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# ***The Education Bill* [HL]**

**Bill 77 of 2004-05**

The *Education Bill* was introduced in the House of Lords on 30 November 2004. It was brought to the House of Commons on 4 March 2005, and is due to have its second reading debate on 14 March 2005.

The Bill provides the legislative basis for the Government's *New Relationship with Schools* proposals, the central feature of which is a reformed school inspection system. The Bill's other main provisions include changes to the arrangements for school funding and school organisation, an extension of the Teacher Training Agency's remit, and provision for the sharing of certain data. Some of the Bill's provisions apply to England and Wales, some apply only to England or only to Wales, and provisions relating to the supply of data for educational maintenance allowances apply to the UK.

This research paper provides background information on the Bill's main provisions, and notes some of the key issues raised during the Lords' consideration of them. The paper is not intended to be a clause-by-clause account; the Explanatory Notes that accompany the Bill provide detailed information on its provisions.

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## Summary of main points

The Education Bill was introduced in the House of Lords on 30 November 2004, and was brought to the House of Commons on 4 March 2005. This portmanteau Bill, consisting of 128 clauses and 19 Schedules, provides the legislative basis for the Government's *New Relationship with Schools* proposals, and the Department for Education and Skills' *Five Year Strategy for Children and Learners*, although some of the changes set out in these documents do not require legislation and so are not included in the Bill. The stated aim of the Government's policies is to free schools from bureaucratic burdens and provide for greater school autonomy.

A central feature of the new relationship with schools is a reformed school inspection system that provides for more frequent and shorter inspections based on the school's own self evaluation. The Bill repeals the *School Inspections Act 1996* and re-enacts many of its provisions, but makes significant changes. It removes the requirement on Her Majesty's Chief Inspector of Schools in England to maintain a register of registered inspectors. The Chief Inspector will become responsible for all inspections and will be accountable for all reports. In carrying out his functions he may appoint independent additional inspectors. There is general support for shorter and more regular inspections. However, concern has been expressed about the details of the new arrangements and in particular about the need to ensure that additional inspectors have the necessary qualifications, skills and experience. The Bill was amended in the Lords to address some of these concerns.

The provisions in the Bill relating to school inspection in Wales mainly re-enact existing provisions, and inspections in Wales will continue to be conducted by HMI or registered inspectors. However, the National Assembly for Wales would be empowered to introduce in Wales similar provision to the reformed system proposed for England.

The Bill also provides the legislative framework to extend the circumstances in which a local education authority must invite proposals for a new or replacement secondary school; extend the remit of the Teacher Training Agency, and to make other changes related to the training of the whole school workforce; enable maintained schools to receive their individual school budgets over a three year period based on the academic year; replace the current statutory school governors' annual report and annual parents' meeting with a school profile that will give key information about the school; provide for the collection and sharing of various data; enable maintained schools to offer their pupils limited courses of higher education; make special provision in school admission arrangements for children in local authority care; place restrictions on the disposal of certain foundation schools' land; and ensure that excluded pupils attend alternative educational provision.

Some of the Bill's provisions apply to England and Wales, some apply only to England or only to Wales, and provisions relating to the supply of information in relation to educational maintenance allowances apply to the UK. A check list of the territorial application of each clause of the Bill is given in Annex A of the Explanatory Notes on the Bill.



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# I Introduction

The Education Bill was introduced in the House of Lords on 30 November 2004, and was brought to the House of Commons on 4 March 2005.<sup>1</sup> Its provisions are part of a wider package of reforms that were set out in the Department for Education and Skills' *Five Year Strategy for Children and Learners*,<sup>2</sup> and *A New Relationship with Schools*,<sup>3</sup> and in the National Assembly for Wales' 2001 paving document *The Learning Country: An Comprehensive Education and Lifelong Learning Programme to 2010 in Wales*.<sup>4</sup> Many of the reforms do not require legislation. The Bill makes provision for those reforms that require a legislative framework.

The stated aim the Government's strategy is "to establish a new relationship between government and schools. The overall purpose of this strategy is to reduce the burden of bureaucracy for schools, freeing up resources within schools, enabling them to concentrate on the core task of delivering high quality education."<sup>5</sup> However, some commentators see the Bill, particularly its school organisation and school funding provisions, as an attempt to wrest power from local authorities.<sup>6</sup>

Many of the Bill's provisions, particularly relating to school inspection, have to be seen within the wider context of the *Children Act 2004*, which puts a duty on a range of bodies to safeguard and promote the welfare of children. The Act created the legislative framework for the proposals and recommendations set out in the Green Paper, *Every Child Matters*, published in September 2003.<sup>7</sup> One of the Act's central provisions establishes a duty to make arrangements to promote co-operation between services to improve the well-being of children.

The Bill consists of 128 clauses and 19 Schedules. Some of the provisions apply to England and Wales, some apply only to England or only to Wales, and provisions relating to the supply of information in relation to educational maintenance allowances apply to the UK. A check list of the territorial application of each clause of the Bill is given in Annex A of the Explanatory Notes on the Bill.

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<sup>1</sup> Education Bill, Bill 77, and Explanatory Notes Bill 77-EN, <http://pubs1.tso.parliament.uk/pa/cm200405/cmbills/077/2005077.htm>

<sup>2</sup> *Five Year Strategy for Children and Learners*, DfES, July 2004, Cm 6272, <http://www.dfes.gov.uk/publications/5yearstrategy/>

<sup>3</sup> *A New Relationship with Schools*, DfES/Ofsted, <http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.displayfile&id=3666&type=pdf>

<sup>4</sup> *The Learning Country: An Comprehensive Education and Lifelong Learning Programme to 2010 in Wales*, NAW, August 2001, <http://www.wales.gov.uk/subieducationtraining/content/PDF/learningcountry-e.pdf>

<sup>5</sup> DfES Regulatory Impact Assessment, Education Bill, [http://www.dfes.gov.uk/ria/assessmentFiles/riaFile\\_60.pdf](http://www.dfes.gov.uk/ria/assessmentFiles/riaFile_60.pdf)

<sup>6</sup> "Ringing in the New Year", *Times Educational Supplement*, 7 January 2005, p 6

<sup>7</sup> <http://www.everychildmatters.gov.uk/key-documents/>

The Bill is divided into five parts.

**School Inspection and other inspections by school inspectors:** Part 1 (including Schedules 1 to 9) repeals the *School Inspections Act 1996* and re-enacts many of the Act's provisions, with some significant changes, some of which apply to England only and some to Wales only. It reforms school inspection arrangements in England in line with the plans to introduce more frequent, shorter inspections based on a school's own self-evaluation. The requirement on Her Majesty's Chief Inspector of Schools in England to maintain a register of registered inspectors is removed. The Bill gives the National Assembly for Wales (NAW) the power to introduce similar reforms in the future. It revises the current categorisation for schools that are causing concern by introducing a new designation of requiring significant improvement, and removes the duty on a school to provide an action plan. The inspection of early years provision is aligned with school inspections.

There are a number of Wales-only provisions that provide for the inspection of careers services in Wales; for the NAW to establish an advisory panel on inspection matters; and for the NAW to provide advice on the appointment of the Chief Inspector for Wales.

**School Organisation:** Part 2 extends the circumstances in which a local education authority (LEA) must invite proposals for a new or replacement secondary school. The aim is to promote diversity of provision by extending the requirements for secondary school competitions whenever a new school is proposed unless the Secretary of State decides that a competition is not required.

A new clause (now clause 70) requiring statutory consultation on the closure of rural primary schools was added to the Bill by an amendment moved by Baroness Morris of Bolton, an Opposition Whip. This requires consultation with registered parents of the school and the relevant parish, borough and district councils in England or the community council in Wales, and for specific matters to be taken into consideration.

Also a new clause (now clause 72) was added to the Bill to help protect special schools from closure. Under the new clause moved by Lord Hanningfield, Opposition Spokesperson for Office of the Deputy Prime Minister, no local authority can close a special school without first consulting with all local authorities that send pupils to the special school in question and with all registered parents of registered pupils attending the school.

**Training the school workforce:** Part 3 broadens the objectives of the Teacher Training Agency (TTA) so that it may carry out activities in relation to the whole school workforce, not just in relation to teaching. The TTA is renamed the Training and Development Agency for Schools, and is empowered to take on new roles in the provision of training and development for the school workforce.



**Miscellaneous:** Part 4 (including Schedules 16 to 18) contains a number of miscellaneous provisions relating to maintained schools, information sharing, and attendance for excluded pupils at alternative educational provision.

In relation to maintained schools, Part 4 provides for schools to adjust their accounting period from financial year to academic year; for the introduction of a guaranteed 3-year budget for schools; for the delegation of powers from the Secretary of State to school forums enabling them to agree proposals from local education authorities in England for variations in central expenditure limits as part of the local setting of school budgets; and allows for similar provisions for Wales to be enacted by order of the NAW, should it wish to do so at a later date.

Part 4 also provides for LEAs to set annual targets for pupil performance; for the removal of the requirement on schools to produce an annual governors' report and to hold an annual parents' meeting, and the introduction of the school profile in England only; for limited courses of higher education to be provided and funded in maintained schools; for school admission arrangements to make special provision for children who are in the care of the local authority; and for safeguards to apply to the disposal of publicly-funded, foundation school land.

Provision is made for data to be shared between the Department for Education and Skills (DfES) and Inland Revenue (IR) and the Department for Work and Pensions (DWP) in connection with education maintenance allowance applications, as a means of reducing fraud; for data to be shared between the DfES and IR and the DWP for the purpose of improving the administration of free school lunches etc; and for the collection of data on individual teachers and support staff to be held on a school workforce database for statistical, research and other purposes.

Clauses 115 and 116 of Part 4 relate to attendance at alternative educational provision. The Bill provides for sanctions (prosecution or a fixed penalty notice) to be used against the parents of children who fail to secure the attendance of their children at alternative education provision that has been made for the child. There is provision for a defence for a parent who proved that suitable education is being provided at home or by other means.

**General:** Part 5 (including Schedule 19) contains general incidental and supplemental provisions including those relating to the functions of the National Assembly for Wales, subordinate legislation, general interpretation, repeals, commencement and extent.

The potential impact of the Bill's provisions on businesses, charities, voluntary sector organisations and the public sector are set out in the Regulatory Impact Assessment (RIA), which is available on the DfES website.<sup>8</sup> The Secretary of State for Education and Skills has stated that the Bill's provisions are compatible with the European Convention

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<sup>8</sup> <http://www.dfes.gov.uk/ria>

on Human Rights. Four provisions - relating to data sharing, and the disposal of land by foundation schools - in the Bill engage the Convention, and DfES's views on these are set out on page 48 of the Explanatory Notes to the Bill.

The House of Lords Delegated Powers and Regulatory Reform Committee considered the delegated powers in the Bill and concluded that there was nothing that it wished to draw to the attention of the House.<sup>9</sup>

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<sup>9</sup> House of Lords Delegated Powers and Regulatory Reform Committee 4<sup>th</sup> Report of Session 2004-05, HL Paper 19, published 16 December 2004: <http://www.publications.parliament.uk/pa/ld/lddelreg.htm>

## II Part 1: School Inspection and other inspections by school inspectors

A comparison between the main features of the current system and the proposed new system is reproduced in Appendix A to this research paper.

### A. Current school inspection regime in England

The inspection of maintained schools is governed by the *School Inspections Act 1996*, as amended.<sup>10</sup> The status and functions of Her Majesty's Chief Inspector for England (HMCI) and Her Majesty's Chief Inspector of Education and Training in Wales, and the requirements for registered inspectors are set out in the 1996 Act. It also covers the procedure for inspections.

The *Education (Schools) Act 1992* established the Office for Standards in Education (Ofsted) as a non-ministerial government department to take responsibility for the inspection of all schools in England. Before that, the inspection of schools was carried out by Her Majesty's Inspectorate which was a branch of the Department of Education and Science (DES). Ofsted has responsibility for a range of educational settings, and its role also includes the inspection of local education authorities, teacher training institutions and youth work. During 2001, Ofsted became responsible for inspecting all 16-19 education and for the regulation of early years child care, including childminders.

The effectiveness of Ofsted and the impact of the inspection process on school performance were evaluated by Ofsted and the Institute of Education in the report, *Improvement through Inspection*, published in July 2004<sup>11</sup> and by the Education and Skills Committee in its report, *The work of Ofsted*, published in September 2004;<sup>12</sup> and, in the evidence taken by the Committee since then.<sup>13</sup>

Part I of the *School Inspections Act 1996* provides for four kinds of school inspection:

- *ad hoc* inspection of schools, carried out by Her Majesty's Inspectors (HMIs) at the request of the Secretary of State or on the initiative of the Chief Inspector;

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<sup>10</sup> The 1996 Act consolidated the provisions of the *Education (Schools) Act 1992* and Part V of the *Education Act 1993*. The *Education Act 1997* and the *School Standards and Framework Act 1998* amended some of the provisions of the 1996 Act, and the *Education Act 2002* made further changes.

<sup>11</sup> HMI 2244, <http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.displayfile&id=3696&type=pdf>

<sup>12</sup> House of Commons Education and Skills Committee, Sixth Report of Session 2003-04, *The work of Ofsted* H C Paper 426, September 2004

<sup>13</sup> Education and Skills Committee, Uncorrected Oral Evidence, 3 November 2004, <http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmeducski/uc1121-i/uc112102.htm>

- periodic inspections of schools under section 10 of the 1996 Act, carried out by registered inspectors;
- inspections of religious education at voluntary and foundation schools that are designated as having a religious character, carried out by persons chosen by the school governing bodies; and
- LEA inspection of schools in their areas, carried out by LEA officers<sup>14</sup>

The *Education Act 2002* introduced a statutory regime in England and Wales for the registration and inspection of independent schools and set out procedures for dealing with failing independent schools.

The rest of this section of the Research Paper outlines the current arrangements for the inspection of maintained schools and certain non-maintained schools under section 10 of the *School Inspections Act 1996*.

**a. Section 10 inspections**

Under section 10 of the *School Inspections Act 1996*, as amended by the *Education Act 2002*, all maintained schools and some non-maintained schools (see below) must be inspected. Most inspections are conducted by teams of independent inspectors recruited, trained, assessed and enrolled by Ofsted. Registered inspectors usually lead inspections, and work with enrolled inspectors. An inspection team must include at least one lay inspector without experience in the management of a school or the provision of education in a school (other than as a governor or other volunteer). The registered inspector agrees the composition of the team and manages it. Apart from a lay inspector, teams must include members responsible for co-ordinating education of pupils with special educational needs, pupils in the Foundation Stage<sup>15</sup>, where relevant, and pupils using English as an additional language, where relevant. Ofsted invites inspection providers to bid for contracts under competitive tender.

The principles of inspection and what inspectors must report on are set out in the Ofsted framework for inspections. The current framework, *Inspecting Schools*, was introduced in September 2003 (referred to hereafter as the *Framework*).<sup>16</sup> It sets out the role of Ofsted and the inspection system, including how inspection teams are formed, and describes the inspection process and the structure of the evaluation schedule, which lists what judgements inspectors are required to make.

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<sup>14</sup> Butterworths, *The Law of Education*, Introduction, Chapter 8

<sup>15</sup> The Foundation Stage covers the period of education for three year old children to the end of the school reception year.

<sup>16</sup> Ofsted, *Inspecting Schools: Framework for Inspecting Schools*, HMI 1525, 2003, <http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.displayfile&id=3266&type=pdf>

There is also a series of handbooks, which complement the *Framework*, and provide much more detail on the arrangements.<sup>17</sup> The following outline of the inspection regime draws on these documents. For full information Members are referred to the 1996 Act, the *Framework* and the handbooks.

The following categories of schools (and other institutions) are inspected under section 10 of the 1996 Act:

- community, foundation and voluntary schools;
- maintained nursery schools;
- city technology colleges;
- city colleges for the technology of the arts;
- early excellence centres that have maintained nursery provision;
- community and foundation special schools;
- pupil referral units (PRUs);
- non-maintained special schools approved under section 342 of the *Education Act 1996*; and
- academies

Schools are inspected at least once within six years of the end of the school year in which they were previously inspected. More frequent inspections may be made where HMCI considers it to be necessary.

Schools are notified six to ten weeks before a planned inspection. Ofsted specifies what information and data are needed from the school before inspection.

The purpose of inspection is to provide an independent, external evaluation of the quality of the education provided by schools. The external evaluation is complemented by self-evaluation by the school. Inspection is intended to be tailored to the circumstances and performance of the school. Therefore the inspection may focus on particular aspects of the school. Current inspections collect a wealth of information. Subjects and courses of the curriculum are grouped into curriculum areas. Inspectors collect extensive information through lesson observations.

The *Framework* states that inspections must currently report on:

- the educational standards achieved in the school;
- the quality of the education provided by the school;

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<sup>17</sup> <http://www.ofsted.gov.uk/inspectors/index.cfm?fuseaction=framework>

- the quality of leadership and management, including whether the financial resources made available to the school are managed efficiently; and
- the spiritual, moral, social and cultural development of pupils at the school.

The evaluation schedule in Part C of the *Framework* covers these four requirements by requiring inspectors to evaluate the following aspects of the school's work:

- standards achieved;
- pupils' attitudes, values and personal development;
- teaching and learning;
- the quality of the curriculum;
- the care, guidance and support of pupils;
- partnerships with parents, other schools and the community;
- leadership and management;
- the areas of learning, subjects and courses of the curriculum; and
- other matters that HMCI may specify.

When inspectors make their judgements they use the evaluation schedule in Part C of the *Framework* and take account of guidance contained in the inspection handbooks. Some schools have a religious character and teach denominational religious education. The religious education and content of collective worship in such schools are not covered by section 10 inspections but are inspected separately under section 23 of the 1996 Act.

As the *Framework* explains, the inspection system operates one type of inspection for schools in each sector. One model of inspection, for example, applies to all primary, including nursery, schools. A more extended model applies to secondary schools, while a model that reflects the distinctive features of special schools and pupil referral units (PRUs) is used for them.

