



RESEARCH PAPER 01/107  
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# ***The Education Bill***

**Bill 55 of Session 2001-02**

The *Education Bill* was presented on 22 November 2001 and is due to have its Second Reading debate on 4 December 2001. The Bill seeks to implement the legislative proposals set out in the White Paper *Schools-Achieving Success* and associated consultation documents, and in the National Assembly for Wales's Paving Document *The Learning Country*. It makes provisions for England and Wales, sometimes separately but more often by enabling legislation which gives the National Assembly for Wales discretion on how and when they are applied in Wales.

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## Summary of main points

The *Education Bill* presented on 22 November 2001 is a Bill of 211 clauses and 22 schedules covering a number of different aspects of education. It was presented on 22 November 2001 and is due to have its Second Reading debate on 4 December 2001. The Bill seeks to implement the legislative proposals set out in the White Paper *Schools-Achieving Success* and associated consultation documents, and in the National Assembly for Wales's Paving Document *The Learning Country*.

The Bill itself, or regulations made under it, will:

- make provision for a new legal framework to facilitate innovation;
- permit successful schools to apply for exemption from the legislation covering the National Curriculum and teachers' pay and conditions;
- enable governing bodies of maintained schools to form companies or participate in forming companies;
- make new provision for the Secretary of State or the National Assembly for Wales to give financial assistance for education and childcare;
- alter the constitution, powers and procedures of school governing bodies;
- provide separate financial assessments for expenditure on school pupils, and new accounting procedures;
- make changes to admission arrangements, exclusion procedures and the setting of attendance targets;
- increase powers of intervention in schools and LEAs;
- make provision about the setting up of new schools, introduce Academies and make changes to the provisions for opening, closing or making alterations to schools;
- make separate provision for the curriculum in England and Wales, including a foundation stage and greater flexibility;
- introduce a new framework for the determination of teachers' pay and conditions, make provision for teacher appraisal, qualifications, provision about misconduct, extend the functions of the General Teaching Councils and provide for lecturer and principal qualifications in further education colleges;
- make changes in relation to childcare and nursery education; and

- introduce a new regulatory regime for independent schools;

The *Explanatory Notes* published with the Bill provide a detailed commentary on the provisions of the Bill, together with notes on the effect of the Bill on public sector finance and manpower and a summary of the Regulatory Impact Appraisal.<sup>1</sup> The Department for Education and Skills (DfES) has published a full Regulatory Impact Assessment.

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<sup>1</sup> <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/055/en/02055x--.htm>

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## I Introduction

The *Education Bill*<sup>2</sup> was presented on 22 November 2001 and is due to have its Second Reading Debate on 4 December 2001. The Bill seeks to implement the legislative proposals set out in the White Paper *Schools-Achieving Success*<sup>3</sup> and associated consultation documents, and in the National Assembly for Wales's Paving Document *The Learning Country*.<sup>4</sup> It makes provisions for England and Wales, sometimes separately but more often by enabling legislation which gives the National Assembly for Wales discretion on how and when they are applied in Wales.<sup>5</sup>

The White Paper was described<sup>6</sup> as putting

pupils first by increasing diversity, promoting innovation and stripping away many regulatory burdens that stifle creativity in school leadership.

It sets out a blueprint that will give every secondary school the freedom to develop its own unique ethos and centre of excellence. With this freedom will come a renewed responsibility to deliver the highest standards for every pupil.

Jane Davidson Minister for Education and Lifelong Learning described the Paving Document in these terms:<sup>7</sup>

The Learning Country sets out policies which are right for us in Wales, distinctive Welsh policies to suit our circumstances. It celebrates what teachers have achieved for pupils in Wales. It puts local authorities, local communities and locally determined needs and priorities at the centre of the agenda for schools. A local comprehensive system – run in partnership to suit the needs of a distinctive small country – building on our strengths.

The Queen's speech on 20 June 2001<sup>8</sup> had announced:

An education Bill will be introduced to promote diversity and higher standards, particularly in secondary schools. It will provide new opportunities for school sponsorship, more options for tackling failing schools, and greater freedom for successful head teachers and governors.

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<sup>2</sup> Bill 55 of 2001-2202

<sup>3</sup> Cm 5230 September 2001

<sup>4</sup> *The Learning Country: A Comprehensive Education and Lifelong Learning Programme to 2010 in Wales* September 2001

<sup>5</sup> NAW PN, *Ministers welcome moves to strengthen education in Wales* 23 September 2001

<sup>6</sup> DfES PN, *Far reaching reform to put the pupil first and enable every school to succeed* 5 September 2001

<sup>7</sup> NAW PN, *Jane Davidson takes forward the "Great Debate" on Education* 22 October 2001

<sup>8</sup> HL Deb 20 June 2001 c 5

This Paper outlines the proposed powers in the Bill, the background to them and some of the reaction to the policy intentions, where it is available. The NAW do not expect to publish their summary of responses to the Paving Document until mid December 2001.

A feature of the Bill is the use of powers to introduce regulations. A report<sup>9</sup> of the Procedure Committee last year considered the system for dealing with delegated legislation and made recommendations.

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<sup>9</sup> Delegated Legislation HC 48 of 1999-2000 7 March 2000  
<http://www.publications.parliament.uk/pa/cm199900/cmselect/cmproced/48/4802.htm>

## II Part 1 Provision for New Legal Frameworks

Part 1, Chapters 1, 2 and 3, of the Bill seeks to provide new legal frameworks to support innovation and new forms of service delivery.

### A. Powers to facilitate innovation

#### 1. Background

The aim of the Government's education policy as set out in the White Paper, *Schools - Achieving Success*, is to provide a school system which 'values opportunity for all, and embraces diversity and autonomy as the means to achieve it.' The Government's second term is dedicated to transforming secondary education by, amongst other things, giving successful schools 'the freedom they need to excel and innovate.'<sup>10</sup> The White Paper and the Green Paper<sup>11</sup> that preceded it highlighted the importance of creating a culture in education that encourages innovation, particularly in the use of Information and Communications Technology. The White Paper also announced that the Government would set up a schools innovation unit to act as a 'powerhouse' and 'incubator' for new approaches which might not fit with the rules as they currently exist, but could be developed as prototypes and tested for their effectiveness.<sup>12</sup>

In a recent speech to the Social Market Foundation the Secretary of State outlined her vision for the future of teachers and teaching. In it she highlighted flexible and innovative approaches to teaching, and proposed changes in the way staff should be deployed. She envisaged classrooms of the future at the 'cutting edge in the use and availability of ICT, stretching and challenging the ablest and the most disaffected pupils alike, and supporting on-line learning.'<sup>13</sup>

#### 2. The Bill

**Chapter 1, clauses 1 to 4**, introduces new powers to facilitate experimental pilot projects in the education system, where the Secretary of State, or the NAW, believes innovation is likely to lead to improvement in educational standards for children under the age of 19. The clauses allow the Secretary of State, or the National Assembly for Wales (NAW) in

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<sup>10</sup> Cm 5230, paragraphs 1.5 and 1.6

<sup>11</sup> *Schools Building on Success*, Cm 5050

<sup>12</sup> *ibid*, paragraph 5.21

<sup>13</sup> *Professionalism and Trust – the future of teachers and teaching*, A speech by the Secretary of State to the Social Market Foundation, DfES, 12 November 2001

Wales, to make an order to suspend or modify legislation in response to applications from ‘qualifying bodies’ (**clause 2**). The power is limited to education legislation (**clause 1 (3)**), and the lifetime of the powers set out in Chapter 1 (apart from those powers relating to variation or revoking orders) will last for 4 years (**clause 2(6)**).

‘Qualifying bodies’ are defined as: a LEA, an Education Action Forum, the governing body of a ‘qualifying school’ or the proprietor of a non-maintained special school approved by the Secretary of State or NAW. ‘Qualifying schools’ are a community, foundation or special school, a maintained nursery school, a City Technology College, a City College for the Technology of the Arts or an Academy (**clause 1 (c)**). Before making an application the ‘qualifying body’ must consult with others as appropriate. Before making an order under **clause 2** the Secretary of State or the NAW shall, if she or it considers it appropriate to do so, consult the Chief Inspector (in England, HM Chief Inspector of Schools, and in Wales HM Chief Inspector of Education and Training). The NAW must obtain the consent of the Secretary of State before making an order under clause 2 that relates to **clauses 115 to 125** (teachers’ pay and conditions) of the Bill.

The duration of any particular legislative suspension or modification is restricted to three years in the first instance. The Explanatory Notes on the Bill state that this would provide time for most innovative practices to be implemented and evaluated, while ensuring that pilots remain time-limited.<sup>14</sup> Orders made under the power may be extended in scope or time, subject to a maximum period of six years. The clauses also allow for the termination of any suspension or modification of legislation. As the Explanatory Notes clarify, this is to ensure that if it became clear that a specific innovative proposal was not going to deliver the anticipated benefits, the Secretary of State, or NAW, would be able to reinstate the original legislation. If the Government consider that any innovative project should be made permanent it may amend the relevant statutory provisions either by way of a Bill to amend the relevant legislation or by way of a Regulatory Reform order under the *Regulatory Reform Act 2001*.

The LGA has welcomed the powers to allow LEAs greater scope to be innovative but has argued that the Secretary of State (or NAW) should consult appropriate LEAs where the qualifying body applying is a school.<sup>15</sup>

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<sup>14</sup> Bill 55-EN, paragraph 54

<sup>15</sup> LGA *Circular on the Education Bill*, 23 November 2001

## **B. Exemptions related to school performance**

### **1. Background**

Chapter 2 of Part 1 of the Bill will allow, subject to regulations, the governing bodies of successful schools to apply for exemption from certain aspects of the legislation covering the National Curriculum and teachers' pay and conditions.

The White Paper outlined proposals to give successful schools flexibility to opt out of elements of the National Curriculum and the teachers' pay and conditions arrangements:

5.16 We now have an accountable schools system where we can monitor individual school performance and intervene in inverse proportion to success. Within that framework we can now allow schools more autonomy so that well-led schools take more responsibility for themselves. Already every school enjoys almost all the freedoms that were previously available only to a few, but retains its responsibilities to the wider system. But the time is right to move further to extend the scope for our best schools and our best teachers to innovate and so to lead the way in transforming secondary education.

.....

5.17 Where schools are successful, well-led and have a record of school improvement, we want to free them from those conditions and regulatory requirements which they tell us stand in the way of yet higher standards and further innovation. The framework of performance targets and accountability, including Ofsted inspection, must remain in place; every school must continue to teach the basics and offer a broad and balanced curriculum; and effective performance management arrangements must stay.

5.18 Nonetheless, we believe that there is potential for greater flexibility in allowing successful schools to opt out of elements of the National Curriculum, for example to lead the development of thinking about greater flexibility in Key Stage 4. We will allow schools flexibility over some elements of teachers' pay and conditions, for example to provide even greater recruitment and retention incentives, or to allow schools to agree with their staff a more flexible working day or year in return for some reward. But important elements of teachers' pay and conditions will remain common to all teachers: this will not lead to individual contracts.

5.19 We will set out clear criteria for deciding which schools should have this extra autonomy and as the school system improves, we would expect the proportion of eligible schools to grow. Because secondary schools are larger, with greater management capacity, we believe that they are the sensible place to begin, but over time and in the light of experience, we will want to extend these freedoms to excellent primary schools as well. The Secretary of State will

identify the areas where schools will have extra flexibility on the advice of Ofsted.

Earlier, the White Paper stated that “all maintained specialist schools must abide by the same curriculum legislation as other schools and by the law and Code of practice on admissions. That will not change”.<sup>16</sup>

## 2. The Bill

**Chapter 2, clauses 5 to 9**, enable any community, voluntary or special school that is of a prescribed description and satisfies prescribed criteria to apply for exemption from certain aspects of the legislation covering the National Curriculum and teachers’ pay and conditions. The Secretary of State, or NAW, will make regulations specifying the qualifying criteria that a school will be required to meet to be eligible to apply. The application will be to the Secretary of State, or NAW, for an order to confirm the exemption. Some elements of the pay and conditions and curriculum requirements will be subject to exemption by right, whereas others will be subject to the Secretary of State’s, or NAW’s, discretion. The areas in which exemption may apply by right and those in which it will only be available at the discretion of the Secretary of State, or NAW, will also be set out in regulations.

**Clause 7 (2)** requires the governing body of an eligible school to consult with appropriate parties before making an application. Where the application relates to a curriculum provision, there must be consultation with the parents of registered pupils at the school. Where the application relates to a pay and conditions provision, there must be consultation with each school teacher at the school. The governing body may consult others as appear to it to be appropriate, having regard to any guidance issued by the Secretary of State or the NAW.

Commenting on the Bill’s proposals the Secretary of State said:

“The idea is that schools, or groups of schools, will be able to approach us directly with innovations or plans for improvement which we will decide both on the value of the idea and the merit of the school. This could not have happened before we came to power four years ago, but now we have an education service that is more professional and has recognised that with accountability comes flexibility and the freedom to stretch out and embrace new ideas.

Where schools have ideas that do not fit the rules they will be able to apply directly to the secretary of state to vary legislation for a pilot period. For instance, if a school comes to me and asks if it can make changes to the curriculum. That

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<sup>16</sup> Cm 5230, paragraph 5.10

judgement can be made against a background of knowing the strengths and weaknesses of that school.

We might find that a headteacher wants to change the school day, and if this helped raise standards and is acceptable to parents, this could be allowed. There could be a degree of flexibility around teachers pay and conditions, or allowing schools to link up with further education colleges to provide vocational teaching. A school may be able to opt out of elements of the national curriculum, but only if it can be proved it will raise standards.”<sup>17</sup>

### **3. Reaction**

In their responses to the White Paper both the teachers’ unions and the Local Government Association (LGA) expressed concern about the introduction of flexibility over elements of teachers’ pay and conditions, pointing out that such flexibility for some schools could lead to current problems in recruitment and retention being exacerbated.

The National Union of Teachers (NUT) said that the change could lead to fundamental and irrational inequalities being introduced into teachers’ pay and conditions, and it urged the Government not to adopt such an approach.<sup>18</sup>

The Association of Lecturers and Teachers (ATL) pointed out that when the Conservative Government introduced Grant-Maintained schools, which were bitterly opposed by the Labour Party at the time, one of the claimed advantages was that GM schools would be able to pull out of the statutory pay and conditions arrangements. However, hardly any did.<sup>19</sup>

The LGA emphasised its commitment to using Public Service Agreements to improve services and wished to see the concept extended to the LEA/Schools relationship so that schools would earn greater freedoms for achieving enhanced targets, which would reflect not only Government targets but also local targets such as working together as a family of schools:

“Schools do not exist in isolation and it is necessary to ensure, locally, that the freedoms won by one school do not detrimentally affect other schools. For example, flexibility over teachers’ pay and conditions - for recruitment and retention purposes – may simply result in drawing staff from the under-resourced and often under-performing schools elsewhere in the locality. The teachers’

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<sup>17</sup> “Loosening the reins”, *Guardian*, 23 November 2001

<sup>18</sup> *Schools - Achieving Success: the response of the NUT*, October 2001, paragraph 84

<sup>19</sup> *ATL Comment on Schools - Achieving Success*, paragraph 5.8.1



salary framework already offers a great deal of flexibility and it is difficult to see why more is needed.”<sup>20</sup>

On the proposal to allow exemptions from the National curriculum, the National Association of Head Teachers (NAHT) posed the question: what does it say about the National Curriculum if successful schools are able to opt out of it?<sup>21</sup>

NOP Consumer, which was commissioned as an independent agency to receive and process responses to the White Paper, reported that the majority of respondents showed caution with regard to the proposals to provide greater autonomy for successful schools:

Proposals were included in the White Paper that aim to reward excellence and facilitate innovation. These include proposals to provide greater autonomy for successful schools, and creating a schools innovation unit.

Table 10 shows responses to these proposals (paragraphs 5.16 and 5.21).

In a pattern similar to the previous proposal, the majority of respondents showed caution with regard to this proposal and stated that they supported this in part; 3 in 10 (32%). Again, 7 in 10 (74%) of all respondents supported the proposal to some extent, but levels of strong support were low (17%). As we have seen for many of the proposals referring to excellence, innovation and diversity, Governors and those working in or responding on behalf of schools aged 11-18 show the strongest support for these proposals.

Under 2 in 10 did not support the proposal (18%).<sup>22</sup>

Commenting on the Bill, David Hart general secretary of the NAHT, said:

“Greater autonomy for successful schools is all spin and no substance. The idea that heads have to prove success to the satisfaction of the Secretary of State is highly prescriptive and over-bureaucratic. As far as the NAHT is concerned all schools, other than those in special measures or serious weaknesses should be self-managed.”<sup>23</sup>

Peter Smith, general secretary of the Association of Teachers and Lecturers, said:

"Under the guise of deregulation and freeing schools to innovate, the real effect of this bill will be to give the secretary of state huge powers, under regulations

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<sup>20</sup> *LGA Response to the White Paper: Achieving Success and six associated consultation papers*, 8 November 2001, p 5

<sup>21</sup> *NAHT Response to the Government White Paper*, paragraph 5.20

<sup>22</sup> *Schools Achieving Success: Consultations on Education White Paper, Interim Report*, NOP Consumer, November 2001 available online at <http://www.dfes.gov.uk>

<sup>23</sup> NAHT Press Release, *NAHT comments on the Education Bill*, 23 November 2001

which are rarely subject to parliamentary scrutiny. Far from being a liberal revolution, Whitehall is tightening its grip over schools."<sup>24</sup>

## **C. Powers to form companies**

### **1. Background**

The purpose of Chapter 3 of the Bill, which gives powers to governing bodies to form or invest in companies to provide services, is to enable the further implementation of the proposals for models of service delivery set out in the Government's policy paper, *The Role of the Local Education Authority in School Education*.<sup>25</sup> This set out ideas for LEAs to develop new ways of providing key services in partnership with others. It reaffirmed LEAs' core role in relation to special educational needs; access and school transport; school improvement and tackling failure; educating excluded pupils and pupil welfare; and the strategic management needed to support these functions. The paper set out a number of proposals for action:

- Encouraging a more open market for school services.
- Exploring the extent to which LEAs can share school improvement responsibilities with groups of schools.
- Testing out new ways of discharging LEA responsibilities in partnership with other LEAs and with private, public and voluntary sector bodies.

The Government is keen to encourage imaginative partnerships. It is providing funding for a number of pilot projects of new models of service of delivery, involving LEAs working in partnership with each other and with others. The DfES website states that some partnerships are testing out ideas of the strategic LEA and devolved decision making, or of a consortium of LEAs co-operating on the provision of services. One project has a cluster of schools working together to examine how groups of schools can work together on commissioning and procuring services. Most pilots got under way in the last quarter of the 2000-2001 financial year and funding continues until March 2002, although project timescales vary. Pen pictures of the ten partnership pilots currently underway are given on the DfES website.<sup>26</sup>

Paragraph 8.19 of the White Paper referred to some of the recent developments, including the work of the New Models pilots, and stated that the Government would seek to remove any legislative barriers that exist to any of the innovative ideas being advanced:

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<sup>24</sup> "Unions criticise Education Bill", *Guardian*, 23 November 2001

<sup>25</sup> DfES, October 2000, available online at <http://www.dfes.gov.uk/learole/policypaper/>

<sup>26</sup> <http://www.standards.dfes.gov.uk/lea/newmodels/>

8.19 We remain committed to our proposals in last autumn's paper for LEAs to develop new ways of providing key services, and are encouraged by the very positive response we have received from LEAs. There is tremendous interest in the idea of sharing school improvement and other responsibilities with schools. Local Public Service Agreements provide an opportunity for local authorities to engage with central Government to negotiate additional resources, freedoms and flexibilities in the delivery of public services, in exchange for setting new higher targets in priority areas. Work is also going forward on the idea of developing national professional standards and recognition for school improvement service providers. A great deal of work is under way both as part of our New Models pilots and independently to investigate new ways of discharging LEA responsibilities in partnership with others in the public, private and voluntary sectors. We shall disseminate information and good practice from these as time goes on and will seek to remove any legislative barriers that exist to any of the innovative ideas now coming forward.

