

*Proposal for the way forward*

We are still minded to inspect good and outstanding schools that maintain and/or continue to improve their performance once within a six-year period. However, we will also investigate the benefits and costs of inspection within five years.<sup>343</sup>

---

<sup>343</sup> [A focus on improvement: An evaluation report: responses to Ofsted's consultation on proposed changes to maintained school inspections](#), Ofsted, October 2008

And on the proposed 'health check' it noted:

Are the proposals for what a health check should include appropriate?

Almost two thirds of all respondents were in favour of this proposal. Support was consistent across the board. It was particularly strong among 'other service providers', governors and teachers. Overall, none of the identified groups of respondents was against.

There was concern that the health check would result in over-reliance on data. Some suggested that the health check should include at least a one-day visit by an inspector. Others expressed the view that Ofsted needed to ensure that the health check did not involve extra paperwork for school staff.

Many of those who responded favourably stated that they would like to see schools have an input in the process. Some respondents reported they were reassured by the fact that the health check will not rely solely on the analysis of performance data as there are other variables which may have an impact. Others suggested the inclusion of the views of governors and school staff, whilst some proposed that the health check should be carried out in conjunction with the LA. Support was expressed for the use of financial data to help identify schools at risk.

Proposal for the way forward

We will continue to consult schools, LAs and government agencies about the content of a published health check report.

In its response to the consultation, NAHT said that it was appropriate for good and outstanding schools to be inspected every six years, and noted that such schools would still be subject to local authority monitoring - so even without a formal inspection the school would be monitored. NAHT went on to make detailed comments about what should be included in 'health checks' and responded to other matters raised in the consultation.<sup>344</sup>

## B. The Bill

**Clause 210** inserts three new sections into the *Education Act 2005*. New section 10A enables the Chief Inspector to publish an interim statement (a 'health check') where the school's performance is such that it is appropriate to defer a routine inspection of the school for at least a year. The statement must give the Chief Inspector's reasons for deferring a routine inspection. This would not prevent the Chief Inspector from inspecting the school at any time if this is deemed necessary in light of changed circumstances.

New section 14A requires the Chief Inspector to send a copy of the interim statement to the appropriate authority of the school (either the governing body or the local education authority) and to other specified people. This applies to a community, foundation or

---

<sup>344</sup> [NAHT Response to Ofsted consultation 'A focus on Improvement'](#), July 2008

voluntary school, a community or foundation special school, or a maintained nursery school. The appropriate authority must make the statement available to members of the public and take steps to ensure a copy of the statement is received by parents within a prescribed period. New section 16A broadly mirrors the provisions in section 14A in relation to academies; city technology colleges, city colleges for the technology of the arts; and special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the *Education Act 1996*. Under section 16A, the Chief Inspector must send a copy of the interim statement to the school's proprietor and others. **Clause 211** makes provision for administrators supplied by inspection service providers to enter schools and assist inspectors by performing administrative tasks during the course of an inspection. Inspection administrators would be prohibited from conducting inspections.

The *Impact Assessment* gives information on the estimated savings to Ofsted and schools associated with the proposed changes. The figures are modelled on both a five-year and six-year cycle, as decisions on the final inspection cycle had not been taken at the time the *Impact Assessment* was published.

The Government has estimated that moving from a three- to a five-year inspection cycle for schools judged good or outstanding would save the school system around £1.6 million per year and Ofsted around £4.6 million per year. School costs associated with inspections include preparation time of senior staff and the time of the head teacher during the inspection. These savings increase to £2.1 million and £7.0 million for schools and Ofsted respectively if a six-year cycle were adopted. There are also likely to be one-off costs of £0.6 million.<sup>345</sup>

There were 7,900 schools inspected by Ofsted in England in 2007/08. 15% of these were judged to be outstanding and 49% good, a total of just under 5,000 schools.<sup>346</sup> A further 8,600 schools had been judged to be good or outstanding in academic years 2005/06 and 2006/07.<sup>347</sup> Together this makes a total of 13,600 schools at this level (61% of inspections) across the three year cycle. The Bill's Impact Assessment uses more recent data and states that there were 'currently' 14,400 good and outstanding schools.

---

<sup>345</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment*, DCSF, pp110-112

<sup>346</sup> *Inspection judgements 2007/08*, Ofsted

<sup>347</sup> *Good or better judgements for schools and settings by local authority*, Ofsted

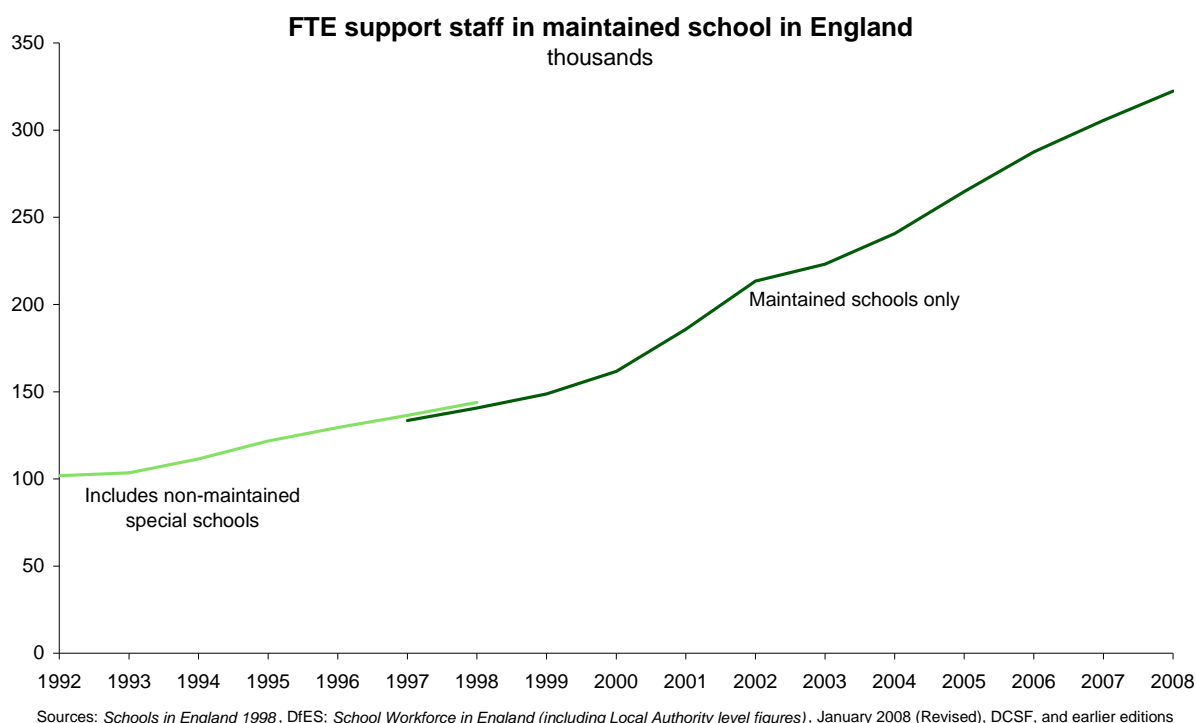
### XIII Creation of a School Support Staff Negotiating Body (SSSNB)

Part 10, Chapter 4, Clauses 212-228 of the Bill would create a new statutory body to be known as the School Staff Negotiating Body (SSSNB). This part of the Bill extends to England only.<sup>348</sup>

#### A. Support staff: statistics

##### 1. Numbers of support staff in England

The number of support staff employed by maintained schools in England increased rapidly between 1997 and 2008. Their full-time equivalent number<sup>349</sup> rose from 134,000 to 322,000; an increase of 140%. Trends back to 1992 are illustrated in the chart below.



Within this total the number of teaching assistants nearly trebled from 61,000 in 1997 to 177,000 in 2008. A breakdown of support staff in the maintained sector by type is given below.

<sup>348</sup> *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Explanatory Notes, p162

<sup>349</sup> Numbers in maintained, primary, secondary and special schools and Pupil Referral Units. Excludes academies and City Technology Colleges

**Support staff in maintained schools in England, January 2008**

FTEs

	Number (000s)	% of total
<b>Teaching assistants</b>		
<i>Teaching assistants</i>	125.2	39%
<i>Special needs support staff</i>	47.5	15%
<i>Minority ethnic pupil support staff</i>	3.0	1%
Total	175.7	54%
<b>Administrative staff</b>		
<i>Secretaries</i>	35.3	11%
<i>Bursars</i>	8.1	3%
<i>Other admin/clerical staff</i>	25.1	8%
Total	68.5	21%
Technicians	24.1	7%
<b>Other Support Staff</b>		
<i>Matrons/nurses/medical staff</i>	1.5	0%
<i>Child care staff</i>	1.6	0%
<i>Other education support staff<sup>a</sup></i>	51.0	16%
Total	54.2	17%
<b>All Support staff</b>	<b>322.4</b>	<b>100%</b>

(a) Includes librarians, welfare assistants, learning mentors employed at the school and any other non-teaching staff regularly employed at the school not covered in teaching assistants.

Source: *School Workforce in England (including Local Authority level figures), January 2008 (Revised), DCSF. Table 16*

FTE = Full Time Equivalent

72,600 support staff – or 23% of all employed by maintained schools – were in self-governing schools<sup>350</sup> in January 2008. A further 4,000 were in academies.<sup>351</sup> These staff are not included in the earlier figures as academies are not maintained schools. At the time there were 83 academies. The Government expects a total of around 300 academies in 2010 and at least 400 in the longer term.<sup>352</sup>

## 2. Pay of support staff

The Bill's Impact Assessment states that the pay structure for support staff has not kept pace with recent changes to their numbers and responsibilities:

The significant increase in numbers of support staff, coupled with growth in the range and depth of skills required has resulted in pay structures that have not kept pace with the changing role and contribution to educational delivery.<sup>353</sup>

<sup>350</sup> Self governing schools are foundation and trust schools and voluntary-aided schools

<sup>351</sup> *Schools Census*, DCSF. Academies are defined by the Government's [Direct gov website](#) as "independently managed, all-ability schools set up by sponsors from business, faith or voluntary groups in partnership with the Department for Children, Schools and Families and the local authority. Together they fund the land and buildings, with the government covering the running costs."

<sup>352</sup> HC Deb 17 November 2008 c63W

<sup>353</sup> *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Impact Assessment, p129

The Department for Children, Schools and Families (DCSF) does not collect information on the pay of teaching assistants or other support staff<sup>354</sup> and has not given average pay levels in response to written Parliamentary Questions:

**Mr. Laws:** To ask the Secretary of State for Children, Schools and Families what the average salary is of a teaching assistant.

**Jim Knight:** The salaries for all support staff are for local determination and are set either by local authorities (in the case of community and voluntary controlled schools) or governing bodies (in the case of foundation and voluntary aided schools). Due to the many variations in local pay across the country it is not possible to give an average salary.<sup>355</sup>

The Government has commissioned a series of surveys into how support staff are used. These give some information on their pay and hours. The latest published research was conducted in 2005/06.<sup>356</sup> This found that support staff in England and Wales were contracted to work an average of 22 hours per week. Average contracted hours were longer for support staff in secondary schools at 27.4 per week compared to 18.5 for those in primary schools. When analysed by type-of staff, those working the longest hours were site staff, administrative, pupil welfare and technicians. All worked around 30 hours per week on average. 88% of all support staff had permanent contracts. 45% were contracted to work 52 weeks a year, up from 22% in 2003/04. Administrative staff (35%) and teaching assistants were least likely to be contracted for 52 weeks per year; site staff (91%) and those working in facilities (61%) were most likely to.<sup>357</sup>

Mean reported hourly wages are shown in the table opposite. Those working in facilities (catering staff and cleaners) clearly earned the lowest of any group of support staff. Administrative and pupil welfare staff both earned around 30% above average. In 2006 the mean hourly pay of full-time teachers in the UK was £19 in primary and £20 in secondary schools. The means across all full-time and part-time employees in the UK were £13.60 and £9.40 respectively.<sup>358</sup>

The research also looked at variations in pay within these categories and the other factors they were associated with. This analysis identified the differences in pay for a single factor when all other factors were accounted for. Although their effects were not uniform across staff categories the authors concluded that three types of staff characteristic affected wages: qualification, gender and age. On average male teaching assistants earned £1.52 per hour above

#### Mean pay of support staff

Gross hourly pay in 2005/06

<i>School type</i>	
Primary	£8.27
Secondary	£9.35
Special	£9.06
<i>Support staff type</i>	
Teaching assistants	£9.26
Pupil Welfare	£11.34
Technicians	£9.95
Other Pupil Support	£7.49
Facilities	£6.64
Administrative	£11.18
Site staff	£8.26
<b>All staff</b>	<b>£8.69</b>

Note: Teaching assistants includes learning support assistants, nursery nurses and therapists

Source: DCSF RR-005 Table 18

<sup>354</sup> HC Deb 14 November 2007 c264W

<sup>355</sup> HC Deb 24 July 2007 c1033W

<sup>356</sup> Blatchford P. et al, *Deployment and Impact of Support Staff in Schools. Report on findings from the Second National Questionnaire Survey of Schools, Support Staff and Teachers (Strand 1, Wave 2 - 2006)*. Research Report DCSF-RR005, 2007

<sup>357</sup> *ibid.* Table 11

<sup>358</sup> *2006 Annual Survey of Hours and Earnings*, ONS. Table 14.5a

their female counterparts. However, when different types of teaching assistants were included in the analysis the gap fell to £1.25 and was no longer statistically significant<sup>359</sup> after other relevant facts were taken into account. This finding would have been in part down to the relatively small number of male teaching assistants. Male administrative staff earned an average of £3.44 more than females. This difference was statistically significant as were the higher wages earned by male technicians. On the question of gender pay differences the authors stated:<sup>360</sup>

...this probably reflects the fact that career progression and higher wages are more possible in these groups and males appear more likely to reach senior positions.