The *Framework* states:

The inspections of nursery, primary, secondary and special schools (including PRUs), cover all the main evaluation requirements on aspects of the school's work as set out in the Evaluation Schedule in Part C of Inspecting Schools. The areas of learning, subjects and courses inspected in different types of school are specified below.

**Nursery school inspections** include the evaluation and reporting of the standards achieved by children, taking account of their progress towards Foundation Stage early learning goals, as well as the quality of teaching and learning in each of the six areas of learning and the quality of curriculum leadership.

**Primary school inspections** include the evaluation and reporting of standards achieved by pupils, the quality of teaching and learning, curriculum leadership, and any other factors that have a bearing on pupils' achievement, as applicable, in:

- the Foundation Stage and Key Stages 1, 2 and 3;
- English (including literacy across the curriculum), mathematics (including numeracy), science, information and communication technology (ICT) and ICT capability across the curriculum and religious education (where it is inspected); and
- work seen in other subjects.

**Secondary school inspections** include the evaluation and reporting of standards achieved by pupils, the quality of teaching and learning, curriculum leadership, and any other factors that have a bearing on pupils' achievement, as applicable, including the evaluation of and reporting on:

- the National Curriculum subjects in Key Stages 2, 3 and 4, as applicable, religious education (where it is inspected);
- at least one vocational course in Key Stage 4;
- work seen in as many other subjects and courses as possible; and
- a sample of between 4 and 13 subjects or courses in the sixth form chosen according to the following principles.

A cross-section of sixth-form subjects to be inspected in detail should be chosen using the following principles.

- English, mathematics and a science subject should always be included.
- Other subjects should be drawn from across as many curriculum areas as possible.
- Where possible, a modern foreign language should be included in addition to
- English from the 'English, languages and communications' area.
- Subjects that, from pre-inspection data, appear to be particularly weak must be inspected.
- Vocationally related courses should be duly represented.
- Courses at different levels should be inspected. Where a subject or course is offered at two levels, for example advanced and intermediate vocational courses, standards and quality at both levels should be evaluated.
- Where a school is part of a shared sixth form, the subjects inspected in detail should be in that school where possible, with sampling in other schools. Circumstances may dictate more inspection outside the inspected school. Where substantial provision is made outside the school, this should be inspected to test the effectiveness of the management decisions to provide for the sixth form in this way.
- In small sixth forms (up to 100 students), attention should be given mainly to the subjects or courses followed by most students, but English, mathematics and a science should be inspected where possible.

**Special school inspections**, and the inspection of **pupil referral units (PRUs)**, include the evaluation and reporting of standards achieved by pupils, the quality

of teaching and learning, curriculum leadership, and any other factors that have a bearing on pupils' achievement in:

- English (including language and literacy across the curriculum), mathematics (including numeracy), science, information and communication technology (ICT) and ICT capability across the curriculum, and religious education (where it is inspected); and
- work seen across other curriculum areas as appropriate, considering the nature of the school.

These inspections must also include other important features of the school's provision such as outreach functions or support services.<sup>18</sup>

#### ***b. School self-evaluation***

External inspection is complemented by school self-evaluation. The key document on school self-evaluation is the “S4 self-evaluation report”, which summarises the school's views on its own strengths and weaknesses. The *Framework* explains:

Schools have a range of internal processes for monitoring their own performance and evaluating the effectiveness of their work in raising achievement. Such monitoring and evaluation should contribute, directly or indirectly, to periodic updating of the school improvement plan, which maps the priorities for action and sets out programmes for implementing them.

Inspection takes account of or contributes to these processes in several ways.

a. A brief self-evaluation report (Form S4) prepared by the school helps to focus inspection effort where it matters most and to respond to any specific issues that the inspection can usefully include. The school's summary of its self-evaluation is used as the basis for discussion between the lead inspector and the headteacher and, where possible, governors of the school, when the inspection is being planned.

b. The quality and use made of school self-evaluation is a good indication of the calibre of management. Evidence of how effectively schools undertake self-evaluation and the use they make of it helps inspectors to evaluate the quality of management in the school and the capacity of the school to improve.

In order to promote the use of self-evaluation, the self-evaluation report (Form S4) which is completed by the school before inspection, is constructed so as to match the Evaluation Schedule used by inspectors. Many schools use the Evaluation Schedule as the basis for their internal evaluation processes.

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<sup>18</sup> paragraphs 22 to 27



The lead inspector must allow sufficient time, both in the school before the inspection and in preparation, to analyse and interpret the school's performance, identify issues and themes, and design and plan the inspection so that it will reflect the essence of the school. This process must be thorough and consultative.<sup>19</sup>

**c. *Inspectors' judgements***

Inspectors are required to make a range of judgements during an inspection. Currently, these must be expressed on a seven-point scale ranging from excellent to very poor. The key questions that the inspection must consider are listed in the evaluation schedule of the *Framework*.

**d. *Outcome of inspection***

After the inspection team has reached its conclusions, these must be explained to key staff, senior managers and the governing body at separate meetings. After this oral feedback, a written report is made. This summarises the schools' effectiveness, strengths and weaknesses and what it must do to improve. It reports on each of the matters listed in the evaluation schedule of the *Framework*, each curriculum area inspected, and evaluations arising from issues specified by HMCI. The format of the report is specified.

The school checks that the draft report is factually correct but it may not change any of the judgements. If any judgement is founded on a factual error the registered inspector can change the report. The written report is completed within six calendar weeks of the inspection team leaving the school. It is sent to Ofsted, the headteacher of the school, and the appropriate authority for the school. For maintained schools a copy must be sent to the LEA or the governing body where the LEA is the appropriate authority. A copy must be sent to the person responsible for appointing the foundation governors if the school has them. The report is also sent to the Learning and Skills Council for secondary schools with sixth forms.

The school governing body must send a copy of the summary of the report to all parents and carers of pupils at the school within ten working days of receiving the report from the registered inspector. A copy of the summary and report must be made available for members of the public (copies of reports are also put on the Ofsted website).

The appropriate authority must prepare a written statement of the action it proposes to take in response to the inspection report within 40 working days (excluding holiday periods of more than five working days) of receiving it. The plan must show what action the school will take to bring about improvements in response to the issues identified in the inspection report. A copy of the action plan, or a summary of it, must be sent to the parents or carers of all pupils registered at the school. When a school requires special

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<sup>19</sup> paragraphs 30 to 33

measures, has serious weaknesses or has an inadequate sixth form (see below), a copy of the action plan must also be sent to Ofsted, with copies to each of the other parties listed in section 17 of the *School Inspections Act 1996* as amended.<sup>20</sup>

*e. Schools causing concern*

Currently there are four categories of schools that cause concern.

1. Where **special measures** are required because the school is failing or likely to fail to give its pupils an acceptable standard of education. Usually two or more major weaknesses have been found in such schools. There may be under-achievement by a large proportion or groups of pupils, unsatisfactory or poor teaching overall or in particular stages, ineffective leadership and management, a breakdown in discipline, or significant levels of racial harassment.
2. Where there are **serious weaknesses** in one or more of the school's activities although overall the school is providing an acceptable standard of education. A school may be under-achieving though not in need of special measures.
3. Where a school is **underachieving** despite satisfactory teaching overall. Such schools may appear to be achieving average or higher standards but standards may be low compared with similar schools.
4. Where a school has an **inadequate sixth form**. A school has an inadequate sixth form where it is failing, or likely to fail, to provide an acceptable standard of education for post-16 students or provides an acceptable standard of education, but has significant weaknesses in one or more of its activities for post-16 students.

Concern was expressed that the new *Framework*, introduced in September 2003, was leading to an increase in the number of schools going into special measures or having serious weaknesses, and that it was harder to achieve a satisfactory outcome under the new *Framework* than was previously the case.<sup>21</sup> A survey conducted by the National Association of Head Teachers (NAHT) suggested that inspectors were concentrating too much on weaknesses that the schools had identified in their own self-evaluation.<sup>22</sup> The 2004 *Annual Report of Her Majesty's Chief Inspector of Schools* noted that the number of schools in 2002-03 made subject to special measures following an Ofsted inspection was higher (160) than in the previous year (129).<sup>23</sup> Complaints about inspections in 2002-03 were higher than in the previous year.<sup>24</sup> Ofsted figures published on 6 February 2004

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<sup>20</sup> *Framework*, see paragraphs 119 to 122

<sup>21</sup> "Fault may be ours, says OFSTED chief", *Times Educational Supplement*, 7 May 2004, p 3

<sup>22</sup> NAHT Press Notice, *NAHT writes to Ofsted Chief Inspector expressing concerns about the new Ofsted Framework*, 16 January 2004

<sup>23</sup> House of Commons Paper 170, February 2004, p 63

<sup>24</sup> p 101

showed that the number of schools in special measures increased by 10% over the course of the autumn term 2003; from 282 to 311 schools. The Chief Inspector acknowledged that the new framework was a factor in explaining the increase.<sup>25</sup>

*f. Complaints about inspections*

The *Framework* document sets out a complaints procedure but states that the vast majority of inspections are free of problems. Where a concern cannot be resolved with the registered inspector, the next step is to complain to the contractor responsible for the inspection, and contractors have their own procedures for dealing with complaints. If the problem has not been resolved, the complaint may be referred to Ofsted no later than three months after the school receives its inspection report. Where a school or any other party is dissatisfied with the way Ofsted has dealt with the complaint, the matter may be referred to the Independent Complaints Adjudicator. A request for adjudication must be made within three months of Ofsted's final response to a complaint.<sup>26</sup>

The NAHT has called for changes in the appeal procedures. It has argued that the current procedures are defective as the adjudicator has little real power, complaints take too long to be dealt with, and Ofsted reports cannot be amended unless the registered inspector who carried out the inspection agrees.<sup>27</sup>

## **B. Proposals for a new school inspection regime**

In autumn 2003, Ofsted published its strategic plan for 2004-2007 which announced that it would undertake a fundamental review of the approach to school inspection. The review was to build on the revised inspection framework that was introduced with effect from September 2003. Also, Ofsted started to develop an integrated inspection framework in response to the green paper, *Every Child Matters*.<sup>28</sup>

A consultation paper was issued in February 2004 entitled *The Future of Inspection*.<sup>29</sup> This stated that inspection should become a more natural part of the normal business of schools, rather than an infrequent event that does not necessarily see the school as it usually is. A new system was proposed that would reduce the burden on schools. Each inspection would be a short, sharp review, carried out with minimal notice by teams usually comprising both HMI and independent inspectors and childcare or other specialist inspectors, where necessary. It was envisaged that, overall, the number of inspector days in the regular programme of school inspections would be about half the current figure. Ofsted would continue to report to parents, but reports would be much briefer, would

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<sup>25</sup> <http://www.ofsted.gov.uk/news/index.cfm?fuseaction=news.details&id=1522>

<sup>26</sup> paragraphs 140 to 145

<sup>27</sup> NAHT Press Notice, *NAHT seeks changes to Ofsted appeal procedures*, 22 October 2004

<sup>28</sup> DfES, *Every Child Matters*, Cm 5860

<sup>29</sup> Ofsted, HMI 2057, 10 February 2004, <http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.displayfile&id=3566&type=pdf>

provide a clearer guide to the school's priorities for improvement, and would be accompanied by a new school performance profile which would replace school governing bodies' annual reports. There would be shorter intervals between inspections.

The Ofsted/DfES analysis of responses to *The Future of Inspection* was reported in the Appendix to *A New Relationship with Schools*. The analysis noted that there was broad support for shorter, more frequent inspections. There was substantial support for schools being given less notice of an inspection though there were different views about how much notice should be given. The analysis reported that parents in particular felt that short notice would enable inspectors to see the "real school". Some head teachers and governors and the National Governors' Council (NGC) and the National Association of Governors & Managers (NAGM) suggested that a notice period of one week would increase the possibility of governor involvement, and would enable the school to arrange practical matters. Some respondents favoured a two week notice period. There was strong support from head teachers, governors and teachers to the proposal for greater collaboration between HMI and independent inspectors in school inspection. Those commenting on the introduction of a more consistent approach to inspection of education and care through the age range from 0 to 19 years, stressed the need for taking account of differences in education and care for the different age ranges.

The joint Ofsted and DfES document, *A New Relationship with Schools*,<sup>30</sup> set out the Government's intention to change the inspection system as part of a series of changes:

We propose a cluster of interlocking changes that will affect school inspection, schools' relations with local and central government, schools' self-evaluation and planning, data collection from schools, and communications with schools.<sup>31</sup>

The proposed changes to the inspection system were summarised in *A New Relationship with Schools* as follows:

- shorter, sharper inspections that take no more than two days in a school and concentrate on closer interaction with senior managers in the school, taking self evaluation evidence as the starting point
- shorter notice of inspections, to avoid schools carrying out unnecessary pre-inspection preparation and to reduce the levels of stress often associated with an inspection. Shorter notice should also enable inspections to review the school in an environment much closer to the schools more usual working pattern

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<sup>30</sup> HC Deb 15 June 2004, 23WS

<sup>31</sup> *A New Relationship with Schools*, DfES/Ofsted,  
<http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.displayfile&id=3666&type=pdf>

- smaller inspection teams with a greater number of inspections led by one of Her Majesty's Inspectors (HMI). Furthermore, Her Majesty's Chief Inspector (HMCI) will be accountable for all reports, including those written by non-HMI led inspection teams
- more frequent inspections, with the maximum period between inspections reduced from the current six years to three years, though more frequently for schools causing concern
- more emphasis placed on the school's own self-evaluation evidence, as the starting point for inspection and for the school's internal planning, and as the route to securing the regular input and feedback from their users – pupils, their parents and the community – in the school's development
- a common set of characteristics to inspection across all phases of education from early childhood to 19
- a simplification of the categorisation of schools causing concern. We intend to retain the current approach to schools that need special measures and remove the labels of serious weakness and inadequate sixth form, replacing them with a new single category of improvement notice for schools where there are weaknesses in the progress of pupils or in key aspects of the school's work.<sup>32</sup>

*A New Relationship with Schools* stated that there was a widespread view among schools that at present too much notice of inspection (currently 6 to 10 weeks) is given. The more notice given, the greater the risk that the schools spend unnecessary time and resources on pre-inspection preparation. Therefore under the proposed new arrangements schools will be given 2 to 5 days notice of inspection. *A New Relationship with Schools* noted that there may be a small number of occasions when no-notice visits would be appropriate, but that HMCI would use such a power sparingly.<sup>33</sup>

It is envisaged that the school's self-evaluation will be at the heart of the inspection process. As part of the drive to reduce bureaucracy, a new single self-evaluation form will be introduced which schools will be expected to keep up-to-date annually. Ofsted and the DfES will jointly give guidance on how schools can judge whether they are carrying out effective self-evaluation but schools will be expected to develop their own process of self-evaluation as best suits them.<sup>34</sup> Inspections will involve discussions with staff and pupils, scrutiny of written work, examination of data and assessment records and the tracking of pupils throughout the school day. The inspection of the subjects of the curriculum will be less prominent in the new inspection process. Instead, Ofsted will

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<sup>32</sup> p5

<sup>33</sup> p16

<sup>34</sup> p7

gather information about subjects through a separate programme of subject-focused surveys in a sample of schools.<sup>35</sup>

Under the *New Relationship with Schools* proposals, all schools will have School Improvement Partners (SIPs). The idea is that the SIP will be a “critical friend”, in many cases a serving head, who help set targets and priorities and identify support that is needed. It is envisaged that the SIP will discuss how the school’s plans respond to school inspection findings, and help the school find any external support that is needed, whether from the LEA or other agencies.

At present, registered inspectors lead inspections and are responsible for the publication of reports. Under the proposed new system HMCI will be responsible for all reports. This will mean that Ofsted will be able to amend any report, including those written by contracted inspectors, whereas at present a report can only be changed with the agreement of the inspector carrying out the inspection.

Lay inspectors will not be involved in all inspections though, *A New Relationship with Schools* says that Ofsted values the contribution lay inspectors make and is exploring ways of using them, for example across a group of schools within an area.<sup>36</sup>

Ofsted has conducted a number of pilot inspections under the proposed new regime, and the experiences from these are summarised in chapter 3 of *A New Relationship with Schools*.

As noted above, currently there are four “schools causing concern” categories. *A New Relationship with Schools* described how the arrangements would change. It acknowledged that occasionally schools that had been made subject to special measures had already made sufficient progress to demonstrate that they had the capacity to improve without the need for special measures treatment. Also, the document noted that the differences between the monitoring regimes for the different categories were not easy to justify, and the underachieving category was regarded as being the least effective approach. Under the new system there will be only two categories of schools causing concern:

- schools requiring special measures because they are failing to provide an acceptable standard of education and have shown insufficient capacity to improve; and
- schools subject to an improvement notice because they are not performing as well as they should in one or more respects although they are providing an acceptable standard of education.

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<sup>35</sup> p16

<sup>36</sup> *ibid*

In September 2004 the Education and Skills Committee published a report on the work of Ofsted.<sup>37</sup> The report examined the Government's proposals for a new inspection regime, and welcomed the changes. However, it stressed that the central role of self-evaluation needed to be carefully developed in order for it to function effectively. Also the report said that much work needed to be done to develop consistent grading structures across the different institutional inspections.

While supporting the general thrust of the proposed changes, the NAHT expressed reservations about the short notice for inspections,<sup>38</sup> and called for changes in the appeal procedures. It pointed out that if reports arising from the new short, sharp inspection system are published within three weeks of a school inspection, then schools will have little time for an appeal where they consider the report to be flawed.<sup>39</sup>

A consultation document on a new *Framework for Inspecting Schools*, which sets out the proposed requirements for school inspection from September 2005, was issued by Ofsted on 1 November 2004.<sup>40</sup> It incorporated the proposed changes in school inspections that were set out in *A New Relationship with Schools*, and reflected the requirements contained in the *Children Act 2004* for Ofsted to develop (with others) a framework for the integrated inspection of children's services. It noted that:

In the move to adopt a common set of characteristics to inspection across all phases of education, we propose that there will be a **common inspection schedule for schools and colleges** for the inspection of education from early childhood to the age of 19. Where judgements are only required in some settings, because of the nature of their work or the statutory requirements of inspection, this is made clear. We propose to continue to have four key parts to this common inspection schedule for schools and colleges, although the requirements within them have been considerably reduced.