The DfES consultation paper, *Consultation on a Contracting Out Order; Local Education Authorities Functions*, outlined the existing legislative barriers to local authorities working in partnership with others to deliver services, and explained how current restrictions on local authorities would be removed through the use of a contracting out order made under the *Deregulation and Contracting Out Act 1994*.

## 2. The Bill

**Clause 10** provides a new enabling power, so that the governing body of a maintained school can form, or take part in forming, companies to provide services or facilities for any schools, to exercise relevant LEA functions, or to make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons. The Explanatory Notes state that such a company 'could, for example, provide, or arrange provision of, the financial, technical and legal advice that schools would normally have to arrange elsewhere, and it could also procure suppliers through the use of standard specifications and contracts. In addition, maintained schools may form companies to deliver services to any schools on behalf of an LEA, pursuant to a 'contracting-out' order under the *Deregulation and Contracting Out Act 1994*, and/or provide traded services to schools'.<sup>27</sup>

**Clause 11** requires maintained schools wishing to form or join companies established for the purposes of **clause 10** to obtain the consent of their LEA. Regulations may restrict the circumstances in which an LEA may refuse consent (**clause 11(7)**). Only schools with a delegated budget may form, or participate in forming, companies (**clause 11(1)(a)**). **Clause 11(3)** provides for regulations to require that the companies are

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<sup>27</sup> Bill 55 - EN, paragraphs 63 and 64

registered under the *Companies Act 1985* as companies limited by guarantee, and meet prescribed requirements. Companies will be prohibited from borrowing money without the consent of a ‘prescribed person’ (**clause 11(4)**). Provision is made for a LEA to be designated as a ‘supervising authority’ where one or more governing bodies have invested in a company under section 10. **Clause 11 (5)** provides for regulations to make provision for the duties of a LEA where it has been designated as a ‘supervising authority’ for the company. The Bill does not define ‘supervising authority’ and does not appear to clarify who the ‘supervising authority’ would be if schools from more than one LEA participate in a company.

**Clause 12** provides for the Secretary of State to form, take part in forming, or invest in a company for purposes connected with her education functions. Education for these purposes includes vocational training (including the preparation of young people for employment in general) and social and physical training (including the promotion of the development of young children) but it does not include higher education (**clause 12 (2)**).

The LGA has pointed out that clause 12 ‘allows unprecedented powers to the Secretary of State including investing public money in existing commercial operations.’<sup>28</sup>

### **III Part 2 Financial Assistance for Education and Childcare**

The White Paper signalled that the Government would rationalise the large range of existing powers for giving financial assistance for education so that there would be fewer, broader powers.<sup>29</sup>

The Explanatory Notes on the Bill summarise how, under **clauses 13 to 17**, the grant-making powers will be simplified and consolidated:

69. Clause 13 enables the Secretary of State or the NAW to give financial assistance for a number of educational or education-related purposes. These purposes are broadly defined and include, among many other objects, childcare, the use of educational buildings for different purposes and the support of teachers. Funds may be directed to schools, LEAs, individuals and companies. Education will include pre-school, school and FE, but not HE (apart from teacher-training).

70. The power allows the Secretary of State, or NAW, to attach conditions, at her or its discretion, to the provision of assistance. In particular, as well as providing financial assistance directly, clause 16 allows financial assistance to be provided

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<sup>28</sup> LGA *Circular on the Education Bill*, 23 November 2001

<sup>29</sup> Cm 5230, paragraph 9.5

via third parties. For example grants might be made available to an LEA, on condition that the LEA passes the grant on to its schools.

**Clause 17** lists the specific grant-making powers that will be repealed.

Details of the effects of the provisions on public sector finances are contained in paragraph 414 of the Explanatory Notes.

The ATL supported the White Paper's proposals to simplify and consolidate the Secretary of State's grant-making powers.<sup>30</sup> The NUT, while acknowledging that there may be strong arguments for the proposal, emphasised that certain grants should continue to be ring-fenced in order to meet the needs of pupils from minority ethnic groups and Traveller children.<sup>31</sup>

Commenting on the Bill, the LGA said that it is 'very concerned if the grant giving powers in Clauses 13 - 17 led to broad discretionary grant-making powers for the Secretary of State without direct parliamentary scrutiny or accountability'. It noted that the change would mean that the Standards Fund, for example, would no longer exist for England being subsumed into the general grant-making power (although it will continue for Wales). The LGA is concerned about the lack of accountability and potential increase in specific grants. It wishes to see more resources channelled through the SSA and RSG and less through specific grant.<sup>32</sup>

## **IV Part 3 Maintained schools**

### **A. Government of maintained schools**

#### **1. Background**

The current provision for the constitution and powers of governing bodies is in the *School Standards and Framework Act 1998*<sup>33</sup>. These were new provisions reflecting the new framework of schools introduced by the 1998 Act. The technical consultation paper published in August 1997 had proposed a number of changes, including more elected parent governors, two LEA governors at all foundation schools, and representation for non-teaching staff. It also asked for views on keeping the provisions for grouping arrangements.<sup>34</sup> The proposals were designed to provide a model for each type of school

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<sup>30</sup> *Comment from ATL on Schools—Achieving Success*, Annex A: Outline of ATL response to legislative proposals in the White Paper

<sup>31</sup> *NUT Response to School—Achieving Success*, paragraph 169

<sup>32</sup> *LGA Circular on the Education Bill*, 23 November 2001

<sup>33</sup> In particular, ss 36-44 and schedules 9-12

<sup>34</sup> *Framework for the Organisation of Schools: Technical Consultation Paper* DfEE 1997 Part 2

with some flexibility for schools to decide the size of governing body they wanted.<sup>35</sup> These changes, which included a separate governing body for each school, came fully into force on 1 September 1999.<sup>36</sup>

Sections 54-57 of the 1998 Act together with schedules 16 and 17 set out the current provisions on staffing of schools. They restate much that was in Chapter VI of Part II of the *Education Act* 1996 and in schools' articles of government. The 1998 Act replaced articles of government with regulations. The main changes on staffing procedures brought in by the Act related to the involvement of the LEA and the force of guidance from the Secretary of State on capability.<sup>37</sup>

Successive Education Acts since 1986 have added to the responsibilities placed on governing bodies. These range from their principal duty to conduct the school with a view to promoting high standards of educational achievement<sup>38</sup> to their responsibility for the nutritional standards of school lunches.<sup>39</sup> The DfES *Guide to the Law for School Governors*<sup>40</sup>, issued to all governors in different editions for different types of school, is now a loose leaf folder of over 150 pages which is constantly being up-dated. The Government has noted that school governors represent the largest volunteer force in the country.<sup>41</sup>

## 2. Proposals

The White Paper refers to both 'deregulating'<sup>42</sup> and 'reforming'<sup>43</sup> governance and summarises the proposals in the consultation paper *The Way Forward - A Modernised Framework for School Governance*<sup>44</sup> published on 5 September 2001:

In brief, we propose to replace the current prescriptive models on governing body size and constitution with a set of principles. These will recognise, as now, the need for balanced representation of the key stakeholder groups: parents, the community, school staff, the LEA, and where relevant, the Church or foundation. The principles will make clear the proportion of places to be available to each group and the overall parameters of governing body size, but beyond that, will leave each school free to choose the size and makeup of its governing body that best matches its needs.

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<sup>35</sup> *ibid* para 7

<sup>36</sup> SI 1999/2323

<sup>37</sup> See Library Research Paper 97/136: *School Standards and Framework Bill*

<sup>38</sup> *School Standards and Framework Act 1998* s 38

<sup>39</sup> SI 2000/1777

<sup>40</sup> DfEE January 2000 as amended

<sup>41</sup> *The Way Forward* consultation paper p 3

<sup>42</sup> p 63

<sup>43</sup> p 64

<sup>44</sup> [www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=114](http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=114)

8.8 We also propose to deregulate many of the current prescriptive provisions in primary legislation relating to governors' role in staff appointments. A framework of enabling powers would replace them, supported by statutory guidance encouraging delegation of the responsibility for most appointments to the head. We propose further to restrict governors' involvement in dismissal cases to hearing appeals, in line with their current role on discipline, grievance and capability. We shall provide for governing bodies to group and work together where they wish to, for example bringing small schools together or enabling a successful school to ally with a weaker one. And we shall remove much of the legislative prescription for how governing bodies should go about their work, replacing it with statutory guidance.

There had been earlier proposals on similar lines in the *Consultation on School Governing Bodies* published on 1 November 2000.<sup>45</sup> The introduction to that paper had made it clear that it took account of the recommendations of the Education and Employment Select Committee report on the role of school governors and the Secretary of State's commitment to the reduction of the bureaucratic and administrative burdens on head teachers.<sup>46</sup>

The Select Committee had carried out a wide ranging enquiry and its report<sup>47</sup>, published in July 1999, found that the current system of school governance had worked well overall and there was no need for wholesale reform.<sup>48</sup> They identified a number of key issues<sup>49</sup>:

More coherent support is needed for governors. Difficulties with recruitment must be solved, especially from under-represented groups such as ethnic minorities. Governor induction and training should be improved and made more widely available. Governors, and others involved in schools including headteachers and parents, need to have a clearer idea of their role. Above all, perhaps, it is necessary to encourage greater public recognition of the contribution governors make to education.

Most of their recommendations, which were aimed at supporting governors and increasing recruitment, were accepted by Government.<sup>50</sup>

The debate on the burdens on head teachers had been informed by the Better Regulation Task Force report *Red Tape Affecting Head Teachers* published in April 2000. Unlike the

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<sup>45</sup> [www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=2](http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=2)

<sup>46</sup> op cit para 1

<sup>47</sup> HC 509-I of 1998-99

<sup>48</sup> ibid para 2

<sup>49</sup> ibid para 3

<sup>50</sup> *Government Response to the Fifth Report from the Education and Employment Committee, Session 1998-99: The Role of School Governors* HC 859 of 1998-99

Select Committee report, this report called for fundamental changes, making their first key proposal:<sup>51</sup> “removing or simplifying prescriptive statutory duties and constraints on governors, recognising that their key priority is to appoint and monitor the performance of an effective head teacher (Section 5.4 Recommendations 2 and 3).” The Government accepted in part the proposals relating to governors.<sup>52</sup>

Not all the proposals in the 2000 consultation commanded widespread support. A Way Forward Group on School Governance was formed in April 2001 with a remit to discuss the way forward in the light of those responses, focusing on those that attracted least consensus. A headline analysis of the 6,514 responses was published as Appendix 2 to their report, which was itself published with the *Way Forward* consultation paper.<sup>53</sup> 61% of respondents did not want new models for governing bodies or grouped governing bodies; 51% did not want head teachers to have enhanced responsibility for recruiting and disciplining staff and 52% did not want the proposed restrictions on governing body involvement in capability and dismissal proceedings and in considering grievances. The Way Forward group, which had representation from LEA officers and elected members as well as the main Churches and the governor associations, dealt with the lack of consensus by recommending, in most cases, enabling powers. The final *Way Forward* consultation paper reflected this. It stated:<sup>54</sup>

“Minimal primary legislation will sit alongside clear Regulations that concentrate on principles and supporting guidance giving practical advice on fulfilling responsibilities.”

The proposals on the membership of governing bodies<sup>55</sup> set out a very detailed framework of principles, a size limit of between 9 and 20 with the representation of different groups expressed in thirds and fifths. They also removed the specific category for non-teaching staff, and placed minority authority representation within the LEA governor category. Co-opted governors were renamed community governors. The arrangements in an Instrument of Government for up to two sponsor governors and one governor representing an Education Action Forum would remain. There was also a proposal for a non-voting ‘associate governor’. The paper proposed governing bodies for nursery schools and a power for schools to federate under a single governing body. The consultation question on the maximum number of schools in a federation had categories ranging from ‘up to 5’ to ‘10+’.<sup>56</sup>

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<sup>51</sup> pp 4 & 5

<sup>52</sup> [www.cabinet-office.gov.uk/regulation/TaskForce/2000/HeadTeachersResponse..htm](http://www.cabinet-office.gov.uk/regulation/TaskForce/2000/HeadTeachersResponse..htm)

<sup>53</sup> [www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=114](http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=114)

<sup>54</sup> para 3.4

<sup>55</sup> para 4-9

<sup>56</sup> Q.10



The proposals on governing bodies' responsibilities<sup>57</sup> set out an intention of replacing primary legislation with a framework of regulation-making powers, alongside guidance and model policies. This is intended to create a 'more responsive statutory framework' and give schools the opportunity to establish arrangements to suit their particular circumstances. There were, however, firm intentions to reduce the governors' role in dismissal decisions and to provide that, 'in normal circumstances', the involvement in appointments should be restricted to the leadership group. There was also to be a new discretionary power to provide community services, supporting the White Paper's intention to promote 'extended schools'. The DfES press notice on the White Paper envisaged services such as health and social care, childcare, after school study and community learning.<sup>58</sup>

The proposals on procedure<sup>59</sup> suggested a framework of guiding principles, greater use of information and communications technology, including holding e-meetings if appropriate, and a single quorum of one third.

The *Way Forward* document acknowledges<sup>60</sup> the concerns registered in response to the earlier consultation about change so soon after the major reconstitution exercise in September 1999. It proposes that governing bodies should have until September 2005 to effect the changes, with transitional provisions allowing them to run with surplus governors in any category until their individual terms of office expire.

#### **a. Wales**

The Paving Document *The Learning Country* sought comments on the areas of governance proposed for change but with no commitment to implement them.<sup>61</sup>

### **3. The Bill**

Clauses 18-38

This chapter of Part 3 implements the proposals in *The Way Forward - A Modernised Framework for School Government*. It is also seen as responding in part to the Better Regulation Task Force recommendations:<sup>62</sup>

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<sup>57</sup> para 10-13

<sup>58</sup> DfES PN 2001/0335 5 September 2001

<sup>59</sup> para 14

<sup>60</sup> para 15

<sup>61</sup> para 39

<sup>62</sup> [www.cabinet-office.gov.uk/regulation/TaskForce/progress/headteachers.htm](http://www.cabinet-office.gov.uk/regulation/TaskForce/progress/headteachers.htm)

<b>Red Tape Affecting Head Teachers, April 2000</b>		
<b>Task Force recommendation</b>	<b>Government Response</b>	<b>Latest position</b>
DfEE should clarify and simplify the role of governing bodies, recognising that their key priority is to appoint, monitor and support the performance of an effective head teacher.	This was accepted in part. The DfEE's proposed Terms of Reference Regulations, now out for consultation, clarify the role of governing bodies in relation to head teachers, and require governing bodies to undertake their functions in a strategic way. Simplification will require a further review of respective roles, and the amendment of primary legislation.	Terms of Reference Regulations were laid in July 2000, and guidance on the Roles of Governing Bodies and Head Teachers issued Sept 2000. Both groups have received the guidance very well. Consultation on School Governing Bodies (including suggestions for streamlining the role and constitution of Governing Bodies) launched in November 2000, attracted over 500 responses. A Ministerial Way Forward Group was established in summer 2001 to review proposals. On the basis of this report, Government issued further consultation "The Way Forward – A Modernised Framework for School Governance" on 5 September 2001, alongside the White Paper "Excellence in Schools". Proposals for de-regulation of school governance and some streamlining of functions (particularly on staffing) will be included in the new Education Bill.

The provisions on the governance of maintained schools in the *School Standards and Framework Act 1998* are repealed<sup>63</sup> and replaced, with amendments and extensions, mainly by enabling powers, regulations and statutory guidance.

**Clause 1** provides for each maintained school to have a governing body and for its constitution and membership to be established in accordance with regulations. The *Explanatory Notes* make clear<sup>64</sup> that, in England, the regulations will establish principles and set proportions for the different groups which will include a single staff governor category. In Wales, the National Assembly will consult with interested bodies before establishing the requirements for membership and procedures. The regulations in England will be introduced, as will all the regulations in this Chapter, by statutory instrument subject to the negative procedure.

Provision is made for each school to have an instrument of government (**Clause 19**) but the procedures for making, reviewing and varying instruments will be in regulations. Provisions relating to the responsibility for the general conduct of the school and the

<sup>63</sup> section 209(2) and schedule 22 Part 3

<sup>64</sup> Bill 55-EN para 72-76

promotion of high standards are re-enacted, as are those relating to training and clerking (**Clauses 20-22**). The extent of regulations to define the respective roles and responsibilities of the governing body and head teacher has been extended to include the LEA. (**Clause 20 (3)(b)(i)**)

**Clauses 23** and **24** make the new provision for federations of schools. Conditions and procedures will be in regulations, made by the Secretary of State or NAW. The Bill sets no limit on the number of schools in a federation. **Clause 29** provides for regulations to enable schools to arrange for the joint discharge of functions without federating. The Way Forward group proposed this as several of their members were unhappy about the federation proposals.<sup>65</sup>

**Clauses 25** and **26** extend the governing body's powers to providing, within limits, any facilities or services which will further any charitable purpose for the benefit of their pupils and their families and the people of the locality.

Charitable purposes are normally understood as purposes that fall within at least one of the following headings:<sup>66</sup>

- The relief of poverty
- The advancement of education
- The advancement of religion, or
- Other purposes beneficial to the community not falling under any of the other heads<sup>67</sup>

The governors may charge for any services subject to the provisions on charging in the 1996 *Education Act*. (**Clause 25 (3)**) These provisions prohibit charging pupils for education and limit charges for optional extras. In exercising these new powers the governors must be satisfied that nothing they propose will, to any significant extent, interfere with their duty to conduct the school in order to promote high standards of educational achievement or any other duty under the Education Acts.

**Schedule 1** similarly extends the powers of governing bodies but restates the ban on the governing bodies of community, voluntary controlled, community special and now nursery schools entering into contracts for employing staff. **Clause 36**, which largely re-enacts the 1998 Act's provisions on payments in connection with the dismissal of staff, now also makes provision with respect to staff employed on community activities. It is made clear that any costs that the LEA seeks to recover from the governing body in relation to the dismissal or premature retirement of such staff cannot be met from the school's budget share. Separate funds are to be kept for community purposes. The details of this are set out in **Schedule 3**.

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<sup>65</sup> Report of the Way Forward Group on School Governance para 7

<sup>66</sup> Definition supplied by Christopher Blair Business and Transport Section House of Commons Library

<sup>67</sup> The 'Pemsel heads', *Income Tax Special Purpose Commissioners v Pemsel* [1891] AC 531

**Clauses 27-28** and **30-33** largely re-enact or replace the comparable provisions in the *School Standards and Framework Act*. Only the main alterations are noted below. **Clause 29** provides for regulations covering the proposal for the joint discharge of functions.

The duty to establish a complaints procedure is now to be carried out with regard to any guidance from the Secretary of State or NAW. The 1998 section referred to regulations which have not been issued. (**Clause 27**). The provisions on the governors' report make it explicit that it can be combined with another document. (**Clause 28(2)9c**). The DfES has always held that this was permissible, although a proposal last year on combining the report and the prospectus met with a negative response.<sup>68</sup> The detailed provisions on the control of school premises, previously in Schedule 13 of the *SSFA*, are now to be in regulations. (**Clause 30**). Regulations will also make provision for the purpose and conduct of the annual parents' meeting (**Clause 32**) and for determining the date when the governing body of a new school should be in place.

**Clauses 34** and **35** make provision for staffing schools. They replace the arrangements in primary legislation with an enabling power for the Secretary of State or NAW to make regulations, supplemented by statutory guidance, related to the appointment, discipline, suspension, and dismissal of staff. The LEA is confirmed in primary legislation as the employer of staff in community, voluntary controlled, community special and maintained nursery schools. (**Clause 34(2)**)

**Clause 37: Interpretation of Chapter 1** is the clause which has the effect of applying to nursery schools the requirement to have a legally constituted governing body and most of the consequent powers and duties. The *Explanatory Notes* state that it is not proposed to apply admissions legislation fully to nursery schools: the responsibility for making decisions about the admission of a pupil will be dealt with by regulations.<sup>69</sup>

#### 4. Reaction

Because of the nature of this part of the Bill, in which provisions previously in primary legislation are moved to regulations, much of the comment on the White Paper and *The Way Forward* consultation paper refers to proposals that are not on the face of the Bill.