There is currently no routine data collected on the gender or ethnic background of support staff.<sup>361</sup> The same survey as quoted above found that 89% of all support staff were female and the figure was 94% in primary schools. The only group with more men was site staff (caretakers and premises managers) where 79% were male; the next highest group was technicians (40% male). Overall 97% of all support staff classified themselves as white.<sup>362</sup> In 2007 70% of teachers were female and 95% were white.<sup>363</sup>

## **B. Why a SSSNB is needed**

### **1. Issues with how support staff pay is currently determined**

Teachers have a review body to report on and make recommendations about their pay, the School Teachers' Review Body (STRB). Support staff in schools however, do not have a such a body. There is also no national pay structure to cover support staff who are employed in local authority maintained schools. Decisions on pay and conditions and other benefits are taken at local level and practices vary depending on the type of school that a support worker is employed in.

The Bill's Impact Assessment explains why this is a problem:

The lack of consistency in the current arrangements means that staff in different schools may be paid significantly different salaries, even though they have the same job role. This inequity can restrict the opportunities for the movement and development of support staff. A more consistent structure has the potential to increase the opportunities for support staff wishing to extend their experience by moving jobs, and so help spread good practice which will ultimately benefit staff, schools, LAs and pupils.<sup>364</sup>

---

<sup>359</sup> At the 5% level

<sup>360</sup> DCSF Research Report RR-005, 2007. Section 3.7.1 and 4.7

<sup>361</sup> HL Deb 13 January 2009 c138-9WA

<sup>362</sup> DCSF Research Report RR-005. Section 3.3

<sup>363</sup> *School Workforce in England (including Local Authority level figures), January 2008 (Revised)*, DCSF. Tables 12 and D2

<sup>364</sup> *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Impact Assessment, p130

**a. Current practice in community and voluntary schools**

At present, support staff in community and voluntary controlled schools are covered by the National Joint Council (NJC) collective pay and conditions of service agreement for local government services (commonly known as the “Green Book”). This agreement covers the pay and conditions of approximately 1.3 million local government employees, but excludes teachers. The NJC is a voluntary (non-statutory) collective bargaining arrangement. The employers’ side is represented by elected members of the Local Government Association, the Welsh Local Government Association and the Northern Ireland Local Government Association. The trade union side of the NJC has representation from GMB, T&GWU and Unison.<sup>365</sup>

Individual local authorities also have local negotiating and consultative arrangements with their recognised trade unions. These allow for collective agreements affecting a local area to be addressed at local authority level. The detail from these agreements can be incorporated into employees’ contracts of employment. Such agreements may enhance or vary the national collective agreement.

The local authority is responsible for determining the pay and grading structure for all local government staff. When a member of support staff is appointed to a school, the school’s governing body recommends their pay and conditions to the local authority, which will be within the local authority’s pay and grading structure. The local authority can then make representations to the governing body about this recommendation if it does not agree with it. There are no specific sanctions however, that can be applied to a school’s governing body which ignores the local authority’s advice – the governing body therefore takes the final decision about the appropriate pay and grading for a school support staff post.<sup>366</sup>

Salary rates for support staff in these schools are essentially linked to those of other local authority employees doing non-education based work, rather than other people who work in schools.

**Equal Pay Issues**

Prior to 1997, the terms and conditions of employment for local authority employees were set out in different documents which referred to different categories of employees: manual workers were governed by the White Book; administrative, professional, technical and clerical (APT&C) workers were governed by the Purple Book; and craft workers came under the Red Book. It became increasingly apparent however that some gender-based pay inequalities had been allowed to develop.<sup>367</sup>

In 1997, national representatives of local government employers and recognised trade unions (Unison, TGWU and GMB) came together to sign what is known as the “Single Status Agreement”. The purpose of the agreement was to harmonise terms and

---

<sup>365</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p18-19

<sup>366</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p19

<sup>367</sup> As explained in the judgement of *Allen & Ors v GMB [2008] EWCA Civ 810 (16 July 2008)*, para 1



conditions of employment for support staff, administrative, professional, technical and clerical (APT&C), and manual employees on a national basis. One of the aims was to address inequalities in pay and conditions among local government workers, in particular between men and women. Since this date, there has been one national negotiating body – the National Joint Council for Local Government Services (NJC) – with the National Agreement on Pay and Conditions of Service contained in a new handbook, “the Green Book”.<sup>368</sup>

The main principles of the Single Status Agreement are as follows:

- Local authorities aim to provide training and development opportunities for the employees, in order to deliver high quality services to the local community.
- Equality was to be a core principle, which underpinned employment practice, employee relations and service delivery.
- There should be a flexible approach to providing services to the community, which met the needs of employees as well as employers.
- Local authorities, along with the signatory recognised trade unions, should aim to provide stable industrial relations, through consultation and negotiation.<sup>369</sup>

Job evaluation has been considered an essential element in delivering Single Status.<sup>370</sup> It has attempted to ensure that all jobs within the scope of the “Green Book” are graded in accordance with a fair and non-discriminatory grading structure and provides the base information for an overhaul of existing pay and reward systems. All jobs covered by the National Agreement on Pay and Conditions of Service either have or will soon have been evaluated by this process. It has been a lengthy process given the number of different jobs and employees covered by it. It includes all jobs for which there is no other national negotiating body.

Many reviews are reaching their final stages and local authorities are seeking to agree changes to the relative pay of staff. Staff whose pay is increased may be entitled to up to six years’ back pay, depending on agreements made locally. Back pay and payments in lieu of back pay can also be due following Employment Tribunal hearings, or from out-of-Tribunal settlements.<sup>371</sup> Some staff have also been subject to pay decreases following the implementation of the single-status agreement: for example, one publication reported that:

Many support staff, including classroom assistants, have fallen foul of the equal pay process taking place in local government under the single status agreement. Long-serving teaching assistant Gina Smith, for example, found that following the single-status process, her pay was slashed by £240 a month.<sup>372</sup>

---

<sup>368</sup> Available to download from the Local Government Employers website, [Green book: National agreement on pay and conditions of service for local government services](#) [on 16 October 2008]

<sup>369</sup> Local Government Employers, Key Points, [The 1997 Single Status Agreement](#), undated

<sup>370</sup> Unison website, [Single Status pay and grading: NJC job evaluation scheme](#) [on 2 February 2009]

<sup>371</sup> Department for Children Schools and Families, [Guidance on Back Pay for Education Staff](#), March 2008

<sup>372</sup> “Analysis: Hard bargaining ahead for new support staff pay body” [Nursery World](#), 5 November 2008

The implementation of the agreement has been accompanied by various problems ranging from industrial action over pay cuts to equal pay litigation.<sup>373</sup> Some councils have struggled to meet financially their equal pay commitments and have warned that council taxes may have to rise or expenditure on capital projects cut back in order to meet the liabilities.<sup>374</sup> A particular problem in relation to school support staff has been dispute between the schools and the local council as to who was originally responsible for setting any rates of unequal pay, and therefore, who is responsible for settling back pay liabilities, as reported in the *Guardian* in January 2008:

But the situation is more complex. Local authorities are responsible in law for setting and managing the terms and conditions of school staff. Despite schools holding their own budgets, heads are supposed to uphold local-authority set pay rates for support staff roles. And it's here that the argument about who is liable for settling backpay in discrimination cases starts.

### **Recommended pay rates**

At LGE [Local Government Employers], principal strategic adviser John Sutcliffe is adamant that schools have not been adhering to the spirit of employment legislation, have varied local-authority recommended pay rates for support staff and set their own salary levels, and that it is therefore entirely fair that they should pay their share of the liability.

When asked, however, about how many schools have in fact chosen to set their own pay rates at a lower level than that suggested by the council, he cannot produce a figure, or even an estimated proportion of the whole. Given that this is the crux of the LGE argument for schools being liable, this failure seems alarming.

[...]

The LGE position is that schools must find a way of paying, and that there are three main areas where they should look to find the money: capitalisation (borrowing against assets), efficiency savings, or their reserves - estimated by the LGE at £1.5bn nationally.

[...]

If schools can't afford it and councils don't want to shift their budgets around, who's going to pay these mainly female workers for their years of undervalued labour?

The LGE thinks schools will have to find the money somehow. But then, it's probably easier to invoice a school than to fight the government for more cash. The NAHT says a deal must be thrashed out between local authorities and central government if children aren't ultimately to suffer from depleted staffing levels and reduced learning opportunities.<sup>375</sup>

In March 2008 the Department for Children Schools and Families issued [Guidance on Back Pay for Education Staff](#). It stated that ultimately, the issue was the responsibility of the local authority:

---

<sup>373</sup> "Council to force single status deal" *Coventry Evening Telegraph*, 1 February 2005

<sup>374</sup> Journal Live, [Council equal pay bill set to raise council tax](#), 2 October 2008

<sup>375</sup> "Equality backpay comes at a price" *The Guardian*, 15 January 2008

Ultimately the local authority is responsible for meeting their legal obligations as employers, and for balancing the risks and financial impacts between employees, council tax payers and service users. They will need to consider, in negotiation with workforce representatives, the options available to them on the cost of the package offered to employees, including school support staff. They will also need to consider the sources of funding available, including the use of the authorities' reserves, any excess surplus schools balances, the Schools Budget, and capitalisation.<sup>376</sup>

### **b. Current practice in self-governing schools**

In contrast, support staff in self-governing schools are employed not by the local authority, but by the governing body of the individual school. Self governing schools are foundation and trust schools and voluntary-aided schools.<sup>377</sup> The governing body has the freedom to determine the pay and grading of its employees; it does not have to follow the NJC or any other local agreement, although they can choose to informally follow the Green Book. These schools can apply their own performance management processes and can make pay decisions based upon affordability.<sup>378</sup>

Under the provisions of the *Equal Pay Act 1970*, self governing schools must also ensure that jobs of equal value receive equal pay. They are not however as affected by many of the difficulties associated with the Single Status Agreement.

## **2. The National Agreement on Raising Standards and Tackling Workload**

The *National Agreement of Raising Standards and Tackling Workload* was signed by the Government and unions in January 2003.<sup>379</sup> As a result of this a number of changes were made to teachers' contracts which were phased in over a three year period:

- Since September 2003: teachers should not routinely be required to carry out clerical or administrative tasks; teachers with leadership and management responsibilities have been entitled to time in which to carry out those duties; and head teachers have needed to take into account the work-life balance of their teaching staff.
- Since September 2004: teachers should not have been required to carry out more than 38 hours a year of cover for absent colleagues.
- Since September 2005: teachers have been entitled to at least 10 per cent of their timetabled teaching time for planning, preparation and assessment; teachers should not have been required to invigilate

---

<sup>376</sup> Department for Children Schools and Families, *Guidance on Back Pay for Education Staff*, March 2008

<sup>377</sup> Directgov website, *Types of schools* [on 4 February 2009]

<sup>378</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p21

<sup>379</sup> Training and Development Agency for Schools, *The National Agreement*, 15 January 2003

external exams; and head teachers have been entitled to Dedicated Headship Time.<sup>380</sup>

The agreement has meant that support staff in schools have a “distinctive and increasingly important role” to play in schools.<sup>381</sup> There has been a change in the roles and responsibilities taken on by support staff:

Support staff have a crucial part to play in helping maintain the momentum of school improvement, with changes to teachers' contracts helping them to focus more on teaching and less on administrative and other tasks. These changes have largely been achieved by deploying more support staff in schools, developing new roles and broadening their range of responsibilities. Over the past ten years their numbers have grown from 136,500 to 326,400 (full time equivalent) as the number of teachers has grown from 399,200 to 434,900.<sup>382</sup>

In July 2008, the Department for Children, Schools and Families issued guidance about the role of support staff under the Workload Agreement, [The Appropriate Deployment of Support Staff in Schools](#).

Despite this however, there still appear to be problems relating to pay and conditions for school support staff. In July 2008 it was reported that school support staff had joined a national local government worker strike over pay.<sup>383</sup> An article in the *Times Educational Supplement* in August 2008, suggested that there was still some confusion about the role that support staff had to play in the classroom. There was also concern about the continued use of split contracts to reflect different levels of work and about the prevalence of unpaid overtime:

The new guidance tells schools: "Ensure that support staff receive fair and consistent pay and conditions appropriate to the overall role and responsibilities they undertake." The strongly worded document amounts to the first official recognition of widespread malpractice among schools from the headteachers and the Department for Children, Schools and Families. Support staff unions had to battle hard for its publication. It warns of "widespread confusion" from schools over what roles different support staff should be performing in the classroom.