At the same time as the consultation on the *Framework for Inspecting School* was published, Ofsted and the Adult Learning Inspectorate issued for consultation *The Common Inspection Framework: For Inspecting Education and Training*, which set out the principles to be applicable to the inspection of post-16 non-higher education and training.<sup>41</sup> The consultation period ended on 31 January 2005.

These Frameworks comprise:

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<sup>37</sup> House of Commons Education and Skills Committee, *The work of Ofsted*, Sixth Report of Session 2003-04, HC Paper 426

<sup>38</sup> NAHT Press Notice, NAHT comments on the proposals for future school inspections, 15 June 2004

<sup>39</sup> NAHT Press Notice, *NAHT seeks changes to Ofsted appeal procedures*, 22 October 2004

<sup>40</sup> *Framework for Inspecting Schools*, Ofsted, HMI 2357, <http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.displayfile&id=3743&type=doc>

<sup>41</sup> <http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1264>

- the common inspection schedule, which lists the questions that inspectors must ask in every institution or setting that provides education and training. There will be a common grading scale for inspection judgements ranging from 1 for outstanding to 4 for inadequate;
- procedures where provision is inadequate;
- principles of inspection;
- code of conduct for inspectors; and
- complaints about inspection

### **C. School inspection in Wales**

School inspection in Wales is carried out by Estyn, which is the office of Her Majesty's Inspectorate for Education and Training in Wales. It is independent of, but funded by, the NAW under Section 104 of the *Government of Wales Act 1998*.

Estyn carries out inspections of schools under Section 10 of the *School Inspections Act 1996*. The Act requires the Chief Inspector for Wales to maintain a register of inspectors whom s/he considers appropriate to conduct these inspections. Under the Act, the Chief Inspector may also direct Her Majesty's Inspectors of Education and Training (HMI) to inspect schools, where necessary. All schools are inspected at least once every six years. These inspections cover all aspects of a school's provision, apart from denominational education and the content of collective worship in those voluntary schools specified in Section 23 of the Act.

As in England, the function of an inspection under Section 10 of the Act is to report on:

- the educational standards achieved in the school;
- the quality of education provided by the school;
- the quality of leadership in and management of the school, including whether the financial resources made available to the school are managed efficiently; and
- the spiritual, moral, social and cultural development of pupils at the school.

Registered inspectors are required to comply with Estyn's *Common Inspection Framework for Education and Training in Wales* and relevant guidance.<sup>42</sup> HMI monitors the quality of Section 10 inspections on behalf of the Chief Inspector.

In September 2004, after wide consultation, Estyn introduced new inspection arrangements. The Chief Inspector said that the new system was characterised by the following features:

- an emphasis on listening to learners;

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<sup>42</sup> [http://www.estyn.gov.uk/inspection\\_arrangements.asp](http://www.estyn.gov.uk/inspection_arrangements.asp)



- a common inspection framework for almost all of Estyn’s work supported by handbooks of guidance showing how this will be applied in each sector;
- shorter notice of inspection;
- using the provider’s self-evaluation as the starting point for the inspection;
- extending Estyn’s peer assessment scheme into all areas of its work;
- customising the inspection in the light of the “risk” presented by the institution; inspections will be described as either short, standard or full inspection depending on the “risk” presented by the institution;
- involving a representative nominated by the institution being inspected as a member of the inspection team; and
- publishing a response from the institution as part of the inspection report.<sup>43</sup>

Further background information can be found in a Frequently Asked Questions guide that Estyn prepared for schools on the new inspection arrangements.<sup>44</sup>

The Government has taken the view that it is too soon to change the new inspection system in Wales although provision is made in the Bill to allow NAW to introduce similar reforms to those in England in the future.

## **D. The Bill’s school inspection provisions**

### **1. An overview**

The following highlights some of the major provisions in the Bill which relate to school inspection. It does not give a clause-by-clause account; the Explanatory Notes on the Bill provide a detailed account of the clauses.

The Bill repeals the *School Inspections Act 1996* (SIA 1996) and re-enacts many of its provisions, but makes some significant changes. Some of the provisions apply to England only, some to Wales only, and some to England and Wales. As noted earlier, a list of the territorial application of each clause of the Bill is given in Annex A of the Explanatory Memorandum on the Bill.

New duties are added to the functions of the Chief Inspectors (clauses 2 and 20). In addition to the existing duties of keeping the Secretary of State/NAW informed about the quality of education provided in schools, educational standards, the quality of leadership and management of schools, and the spiritual, moral, social and cultural development of pupils, he/she would also be required to inform the Secretary of State/NAW about how far education meets the needs of the range of pupils at schools and the contribution made by schools to the well-being of their pupils. Well-being is defined as having regard to the matters mentioned in section 10(2) of the *Children Act 2004*, namely:

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<sup>43</sup> [http://www.estyn.gov.uk/press\\_releases/LandmarkDay.pdf](http://www.estyn.gov.uk/press_releases/LandmarkDay.pdf)

<sup>44</sup> [http://www.estyn.gov.uk/publications/New\\_Inspection\\_Guidance\\_FAQs.pdf](http://www.estyn.gov.uk/publications/New_Inspection_Guidance_FAQs.pdf)

- physical and mental health and emotional well-being;
- protection from harm and neglect;
- education, training and recreation;
- the contribution made by them to society;
- social and economic well-being.

In addition to these duties, as a result of amendments to the Bill in the Lords, the Chief Inspector in England would be required to inform the Secretary of State about the extent to which schools are developing self-evaluation procedures, and about the behaviour and attendance of pupils (Clause 2).

One of the major changes the Bill makes is to remove the requirement on Her Majesty's Chief Inspector of Schools in England to maintain a register of registered inspectors in relation to England. Clause 2 re-enacts section 2(1) to (6) of the 1996 Act, with the exception of the duty on the Chief Inspector to maintain a register of inspectors, and the regulatory duties related to the system of inspection by registered inspectors.

Clause 5, which relates to England, requires all schools previously covered by section 10 of SIA 1996 to be inspected at intervals to be prescribed in regulations. Section 10 of SIA 1996 requires the inspection of those schools to be carried out by a registered inspector. However clause 60 repeals the SIA 1996, thereby removing the requirement for registered inspectors in England. Clause 5 places the responsibility for inspecting every school in England on the Chief Inspector. Under Schedule 1 paragraph 5, the inspections may be carried out by HMI, any other member of the Chief Inspector's staff, or any additional inspector.

Clause 6 carries forward the provisions in the SIA 1996 to notify parents of registered pupils at the school of a school inspection (made under clause 5 of the Bill) and to invite their views on matters relating to the school. But it does not carry forward the further requirement that the school arrange a meeting between parents and the inspectors. Clause 7 was added to the Bill in the Lords to place a specific duty on the Chief Inspector, when conducting a section 5 inspection, to have regard, amongst other things, to the views of certain persons, including the registered parents of registered pupils. The other persons listed include the head teacher, the governing body in the case of a maintained school, the proprietor in the case of any other school, members of the school staff and registered pupils at the school. Provision is made for others also to be specified.

The Bill re-enacts the provisions in the SIA 1996 for the registration of inspectors in Wales, and for school inspections in Wales to be conducted by HMI or a registered inspector. However, Clause 62 gives the NAW the power to introduce in Wales, if it wishes, similar provision to that being proposed for England.

The Bill revises the current categorisation for schools that are causing concern, introducing a new designation of requiring significant improvement, and removes the

duty on a school to provide an action plan. Under the Bill there will be two statutory categories of schools causing concern:

1. Schools that require special measures because they are failing to give their 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. The Explanatory Notes<sup>45</sup> explain that the Bill provides a revised definition of the existing special measures category, with a school's capacity to improve now to be taken into account in inspectors' judgements. The definition in section 13(9) of SIA 1996 is that "special measures are required to be taken in relation to a school if the school is failing, or likely to fail, to give its pupils an acceptable standard of education." Schools will no longer be regarded as requiring special measures merely because they are 'likely to fail'. Special measures will be required only if the school is failing to provide an acceptable standard of education and the capacity to secure the necessary improvement is not demonstrated; and

2. Schools requiring significant improvement. The Explanatory Notes explain that schools which would previously have been judged to have serious weaknesses, as defined in section 15 of the *School Standards and Framework Act 1998*, inadequate sixth forms, as defined in paragraph 1(2) of Schedule 7 of the *Learning and Skills Act 2000*, or to be underachieving, as defined in Ofsted guidance, are expected to fall into this new category.

The Bill seeks to amend section 19 of the *School Standards and Framework Act 1998* (as amended by section 56 of the *Education Act 2002*) to curtail the power of the Secretary of State or the NAW to direct a local education authority to close a school which is causing concern. The Explanatory Notes explain that at present the Secretary of State or the NAW has such power in relation to schools which require special measures or have serious weaknesses. In future, this power will apply only in relation to a school which is placed in special measures.

The Bill seeks to amend the *Learning and Skills Act 2000* to take account of the new category of significant improvement. The current categorisation of 'inadequate sixth form' is replaced with a 'sixth form requiring significant improvement'.

The provisions in the Bill relating to school inspection in Wales mainly re-enact existing provisions in SIA 1996. There are however some significant changes, in particular a new-regulation-making power for the NAW to establish a panel to advise it on any matters relating to the functions of the Chief Inspector; and for the Assembly to provide advice on the appointment of the Chief Inspector for Wales. As noted above, the Bill provides a new order-making power giving the Assembly flexibility to make changes to primary legislation to adjust elements of the inspection system in Wales. This would

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<sup>45</sup> see the notes on clause 44

enable the Assembly, should it wish, to mirror the approach being taken forward in England, either in part or in full.

The DfES Regulatory Impact Assessment, published when the Bill was presented in the Lords, summarises the school inspection changes:

In summary, the provisions will:

- make Her Majesty's Chief Inspector (HMCI) accountable for all reports and responsible for all inspections
- involve a greater number of HMI in routine school inspections
- remove the requirement to tender from contractors for each school inspection
- remove the requirement on HMCI to maintain a register of authorised inspectors
- provide for shorter, sharper, more frequent inspection, with less notice
- enable HMCI to constitute inspection teams as he/she sees fit. This will remove the requirement for lay inspectors to be included in the inspection team
- repeal the requirement for a parents' meeting during an Ofsted inspection
- repeal the requirement for Ofsted to meet with governors during an inspection
- improve and simplify the current arrangements for schools causing concern<sup>46</sup>

The Regulatory Impact Assessment envisages that:

Existing HMI would be appointed as managing inspectors for all inspections within a given geographical area. The managing inspectors would exercise oversight of these inspections whether or not they were on the inspection team. Teams would comprise independent inspectors, recruited, trained, scheduled and supported by contractors and on some inspections, HMI. A smaller number of contractors are envisaged, working on a geographical basis to support the managing inspectors and with overall control resting with the managing inspector. Reports will be prepared by the lead inspector and cleared for publication by the managing inspector.<sup>47</sup>

On 9 March 2005, the DfES published, *A New Relationship with Schools: Next Steps*, which outlines the proposed timetable for the implementation of the changes, subject to parliamentary approval of the Bill. At the same time, *A New Relationship with schools: Improving Performance through School-Self Evaluation*, was published.<sup>48</sup>

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<sup>46</sup> The Regulatory Impact Assessment, DfES

<sup>47</sup> p 11, option (ii)

<sup>48</sup> <http://publications.teachernet.gov.uk/eOrderingDownload/1288-2005DOC-EN.pdf>  
and <http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.displayfile&id=3862&type=pdf>

## 2. Initial reaction

Commenting on the publication of the Bill, Her Majesty's Chief Inspector of Schools, David Bell, welcomed the proposed reforms, which he said would result in a "more efficient and proportionate inspection system that will reduce the burden on teachers. At the same time more frequent inspections at little or no-notice will also ensure that parents and pupils receive up-to-date no holds barred information about the quality of education in their local schools."<sup>49</sup>

The NAHT supported the principles behind the new shorter and more regular inspection system but expressed concern about some of the details - the fate of a small school in the hands of one inspector, for example, and appeal arrangements.<sup>50</sup>

The NUT said that the reforms were moving the right direction but did not go far enough, and it advocated a more radical overhaul of the system based on a new system of school evaluation with separate complaints and appeal procedures.<sup>51</sup>

The General Teaching Council for England (GTC) generally welcomed the thrust of the proposals for a more streamlined inspection system, within the context of a more developed model of school self-assessment. It emphasised that the GTC's central priority is to develop and promote the teaching profession's capacity for self-evaluation and improvement.<sup>52</sup>

The Local Government Association (LGA) has pointed out that the Bill was published at a time when a number of consultations relating to the inspection of schools and children's services were ongoing. It said that the reforms are being proposed without sufficient regard for how the school inspection system will integrate with, and affect, children's services and local authority inspection.<sup>53</sup>

## 3. Lords' consideration

During the second reading debate Peers generally welcomed proposals for a more streamlined school inspection system but raised concerns and questions about:

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<sup>49</sup> OFSTED Press Notice 1 December 2004,  
<http://www.ofsted.gov.uk/news/index.cfm?fuseaction=news.details&id=1634>

<sup>50</sup> NAHT, Education Bill (HL) Briefing paper for second reading, 10 December 2004,  
<http://www.naht.org.uk/newsdocs/542/educationbillsecondreadinghol.pdf>

<sup>51</sup> NUT, Education Bill Briefing for House of Lords second reading, 13 December 2004

<sup>52</sup> GTC, The Education Bill (HL), Second Reading Briefing,  
<http://www.epolitix.com/NR/rdonlyres/9E28FC9E-ACA7-49FB-AA31-599FABF1BAB8/0/GTC101204.pdf>

<sup>53</sup> LGA, Lords Committee, briefing paper,  
<http://www.lga.gov.uk/Documents/Briefing/Lobbying/Legislative%20Programme/apple2.pdf>

- removing the requirement for registered inspectors;
- extending the remit of Ofsted to cover areas identified under the *Children Act 2004*, and in particular whether short inspections will give sufficient time to cover the extended remit,
- whether adequate resources will be made available;
- the publication of inspection reports;
- the importance of lay inspectors;
- the role of school improvement partners (SIPs);
- how the inspection arrangements will fit in with the *Children Act 2004*;
- the need for improved complaint/appeal arrangements; and about
- why it is thought to be appropriate to have different inspection regimes in England and Wales.<sup>54</sup>

All these issues, and related themes, were returned to during the subsequent debates in the Lords on the Bill. The following, which is not intended to be an exhaustive account of the debates, gives a flavour of some of the key issues raised, and notes the main changes made in the Lords to the Bill's school inspection provisions.

***a. Registered inspectors; additional inspectors***

During the committee stage, Peers questioned the rationale for the removal of registered inspectors, the impact that this might have on the quality of inspections, and the accountability of additional inspectors. Baroness Perry moved an amendment to re-introduce registered inspectors.<sup>55</sup> Another amendment sought to remove the Chief Inspector's ability to use additional inspectors. Other amendments were concerned with rights of appeal to a tribunal; the process for tendering for inspections; the removal of the requirement to have lay inspectors on every inspection; meetings with parents; and training of inspectors. All the amendments moved were withdrawn after debate.

Comparisons were made between the different arrangements that will apply in England and Wales as the system of registered inspectors will continue in Wales (though, as noted above, this could change in the future).

Baroness Andrews, Government Spokesperson for Education and Skills, explained why the current system of registered inspectors had outlived its usefulness:

We had a very positive and extensive consultation process on this whole package with schools and with the providers who are responsible for the registered inspectors, and a pilot in 100 schools is testing the new system. We believe that

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<sup>54</sup> HL Deb 13 December 2004, cc 1092 to 1156  
[http://pubs1.tso.parliament.uk/pa/ld200405/ldhansrd/pdvn/lds04/text/41213-04.htm#41213-04\\_head1](http://pubs1.tso.parliament.uk/pa/ld200405/ldhansrd/pdvn/lds04/text/41213-04.htm#41213-04_head1)

<sup>55</sup> HL Deb 11 January 2005, Committee First Day, c 147

we have found a way forward that builds on the strengths of the system of the past 12 years and makes it fit for the future.

Like other noble Lords, I should like to pay tribute to all the inspectors across the system and to the extraordinary contribution they make towards raising standards in education. We have had a register for more than 12 years in schools. In that time, the cadre of registered inspectors, working with 250 HMIs, has increased to 5,000, with more than 700 of those being registered inspectors and the rest being enrolled inspectors. They have carried out more than 50,000 inspections over the years; so they have a huge body of experience and a huge and conscientious expertise which we certainly do not want to lose. I hope that I can convince the noble Lord, Lord Hanningfield, that there will be no damaging impact on the inspectorate and that we are in fact offering enhanced and welcome opportunities.

Noble Lords have recognised in recent debates on the new inspection system that our proposals present new challenges. The noble Baroness, Lady Perry, referred to that in her opening remarks. We are asking for shorter inspections, smaller teams, and a targeted approach that focuses more on core systems, engages more with the management team through self-evaluation and engages with parents and pupils. That will place new demands on the inspectorate. We need to ensure that inspectors are fully competent and can continually demonstrate competence to deliver the new model. Far from dismantling the system, we see this as a tightening up which will bring improvements.

Noble Lords are rightly concerned about what will happen to the existing pool of inspectors who have brought such value to the system. The inspectors have been recruited from many different backgrounds over the years. Their enrolment is covered in law under Schedule 3 of the 1996 Act and was introduced by the School Standards and Framework Act 1998. But regardless of where they come from, the inspectors have in common an ability to produce the standards necessary to lead and manage a school inspection. That means taking account of the school environment and ecology, recognising what a stressful time an inspection is for a school, and recognising the impact that the report will have on the school in the community. They must be able to demonstrate the experience and skills for the phase of education they intend to inspect. They have traditionally worked alongside HMIs who are directly employed by the chief inspector.