The Government has published an interim report on the responses to *The Way forward* document prepared by NOP Consumer for the DfES.<sup>70</sup> The report analyses the responses

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<sup>68</sup> *School Prospectuses and Governors Annual Reports*  
<http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=56>

<sup>69</sup> Bill 55-EN para 111-113

<sup>70</sup> [www.dfes.gov.uk/achievinguccess/docs/Govreportv2.doc](http://www.dfes.gov.uk/achievinguccess/docs/Govreportv2.doc)

to a structured questionnaire; separate written submissions and responses have been accepted for consideration by the DfES. A final analysis will consider the comments written on the questionnaire.

The interim report found strong support for the stakeholder model for the constitution of governing bodies and for the single group to represent all staff employed at the school. There was also support for statutory governing bodies for nursery schools. The questionnaire did not seek views on the principle of federation and the question only asked for views on setting a maximum number of schools in a federation. The vast majority chose the lowest option offered, up to 5.

The report notes a good level of support for the proposal that governing bodies could provide community services. There was less support, but still a good majority, for the proposal to deregulate provisions relating to governing body responsibilities. The lowest level of support was for the proposal on staffing responsibilities, with only 48% in support or strong support although another 19% supported in part. The report notes<sup>71</sup> that those least in favour were diocesan bodies.

There was strong support for governing bodies regulating their own procedures and the use of a single quorum of one third.

The following selection of comment received in the Library from some of the main players involved concentrates on proposals that are in the Bill or clearly indicated as the Government's intention in the Explanatory Notes.

There was support for what was seen as replacing statutory prescription with guidance, together with any increase in flexibility in the arrangements for governance from the Association of Teachers and Lecturers (ATL)<sup>72</sup> and the Secondary Heads Association (SHA)<sup>73</sup>. The Local Government Association (LGA) was felt that the increased use of regulation, not subject to close parliamentary scrutiny, was not conducive to open government<sup>74</sup>. The National Governors' Council (NGC)<sup>75</sup> noted that the common theme in discussions and responses to them on the consultation paper was 'why bother?'. It felt that although some of the proposals had merit, they were not aimed at solving major issues. There was widespread opposition from their members to the single staff group, governing bodies wishing to ensure teaching and non-teaching staff representation. SHA also wanted protection to maintain staff governor representation, while the LGA accepted the idea of a single group but wished to establish a balance between teaching and non-teaching staff.<sup>76</sup>

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<sup>71</sup> para 3.2.1

<sup>72</sup> ATL, *Schools: achieving success*: Comment from ATL

<sup>73</sup> SHA, *Secondary Schools of the Future: a response to the White Paper*

<sup>74</sup> LGA, *The Education Bill-November 2001*

<sup>75</sup> NGC, Response on *The Way Forward*

<sup>76</sup> LGA, *Response to the White Paper*

Federations of schools were opposed by NGC and SHA. NGC advocated collaboration but felt that grouping would increase workload, weaken ethos, and discourage governor recruitment. LGA<sup>77</sup> felt it was acceptable, with the agreement of the LEA.

The proposals on governors' providing community services met with general approval, although the LGA noted the need to ensure that there was no conflict with educational standards and the future building needs of the school. They also wanted acknowledgement of the role of the LEA as the owner of community schools. The NGC pointed out that current PFI contracts could limit governors' use of the premises. The *TES* appeared to conflate the power to run community services with the power in Clause 10 to form companies to provide services to schools to produce the headline "Schools will be able to set up as post offices."<sup>78</sup>

All respondents had points of concern about those proposals that are not on the face of the Bill. NGC wanted to keep the current discretions on appointments, although they accepted the removal of the governors' role in dismissals before the appeal stage. SHA welcomed the restrictions on governor involvement in appointments, although they would wish some discretion left with the head teacher. They reported disagreement among their membership about dismissals. Some felt natural justice required the involvement of someone other than the head; others felt that the Government proposals reflected the procedure in industry and other areas of education. The ATL would keep governors' involvement in dismissals, arguing that a governing body would be unlikely to overturn a head's decision on appeal.

## **B. Financing of maintained schools**

### **1. Background**

The current provisions for the financing of maintained schools are in sections 45 to 53 of the *School Standards and Framework Act 1998 (SSFA)*. This was a revised framework applying to all maintained schools, commonly known as the Fair Funding provisions after the consultation paper published in May 1998.<sup>79</sup> The consultation paper introduced the terms "local schools budget" and "individual schools' budget" which were used to replace the previous terminology in the *School Standards and Framework Bill* at Report Stage in the Commons.

Under the Fair Funding provisions, an LEA first sets its overall education budget and then determines its local schools budget (LSB) as prescribed by regulations. The LSB

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<sup>77</sup> LGA, *The Education Bill-November 2001*

<sup>78</sup> *TES* 23 November 2001

<sup>79</sup> DfEE *Fair Funding: Improving Delegation to Schools* May 1998

represents the LEA's spending on primary and secondary education. Having established the LSB, there are only certain prescribed areas: special education, school improvement, access and strategic management where the LEA can hold back money, everything else must be delegated to schools. Regulations<sup>80</sup> define closely what can be held back and make minor differences between England and Wales.

The funding remaining in the LSB once the allowed deductions for LEA responsibilities have been made constitutes the "individual schools budget" (ISB) and must be delegated to individual schools according to a formula which should be "simple, objective, measurable, and predictable in effect, and clearly expressed".<sup>81</sup>

## 2. Proposals

In June 2000, the then Education and Employment Secretary David Blunkett announced at the National Association of Headteachers (NAHT) annual conference a package of measures designed to cut bureaucracy and give head teachers more control over their own budgets.<sup>82</sup> He set out proposals to improve the education funding system by considering the introduction of separate budgets for schools and LEAs.

In September 2000, the DTLR published a Green Paper *Modernising Local Government Finance*<sup>83</sup> consulting on the reform of the system. A White Paper was promised for 2001. The Green Paper set out, in its chapter on different services, the Government's arguments for identifying separately at national and local level the aggregate funding available to be spent on schools. The next issue it addressed was how to ensure that the funding intended for schools reached them. Because of what it termed "the potential difficulties ...associated with legal ring fencing", it favoured an option:

"which would not involve a legal duty on authorities to pass on a given level of funding, would instead be based on transparency around schools funding. Under such a system, the funding intended for schools' delegated budgets and for other local education authority responsibilities would be separately identified by central Government as described in paragraph 6.7. Authorities would be required to give their council tax payers and schools a full account of money delivered through spending assessments and through special and specific grants both for schools and for authorities' own service provision; with an indication of the proportions funded through national Government and locally-raised finance; and a comparison with the previous year.

Such transparency would assist in ensuring local accountability for decisions on funding taken by authorities as it would greatly improve clarity and would put

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<sup>80</sup> SI 2001/475 for England and SI 2001/495 for Wales

<sup>81</sup> Regulation 10

<sup>82</sup> DfEE PN "More spending power for schools and less red tape-Blunkett" 1 June 2000

<sup>83</sup> [www.dtlr.gov.uk/greenpap/fwd.htm](http://www.dtlr.gov.uk/greenpap/fwd.htm)

pressure on local authorities to pass on in full the assessments for school budgets. The Government believes that this option would also be more likely to lead local education authorities to continue to add their own resources to the level of funding indicated by central Government.”<sup>84</sup>

The Education Green Paper<sup>85</sup> and White Paper<sup>86</sup> reflected these proposals. The White Paper also referred to the intention to require LEAs to set up a Schools Forum to represent schools in the distribution of the schools’ budget.<sup>87</sup>

**a. Consistent Financial Reporting**

A separate consultation paper *Introducing Consistent Financial Reporting* was issued jointly by the DfEE, the Audit Commission and OFSTED on 30 March 2001.<sup>88</sup> It asked for views on a national reporting framework for schools, the possible headings for such a framework and its implementation. The arguments for such a system were the benefits to schools of being able to compare their expenditure on a like for like basis; reducing bureaucracy by having one set of records; improving accountability; and improving governing bodies’ ability to identify headings for routine financial monitoring and for reporting to parents.<sup>89</sup>

**b. Wales**

A Green Paper *Simplifying the System: Local Government Finance in Wales* was issued by the National Assembly in September 2000. It also suggested an option of identifying LEA and schools’ budgets separately.<sup>90</sup> The Paving Document, in its chapter on comprehensive education and lifelong learning in Wales, refers to the close partnership arrangements that exist with LEAs in Wales. It cites the transparency that is now required by the Assembly about decisions on resource allocation at Assembly and local authority level. The document continues:

“We shall maintain the constitutional capacity of local authorities to reach balanced judgements about investment suited to their circumstances and which they are best placed to justify.”<sup>91</sup>

The Paving Document also proposes to require LEAs to establish a local forum for consulting schools on their funding needs and the local formula to distribute funds to schools.<sup>92</sup>

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<sup>84</sup> ibid Part 6

<sup>85</sup> para 6.14

<sup>86</sup> para 8.27

<sup>87</sup> para 8.29

<sup>88</sup> DfEE 0108/2001

<sup>89</sup> ibid para 10

<sup>90</sup> op cit para 6.2–6.12

<sup>91</sup> para 34



### 3. The Bill

#### Clauses 39-43

The Explanatory Notes explain the relationship of these clauses to the introduction of a new system of funding LEAs and schools in England, proposed above. Most of the changes will be effected under the *Local Government Finance Act 1992* (as amended).<sup>93</sup> Schools and LEAs are also awaiting the outcome of the major review of educational standard spending assessments, which is expected to be in place for the 2003-2004 financial year.<sup>94</sup>

The Bill repeals section 46 of the *SSFA* which contains the definitions of the ‘local schools budget’ and the ‘individual schools budget’.<sup>95</sup> **Clause 39** inserts new definitions of the “LEA budget” and the “schools budget” into the *SSFA*. The definition of the ‘individual schools budget’ is the same. Regulations will continue to give the Secretary of State or NAW the power to set limits on certain classes of expenditure or give that authority to the schools forum. It sets the end of January as the point by which LEAs must have determined their schools budget and informed the Secretary of State and the schools.

It is made clear in the *Explanatory Notes* that these definitions will apply in Wales “but in the context of the existing funding arrangements for LEAs and schools”.<sup>96</sup>

**Clause 40** gives the Secretary of State a reserve power to set a minimum schools budget for an LEA, a power envisaged in the Local Government Finance Green Paper<sup>97</sup> and, according to the *Explanatory Notes* only to be exercised in exceptional circumstances. **Clause 41** establishes schools forums. Their function, constitution and proceedings are to be established by regulations.

**Clauses 42** and **43** provide the enabling powers to implement the Consistent Financial Reporting proposals. As in the proposals, the powers extend to the private funds available to the governing body.

### 4. Comment

The DETR published an analysis of responses to the Local Government Finance Green Paper in March 2001.<sup>98</sup> On the question of how best to ensure that funding was properly matched to the separate responsibilities of local authorities and LEAs, only 31%, most of

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<sup>92</sup> para 34

<sup>93</sup> Bill 55-EN para 117

<sup>94</sup> “Promised land of equity recedes” *Education Journal* September 2001

<sup>95</sup> schedule 22 part 3

<sup>96</sup> *ibid* para 117

<sup>97</sup> para 6.13

<sup>98</sup> DETR *Analysis of Responses* 5 March 2001 [www.local.dtrl.gov.uk/greenpap/analysis/18.htm](http://www.local.dtrl.gov.uk/greenpap/analysis/18.htm)

them schools, opted for separate identification of funding for schools at national and local level. Similarly, on how best to ensure that funds allocated by Government were used for schools, although 79% wanted greater transparency, only 19% wanted separate identification of schools and LEA budgets. The question on a fair allocation of funding between authorities and between schools in authorities drew the strongest support for levelling up for those authorities with the lowest Standard Spending Assessment. The analysis does note, however, the strong campaign from the Fair Education Funding Forum (f40). This group was formed to highlight the inequalities of education funding and is made up of the forty lowest funded education authorities.

Of the responses to the White Paper, the LGA opposed a statutory schools forum as adding another layer to the Fair Funding consultation process. It also opposed the Secretary of State's reserve power to set a schools budget on the grounds that such 'ring-fencing' was likely to have serious long-term effects on other local government services.<sup>99</sup> The Association of Chief Education Officers/Society of Education Officers was also strongly opposed to the reserve power.<sup>100</sup> The National Association of Headteachers (NAHT) supported the reserve power<sup>101</sup>, while the Secondary Heads Association (SHA) supported a schools forum<sup>102</sup>. The Campaign for State Education also supported a schools forum and made the original suggestion that each LEA had one Local Education Forum to carry out the responsibilities of the Schools Organisation Committee, the Admissions Forum and the Schools Forum.<sup>103</sup>

## **C. Admissions, exclusions and attendance**

### **1. Admissions**

The current admissions framework is in the *School Standards and Framework Act 1998*<sup>104</sup> and the Codes made under it by the Secretary of State and NAW.

The White Paper referred to plans to clarify and simplify aspects of admissions law; to require LEAs to co-ordinate admission arrangements; and to make the Admissions Forums, recommended in the Codes of Practice mandatory.<sup>105</sup> A consultation paper *Consultation on School Admissions*<sup>106</sup> was issued at the same time.

The changes proposed in the paper were:

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<sup>99</sup> *LGA Response to the White Paper 8 November 2001*

<sup>100</sup> *ACEO/SOE Response to the White Paper November 2001*

<sup>101</sup> *NAHT Response to the White Paper*

<sup>102</sup> *SHA Response to the White Paper*

<sup>103</sup> "The right way to achieve success?" *Parents and Schools no 1171*

<sup>104</sup> ss 84-98

<sup>105</sup> para 8.12-8.15

<sup>106</sup> [www.dfes.gov.uk/admissions](http://www.dfes.gov.uk/admissions) September 2001

requiring co-ordination of admissions systems and school place allocation by LEAs, on a locally agreed basis which allows schools which are their own admission authority (foundation and voluntary aided schools) to apply their own admission criteria and feed the results into the LEA for allocation purposes (paragraphs 9-14);

clarifying the law on parental preference, to resolve any doubts LEAs may have about whether their present or proposed systems comply (paragraphs 15 -20);

making the current voluntary Admissions Forums mandatory, with a role to advise all admission authorities in their area on admissions issues, including the sharing of pupils with challenging behaviour and from other vulnerable groups (paragraphs 21-22);

ceasing to use standard numbers to establish how many pupils a school can take, relying instead on admission numbers set as part of admission arrangements based on the new capacity assessment (paragraphs 23-28);

amending legislation so that objections to the Adjudicator can be made by all those who ought to have been consulted on intended admission arrangements, rather than just those who actually were; and so that community and voluntary controlled schools can object to the arrangements of local foundation and voluntary aided schools which affect them (paragraphs 29-31);

relaxing consultation requirements on admission authority schools, so that, after an initial year in which all will have to publish intended admission arrangements, they need only publish them every other year if nothing has changed and there were no objections previously. Alternatively, providing for LEAs to carry out consultation on behalf of these schools (paragraphs 32-34).

A paper *Assessing the Net Capacity of Schools* was sent to LEAs in October 2001.<sup>107</sup> It gave guidance on the method of assessing the ‘net capacity’ of schools and stated that the method would be used as the measure of the capacity of all maintained, mainstream school in England from June 2002.

**a. The Bill**

Clauses 44-48

All the clauses amend the *SSFA*. **Clauses 44** and **45** implement the proposals for mandatory admissions forums and the use of admission numbers (set by the admissions authority) rather than standard numbers (based on admissions at a set point in the past, although open to review). Regulations will make provision for the constitution and procedure for an admissions forum but their purpose of giving advice is set out in statute.

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<sup>107</sup> DfES/0739/2001

**Clause 46** allows the making, by the Secretary of State or NAW, of regulations to set up co-ordinated admission arrangements. An LEA would be responsible for such a scheme. Annex B of the consultation paper outlined possible examples. **Clause 47** amends section 94 of *SSFA* to reflect the repeal of Schedule 24 of that Act, relating to admission appeals, and allows instead for regulations. **Clause 48** and **Schedule 4** make a number of changes to admission arrangements. Most of them were indicated in Annex A of the consultation paper and the *Explanatory Notes* have a commentary on them.<sup>108</sup> The clarification on parental preference (more than one preference is acceptable) is in paragraph 3 of the Schedule. Paragraph 3 also implements the right of appeal by a pupil already in the school against the refusal of a place in a sixth form. The implementation of the proposal to allow all those who should have been consulted and the governing bodies of community and controlled schools to make objections on admission arrangements to the Adjudicator are at paragraphs 6 and 5 respectively. Paragraph 13 makes provision for admissions to nursery education.

### ***b. Reaction***

The draft report on the responses on the *Consultation on Schools Admissions*<sup>109</sup> commented that the majority of the 416 responses were received from those with a professional interest in education. Very few parents responded. There was strong support for the LEA taking on a co-ordinating role and majority support for clarifying the law on parental preference and making Admissions Forums mandatory. There was also a majority supporting the change to capacity assessment rather than standard numbers, and the proposed changes to the right to object to the Adjudicator, although not for any further extension of the right to object. There was no overall support for the LEA carrying out consultation on behalf of other admissions authorities. There was broad support with the proposed changes to legislation and the Code of Practice but little support for making other changes.

The LGA<sup>110</sup> welcomed the new duty of co-ordinating admission arrangements but did not wish admission forums to be statutory. They had concerns about the clarification of the law on parental preference where neighbouring LEAs adopted different practices. They welcomed the changes in the right to make objections to the adjudicator, but had concerns about the abolition of standard numbers. SHA<sup>111</sup> also welcomed co-ordination but could foresee difficulties, particularly in areas like London where parents apply for places in three or more LEA areas and to sometimes up to six or seven admission authorities. They would prefer one statutory first preference for parents, with the right to state which schools they did not want their child to attend. They agreed with mandatory admissions forums, but wanted them to have decision-making powers. They also supported the

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<sup>108</sup> Bill 55-EN para 129-139

<sup>109</sup> prepared by NOP for the DfES [www.dfes.gov.uk](http://www.dfes.gov.uk)

<sup>110</sup> LGA Response to the White Paper and six associated consultation papers.

<sup>111</sup> Secondary Heads Association, Response to Consultation on School Admissions

extended right to make objections to the adjudicator and the abolition of standard numbers. The NGC<sup>112</sup> supported all the proposals, except the allowance of more than one preference, but felt the co-ordination of admissions should be limited to secondary schools. The Church of England Board of Education supported the proposal to make admissions forums mandatory.<sup>113</sup>

## 2. Exclusions

Chapter 3 of the White Paper dealt with poor behaviour and stressed the importance of early intervention. It made a commitment to clarify the law and statutory guidance on exclusions to ensure that the interests of the wider school community were properly reflected in exclusion appeal hearings. A separate consultation paper on Exclusion Appeal Panels was issued at the same time.<sup>114</sup> It proposed a statutory requirement for an appeal panel to balance the interests of the excluded pupil against the interests of all other members of the school community. Such a requirement had been in the *Education Act 1997*, but was removed by the *School Standards and Framework Act 1998*. Other proposals were: to make it clear that the panel's remit was to consider reinstatement not to review the procedure; to require the panel to consist predominately of people with direct experience of classroom management; to require school discipline committees to meet only when the total of fixed term exclusions for an individual would be more than 15 days in any one term. They currently meet to consider fixed term exclusions of more than 5 days in any one term.

The Welsh Paving Document also considered poor behaviour in the section *Conduct and Citizenship*<sup>115</sup> and made a commitment to hold a conference to review best practice and to publish guidance on the role of governors in handling appeals.