The unions want a review of the situation in six months. If there has been no improvement they will be pushing for tighter legislation to force schools to improve their members' working conditions. The document identifies three major areas of concern in the way support staff are paid. It cites research from the biggest support staff union, Unison, which last year found up to half of schools were using split contracts that only pay teaching assistants higher level rates for the hours when they are doing "higher level" work.

---

<sup>380</sup> Department for Children, Schools and Families press release, [New package to back the schools workforce and improve standards for all](#), 24 September 2008

24 September 2008

<sup>381</sup> Department for Children, Schools and Families press release, [Government announces next steps for school support staff](#), 26 September 2007

<sup>382</sup> Department for Children, Schools and Families press release, [New package to back the schools workforce and improve standards for all](#), 24 September 2008

<sup>383</sup> "Council strike: School support staff to walk out over pay" [The Guardian](#), 15 July 2008

The guidance also tells schools to review their use of term-time only contracts which it says the majority of support staff still have. It also deems the practice of expecting support staff to work beyond their contracts on unpaid overtime as "unacceptable".

The guidance points to "widespread confusion" between the two "very different" new roles created for support staff by the school workforce agreement - cover supervising and taking classes during a teacher's timetabled preparation time.

The TES reported earlier this year that there have been increasing fears of some schools using cover supervisors unqualified to teach as "cut-price teachers" which the guidance says is "inappropriate".

Christina McAnea, head of education at Unison, said she fears schools, particularly primaries, are either using untrained support staff to cover preparation time or using staff that have been trained without paying them the proper rate. "We hope this guidance will give us some ammunition to stop the worst practices that take place in schools," she said. Kerry George, senior assistant secretary of the National Association of Head Teachers said: "I am not convinced there is any willful abuse of these staff."<sup>384</sup>

### C. Work towards establishing the SSSNB

In November 2005, Jacqui Smith, the then Minister of State for Schools, wrote to the support staff unions and employer representatives inviting them to establish the Support Staff Working Group (SSWG) to review the main employment issues affecting support staff.<sup>385</sup> The SSWG was chaired by the then Department for Education and Skills and had membership from the unions GMB, T&GWU and Foundation & Aided Schools National Association (FASNA). In June 2006 the Minister of State for schools commissioned the group to do detailed work on "the examination of a model which is nationally consistent on support staff pay and conditions but retains appropriate flexibilities."<sup>386</sup> The reasoning behind this was set out in the SSWG report:

As more schools become self governing and the extended schools' agenda further changes the shape of educational delivery locally, it is essential that we have in place an effective structure for support staff that achieves national consistency in approach to pay and conditions of service while maintaining an appropriate degree of local flexibility.<sup>387</sup>

The SSWG examined the following options:

Model 1: The current structure

Model 2: A new structure to consider school support staff but that remains linked to the NJC

---

<sup>384</sup> "Fair deal ordered for class assistants" *Times Educational Supplement*, 22 August 2008

<sup>385</sup> Department for Children, Schools and Families press release, [Alan Johnson confirms plans to investigate the feasibility of a nationally consistent pay and conditions framework for support staff](#), 24 May 2007

<sup>386</sup> [Findings of the Workforce Agreement Monitoring Group sub group on support staff](#), Fifth Report, May 2007, p3

<sup>387</sup> [Findings of the Workforce Agreement Monitoring Group sub group on support staff](#), Fifth Report, May 2007, p17

Model 3: A separate negotiating body for school support staff

Model 4: A statute based pay review body that covers the whole of the school workforce<sup>388</sup>

Each model was assessed against the criteria that the SSWG felt would be necessary in any new model:

- Be equal pay compatible;
- Be flexible enough to meet the needs of individual schools;
- Take fully into account the role of existing negotiating bodies;
- Have a framework that relates to competence and performance;
- Represent the needs of all employers;
- Include a term time pay formula ( for those on term time only contracts) and be compatible with minimum conditions of service, including sick pay and holidays;
- Be compatible with a set of national model job profiles;
- Have monitoring procedures and appropriate machinery for keeping arrangements under review to reflect remodelling in schools;
- Complement education policy developments , such as extended schools;
- Be cost efficient;
- Consider practicalities of implementation in light of existing structures so that it can be in place in a timely manner;
- Allow the NJC to develop considerations of revising the 'Way Forward' guidance; and
- Be capable of being applied in all maintained schools with statutory/regulatory underpinning as necessary.<sup>389</sup>

The SSWG was not prepared to recommend a particular model, but felt that model 3 was “worth further consideration” as it “met the most criteria.”<sup>390</sup> There was some concern in the report that in using this model self-governing schools would lose the unrestricted flexibility that they currently enjoy to determine pay and conditions.<sup>391</sup> The report estimated that the cost of setting up and servicing a new body would be approximately “£250,000 per annum”.<sup>392</sup>

The report examined how the new body might work. It confirmed that the new negotiating body would stand outside the local government structure and would not therefore be under the auspices of the NJC:

### **Role and Ways of Working**

78. Membership of the new body would be representative of employers and employees of all maintained schools. The number of seats on each side would

---

<sup>388</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p18

<sup>389</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p17-18

<sup>390</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p43-44

<sup>391</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p26 and 43

<sup>392</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p39



be representative of relevant organisations' interests but small enough to provide a forum that generates meaningful and effective dialogue and negotiation between members.

79. In order to ensure that employees in all school types would be covered by the arrangements all schools could be required to 'have regard' to these arrangements by the amendment of the Statutory Staffing Guidance that is made under Sections 35(8) and 36(8) of the *Education Act 2002* or whether the *School Staffing Regulations 2003* should be amended to facilitate this.

80. The primary role for the negotiating body would be to reach collective agreements on pay and conditions of service for support staff and to issue joint advice and guidance on employment related matters. Accountability would lie within the new Body and all members would be accountable to their own organisations in regard to contribution and decision making. Decisions would be reached by consensus within defined timescales.

### **Pay Determination**

81. Pay would be determined through this negotiating body which would cover all school support staff working in schools and be executed through negotiations between the employers and the trade unions.<sup>393</sup>

The SSWG identified a number of issues that it said would need to be addressed or resolved before steps could be taken to establish a new negotiating body based on model 3. These included: making sure that the new process would be at least as compatible with equal pay principles than the current system, if not more so; ensuring that work already done towards equal pay compatibility is not wasted; and making sure that the new body is representative of trade unions and all employer types, with "appropriate" and "fair" membership from each type of employer.<sup>394</sup> There were also issues relating to the terms and conditions of school support staff to be resolved:

### **Terms and Conditions**

The primary role for the negotiating body would be to reach collective agreement on pay and conditions of work for incorporation into individual contracts of employment in all schools together with jointly agreed advice and guidance that schools are required to 'have regard to'. Decisions of the body would be reached by agreement between employer and employee representatives and in cases where agreement could not be reached arbitration would be through the appropriate professional bodies as is currently the case.

In order to agree terms and conditions of employment this body also needs to undertake extensive research to allow a comprehensive review of the range of terms and conditions currently in use and then a process of renegotiation between all stakeholders to form a National Pay & Conditions Agreement. Additional work could be undertaken by the group to draft supporting guidance for use in all schools. A new National Agreement with supporting guidance could

---

<sup>393</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p22

<sup>394</sup> *Findings of the Workforce Agreement Monitoring Group sub group on support staff*, Fifth Report, May 2007, p45-46

then be used by all employers with support provided locally to encourage compliance.

A new body might also give consideration as to whether the date of the annual pay award for all schools might also be brought more in line with that for teachers. A new set of job roles with agreed indicative pay ranges could be determined.<sup>395</sup>

On 26 September 2007 the Government confirmed that it would indeed create a new negotiating body:

So that the distinctive and increasingly important role of support staff is properly recognised, a new body giving a bigger voice to more than 300,000 school support staff will now come into force in 2008. The new framework will be focused on the needs of schools rather than considering support staff together with other local government employees as happens at the moment.<sup>396</sup>

The SSWG, since its report, has been working to establish the “foundations and mechanics” of the new School Support Staff Negotiating Body, which is being established as an advisory Non-Departmental Public Body.<sup>397</sup> On 24 September 2008, the Department for Children, Schools and Families (DCSF) announced that it had appointed Philip Ashmore to be an independent chair of the SSSNB. Mr Ashmore is currently a member of the NHS Pay Review Body and is described as having “over 35 years experience of employee relations, collective bargaining, mediation, conciliation and arbitration at a high level.”<sup>398</sup> It is a paid post for a period of three years, with the option for it to be extended without a further selection process for a further three years.<sup>399</sup> Since October 2008 a non-statutory form of the SSSNB has been operating until the legislation is passed to establish it on a statutory basis.<sup>400</sup>

An article from the *Times Educational Supplement* in August 2008, suggested that the unions and the Government had already agreed some of the changes that the new negotiating body would make:

Senior ministers met union leaders at Labour's National Policy Forum at Warwick University late last month, in the first of a series of meetings to discuss the unions' policy demands. An unpublished draft policy paper, agreed by the ministers and the unions, lays out several proposed changes to industrial relations in schools.

---

<sup>395</sup> [Findings of the Workforce Agreement Monitoring Group sub group on support staff](#), Fifth Report, May 2007, p45-46

<sup>396</sup> Department for Children, Schools and Families press release, [Government announces next steps for school support staff](#), 27 September 2007

<sup>397</sup> Department for Children, Schools and Families, Church of England, FASNA, GMB, TDA, LGE, Unison, CES, and Unite press release, [School Support Staff Pay and Conditions](#), 14 October 2008

<sup>398</sup> Department for Children, Schools and Families press release, [New package to back the schools workforce and improve standards for all](#), 24 September 2008

<sup>399</sup> Department for Children, Schools and Families press release, [New package to back the schools workforce and improve standards for all](#), 24 September 2008

<sup>400</sup> GMB, [GMB welcome new negotiating body for 300,000 school support staff in England](#), 25 September 2008



Ministers have agreed that the new national pay negotiating body will, as a matter of priority, shift support staff from term-time to 52-week contracts. At present, many are not paid during school holidays.

They have also agreed that academies will be represented on the negotiating body, which is to be established next month. Jim Knight, the schools minister, had previously told a support staff conference that academies would continue to set their own pay.

The about-turn poses a challenge: each academy has its own contract, so it would be difficult to enforce a national pay deal unless the academies agree.<sup>401</sup>

## D. The Bill

Clause 212 gives provision for there to be an “unincorporated body of persons” to be known as the “School Support Staff Negotiating Body”, which would be referred to as the “SSSNB”.

### a. *The SSSNB’s remit*

Clause 213 defines the SSSNB’s remit as relating to:

- (a) the remuneration of school support staff, or
- (b) conditions of employment relating to the duties or working time of school support staff.

Clause 213(2) would give the Secretary of State the power to make an order to set out more specifically whether something is to be treated or not as relating to: remuneration; the duties of school support staff; and the working time of school support staff.

Clause 214 would give the Secretary of State the power to refer a matter within the above remit to the SSSNB for consideration, along with a date which the SSSNB must either have:

- (a) if it has reached an agreement about the matter, submit that agreement to the Secretary of State, and
- (b) if it has been unable to reach an agreement about the matter, notify the Secretary of State of that.

Clause 215 would allow the SSSNB to consider a matter within its remit, even if it has not been referred to it by the Secretary of State under clause 214. Any agreement about this matter could then be submitted to the Secretary of State, but only (as provided for in Clause 215(3)), if the SSSNB had obtained the Secretary of State’s consent to submit it.

### b. *Definition of support staff*

Clause 227(5) provides a definition of who would be classed as school support staff:

---

<sup>401</sup> “U-turn forces academies’ hand on pay” *Times Educational Supplement*, 22 August 2008

- (3) A person is within this subsection if the person—
- (a) is employed by a local education authority in England or the governing body of a school maintained by a local education authority in England, under a contract of employment providing for the person to work wholly at a school or schools maintained by a local education authority in England;
  - (b) is not a school teacher, or a person of a prescribed description.

(4) In this section, “school teacher” means a person who is a school teacher for the purposes of section 122 of the Education Act 2002 (c. 32).

Clause 228 provides that a “school maintained by a local education authority” would mean:

- (a) a community, foundation or voluntary school;
- (b) a community or foundation special school;
- (c) a maintained nursery school;
- (d) a short stay school.

Although it was suggested in the press<sup>402</sup> before the publication of the Bill that the SSSNB would cover the pay and conditions of support staff in academies, the Bill does not provide for this. This has been confirmed by the DCSF.<sup>403</sup>

The Explanatory Notes show that the Government intends to make further regulations to exclude certain groups of support staff from the Bill’s definition:

The Government envisages that the power to make regulations will be exercised so as to exclude from the definition of “school support staff” persons whose terms and conditions of employment are determined in accordance with agreement of other bodies such as the Soulbury Committee<sup>[404]</sup>.<sup>405</sup>

### **c. Powers of the SSSNB and the Secretary of State**

Clause 216 would provide that when the SSSNB reaches an agreement, it must recommend that the Secretary of State either:

- (a) make an order ratifying the agreement, or
- (b) make an order requiring persons specified in the recommendation to have regard to the agreement in exercising functions specified in the recommendation.