Being on the register has simply provided a status that means that the individual can be trusted to undertake a school inspection—it is a badge to do so—and can be trusted to write a report. To get on to the register an individual must initially demonstrate fitness to practise. However, the register has not been an indicator of how good an inspector is at delivering inspections to the required standard. That is reflected in the fact that being on the register is, paradoxically, no guarantee of employment or regular participation. It is possible to be on the register without intending to inspect regularly, and some inspectors may make only three or four inspections a year. For some, inspector status has been a passport to other forms of employment.

Moreover, registered inspectors are not a part of Ofsted; they are employed by a range of contractors who are themselves independent of Ofsted. Many of them operate on self-employed terms as autonomous units. The chief inspector has little or no say on which individuals are used to conduct which inspections; he can only require that they meet the specification for a tender exercise.

We are asking schools to learn and improve continuously and to look critically at how they might do so. It is right and proper that we ask the same of the inspection system. So in making the decision to replace the system of a register of inspectors with a greater role for HMIs in the inspection and reporting process, we have been motivated by the intention to enhance the inspectorate system and to enrich the professional development opportunities and systems that will ensure that quality, performance and accountability are improved. That reflects the progress that we have made through the inspection system in recent years. That will keep and mobilise the experience and mix of skills that we already have. It will improve the consistency of inspection, make the process simpler for schools and develop greater flexibility in the inspection system as it grows and develops.<sup>56</sup>

And:

Given the changes we wish to see, the excellent pool of inspectors who will make up the new additional inspectors, the shorter, sharper, more frequent inspections and greater flexibility, we believe that the notion of a fitness to practise register has served its purpose. Not only will the HMIs have that extra quality and accountability, we believe that the register has outlived its usefulness. It has served the nation extremely well for 12 years. It is time to look for something better; and a better system comes with better performance management and quality controls.<sup>57</sup>

Baroness Andrews explained the role of additional inspectors as follows:

Who are these additional inspectors? They may be inspectors who are already registered or who would have sought registration under the old system. To what standards will they be working? As I said, there will be no new entry threshold, but they will all have to meet the criteria that HMIs set out and on which we have been working. The criteria will be much nearer to those that we would expect for HMIs themselves. Inspectors will have to demonstrate the ability to meet those criteria in the inspection process, the evaluation of evidence, the choice of evidence and the quality of judgments. HMCI will be directly responsible for ensuring that they are all up to the job.

Why do we regard the system as simpler and more accountable? The reports will certainly be issued in the name of the chief inspector. At the moment a registered inspector, independent of Ofsted, can publish a report without the approval of the

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<sup>56</sup> HL Deb 11 January 2005, cc 151 to 153

<sup>57</sup> HL Deb 11 January 2005, cc 156



chief inspector. Even in the most serious cases, where he feels that special measures are warranted, an inspector could in theory publish a report although the chief inspector disagreed with the judgment. That means that at present Ofsted can make changes to inspection reports only with the agreement of the registered inspector. As a result, schools have in some cases been left frustrated, dissatisfied with the judgment and unable to have their concerns addressed swiftly and helpfully. Discussions with the Secondary Heads Association and other teacher associations highlight the frequency with which they are called in to arbitrate in school-inspector disputes. That is, no doubt, one reason why schools and teachers have supported the changes we propose.<sup>58</sup>

Responding, Lord Hanningfield pointed out that the proposals would, in effect, replace a register with a list of people trained and assessed as appropriate to inspect.<sup>59</sup> Baroness Sharp of Guildford noted that there would be no appeal if an inspector were dropped from the list (whereas registered inspectors can appeal against de-registration).<sup>60</sup>

At report stage, Baroness Perry (supported by Baroness Sharp of Guildford, Lord Sutherland and Lord Hanningfield) moved three related amendments: amendment 2—to ensure that the list of additional inspectors will be published annually; amendment 5—to require that every additional inspector satisfies the Chief Inspector that they have the necessary skills, expertise and experience to perform their functions; and, amendment 7—to provide for a induction period for additional inspectors lasting not less than three inspections. All three amendments were successful; the first, on a division, was agreed 149 votes to 133, and the other two were agreed without divisions.<sup>61</sup>

Lord Sutherland stressed the importance of knowing not only the backgrounds of the inspectors and the qualities that they are supposed to have but also the importance of having their names in the public domain. He also said that the Chief Inspector needed to be assured that inspectors had the required skills in advance of their inspections, and that no one should carry out an inspection without having already reached some level of expertise.<sup>62</sup> Lord Hanningfield remained sceptical about the benefits of removing the current system of registered inspectors.<sup>63</sup> Speaking in support of the amendments, Lord Dearing emphasised that the additional inspectors will have massive responsibilities and that there would need to be confidence in the system.<sup>64</sup>

Lord Filkin, Parliamentary Under-Secretary of State for Education and Skills, argued against the amendments proposed by Baroness Perry, Baroness Sharp of Guildford, Lord Sutherland and Lord Hanningfield. He said that the Government had listened to the

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<sup>58</sup> HL Deb 11 January 2005, c 154

<sup>59</sup> HL Deb 11 January 2005, c 159

<sup>60</sup> HL Deb 11 January 2005, c 160

<sup>61</sup> HL Deb 21 February 2005, cc 1005-1023

<sup>62</sup> HL Deb 21 February 2005, c 1009

<sup>63</sup> HL Deb 21 February 2005, c 1010

<sup>64</sup> HL Deb 21 February 2005, c 1011

concerns expressed in committee and had responded by tabling its own amendment<sup>65</sup> to Schedule 1. This amendment, which was also agreed, required the Chief Inspector to publish the standards as well as the qualifications and/or experience that all additional inspectors would be required to meet. Lord Filkin said that the Chief Inspector had given an undertaking that he would publish the names of the inspectors given to him by the regional inspection service providers that they are using at any one time under the terms of the contract, and that the list would be put on the Ofsted website. On the issue of induction of inspectors, Lord Filkin stressed that all inspectors would undergo training, and he thought that specifying the requirement in the Bill would not be helpful. There will be performance monitoring and schools would be asked to give their view of the inspection.<sup>66</sup>

At third reading, Lord Filkin said that since Baroness Perry's amendments and the Government's amendment had been agreed, the Bill as it stood contained a conflicting set of amendments therefore he proposed fresh Government amendments designed to meet the House's concern that strong emphasis be placed on the Chief Inspector being under a duty to ensure that additional inspectors have the necessary qualifications, experience and skills. The amendments also addressed the issues raised about induction and about the names of inspectors being available. In effect, the Government amendments require the Chief inspector to ensure that additional inspectors undergo an inspection to the satisfaction of HMI before they can participate in an inspection without HMI supervision; and, the Chief Inspector would have to publish a list of additional inspectors at intervals of no more than 12 months. Peers welcomed these changes.<sup>67</sup> (The changes are now contained in Schedule 1.)

#### ***b. Functions of HMCI in England***

During the committee stage, Peers discussed the accountability of HMCI to Parliament. Comparisons were drawn between the position in England, where HMCI will be accountable to Parliament via the Secretary of State, and in Wales where the Chief Inspector will report directly to the National Assembly.

In relation to the extended remit of HMCI, particularly with regard to the contribution schools make to the well-being of pupils, Peers questioned how inspectors would be able to measure well-being, and asked exactly what this could mean in a school setting.<sup>68</sup> There was concern about the breadth of what schools are being asked to do, and also about how the provision ties in with the new agenda set out in the *Children Act 2004*. Baroness Walmsley said that it was odd that the Bill should be placing such emphasis on the role of schools in contributing to pupil well-being when the Government resisted

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<sup>65</sup> Amendment 3

<sup>66</sup> HL Deb 21 February 2005, cc 1012- 1020

<sup>67</sup> HL Deb 2 March 2005, cc 249-52 and c 288

<sup>68</sup> HL Deb 11 January 2005, cc 173-182

attempts to amend the *Children Bill* to require schools to be listed as co-operating partners:

Both the Ministers will probably remember that during the passage of the Children Bill, with the support of many children's charities including the NSPCC, we tried to persuade the Government that the duty to co-operate should exist not only between strategic bodies such as strategic health authorities and probation boards, but also between operational delivering agencies including schools. In response to our amendments the Government stated that one of the levers of influence to ensure that co-operation took place between delivery agencies would be inspection. While we welcome the provisions set out in the current Bill to inspect the contribution made by schools to the well-being of their pupils, there are no explicit provisions for inspection to ensure that co-operation between other strategic and operational agencies takes place in schools.

That is why we have tabled this amendment. It seeks simply to probe how the lever of inspection is to apply, as the Government stated it would, during the passage of the Children Bill last year—and very specifically how it relates to what teachers and other staff in schools are expected to do. I beg to move<sup>69</sup>

The relationship between Ofsted and the Commission for Social Care Inspection was also discussed.<sup>70</sup>

At report stage, Baroness Walmsely argued the case for amending the Bill to place specific requirements on the Chief Inspector to ensure that those inspecting schools have the relevant knowledge and understanding to evaluate how the needs of children under the *Children Act 2004* are being met by schools.<sup>71</sup> Lord Haningfield also moved amendments, withdrawn after debate, which sought to ensure that the Chief Inspector's functions specifically included reviewing how schools work with other bodies to improve the well-being of children and young people in the area. Lord Filkin said that it was unnecessary to make such provision in the Bill as joint area reviews will look at wider co-operation arrangements.<sup>72</sup>

Some Peers wanted to ensure that the definition of “well-being” included specific activities including physical activities and out of school trips<sup>73</sup>, and would be related to specific groups of children such as children in care. Lord Filkin emphasised that schools are responsible for the educational achievements of all pupils and that the Government did not want to create a list of particular groups that the inspectors would have to consider as that could fetter their discretion.<sup>74</sup>

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<sup>69</sup> HL Deb 11 January 2005, cc 182-3

<sup>70</sup> HL Deb 11 January 2005, cc 212-219

<sup>71</sup> HL Deb 21 February 2005, c 1020

<sup>72</sup> HL Deb 21 February 2005, c 1051-6

<sup>73</sup> HL Deb 11 January 2005, cc 183-191; HL Deb 21 February 2005, c 1027

<sup>74</sup> HL Deb 11 January 2005, c 192

The role of school self-evaluation was discussed at all stages of the Bill in the Lords. During the committee stage, Baroness Sharp of Guildford sought to place a duty on inspectors to assess schools' internal procedures for self-evaluation.<sup>75</sup> However, Lord Filkin emphasised that school self-evaluation would be central to the inspection process and the wider policy of the new relationship with schools, and that the Government did not want to dictate to schools how they should do this. There would be guidance but not a model of self-evaluation. Lord Filkin highlighted the role of the school improvement partner (SIP) in the process. Part of the SIP's function would be to challenge the processes used by the school.<sup>76</sup> At report stage an amendment<sup>77</sup> tabled by Baroness Walmsley and Baroness Sharp of Guildford, was agreed on a division, by 144 votes to 125. This places a statutory duty on the Chief Inspector to report to the Secretary of State on the degree to which schools are developing rigorous internal procedures of self-evaluation.<sup>78</sup> At third reading the wording was changed slightly but without effect on the substance of the amendment.<sup>79</sup> The provision is now contained in clause 2(1)(g) of the Bill.

An amendment<sup>80</sup> successfully introduced by Lord Hanningfield and Baroness Morris of Bolton at report stage placed new duties on the Chief Inspector to report to the Secretary of State on the behaviour and discipline of pupils, and the levels of truancy in schools. A similar amendment related to Wales. Lord Filkin emphasised that behaviour and discipline of pupils was a key issue for the Secretary of State, and that the Chief Inspector reports on behaviour and discipline of pupils in his annual report. In relation to Wales, he noted that the new common inspection framework makes explicit reference to behaviour, discipline and attendance. However, Lord Hanningfield argued that including the requirement in the Bill would place greater emphasis on the matter. The amendment to clause 2 was agreed on a division by 127 votes to 120.<sup>81</sup> At Third Reading the wording was changed slightly but without effect on the substance of the amendment.<sup>82</sup> The provision is now contained in clause 2(1)(h) of the Bill.

During the committee and report stages, Baroness Walmsley probed whether Ofsted should have a role inspecting the quality of training and professional development for the whole school workforce not just in relation to teachers.<sup>83</sup> In the committee debate Lord Filkin said that the Government would reflect further on the matter; Baroness Andrews responded at report stage saying that, on reflection, this could create potential confusion

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<sup>75</sup> HL Deb 11 January 2005, cc 219-227

<sup>76</sup> HL Deb 11 January 2005, cc 223-4

<sup>77</sup> Amendment 13

<sup>78</sup> HL Deb 21 February 2005, cc 1032-40

<sup>79</sup> HL Deb 2 March 2005, cc 249-52

<sup>80</sup> Amendment 14

<sup>81</sup> HL Deb 21 February 2005, cc 1040-1051

<sup>82</sup> HL Deb 2 March 2005, cc 249-52

<sup>83</sup> HL Deb 11 January 2005, cc 235-236; HL Deb 21 February 2005, cc 1056-9

between the respective roles of Ofsted, Adult Learning Inspectorate and the Qualifications and Curriculum Authority.<sup>84</sup>

Lord Hanningfield sought to introduce a new clause<sup>85</sup> aimed at reducing bureaucracy by placing a specific requirement on the Chief Inspector to avoid excessive administrative burdens on head teachers and school governing bodies. In particular he was concerned that more self-assessment may create more work for schools. The amendment was put to a vote and defeated 126 votes to 83.<sup>86</sup>

During the report stage, technical Government amendments were made to Schedule 1 of the Bill concerning Government accounting rules and practice relating to the approval and conditions of service for Ofsted staff, the terms under which additional inspectors may be engaged, and the remuneration and pension to the Chief Inspector.<sup>87</sup>

Baroness Sharp of Guildford moved a probing amendment at report stage on the scrutiny of the work of Ofsted, and explored the possibility of giving the Education and Select Committee a role in relation to the appointment of the Chief Inspector.<sup>88</sup>

### *c. Inspections*

Peers expressed concern about the removal of the requirement to hold meetings with parents when a school is being inspected. Baroness Walmsley moved an amendment during the committee stage to require that in the course of an inspection the head teacher, staff, parents, pupils and governors would be consulted. The amendment was withdrawn after debate. Other related amendments were discussed, and Lord Hanningfield put the case for enabling the head teacher to arrange a meeting between the inspectors and parents. Lord Hunt thought that some head teachers might discourage such meetings. Baroness Andrews, speaking for the Government, explained that the amendments were unnecessary. She stressed that it would be difficult for parents to attend meetings at short notice and that parents would still be notified of an inspection and would be given a questionnaire that the inspectors would analyze. She observed that if schools wanted to arrange meetings they could.<sup>89</sup> Other issues raised in committee included the need for pupils to have a participative role in school inspections<sup>90</sup>; and the availability of inspection reports.<sup>91</sup>

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<sup>84</sup> HL Deb 21 February 2005, cc 1058

<sup>85</sup> Amendment 33

<sup>86</sup> HL Deb 13 January 2005, cc, 410-413

<sup>87</sup> HL Deb 21 February 2005, cc 1005 and c 1023

<sup>88</sup> HL Deb 21 February 2005, cc 1059-62

<sup>89</sup> HL Deb, 13 January 2005, cc 363-380

<sup>90</sup> HL Deb, 13 January 2005, cc 380 to 385

<sup>91</sup> HL Deb, 13 January 2005, cc 386-387

During the report stage, Baroness Walmsley introduced the same amendment as she had tabled in committee to require that in the course of an inspection the inspectors must consult and have regard to the views of the head teacher, staff, parents and governors of the school.<sup>92</sup> She withdrew her amendment after Lord Filkin said that the Government had listened to the arguments, and had decided to introduce its own amendments to meet the concerns expressed by Peers.

The Government amended clause 6 (Duty to notify parents of section 5 inspections) to provide that when parents are notified of an inspection they are also informed about the arrangements for them to make their views known.<sup>93</sup> In addition the Government introduced a new clause<sup>94</sup> to make provision for the Chief Inspector to have regard to the views expressed by the head teacher, the governing body in the case of a maintained school, the proprietor in the case of other schools, staff, registered pupils at the school and the registered parents of such pupils (the word “registered” parents was added to clause 6 by Government amendment<sup>95</sup>). The amendments were agreed, without a division.<sup>96</sup>

Probing amendments were moved by Baroness Sharp of Guildford relating to the inspection of out of school provision such as breakfast clubs and after school sport clubs, for the under-eights. Although Baroness Andrews expressed support for the general intention of the amendments she thought they were too wide, and the amendment was withdrawn.<sup>97</sup>

Some of the other proposed amendments (which were withdrawn after debate) covered the form of publication of inspection reports<sup>98</sup>; the production of summary reports<sup>99</sup>; the role of the LEA in school inspection<sup>100</sup>; and the availability to LEAs of inspection reports on non-maintained schools.<sup>101</sup>

#### *d. Schools causing concern*

During the committee stage debates Peers had expressed concern about the impact on schools of inspection judgements (see below). The issue was raised particularly in relation to those schools that are found to be a cause for concern. The Government responded at report stage by introducing amendments to clause 12 and schedule 1.<sup>102</sup> The amendments, which were agreed without division, make two main changes.

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<sup>92</sup> HL Deb 21 February 2005, c 1062

<sup>93</sup> Amendment 30

<sup>94</sup> Amendment 32

<sup>95</sup> HL Deb 21 February 2005, 1079 (Government amendment 27)

<sup>96</sup> HL Deb 21 February 2005, cc 1065 and 1079

<sup>97</sup> HL Deb 21 February 2005, cc 1075-6

<sup>98</sup> HL Deb 13 January 2005, c 416

<sup>99</sup> HL Deb 13 January 2005, cc 428-432

<sup>100</sup> HL Deb 13 January 2005, c 419

<sup>101</sup> HL Deb 21 February 2005, cc 1085-87

<sup>102</sup> HL Deb 21 February 2005, cc1023-1026 and c 1082-3

The first is that any decision that a school requires special measures will be taken personally by the Chief Inspector or by one of HMCI whom the Chief Inspector has directed to do so.<sup>103</sup>

Secondly, the Chief Inspector is required, on completion of a section 5 inspection which concluded that a school required special measures or significant improvement, to send a draft of the inspection report to the governing body of a maintained school, and to the proprietor in the case of any other school, for comment. The Chief Inspector would have to consider comments within a prescribed period.<sup>104</sup>

Lord Filkin explained that in practice all schools will be sent a copy of the draft inspection but where special measures or significant improvement is required, the school would have longer to consider and offer comments on the draft report. It is the Government's intention that where a draft report states that special measures or significant improvement is required, the school will have 5 working days to respond, and that this will be prescribed in regulations.<sup>105</sup> In other cases the school would be expected to respond within 24 hours. The Minister took the view that this will not place undue pressure on schools as draft reports will be shorter and more focused, and the school will have had the opportunity to offer comments to the inspectors throughout the inspection.