### a. *The Bill*

#### Clause 49

All the provisions relating to exclusions in the *SSFA*<sup>116</sup> are repealed and replaced by **Clause 49** and the regulations to be made under it. The clause re-enacts the headteacher's power to exclude and puts in the same clause the provision for a teacher in charge of a pupil referral unit (PRU) to exclude that was originally in paragraph 7 of Schedule 1 of the *Education Act 1996*. The remainder of the clause provides for regulations. The *Explanatory Notes* comment that procedures will be largely unchanged except for the possible inclusion of the specific points in the consultation document. Nursery schools

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<sup>112</sup> NGC, Response to consultation on school admissions

<sup>113</sup> Church of England Board of Education, Response to the White Paper

<sup>114</sup> [www.dfes.gov.uk/consultations/](http://www.dfes.gov.uk/consultations/)

<sup>115</sup> para 45-50

<sup>116</sup> ss 64-68 and schedule 18

are given the power to exclude; a power apparently called for by the Association of Teachers and Lecturers (ATL) at their annual conference.<sup>117</sup> The right of a parent of a pupil permanently excluded from a PRU to appeal is new and is given retrospectively to 1<sup>st</sup> September 1994. Presumably for this reason, the sections relating to such appeals come into force on Royal Assent.<sup>118</sup>

### **b. Reaction**

The LGA<sup>119</sup> supported the proposals in the consultation document with the exception of the proposed constitution of the panel. They would wish to include governors and independent members for objectivity. They would also want a reserve power for a parent to make oral representations over a five day exclusion. Lawyers at an Education Law Association (ELAS) seminar<sup>120</sup> also raised questions as to whether a majority of teachers or ex-teachers accorded with natural justice. NAHT<sup>121</sup> welcomed a change to the five day trigger for a discipline committee to meet.

### **3. Attendance**

**Clause 50** removes the reference to “unauthorised” in Section 63 of *SSFA* relating to targets to reducing absence. The new subsection widens the power and would allow for targets to reduce overall levels of absence. The Secretary of State in her evidence to the Select Committee on 24 October 2001 expressed interest in attendance targets rather than truancy targets.<sup>122</sup> Such a target, if set, would be in line with recent research on the equally detrimental effect of parentally condoned absence.<sup>123</sup> Mike Tomlinson, HMCI, told ATL delegates in April that 1 million days were lost each year in English schools through unauthorised absence, while 6 million days’ absence were authorised by parents.<sup>124</sup>

## **V Part 4 Powers of Intervention**

### **1. Background and proposals**

Chapter 6 of the White Paper, *Decisive intervention to ensure high standards*, set out the Government’s proposals to tackle poor performance. Part of the strategy was to apply the approach used with poor performing LEAs to schools. The power to intervene in LEAs

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<sup>117</sup> “Expel aggressive three-year-olds, teachers demand” *Times* 12 April 2001

<sup>118</sup> s 210 (1)

<sup>119</sup> LGA Response on Consultation on Exclusion Appeal Panels

<sup>120</sup> Update on Education Law 21 November 2001

<sup>121</sup> NAHT Response to White Paper

<sup>122</sup> Check pub evidence

<sup>123</sup> “Raising attendance” Mary Atkinson NFER *Education Journal* Issue 55 2001

<sup>124</sup> see footnote 83

was introduced in the *School Standards and Framework Act 1998*. In his speech on Second Reading, David Blunkett MP then Secretary of State said: “We will have the power to take directly whatever steps are necessary to ensure that education authorities deliver our pledges.”<sup>125</sup>

The approach to LEAs has been pragmatic, but in most cases has involved an external, usually private, partner. A table has been deposited in the Library in response to a Parliamentary Question from Andrew Turner MP listing the 21 LEAs in which the Secretary of State has intervened following a critical OFSTED report.<sup>126</sup> It notes the action taken and the companies or stakeholders involved.

The proposals in the White Paper encouraged LEAs to consider the widest range of solutions in tackling school failure. Governing bodies were to be replaced if necessary with a new, more focused, Interim Executive Board. Successful heads or senior managers were to be enabled to offer support, as were successful governing bodies. Sharing of staff and facilities was to be encouraged. Finally, LEAs having to turn round failing schools were to invite proposals from external partners for help at the point at which they had to submit their action plan. If they decided not to use any external partner, there was to be a reserve power for the Secretary of State to require one to be involved if necessary. Principles were set out<sup>127</sup> for the use of an external partner. These included the undertaking that the governing body and the head would remain in control of the school and the staff would not be required to enter the employment of the external partner. The proposal in the Green Paper<sup>128</sup> for an external private or voluntary sector sponsor taking responsibility for a weak or failing school on a fixed term contract did not feature in the White Paper.

The proposals for the Interim Executive Board were set out in greater detail in *The Way Forward* consultation paper.<sup>129</sup>

#### **a. Wales**

The Paving Document<sup>130</sup> states that it will provide by law for local authorities to establish **protocols** for partnership agreements setting out the actions LEAs will take to support schools and to set shared objectives for underperforming schools. **Clause 191** provides for partnership agreements in Wales.

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<sup>125</sup> HC Deb 22 December 1997 c661

<sup>126</sup> HC Deb 8 November 2001 c405W DEP 01/1629

<sup>127</sup> para 6.25

<sup>128</sup> para 4.23-4.24

<sup>129</sup> para 9.1-9.11

<sup>130</sup> para 28

## 2. The Bill

### Clauses 51- 61

The provisions in this part apply to both England and Wales. They amend and extend existing legislation, mainly in the case of schools the provisions of the *SSFA* relating to intervention in schools causing concern.<sup>131</sup>

#### a. Schools

**Clause 51** places a duty on the Chief Inspector to notify the Secretary of State or NAW where an inspector has concluded that a school has serious weaknesses or requires special measures. The Secretary of State or NAW must then notify the LEA that they have been informed. Serious weaknesses are now defined in legislation as significant weaknesses in one or more areas of the school's activities, although the school gives its pupils in general an acceptable standard of education. Factors and criteria to be taken into account by inspectors making such judgements are set out in Annex 2 of the *OFSTED Handbook for Inspecting Secondary Schools*.<sup>132</sup> Further information, including figures, on schools in special measures was given in response to a recent Parliamentary Question.<sup>133</sup>

The effect of **Clause 51** and **Clause 52** is to allow the Secretary of State, NAW, or the LEA to intervene more quickly.<sup>134</sup> **Clause 53** extends the current powers of the Secretary of State or NAW to appoint additional governors to schools requiring special measures to those identified as having serious weaknesses and to direct the closure of such schools. **Clause 54** provides for the LEA, with the consent of the Secretary of State or NAW, to appoint a governing body consisting of interim executive members (the interim executive board of the consultation paper); **Clause 55** gives the same power to the Secretary of State or NAW. **Schedule 6** sets out the detailed provisions for an interim executive board (IEB). There are a number of distinctive features: the governing body will remain in existence as a body corporate, but with the membership changed. The IEB will have a minimum of two members and will take on all governing body duties and responsibilities, using procedures determined by itself. Governing body regulations will not apply (para 13). The IEB will be able to recommend closure to the LEA and the Secretary of State and NAW (para 15 and 16).

IEB members are to be paid and the statement on Public Sector Finance cites a cost for three IEBs a year of £25,000. It suggests that IEBs will only be appointed in exceptional circumstances.<sup>135</sup>

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<sup>131</sup> ss 14-19

<sup>132</sup> OFSTED TSO 1999 effective from January 2000

<sup>133</sup> HC Deb 27 November 2001 cc 775-779W

<sup>134</sup> Bill 55-EN para 146-151

<sup>135</sup> Bill 55-EN para 416



Clause 60 (see below) is also relevant to schools.

### **b. LEAs**

**Clauses 58 and 59** amend and extend sections 497A and B of the **Education Act 1996**, as amended, which relate to the reserve power of the Secretary of State to secure proper performance of LEA's functions. These sections were inserted in the 1996 Act by the *SSFA*<sup>136</sup> to give Government a statutory right of intervention in LEAs. The clauses require the co-operation of the LEA with a specified contractor or nominee when the Secretary of State or NAW has notified them of the intention to intervene. **Clause 60** sets out the new reserve power to require an LEA to involve an external partner in turning round a school requiring special measures or with serious weaknesses. The White Paper linked this requirement to an individual failing school<sup>137</sup>. The legislation extends the power from a situation where the LEA has been ineffective or is unlikely to be effective in turning round a specific school to cover a situation where the LEA has a disproportionate number of such schools.

The *Explanatory Notes* refer, like the White Paper, to a wide range of potential partners. The Notes on Public Sector Finances refer only to private sector partners and envisage a cost for competitions and payment amounting to a maximum of £10,000 per school. Once again it is stated that the Department does not expect to use the power in other than exceptional circumstances.<sup>138</sup>

## **3. Reaction**

The proposals in the White Paper on tackling school failure attracted support or strong support from 39% of the 2378 responses. 20 % did not support any part of the proposals. This was in contrast to the high level of support (70%) for the proposals in the same chapter on supporting schools facing challenging circumstances.<sup>139</sup> The specific proposals on interim executive boards (IEB) in *The Way Forward* consultation attracted support or strong support from 63% of the 4385 responses; 22% supported in part and only 12% opposed the proposal.<sup>140</sup>

The Association of Teachers and Lecturers (ATL) had anxieties about private sector involvement and the lack of clarity on accountability.<sup>141</sup> The LGA would prefer a reconstituted governing body to an IEB on the grounds that it would have a long term commitment to the school. They were concerned that seeking an external partner would

<sup>136</sup> s 8

<sup>137</sup> para 6.23-6.26

<sup>138</sup> Bill 55-EN para 175 and 416

<sup>139</sup> NOP Interim Report on responses to the White Paper

<sup>140</sup> NOP Interim Report on *The Way Forward* consultation

<sup>141</sup> ATL Comment on the White Paper

delay the implementation of an action plan, but would not object if the requirement was to seek a partner after all other strategies had failed.<sup>142</sup>

## **VI Part 5 School Organisation**

This part of the Bill makes provision for the setting up of new schools and the alteration of and closing of existing schools. The first group of clauses amends the law relating to City Colleges. The second group seeks to encourage a wider range of promoters to bring forward proposals to meet the need for new schools. These provisions are part of the Government's stated policy to promote diversity in schools.

### **A. Academies and city colleges**

#### **1. Background**

City Technology Colleges (CTCs), City College for the Technology of the Arts (CCTAs) and City Academies, are known collectively as City Colleges. They are publicly-funded independent schools.

The current statutory provision for CTCs, CCTAs and City Academies are in sections 482, 483 and 483A of the *Education Act 1996* (as amended by the *Learning and Skills Act 2000*). Section 482 provides for the Secretary of State to enter into agreements with specific categories of independent schools. These categories are CTCs and CCTAs and City Academies. The agreement must require that the school:

- is situated in an urban area,
- provides education 'for pupils of different abilities who have attained the age of 11 and who are wholly or mainly drawn from the area in which the school is situated',
- has a broad curriculum with an emphasis on science and technology, or on technology in its application to the performing and creative arts, or on a subject specified in section 482 (2A), namely modern foreign languages, visual arts, performing arts or media arts (or a combination of them), sport, or any subject specified by order made by the Secretary of State. The *Education (City Academies) (Subject Areas) Order 2001* enables a City Academy to specialise in the areas of business, enterprise and information technology.<sup>143</sup>

Section 483 specifies the financial provisions for city colleges. The funding agreement can be for capital or for current expenditure.

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<sup>142</sup> LGA response to the White Paper

<sup>143</sup> SI 2001 No 3631

CTCs were established by the Conservative Government under the *Education Reform Act 1988* as independent, all-ability, non fee-paying secondary schools for pupils aged 11-18 offering education with a science and technology bias. At the time, the Labour Opposition was fiercely opposed to them.<sup>144</sup>

There are 14 CTCs and 1 City College for the Technology of the Arts (CCTA) in England.<sup>145</sup> The original target was for 20 CTCs to be established with all or a substantial part of the capital costs to be met from private sponsors.<sup>146</sup> Subsequently it became clear that this level of private support would not be forthcoming, and the Conservative Government contributed much of the capital costs to establish CTCs. CTCs bid competitively each year to the DfEE for capital project funding and their running costs are funded by the DfES on the basis of comparison with similar maintained schools.

The Labour Government is supportive of the network of CTCs, which are viewed as "an important part of the Government's strategy to promote diversity with excellence within a modernised comprehensive system." The role of CTCs in spreading innovation and best practice is stressed.<sup>147</sup>

No City Academy yet exists, but partnerships are currently working to establish them. City Academies will be publicly-funded independent secondary schools aimed at tackling educational underachievement in some of the most disadvantaged urban areas. The creation of City Academies was announced by David Blunkett in a speech entitled *Transforming Secondary Education*, given to the Social Market Foundation on 15 March 2000.<sup>148</sup> The full speech is in booklet form on the DfES web site.<sup>149</sup>

A *City Academies Prospectus for sponsors and other partners*, published by the DfEE in July 2000<sup>150</sup> explains the key features of the programme. In brief, City Academies will be:

- All-ability schools which cater for 11 - 16 or 11 - 18 year olds, according to the pattern of local provision;
- situated in major urban areas, taking over from schools with poor track records (either directly or as part of a wider reorganisation) or meeting a demand for new places;
- at the heart of their communities, sharing their facilities with other schools and the wider community;

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<sup>144</sup> see e.g HC Deb 19 July 1988, c 953W

<sup>145</sup> HC Deb 18 December 2000 c 22W

<sup>146</sup> HC Deb 19 December 1986 c 722W

<sup>147</sup> HC Deb 20 December 1999 c 390W

<sup>148</sup> DfEE *Press Notice, Blunkett sets out radical new agenda for inner school diversity and improvement*, 15 March 2000

<sup>149</sup> <http://www.dfee.gov.uk/socialmarket>

<sup>150</sup> a copy is online at: <http://www.standards.dfee.gov.uk/otherresources/publications/prospectus>

- registered as independent schools, subject to inspection by OFSTED, but charging no fees;
- schools with state of the art facilities (whether in new build or refurbished premises), with sponsors making a contribution towards the capital costs;
- owned and run by sponsors, and receive Government grants on conditions agreed with the Secretary of State;
- schools with a broad curriculum and a special emphasis on an area of the curriculum, such as science and technology, modern foreign languages, arts or sport, alongside an emphasis on the needs of the individual pupil;
- schools which develop in their pupils the qualities of enterprise, self-reliance and responsibility which young people need for adult life;
- schools which aim to secure the highest possible standards of achievement, never satisfied with past levels of achievement.

The Green Paper, *Schools - Building on Success*, proposed that the City Academy programme should be expanded, and highlighted the intention that City Academies would raise standards by innovative approaches to management, governance, teaching and the curriculum with a specialist focus on one area. It said that there would be major investment for refurbishment, ICT and learning resources.<sup>151</sup>

The White Paper announced that the City Academy programme would be extended to allow for all-age academies and for schools on the City Academy model to be established in urban areas. The aim is that by 2005 at least 20 City Academies will be open. It also said that the Government would examine the potential for developing Private Finance Initiative (PFI) City Academies:

5.23 Our City Academy programme means that sponsors from private, voluntary and faith groups can establish new schools whose running costs are fully met by the state. They bring a distinctive approach to school management and governance and offer a radical option to raise standards in areas of disadvantage. Thirteen partnerships are working now to set up City Academies and we will expand this programme year on year to set up Academies across the country. Our aim is that by 2005 at least 20 City Academies will be open. We will legislate to allow for all-age Academies and for schools on the City Academy model in rural as well as urban areas. And we will examine the potential for developing PFI City Academies. All such schools will share their specialist expertise and facilities with other schools and the wider community and will of course conform to the law and Code of Practice on admissions.

At the recent CBI's annual conference, the Secretary of State said that there has been a 'superb response from the business community keen to get involved in the new City Academies. Already we have 14 of these in the pipeline.'<sup>152</sup>

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<sup>151</sup> Cm 5050, February 2001, paragraph 4.21

<sup>152</sup> DfES Press Notice, *Morris wants business backing to bridge skills gap*, 5 November 2001

A DfES consultation document was issued on 8 October 2001 setting out proposed arrangements for ensuring that City Academies will be inclusive schools which cater for the needs of pupils with special educational needs and disabilities on a comparable basis to mainstream schools in the maintained sector.<sup>153</sup> It summarises the relevant powers and duties of City Academies and proposes regulations, which would also apply to CTCs and the CCTAs, to make provision for pupils with special educational needs (SEN). The consultation document notes that as with independent schools much of the legislation that applies to maintained schools will not apply to City Academies; however, the funding agreement between the Secretary of State and each academy will set out in general terms how the school will operate. Annexes to the funding agreement will provide more specific details about the school, including its admission arrangements and its SEN policy. It emphasises that Ministers have made it clear that City Academies' admission arrangements must have admission policies consistent with the law and with the Code of Practice on School Admissions. They will be expected, as inclusive schools, to admit children with SEN on the same basis as other applicants. They may not select pupils on the basis of academic ability; however, like maintained schools, they will be able to admit up to 10% of pupils to each new year 7 cohort on the basis of aptitude for the school's specialism.

## 2. The Bill

**Clauses 62 to 65 and Schedule 7** make new provision for Academies and City Colleges. **Clause 62** replaces section 482 of the *Education Act 1996* providing for the establishment of Academies. These changes are proposed:

- Academies may be established in any part of England, whereas under the existing provision CTCs, CCTAs and City Academies can only be established in urban areas.
- Academies, unlike CCTs, CCTAs and City Academies, will not be restricted to providing only secondary education.
- The emphasis on a particular subject area or subject areas for Academies will be specified in their funding agreements with the Secretary of State. At present the specialist subject areas for CTCs, CCTAs and City Academies are set out in the Act or specified in an order made by the Secretary of State.

The requirement contained in the present section 482 that education must be provided for pupils of different abilities who are wholly or mainly drawn from the area in which the school is situated is carried over into the proposed new section 482.

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<sup>153</sup> Consultation Document, *City Academies: Arrangements for pupils with SEN and Disabilities*, 8 October 2001; available online at <http://www.dfes.gov.uk/consultations/active/index.cfm?CONDID=128>

The existing requirement for the Secretary of State to consult the LEA before entering into an agreement for a City Academy is also included in the new provision.

**Clause 62(3)** provides for **Schedule 7**, which inserts a new schedule into *the Education Act 1996*. It makes provision about land in relation to Academies. Schedule 8 of the *Learning and Skills Act 2000* protects land used by community and county schools within five years of the Act becoming law on 28 July 2000 where that land is needed for a City Academy. LEAs are required to obtain the Secretary of State's consent before they can dispose of such land. Draft guidance, *Protection of School Playing Fields and Land for City Academies*, was issued by the DfES for consultation, which ended on 28 February 2001.<sup>154</sup> **Schedule 7** of the Bill seeks to make similar provision in relation to Academies, and under paragraphs 7(2) the period of time relating to restrictions on a LEA's disposal of land will be eight years.

An outline of main provisions proposed in Schedule 7 is given in paragraphs 182 and 183 the Explanatory Notes on the Bill.

**Clause 63** provides for City Academies to be known as Academies and deems them to have been established under clause **62(1)**.

**Clause 64** provides for existing CTCs and CCTAs to continue to be known as such, for their existing section 482 agreements to continue, and permits agreements to be terminated and replaced by an agreement under new section 482, for them to become Academies.

**Clause 65** amends section 557 of the *Education Act 1996* (uniform statutory trusts) and its purpose is explained in the Explanatory Notes, paragraph 186.