The effect of making an order ratifying the agreement is set out in Clause 222. It would either determine a person’s remuneration or add a term to a person’s contract of employment:

---

<sup>402</sup> “U-turn forces academies’ hand on pay” *Times Educational Supplement*, 22 August 2008

<sup>403</sup> Conversation with DCSF official 10 February 2009.

<sup>404</sup> The Soulbury Committee was established in 1948 to provide voluntary collective bargaining machinery for advisory staff in local education authorities (LEAs). It covers approximately 6,000 staff including: educational inspectors and advisers; educational psychologists, and youth and community service officers. Local Government Employer’s website, [About the Soulbury Committee](#) [on 10 February 2009]

<sup>405</sup> Apprenticeships, Skills, Children and Learning Bill, Bill 55 2008-09, Explanatory Notes, p118-119

- (2) If the agreement relates to a person's remuneration, the person's remuneration is to be determined and paid in accordance with it.
- (3) A provision of the agreement that relates to any other condition of a person's employment has effect as a term of the person's contract of employment.
- (4) A term of that contract has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the agreement.

Clause 224(1) would provide that an order under this chapter could have retrospective effect, subject to 224(2), which states that it could not retrospectively reduce remuneration or detrimentally alter a person's contract of employment:

- (2) An order under this Chapter may not make provision the effect of which is to—
  - (a) reduce remuneration in respect of a period wholly or partly before the date on which the order is made, or
  - (b) alter a condition of a person's employment to the person's detriment in respect of such a period.

Under Clauses 217 and 218, the Secretary of State would have a choice to either make the order recommended, or he could refer the agreement back to the SSSNB for reconsideration if he thinks that it would be inappropriate to make an order.

Once the SSSNB has reconsidered the agreement, under Clause 220(2), the Secretary of State then would have four possible courses of action, including (b) referring the agreement back to the SSSNB yet again:

- (a) by order ratify the agreement;
- (b) refer the agreement back to the SSSNB for reconsideration (see section 219);
- (c) by order require specified persons to have regard to the agreement in exercising specified functions;
- (d) by order make provision, in relation to a matter to which the agreement relates, otherwise than in the terms of the agreement.

However, if the Secretary of State does choose to refer the matter back to the SSSNB for further consideration, this can only be done if one or more of the three conditions provided for in Clause 220(5) apply:

- (a) the agreement does not properly address the matter;
- (b) it is not practicable to implement the agreement;
- (c) the SSSNB failed in reconsidering the agreement to have regard to factors specified under section 219(2)(a). [Factors specified under Clause 219(2)(a) are those which the Secretary as State can require the SSSNB to have regard to in its reconsideration.]

There are also limits on when subclause 220(2)(d), choosing to make a provision by order, could be used. These are set out in Clause 220(4):

- (a) the condition in subsection (5) [above] is met, and
- (b) there is an urgent need to make provision in relation to the matter.

The term "urgent" is not defined further in the Bill or the Explanatory Notes.

Clause 225 would give the SSSNB, with the Secretary of State's approval, the power to issue guidance relating to:

- An order which ratifies an agreement
- An order which requires a particular person to have regard to an agreement

It would provide that local education authorities and governing bodies of schools maintained by local education authorities should have regard to guidance issued under this section.<sup>406</sup>

**d. If the SSSNB cannot agree**

Clause 221 would define what the Secretary of State could do if the SSSNB fails to reach an agreement. Under Clause 221(2), if the SSSNB has failed to reach agreement on its first consideration, the Secretary of State has two options: either specify a later date for the SSSNB to reach agreement; or, "by order make provision in relation to the matter".

Under Clause 221(4) the Secretary of State's powers would be the same when the SSSNB has failed to reach agreement after being asked to reconsider the matter.

Under Clause 221(5), before deciding to make an order himself under the situations above, the Secretary of State would be required to consult the SSSNB. There is no further definition in the Bill or the Explanatory Notes as to what "consult" means, nor to whether the SSSNB's response to any consultation would carry any weight. Any order made under these subclauses, would have the same effect on a person's remuneration or contract of employment as described above under Clause 222.

**e. Schedule 15: Constitution, membership and proceedings of the SSSNB**

Schedule 15, Clause 1(1) would give the Secretary of State the power to make arrangements for the constitution of the SSSNB, in consultation with the "prescribed organisations" listed in 1(2):

- (a) the prescribed school support staff organisations, and
- (b) the prescribed school support staff employer organisations.

These organisations are further defined in Schedule 15, Clause 8:

- (a) a "school support staff organisation" is an organisation that, in the opinion of the Secretary of State, represents the interests of school support staff;
- (b) a "school support staff employer organisation" is an organisation that, in the opinion of the Secretary of State, represents the interests of employers of school support staff;

Schedule 15, Clause 2 would provide for the membership of the SSSNB. It should include people representing the "prescribed organisations". It could also include people

---

<sup>406</sup> *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Explanatory Notes, p118

who do not represent such interests, although by virtue of Schedule 15, Clause 3(1) these people would not be entitled to vote in respect of its proceedings. Under 2(2), the SSSNB should have an independent chair, defined as someone who does not represent the interests of:

- (a) a school support staff organisation;
- (b) a school support staff employer organisation;
- (c) the Secretary of State, or
- (d) any other person or organisation represented on the SSSNB.

Schedule 15 would make provision for the chair of the SSSNB to be paid, allow the SSSNB to determine its own proceedings and effectively require it to publish an annual report.

#### **f. The non-statutory SSSNB**

Clause 226 would provide that the establishment of the non-statutory SSSNB, the body set up prior to this Chapter coming into force, should be treated as the establishment of the SSSNB. Any matters referred to this non-statutory body would be treated as though they were referred to the SSSNB as set up by this Bill.

### **E. Costs of the provisions**

The Bill's Impact Assessment does not give a single assessment of the potential costs to schools and local authorities of the SSSNB so as not to pre-empt any decisions or agreements the Body will make. It does however set out models based on different assumptions about when agreements are implemented. Costs are split into those associated with implementation, transition and pay costs. The final category is potentially the largest and is ongoing in nature. A range of potential uplifts in total staff costs from 0.5% to 2.5% would mean increase in the total wage bill of £20.5-£121.5 million in the uplift year for schools and local authorities combined. It is not implied that there would be an equal uplift, but if 10% of staff were affected they would gain between £700 and £3,400 each. This is described as a 'rough assessment'.<sup>407</sup>

### **F. Reaction to the SSSNB**

The creation for the new SSSNB has received strong support from the unions, as evidenced in a recent Department for Children Schools and Families press notice:

Chris Keates, General Secretary of **NASUWT**, said:

"The announcement to introduce legislation to ensure that contractual provisions are implemented delivers on the promise the Secretary of State made to the NASUWT Conference earlier this year and will be warmly welcomed by teachers and head teachers.[...]."

Mary Bousted, General Secretary of **ATL**, said:

---

<sup>407</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment*, DCSF. pp130-138 and Tables 1-3

"Workforce reform is key to raising standards in schools. It enables teachers to concentrate upon their professional practice and to concentrate on teaching and learning. These new legislation is, unfortunately, necessary to ensure that teachers receive their contractual rights and ATL welcomes this Government's drive to reinforce all the provisions of the National Agreement."

Dave Prentis, **UNISON** General Secretary, said:

"This is a very important development. Professional and support staff in schools deserve fair pay and the hard work starts now to make sure the new negotiating body can deliver this."

Brian Strutton, **GMB** National Secretary, said:

"100,000 GMB members in schools will be delighted with this fantastic news. Having a statutory body to introduce a consistent, fair, pay and conditions framework for school support staff in all schools will be good for staff and directly contribute to better education. As a member of the new body I look forward to working with the new chair to deliver Ed Balls' and Jim Knights' bold and imaginative vision."

Peter Allenson, **Unite** National Secretary for the Public Sector, said:

"We are pleased with the progress in setting up this new negotiating body for school support staff which will make a real difference to staff up and down the country. There is still a lot of detailed work to be done on setting it up but the appointment of an independent chair will move the process along much more smoothly."<sup>408</sup>

An article in *Nursery World* however, describes some of the challenges that the union GMB thinks the new body will have to overcome:

Mr Strutton [GMB national secretary] wants the new body to establish a 'standard contract of employment, with standard terms and conditions and standard rates of pay'. He points to the wide discrepancy in pay, 'not just between local authorities but between schools in authorities'.

He adds, 'It's hard to see how this can be taken forward unless we establish what those jobs are, what they are worth and how much money should be attached to them.'

He says that while considerable progress has been made in designing the contract of employment, work on jobs and pay has barely started. He is realistic about the need for flexibility.

'It is not going to be possible to design a single standard job for a caretaker and a teaching assistant. To expect 23,000 schools to comply and change what they do is not going to happen, we need a framework that is sufficiently flexible to cope with most of the variation out there,' he said.

---

<sup>408</sup> Department for Children, Schools and Families press release, [New package to back the schools workforce and improve standards for all](#), 24 September 2008

The deadline of having all this in place by next April is unlikely to be met - a more realistic target would seem to be September 2009. Mr Strutton says that once the essential building blocks are in place, the SSNB can then start building on to that personal and career development, competency-based progression and 'rewards for staff for what they actually do, which the current system was just too inflexible to cope with'.

He cites the example of the 13,000 higher level teaching assistants (HLTA) who have been trained, but only half of whom are doing HLTA work and being recognised and paid for it. He says, 'The other half are no doubt using the skills they have acquired but not in a recognised capacity. That's the type of thing for support staff that smacks of abuse and not being treated fairly.'<sup>409</sup>

In the article, Unison are reported to have said that they will continue to press for the inclusion of academies in the SSSNB arrangements. The article also described some concerns from local authorities about the new body in that it does not cover all staff employed in children's services.

## XIV Learners

### A. Background: behaviour-related provisions

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.<sup>410</sup> Effective leadership was seen as central in creating a climate of good order. The group recommended that schools set high expectations for pupils and staff. 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, making it clear she wanted to see rapid progress, and the schools white paper set out how the Government would implement the Steer group's recommendations.<sup>411</sup>

The *Education and Inspections Act 2006* made provision to carry forward the commitments including a statutory power to enforce school discipline, 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.

---

<sup>409</sup> "Analysis: Hard bargaining ahead for new support staff pay body" *Nursery World*, 5 November 2008

<sup>410</sup> *Learning Behaviour, The Report of the Practitioners' Group on School Behaviour and Discipline*, chaired by Sir Alan Steer, DfES, October 2005

<sup>411</sup> *Higher Standards, Better Schools for All*, Cm 6677, October 2005:

Following the 2005 report of the Practitioners' Group on School Behaviour and Discipline, a further review of the issues around school discipline and pupil behaviour was set up under Sir Alan Steer. Sir Alan has issued a series of reports on these issues.<sup>412</sup>

In July 2009 the Government's *Youth Crime Action Plan* included a commitment for every school to have a named police contact, and for participation in Safer School Partnerships (SSPs) to be the norm rather than the exception. Safer School Partnerships are a structured way for schools and police to work with one another, and with other local partners. They may involve having a police officer based in a school or police working with groups of schools. Some 5,000 schools are part of SSPs.<sup>413</sup>

## **B. Powers to search for prohibited items**

### **1. Power of members of staff to search pupils for prohibited items: England**

The *Violent Crime Reduction Act 2006* inserted new provision into the *Education Act 1996*, to make it lawful for a headteacher (or other school staff with the authority of the headteacher) to search suspected pupils for knives or other weapons without consent.<sup>414</sup> It also deals with the seizure of items found during the course of a search. Guidance for school staff was issued in 2007 on screening and searching of pupils for weapons.<sup>415</sup>

A report published by the Steer review in July 2008 recommended that the power of search for teachers should be extended to cover a broad range of items, and include alcohol and stolen property. The report said that the power should be supported by clear departmental guidance.<sup>416</sup>

Voice, the union for education professionals, gave a cautious welcome to the Steer report but said that great caution must be exercised over any extension of search powers, and that such powers should only be exercised where necessary in schools that have a particular problem with drugs, alcohol and stolen property, and with the necessary back-up from the police or specially trained security staff.<sup>417</sup>

The NUT said that the Government needs to respond pragmatically to the needs of schools which face threats from gangs, knives and drug and alcohol abuse, and that a minority of schools need exceptional back-up. However, it highlighted resource issues, and said that schools should not face enormous security bills just because they are sited in the toughest areas, suggesting a targeted approach that involves no cost to the schools concerned.<sup>418</sup>

---

<sup>412</sup> For further information see: <http://www.teachernet.gov.uk/wholeschool/behaviour/steer/> and [http://www.dcsf.gov.uk/behaviourandattendance/about/Sir\\_AlanSteer\\_Behaviour\\_Review.cfm](http://www.dcsf.gov.uk/behaviourandattendance/about/Sir_AlanSteer_Behaviour_Review.cfm)

<sup>413</sup> "One in five schools has its own PC", *Times Educational Supplement*, 6 February 2009, p12