Similar provision was made in relation to sixth forms requiring significant improvement.<sup>106</sup>

In committee, Baroness Morris of Bolton moved amendments to allow the respective Chief Inspectors in England and Wales to take action if, in his opinion, a school was "likely to fail". Lord Filkin rejected including in the Bill an additional category of school causing concern.<sup>107</sup>

At report stage, Baroness Walmsley moved a probing amendment to change the designation of schools in special measures and those requiring significant improvement to schools "in need of additional support". This was a development of proposals that had been discussed in committee.<sup>108</sup> Although Lord Filkin agreed that additional support is necessary for schools causing concern, he could not back the amendment as he said that support is not always the issue; intervention may be needed for other reasons, particularly where leadership is weak.<sup>109</sup>

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<sup>103</sup> Government Amendments 9 and 10

<sup>104</sup> Government Amendments 36 and 37

<sup>105</sup> HL Deb 21 February 2005, c 1025

<sup>106</sup> HL Deb 24 February 2005, c 1348

<sup>107</sup> HL Deb, 13 January 2005, cc 427-8

<sup>108</sup> HL Deb 13 January 2005, cc 422-427

<sup>109</sup> HL Deb 21 February 2005, c 1079-81

Amendments were moved by Baroness Sharp of Guildford in committee and by Baroness Walmsley at report stage to place a statutory requirement on LEAs to consult schools when drawing up action statements following inspections that require special measures or significant improvements to be made.<sup>110</sup> The NAHT, the LGA and the National Union of Teachers (NUT) had all expressed concerns about the matter. During the report stage debate, Lord Filkin said that although he understood the concerns, he thought it would not be appropriate to specify such consultation on the face of the Bill. However, he assured Peers that guidance would make it clear that the LEA should work closely with the head teacher and the governing body in drawing up its action statement.

*e. Complaints procedures*

Several Peers expressed concern about the current complaints arrangements for schools that are dissatisfied with the conduct of inspectors and/or the inspection report. The NAHT and NUT highlighted this issue and had suggested amendments to improve the present procedures. Concern not only focused on complaints about procedures and factual errors in inspectors' reports and how this could be dealt with before reports were published, but also about the conduct of inspectors and their judgements. In committee, Lord Filkin said that Ofsted was currently developing a new complaints procedure, and that the changes introduced by the Bill, which will make the Chief Inspector responsible for all inspections and reports, would improve matters. The Minister went on to outline how the new complaints procedures would operate.<sup>111</sup>

Complaints procedures were debated again during the report stage, and Lord Filkin gave a detailed account of the new draft procedures on which Ofsted is consulting:

The draft procedures that Ofsted are consulting about will make it clear that inspectors should try to consider and to resolve any concerns a school raises about an inspection or judgments as part of the process. There should not be a stand-off process, there should be active listening and engagement because that is both decent and efficient.

Schools will have opportunities throughout the inspection process to respond to emerging findings, and to draw attention to any evidence that they think points to different conclusions from those to which the inspection process is minded to reach. They will receive a draft report: an opportunity to comment on factual accuracy. Later on, in our amendment to Clause 12, we will signal and discuss where we think we have made a significant shift in terms of schools requiring major improvement of special measures, through the care with which the process is tested with the school before those issues go into the public domain. Given the time, I will not go into detail now.

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<sup>110</sup> HL Deb 13 January 2005, c 432-4 and HL Deb 21 February 2005, cc 1083 to 4

<sup>111</sup> HL Deb 13 January 2005, cc 393-397



I also want to double check that the draft guidance on the moderation procedures for schools causing concerns has also been shared with Opposition Front Benches, because they are again part of this picture. Without labouring the point, when I prepared my notes I saw five separate stages that the inspectorates had to go through to try to ensure that the school and its governors were given opportunities to engage with them, before the inspectorate came to a conclusion that special measures were appropriate. These of course included a process for a second pair of eyes, totally separate from the inspectors who had made those judgments, to see whether the evidence and the representations made by the school supported them. For those cases, the moderation process is again building a strong double layer of protection. It is not just the judgments of the inspectors themselves; other inspectors with seniority and experience have to look at that to see whether they consider the conclusions valid. In doing so, they would also be looking at the views that the school might have given—for example, that it felt that the evidence did not merit the conclusions that were being reached by the inspectors.

Again, without labouring the point, I am signalling that this is part of the overall picture of trying to ensure that the conclusions reached are ones that are fair, that are supported by the evidence, and are reached through a process which makes those who are being inspected feel that they have had every opportunity to put their part of the story, and that they have been listened to. That is the background. The more that that works, the less formal complaints procedures are required. We know from the work of the noble and learned Lord, Lord Woolf, and others, that that is the sensible way to get justice, rather than rushing off into formal processes.

Having said that, there is an adjudicator in place, who does substantially what is asked for in the amendment put down by the Opposition Front Bench. The independent adjudicator is completely independent of Ofsted. She has the remit to examine a complaint about any of the issues covered by subsection (1)(a) to (c) of the proposed new clause. She is not able to overturn professional judgments, nor should she be for reasons that I think we understand—otherwise the independent adjudicator would become the inspector. However, she is able to make recommendations if she considers there is no evidence for a judgment, or if a report does not adequately explain the link between the evidence and the findings. The adjudicator can recommend that the chief inspector reconsiders a complaint in the light of her comments, and if he rejects her recommendations, he must make a public statement of his reasons. The powers are very strongly there.

The noble Baroness, Lady Sharp, was concerned that the adjudicator should not be appointed by Ofsted or the Adult Learning Inspectorate. I can set her mind at rest. The adjudicator is not appointed by either of those bodies, but by the Secretary of State. Therefore, there is a proper separation of the appeal process from the decision-maker. For these reasons, we believe that the chief inspector will be able, without limitation, to play a proper part in the formal complaints

process, in what we hope will be the relatively few cases that the informal processes have been unable to resolve.<sup>112</sup>

#### *f. Wales*

Comparisons were made between the different arrangements that will apply in England and Wales as the system of registered inspectors will continue in Wales (though, as noted earlier, the Bill gives the NAW regulation-making powers to adopt, if it so wishes, the approach the Bill seeks to introduce in England). Lord Roberts of Conwy questioned whether there should have been a separate Bill relating to Wales. He said during the second reading debate:

The Welsh aspects are extensive. Of the 120 clauses, 59 apply to England and Wales, 25 relate to England only, and 40 to Wales only. Of the 40 which relate to Wales only, I am told that 33 are re-enactments and seven only are really new. I am not sure that I have yet found them all but I have spotted some.

It might be argued that there should have been a separate Bill for Wales. I am sure that proposal was considered by the Government and clearly rejected for a variety of reasons. It would be of some constitutional interest to know the substance of the Government's consideration of that issue and how they came to the conclusion that a combined England and Wales Bill was to be preferred.

One advantage of having a combined Bill is that we can see the differences that are developing between the education systems in the two countries. Many of the clauses relating to Wales are enabling clauses which allow the devolved administration in Wales to follow England should it wish to do so at a later date. That applies to the new inspectorate system, for example. Under the very sweeping powers contained in the Henry VIII clause, Clause 61, Wales could adopt the new English inspectorate system in its entirety. I understand that, currently, the Welsh Assembly Government take the view that having only recently introduced a novel common inspection framework, it is too early to change systems yet again. That sounds reasonable enough. I hope that the Assembly will read the queries raised by the noble Lord, Lord Dearing, and possible answers. What is important is that Wales should have considered the possibility of change and decided to keep its options open as to the future. The net result may give the impression of a lack of decisiveness and joined-up government at central and devolved levels but I prefer that to Wales closing off an option entirely and later regretting a missed legislative opportunity. We want the best of all possible worlds.<sup>113</sup>

During the committee stage debate, Peers questioned, amongst other things, why it was necessary for the NAW to be given the power to establish an advisory panel, when such provision is not thought to be necessary in England. Questions were also asked about the

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<sup>112</sup> HL Deb 21 February 2005, cc 1072-4

panel's remit. It was noted that the Public Services Ombudsman for Wales does not have an advisory panel. Replying for the Government, Baroness Andrews outlined the role of Estyn, and said that an advisory panel would provide an informed and independent view on the duties that the NAW has to discharge in respect to Estyn:

Clause 21 provides the Assembly with a new and necessary power to establish through regulations a panel to advise the Assembly on any matter relating to the functions of the chief inspector. It might be worth stating the role of Estyn in relation to the Assembly. Estyn is independent of but funded by the National Assembly for Wales under Section 104 of the Government of Wales Act. It is accountable to the Assembly in relation to financial matters and to the audit committee. It has a key role in raising standards in quality of education and training across Wales in all areas through inspection and advice. Although the management of the inspectorate is a matter for the chief inspector, the Assembly is required to discharge a range of responsibilities with regard to Estyn. It is in relation to those other responsibilities that we seek to enable the Assembly to discharge its duties with a little more dialogue and enrichment, without imposing any new duties or any new bureaucracy.

Clause 21 allows the Assembly to make provision for the appointment of members of the panel, remuneration and allowances, and the preparation of reports. It requires the chief inspector to co-operate, for example, by providing the panel with access to staff and papers.

We fully recognise that the management of the inspectorate is clearly a matter for the chief inspector. However, the new panel will provide what has been felt lacking for some time—it will fill a gap with an informed and independent view on the range of duties and responsibilities the Assembly is required to discharge with regard to Estyn—Her Majesty's Inspectorate for Education and Training in Wales. There is no mechanism for providing the Assembly with independent advice, and it is the independence of the advice that concerns us particularly.<sup>114</sup>

Baroness Andrews emphasised that the panel will be essentially advisory – providing advice to the NAW on the Chief Inspector's remit, and providing advice to Ministers in meeting the NAW's statutory obligation to approve Estyn's annual plan, for example.<sup>115</sup>

At report stage, Baroness Morris of Bolton moved an amendment to remove clause 21 (Powers of the Assembly to establish an advisory panel) from the Bill arguing that it was important to guard against the creation of unnecessary quangos. The amendment was withdrawn after debate. Baroness Andrews stressed that the NAW and practitioners in Wales had welcomed the proposal:

The new body is welcomed by all parties in Wales. It is a very modest body. It will help Estyn to formulate part of its strategy. Unlike Ofsted, 15 per cent of

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<sup>113</sup> HL Deb 13 December 2004, cc 1117-8

<sup>114</sup> HL Deb 13 January 2005, c 438

<sup>115</sup> HL Deb 13 January 2005, cc 437-9

Estyn's work constitutes a strategic power which helps to inform the pattern of provision and the way in which education policy is developed. That is one of the very clear reasons why this new and modest body is necessary.

The noble Baroness said that much of this matter will be left to regulations. That is the way things are done under devolution. Regulations are made in full consultation with all interested parties and in accordance with the Assembly's own procedures for making subordinate legislation. Indeed, those procedures involve at least as much scrutiny as in Parliament. Draft regulations are open to scrutiny and debate. There is no negative procedure so everything is debated. They are laid before the Assembly and they may be considered by the relevant subject committee. They will be scrutinised by the legislation committee. It is a robust and rigorous process.

I wish to address a few issues that the noble Baroness raised. The new panel will, indeed, provide the Assembly with an informed and independent view on the range of duties and responsibilities it is required to discharge with regard to Estyn. Currently there are no mechanisms to provide the Assembly with independent advice on such matters. There is no question that the body does not know what it is going to do, as the noble Baroness implied. It is anticipated that its role would include, for example, provision of advice to the Assembly on the handling of any complaint lodged against the chief inspector and advice in meeting the Assembly's statutory obligation to approve Estyn's annual plan. We addressed some of the relevant issues in our letter. It is worth putting on the record that the noble Lord, Lord Roberts, gave the proposal a modest but warm welcome on Second Reading, provided the constitution met his very high standards.

We confirmed in our letter that although the exercise of the power and decisions on the detail would need to be framed in the light of consultation, it is very much anticipated that the panel will draw together experienced practitioners from across the field of education and training, and perhaps from the business sector due to work-based learning. This body is not a quango; it has only six members. Membership is likely to comprise approximately six people with appointments made by Ministers in accordance with the Assembly's code of practice for public appointments.

It is anticipated that the panel would meet three or four times a year although there may be a requirement for further meetings. The secretariat for the panel would be provided by officials from the Assembly's Department for Training and Education. Costs would therefore be limited to travel and subsistence expenses for panel members. It is not anticipated that members will receive a salary or fee for their contribution to the panel. It would be a modest, expert and very useful body.

However, there is a necessity to create further accountability. Questions were raised about why a complaint registered against the chief inspector could not simply be referred to the Welsh administration ombudsman. I must emphasise that there have been instances where the Welsh administration ombudsman has

ruled that she is not in a position to consider a complaint lodged against the chief inspector. It has, therefore, fallen to the Assembly to consider such matters. To date this has been managed through ad hoc arrangements. There is, therefore, clearly a gap that needs to be filled in that respect and the panel will ensure that there is a standing body with a range of experience that will be extremely useful in that regard.

In that context the powers to provide access to people and papers will be central in ensuring that the panel has unfettered access to papers and can provide an informed judgment. It will be able to draw advice from other bodies but its role is not the same as that of the Education and Lifelong Learning Committee. That body's role is very much one of scrutiny. The committee is part of the National Assembly and it is quite separate from the Assembly government. The Education and Lifelong Learning Minister is a member of the committee but he is not in a position to commission the committee to undertake particular pieces of work or to provide advice.

So the panel will have a new function. It will be different from that of the Education and Lifelong Learning Committee and will be completely consistent with the First Minister's recent paper, *Making the Connections. Delivering Better Services for Wales*. So it will not be a decision-making body and it will not have executive powers. It will be a critical friend that will be able to fill a gap that we need to be filled and will be able to make a contribution when the Assembly needs advice on specific issues. It will have been achieved in the spirit of devolution and I believe that it is the feeling of this House that the Assembly, having welcomed the proposal, should be able to achieve what it wants.<sup>116</sup>

Other issues discussed included the training arrangements for inspectors in Wales<sup>117</sup> and the arrangements for making complaints about inspections.<sup>118</sup>

## **E. Other inspections**

### **1. Inspection of religious education**

The Bill re-enacts provisions currently contained in the SIA 1996 for the separate inspection of denominational education and collective worship in schools that have been designated as having a religious character.

During the Lords' consideration of the provisions relating to England, probing amendments were moved in committee to require school governing bodies to have regard to diocesan authority advice, and to give diocesan authorities a greater role in inspection.<sup>119</sup> In response, at report stage, the Government tabled amendments to ensure

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<sup>116</sup> HL Deb 21 February 2005, cc 1088-1090

<sup>117</sup> HL Deb 21 February 2005, cc 1026-7

<sup>118</sup> see for example, HL Deb 13 February 2005, c 395

<sup>119</sup> HL Deb 13 January 2005, cc 447-452

that the Secretary of State and the NAW respectively specify the appropriate body for each faith group that must be consulted by the foundation governors or the governing body when choosing the inspector for religious education. The amendments were agreed.<sup>120</sup>

Government amendments introduced during the committee stage made minor and technical changes in relation to the delivery of inspections of denominational education and collective worship in faith schools in England and Wales.<sup>121</sup>

## **2. LEA inspections**

The Bill re-enacts, without any changes, provisions contained in section 25 of the SIA 1996 giving LEAs for specific purposes the power to conduct visits to inspect provision maintained schools. Section 24 of the SIA 1996 is re-enacted in its application to Wales.

## **3. Inspection of child minding, day care and nursery education**

The Bill makes changes to the arrangements for the inspection of child minding, day care for children and nursery education. Since 1998, Ofsted has been responsible for the inspection of funded nursery education, mainly in the private, voluntary and independent sector, in addition to its responsibility for the inspection of nursery education in maintained schools. Since 2001, Ofsted has also been responsible for the registration and inspection of day care providers and child minders for children under the age of eight years. Different inspection arrangements apply to nursery education and childcare settings. The Government want a more integrated approach to the inspection of education and childcare providers, and to bring early years inspections in line with school inspections.

Ofsted carried out a web-based consultation on the future of early years inspections, and the Government announced that from April 2005 nurseries will face no-notice inspections, a new grading scale and the introduction of self-assessment.<sup>122</sup>

### ***a. Child minding and day care***<sup>123</sup>

The *Care Standards Act 2000*, through amendments to the *Children Act 1989*, made Ofsted responsible for the registration and inspection of day care (except nursery provision) and child minding for children under eight years of age in England from September 2001, thereby supplanting local authorities in this role.

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<sup>120</sup> HL Deb 24 February 2005, cc 1348-9; HI Deb 24 February 2005, cc 1349

<sup>121</sup> HL Deb 13 January 2005, c 452 and c 453

<sup>122</sup> <http://www.ofsted.gov.uk/news/index.cfm?fuseaction=news.details&id=1626>  
<http://www.ofsted.gov.uk/publications/index.cfm?fuseaction=pubs.summary&id=3745>

<sup>123</sup> This sub-section of the research paper was written by Tim Jarrett, Social Policy Section.

Under the *Children Act 1989*, Ofsted has the “general duty of keeping the Secretary of State informed about the quality and standards of child minding and day care provided by registered persons in England”. Paragraph 1 of Schedule 7 will add the following to the general duty: how far child minding and day care meet the needs of the range of children cared for; the quality of the leadership and management of day care; and the contribution made by child minding and day care to the well-being of the children for whom they are provided—well-being in this context has the same meaning as stated in section 10(2) of the *Children Act 2004*.