### 3. Reaction

In their responses to the White Paper, the teaching unions and the LGA expressed concern about the proposals to expand the City Academy programme. A common theme is that there is no evidence that City Academies are successful, as none are yet fully established. The ATL has suggested that further development of the programme should be delayed until solid evidence of its success is available. It observes that the Government's expansion plans are 'analogous to marketing a pharmaceutical remedy before the clinical trials have been completed'.<sup>155</sup>

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<sup>154</sup> available online at <http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=47>

<sup>155</sup> *Comment from ATL on Schools - Achieving Success*, Annex A: Outline of ATL response to legislative proposals in the White Paper, p 46

The NUT has made similar points, emphasising that the proposals to extend the programme are not based on any evaluation of their impact on other schools. The NUT considers that the establishment of City Academies has the potential for fragmenting local provision of secondary schools. It has also expressed concern about the transfer of publicly funded assets to sponsoring bodies which, it argues, are not accountable. The difficulty of obtaining private sector sponsorship is also highlighted. The NUT notes that ‘the Government appears not to have learnt the lessons from the establishment of Education Action Zones and the earlier establishment of CTCs, where there have been enormous difficulties in obtaining commercial sponsorship’ and adds that the Government may be called upon to bail out the initiative. Concern is also expressed about the lack of information about the effect of City Academy status on teachers’ jobs security, salaries and conditions of service. The White Paper’s proposal to develop PFI City Academies is seen as a further step towards removing accountability to the wider community. The NUT argue that both the management and governors of schools will be subject not only to the specific interest of sponsors but also to the constraints of long-term PFI contacts.<sup>156</sup>

The Secondary Heads Association also has reservations about extending the programme, and particularly about the effect it may have on other schools.<sup>157</sup>

The LGA has raised a number of issues. It is concerned that there will be no choice for parents where the only school in a rural area is a ‘City Academy.’ Criticising ‘bad CTC admission practices’, the LGA stresses that admissions to City Academies should be part of the local co-ordinated admission arrangements. It also points out that if City Academies are to become all-age, then DfES planning guidance should support all-age schools in any other category should that be the wish of the local community. LGA argue that local authorities should always be one of the sponsors, and that City Academies should become a new category of maintained school. In common with other commentators, the LGA wished to see evidence of the success of City Academies before the programme is extended, and recommends that no more should be created until a full review has been made of committed academies.<sup>158</sup>

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<sup>156</sup> *Schools - Achieving Success: the response of the NUT*, October 2001, p 15

<sup>157</sup> *Secondary Heads Association - Secondary schools of the future: a response to the White Paper*, November 2001, paragraph 5.12

<sup>158</sup> *LGA response to the White Paper and six associated consultation papers*, 8 November 2001. pp 6 and 7

## B. Proposals to establish, alter or discontinue schools

### 1. Background

The provisions relating to the opening, closure or change of a maintained school are technical and complex. The statutory provisions are set out in the *School Standards and Framework Act 1998*, Part II chapter II and Schedules 6 to 8, and in regulations made under the Act. The 1998 Act introduced new arrangements to strengthen local involvement in decisions about the pattern of provision in areas and, in England, removed the Secretary of State's direct involvement in the decision-making process. DfEE Circular 9/99<sup>159</sup> and National Assembly for Wales (NAW) Circular 9/99<sup>160</sup> provide guidance on the provisions. There is also DfES guidance on statutory proposals.<sup>161</sup>

LEAs have a general duty under sections 16 and 17 of the *Education Act 1996* to establish and maintain primary, secondary and nursery schools. Each LEA must prepare and consult on a school organisation plan for their area. The plan sets a context for consideration of specific proposals, and identifies any need to add or remove places in its area. It is not intended to identify changes that are required to particular schools. Proposals for changes in respect of maintained schools must be published under sections 28, 29 and 31 of the 1998 Act. There are detailed requirements relating to consultation on the proposals.

In England, once proposals have been published, they must be sent to the School Organisation Committee, which includes representatives of LEAs, Church of England and Roman Catholic Dioceses, school governors, and others.<sup>162</sup> Proposals require approval by the relevant School Organisation Committee (SOC) if they were published by a governing body or promoters, or published by an LEA and there are subsisting objections or if statutory approval is required. The SOC may reject, approve, or approve with modifications. Where the SOC cannot reach a decision the proposal is referred to an independent Adjudicator. The arrangements are described in detail in Circular 9/99 and in the Addendum to it. Section D of the DfES *Guidance on Statutory Proposals* sets out the actions SOCs must take on receipt of proposals.

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<sup>159</sup> *Guidance on Statutory Proposals*, DfEE

<sup>160</sup> National Assembly for Wales, *School Standards and Framework Act 1998, Organisation of School Places*, available on line at [http://www.wales.gov.uk/subieducationtraining/content/guidance/admiss/0999\\_e.pdf](http://www.wales.gov.uk/subieducationtraining/content/guidance/admiss/0999_e.pdf)

<sup>161</sup> DfEE Circular 9/99, *Organisation of School Places, and Addendum issued in September 1999*

<sup>162</sup> *School Standards and Framework Act 1998*, section 24



In Wales, there are no SOCs or Adjudicators. Proposals that require statutory approval are considered by the NAW. The arrangements are described in detail in National Assembly for Wales Circular 9/99.

The Secretary of State, and in Wales the NAW, may direct a LEA or the governing body of a foundation or voluntary school, to bring forward statutory proposals where it appears to her/it that there is or is likely to be either an excess or insufficiency in school places.<sup>163</sup>

The Bill's provisions on school organisation seek to encourage a wider range of promoters to bring forward proposals to meet the need for new schools. The other changes include amendments to the procedures in the 1998 Act for dealing with statutory proposals for the establishment, alteration and discontinuance of schools. Provision is made for new rights of appeal to the Adjudicator.

## **2. The debate about faith schools**

### ***a. Background***

Most religious schools currently receive public funding as either voluntary-aided or voluntary-controlled schools. These categories were established by the *1944 Education Act*, which brought church schools into the maintained system, and continue to exist in the new framework established by the *School Standards and Framework Act 1998*. The majority of schools are either Church of England or Roman Catholic although there are also Methodist and Jewish voluntary schools. Since 1992 it has been explicit policy under both Governments that applications for voluntary aided status put forward by groups of any religious persuasion are treated on their individual merits.<sup>164</sup> Over the past decade there have been attempts by independent Muslim schools to join the state maintained sector but it was only in 1998 that proposals from some Muslim schools were approved. The sector currently includes both Muslim and Sikh schools.<sup>165</sup>

The Dearing Report, *The Way Ahead: Church of England Schools in the New Millennium*, recommended that over the next seven to eight years the Church of England seek, in partnership with LEAs, to provide the equivalent of 100 extra Church of England secondary schools.<sup>166</sup> The recommendation has been approved by the General Synod.<sup>167</sup>

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<sup>163</sup> *School Standards and Framework Act 1998*, Schedule 7

<sup>164</sup> HC Deb 3 June 1992 c 567W and HC Deb 11 December 1997 c 1182

<sup>165</sup> "Losing faith in church schools" *Sunday Times* 11 March 2001 p 17

<sup>166</sup> *The Way Ahead: Church of England Schools in the New Millennium*, Church of England, Executive Summary, paragraph 2

<sup>167</sup> "New church schools get Synod vote", *Times*, 16 November 2001, p 16

There has been some debate about the academic performance of church schools and about their admission policies. John Marks, Director of the Civitas education unit, compared the examination performances of Church of England, Roman Catholic and LEA schools and found that pupils at church schools achieve better results, on average, than LEA schools but that the differences are not as large as might be imagined given the popularity of church schools.<sup>168</sup>

**b. School and pupil numbers<sup>169</sup>**

The table below details the number and type of schools in England by their religious character. Overall there were 6,940 schools with a religious character, around two-thirds of these were Church of England Schools.

**Maintained primary and secondary schools by denomination and category**

England January 2001

Category	Community	Voluntary Aided	Voluntary Controlled	Foundation	Total	Denominations (Per Cent)
<b>Primary</b>						
Denomination:						
No religious character	11,334	17	39	318	11,708	64.8%
Church of England	0	1,913	2,558	38	4,509	25.0%
Roman Catholic	1	1,746	0	0	1,747	9.7%
Methodist	0	3	25	0	28	0.2%
Other Christian <sup>(a)</sup>	0	18	28	1	47	0.3%
Jewish	0	26	0	0	26	0.1%
Muslim	0	2	0	0	2	0.0%
Sikh	0	1	0	0	1	0.0%
Others	0	1	0	0	1	0.0%
All Schools	11,335	3,727	2,650	357	18,069	100.0%
Category (Per cent)	62.7%	20.6%	14.7%	2.0%	100.0%	..
<b>Secondary</b>						
Denomination:						
No religious character	2,307	46	59	487	2,899	83.3%
Church of England	0	118	65	8	191	5.5%
Roman Catholic	0	356	0	1	357	10.3%
Methodist	0	0	0	0	0	0.0%
Other Christian <sup>(a)</sup>	0	20	6	1	27	0.8%
Jewish	0	5	0	0	5	0.1%
Muslim	0	0	0	0	0	0.0%
Sikh	0	1	0	0	1	0.0%
Others	0	1	0	0	0	0.0%
All Schools	2,307	547	130	497	3,481	100.0%
Category (Per cent)	66.3%	15.7%	3.7%	14.3%	100.0%	..

(a) Includes schools of mixed denomination or other Christian beliefs.

Source: Statistics of Education Schools in England 2001 tables 23a and 23b, DFES

<sup>168</sup> John Marks et al, *Faith in Education : the Role of the churches in education – a response to the Dearing Report on church schools in the third millennium*, Civitas; “Church results could be better”, *TES*, 12 October 2001, p 2

<sup>169</sup> Statistics provided by Paul Bolton, Social and General Statistics Section, House of Commons Library

In January 2001 28% of full-time equivalent primary and 15% of secondary school pupils attended denominational schools in England.<sup>170</sup> Over the last decade the number of denominational primary schools in England has fallen by 187, but has remained around the same proportion of all primary schools. Over the same period the number of denominational secondary schools has fallen by 86 and from 20% to 17% of all secondary schools.<sup>171</sup>

In Wales the proportion of schools that are denominational is somewhat smaller than in England. The latest published figures are for January 1999 when there were 173 (10%) Church in Wales primary schools and 78 (5%) Roman Catholic schools. There were also 5 (2%) Church in Wales secondary schools and 16 (7%) Roman Catholic schools. Over the last 10 years the pupils in church schools has remained at around 9% in primary schools and 7% in secondary schools.<sup>172</sup>

### c. *Exam results*<sup>173</sup>

The following table gives information on the background of pupils in England by the religious character of the schools they attend.

**Special Educational Needs and free school meals data for pupils in maintained schools in England**  
Percentage

	Pupils known to be eligible for free school meals, January 2001		Pupils with statements of special educational needs, January 2000	
	Primary	Secondary	Primary	Secondary
Church of England	11.5	11.4	1.5	2.2
Roman Catholic	16.1	15.6	1.1	1.9
Jewish	4.0	6.2	1.1	1.5
Muslim	30.6	..	0.6	..
Sikh	5.6	6.5	0.6	0
Other and non-denominational <sup>(a)</sup>	19.5	16.1	1.7	2.6
All schools	17.6	15.8	1.6	2.5

(a) Includes mixed denominational schools, other christian faith schools and schools with no religious character

Sources: HC Deb 22 October 2001 c38-9w

School in England 2000 and 2001, DfEE/DfES

Free school meals eligibility at Church of England schools was around one-third lower than in the 'other' group (mainly non-denominational schools). Eligibility at Catholic schools was only slightly below average. The situation was reversed for Special

<sup>170</sup> *Schools in England 2001*, DfES

<sup>171</sup> *ibid*; *Schools in England 1991*, DES

<sup>172</sup> *Schools in Wales: General statistics 2001*, NAW

<sup>173</sup> Statistics provided by Paul Bolton, Social and General Statistics Section, House of Commons Library

Educational Needs. The proportion with statements in Catholic schools was around one-third below the 'other' group and the level in Church of England Schools was just below the figure for all schools. In Wales 16% of pupils in church secondary were entitled to free school meals in 2000 compared to 18% in non-church schools.<sup>174</sup>

The next table shows 2001 GCSE results by religious character. The percentage achieving 5 or more good grades in denominational schools was 7.5 percentage points higher than in non-denominational schools. The other indicators also show better performance for denominational schools.

**GCSE/GNVQ performance of mainstream LEA schools by denomination status, England**

	% of 15 year old pupils achieving:			Average points score <sup>(a)</sup>
	5 or more grades A* to C	5 or more grades A* to G	no passes	
All denominational	55.3%	93.3%	2.9%	42.6
Of which:				
Church of England <sup>(b)</sup>	55.1%	93.4%	2.9%	42.6
Roman Catholic <sup>(b)</sup>	53.9%	93.1%	3.0%	41.8
Other and mixed	74.1%	95.8%	2.1%	52.4
Non-denominational	47.8%	90.9%	4.3%	38.6
All LEA Schools	48.9%	91.3%	3.9%	39.2

(a) Scores based on A\* = 8 points, A=7, B=6, C=5, D=4, E=3, F=2, G=1

(b) Excludes schools that are described as having more than 1 denomination

Source: DfEs performance tables

Register of educational establishments

A recent study by the National Assembly for Wales found similar results with 54% achieving 5 or more good grades in church schools compared with 49% in other LEA schools. Further analysis showed that when free school meal entitlement was taken into account the difference in exam performance between church and non-church schools was **not** statistically significant.<sup>175</sup>

<sup>174</sup> NAW SDB 21/2001 *Church school secondary education in Wales: examination and attendance data, 2000*

*d. The Government's proposals in the White Paper*

The White Paper proposed that where there is a need for new school the LEA should invite interested parties including community, faith, public, private or voluntary body to bring forward proposals:

We will encourage wider innovation in the provision of new schools

5.24. As well as City Academies we want to develop new ways of encouraging innovative schools within the state sector. We therefore propose that where an LEA identifies a need for a new maintained school, it should advertise this fact and invite interested parties to bring forward proposals to establish the school by a specified date. Any interested party, including a community or faith group, an LEA or another public, private or voluntary body, will be able to publish proposals. Proposals may be brought forward for a City Academy as part of the competition.

5.25. In order to make sure that all promoters are treated equally, we will expect the LEA to secure a site for the new school and arrange for any necessary planning permission to be sought. The LEA will also secure the Secretary of State's agreement in principle to a case for new provision.

5.26 The proposals will be published alongside one another for local consultation, and the School Organisation Committee will have a full opportunity to assess the proposals, comment on their pros and cons and express a preference. The Secretary of State will then consider all proposals submitted and decide between them. All promoters will be treated fairly on the merits of their case. Criteria for decisions will include the educational merits of the proposals, the value for money that they provide and the outcome of the consultation.

The White Paper went on to emphasise that the Government want faith schools to come into the maintained sector to add to the inclusiveness and diversity of the school system:

5.30 Faith schools have a significant history as part of the state education system, and play an important role in its diversity. Over the last four years, we have increased the range of faith schools in the maintained sector, including the first Muslim, Sikh and Greek Orthodox schools. There are also many independent faith schools and we know that some faith groups are interested in extending their contribution to state education. We wish to welcome faith schools, with their distinctive ethos and character, into the maintained sector where there is clear local agreement. Guidance to School Organisation Committees will require them to give proposals from faith groups to establish schools the same consideration as those from others, including LEAs. Decisions to establish faith schools should take account of the interests of all sections of the community.

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<sup>175</sup> *ibid.*

5.31 We note that Lord Dearing's report to the Archbishops' Council recommends that the Church of England increase significantly the number of secondary school places it supports. Where there is local support, we will welcome that. We want these schools to be inclusive, and welcome the recommendation that Church of England schools should serve the whole community, not confining admission to Anglicans. We want faith schools that come into the maintained sector to add to the inclusiveness and diversity of the school system and to be ready to work with non-denominational schools and those of other faiths.<sup>176</sup>

Earlier, the Green Paper had made a strong commitment to schools supported by the churches and other major faith groups, and said that the Government would streamline the way that voluntary aided schools receive funding for work on their premises.<sup>177</sup> Proposals to improve the funding arrangements for building work at voluntary-aided schools, including the reduction in the statutory contribution made by governing bodies to the cost of capital work from 15% to 10%, were set out in separate consultation papers.<sup>178</sup> The changes are contained in the *Draft Regulatory Reform (Voluntary Aided schools Liabilities and Funding) (England) Order 2002*, which was laid on 20 November 2001.<sup>179</sup> The proposals are not going ahead in Wales as the consultation did not support the change.<sup>180</sup>

#### *e. Reaction*

The White Paper's proposals have prompted a wide debate about Church or faith involvement in education. The issue has become more controversial with the racial troubles in the summer of 2001 in Oldham and Bradford, the confrontation on the route to the Holy Cross Primary School in Belfast, and the terrorist attacks in the United States on 11 September 2001.<sup>181</sup> A report on Bradford, conducted by Lord Herman Ouseley, the former head of the Commission for Racial Equality, highlighted concern about limited or non-existent interaction between schools and different communities.<sup>182</sup>

The DfES analysis of responses to the Green Paper noted that some respondents did not support an increase in the number of faith schools. It noted that they felt that the Government should promote equality of opportunity and that the proposals would

<sup>176</sup> Cm 5230

<sup>177</sup> Green Paper, paragraph 6.20

<sup>178</sup> DfES consultation document 0464/2001, *Voluntary Aided Schools in England: proposals for Governing Body and local education Authority Financial Liabilities and Funding for Premises*, available online at <http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=74>; National Assembly for Wales, *Proposals to Change Capital Liabilities Arrangements at Voluntary Aided Schools*, September 2001

<sup>179</sup> Unprinted Paper 692

<sup>180</sup> *National Assembly for Wales Analysis of Consultation Responses*

<sup>181</sup> e.g. "Faith school opposition multiplies", *TES*, 5 October 2001, p 1; "A wing and a prayer", *Times*, 23 November 2001, p 21

<sup>182</sup> <http://www.bradford2020.com/pride/index.html>

reinforce and extend divisions within the existing education system. The positive contribution that faith schools had made towards the range of provision available was also noted.<sup>183</sup>

NOP Consumer, in its analysis of responses to the White Paper, reported relatively low levels of support for the proposals to encourage wider sponsorship for new schools as outlined in paragraphs 5.24 to 5.26 of the White Paper:

Support for this proposal was low compared to other proposals in this chapter. Of all the respondents only 1 in 10 (10%) strongly supported it, and 6 in 10 (65%) claimed they supported it to some extent. As has been the case in many proposals Governors were more likely to support the proposal to some extent (71%).