<sup>414</sup> *Education Act 1996*, section 550AA

<sup>415</sup> *Screening and searching of pupils for weapons: guidance for school staff*, DfES, 2007

<sup>416</sup> Steer report, July 2008, Para 3.ix: <http://www.teachernet.gov.uk/wholeschool/behaviour/steer/>

<sup>417</sup> Voice Press Release, *Statement on Steer report*, 14 July 2008

<sup>418</sup> NUT Press Release, *Commenting on the latest instalment of Sir Alan Steer's Behaviour Review*, 14 July 2008



**Clause 229**, which relates to England, extends the powers of search to cover illegal drugs, alcohol and stolen property. The clause adds new sections 550ZA, 550ZB, 550ZC and 550ZD to the *Education Act 1996*. The power may be used only where a member of staff has reasonable grounds to suspect that a pupil has with him or her, or in his or her possession, a prohibited item (New section 550ZA, subsection (1)). It also provides that a person may carry out a search only if he or she is the head teacher of the school, or he or she has been authorised by the head teacher to carry out the search. New section 550ZB makes further provision in relation to how searches can be conducted. Powers to seize items are set out in new section 550ZC. There will be guidance on the new powers that will explain how the powers should be exercised and advise schools on what they must and must not do if and when choosing to search a pupil or a pupil's possessions for a prohibited item.<sup>419</sup>

The *Impact Assessment* notes that schools will not be compelled to use the extended powers of search, so for most schools no additional costs will be incurred. However, it also notes that some schools will incur costs and notes the likely costs.<sup>420</sup>

The Secretary of State has made a statement to the effect that the Bill's provisions are compatible with the European Convention on Human Rights. In relation to the extended powers to search pupils, the *Explanatory Notes* state that the Government is satisfied that the powers are justified in the interests of public safety and the prevention of disorder or crime.<sup>421</sup>

## 2. Power of members of staff to search pupils for weapons: Wales

**Clause 230** makes consequential amendments to retain the status quo in Wales. Members of staff in schools in Wales will continue to have powers to search for weapons only as set out in Section 550AA of the *Education Act 1996 Act*.

## 3. Power of members of staff to search students for prohibited items: England

A principal or an authorised member of the college staff has a statutory power to search a student or his possessions without consent if there are reasonable grounds for suspecting that the student is in possession of a weapon. **Clause 231** of the Bill extends this power to cover illegal drugs, alcohol and stolen property.

**Cause 231** inserts new sections 85AA, 85AB and 85AC for England, into the *Further and Higher Education Act 1992*. Clause 231 gives members of staff a power to search, but does not impose any duty on them to carry out any searches. The new powers will be supported by guidance.

Subsection (1) specifies that the new power may only be used where a member of staff has reasonable grounds to suspect that a student has with him or her, or in his or her possession a prohibited item. It also provides that a person may carry out a search only if he or she is the principal of the institution, or he or she has been authorised by the

---

<sup>419</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 691

<sup>420</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment*, DCSF, p152

<sup>421</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraphs 846 to 851

principal to carry out the search. Subsection (3) sets out which items are 'prohibited items' and may be searched for, these items include articles under section 139 of the *Criminal Justice Act 1988* (knives and blades), offensive weapons within the *Prevention of Crime Act 1953*, alcohol, and controlled drugs within the *Misuse of Drugs Act 1971* and stolen articles. Subsection (5) states that a student may not be searched for alcohol if they are 18 or over.

New section 85B sets out who may carry out the searches and how those searches must be conducted. The *Explanatory Notes* explain these sections:

Subsections (1), (2) and (3) provide that only principals and authorised members of staff may conduct searches, and that a member of staff may have (a) a general authorisation to search, for example a member of staff may be authorised to search for any prohibited item at any time; (b) be authorised to conduct a particular search, for example given authorisation to search a particular individual in a particular circumstance; or (c) be authorised to conduct particular types of searches, for example given authorisation to conduct searches for some prohibited items (but not others), or where a particular set of circumstances arise. *Subsection (3)* sets out that a principal may not require anybody other than security staff to conduct a search. This means lecturers can never be placed under any obligation to search a student.<sup>422</sup>

Subsection (4) stipulates that a search may be carried out only on the premises of the FE institution or where the member of staff has lawful control or charge of the student, such as on a field trip. These powers apply only in England; they therefore do not apply on trips to other countries.

Subsection (5) provides that reasonable force may be used in executing a search.

Subsection (6) states that a search of a student may be made only by a person of the same gender as the student and in the presence of another member of staff. It also provides that the person carrying out the search may not require the student to remove any clothing other than outer clothing (as defined in *subsection (8)*).

Subsection (7) states that a student's possessions may be searched only in the presence of the student and another member of staff.

Section 85AC sets out the powers members of staff will have to seize and dispose of any prohibited items.

#### **4. Power of members of staff to search students for weapons: Wales**

**Clause 232** sets out the power of members of staff to search pupils for weapons in Wales. This clause makes consequential amendments to retain the status quo in Wales. Members of staff in schools in Wales will continue to have powers to search for weapons only as set out in 85B of the 1992 Act on weapons searching.

---

<sup>422</sup> Bill 55 – EN page 123

## C. Recording and reporting the use of force

### 1. Recording and reporting the use of force in schools: England

Section 93 of the *Education and Inspections Act 1996*<sup>423</sup> enables school staff to use such force as is reasonable in the circumstances to prevent a pupil from committing an offence, causing personal injury, damaging property, or doing something that prejudices school discipline. The staff to which the power applies are listed in section 95 of the Act. The DCSF has issued guidance on the use of force to control or restrain pupils.<sup>424</sup> As the guidance explains, there is no legal definition of when it is reasonable to use force as that will always depend upon the precise circumstances in individual cases. The guidance notes good practice for schools. It strongly advises schools to keep systematic records of every significant incident in which force has been used, in accordance with school policy and procedures on the use of force, and its child protection requirements. It also advises schools to report incidents to parents (paragraphs 43 to 55). Information on the use of force by school staff is collected centrally “because this would be an unjustifiable bureaucratic burden for schools.”<sup>425</sup>

**Clause 233** seeks to strengthen safeguards on the use of force for both pupils and school staff. It inserts a new subsection 93A into the *Education and Inspections Act 2006* which requires the governing body of a school in England to ensure that a procedure exists for recording significant incidents where a member of staff has used force on a pupil. The governing body must take reasonable steps to ensure that the procedure is followed by staff at the school. The procedure must provide that such incidents are both recorded in writing, and reported to the pupil’s parents. The governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force.

The Government believes that not only will there be child protection benefits from the measure, but that staff will also benefit from there being a written record of the circumstances in which force was used, and that parents will be less likely to lodge malicious complaints about the misuse of the power. The costs to schools are likely to be low as many schools already follow good practice of recording and reporting incidents.<sup>426</sup>

### 2. Recording and reporting use of force in FE colleges in England

Staff at schools and FE institutions who supervise learners have powers to use force to prevent the commission of any criminal offence, injury, damage to property or serious breaches of discipline. The legislation that provides for colleges is section 85C of the *Further and Higher Education Act 1992* (inserted by the *Education and Inspections Act 2006*).

---

<sup>423</sup> Which replaced section 550A of the *Education Act 1996*

<sup>424</sup> [Guidance on the use of force to control or restrain pupils](#), DCSF

<sup>425</sup> HC Deb 6 October 2008, c504W

<sup>426</sup> *Apprenticeships, Skills, Children and Learning Bill Impact Assessment*, DCSF, p149

The Association of Colleges in partnership with the then Department for Education and Skills issued revised guidance, entitled *The Use of Force to Control or Restrain in Further Education* in April 2007. This document referred to specialist guidance documents prepared for schools, with the re-designation of sixth form colleges, this guidance will cover both general FE and sixth form colleges.

**Clause 234** of the Bill creates a new section 85D of the *Further and Higher Education Act 1992* to be inserted after section 85C. Subsections (1), (2) and (3) of this section require the governing bodies of institutions within the FE sector in England (including sixth form colleges) to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a student and to take reasonable steps to ensure that the procedure is followed by staff at the institution. The procedure must provide that such incidents are both recorded in writing, and reported to the student's parents (except where the student is aged 20 or over) as soon as possible after the incident. Subsection (1)(b) specifies that the report must be made to each of the student's parents..

The governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force.

## **D. School Behaviour Partnerships**

Currently, Behaviour and Attendance Improvement Partnerships are voluntary. Their aim is for schools to work together to improve behaviour, tackle persistent absence, and improve outcomes for pupils with challenging behaviour and attendance.

In November 2004, Ruth Kelly, the then Secretary of State for Education, announced that the Government expected all secondary schools, including special schools, Pupil Referral Units, academies, and city technology colleges (CTCs), to work in partnership to improve behaviour and tackle persistent absence. A range of pathfinders were set up, and, in 2007 Jim Knight, the Schools Minister, wrote to local authorities and academies reaffirming the Government's commitment for schools to work in partnership to tackle behaviour and attendance issues.<sup>427</sup> Typically a partnership may comprise six to ten secondary schools, though primary schools may also join the partnerships. Schools agree and operate a fair access protocol which ensures that all schools admit a fair share of "hard to place" pupils, and agree a managed-moves protocol for pupils for whom a move to another school is agreed appropriate. Individual schools may agree to pool an element of their funding to enable them to commission a range of in-school and out-of-school pupil support and provision from public, private and voluntary sectors. DCSF guidance provides further information on the operation and funding of partnerships.<sup>428</sup>

An interim report of the review by Sir Alan Steer on pupil behaviour was published in March 2008. It included a specific recommendation that the expectation on participation

---

<sup>427</sup> Further information is provided on the [DCSF teachernet website on school partnerships](#)

<sup>428</sup> [Guidance for school partnerships to improve behaviour and persistent absence](#), DCSF

by all secondary schools should now be enshrined in legislation. The interim report said that all schools should participate, and specifically referred to new and existing Academies, Foundation schools and Pupil Referral Units:

3. School behaviour partnerships.

3.i The Practitioners' Group in recommendations 3.6.1. and 3.6.2. strongly supported the principle that all schools needed to work in collaboration in order to promote good standards of behaviour in their schools. This remains my opinion.

3.ii While Local Authority returns indicate that over 9/10ths of secondary schools are involved in behaviour partnerships, informal soundings make me sceptical that all of these schools are actually engaged in meaningful partnership working. Outside the early pathfinder partnerships, credible evidence is lacking on the impact partnerships are making where they do exist. I will return to this issue in my final report.

3.iii Good collaboration between schools is often prevented by what are perceived as unfair practices operated by a minority of schools in admissions and exclusions. Where these practices take place they damage partnership and damage the development of good behaviour standards in the area. I warmly welcome the changes since 2005 relating to school admissions and recent announcements of measures to strengthen further the implementation of the Admissions Code. These need to be applied consistently to all schools, including Foundation schools and Academies. A school that permanently excludes a child should expect to receive a permanently excluded child on the principle of 'one out, one in' as recommended by the Practitioners' Group. This should not affect the protection given to schools in special measures.

3.iv It remains my firm view that all secondary schools – including new and existing Academies, Foundation schools and Pupil Referral Units – should participate in behaviour partnerships. This expectation should now be enshrined in legislation (or, in the case of existing Academies, in a clear formal commitment by each of them to participate).<sup>429</sup>

Responding to the interim report, the Secretary of State said that he accepted the recommendation that all schools should be part of the behaviour partnerships.<sup>430</sup>

Currently, 98% of maintained schools and 94% of academies are members of partnerships.<sup>431</sup>

**Clause 235** places a duty on the governing body of a maintained secondary school in England (defined in subsection (5)), and the proprietor of an Academy, city technology college or city college for the technology of the arts in England ("relevant partners"), to make arrangements to co-operate on promoting good discipline and behaviour generally on the part of pupils, and reducing persistent absence on the part of pupils.

---

<sup>429</sup> *Behaviour review: an initial response*, Sir Alan Steer, 26 March 2008

<sup>430</sup> DCSF Press Notice, *New report into behaviour praises partnerships*, 26 March 2008

<sup>431</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 751

## E. Short stay schools

### 1. Alternative provision and Pupil Referral Units

#### a. Background

Education arranged by local authorities and schools outside of school is referred to as 'alternative provision'. Section 19(1) of the *Education Act 1996* requires local authorities to make arrangements for the provision of suitable education for children of compulsory school age who cannot attend school by reason of illness, exclusion or otherwise. Since September 2007, permanently excluded pupils from the sixth day of exclusion must be provided with suitable full-time education. Around 135,000 children of compulsory school age receive alternative provision every year, and about one-third are educated in Pupil Referral Units (PRUs).<sup>432</sup> These are defined in section 19(2) of the 1996 Act as a type of school. There are 450 PRUs; other forms of alternative provision commissioned by local authorities and schools include placements in further education colleges, and in private and voluntary sector provision. (Detailed statistics are given below.)