This extended list of factors for the general duty will also apply to the inspection of child minding or day care as a result of paragraph 3 of Schedule 7; at present, an inspector only reports on the quality and standards of child minding or day care under section 79Q(6) of the *Children Act 1989*.

Explaining the rationale for this extension of the general duty and the report of inspections, Lord Filkin said:

As the House knows, the *Children Act 2004* provides that each children’s services authority must promote co-operation in the delivery of children’s services with a view to improving the well-being of children in their areas. Early years settings have their part to play and it is important that Ofsted assesses, as part of the inspection process, how the childcare contributes to children’s well-being, not least so that these findings can be fed through to the joint area reviews to be led by Ofsted ... You could argue that in fact it is more important that there is an inspection of the well-being contribution, given the powerful evidence of the impact of early years influences on a child’s future ability, not only to learn but also to socialise and to take a positive attitude to life.<sup>124</sup>

Paragraph 2 of Schedule 7 will omit section 79P of the *Children Act 1989*, which requires Ofsted to establish and maintain a register of early years child care inspectors for England; this would remove the distinction between early years child care inspectors and other Ofsted inspectors.

Baroness Morris argued that this creation of a single pool of Ofsted inspectors raised the “concern ... over ... whether the inspectors themselves will have adequate knowledge and be *au fait* with the particular circumstances involved in such provision [...] ... inspecting a sixth form is considerably different from inspecting a child minding centre”.<sup>125</sup>

In reply, Lord Filkin said that there would continue to be specialisation of inspectors. He added that there is currently little need for such a register as “most Ofsted early years inspectors are Ofsted employees and, as such, are not separately registered” and are

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<sup>124</sup> HL Deb 13 January 2005 c455

<sup>125</sup> HL Deb 13 January 2005 c453

subject to Ofsted's own internal monitoring and accountability processes. Should the number of external early years child care inspectors increase, Lord Filkin said that their performance and quality could be monitored and controlled through "normal contract terms and contract management, which we believe is perfectly adequate and appropriate", arguing that "it would be administratively cumbersome for Ofsted to have overlapping registration and contracting arrangements".<sup>126</sup>

Paragraphs 3(6) and 4(4) of Schedule 7 create regulation-making powers in relation to the inspection of day care and child minding in order to "enhance the level of parental involvement in the inspection of early-years provision".<sup>127</sup> Lord Filkin explained that their purpose is "to ensure that parents' rights to information before and after an inspection are the same for both schools and early-years settings" by informing parents of a forthcoming inspection and to make a copy of the subsequent inspection report available to other persons as may be prescribed and to provide a copy of the report to other persons as may be prescribed; Lord Filkin said that "It is intended that parents would be sent a copy of the report".<sup>128</sup>

At present, following a child minding or day care inspection, under section 79R(1) of the *Children Act 1989* a report has to be made within 25 days beginning on the day following that on which the inspection is completed,<sup>129</sup> although this period may be extended by up to three months if the Chief Inspector of Ofsted considers it necessary under section 79R(2). Paragraph 4(2) will remove these time-limits by omitting subsection 1 and 2 from section 79R.

Paragraph 5 of Schedule 7 broadens the scope of the regulation-making powers available to the National Assembly for Wales in relation to the inspection of child minding and day care; currently, such regulations may only concern the inspection of the "quality and standards" of such care.

#### ***b. Nursery education***

The Bill amends section 122 and Schedule 26 of the *School Standards and Framework Act 1998* to reflect the different school inspection approaches in England and Wales in relation to nursery education inspection. In particular, it provides for the retention of the requirement to keep a register of nursery inspectors in Wales but removes the requirement in England.

The general duties of the Chief Inspectors will be expanded to cover how nursery education meets the needs of the range of children for whom it is provided, the quality of

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<sup>126</sup> HL Deb 13 January 2005 cc455–456

<sup>127</sup> HL Deb 13 January 2005 c456

<sup>128</sup> HL Deb 13 January 2005 c457

<sup>129</sup> *Day Care and Child Minding (Inspections) (Prescribed Matters) (England) Regulations 2001* SI 2001/2745, regulation 4



the leadership and management of nursery education, and the contribution made by nursery education to the well-being of the children for whom it is provided. Other changes include: in relation to England and Wales, provision to enable the Chief Inspectors to inspect relevant nursery education without having to arrange an inspection visit to every set of premises; in relation to England, provision to make the Chief Inspector responsible for the production and distribution of all inspection reports; the annual reports of the Chief Inspectors will include an account of the exercise of their functions in respect of nursery education inspection.

#### **4. Inspection of independent schools**

The *Education Act 2002* introduced a statutory regime in England and Wales for the registration and inspection of independent schools and set out procedures for dealing with failing independent schools.

Schedule 8 of the Bill amends the 2002 Act as a consequence of the removal of registered inspectors in England. Separate provision is made for England and Wales to allow for the fact that in Wales the role of registered inspector will continue.

During the committee debate, Lord Hanningfield asked whether independent schools had been consulted about the proposals. Lord Filkin wrote to Lord Hanningfield explaining that the purpose of Schedule 8 is to update the 2002 Act to remove the references to registered inspectors, and that it would not affect the inspection of independent schools as registered inspectors have never been used in the independent sector. Independent schools that are associated to the Independent Schools Council are inspected by the Independent Schools Inspectorate, which is approved by the Secretary of State to carry out such inspections. Ofsted inspects all other independent schools.<sup>130</sup>

#### **5. Inspection of careers and related services in Wales<sup>131</sup>**

The Bill makes a number of new provisions relating to the inspection of careers and associated services in Wales.<sup>132</sup> It ensures that all powers corresponding to the delivery and administration of these specific provisions rest with the National Assembly for Wales.

In Wales, careers services are currently provided by a number of careers companies which together make up Careers Wales. While Careers Wales is currently inspected by the Chief Inspector for Education and Training in Wales (CIETW),<sup>133</sup> these inspection

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<sup>130</sup> Letter to Lord Hanningfield from Lord Filkin, Parliamentary Under-Secretary of State for Children and Young People, DfES, 7 February 2005, House of Lords Deposited Paper, HDEP 2005/056

<sup>131</sup> This sub-section of the research paper was written by Edward Beale, Economic Policy and Statistics Section

<sup>132</sup> These new provisions may be found in clauses 54-56 of the Bill.

<sup>133</sup> As provided for under section 35 of the *Teaching and Higher Education Act 1998*.

arrangements are out of line with all other areas of inspection in Wales, thus limiting the Chief Inspector's powers. Consequently, the remit of the Chief Inspector would be extended so that the inspection of such services in Wales is subject to a similar system of inspection as other education and training provisions within the Chief Inspector's remit.

Similarly, the Bill sets out a new provision in relation to the Chief Inspector's remit regarding the inspection of education, training or advisory services provided by persons providing careers services, i.e., "related services" provided by careers companies in Wales.<sup>134</sup>

The Chief Inspector would be directed by, and report to, the National Assembly for Wales on all aspects relating to the inspection of careers and related services in Wales. The Bill also presents new procedures relating to the process of inspection, and subsequent reporting of, careers and related services in Wales.

#### ***a. Reaction***

The clauses relating to the inspection of careers and related services in Wales passed through the Lords stages without amendment. The Conservative peer Lord Roberts of Conwyn, acknowledged the importance of careers services and therefore their effective inspection:<sup>135</sup>

I welcome too the inclusion of the careers service within the ambit of the inspectorate. Careers service companies are already covered by the Welsh inspectorate, Estyn, which is a very apt name because "estyn" means "reach" in the sense of "extend". The careers service has had a varied career itself within the education system. It now has a very important role, and its inclusion within the purview of the inspectorate acknowledges that importance.

Similarly, the Liberal Democrat peer Lord Livsey of Talgarth commented that the "... provisions for the careers service [in Wales] are also to be welcomed. It is a very positive move indeed."<sup>136</sup>

### **III Part 2: School Organisation**

#### **1. New secondary schools and rationalisation of school places**

The Bill extends the circumstances in which a LEA must invite proposals for a new or replacement secondary school. The aim is to promote diversity of provision by extending the requirements for secondary school competitions whenever a new school is proposed

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<sup>134</sup> This provision replaces that made under section 35A of the *Teaching and Higher Education Act 1998*.

<sup>135</sup> HL Deb 13 December 2004 c1118

<sup>136</sup> *ibid.* c1121

unless the Secretary of State decides that a competition is not required. Normally the decision maker for school competitions would be the School Organisation Committee (SOC).<sup>137</sup> Where the SOC cannot reach a unanimous decision or fails to reach a decision within a prescribed period, the matter would be decided by the School Adjudicator. These provisions apply to England only.

The Bill also contains provisions relating to rationalisation of school places. It re-enacts existing powers enabling the Secretary of State to direct LEAs in England, or the governing bodies of maintained schools, to make proposals for the rationalisation of school places, and if necessary for the Secretary of State to publish her own proposals.

#### **a. Background**

At present section 70 of the *Education Act 2002* requires local authorities to invite proposals for new schools where there is a need for an additional secondary school. The Bill extends this requirement to apply whenever statutory proposals are required to establish a new secondary school, whether as an additional school or as a replacement for one or more existing schools. There have been no competitions for new secondary schools since the section 70 requirement was introduced in June 2003.<sup>138</sup>

The DfES' *Five Year Strategy for Children and Learners* said that the Government would make it easier for new promoters to open schools in response to local demand. It also set out the Government's plans for a secondary school sector of "independent specialist schools", underpinned by proposals to encourage secondary schools to gain greater autonomy by becoming foundation schools. The Government want to encourage the creation of more places in popular and successful secondary schools by speeding up the process for schools to expand, and introducing a presumption in favour of the approval of proposals for the addition of a sixth form by "high-performing" specialist schools. These proposals, which are not contained in the Bill, were set out in detail in a consultation document issued in October 2004.<sup>139</sup> The consultation ended on 31 December 2004 and Ministers are considering the responses.

The DfES wrote to interested parties in July 2004 alerting them to the Government's intention to change the legislation on school organisation, and a letter dated 7 January 2005 described the effects of the provisions in the Bill:

The Bill provides for proposals for new secondary schools to be decided by the SOC or by the adjudicator in specified circumstances. It was originally envisaged that the decision about which proposals should be approved would be made by

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<sup>137</sup> SOC's were introduced by the *School Standards and Framework Act 1998* as statutory bodies which bring together the key partners in the provision of education at local level.

<sup>138</sup> HL Deb 25 January 2005, c WA 152

<sup>139</sup> DfES, *Consultation on foundation schools and expansion of successful and popular schools*, <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1282>

the Secretary of State. However, in the light of comments from stakeholders, Ministers have decided that the SOC or adjudicator should make these decisions.

There is a reserve power in the Bill for the Secretary of State to direct that proposals should be decided by the adjudicator, where there is a poor record of local decision making. It was originally suggested that the Secretary of State would decide proposals in these circumstances, but again, Ministers have now decided that the independent adjudicator would be better placed to decide.

The Bill provisions are consistent with the modernised role for local authorities as commissioners of education, rather than direct providers, set out in the five-year strategy. They are intended to give local people a greater say over the establishment of secondary schools in their areas. Local people will have more opportunities to come up with their own proposals to establish schools; and they will be able to make their views known on a range of options, rather than on a single option put forward by the local authority or an individual promoter.

Local authorities will retain their strategic planning role. It will accordingly be for local authorities to determine the need for new secondary schools and the key characteristics of schools in terms, for example, of their location, the number of places needed and age range. Promoters will be invited to bring forward proposals for schools on the basis of a specification drawn up by the local authority; and of course the local authorities would also be free to publish their own proposals on the same basis. As a general rule, local authorities inviting proposals will be expected to take responsibility for bearing the cost of providing new school buildings, regardless of who the promoters are of the successful proposals. In many cases, new secondary schools are likely to be established as part of wider reorganisations undertaken through BSF. [Building Schools for the Future programme]

The requirement to invite proposals applies only where statutory proposals to establish a school need to be published. This means that it would not apply where a school was being rebuilt on its existing site or nearby. In these circumstances the rebuilt school would not fall within the definition a new school, as no proposals would need to be published in order to permit its rebuilding.

Local authorities and promoters may apply to be relieved of the duty to invite proposals for new secondary schools in exceptional circumstances. The Bill inserts a new section 28A into the School Standards and Framework Act 1998 enabling schools and promoters to publish uncontested proposals with the Secretary of State's consent.

These provisions do not apply to primary schools.

The Bill also re-enacts the Secretary of State's existing reserve powers to issue directions, and if necessary publish his own proposals, relating to the rationalisation of school places. These powers are contained in schedule 7 to the School 1998 Act and section 71 2002 Act. The Bill does not give the Secretary of State any new powers in relation to the rationalisation of school places.

The Bill does not make provision for foundation bodies (i.e. bodies created by section 21 of the 1998 Act) to propose the establishment of a new school as the Department previously suggested it might. We are satisfied that the existing provision for promoters to propose that a new school should belong to a foundation body is sufficient.<sup>140</sup>

The LGA has criticised the proposals; it believes that they will mean less involvement of the local authority and local community in co-ordinating provision which is likely to result in much greater disparity in provision. It strongly argues that the local authority should be able to compete with other proposers on the same basis, pointing out that it is important for local people to be able to select local authority maintained community schools, as well as other options. It emphasises that local authorities have a strategic role to ensure that there is sufficient provision of a suitable nature for all children and young people in the area.<sup>141</sup>

### ***b. Lords' consideration***

In committee, Baroness Sharp of Guildford moved an amendment to require the Secretary of State to have regard to the principle that in the organisation of secondary education there should be no extension of selection by ability. After a short debate the amendment was withdrawn. Responding, Lord Filkin reiterated that the Government had no intention to reintroduce selection by ability, and stressed that existing statutory provisions prohibited selection by ability.<sup>142</sup> Later in the committee debate, after discussion about grammar schools, Baroness Andrews said that the Government do not support selection at 11 and would not want to see it extended but that there are no plans to abolish grammar schools.<sup>143</sup>

Other issues raised in committee included: the need to take into account the views of local authorities and the wider effect of decisions on statutory proposals for new secondary schools; the position of rural Church of England schools and other faith-based schools; the effect of opening a new school on neighbouring schools; the criteria against which promoters of schools will be judged; and the need for a level playing field for all parties including local authorities to be able to bring forward proposals for new secondary schools.<sup>144</sup> Government amendments were made to the Bill to remedy drafting errors, and to provide a regulation-making power to enable provisions to be modified where it is proposed to establish a school in an area other than the area of the local authority that published the notice inviting proposals.<sup>145</sup>

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<sup>140</sup> Letter dated 7 January 2005 from Stephen Crowne, Director of School Resources Group, DfES, <http://www.dfes.gov.uk/schoolorg/data/downloads/crowne%20let%202005-01-07.pdf>

<sup>141</sup> LGA briefing on the Education Bill for Lords Committee, second day, 13 January 2005

<sup>142</sup> HL Deb 18 January 2005, cc 650-3

<sup>143</sup> HL Deb 18 January 2005, c 713

<sup>144</sup> HL Deb 18 January 2005, cc 656-686

The role of the School Organisation Committees (SOCs) was discussed, and Lord Hanningfield outlined Conservative opposition to SOCs and Conservative policy on school choice.<sup>146</sup>

Baroness Sharp of Guildford raised the issue of foundation status for schools, and pointed out that an increase in foundation schools would make it more difficult for local authorities to manage the education estate for the entire community.<sup>147</sup>

At report stage, Baroness Sharp of Guildford moved an amendment designed to exclude from the Bill's competitive requirements proposals that result from falling school rolls. She also spoke to an amendment to require the Government to publish guidance for SOCs on matters to be taken into account in making decisions on competitions for new or replacement schools. Responding, Lord Filkin stressed that the Government believed that greater choice of providers where there is a need for new places or reorganisation would be in the best interests of parents and pupils. He said that local authorities would still have a role in deciding when to reorganise but that provision would be provided by another provider if the SOC decided that would be in the best interests of the area. On the issue of guidance to SOCs, he said that there would be guidance on the factors that would need to be taken into account where more than one proposal was submitted but he stressed that it would be for the SOC and the adjudicator to decide a proposal on its merits.<sup>148</sup>

In response to concerns expressed in committee about the need for consultation on proposals, Government amendments were made to the Bill at report stage. These provided for regulations to specify the persons to be consulted, the matters to be consulted on and other requirements, and for regulations to prescribe other steps that local authorities should take to promote public awareness of their proposals.<sup>149</sup>

There was a wide-ranging debate on the Bill's provisions relating to the rationalisation of school places. In committee, Baroness Morris of Bolton asked why the powers were needed. Also, she sought clarification of how an academy could be closed, and discussed the role of LEAs in ensuring that sufficient school places are available in their areas. On 7 February, Lord Filkin wrote to the Baroness on a number of issues including the closure of academies.<sup>150</sup>

Baroness Sharp of Guildford raised the issue of local accountability and questioned why central Government should be able to tell local authorities what to do with their school places. Lord Dearing spoke about the implications of fast-tracking the expansion of successful schools, and the wider role of schools in deprived communities. Lord Filkin

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<sup>145</sup> HL Deb 18 January 2005, cc 672-3

<sup>146</sup> HL Deb 18 January 2005, cc 673-9

<sup>147</sup> HL Deb 18 January 2005, cc 684-5

<sup>148</sup> HL Deb 24 February 2005, cc 1350-4

<sup>149</sup> HL Deb 24 February 2005, cc 1356-8

<sup>150</sup> Letter to Baroness Morris of Bolton from Lord Filkin, Parliamentary Under- Secretary of State for Children and Young People, DfES, 7 February 2005, House of Lords Deposited Paper, HDEP 2005/060

stressed that the provisions enabling the Secretary of State to direct local authorities or governing bodies to bring forward proposals for the addition of places or the removal of surplus places are not new and that the powers are reserve powers.<sup>151</sup> The Minister also commented briefly on the issue of the surplus places rule or the absence of one:

I should also touch briefly on the issue of the surplus places rule. There is no surplus places rule; there might have been in the past under the previous administration, but there is not one now. If memory serves me right, there has not been one since 1998. By that, I mean that it is government policy that school places should be located where parents want them. There is therefore a strong presumption that proposals to expand successful and popular schools, which is what parents often want, should normally be approved. The fact that there are surplus places elsewhere in the area does not necessarily mean that that should not be approved. That may give comfort to parts of the Committee but cause increasing discomfort to other parts. Again, that is the nature of the role.