Over one quarter of respondents (27%) did not support this proposal, and this was highest amongst those working in or responding on behalf of a school with pupils aged 11-16 (33%).<sup>184</sup>

Phil Willis, the Liberal Democrat education spokesman, has criticised the proposals as being ‘ill-thought out and potentially divisive.’<sup>185</sup>

The ATL in its response to the White Paper looked at some of the main arguments for and against faith schools. It observed that some argue that voluntary-aided schools should not be supported from public funds since the religious belief of individual citizens (or lack of it) should not be a matter for the state.<sup>186</sup> It noted that those opposed to voluntary-aided schools also point out that many such schools, even if ostensibly comprehensive, operate a covert policy of selection. The ATL concluded that although it had serious reservations about the Government’s proposals it took the view that favouring, for largely historic reasons, some faiths but not others could no longer be justified. On balance therefore it thought that it was right for the Government to seek to redefine the place of faith schools in society, but recommended however a number of safeguards.<sup>187</sup>

The NUT believe that the Government has started a damaging debate about faith schools, and feels that at the very least there should be more time for a fuller debate on the issue of faith schools.<sup>188</sup>

The LGA has ‘deep reservations about a national drive to increase the number of faith schools’ and sees such a move as potentially divisive and as another indication of central

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<sup>183</sup> available online on the DfES website at: <http://www.dfes.gov.uk/consultations>

<sup>184</sup> *Schools Achieving Success: Consultations on Education White Paper, Interim Report*, NOP Consumer, November 2001, p 26

<sup>185</sup> “Willis warns of race conflict”, *TES*, 28 September 2001, p 11

<sup>186</sup> *Comment from ATL on Schools - Achieving Success*, p 21; see also *the National Secular Society’s response to the White Paper*, 7 November 2001

<sup>187</sup> *Comment from ATL on Schools - Achieving Success*, p 23

<sup>188</sup> *Schools - Achieving Success: the response of the NUT*, October 2001, p 16

direction of local education provision. It proposes that single faith schools should be established as voluntary controlled schools so that the LEA is the admissions authority and the employer and would be able to 'preserve the interests of the geographic community of the school.' LGA has called for the development of multi-faith schools.<sup>189</sup>

The National Association of Governors and Managers (NAGM), highlighting the events of 11 September 2001 in the USA, the continuing problems in Northern Ireland, and the racial unrest in England during the summer, commented that 'the increase in the number of faith schools of any religious persuasion would be detrimental'. It called for a commission to be set up to conduct an investigation into whether faith schools are contributing to societal divisions, and the ways in which both faith and other schools can foster religious and cultural understanding.<sup>190</sup>

The Campaign for State Education (CASE) thought that the proposals had not been sufficiently thought through, and urged the Government to undertake a wide-ranging study of the subject. It stressed that schools funded by general taxation should be open to all children, and argued that faith schools should be required to reserve a significant proportion of their places for local children who are not part of the faith.<sup>191</sup>

Religious groups have supported the proposals. The Church of England 'warmly welcomed proposals for the development of inclusive schools that have a religious character.'<sup>192</sup> The Muslim Educational Trust also welcomed the proposals to increase the number of faith schools. It noted that while some independent Muslim schools would prefer to remain independent, others would prefer to be in the maintained sector.<sup>193</sup> In a statement on the Bill, the Catholic Education Service supported the proposals.<sup>194</sup>

In his speech to the Conservative Party Conference on 9 October 2001, Damian Green, the Conservative education spokesman, supported the introduction of more faith schools.<sup>195</sup>

In evidence to the Education and Skills Committee, the Secretary of State outlined the context in which the Government has made its proposals:

*(Estelle Morris)* I understand the sensitivities around this, of course I do, and I know why Members are concerned about what will happen. Let us put it in context. I think that we have had a proud tradition in this country of tolerance and

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<sup>189</sup> LGA, *Response to the White Paper*, p 4

<sup>190</sup> NAGM, *Response to the White Paper*, paragraphs 2 to 4

<sup>191</sup> *Parents and School*, CASE, November 2001, No 117, p 4

<sup>192</sup> *Church of England response to the White Paper, Achieving Success*, 13 November 2001

<sup>193</sup> *Muslim Educational Trust Comments on the Government Education White Paper*, 5 November 2001

<sup>194</sup> *Catholic Education Service, A statement on the Expansion of faith schools as proposed in the Education Bill*, 26 November 2001

<sup>195</sup> [http://www.conservatives.com/conference/conferencenews.cfm?obj\\_id=18036](http://www.conservatives.com/conference/conferencenews.cfm?obj_id=18036)



acknowledging a parent's right to have a faith-based school if that is what they want. It goes right back for centuries and centuries and centuries, and that is the way we are. My starting point is that I am not about to take away from Roman Catholic and Church of England parents their right that they have enjoyed over centuries as a tolerant society to exercise that right to have a faith-based education. Given the sort of society we are in now, it is intolerable that you do not offer that sort of choice to those from minority faiths as well. My constituency is Birmingham. One of the things which you get there is that Muslim parents actually say, "Why should Roman Catholic parents have that choice if Muslim parents don't?" It is not an easy solution. It is not easily solved. I will say two more things. Parents are exercising that right anyway; whether we want them to or not, they are exercising that right. In Bradford, I think I am right in saying, there are 18 Muslim schools in the independent sector. Prior to our announcement before the Election, there was not one in the state sector. So not having faith schools does not mean that parents do not access it if that is what they really want. I will be honest, I would sooner have them in the state sector than in the independent sector, because they are accountable for the national curriculum, they are inspected by OFSTED and I can make sure that there are equal opportunities for girls as well as boys, which goes right across all the religions, when we actually grant them. So I think you have to be careful about that—that there is a check. We have the minority-faith schools, we have lots of them, they are just not in the maintained sector. The next point is, my constituency is in Birmingham, Birmingham which is the most multi-racial city outside London. When I go into schools generally they are predominantly white. I can go into classrooms and not see a non-white face, in Birmingham. If you are really worried about children from different faiths being educated separately, do not pile it all on the heads of the traditional-faith schools. It is about racism, it is about urban development, it is about housing policy, it is about how our urban centres have grown, because you can go into inner-city Birmingham and find a maintained non-faith school that has got 99 or 100 per cent Muslims. That is what we are really worried about. Let us get down to the roots and let us see what is happening. My final point, and what I think the Committee will most want to hear, is that we are not, actively or proactively, about to launch a campaign to get lots more faith schools into the state school system. We are not about to do that. The mechanism will be the same as it is for the opening of every school. The School Organisation Committee will locally make that decision. That means that the family of schools at the heart of the community will take the decision as to whether a new faith school, from whichever religious background, is allowed to join the sector. We have got faith, it is important in this country, it is important to lots of individuals. If we tie it up with the churches and say, "Faith is okay, but don't let it leave the churches", we are a strange new tolerant society. I think that we look for levers of co-operation and integration, inclusivity, at the same time as acknowledging people's rights to pursue a different faith. That is the message I have from the leaders, from the mosques, from the temples and from the churches, and that is the way I want to go forward.<sup>196</sup>

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<sup>196</sup> Minutes of Evidence to the Education and Skills Select Committee, 24 October 2001, HC Paper 304-I,

She went on to emphasise that faith schools will be expected to work in partnership with other schools and that guidelines will be issued to the School Organisation Committees requiring them to look at how any new school proposes to work in partnership with other schools:

Mr Chaytor

41. In the White Paper it refers to the need for clear local agreement before establishing faith schools. My first question is, does that mean the School Organisation Committee?

*(Estelle Morris)* Yes, through guidance which we shall issue in due course.

42. It also refers to the concept of inclusiveness in faith schools. Is not that a contradiction in terms?

*(Estelle Morris)* Yes, it is if you only commit yourself to admissions arrangements. Going back to the Chairman's question to me about the pattern of schools, one of the things which I want schools to change over the next five years is for schools to be hugely individual and accountable for their own performance, but to be part of the family of schools and cluster of schools. One way to be inclusive is actually to ask schools to point out in their application to join the mainstream, in what ways they will work with the family of schools. So that is the nature of the inclusivity with which we would work, how open they are, how well they work with neighbouring schools.

43. Is it likely, for example, that a new Muslim school or a new Sikh school would admit a large number of Catholics?

*(Estelle Morris)* I think it is very likely. My feeling is that that is what happens. Church of England schools do, Roman Catholic schools do, they are multi-racial. We now have quite a lot of plans to change the admissions framework.

44. Are you saying you have or you have not got them?

*(Estelle Morris)* I have not announced the plans to change the admissions framework.

45. But there is a plan to do that?

*(Estelle Morris)* All I would say is that there are more ways of making schools mutually inclusive than actually having a quota of meeting 10 per cent of Muslims or whatever. I do not want to move along those lines. What I do find, which is hugely heartening, is that if you go to those that run faith schools in the maintained sector they are some of the most progressive within their faith group, some of the most progressive. They understand that at the heart of their religion is tolerance, understanding and co-operation with others. I am wary, Mr Chairman, that I am about to get myself into trouble before I have issued the guidance which is not fully worked out yet, but that is what we want to do, to respect the ability of a faith, but actually find a myriad of ways in which we can check that schools are being inclusive as members of the family of schools.<sup>197</sup>

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paragraph 40  
<sup>197</sup> *ibid*, paragraphs 41 to 45

### 3. The Bill

#### a. *Proposals for additional secondary schools*

**Clause 66 and Schedule 8** relate to proposals for additional secondary schools in England. As the Explanatory Notes state, the purpose of the change is to encourage a wider range of promoters to bring forward proposals to meet the need for a new school.

Under **clause 66** LEAs in England may, with the approval of the Secretary of State, publish a notice inviting proposals for an additional secondary school to be established as a maintained school or an Academy. The notice must identify a possible site for the school (**clause 66(3)**). Only after it has invited such proposals can the LEA make its own proposals for a maintained school as an additional secondary school. **Schedule 21**, paragraph 49 of the Bill amends section 28 of the *School Standards and Framework Act 1998* to prevent the LEA from issuing proposals under that section for the establishment of an additional secondary school. The Explanatory Notes state that the effect of **clause 66** is that if the LEA considers that an additional maintained school is required they must seek approval from the Secretary of State for the publication of a notice for a new school.<sup>198</sup>

**Schedule 8** sets out further details of the procedure to be followed. Regulations will provide for the Secretary of State to decide the proposals after being considered and commented on by the local School Organisation Committee. The schedule makes provision for the implementation of the proposals.

**Clause 67** empowers the Secretary of State, where she is of the opinion that provision for primary or secondary education in an area is or is likely to become insufficient, to give a direction to a LEA in England to exercise its powers to ensure that specified provision is made. The Secretary of State may publish her own proposals if the LEA fails to comply with the direction, or if she is not satisfied with the action taken by the LEA.

The LGA strongly opposes the proposal to require LEAs to advertise for organisations to establish schools. It argues that decisions affecting local people should be taken locally, and notes that although School Organisation Committees, which represent local interest will be able to comment on the proposals, the decision on which bid to accept will rest with the Secretary of State.<sup>199</sup>

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<sup>198</sup> Explanatory Notes, Bill 55 - EN, paragraph 188

<sup>199</sup> *LGA response to the White Paper*, p 6

Others have also made negative comments on the proposal. The NUT said that it could see ‘no good argument’ for it.<sup>200</sup>

**b. *Proposals relating to sixth forms***

At present the Learning and Skills Council (LSC) can put forward proposals to the Secretary of State for the establishment and dissolution of sixth form colleges and further education colleges. It cannot, however, make proposals affecting school sixth forms or 16 to 19 schools, except where a school sixth form or 16 to 19 school is found still to be inadequate following a second OFTED inspection. The case for the LSC being empowered to put forward proposals was set out in the DfES consultation document, *16-19 Organisation and Inspection*.<sup>201</sup> It emphasised that the proposals are in keeping with the LSC’s strategic role and funding responsibility for 16 to 19 provision. The consultation document also noted that the Government envisage greatly increased collaboration on the part of all providers of 14 to 19 education and training. Other changes proposed in the consultation document included a proposal to make it easier for those community schools that currently provide only education for those up to 16, to publish proposals to add sixth forms.

**Clause 68** amends the *Learning and Skills Act 2000* to enable the LSC in England, and the National Council for Education and Training in Wales (NCETW) to propose the establishment, alteration or closure of maintained school sixth forms. The Secretary of State would decide on proposals submitted by the LSC, and the NAW would decide on the NCETW proposals. **Schedule 9** inserts a related new schedule 7A into the *Learning and Skills Act 2000*.

**c. *Proposals by governing bodies of community schools***

**Clause 69** makes provision for the governing bodies of community schools maintained by a LEA in England to publish proposals for prescribed alterations. It is intended that regulations will prescribe that a community school may, amongst other things, make proposals to add a sixth form.<sup>202</sup>

In its response to the proposals, the LGA commented that it would be necessary for the LSC to work closely with local authorities to ensure that the financial consequences for any 16 to 19 reorganisation are fully thought through. The LGA emphasised that it would

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<sup>200</sup> *Response of the NUT to the White Paper*, p 15

<sup>201</sup> <http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=125>

<sup>202</sup> Explanatory Notes, Education Bill, Bill 55 - EN, paragraph 200

not support an extension of the LSC's remit into funding or organisation of 14 to 16 provision.<sup>203</sup>

*d. Proposal for the establishment of federated schools*

**Clause 70** makes provision for a new school to be established as a federated school under a single governing body from its opening date. It is linked to clauses 23 and 24 (*Federations of schools*). The purpose of **clause 70** is to ensure that such schools are subject to the provisions of the *School Standards and Framework Act 1998* governing statutory proposals to establish new community, voluntary or foundation special schools.<sup>204</sup>

*e. Changes to the procedure for dealing with statutory proposals to establish etc schools*

**Clause 71 and Schedule 10** amend the procedures for dealing with statutory proposals for the establishment, alteration or discontinuance of schools in England. The changes, which are listed in more detail in the Explanatory Notes, include:

- Provision to allow comments of any kind, and not just objections, to be made in response to statutory proposals;
- A right of appeal to the Adjudicator for promoters of new foundation or voluntary schools (other than Church of England or Roman Catholic dioceses who are already represented on the School Organisation Committee) where proposals are rejected by the School Organisation Committee;
- A right of appeal to the Adjudicator by the governing bodies of foundation or voluntary schools of a prescribed description whose proposals have been rejected by the School Organisation Committee. This is intended to cover popular schools that wish to expand. These changes were proposed in the White Paper;<sup>205</sup>
- Provision so that proposals approved conditionally by the SOC or Adjudicator (in England) or by the NAW would no longer be treated as rejected if the condition is not met by the set date, but instead will be considered afresh.

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<sup>203</sup> *LGA Response to the White Paper and the six associated consultation documents*, p 22 (response to the 16 to 19 organisation and inspection consultation document)

<sup>204</sup> *ibid*, paragraph 201

<sup>205</sup> Cm 5230, paragraphs 5.20 and 5.30

## VII Part 6 The curriculum in England

### 1. Background and proposals

This part of the Bill and the next create separate statutory provision for the National Curriculum in England and Wales. In making separate provision for England, it allows for the implementation of certain proposals outlined in the White Paper and in the consultation paper.<sup>206</sup> *Better Beginnings - improving quality and increasing provision in early years education and childcare*, published at the same time as the White Paper.

The White Paper proposed to provide more opportunities for pupils to progress in line with their abilities, rather than their age.<sup>207</sup> It also proposed, in Chapter 4, greater flexibility from the age of 14 to allow vocational options and work-based learning. Much of what was suggested already exists in some form: pupils study for GNVQs; are entered early for GCSEs; and participate in work-based learning. The Government intends to set out its detailed plans for “the creation of a coherent, well-balanced 14-19 phase of learning” in the New Year.<sup>208</sup>

Estelle Morris in her evidence to the Select Committee confirmed her commitment to performance tables recording achievement at 16 and expressed greater support for pupils taking exams earlier rather than later.<sup>209</sup> David Hargreaves, chief executive of the Qualifications and Curriculum Authority (QCA), has suggested that all GCSEs should be taken at 15 and pupils should spend three years in the sixth form. He would also favour shortening Key Stage 3 to two years.<sup>210</sup>

One of the proposals in *Better Beginnings* was for the introduction of assessment at the end of the Foundation Stage (which for the majority of children is the end of the reception year in primary school). Consultation by the QCA on this issue had been completed by January 2001 and had revealed strong support for a single national scheme. The end of Foundation Stage profile will replace baseline assessments which were carried out within seven weeks of starting school, according to one of 90 different schemes. The statutory basis for baseline assessment is removed by **Clause 198**. The new Foundation Stage was introduced on a non-statutory basis from September 2000. *Curriculum guidance for the foundation stage*<sup>211</sup> was published in May 2000 and *Early Learning Goals* in October

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<sup>206</sup> [www.dfes.gov.uk/consultations](http://www.dfes.gov.uk/consultations)

<sup>207</sup> para 3.14 and para 4.13

<sup>208</sup> Estelle Morris, Forward to *16-19 organisation and inspection: a consultation document* DfES September 2001

<sup>209</sup> Evidence 24-27

<sup>210</sup> “GCSE move could let pupils leave school at 15” *Daily Telegraph* 13 November 2001

<sup>211</sup> QCA and DfEE QCA/00/587

1999.<sup>212</sup> The first cohort of children are now in the second year of the Foundation Stage, which runs from three to the end of the reception year. It is delivered by a diverse network of publicly funded settings co-ordinated at the local level by the Early Years Development and Childcare Partnership.

## 2. The Bill

### Clauses 72-92

This part of the Bill re-enacts sections 350 to 357 and 362 to 368 of the *Education Act 1996* in their application to England. Only the main changes are noted here.

**Clause 72** lists definitions and includes new definitions for ‘foundation stage’ (which is not to be a key stage) and ‘maintained nursery school’. The National Curriculum previously applied only to pupils of statutory school age. The definition of ‘programmes of study’ has been changed to refer to the skills and processes to be taught by the end of a key stage rather than during a key stage. This is apparently to make it clearer that teachers can teach material from the next key stage to able pupils.<sup>213</sup> **Clause 73** defines nursery education and funded nursery education to cover all providers.

**Clauses 74** and **75** re-enact section 351 of the *Education Act 1996* including the requirement for the curriculum to be ‘balanced and broadly based’. The functions relating to religious education and religious worship are not applied to nursery education. The place in the basic curriculum of religious education for all other pupils and sex education for secondary pupils is re-enacted by **Clause 76**. The clause also provides for the inclusion of the foundation stage in the National Curriculum. There are new order making powers (Henry VIII powers) for the Secretary of State, exercisable by statutory instrument subject to the affirmative procedure, to add further requirements to the basic curriculum, and to amend the reference to the compulsory school age. The *Explanatory Notes* suggest, as examples, that these powers could be used to add community activities to the basic curriculum for 14-16 year olds or make some elements of the National Curriculum statutory beyond 16.

**Clause 77** adds the foundation stage to the National Curriculum and **Clause 78** re-enacts the provisions relating to key stages, with a slight change to the definition of key stage 1 to allow for the foundation stage. The Secretary of State’s power to amend by order existed in the 1996 legislation and require the affirmative procedure. **Clause 79** sets out the areas of learning for the foundation stage and the requirement for early learning goals and the ‘educational programmes’, the foundation stage equivalent to the key stages’ programmes of study. The areas of learning may be amended by order, subject only to the negative procedure. **Clause 80** and **81** re-enact the previous provisions relating to the

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<sup>212</sup> QCA and DfEE

<sup>213</sup> Bill 55-EN para 206

subjects of the National Curriculum that are compulsory at each stage. Key Stage 4 is given a separate clause (**81**). The power to amend by order existed before but the power in relation to Key Stage 4 is broader in scope. (**Clause 82**) Both are subject to the affirmative procedure. This drafting makes provision for the introduction of new requirements for 14-16 year olds. **Clause 83** re-enacts previous provisions and includes the foundation stage. The protection of the affirmative procedure is given to the alteration by order of attainment targets whereas previously alterations of assessment arrangements were subject to that procedure. **Clause 84** re-enacts the duties to implement the National Curriculum and **Clause 85** places them on all providers of funded nursery education.

**Clauses 86 to 91** re-enact previous provisions relating to special cases. The disapplication of the National Curriculum for developmental work or experiments has always been possible. **Clause 92** re-enacts the previous supplementary provisions on the procedure and consultation required before making certain orders.

### 3. Reaction

The interim report on the White Paper responses showed 76% supporting or strongly supporting the proposals for new pathways post-14. This suggests support for the powers to alter the Key Stage 4 curriculum. A number of respondents, like NAHT, awaited the promised consultation paper. The LGA welcomed the single national end of Foundation Stage Profile.<sup>214</sup>

## VIII Part 7 The curriculum in Wales

### 1. Background and proposals

The National Curriculum in Wales was revised at the same time as the National Curriculum in England and there are now marked differences, particularly at Key Stage 4. National Curriculum Orders<sup>215</sup> revising the curriculum were accepted by the National Assembly for Wales in January 2000, and have been implemented in schools from September 2000.<sup>216</sup>

The Paving Document expressed interest in flexibility to offer pupils a wide range of subjects and a statutory framework for personal and social education and work related education (para 51). It accepted as self-evident the need for pupils to progress at different

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<sup>214</sup> LGA Response on the White Paper and consultation documents

<sup>215</sup> SI 2000/1882

<sup>216</sup> *An introduction to the School Curriculum in Wales ACCAC 2001*  
[www.accac.org.uk/schoolcurric/School-curric-in-Wales/Contents.htm](http://www.accac.org.uk/schoolcurric/School-curric-in-Wales/Contents.htm) and *Wales Curriculum 2000*  
[www.accac.org.uk/section368.html](http://www.accac.org.uk/section368.html)



paces (para 52) and intended to seek advice from ACCAC on the disapplication of the National Curriculum at Key Stages 3 and 4 (para 53).

The Document sought views on a proposed statutory foundation stage running from 3 to 7 and on an end to testing at 7 (para 25). Subsequently Jane Davidson National Assembly Minister for Education and Lifelong Learning has announced an end to testing at 7 in response to overwhelming support for this proposal.<sup>217</sup>

## 2. The Bill

### Clauses 93-114

This part re-enacts the curriculum provisions in the 1996 Act in relation to Wales. Much of it is very similar to the preceding part and attention is only drawn to the main differences.