All PRUs have a Teacher in Charge, and, from 1 February 2008, all PRUs must have a management committee (governing body) that is established according to regulations and guidance issued by the Secretary of State. PRUs can provide full-time or part-time education, and provision varies depending on the age of the child and the reason for their being in the PRU. Education may be offered directly by the PRU or it may arrange provision with external providers such as further education colleges, and voluntary or private bodies; or a combination of arrangements may be provided. At present PRUs do not have to provide the full National Curriculum, although they are required to provide a broad and balanced curriculum, and are inspected by OFSTED.<sup>433</sup>

In September 2007 Ofsted visited 28 PRUs in 22 local authorities, and reported on establishing successful practice in PRUs and local authorities. The report noted that although there are a wide variety of PRUs, they face similar barriers to providing children with a good education. These may include inadequate accommodation, pupils of different ages with diverse needs arriving in an unplanned way, limited numbers of specialist staff to provide a broad curriculum, and difficulties in reintegrating pupils into mainstream schools. Inspectors found that most of the PRUs visited received little information about pupils' academic progress from their previous schools. The most effective PRUs offered pupils a curriculum that varied according to their needs. All the PRUs visited had developed partnerships with schools and colleges that supported their curriculum and staff development. The best partnerships were mutually beneficial: the staff of the PRU shared their expertise with the mainstream schools, trying to prevent exclusions or helping with strategies to support vulnerable pupils. However, the PRUs visited generally found that, despite these partnerships, schools did not readily offer places to PRU pupils. Occasionally, individual partnerships eased reintegration, but generally reintegration was effective and efficient only when the local authority had good strategic arrangements and pursued these determinedly. The Inspectors also found that

---

<sup>432</sup> [Back on Track - A strategy for modernising alternative provision for young people](#). Cm 7410, May 2008

<sup>433</sup> The [DCSF website on Alternative Provision](#) provides further background on PRUs and alternative education generally.

placements in PRUs seldom had end dates. Although local authorities encouraged PRUs to reintegrate pupils, especially younger ones, into mainstream schools, this was often very difficult to achieve when the onus was on the PRU to find and secure a school place.<sup>434</sup>

### **b. Statistics on PRUs**

In January 2008 there were 455 PRUs in England and 16,100 pupils attended PRUs at the time the census count was taken (excluding those also registered at other schools<sup>435</sup>). Trends are given in the table below. The largest increase in PRU numbers occurred between 2002 and 2004 when there was an increase of 114 (37%). Pupil numbers have nearly doubled since January 1999.

#### **PRUs in England**

January each year

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of schools	298	295	308	312	360	426	447	449	448	455
Solely registered pupils	8,260	8,480	9,290	9,960	12,010	13,040	14,470	15,240	15,160	16,100

Source: *Pupil Characteristics and Class Sizes in Maintained Schools in England: January 2008 (Provisional)*, DCSF

While total numbers give the impression of a simple expansion in PRUs there has in fact been a large number of closures over the same period - more PRUs have opened so there has been a net increase. In the ten years to the end of August 2008 390 PRUs opened and 234 closed. One third of these closures were as a result of amalgamation, but the true proportion is likely to be higher as reasons are not listed for around another third of closures.<sup>436</sup> Alongside the relatively transitory nature of some PRUs, their pupil population can be highly changeable. Around 50 PRUs in January 2008 were listed as having no solely registered pupils, but 39 had more than 100 pupils. Snapshot data from the School Census will only provide a partial picture as numbers change throughout the year. In addition PRUs do not make a pupil-level statistical return so there is less information collected on a number of different pupil characteristics. The latest data on pupil characteristics in PRUs is for January 2008.<sup>437</sup>

- 69% were boys
- 69% were aged 14+ (age at the previous 31 August)
- 26% were eligible for free school meals
- 11% had a statement of Special Educational Needs (SEN)
- 47% had identified SEN without a statement
- 18% were from a non-white ethnic background (in 2006)<sup>438</sup>

<sup>434</sup> [Pupil Referral Units: establishing successful practice in PRUs and local authorities](#), Ofsted, September 2007

<sup>435</sup> If dually registered pupils are included the total number of pupils aged up to 15 was just over 25,000.

<sup>436</sup> *EduBase*, DCSF

<sup>437</sup> *National Pupil Database and EduBase*, DCSF

<sup>438</sup> Based on pupils with a classified ethnicity only. House of Commons Library deposited paper 07/1761



Thus, compared to mainstream schools, pupils in PRUs were more likely to be: boys, older, eligible for free school meals and have SEN. The white/non-white pupil breakdown was broadly equivalent to that across all schools.<sup>439</sup>

In academic year 2007/08, 138 PRUs were inspected by Ofsted which judged them as shown in the table below. In that year a smaller proportion of PRUs inspected were given the top rating than the other school types. However, 62% were judged to be good or outstanding - above the equivalent rate for secondaries, similar to primaries but below the proportion of special and nursery school judged to reach this level.

**Overall inspection judgements, by school type, 2007/08**

Percentage of each type of schools inspected

	Outstanding	Good	Satisfactory	Inadequate
Nursery	39%	58%	3%	0%
Primary	13%	50%	33%	4%
Secondary	17%	40%	34%	9%
Special	26%	54%	18%	2%
PRU	7%	55%	30%	7%

Source: *Inspection judgements 2007/08, Ofsted*

At the end of academic year 2007/08 there were 12 PRUs in special measures and one requiring significant improvements and given a Notice to Improve. 2.6% of PRUs were in special measures compared to 1.5% of secondary and 0.5% of primary schools. 0.2% of PRUs had been given a Notice to Improve compared to 2.1% of secondary and 1.0% of primary schools.<sup>440 441</sup> Four of the 34 PRUs that have closed since the start of 2007 were in Special Measures or had been given a Notice to Improve at 31 December 2006.<sup>442</sup>

## 2. Proposals for change

On 20 May 2008, Ed Balls the Secretary of State for Children Schools and Families, published a white paper *Back on Track - A strategy for modernising alternative provision for young people*.<sup>443</sup> It highlighted that there was limited data on the performance of pupils in alternative provision, and that the available data indicated often very poor outcomes - in 2006 only 1% of 15 year olds in PRUs achieved 5 GCSEs at grades A\* to C or equivalent, and only about 11% achieved 5 or more grades at A\* to G. However, some commentators have noted difficulties in assessing performance data in PRUs as some units have few pupils, and pupils often have personal and/or medical problems that may affect attendance, for example.<sup>444</sup>

The white paper stressed that there was a need for a step change in the quality of PRUs and other alternative provision. To this end, the Government said that it wanted to

<sup>439</sup> *Pupil Characteristics and Class Sizes in Maintained Schools in England: January 2008 (Provisional)*, DCSF

<sup>440</sup> *Data on schools causing concern, summer term 2008*, Ofsted

<sup>441</sup> Rates based on January 2008 school numbers

<sup>442</sup> *Data on schools causing concern, autumn term 2006*, Ofsted

<sup>443</sup> Cm 7410

<sup>444</sup> "Staff call for 'sin-bin' make-over", *Times Educational Supplement*, 6 February 2009, p29



encourage greater diversity of alternative provision, with more input from the private and voluntary sectors, and it provided funding for a series of innovative pilot schemes working with the private and voluntary sectors.

The white paper followed on from the work undertaken by Sir Alan Steer to bring a practitioner perspective to the development of the white paper.<sup>445</sup> He concluded that although there were some excellent examples of good practice in PRUs and alternative education, the overall picture gave cause for concern. He noted a lack of consistency within and between local authorities, lack of a national strategy, lack of information and data on the sector, the absence of national minimum standards of provision for local authorities, low expectations for children attending some PRUs and some alternative provision, insufficient attention on pupils, insufficient places in PRUs, lack of support for PRUs and difficulty in recruiting staff, and lack of local behaviour improvement partnerships between PRUs and mainstream schools. Sir Alan set out the key issues for the white paper to address, including the need for national minimum expectations for provision, the need for early intervention for pupils at risk, better data collection and analysis, improved accountability of PRUs and alternative provision, more PRU places and improved training and support for staff, the need for differentiated provision according to the age and aptitude of children, and a new name for PRUs. The white paper addressed these issues in detail, and in his Written Ministerial Statement on 20 May 2008 the Secretary of State summarised the proposed changes:

- intervening when pupil referral units fail, by requiring local authorities to replace them with a specified alternative, as announced in the draft legislative programme;
- requiring a local authority, when necessary, to hold a competition to find the best provider of the specific alternative model that has been identified to replace a failing pupil referral unit;
- collecting and publishing data annually on attendance at pupil referral units;
- collecting and publishing educational outcomes data (GCSEs and equivalents) for pupils at the end of key stage 4 in alternative provision;
- ensuring that all young people in alternative provision have a personalised education plan, so that their needs can be identified and assessed much earlier;
- securing an appropriate curriculum entitlement for young people in alternative provision and work towards developing a national minimum standard of provision;
- improving support for the workforce in pupil referral units and alternative provision and improving accommodation and facilities;
- running up to 10 pilots to test a range of innovative and good practice models to deliver alternative provision.<sup>446</sup>

---

<sup>445</sup> Annex 3 to the white paper

<sup>446</sup> [Written Ministerial Statement, 20 May 2008, cc13-14W](#)

While welcoming the white paper's aims, some commentators expressed concern about private sector involvement in alternative provision. Christine Blower of the National Union of Teachers argued that PRUs should not be 'outsourced' to private companies as this would only increase their sense of isolation from other schools, and she emphasised the success of PRUs where local authorities included them as a central part of their strategy to provide behaviour support to other schools. However, others favoured greater use of the private and voluntary sectors for alternative provision. Jean Johnson, chief executive of the Inclusion Trust, described it as a positive step.<sup>447</sup> Others, for example the Association of Directors of Children's Services (ADCS), welcomed the aims of the white paper and while not opposing the principle of a mixed economy of provision, it stressed the importance of alternative providers being accountable to local authorities since Directors of Children's Services are statutorily responsible for all children and young people in their areas.<sup>448</sup>

On 23 October 2008 the Secretary of State published feedback on the responses to the white paper, and set out the next steps for the proposed changes.<sup>449</sup> This stated that there was widespread support from local authorities, social partners, other organisations and practitioners for the Government's plans to modernise alternative provision for young people, and to put them at the centre of the approach. The Next Steps document said that the views of professionals working in PRUs, parents and pupils had been carefully noted, and that their feedback had confirmed the direction of the Government's strategy. It also noted that over a hundred suggestions had been made on the renaming of PRUs. The Next Steps document said that the intention was to rename them 'Prospect Schools' but that institutions would not be required to use this name as they should use whatever name fits their circumstances.<sup>450</sup> The Bill makes provision for the schools to be called short-stay schools (see below).

Annex 2 of the Next Steps document gave information on the pilot schemes exploring innovative ways of making alternative provision.

The Next Steps document made clear that legislation would be introduced to:

- require the replacement of underperforming PRUs with specified alternatives and, where necessary, to require local authorities to hold a competition to replace them;
- change the statutory name "Pupil Referral Units" into something that better describes the provision;
- make school behaviour partnerships mandatory, so partnership working can underpin improvement.

It also noted those changes to be covered by guidance though the document emphasised that the Government would review the possibility of underpinning some with legislation. For example, it said that guidance would cover the curriculum but that the

---

<sup>447</sup> *Children & Young People Now*, 28 May – 3 June 2008, p14

<sup>448</sup> "Modernising alternative provision", *Education Journal*, June 2008, p17

<sup>449</sup> *Taking Back on Track Forward: Response to consultation and next steps 2008*, DCSF

<sup>450</sup> *ibid.*, paragraphs 3.5 to 3.7

Government would review the possibility of legislating for a curriculum entitlement at a later date.

The Next Steps document also noted measures the Government is taking to ensure that staff in PRUs have the right pay and conditions:

4.9. We are also exploring ways to ensure that staff in Pupil Referral Units have the right pay and conditions. The School Teachers' Review Body are considering a proposal to revise the criteria that apply to staff in Pupil Referral Units as well as other school settings for award of allowances to staff teaching pupils with special educational needs. We expect them to report back on this proposal in January 2009. A new negotiating body to determine pay and conditions of school support staff is being set up by legislation and will start work in September 2009, with a remit that includes making sure that staff in Pupil Referral Units are appropriately rewarded for the work that they do.