Local authorities have been encouraged to take action to remove surplus places especially where schools have a quarter or more of their places unfilled. Different judgments need to be made in rural areas, for reasons which I think the House will understand and to which noble Lords will be sensitive. The Secretary of State wants to encourage local authorities to organise provision in order to ensure that places are located where parents want them and to encourage them to take positive action to remove any unfilled vacancies at schools to which parents do not choose to send their children.<sup>152</sup>

At report stage Baroness Morris of Bolton tried unsuccessfully to remove the clause enabling the Secretary of State to direct local authorities or governing bodies to bring forward proposals for the addition of places or the removal of surplus places. Her amendment was defeated on a division by 105 votes to 94.<sup>153</sup>

In committee, Baroness Sharp of Guildford moved an amendment aimed at requiring all changes in school category to be referred to the SOC. She expressed concern about the Government's policy to encourage a shift from community to foundation school status. Lord Filkin said that the amendment was not related to the Bill's provisions. The Government wanted to allow schools to become foundation schools on a simple vote of the governing body, following consultation, and that the Government had consulted widely on the proposals and that Ministers were considering the responses.<sup>154</sup> The issue was returned to again at report stage when Baroness Walmsley said that she was trying to frustrate the Government's policy as she did not believe the Government had a popular mandate for the change. After debate she withdrew the amendment.<sup>155</sup>

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<sup>151</sup> HL Deb 18 January 2005, cc 686-95

<sup>152</sup> HL Deb 18 January 2005, cc 692-3

<sup>153</sup> HL Deb 24 February 2005, cc 1361-64

<sup>154</sup> HL Deb 18 January 2005, c 715

<sup>155</sup> HL Deb 24 February 2005, cc 1392-5

Baroness Sharp of Guildford moved probing amendments to look at the differences between maintained schools and academies.<sup>156</sup> Lord Filkin wrote to Baroness Sharp clarifying the position of academies within the Government's school organisation proposals.<sup>157</sup>

## **2. Closure of rural primary schools**

The closure of rural schools was debated on several occasions.<sup>158</sup> Baroness Morris of Bolton moved an amendment in committee aimed at prohibiting closure without a parental ballot. She returned to the issue at report stage, and at third reading was successful in introducing a revised amendment to provide a new clause into the Bill. The amendment was agreed on a division by 138 to 136 votes.<sup>159</sup> The provisions are now contained in clause 70, which provides that no primary school located in a rural area in England or Wales may be closed without full consultation with the registered parents of the school and the relevant parish, borough and district council in England or the community council in Wales. There must also be consideration of the transport implications, the impact on the local community, and alternatives to closure.

## **3. Closure of special schools: statutory consultation**

The closure of special schools was debated on several occasions.<sup>160</sup> Lord Hanningfield moved amendments to protect special schools from closure, and successfully introduced a new clause at third reading. The amendment was agreed on a division by 148 votes to 126. The provisions are now contained in clause 72 of the Bill. This clause prohibits a local authority from closing a special school in England or Wales unless it has consulted all local authorities that send pupils to the special school in question and the registered parents of registered pupils attending the school.

The Government's policy on educational provision for children with special educational needs and the role of special schools is outlined in Library Standard Note SN/SP/3375.<sup>161</sup> A decision to propose the closure of a special school is for local determination; however, there is statutory guidance on the factors that must be taken into account.<sup>162</sup>

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<sup>156</sup> HL Deb 24 February 2005, cc1398-9

<sup>157</sup> Letter to Baroness Sharp of Guildford from Lord Filkin, Parliamentary Under- Secretary of State for Children and Young People, DfES, 7 February 2005, House of Lords Deposited Paper, HDEP 2005/054

<sup>158</sup> HL Deb 18 January 2005, cc 700-4; 24 February 2005, cc1374-8; 2 March 2005, cc252-60

<sup>159</sup> HL Deb 2 March 2005, cc 252-60

<sup>160</sup> HL Deb 18 January 2005, cc 705-7; 24 February 2005, cc1369 72; 2 March 2005, cc 260-69

<sup>161</sup> <http://hcl1.hclibrary.parliament.uk/notes/sps/snsp-03375.pdf>

<sup>162</sup> DfES, Decision Makers Guide: <http://www.dfes.gov.uk/schoolorg/decision-makers-guidance.cfm>



## IV Part 3: Training the School Workforce

### A. The Training and Development Agency for Schools

The Bill seeks to rename the Teacher Training Agency (TTA) as the Training and Development Agency for Schools (TDA), and to extend its objectives to cover the training and development of the whole school workforce.

The new Agency would be empowered to act in Wales as well as England. However, the Agency would not be able to do anything in Wales (except where the functions have been given to them by regulations made under the *Education Act 2002*) unless it had been requested to do so by the NAW and the Agency had given notice that it had agreed to such a request.

#### 1. Background

The Teacher Training Agency (TTA), which is a Non-Departmental Public Body, was set up by the *Education Act 1994*. Its main responsibility is to operate as a funding agency for the provision of initial teacher training in England. It carries out certain promotional work for the Welsh Assembly Government under a Memorandum of Understanding.

Under Section 1 of the 1994 Act, the TTA's objectives are to contribute to raising teaching standards, promote teaching as a career, improve the quality and efficiency of Initial Teacher Training (ITT) and other routes into teaching, secure the involvement of schools in ITT, and generally to secure that teachers are well-fitted and trained for their task. The TTA promotes the Continuing Professional Development (CPD) of teachers.

The Government is extending the TTA's remit to cover, amongst other things, the training and development of school support staff as part of its school workforce reforms. This will build on the TTA's existing work in relation to Higher Level Teaching Assistants. The extended remit opens up the prospect of the TTA taking on a more strategic role for the entire school workforce.

On 29 March 2004 at the launch of the TTA corporate plan for 2004 to 2007, the then Secretary of State for Education and Skills, announced that the remit of the TTA would be widened by:

- expanding its role in relation to the wider school workforce, moving further towards securing comprehensive training and development for all school support staff;
- being a key partner in the new strategic network representing all staff working with children and young people that is being established following the Green Paper, *Every Child Matters*, and

- strengthening its contribution to teachers' continuing professional development.<sup>163</sup>

The full corporate plan is available on the TTA website.<sup>164</sup>

To develop the strategy for school support staff training and development, the TTA will be working closely with the Learning and Skills Council (LSC), local authority employers, school workforce unions and training providers. Speaking at the LSC on 29 March 2004, David Miliband, the then Minister for School Standards, said:

“The potential gains from up-skilling the school support staff sector are huge.

School support staff play a vital role in complementing the work of teachers and they have a crucial role to play in raising standards and enabling every child to reach their potential. Developing the whole school workforce is essential if teachers are to focus their skills where they make most difference – teaching. I look forward to seeing bursars, caretakers, learning mentors, teaching assistants and all school support staff benefit – and above all the impact this will have on their schools' learning and standards.”<sup>165</sup>

The DfES has published plans for school support staff training and development in 2004-05, which summarise the work in hand and set out priorities for the future.<sup>166</sup> The LSC also published its own school support sector plan which complements the TTA's plans.<sup>167</sup>

In relation to CDP, in September 2004, Charles Clarke identified four specific areas in which he wanted the TTA to take action:

- improving the coherence of occupational and professional standards for classroom practitioners;
- providing clear high quality guidance to schools on CPD and human resources and giving leadership to local authorities in these areas;
- monitoring the quality and supply of CPD in regions and subjects, working with the DfES and other partners to shape the national CPD agenda and priorities; and
- co-ordinating specific CPD programmes.<sup>168</sup>

Further details on the extended remit relating to teachers' CPD was set out in the Secretary of State's letter to the TTA.<sup>169</sup>

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<sup>163</sup> TTA press Notice, *Wider remit for TTA*, 3 April 2004, <http://www.tta.gov.uk/ttaneewsarchive/april.htm>

<sup>164</sup> <http://www.tta.gov.uk/php/read.php?sectionid=21&articleid=1751>

<sup>165</sup> DfES Press Notice, 29 March 2004, *Clarke congratulates teacher training agency and announces enhanced role*, [http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn\\_id=2004\\_0046](http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2004_0046)

<sup>166</sup> <http://www.teachernet.gov.uk/supportstaff>

<sup>167</sup> <http://www.lsc.org.uk>

<sup>168</sup> TTA Press Notice, *TTA's new role to promote CPD*, 7 September 2004, [http://www.tta.gov.uk/ttaneewsarchive/september\\_04b.htm](http://www.tta.gov.uk/ttaneewsarchive/september_04b.htm)

## 2. Lords' consideration

Peers discussed the proposed extended remit of the Agency and the resource implications of it. They also asked about how the Agency would work with others, particularly the General Teaching Council, and whether the Agency would cover teachers outside school settings. There was some discussion about the need for members of the Agency to be experienced in education and training. Baroness Morris of Bolton made the case for the Agency's annual report to be subject to the affirmative procedure but this was not accepted by Lord Filkin.<sup>170</sup>

Government amendments were made to remove any ambiguity that the Agency would be able to take on any work in relation to the whole school workforce and in so doing have regard to the development of children and young people whether being educated at school or elsewhere.<sup>171</sup>

Lord Hanningfield moved an amendment in committee to place a duty on the agency to ensure that the school workforce is well-fitted and trained to promote the behavioural development of pupils. The Minister agreed with the spirit of the amendment but thought that there was no need to put the matter in statute, and the amendment was withdrawn. At report stage Baroness Morris of Bolton returned to the issue, and the Government decided to incorporate this requirement in the Bill. The Government's amendment was agreed.<sup>172</sup>

Baroness Walmsley moved an amendment, which had been proposed by the NSPCC, to add to the list of the Agency's responsibilities to secure that the school workforce is well-fitted and trained to safeguard and promote the welfare of children and young people. In response, Lord Filkin said that the Government accepted the proposal and would introduce its own amendment at third reading. Accordingly the Bill was amended at third reading.<sup>173</sup>

Other Government amendments were made at report stage relating to the remuneration of members and employees of the Agency, and to align procedures with current government accounting arrangements.<sup>174</sup>

Lord Hanningfield unsuccessfully tried to introduce a new clause into the Bill at report stage, and again at third reading, aimed at reducing the burden of bureaucracy on schools. Lord Filkin outlined the measures that the Government is already taking on this.<sup>175</sup>

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<sup>169</sup> DfES Press Notice, *Clarke sets out plans for high quality professional development of teachers*, 10 September 2004

<sup>170</sup> HL Deb 18 January 2005, cc 717-64

<sup>171</sup> HL Deb 18 January 2005, cc 741-6

<sup>172</sup> HL Deb 24 February 2005, c 1408

<sup>173</sup> HL Debs 24 February 2005, cc 1408-9; 2 March 2005, cc 269-70

<sup>174</sup> HL Deb 24 February 2005, cc 1410-11

<sup>175</sup> HL Debs 24 February 2005, cc 1411-14; 2 March 2005, cc 270-74

## **B. Funding of teacher training by the Higher Education Funding Council for Wales<sup>176</sup>**

Clauses 85 to 91 set out the functions of the Higher Education Funding Council for Wales (HEFCW) as regards teacher training in Wales. HEFCW is responsible, under the *Education Act 1994*, for the funding of initial teaching training for school teachers and the accreditation of providers of initial teacher training in Wales. In England, teacher training is funded by the Teacher Training Agency (TTA). The TTA also covers some areas which are not the responsibility of HEFCW including administering teacher training bursaries and the Graduate Teacher Programme, both of which are carried out by the NAW in Wales.

As noted above, the Bill aims to extend the powers of the TTA (renamed as the Teacher Training and Development Agency for Schools) to cover development of the whole school workforce. This is not an area for which HEFCW is responsible. The Teacher Training and Development Agency for Schools will therefore under an agreement with the NAW carry out certain functions in England and Wales.

Clauses 85 to 91 therefore aim to clarify HEFCW's remit with regard to teacher training. HEFCW's position in this area will remain basically the same.

## **C. Provision of training in schools**

The Bill replaces section 12 of the *Education Act 1994* to allow governing bodies of maintained schools to provide training for members of the school workforce in addition to their existing powers to provide training for teachers.

# **V Part 4 Miscellaneous**

## **A. Funding of maintained schools**

### **1. Background on the Bill's provisions**

Under the current local government finance system, local authorities receive a single revenue grant that covers education, social services, roads and other services. They also raise income from Council Tax and receive a proportion of the national total raised from non-domestic rates. The formula used to distribute grant to local authorities takes account of each authority's relative need to spend on each service. This is known as the Formula

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<sup>176</sup> This sub-section was written by Susan Hubble, Social Policy Section.

Spending Share (FSS). Authorities decide how much Council Tax to raise, and how much they intend to spend on education and other services.

Currently LEAs set a “schools budget” and a “LEA budget” for the forthcoming financial year and calculate the budget shares of schools on an annual basis. The budget shares are shares of the individual schools budget, which is the total sum left in the schools budget after certain items of central expenditure have been deducted. Schools forums advise LEAs on various issues relating to school funding. Established in 2003 they must include representatives from primary and secondary schools.

In 2003-04 some schools experienced funding difficulties, and there was a general outcry that schools’ funding was in crisis. The reasons for this were complicated and were mostly to do with external factors. The Government had changed the funding system in an attempt to produce a fairer and more transparent system, and the changes coincided with extra demands on schools through increases in teachers’ pay, pension contributions and National Insurance contributions. There followed an acrimonious debate between the Government, local authorities and schools about what had gone wrong, and much of the debate focused on whether local authorities had “passported” increases in their schools FSS to their Schools Budget. The Educational and Skills Committee looked at what went wrong, and the Government’s reaction to the problems, in its report, *Public Expenditure: Schools’ Funding*, which was published on 18 December 2003.<sup>177</sup>

In response to the funding problem, the Government introduced additional requirements on LEAs in 2004-05, including a requirement to deliver a minimum percentage increase in every school’s budget share, and a limit on the increase in the expenditure on items not delegated to schools within the overall Schools Budget. (LEAs could apply to the Secretary of State for exemption from the provisions.) This approach was extended when the Government’s *Five Year Strategy for Children and Learners*, published in July 2004, announced new school funding arrangements for maintained schools.<sup>178</sup> The strategy document made it clear that funding will continue to be channelled through local authorities but proposed:

- a new ring-fenced grant (dedicated schools budget) for school funding from DfES to local authorities; and
- three year budgets for all maintained schools, geared to pupil numbers and with a guaranteed minimum increase each year for every school.

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<sup>177</sup> First Report of the Session 2003-04, HC Paper 112:

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmeduski/112/11202.htm>

<sup>178</sup> paragraphs 11 to 13 of Chapter 4 of the strategy document:

<http://publications.teachernet.gov.uk/eOrderingDownload/DfES-5%20Year-Plan-Chapter4.pdf>

To facilitate the changes, Schedule 16 of the Bill amends various provisions in the *School Standards and Framework Act 1998*:

- to allow schools to receive three-year budgets based on the academic year;
- to clarify that the Secretary of State's current power under section 14 of the *Education Act 2002* to pay grants to LEAs includes power to make a grant to cover the core funding of schools; and
- to allow the Secretary of State to make regulations to give specified decision-making powers to Schools Forums in relation to central spend and the minimum funding guarantee.

The enabling powers in the Bill cover both England and Wales but the NAW has no immediate plans to exercise those powers. The NAW intends to continue to provide funding for schools in Wales through the local government revenue settlement.

On 17 February 2005, the DfES issued a consultation document setting out how the new funding arrangements will work.<sup>179</sup>

## 2. Reaction

In its recent report, *Public Expenditure on Education and Skills*, the Education and Skills Committee concludes that the DfES had reacted to perceptions of crisis rather than an actual widespread school funding crisis, and that the solution it has provided has changed the nature of the funding allocation, the role of local authorities in education at the local level, and the role of the DfES. The committee believes that the changes have led to the loss of LEAs' ability to make executive decisions about schools' funding in their areas, and will, inevitably, lead to a far greater involvement of the DfES in the day-to-day management of the school system. The report points out that there is no evidential basis for saying that change is merited, and no way of being confident that the changed system will adequately address any problems that exist.<sup>180</sup>

The NAHT has welcomed the move to three-year budgets saying that it will bring much needed stability into the budget setting process, and will enable heads to plan for the future of their schools with more certainty. It stresses that the success of three-year budgets will depend on adequate year-by-year funding increases. A ring-fenced grant, it argues, would stop local authorities leaking money (meant for schools) into other services.<sup>181</sup>

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<sup>179</sup> [www.dfes.gov.uk/consultations](http://www.dfes.gov.uk/consultations)

<sup>180</sup> First Report of Session 2004-05, HC Paper 168, p 28:

<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmmeduski/168/16802.htm>

<sup>181</sup> NAHT Press Notice, *NAHT welcomes 3 year budgets for schools*, 17 February 2005

The NUT has expressed concern that the proposals will significantly reduce local democratic control over school funding with central government taking the decisions on the level of school funding in every area. It has also pointed out that one of the benefits of local decision-making is that many local authorities have spent more on education than their formula allocation from central government. Specifically on the issue of three-year budgets, it notes that there would need to be robust and accurate mechanisms for ensuring that any increased costs to schools in that period resulted in increased funding.<sup>182</sup>

The LGA has described the proposals as nationalising education funding and has argued that the changes will undermine democratic accountability. Councillor Alison King, chairman of the LGA's children and young people board, said that some councils will not be able to justify giving funds to institutions divorced from the democratic process because the elected member will have no influence in the way schools serve their community, and she expressed doubt that central government would be able to "micro-manage" schools.<sup>183</sup>

### **3. Lords' consideration**

Peers expressed support for the principle of three-year budgets. However, Lord Hanningfield questioned the detailed working of the arrangements and thought that there had been insufficient consultation. Baroness Walmsley saw the proposals as part of an incremental removal of power from local authorities, and thought that the changes would impede the ability of authorities to plan strategically. Lord Ouseley thought that moving to a dedicated schools grant would remove the link between local council tax payers and schools. Lord Dearing noted the representations made by NAHT and SHA in favour of the proposals, but wondered whether there could be some room for flexibility whereby the Secretary of State could consider an appeal by the LEA about local funding.