**Clauses 93 and 94** replicate clauses 72 and 73 except that they apply to Wales. **Clauses 95 and 96** reflect clauses 74 and 75 except that an extra subsection **96(8)** requires LEAs and governing bodies to have regard to guidance issued by NAW. **Clause 97** on the basic curriculum is the same as the English one and gives NAW the same order making powers including for Wales altering the starting age of 3 for the basic curriculum. **Clause 98** is an enabling power allowing for a foundation stage in Wales. No age range is set. **Clause 99** relates to the key stages and keeps the original phrase that Key Stage 1 starts with compulsory school age. **Clause 100** sets out the curriculum requirements for the foundation stage, referring to desirable outcomes rather than early learning goals and omitting any reference to areas of learning. **Clauses 101 to 103** set out the curriculum requirements for the key stages, dealing separately with key stage 4. The requirements provide for Welsh and omit citizenship and for key stage 4 make only physical education (and Welsh in a non Welsh speaking school) foundation subjects. In England, technology, citizenship and a modern foreign language remain as foundation subjects at key stage 4. **Clauses 104 to 106** on establishment and implementation reflect the provisions in the previous section as do **Clauses 107 to 112** on special cases. **Clause 113** provides for the NAW to make appropriate arrangements for consultation when making certain orders. **Clause 114** re-enacts a previous provision enabling the NAW to fund research in relation to the curriculum

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<sup>217</sup> NAW PN 4 November 2001

## **IX Part 8 Teachers**

### **A. Teachers' pay and conditions**

#### **1. Background**

The *School Teachers' Pay and Conditions Act 1991* (STPCA) made provision for a review body to examine and report on the statutory conditions of employment of school teachers in England and Wales. The Act provides for the School Teachers' Review Body (STRB) to be appointed by the Prime Minister and the Secretary of State to be empowered to give directions to it as to the considerations to which it is to have regard and the time in which it is to report. The First Report of the School Teachers' Review Body commented as follows on its status:

2. The School Teachers' Review Body differs from the other public sector pay review bodies in several respects. First, we are a statutory body and have a duty to fulfil the requirements of the 1991 Act; for example, to consult certain interested parties. Secondly, unlike the groups whose pay is considered by other review bodies, most school teachers are paid by local education authorities (LEAs), whose funds are only partially derived from the Exchequer. Thirdly, we are charged with making recommendations not only on pay, but on those conditions of service relating to school teachers' professional duties and working time. Despite these differences, our essential role of carrying out an independent examination of the issues and of submitting recommendations and advice is the same as that of the other review bodies; and, like them, we are a standing body which can initiate its own enquiries and request evidence from any source.<sup>218</sup>

The main provisions of the 1991 Act are summarised in Butterworths, *The Law of Education*, as follows:

A review body appointed by the Prime Minister (not the Secretary of State) is required to examine and report on the statutory conditions of employment of school teachers in England and Wales, meaning their remuneration and their conditions of employment relating to their professional duties and working time. The constitution and proceedings of the review body are governed by Sch 1 to the Act.

The Secretary of State is empowered to give directions to the review body as to 'considerations to which they are to have regard' and as to the time within which their report is to be made. The review body then notify (1) the Local Authority

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<sup>218</sup> Cm 1806, February 1992

Associations and any LEA 'with whom consultation appears to them to be desirable'; (2) bodies representing voluntary schools and grant-maintained schools, or the governors of grant-maintained schools and (3) teachers' professional associations; and give them all the opportunity to submit evidence and to make representations. The review body's report must contain their recommendations and advice on the matter referred to them. Their report goes not only to the Prime Minister but also to the Secretary of State who must arrange for its publication (section 1).

When the review body have made their report, the Secretary of State has the power (not the duty) first to consult the relevant associations, authorities and bodies notified by the review body and then to make an order implementing the review body's recommendations, with or without modification. Such an order, a 'pay and conditions order', may either contain the provision to be made or (as is the current practice), refer to provisions set out in the document published by HMSO. The Secretary of State is also empowered to make a pay and conditions order without referring the matter to the review body under s 1 if he considers (after consultation with the chairman or deputy chairman of the review body) that the provision proposed to be made by the order is not significant enough for referral to the review body under s 1 (s 2).<sup>219</sup>

Following consultations on the Green Paper, *Teachers Meeting the Challenge*,<sup>220</sup> new pay and performance management arrangements came into force from September 2000. One of the main changes was the introduction of threshold payments. Teachers at the top of the main scale may apply to be assessed against threshold standards. If successful they move to the starting point of a new upper scale. As well as progressing up the post-threshold scale, a post-threshold teacher could consider applying for any management post in a school or for designation as an Advanced Skills Teacher. Details of the changes are given on the DfES website.<sup>221</sup>

In July 2000, the NUT brought a successful legal action challenging the way in which the performance-related pay system was being introduced. The High Court ruled that the Education Secretary had not followed the correct procedures to consult on the proposed performance threshold. The court did not challenge the threshold itself but ruled that the Government should have consulted the School Teachers' Review Body (STRB). The system was put on hold while the matter was referred to the STRB. The STRB endorsed the proposals with modifications. The main change was provision for a right of review for teachers who felt that they had been wrongly assessed as not meeting the performance standard.

On 22 November 2000, the Education Secretary announced the restart of the threshold process, and laid the *Education (School Teachers' Pay and Conditions) (No 4) Order*

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<sup>219</sup> Butterworths, *The Law of education*, 9<sup>th</sup> edition, B [751]

<sup>220</sup> Cm 4164

<sup>221</sup> <http://www.dfes.gov.uk/teachingreforms/>

2001 SI No 2899. The threshold standards remained the same as those previously published; however, the timetable was changed and teachers were able to seek a review if they believed they had been wrongly assessed.

The *School Teachers' Pay and Conditions Document 2001*, which came into effect on 1 September 2001, contains the current provisions relating to the statutory conditions of employment of school teachers in England and Wales. The issues on which the Government is seeking the advice of the STRB in respect of the year beginning 1 April 2002 were set out in a letter from the Secretary of State to the STRB.<sup>222</sup>

The White Paper said that the STRB, supported by the Office of Manpower Economics, remains the right mechanism for discussing and recommending teachers' pay levels but proposed a change in its role:

7.34 However, both we and the STRB believe that some adjustment to its role is needed. The STRB has told us that in recent years it has been increasingly asked to take a view on second and third order pay issues, often in great detail. Its members feel, and we agree, that their function should be to take a broad, independent overview of pay and conditions within the teaching profession.

7.35 We therefore intend to take powers to allow the Secretary of State to set standards relating to pay, such as threshold standards; make any necessary administrative arrangements for teachers' pay provisions, such as threshold arrangements; and make minor or consequential changes to pay arrangements. All these powers would be exercised subject to consultation but without requiring reference to the STRB.

7.36 The current STRB requirements give teacher representatives an opportunity to comment on such proposals at draft stage. We see this as a valuable role. We will reflect further on how best to feed consultees' views into exercises conducted below STRB level.

7.37 As part of taking a more strategic overview on pay it makes sense for the STRB to look beyond a single year. That would present difficulties for this year's discussions, because long-term forward expenditure plans will not be settled until next year. In summer 2002 we will invite the STRB to advise on the case for a teachers' pay settlement that runs beyond a single year, as has been agreed in Scotland.<sup>223</sup>

In its response to the White Paper the ATL commented that it was not opposed to a review of the STRB's scope, and accepted that the STRB has had to consider issues of an excessively and operationally detailed nature. It also noted that the ATL had long argued

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<sup>222</sup> letter dated 2 August 2001, available online at:

<http://www.dfes.gov.uk/teachingreforms/rewards/teacherspay/strb2001/remit5.shtml><sup>1</sup>

<sup>223</sup> Cm 5230

that the STRB was the wrong body to determine professional standards in so far as particular standards need to have a link with pay. The Government had, it concluded, correctly identified problems but had not put forward a new model for reaching agreement or consensus.<sup>224</sup>

The NUT is opposed to the existence of the STRB and has argued for the restoration of ‘proper negotiating machinery.’ It does not accept that ‘second and third order pay issues should be delegated solely to Government for consideration.’<sup>225</sup>

The LGA also believes that national negotiations would be a better approach to determining teachers’ pay than the STRB but, in the short-term, supports the proposals to rationalise the role of the review body. Although it supports the proposal that minor or consequential matters should be initiated by the Secretary of State outside the review body process, it wants to see a ‘robust mechanism’ for ensuring that there is agreement over which matters are minor and consequential and which are major and significant.<sup>226</sup>

## 2. The Bill

**Clauses 115 to 126 and Schedule 12** replace *the School Teachers’ Pay and Conditions Act 1991* (which is repealed by **clause 126**). The main outline of the existing machinery is restated and the arrangements continue to apply to England and Wales. The main changes are summarised below. (The Explanatory Notes give further details.)

- Members of the STRB will be appointed by the Secretary of State, rather than by the Prime Minister as under the STPCA. The Chairman of the STRB will, however, continue to be appointed by the Prime Minister. (**Clause 115**)
- The Secretary of State will be given an entitlement to submit evidence and make representations. (**Clause 117 (1)(c)**)
- The definition of a school teacher is clarified. A school teacher is defined as either a qualified teacher or unqualified teacher as prescribed by order. It is intended that the latter category will encompass overseas-trained teachers, instructors, and those following the Graduate or Registered Teacher programme.<sup>227</sup> (**Clause 118**)
- The Secretary of State may make an order conferring discretions on LEAs or governing bodies. It may also confer a function on the Secretary of State or on another person who has agreed to carry it out (**Clauses 118 and 119**). The

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<sup>224</sup> *Comment from ATL on Schools – Achieving Success*, November 2001, paragraphs 7.15.1 to 7.15.12

<sup>225</sup> NUT Response to the White Paper, paragraphs 141 to 143

<sup>226</sup> *LGA Response to the White Paper*, p 9

<sup>227</sup> Bill 55 - EN

Explanatory Notes state that in practice this would include arrangements such as those relating to threshold or fast track assessment.<sup>228</sup>

- An order may also require that any guidance issued relating to such matters is taken into account (**Clause 123**).
- Appeals rights may also be set out in an order (**Clause 119(1)(e)**).
- The Secretary of State could make an order under **clause 118** (power to prescribe pay and conditions) without reference to the STRB if the matter concerned is ‘subsidiary provision’ or where the Secretary of State has consulted the chairman of the STRB about disapplying the provision requiring detailed consideration by the STRB (**Clause 121**). The clause explains what ‘subsidiary’ means for this purpose. The Explanatory Notes state that it will cover the standards which the Secretary of State may set for different classes of teachers (for example, Advanced Skills Teachers) and criteria for progression from one pay scale to another. This would cover movement from the main pay scale to the upper pay scale following threshold assessment. The Explanatory Notes emphasise that this does not mean that the Secretary of State will take decisions without involving the STRB on whether such categories of teachers or such pay scales should exist at all.<sup>229</sup>

**Clause 143** seeks to implement the White Paper’s commitment to correct the removal of point 0 from the teachers’ pay spine.<sup>230</sup> The Explanatory Notes to the Bill explain that the clause now seeks to tidy up the way in which point 0 was removed and in practice should make no difference to teachers’ pay.<sup>231</sup>

## **B. School teachers’ appraisal**

**Clause 127** re-enacts, with modifications, the existing powers under section 49 of the *Education (No 2) Act 1986*. It provides for regulations that may impose duties on specified groups of people in relation to the appraisal of teachers’ performance and may require or permit the appraisal process to be carried out by persons identified in the regulations. The effect is to make it explicit that head teachers, governors and those teachers appointed by the headteacher may review performance; and that schools may use appraisal data in deciding pay.

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<sup>228</sup> paragraph 248

<sup>229</sup> paragraph 253

<sup>230</sup> Cm 5230, p 74

<sup>231</sup> Bill 55–EN, paragraphs 277 to 278

## C. School teachers' qualifications

**Clauses 128 to 131** make provision for school teachers' qualifications.

In a recent speech to the Social Market Foundation the Secretary of State outlined her vision for the future of teachers and teaching, which included using more teaching assistants.<sup>232</sup> A report published by Demos, *Classroom assistance: why teachers must transform teaching*, looked at issues surrounding teacher recruitment and retention. Its recommendations included reducing unnecessary teacher workload and giving every classroom teacher a dedicated teacher assistant.<sup>233</sup> The Government has commissioned an independent review of teachers' workload by PricewaterhouseCoopers. An Interim Report was produced in August 2001. Making the best use of existing or potential future support staff was one of the broad areas in which, the report suggests, future solutions may be found.<sup>234</sup>

**Clauses 128 and 129** re-enact, with amendments, section 218 (1)(a) and 2 of the *Education Reform Act 1988*. These clauses and **clause 131** provide safeguards in relation to what work may be carried out only by school teachers. The Explanatory Notes state that **clause 129** would enable the Secretary of State to set out in regulations the work that may be carried out in a school only by a qualified teacher, and the work that may be carried out by support staff and unqualified teachers. The clause could enable an unqualified teacher to teach in circumstances approved by a qualified teacher.

Under **clause 130** the Secretary of State may set out in regulations that specified work may be carried out in a school maintained by the LEA or a non-maintained special school only by a qualified teacher registered with the General Teaching Council (GTC) for England or for Wales. The clause also provides that a trainee teacher may undertake a specified course of training leading to qualified teacher status only where that teacher is registered with provisional registration with the GTC for England or for Wales. In addition provisional registration may be required of unqualified teachers undertaking specified work in schools.

**Clause 131** provides that the Secretary of State may by regulations make it compulsory for persons serving as head teachers to be qualified teachers. Also the Secretary of State

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<sup>232</sup> *Professionalism and Trust – the future of teachers and teaching*, A speech by the Secretary of State to the Social Market Foundation, DfES, 12 November 2001

<sup>233</sup> Matthew Horne, *Classroom assistance: why teachers must transform teaching*, Demos, 2001. <http://www.demos.co.uk/classroom>

<sup>234</sup> *Teacher Workload study, Interim Report*, PricewaterhouseCoopers, August 2001, <http://www.dfes.gov.uk/index.htm>

may by regulations make it compulsory for head teachers to hold a specified qualification if they are appointed on or after the date when the regulations come into force.<sup>235</sup>

## **D. Further education**

On 21 November 2000 David Blunkett, then Education Secretary, made a speech at the conference of the Association of Colleges announcing plans to put further education colleges at the heart of the drive to meet the skills and productivity challenge of the economy.<sup>236</sup> It proposed a package of proposals to develop the teaching staff and senior management in further education:

For college Principals I want to build on existing good practice to develop a recognised national programme of support which all Principals should have access to throughout their career. First a new National Professional Qualification for College Principals that any aspiring Principal would normally be expected to obtain before taking up a post. Second, a formal induction programme for new Principals in their first two years, just as we have the HEADLAMP programme for new Headteachers. Third, a modular leadership programme for serving college principals to dip into year on year.

For further education teachers there will be a new package of support for qualifications and continuing professional development. For unqualified new entrants to the profession there will be a new requirement to obtain an appropriate qualification within a specified period. This requirement will be given statutory force. All unqualified full-time teachers will be required to obtain a PGCE or equivalent within two years of starting. All new fractional teachers will be required to reach the same level within two to four years. For other new part-time teachers the requirement will be to achieve at least the equivalent of the existing City and Guilds further education Teacher Training qualification within two years. Obtaining the relevant qualification will be a condition of employment. We will also consider introducing a formal probationary period for new teachers.

84. New teachers represent only a small proportion of the total. Existing staff need continuing professional development. However, it would be too simplistic to think in terms of a uniform qualification requirement. Serving teachers will have different development needs depending on their experience, their competence and the changing nature of the demands placed upon them. For some teachers, achieving a qualification might be the sensible solution. For others it might not. Colleges should have flexibility to determine the continuing professional development activities appropriate to their own business priorities

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<sup>235</sup> Education Bill 55–EN, paragraphs 263-5

<sup>236</sup> *Colleges for Excellence and Innovation, Statement by the Secretary of State for Education and Employment on the future of further education in England*, DfEE, 21 November 2000



and to the needs of individuals. This is what we would expect of the best businesses, and colleges should be no different.<sup>237</sup>

The NAW's *Paving Document: The Learning Country* proposed increased professional development and other support in further education. It said that consideration would be given to the introduction of a principalship qualification for new principals, and for all FE teaching staff to obtain suitable qualifications.<sup>238</sup>

**Clauses 132 to 134** and **clause 136** of the Bill make provision for the Secretary of State to make regulations that would have the effect of requiring FE lecturers to have a specified qualification and to serve a probationary period, and for the principal of a FE college to have a specified qualification. The regulations may allow a person to serve as principal while he is undertaking the induction programme.

Under **Clause 141** a reference to the Secretary of State shall be taken as a reference to the NAW.

**Clause 135** allows the NAW to make regulations relating to the provision of higher education courses. The Explanatory Notes state that the provision will assist the NAW to plan post 16 learning provision in Wales.

## **E. Health and fitness**

**Clause 137** re-enacts section 218(5) of the *Education Reform Act 1988* with a minor amendment relating to the definition of a 'child' for these purposes. The Secretary of State continues to have the power to impose requirements as to the health and fitness of persons such as teachers in schools and further education institutions, and persons employed by LEAs or governing bodies otherwise than as teachers, and who are regularly in contact with children.<sup>239</sup>

## **F. Misconduct**

At present, Section 218 (6) of the *Education Reform Act 1988* empowers the Secretary of State and the NAW to prohibit or restrict a person's employment on specified grounds. In summary, the grounds are:

- medical
- misconduct
- that the person is unsuitable to work with children

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<sup>237</sup> *ibid*, paragraphs 82 to 84

<sup>238</sup> p 47

<sup>239</sup> paragraph 137

- that the person is included permanently on the list kept by the Secretary of State for Health under the *Protection of Children Act 1999* (POCA) of people considered unsuitable to work with children
- educational (for teachers)

**Clause 138** re-enacts and modifies these powers. The main changes include:

- an extension of the Secretary of State's and the NAW's powers to persons working for a company exercising functions on behalf of a local education authority;
- new procedures to prevent a person from taking part in the management of an independent school; and,
- the repeal of the Secretary of State's power to make directions on educational grounds. Further details are provided in the Explanatory Notes.<sup>240</sup>

**Clause 139** makes provision for appeals to be heard by the Tribunal established under section 9 of the POCA.

**Clauses 140 to 142** go with clauses 128 and 137 and relate to (a) specification of qualifications and courses, (b) the application of the provisions on a devolved basis in Wales, and (c) associated repeals.

## **G. General Teaching Councils for England and Wales**

The *Teaching and Higher Education Act 1998* (THEA) made provision for the establishment and functions of General Teaching Councils for England and for Wales. They are responsible for regulating the professional conduct of teachers, and also provide advice on a range of issues to Government and others.

The remit and priorities of the GTC for England are set out in its first *Corporate Plan*.<sup>241</sup> The GTC's is responsible for establishing and maintaining a register of teachers, providing a means for teachers to confirm to employers that they are qualified to teach. Details of who needs to be registered with the GTC are given on its website.<sup>242</sup>

The White Paper proposed extending the existing functions of the GTC:

7.30 The creation of the GTC marks an important step in strengthening teachers' professional status. The GTC has already started to offer authoritative and independent policy advice, drawing on the expertise of Council members and broader networks across the profession. Their views have greatly influenced

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<sup>240</sup> paragraphs 271 and 272

<sup>241</sup> *Working for Teachers, the first corporate plan of the General Teaching Council 2001/02*

<sup>242</sup> <http://www.gtce.org.uk/gtcinfo/register.asp>

proposals in this chapter and will contribute to the next steps. We want the GTC to be proactive; to continue to consult with and speak up for teachers and others involved in education, and to play a significant part in celebrating success and identifying what works well in different schools and circumstances. Through its power to regulate the profession the GTC will contribute towards raising teacher morale and work with us in redefining with the profession what it means to be a teacher in the future. We will strengthen the GTC's powers to take this type of action and initiative.