Alongside the Next Steps document, the Government published guidance to local authorities and schools on commissioning alternative provision from external sources.<sup>451</sup> It has also set up a database of alternative providers.<sup>452</sup>

### 3. The Bill

**Clause 236** re-names PRUs as 'short stay schools'. The change applies only to PRUs in England. The *Explanatory Notes* state that the name change will apply in law only. Individual PRUs will be free to use any name they wish for their own purposes (as they do currently).<sup>453</sup> **Clause 236(3)** inserts a new paragraph 3A into Schedule 1 of the *Education Act 1996* to extend the Secretary of State's regulation-making powers in relation to short stay schools. The Government envisages that these regulation-making powers will be used to allow the Secretary of State to direct the alternative that will replace a PRU he decides should close. The Secretary of State already has the power to direct the closure of a PRU described by Ofsted as requiring special measures, conferred by section 68 of Part 4 of the *Education and Inspections Act 2006*. The local education authority is under a duty<sup>454</sup> to provide other suitable education for those pupils who are displaced by the closure of the PRU, but how they will do this is their decision. They could find places in independent schools, open a replacement PRU, or use another provider of alternative provision.<sup>455</sup> The *Explanatory Notes* state that the Secretary of State does not envisage using the direction-giving power to specify exactly who or what will replace the closing unit, but rather to specify the features it should exhibit. However the Secretary of State intends to use the powers to give directions to require the LA to invite bids from external providers for the delivery of the alternative provision. Assessment of bids will be a matter for the local authority, but it will be required to report

---

<sup>451</sup> [Commissioning alternative provision - guidance for local authorities](#), DCSF, October 2008

<sup>452</sup> [Database of Providers of Alternative Provision](#)

<sup>453</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 764

<sup>454</sup> section 19 of the *Education Act 1996*

<sup>455</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory notes*, paragraph 771

back to the Secretary of State once the process of inviting and assessing the bids has been completed.<sup>456</sup>

## **XV Miscellaneous**

### **A. Information about local authority expenditure**

**Clauses 237 to 239** seek to simplify the legal basis for collecting financial information covering education and children's services functions. Currently this information is collected under two separate legal powers. These are section 52 of the *School Standards and Framework Act 1998* and section 230 of the *Local Government Act 1972* respectively. Section 52 of the 1998 Act imposes a duty on LEAs to prepare and publish financial statements containing information about their planned and actual expenditure on their education functions and accountable resources held, received or expended, in accordance with regulations made by the Secretary of State. Section 230 of the 1972 Act allows the Secretary of State to collect such information as he may require from local education authorities with respect to their functions, and is used to collect financial information about their planned and actual expenditure on their children's social services functions. Under the Bill the Secretary of State will be empowered to collect both types of information, but only in relation to local education authorities in England, and to do so by means of a direction. This enables the Secretary of State to collect the information he needs without having to make or amend regulations. The *Explanatory Notes* state that the provisions do not impose additional burdens on local education authorities.<sup>457</sup>

### **B. Support for participation in education and training**

Part 1 of the *Education and Skills Act 2008* places a duty on young people to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier) and requires local education authorities to promote the effective participation of young people in their areas who are subject to the duty to participate. That Act also provides for local education authorities in England to establish support services for people aged 14 to 19, and those aged up to 24 who have learning difficulties. These services are known as Connexions services and are provided by local education authorities themselves or contractors.

Sections 15 and 76 of the *Education and Skills Act 2008* provide for limited social security information to be provided to local education authorities, and Connexions service providers, respectively for the purposes of functions under Part 1 of that Act or Connexions services.

Section 17 of that Act enables information held by LEAs and by Connexions service providers to be supplied and used either for purposes under Part 1 of that Act or for Connexions services purposes.

---

<sup>456</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory notes*, paragraphs 772 to 774

<sup>457</sup> *Apprenticeships, Skills, Children and Learning Bill Explanatory Notes*, paragraph 776

**Clauses 240 and 241** amend provisions of that Act about the holding and supplying of information for the purposes of Part 1 of that Act or for Connexions services purposes. **Clause 240** relates to the provision of social security information for purposes and functions under the *Education and Skills Act 2008* and **clause 241** covers provision of other information in connection with support services.

### **C. Further education corporations in England: promotion of well-being**

**Clause 242** inserts a new section 19A into the *Further and Higher Education Act 1992*. It provides that in carrying out their functions under sections 18 and 19 of that Act, FE corporations in England must have regard to the objective of promoting the economic and social well-being of the people who live or work in the locality of their institution.

### **D. Student Loans: Individual Voluntary Arrangements (IVAs)**

#### **1. Background**

There are two types of student loan. The newer type of loan, known as an Income Contingent Loan, is repayable by a borrower under the *Teaching and Higher Education Act 1998 Act*. The older type of loan, known as a Mortgage Style Loan, is repayable under the *Education (Student Loans) Act 1990*.

Provisions in the *Higher Education Act 2004* closed a loophole which allowed students to file for bankruptcy as a means of writing off their student debts. However these provisions did not prevent students entering into an Individual Voluntary Arrangement (IVA) as a way of writing off some of their debt. IVAs were created by the *Insolvency Act 1986* and enable a debtor to avoid bankruptcy by coming to an agreement with creditors to pay off a percentage of his or her debts over a given period.

An article in the *Daily Telegraph* on 11 February 2003 discussed IVAs with regard to student loan debt;

There is no maximum or minimum level of debt, or repayments. It is not inconceivable that three-quarters of the debt is owed to members of the student's family, who would, of course, be happy to consent to this arrangement.

It must be emphasised that resorting to bankruptcy, or an IVA, are extreme steps and should not be undertaken lightly; nor would they be granted automatically, especially if they looked like a ruse to dodge repayment.<sup>458</sup>

Information given in answer to a parliamentary question on 21 February 2008 included data on the numbers of students declared bankrupt and entered into IVAs:

---

<sup>458</sup> "Last days of the student loan loophole" the *Daily Telegraph* 11 February 2003

### Students: Insolvency

**Mr. Rob Wilson:** To ask the Secretary of State for Innovation, Universities and Skills (1) how many students have entered into individual voluntary arrangements since their introduction;

(2) how many students (a) were declared bankrupt in each of the last 15 years and (b) took out individual voluntary arrangements since their introduction.

**Bill Rammell:** The Government's student finance package is designed to ensure that finance should not be a barrier to a higher education course. Student loans from the Government are not like commercial loans: interest is paid at the rate of inflation, so in real terms students only pay back what they borrowed. For income contingent loans available since 1998, repayment is linked to earnings and borrowers only repay if their earnings are over £15,000; from April 2012 they will be able to take up to five years' 'Repayment Holiday' and those taking out a student loan from 2006 have their debt cancelled after 25 years.

During the passage of the Enterprise Act in 2002 there was a growing awareness about student loan borrowers declaring themselves bankrupt. There was a rise in the number of bankruptcies/Individual Voluntary Agreements (IVAs) notified in 2003. In addition, one of the effects of the Enterprise Act itself was to reduce the period of discharge from bankruptcy from three years to one. Provisions were therefore included in the Higher Education Act 2004 to prevent student loans being written off on bankruptcy. Currently student loans are not exempt from IVAs.

The increase in student loan borrowers with bankruptcies and IVAs should be seen in the context of the increases in the general population. Figures from the Insolvency Service show that between 2002 and 2006 the number of individual bankruptcies in England and Wales more than doubled; the number of IVAs increased seven-fold.

Until 2004 IVAs and bankruptcies were not recorded separately in SLC data. After the change in legislation, only IVAs are recorded, as student loans are excluded from bankruptcy debts and are not written off on discharge from bankruptcy.

Available data are shown in the tables.

<i>English domiciled borrowers with publicly-owned student loans who notified the Student Loans Company (SLC) of their bankruptcy or Individual Voluntary Agreement (IVA)<sup>(1)</sup> — Calendar year of bankruptcy or IVA 1997 to 2004</i>		
<i>Calendar year</i>	<i>Borrowers with bankruptcy or IVA</i>	<i>Percentage of all borrowers UK<sup>(2)</sup></i>
1997	70	n/a
1998	90	n/a
1999	120	n/a
2000	130	0.017
2001	230	0.023

2002	270	0.027
2003	800	0.057
2004	1,170	0.072

n/a = not available

<sup>(1)</sup> Bankruptcies and IVAs are not separately identified in the data. There may be delays between borrowers becoming bankrupt/taking an IVA and notifying SLC, therefore figures can increase overtime, particularly for the most recent years. Figures are rounded to the nearest 10.

<sup>(2)</sup> UK Borrowers with bankruptcy or IVA in the calendar year as a percentage of all UK borrowers in the March of each year.

Source:

Student Loans Company

*English domiciled borrowers with publicly-owned student loans who notified the Student Loans Company (SLC) of their Individual Voluntary Agreement (IVA)<sup>(1)</sup> — Calendar year of IVA 2005 and 2006*

<i>Calendar year</i>	<i>Borrowers with IVAs</i>	<i>Percentage of all borrowers England<sup>(2)</sup></i>
2005 <sup>(3)</sup>	820	0.039
2006 <sup>(3)</sup>	1,060	0.047

<sup>(1)</sup> There may be delays between borrowers taking IVAs and notifying SLC, therefore figures can increase over time, particularly for the most recent years. Figures are rounded to the nearest 10.

<sup>(2)</sup> English domiciled borrowers with bankruptcy or IVA in the calendar year as a percentage of all English domiciled borrowers in the March of each year.

<sup>(3)</sup> provisional

Source:

Student Loans Company

Early indications suggest the numbers of IVAs are reducing after 2006.<sup>459</sup>

## 2. Statistics on student loan IVAs

The first data on the value of loans written off due to bankruptcy or IVA was published for financial year 2007-08. This included a number of write-offs for previous financial years and hence should be seen as more of a cumulative total. The figures given for England were £1.9 million for bankruptcy and £0.2 million on completion of IVAs.<sup>460</sup> The amounts written off in Wales and Northern Ireland were much less, totalling £0.1 million from both types.<sup>461</sup>

<sup>459</sup> HC Deb 21 February 2008 c878

<sup>460</sup> *Student Loans for Higher Education in England: Financial Year 2007/08 (Provisional)*, Student Loans Company

<sup>461</sup> *Student Loans for Higher Education in Wales: Financial Year 2007/08 (Provisional)*, Student Loans Company; *Student Support for Higher Education in Wales: Academic Year 2008/09 (Provisional)*, Student Loans Company

### 3. Rationale for the changes

The Impact Assessment gives the following as the reason for the provision:

The Government has concluded it is now anomalous to exclude student loans from bankruptcy but not from IVAs. Student loans are made on non-commercial terms, including low interest rates and the obligation to repay being linked to a student's income. In addition, as student loans are paid out of and subsidised by public funds, it is not considered appropriate to allow borrowers to reduce or limit their liability to repay by entering into IVAs.<sup>462</sup>

### 4. The Bill

**Clauses 243** and **244** amend the *Teaching and Higher Education Act 1998* (c.30) (the 1998 Act) and the *Education (Student Loans) Act 1990* (c.6) (the 1990 Act) so that a student loan made to a borrower who enters an IVA will be treated in a similar way as it is currently treated under a bankruptcy in England and Wales. This means that the liability of a borrower to repay a student loan will not be reduced when the borrower enters into an IVA.

**Clause 244** also amends the 1990 Act by inserting bankruptcy provisions for Northern Ireland that correspond to those in England and Wales in regard to student loans.

These provisions apply to England, Wales and Northern Ireland.

### 5. Benefits and cost of the changes

The Impact Assessment gives the following information on the benefits and cost:

There is very limited evidence available but, based on the data available, we estimate that IVAs currently costs the taxpayer between £10m-£25m per year in NPV terms, and this money will be saved.<sup>463</sup>

## E. Foundation Degrees: Wales

### 1. Background

Foundation degrees were introduced in 2001. They are an employment-related higher education qualification. Course content is designed in conjunction with employers to meet skills needs at the higher technician and associate professional level. Foundation degrees are delivered by collaboration between employers, higher education institutions and further education colleges. Work-based learning is often a key component of these degrees.

---

<sup>462</sup> Impact Assessment page 82

<sup>463</sup> Impact Assessment page 82



Section 19 of the *Further Education and Training Act 2007* amended section 27 of the *Further and Higher Education Act 1992* and gave further education colleges in England the power to award foundation degrees. These provisions were controversial during the passage of the *Further Education and Training Bill* through Parliament. Library research paper RP 07/35 discussed these provisions on pages 32-45.<sup>464</sup>

The provisions on foundation degree awarding powers came into force on 1 May 2008. Further education institutions in England are now able to apply to the Privy Council for powers to award their own foundation degrees.

Currently foundation degrees provided by further education institutions in Wales are awarded by other higher education institutions with full, taught degree-awarding powers through franchise arrangements. Provisions in this Bill would extend foundation degree awarding powers to Wales. These provisions will not apply to institutions in Northern Ireland and Scottish institutions do not offer foundation degrees.

Guidance documents and criteria for foundation degree awarding powers are available on the DIUS website.<sup>465</sup> A list of frequently asked questions is also available.<sup>466</sup>

An article in the *Times Higher Education* in November 2008 suggested that not many institutions intend to apply for foundation degree awarding powers.<sup>467</sup>

## 2. Policy development in Wales

The Impact Assessment report outlined the development of foundation degree policy in Wales:

Policy development on this issue in Wales has been informed by three main policy documents: the Webb Review Report; One Wales; and the Skills That Work for Wales Strategy (the Assembly's response to the UK Leitch Report).

The Webb Panel undertook a formal written consultation exercise as part of the review process, and also gathered valuable evidence from face-to-face meetings with key stakeholders. The final Webb report was published in December 2007 and included a recommendation to consider foundation degree awarding powers.

The Welsh Assembly Government decided to incorporate consideration of the Webb Report into the consultation on the *Skills That Work for Wales* Strategy. This consultation also comprised a formal written exercise and included a series of stakeholder workshops across Wales.