Lord Filkin, speaking for the Government, stressed that ring-fenced grants would ensure that increases in funding get through to schools. He emphasised that local authorities would continue to play a strategic role, and would be able to add funding over and above the dedicated schools grant. He pointed out that ring-fenced grant does not mean a national funding formula as local authorities will continue to distribute funds to schools by formula in accordance with guidance. Other matters debated included activity-led funding, and the role of school forums, and whether there should be school funding review bodies.<sup>184</sup>

At report stage and third reading, Lord Hanningfield argued that the first set of regulations which introduce the reformed school funding system should be subject to the

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<sup>182</sup> NUT Briefing on the Education Bill House of Lords Second Reading, 13 December 2004

<sup>183</sup> LGA Education Bill Lords Briefings; LGA Press Notice, 10 January 2005, <http://www.lga.gov.uk/PressRelease.asp?id=SXEA2D-A782A557>

<sup>184</sup> HL Debs 24 January 2005, cc 1014-52; 24 February 2005, cc 1415-25 and cc 1458-60

affirmative procedure. At third reading, Lord Filkin accepted that the introduction of three year budgets based on the academic year is an important change that should be scrutinised in detail, and that therefore the Government would not resist Lord Hanningfield's amendment, which was agreed.<sup>185</sup>

## **B. LEA targets: England**

The Bill makes continuing provision for the Secretary of State to make regulations requiring LEAs in England to set targets in respect of pupils' performance. At present section 6 of the *School Standards and Framework Act 1998* makes provision for regulations that require LEAs to set educational performance targets for the approval of the Secretary of State through Educational Development Plans (EDPs). However, new provision is needed when section 6 is repealed under the *Children Act 2004*.

The NUT has questioned why the power is needed at all as no pupil targets are set by LEAs in Wales. It has stressed that target-setting should be a collaborative exercise starting with the pupil and teacher, and that it should not be a "top-down" process.<sup>186</sup>

During the debates in the Lords, Baroness Walmsley moved an amendment to remove the Secretary of State's power to modify LEA targets, which she withdrew after a short debate in which Lord Filkin outlined why the measures were needed. Lord Hanningfield moved an amendment to require the Secretary of State to have regard to evidence of attainment from school inspections where targets are to be modified. Lord Filkin said that there is a wealth of data that could be drawn upon in discussions about targets, and the amendment was withdrawn.<sup>187</sup>

## **C. Removal of requirements for governors' reports and parents' meetings**

The Bill amends the *Education Act 2002* to remove the requirement for governing bodies of maintained schools in England to produce an annual report to parents, and to hold an annual parents' meeting. The requirements to produce a governors' annual report and to hold an annual parents' meeting will continue to apply in Wales though the NAW may remove these requirements by order if it so wishes. The aim of the change is to reduce the legislative requirements on school governing bodies and to give them greater freedom to decide how they communicate with parents. The provision needs to be looked at along side the proposed school profiles (see below).

The requirement on schools to produce an annual governors' report and to hold an annual parents' meeting dates back to 1986. Some commentators feel that these reports and

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<sup>185</sup> HL Debs 24 February 2005, cc1458-60 and 2 March 2005, cc 287-90

<sup>186</sup> NUT Briefing Education Bill House of Lords Second Reading, 13 December 2004, p 10

<sup>187</sup> HL Deb 24 January 2005, c 1052-6 and 24 February 2005, cc1425-8



meetings are often a waste of time. They support the removal of the requirement, and see the school profile as a welcome development.<sup>188</sup> However, there was considerable disquiet expressed by Peers about the proposals. During the committee stage, Peers pointed out that there was a need for governing bodies to be accountable, and questioned whether the change would be a step in the direction of down-grading the involvement of both governors and parents in the running of the school. Lord Hanningfield moved an amendment to give “headmasters” discretion as to whether to hold an annual parents’ meeting but this was defeated by 70 votes to 30. Earlier in the debate Baroness Andrews, speaking for the Government, noted that annual meetings were often very poorly attended, but that the Bill would not stop schools holding meetings with parents if they wished.<sup>189</sup>

During the report stage debate, Baroness Sharp of Guildford moved an amendment to encourage parental involvement in school governing bodies as a way of keeping the debate open. She noted that the National Governors’ Council (NGC) and the National Association of Governors and Managers (NAGM) and the Campaign for the Advancement of State Education (CASE) had asked for the annual meeting with parents to be retained. Lord Filkin, speaking for the Government, outlined the various ways in which parents may become involved with schools, and wanted to go much further than a situation where schools have a meeting and then think the job of involving parents is done.<sup>190</sup>

## D. School Profiles

At the North of England Conference in January 2004, David Miliband, the then School Standards Minister, outlined the Government’s policies for a new relationship with schools. As part of that he announced the development of a school profile which, amongst other things, would replace the governors’ annual report.

The Bill inserts a new provision into the *Education Act 2002* requiring governing bodies of all maintained schools in England to prepare and publish a school profile. The content, format and manner of publication will be prescribed by the Secretary of State in regulations, and governing bodies must have regard to any guidance given by the Secretary of State. During the Lords’ consideration of the provision, Peers probed for information on what would and could be included in the profile. In committee, Baroness Andrews referred to recent trials that had been conducted on the profile, and said that the Government want to reduce prescription while ensuring that a minimum amount of information is provided. She assured Peers that there will be narrative sections written by the governing body which can be tailored to individual schools.<sup>191</sup> Lord Hanningfield

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<sup>188</sup> e.g., National Association of Head Teachers, briefing for Second Reading; Secondary Head Association, Response to the Bill

<sup>189</sup> HL Deb 24 January 2005, cc 1067-78

<sup>190</sup> HL Deb 24 February 2005, cc 1428-1433

<sup>191</sup> HL Deb 24 January 2005, c 1107

moved an amendment during the report stage aimed at ensuring that all registered parents would be sent a copy of the school profile. Lord Filkin said that the guidance accompanying school profiles would cover this.<sup>192</sup>

## **E. Provisions and funding of higher education in maintained schools**

The Bill amends the *Education Act 2002* to enable maintained schools in England and Wales to offer courses that are at a higher level than GCE A Level. The aim is for schools to be able, but not to be required, to offer a limited amount of higher education courses in order to stretch the most able students. This takes forward the Government's commitment to personalised learning, and the proposals contained in the white paper, *14-19 Education and Skills*.<sup>193</sup>

During the committee stage debate, Lord Sutherland asked about the inspection of higher education courses provided in school. Baroness Andrews, speaking for the Government, said that the Ofsted inspection framework would be adequate. She also emphasised that schools would not be able to offer full degrees.<sup>194</sup>

## **F. Admission arrangements to make special provision for looked-after children**

Clause 106 was added to the Bill by Government amendments made at report stage in the Lords.<sup>195</sup> The clause made provision for regulation-making powers to make it a requirement for school admission authorities to set admission arrangements that give priority to children who are looked-after by local authorities. The regulation making power is exercisable in relation to England, and in relation to Wales by the NAW. The Explanatory Notes to the Bill state that the regulations will set out how this will apply to all admission authorities, including faith and grammar schools, and will specify exemptions.

The Education and Skills Committee in its report on *Secondary Education: School Admissions*, recommended that priority to children in local authority care in school admission decisions should be given regulatory backing.<sup>196</sup>

## **G. Restrictions on the disposal of foundation school land**

At present there is a loophole in the law which could allow foundation school trustees in certain circumstances to dispose of publicly-funded school land, including playing fields,

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<sup>192</sup> HL Deb, 24 February 2005, cc1433-4

<sup>193</sup> Cm 6476, February 2005

<sup>194</sup> HL Deb 24 January 2005, c 1110

<sup>195</sup> HL Deb 24 February 2005, cc 1434-7 and c 1458

<sup>196</sup> HC Paper, 58-I, 14 July 2004, paragraph 68:

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmmeduski/58/5802.htm>

and keep the funds. The Bill seeks to close this loophole by requiring the consent of the Secretary of State or the NAW, as appropriate, for disposals of such land. The provisions apply only to land which was originally provided by a local authority, or which was bought or developed using proceeds from the sale of such land. There was a wide-ranging debate at the Lords committee stage on the need to safeguard land required for sport and recreational use.<sup>197</sup>

Foundation schools are a category of maintained school. Following the proposals contained in the DfES five-year strategy, a consultation document was issued in October 2004 encouraging community and voluntary controlled schools to change their school category to foundation.<sup>198</sup> Ministers are currently considering the responses. Those proposals are not dependent on the Bill.

## **H. Information (data sharing)**

The Bill makes provision for data to be shared between the DfES and Inland Revenue and the Department for Work and Pensions in connection with Education Maintenance Allowances (EMA) applications, as a means of reducing fraud, and for the purpose of improving the administration of free school lunches etc; and for the collection of data on individual teachers and support staff to be held on a school workforce database for statistical, research and other purposes.

### ***a. Supply of information about education maintenance allowances<sup>199</sup>***

EMAs are means-tested allowances of up to £30 per week (plus discretionary bonuses of £100), which are paid to 16 to 19 year olds from low income households who stay in education.

Clause 108 will allow certain information of a confidential nature, on applicants for EMAs, to be shared between specified named bodies. The clause aims to facilitate a single information sharing scheme which aims to reduce fraud and abuse of the EMA scheme. Data on household income and identity could be shared between the Inland Revenue and the DWP. This provision aims to make the current system safer and more efficient, allowing eligibility for EMAs to be determined faster.

The type of information to be shared is specified in subsection (1) and the persons eligible to supply and receive such information is specified in subsection (4). A short debate was held on these provisions during the Bill's committee stage in the House of Lords. In the debate, Baroness Andrews reassured the committee that 'financial accountability, privacy

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<sup>197</sup> HL Deb 24 January 2005, cc 1111-16

<sup>198</sup> DfES, *Consultation on foundation schools and expansion of successful and popular schools*, <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1282>

<sup>199</sup> This sub-section was written by Susan Hubble, Social Policy section.

and security of data were extremely important and that we are alert for it'<sup>200</sup>. An exploratory amendment,<sup>201</sup> moved by Baroness Walmsley during the report stage in the House of Lords, clarified the position of teachers under the scheme, by eliciting the assurance that teachers would not be involved in providing information<sup>202</sup>. Further details of the scheme can be found in a letter from Lord Filkin to Baroness Morris of Bolton dated 7 February 2005 which is available as a House of Commons Library.<sup>203</sup>

Clause 109 creates an offence of unauthorised disclosure of information received under section 108; these provisions are similar to those in section 182 of the *Finance Act 1989* and section 123 of the *Social Security Administration Act 1992*. Persons found guilty of such an offence could face criminal prosecution.

***b. Supply of information about school lunches***

A pupil is eligible for a free school lunch if their parent is in receipt of:

- income support
- income-based jobseekers allowance
- support provided under Part 6 of the *Immigration and Asylum Act 1999*; or
- Child Tax Credit, provided that they are not entitled to Working Tax Credit and their annual income (as assessed by the Inland Revenue) does not exceed £13,480

Eligibility for free school lunches is assessed locally and the systems for checking eligibility vary from authority to authority.

Clause 110 is an enabling power designed to remove the barriers to sharing data so that a more efficient system for determining eligibility for free lunches may be implemented. In response to questions asked by Baroness Morris of Bolton in the committee debate, Lord Filkin wrote to her about reasons for introducing the provisions, current plans for their implementation, how data would be properly safeguarded, and why the provisions would apply to England and Wales only.<sup>204</sup> At the report stage, Baroness Andrews explained technical Government amendments to the provisions which would allow information to be passed to anybody checking eligibility for free school meals on behalf of a LEA (where services have been contracted out).<sup>205</sup>

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<sup>200</sup> HL Deb 24 January 2005 c 1117

<sup>201</sup> Amendment No 115

<sup>202</sup> HL Deb 24 February 2005 c1436

<sup>203</sup> Deposited Paper ,HDEP 2005/060

<sup>204</sup> Letter to Baroness Morris of Bolton from Lord Filkin, Parliamentary Under- Secretary of State for Children and Young People, DfES, 7 February 2005, House of Lords Deposited Paper, HDEP 2005/060

<sup>205</sup> HL Deb 24 February 2005, cc 1436-37

**c. *Supply of information about school workforce***

Clause 114 is an enabling power to require or authorise the supply of prescribed information to the Secretary of State, the NAW or prescribed persons. The Explanatory Notes to the Bill state that the information will primarily be used for statistical analysis and research, but will also be shared between organisations which have an independent legal right to the information. In a letter to Lord Hanningfield, Lord Filkin explained why the DfES/NAW need to share data on the school workforce with other organisations, gave information about the prescribed persons with whom data will be shared, described how the data sharing provisions will operate in practice, and explained how information will be safeguarded.<sup>206</sup>

With regard to the sharing of data about the school workforce, Lord Hanningfield expressed concern about how much information would be shared and how the Government will ensure that there are sufficient protections.<sup>207</sup>

**I. *Attendance at alternative educational provision***

As the Explanatory Notes explain, section 29(3) of the *Education Act 2002* gives the governing body of a school the power to direct a pupil in attendance at that school to attend alternative provision. However, pupils who are excluded from school for a fixed period or who are appealing against a permanent exclusion cannot attend a school from which they have been excluded. As a result schools cannot direct such excluded pupils to attend alternative educational provision. Alternative provision is largely provided in Pupil Referral Units (PRUs). Clause 115 amends section 29(3) by extending the governing body's power to direct pupils to attend alternative educational provision if the pupil is not in attendance but is still registered at the school.

Under section 444 of the *Education Act 1996* it is an offence for a parent to fail to secure the regular attendance at a school of a registered pupil. The sanctions against such a parent can include prosecution or a fixed penalty fine. Clause 116 inserts a new section (section 444ZA) in the 1996 Act to extend the circumstances in which a parent or a carer can be issued with a penalty notice or be prosecuted for failing to ensure that a child for whom he is responsible attends the alternative provision that has been made for the child.

There was a wide-ranging debate about school exclusions during the Lords' committee and report stages. In committee Baroness Turner of Camden moved an amendment, which had been suggested by Save the Children, to place a duty on bodies making a decision about whether a child should be excluded from school to have specific regard to

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<sup>206</sup> Letter to Lord Hanningfield from Lord Filkin, Parliamentary Under- Secretary of State for Children and Young People, DfES, 7 February 2005, House of Lords Deposited Paper, HDEP 2005/056

<sup>207</sup> HL Deb 24 January 2005, cc 1119-20

the child's welfare and educational achievement; and for regulations to provide that children proposed for exclusion have a proper opportunity to make representations and receive all relevant information. Baroness Walmsley, the Earl of Listowel and Baroness Howe spoke in favour of the amendment. Although Baroness Andrews, speaking for the Government, was sympathetic to the main thrust of the amendment she did not accept that legislative provision was needed, and noted that the guidance on exclusions made it clear that pupils should be involved. However she said that she that she would reflect on the research to which Peers had referred, and to the arguments that had been made.<sup>208</sup>

At report stage Baroness Sharp of Guildford moved amendments to probe the issue of placing difficult pupils in popular schools. Baroness Morris of Bolton moved an amendment to require PRUs to publish data on the levels of educational achievement at PRUs and other prescribed information. Baroness Thornton moved an amendment to ensure that education is provided for young people detained in youth justice or mental health settings. The amendments were withdrawn after debate.<sup>209</sup>

The Opposition tried unsuccessfully to amend the Bill to abolish independent appeal panels for school exclusions. At report stage an amendment moved by Lord Hanningfield was defeated by 141 votes to 51.<sup>210</sup>

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<sup>208</sup> HL Deb 24 January 2005, cc 1120-6

<sup>209</sup> HL Deb 24 February, cc 1437-51

<sup>210</sup> HL Debs 18 January 2005, cc 695-99; 24 February 2005, cc 1364-9

## J. Appendix: School inspection in England: the main changes at a glance<sup>211</sup>

Current system	New system
6-10 weeks' notice before an inspection	2-5 days' notice
Relatively large inspection teams visiting for around a week	Small teams visiting for no more than 2 days – around a quarter of the current inspection weight
A maximum 6-year interval between inspections	A maximum 3-year interval
Inspections cover: standards and quality of education; leadership/management; and spiritual, moral, social and cultural development	Inspection reports will, as now, cover the standards and quality of education, leadership/management; and spiritual, moral, social and cultural development within the context of the 5 outcomes set out in Every Child Matters
Most schools undertake some form of evaluation, but it is not structured across all schools nor part of the inspection process	Inspection evidence will start from a school's self-evaluation
Collection of a wealth of information – extensive use of lesson observation	Focus on core systems and key outcomes, informed by lesson observation and other indicators of pupils' progress – self-evaluation evidence at the heart of the inspection
Inspections usually conducted by registered inspectors	HMI leading many inspections and involved in all inspections
Registered inspectors responsible for some inspection reports, HMI for others	HMCI accountable for all inspection reports
Detailed and relatively lengthy (30 pages+) inspection reports produced	Short, sharp reports (around 6 pages) focused on key outcomes with clearer recommendations for improvement
Reports produced within 40 days of the inspection event	Most reports will be with the governing body, at least in draft, by the end of the week of the inspection
Schools required to prepare a separate post-inspection action plan	Schools feed their intended actions into the school development plan
Various categories of schools causing concern – special measures, serious weaknesses, underachieving and inadequate sixth forms	Rationalised system with two categories – special measures and improvement notice

<sup>211</sup> DfES/Ofsted, *A New Relationship with Schools*, 2004, p 6