---

<sup>464</sup> Research Paper 07/35 Further Education and Training Bill [HL] Bill 75 of 2006-07

<sup>465</sup> DIUS *Applications for the grant of Foundation Degree- awarding powers. Guidance for applicant further education institutions in England 1 May 2008* at <http://www.dcsf.gov.uk/recognisedukdegrees/uploads/documents/FDAPsDIUSGandC010508.doc>

<sup>466</sup> Foundation Degree Awarding Powers Frequently Asked Questions at <http://www.dcsf.gov.uk/recognisedukdegrees/uploads/documents/FDAP%20Question%20and%20Answers090908.doc>.

<sup>467</sup> "Fight or flight is the wrong response – there's no danger here" *Times Higher Education* 6 November 2008 at <http://www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=404218>.

All respondents to the written consultation that commented specifically on foundation degrees were strongly agreed that they were an important qualification in terms of developing economically important skills that should be supported and encouraged. Of the foundation degree specific responses received, 33% were strongly in favour of foundation degree awarding powers for FEIs, which were largely from FEIs or FEI related bodies. Only 13% of the responses opposed foundation degree awarding powers for FEIs, which were largely responses from HEIs or HEI related bodies.

Welsh Ministers considered carefully the points that had been raised by HEIs, and have sought to respond to them in the following ways:

- Any FE college with foundation degree awarding powers will be expected to deliver through partnership and collaboration, including with HEIs and employer involvement. As in England, the Bill will require that progression routes are identified;
- FDAPs is seen by Welsh Assembly Government as one model of delivering foundation degrees; many, if not the majority, of FE colleges will continue to deliver through franchise arrangements. It is not seen as a mechanism to replace existing partnerships and collaborations that are working well, but an additional model for FEIs to respond to the specific vocational needs of employers more quickly and flexibly where there are gaps in provision that are not currently being addressed, in areas where they have a strong track record of delivery, thus avoiding mission drift into the core business of universities; and
- It is anticipated that only a very small number of colleges will choose to apply in the first instance. The process for obtaining foundation degrees will be robust, and the same as is applied for those institutions wishing to obtain full teaching degree awarding powers. As an additional quality measure, it will also be placed on the face of the bill that Welsh Ministers have to lay a report on the use and effects of the powers before the National Assembly for Wales within four years of commencement of the power for Wales.

### 3. The Bill

**Clause 245** amends section 76 of the *Further and Higher Education Act 1992* so as to enable the Privy Council to make orders granting further education institutions in Wales the power to award foundation degrees. The *Explanatory Notes* to the Bill give further information on this clause;

As a result of this provision, further education institutions in Wales providing courses leading to foundation degrees will be able to apply for powers to award foundation degrees themselves. In order to be granted this power, institutions will have to meet certain non-statutory criteria, which will be published in draft during the passage of the Bill. As with taught and research degree awarding powers, the Quality Assurance Agency for Higher Education will advise on whether an institution meets the criteria.

Subsection (2) requires Welsh Ministers to lay before the National Assembly for Wales a report about the effect of the provision within four years of it coming into force.<sup>468</sup>

#### 4. Benefits and costs of the changes

The Impact Assessment report suggested the following benefits of the changes:

A small number of FEIs which already have high quality standards and quality assurance processes in place can only offer degrees is through validation by higher education institutions with degree-awarding powers. This arrangement is an administrative burden on the FEIs, which limits their autonomy over course content, and their ability to design, develop, teach and assess their own courses and make awards under their own authority will enable them to respond more flexibly and responsively to the needs of students and local employers. The powers will also provide a vital component of the strategic drive towards greater self-regulation for FEIs as a reward for demonstrated excellence.

The direct engagement of further education in providing foundation degrees will also provide opportunities for increased responsiveness to the needs of stakeholders, businesses and learners in rural communities and the needs of small businesses.<sup>469</sup>

The predicted cost of this measure is also given in the Impact Assessment:

The costs for the Welsh Assembly Government to obtain the power to enable FEIs in Wales to gain foundation degree awarding powers will be met from within existing provision. Consequently there will be no additional monetary costs arising from this for Welsh Assembly Government.

Further Education Colleges that are successful in obtaining foundation degree awarding powers will be expected to meet the costs of funding foundation degree places from within their funding allocations from the Welsh Assembly Government or HEFCW, or levied in from other sources for example, employer contributions. The 2007-8 spend via HEFCW on Foundation Degrees was around £19m.<sup>470</sup>

#### 5. Reaction to the Bill

The Welsh Assembly Government issued a written statement called [Foundation Degree Awarding Powers](#) on 5 February 2005:

The First Minister, in his 17 July 2008 statement on the forward legislative programme, announced the Welsh Assembly Government's intention to bring forward legislation to enable Further Education Institutions in Wales to award foundation degrees.

---

<sup>468</sup> Bill 55 - EN page 136

<sup>469</sup> Impact Assessment page 84-85

<sup>470</sup> *ibid*

I am please to be able to provide an update on that commitment, and advise Assembly Members that I have secured the inclusion of such powers within the Apprenticeship, Skills, Children and Learning Bill which was introduced in the House of Commons on 4 February. Subject to the passage of the Bill, I anticipate that these powers will be achieved for Wales.<sup>471</sup>

## F. Complaints: Wales

The *Impact Assessment* of the Bill noted that the Welsh Assembly Government (WAG) receives complaints regularly from parents alleging that governing bodies have not considered their complaints properly or at all. It noted that some governing bodies do not have a complaints procedure or have inadequate procedures. In addition, it referred to high levels of parental dissatisfaction found by the Assembly's *Living in Wales Survey into Citizens Views of Public Services*. While acknowledging that some of the dissatisfaction may be attributed to parents having unreasonable expectations, it nevertheless concluded that too many complaints take too long to resolve and are not handled properly. The *Impact Assessment* said that Welsh Ministers believe that the most effective solution is to have a standard procedure in all maintained schools for handling complaints, so that only one procedure would be in use in Wales. Welsh Ministers would be empowered to specify in regulations how and where the procedure should be publicised. In addition, governing bodies would have to continue to have regard to any guidance issued by Welsh Ministers about the procedures and handling of complaints. These procedures would not replace the statutory procedures established for complaints outside the scope of section 29 of the *Education Act 2002*, for example, on school admissions.

**Clause 246** amends section 29 of the *Education Act 2002* to give a power to the Welsh Ministers to make regulations for a complaints procedure that must be adopted by all governing bodies of maintained schools in Wales. Regulations will specify how and where this procedure should be published.

## XVI Data processing

### A. Information sharing provisions

#### 1. The Bill

The Bill contains a number of measures to facilitate information sharing among a variety of agencies supporting the education and training of those aged 16 and above. Any sharing of personal data would still be subject to the *Data Protection Act 1998* (DPA) even though the latter would impose fewer constraints were the relevant clauses enacted.

---

<sup>471</sup> Written Statement by the Welsh Assembly Government Foundation Degree Awarding Powers 5 February 2009

*Clause 76* covers information sharing within the context of Academy arrangements; it allows a range of persons, including the Secretary of State, the YPLA and a relevant Academy to share information “for the purpose of enabling or facilitating the exercise of any relevant function.” By defining the meaning of “relevant” and by referring to any Act preventing disclosure, the clause should secure a measure of proportionality and appropriateness in information sharing. Similar safeguards are present in *clause 119* which makes provision for the information sharing between, among others, the Chief Executive of Skills Funding, the YPLA and LEAs. Taken in isolation, the actual wording of *clause 119(1)* is quite broad:

A person to whom this section applies may provide information to any other person to whom this section applies for the purpose of enabling or facilitating the exercise of any relevant function.

*Clause 149* provides for information disclosure by Ofqual to counterpart qualifications regulators elsewhere in the UK. Again, the precise nature of the information is undefined but, given the allusion in the Explanatory Notes to the *Data Protection Act 1998*, it seems likely this could include some personal data.

*Clause 154* would allow Ofqual to require specified persons, including the Secretary of State, to provide it with information needed to fulfil its duties to keep under review the National Curriculum and Early Years Foundation Stage assessment arrangements. *Clause 160* would require Ofqual to provide information requested by either the Secretary of State (England) or the Department for Employment and Learning in Northern Ireland. Similar obligations (applying to England) would be imposed on the QCDA (*clause 176*). The Explanatory Notes for these three clauses state that such information is unlikely to identify individuals. But the Notes acknowledge that any such “exceptional circumstance” would be a justifiable engagement of Article 8 (right to privacy) of the European Convention on Human Rights. The Notes (but not the clauses) allude to the *Data Protection Act 1998* as providing protection.

Article 8 of the Convention reads:

Article 8 – right to respect for private and family life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Bill’s Explanatory Notes state, in the context of *clauses 154, 160 and 176*, that: “the Government’s view is that any interference is justified in line with Article 8(2) in the interests of the economic well-being of the country in ensuring that assessment arrangements operate to facilitate an effective education system.” Economic well-being is also cited in relation to data sharing provisions elsewhere in the Bill (e.g. *clause 119*). A general question that arises in connection with Article 8(2) is the extent to which justification for the Bill’s information sharing measures equates to their necessity.

Additional information sharing measures are contained within *clauses 184-5* (Children's Trust Boards), *clauses 202-3* (Local Commissioner) and *clauses 240-1* (social security and support services information). Information subject to the sharing arrangements in the latter two of these clauses will be held on two databases, respectively the Client Caseload Information System (CCIS) and the National Client Caseload Information System (NCCIS). It goes without saying that the processing of personal data held on these databases will be subject to the *Data Protection Act 1998*; this regulates not just the sharing of data but other aspects of "processing" such as retention and security.

## 2. The wider context

Context for the above measures is provided by the Government's long-standing<sup>472</sup> strategy on data-sharing across government departments – motivated as a means of providing more efficient and accessible public sector services. Data sharing represents a significant arm of the "Transformational Government" strategy published by the Cabinet Office in November 2005 (Cm 6683) which observes: "data sharing is integral to transforming services and reducing administrative burdens on citizens and businesses. But privacy rights and public trust must be retained. There will be a new Ministerial focus on finding and communicating a balance between maintaining the privacy of the individual and delivering more efficient, higher quality services with minimal bureaucracy."<sup>473</sup> A Transformational Government *Implementation Plan* was subsequently published in March 2006.<sup>474</sup> In July 2008 the Cabinet Office published its second annual progress report on Transformational Government.<sup>475</sup>

## 3. Data protection

As noted above, the *Data Protection Act 1998* regulates the processing (collection, use and disclosure) of personal information held on computer, other electronic media and, in certain circumstances, in paper files. "Data controllers" (organisations etc. which process personal information) must comply with eight data protection principles set out in Schedule 1 of the Act. The first data protection principle reads:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

The first principle requires that personal data may not be processed at all unless one of the conditions in Schedule 2 of the DPA is met. These conditions are quite broad. The first condition is that the individual has given consent, but there are various conditions which would enable personal information to be processed without consent. For example, processing may be carried out where:

---

<sup>472</sup> *Privacy and Data Sharing*, Performance and Innovation Unit, April 2002

<sup>473</sup> *Transformational Government*, Cabinet Office, Cm 6683, November 2005

<sup>474</sup> *Transformational Government – Implementation plan*, Cabinet Office, March 2006

<sup>475</sup> *Transformational Government Annual Report 2007*, Cabinet Office, 16 July 2008

The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Other conditions are that the processing is necessary for: the exercise of any functions conferred on any person by or under any enactment; the exercise of any functions of the Crown, a Minister of the Crown or a government department; or for the exercise of any other functions of a public nature exercised in the public interest by any person. The *Apprenticeships, Skills, Children and Learning Bill 2008-09* would be one such enactment suitable for the purposes of Schedule 2 of the DPA.

One obvious impediment to increased data sharing is the second data protection principle, given below:

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.<sup>476</sup>

Although the DPA provides for a number of exemptions and exceptions to this, few of which are blanket in nature,<sup>477</sup> greater comfort to would-be information sharers can be provided by legislation. The use of primary legislation, such as the present Bill, is less controversial than the secondary legislation route for data sharing being proposed by the *Coroners and Justice Bill 2008-09*. The latter proposes the introduction of “information-sharing orders” to facilitate information sharing by the public sector.

The Joint Committee on Human Rights has argued that any new data sharing measures should be subjected, in detail, to the level of parliamentary scrutiny that primary legislation provides for:

20. We fundamentally disagree with the Government’s approach to data sharing legislation, which is to include very broad enabling provisions in primary legislation and to leave the data protection safeguards to be set out later in secondary legislation. Where there is a demonstrable need to legislate to permit data sharing between public sector bodies, or between public and private sector bodies, the Government’s intentions should be set out clearly in primary legislation. This would enable Parliament to scrutinise the Government’s proposals more effectively and, bearing in mind that secondary legislation cannot usually be amended, would increase the opportunity for Parliament to hold the executive to account.<sup>478</sup>

---

<sup>476</sup> *Data Protection Act 1998*, Schedule 1, Part I

<sup>477</sup> Not even national security: see *Tolley’s Data Protection Handbook*, 4<sup>th</sup> Edition, 2006, chapter 20.

<sup>478</sup> Joint Committee on Human Rights, *Data Protection and Human Rights*, HL 72/HC 132, 2007-08 para 20