7.31 We consider that, in line with the powers of other equivalent professional bodies, the GTC should take over the responsibility of checking new entrants' employment record, character and criminal record before they are registered, to ensure that they are suitable people to enter the profession. The GTC should also be able to carry out similar screening of returning, overseas and trainee teachers, through extension of registration to these groups. By making a single body responsible for screening, these reforms will reduce the burdens on employers that result from multiple checking.

The NAW's *Paving Document: The Learning Country*, proposed that the statutory responsibilities of the GTC Wales should be 'clarified and augmented, so that its status as an authoritative voice for the teaching profession is enhanced.'<sup>243</sup>

The proposal to streamline the screening process and the proposed extension of registration status to trainee and overseas teachers has been welcomed.<sup>244</sup>

**Clause 144** of the Bill provides for **Schedule 13**, which amends section 2 of the THEA. The main changes, as foreshadowed in the White Paper, provide:

- a new category of provisional registration of teachers. Eligibility for such registration will be defined in the regulations, and is expected to apply to trainee teachers and teachers from overseas. Registration for teachers with qualified teacher status is consequently redefined as "full" registration.<sup>245</sup>
- that a person will not be eligible for registration, whether full or provisional, unless he or she has been judged by the GTCs as suitable to be a teacher. The Explanatory Notes state that it will be for the GTCs to determine suitability:

They might, for example, wish to satisfy themselves as to the good character of individuals by means of criminal record checks and character references for overseas teachers. Amendments to the Police Act 1997 will provide that the GTCs have access to criminal records. The GTCs will exercise their functions on the assessment of suitability at the point that a person applies to become

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<sup>243</sup> p 46

<sup>244</sup> *GTC for England Response to the White Paper*, November 2001, p 7

<sup>245</sup> Explanatory Notes Bill 55-EN, paragraph 280

provisionally registered or re-registered; or fully registered or re-registered. The Schedule provides for a right of appeal to the High Court against a refusal of an application for registration on the grounds of suitability.<sup>246</sup>

## **X Part 9 Childcare and Nursery Education**

### **A. Childcare<sup>247</sup>**

Clauses 145-148 and Schedule 14

These clauses have three broad purposes:

- To clarify in law the role of Early Years Development and Childcare Partnerships
- To enable her Majesty's Chief Inspector and the Welsh Assembly to accredit extra forms of childcare for Tax Credit purposes
- To close loopholes relating to the regulation of child minding and day care

#### **1. Early Years Development and Childcare Partnerships**

Clauses 145 and 146

Early Years Development Partnerships were established under Section 119 of *the School Standards and Framework Act 1998*. The Act requires every local education authority to set up one of these partnerships and to do so in accordance with government<sup>248</sup> guidance. The Act also sets out the functions of the partnerships, which are to (work with the local education authority to):

- review the provision of nursery education in the area
- prepare development plans and submit their proposals for approval to the government<sup>249</sup>
- perform any other functions conferred by government<sup>250</sup>

The partnerships, of which there are now 150 in England, are made up of Local Education Authorities and other interested parties, such as parents childcare providers, local employers, health authorities... The first plans were for 1998-99 and each one set out

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<sup>246</sup> *ibid*, paragraph 281 and 282

<sup>247</sup> The Section on childcare has been written by Jo Roll, Social Policy Section, House of Commons Library

<sup>248</sup> The Secretary of State in England and the National Assembly in Wales

<sup>249</sup> The Secretary of State, in England, or the National Assembly, in Wales

<sup>250</sup> The Secretary of State, in England, or the National Assembly, in Wales

how, from September 1998, a free part-time early education place for three terms before compulsory school would be available for every child whose parents wanted one.<sup>251</sup>

In March 1998 the Government announced that policies childcare and education for children under eight were to be merged under one government department. From 1 April 1998, the Department for Education and Employment (as it then was) took on responsibility from the Department of Health for childcare, including the regulation of nurseries and childminders.<sup>252</sup> At local level, however, responsibilities initially remain unchanged:

The Government set out before the election their intention to transfer responsibility for policy and the regulation of day care under Sections 18 and 19 and Part X of the *Children Act* from the Department of Health to the Department for Education and Employment. I am able to announce today that this transfer will take place on 1 April 1998. We recognise that it is increasingly difficult to make a distinction between day care and education, and we must integrate the two if we are to meet fully the needs of young children and their parents.

The Department of Health will retain responsibility for the provision of day care for children in need under Section 18(1) and 18(5) as part of family support services, as well as other social care duties, such as child protection, outside these parts of the Act. This transfer of responsibilities between central Government Departments does not directly affect the way local authorities may organise their functions. The responsibility for services and regulation through the *Children Act* remains a function of the Social Services Committee under existing statutory requirements but this may change as policy in this area develops.<sup>253</sup>

In May 1998, the Government published its National Childcare Strategy document, *Meeting the Childcare Challenge*.<sup>254</sup> The document said that the National Strategy should be planned and delivered by local childcare partnerships, building on the existing Early Years Development Partnerships and included proposals to expand the remit of the Partnerships to include childcare in their plans. Following this announcement, in April 1999, Partnerships took on the additional role of planning and co-ordinating childcare. In practice government guidance started to refer to the Partnerships as Early Years Development and Childcare Partnerships although the legislation referring to them remained unchanged.

Since 1998 there have also been changes to the responsibilities for the regulation of childcare, which, under the *Care Standards Act 2000* in effect moved from local authority

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<sup>251</sup> HC Deb 11 March 1999 C311W

<sup>252</sup> Department of Health Press Notice, *Child care and education responsibilities to merge in policy move*, 27 March 1998 98/117

<sup>253</sup> HC Deb 27 March 1998 c 296W

<sup>254</sup> Department for Education and Employment and the Ministers for Women, *Meeting the Childcare Challenge*, May 1998

social services departments to Ofsted in England and Estyn in Wales. This change took effect in September 2001 (see clause 148 below).

In September 2001 the Department for Education and Science issued a consultation paper about early years education and childcare.<sup>255</sup> Responses were requested by 7 November. The consultation paper said, among other things, that the Government proposed legislation to ensure that local authorities and Partnerships had a clear legal basis for their childcare functions. It proposed:

- to change Partnerships' legal name to reflect their childcare functions;
- to add to Partnerships' functions that of reviewing the sufficiency of childcare provision and to prepare and Early Years Development and Childcare plan;
- to require Local Authorities, through Partnerships, to set up and run a Children's Information Service;
- for the Department to take specific powers to pay childcare grant to Local Authorities;
- to repeal that part of the Children Act which requires Authorities to review childcare provision in their areas.

These proposals are now contained in Clauses 145 and 146 of the current Bill, except for the proposal relating to childcare grant, which is contained elsewhere. Clause 145 amends the *School Standards and Framework Act 1998*, which set up the Early Years Development Partnerships, so that LEAs will have a duty to carry out annual reviews of childcare provision in their area and establish and maintain an information service on childcare and other related services. They must have regard to government guidance in doing so. In order to avoid confusion and duplication, the provision in the Children Act (Section 19) which requires local authorities to review the provision of childminding and day care within their area is repealed with respect to England and Wales only. (This is one of the few provisions of the Children Act that also covers Scotland). Clause 146 changes the name of the Partnerships to include the word childcare and adds childcare to the functions of the Partnerships.

## **2. Tax Credits, Ofsted and the National Assembly for Wales**

### Clause 147

This basic purpose of this clause is to enable Ofsted (the Bill refers to Her Majesty's Chief Inspector in England) and the National Assembly for Wales to be able to accredit forms of childcare for the purpose of entitlement to Tax Credits. (This is in addition to the childcare that it currently regulates.) The clause does this by enabling the Secretary of

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<sup>255</sup> Department for Education and Skills, *Better Beginnings: Improving quality and increasing provision in early years education and childcare*, September 2001  
[http://www.dfes.gov.uk/consultations/archive/archived\\_sections.cfm?SECNUMBER=2&CONID=109](http://www.dfes.gov.uk/consultations/archive/archived_sections.cfm?SECNUMBER=2&CONID=109)

State in England and the National Assembly in Wales to issue Orders providing these bodies with additional functions. It also provides that any new functions prescribed by the National Assembly must correspond to those for England

The clause refers to the *Tax Credits Act 2002* - the Tax Credits Bill introduced 28 November this year and is due for a Second Reading on 10 December 2001.

### **3. Regulation of child minding and day care**

Clause 148 and Schedule 14

The regulation of child minding and day care is covered by the *Children Act 1989*. The original provisions were repealed and new provisions were inserted, with effect from September this year (2001), by the *Care Standards Act 2000*, which overhauled the regulation of a wide range of services. That Act transferred the regulation of childminding and day care from local authorities to national bodies in England (HMCI/Ofsted) and Wales (National Assembly/Estyn) and replaced the existing provisions in the *Children Act 1989* with a new Part XA and a new Schedule 9A.

This Bill closes a number of loopholes in the new *Children Act* provisions and in the provisions in the *Police Act 1977* relating to criminal record checks. For example:

- It permits the registration authority to deem that a person is not qualified for registration as a child minder or provider of day care if that person or any of his/her associates (in brief someone living, working or looking after children on the premises) fails to give consent to a criminal record check.
- It makes it a criminal offence for someone whose registration is suspended to continue to operate as a child minder or day care provider without reasonable excuse. (It is already an offence for someone who is not registered to operate.)
- It enable the matters that may be brought before a Care Standards Tribunal to be extended by means of Regulations. The example given in the Explanatory Notes is the issue of certificates of suitability for people working with children over the age of seven (a new provision brought in by the *Care Standards Act*. Other aspects of regulation apply to those looking after children under the age of eight).
- It enables inspections to be carried out either by the Chief Inspector or a registered inspector (in England only).
- It will ensure that inspectors are specifically authorised by the registration authority before s/he has the right of entry – the existing legislation gives right of entry to inspectors by virtue of being registered alone.
- It will enable Regulations to be made permitting the registration authority to waive disqualification for registration where a person has disclosed to the registration authority a matter (eg a criminal convictions) which would otherwise lead to that person's disqualification. Such a power was previously available to local authorities.

- It extends the information that may be sought on an associate of someone seeking to register as a child minder or provider of day care when carrying out criminal record checks (in line with the information that may be sought on the person him/herself).
- It enables criminal record checks to be done on people who apply for certificates for looking after children over the age of seven (see third bullet point above).

## **B. Nursery Education**

Clauses 149-152

Section 118 of the *School Standards and Framework Act 1998* places a duty on LEAs to secure the provision of nursery education. Such education is provided not only by maintained schools but also by a variety of other providers, including private and voluntary bodies. Currently funding is paid to the LEA as administrator either through the revenue support grant (RSG ) or by a nursery education grant paid under the *Nursery education and Grant-Maintained Schools Act 1996*. The disbursement to the different providers is made on the basis of the Early Years Development Plan drawn up by the Early Years Development Partnership for the area.<sup>256</sup> These plans, which are public documents, have to be submitted to the Secretary of State for approval.

The consultation paper *Better Beginnings*<sup>257</sup> stated that the Government were reviewing the funding mechanisms and wished to have a power in legislation that would require LEAs to ensure good practice in those delivering nursery education, irrespective of how the funding was delivered. The requirements, which are currently contained within the which are currently contained within the Requirements of Grant issued annually by the DfES, are: meeting the early learning goals, registration, SEN, the Foundation Stage Profile, a ban on corporal punishment, the elimination of unlawful racial discrimination, and the promotion of equality of opportunity.

Respondents were asked whether they agreed with the proposition and whether anything else should be included.

**Clause 149** provides that the LEA in providing financial assistance to nursery providers (other than maintained schools) must have regard to any guidance from the Secretary of State or the NAW on the requirements to be met by providers. The LEA must also ensure that the provider meets any requirements imposed by the arrangements.

**Clause 150** amends section 28 of the *SSFA* on the establishment of mainstream schools to require an LEA to publish proposals to establish a maintained nursery school. Proposals

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<sup>256</sup> *School Standards and Framework Act 1998* ss119-120

<sup>257</sup> DfES *Better Beginnings: improving quality and increasing provision in early years education and childcare* September 2001



are already required to close a nursery school. The section is further amended for Wales to require the publication of proposals for prescribed alterations. Such alterations are likely to be a change in the language of instruction, a change of site or a significant enlargement.<sup>258</sup>

**Clause 151 and Schedule 15** amend Schedule 26 of the *SSFA* to make changes to the system of inspection by registered nursery inspectors. The changes are set out in detail in the *Explanatory Notes*.<sup>259</sup> In brief, members of the Inspectorate will be able to carry out inspections as well as registered nursery inspectors; the Chief Inspector will have greater control over who is placed on the register; and appeals by registered nursery inspectors against removal from the register will be heard by the Care Standards Tribunal<sup>260</sup>, when it is set up, rather than the Registered Nursery Inspector's Tribunal, established by schedule 26 of the *SSFA*.

There was already a reserve power for the Chief Inspector to have a nursery inspection carried out by a member of the Inspectorate.<sup>261</sup>

**Clause 152** clarifies the meaning of a nursery school in the *Education Act 1996*<sup>262</sup> to ensure that it includes schools which are used **wholly** for the provision of education for children between the ages of two and compulsory school age. The clause also widens the definition of primary education to cover part-time nursery education.<sup>263</sup>

## **XI Part 10 Independent Schools**

### **1. Background**

At present, Part 7 of the *Education Act 1996* makes provision for the registration of independent schools, and provides for separate registers for England and Wales.

The DfES Consultation Document, *Registration and Monitoring of Independent Schools*, observed:

The system for regulating and monitoring independent schools has remained largely unchanged for over 50 years and needs to be adapted for the needs and expectations of children and parents in the 21st century. It must provide a light

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<sup>258</sup> Bill 55-EN para 298-9

<sup>259</sup> Bill 55-EN para 300

<sup>260</sup> established by section 9 of the *Protection of Children Act 1999*

<sup>261</sup> *School Standards and Framework Act 1998* schedule 26 para 15, repealed by this Bill

<sup>262</sup> s 6

<sup>263</sup> s 2

touch for those schools where standards are high, but quick and effective penalties in those rare cases where children are placed at risk. It also needs to accommodate the recommendations made by Sir William Utting's "Report of the Review of Safeguards for Children Living Away from Home" and the report of the Waterhouse Enquiry into abuse in children's homes in North Wales.<sup>264</sup>

The need for change was outlined in the Consultation Document as follows:

Under existing legislation, provisional registration is granted to any school that applies to join the register and independent schools may open and admit pupils without adhering to any health, safety, welfare or educational standards. Once they apply for provisional registration, DfES commissions one or more inspections. But it can take two years or more for schools to reach the standards required for final registration. In addition, schools can change the nature of their provision quite substantially between inspections, but there is no mechanism for checking that the changed provision meets the standards required for final registration.

The current arrangements were described in the Consultation Document and the case for change was set out. Briefly, the Consultation Document proposed that:

- There should be evidence of satisfactory standards prior to registration.
- Inspection reports on independent schools should be published, so that all parents of pupils in independent schools are informed about education provision at their schools.
- A more flexible system of inspection should be introduced with shorter and perhaps less frequent inspections for the most successful schools, and more frequent inspections for schools where problems have been identified.
- The procedures for dealing with weak or failing independent schools should be strengthened.
- There should be fast track procedures where pupils are at risk.
- The existing appeal system should be replaced with a right of appeal to a standing tribunal.

The consultation period on the proposals finished on 9 November 2001. The DfES summary of responses has not yet been published. The Regulatory Impact Assessment,

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<sup>264</sup> DfES, Consultation Paper, *Registration and Monitoring of Independent Schools*, 5 September 2001, available online at: <http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=111>

attached to the Consultation Document, set out the likely costs of the changes, and noted that the proposals had received broad support from the sector.<sup>265</sup>

The Independent Schools Council (ISC) has made clear its general support for the Government's approach, and has raised specific points relating to registration fees, re-registration, standards of registration, disqualification of proprietors, and other related matters.<sup>266</sup>

The LGA has welcomed the Government's commitment to improving the quality of independent schools. In its response to the consultation, it gave general support to the proposals for standards, publication of inspection reports, and the new procedures to deal with failing schools. It raised, amongst other things, the issue of arrangements for excluding pupils and the need for independent schools to have a fair appeal system. It also pointed out that there should be consultation with LEAs for finding school places should an independent school be found to be failing or where there is a need to close the school.<sup>267</sup>

## 2. The Bill

Part 10 of the Bill introduces a new statutory regime in England and in Wales for the registration, inspection and procedure for dealing with failing independent schools. The provisions are covered in paragraphs 304 to 320 of the Explanatory Notes to the Bill.

Briefly, the provisions confer power on the Secretary of State (or, in Wales, the NAW) to prescribe standards which independent schools must meet in order to be, or to remain, registered. **Clause 154** provides for the continuation of existing registers, kept by the Secretary of State and NAW for England and Wales respectively. **Clause 155** makes it an offence to operate an independent school which is not registered, and establishes a new power to enable HMI to enter premises where there is reasonable cause to believe that an unregistered independent school is operating illegally. The registration procedures are set out in **clauses 156 and 157**.

**Clauses 158 to 163** make provision for enforcement of prescribed standards after registration. Under **Clause 159** registered inspectors, as well as HMI, may inspect independent schools. **Clause 161** introduces a new regime for dealing with failing independent schools. Where action is taken against an independent school an appeal may be made to a tribunal (**clauses 162 and 163**).

**Clauses 168 to 170** make provision relating to children with special educational needs. The changes include an alteration to the definition of independent school so that a school

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<sup>265</sup> paragraph 8.1

<sup>266</sup> *Independent Schools Council, Changes to the Arrangement for Registration and Monitoring of Independent Schools*, Letter to DfES, 8 November 2001

<sup>267</sup> *LGA Response to Registration and Monitoring of Independent Schools*, 8 November 2001

can be an independent school if it has five or more pupils or just one pupil with a statement of SEN, or who is looked after by a public authority.<sup>268</sup> **Clause 169** provides for LEAs to have access to independent schools to monitor provision made for children with SEN. **Clause 170** amends section 347 (5)(b) of the *Education Act 1996* relating to the making of a placement at an independent school.

The Explanatory Notes state:

#### Independent Schools

427. The Bill will require Ofsted to inspect all non-association independent schools fully and publish reports - putting them broadly on the same footing as maintained schools. Just over half of all independent schools are already fully inspected by the Independent Schools Inspectorate and the inspections result in published reports.

428. The likely cost of the new inspection regime is £2.5 million per annum, with initial costs to be met from within existing resources. Some of the additional costs may be recouped through charges to schools. The increased costs arise from the need to increase inspection manpower by utilising Registered Inspectors for inspections.

*The Regulatory Impact Assessment – Education Bill 2001*<sup>269</sup> gives a detailed assessment of the impact of the provisions on the independent sector.

## **XII Part 11 Miscellaneous and General**

### **A. Education and training outside schools**

**Clause 171** extends the definition of secondary education in the *Education Act 1996*<sup>270</sup>, as amended, to cover education in another “establishment” e.g. in the workplace. The section already covers education partly at another institution. The clause also amends the definition of secondary education to include vocational, social, physical and recreational training. These terms were already part of the definition of further education. **Clause 171(4)** and **(5)** a power for the Secretary of State or NAW to modify certain aspects of the Education Acts to take account of the fact that some pupils may be undertaking part of their secondary education in away from a school or college.<sup>271</sup>

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<sup>268</sup> Bill 55–EN, paragraph 318

<sup>269</sup> DfES

<sup>270</sup> s 2

<sup>271</sup> Bill 55-EN para 321

These amendments both give a firmer statutory basis to what is happening at present and allow for further modifications.

**Clause 172** extends the power given to the Learning and Skills Council<sup>272</sup> to fund education or training at a further education college for 14 to 16 year-olds to funding education or training for them at the premises of an employer. The clause also extends the area inspections<sup>273</sup> of 16-19 education and training, conducted by OFSTED and the Adult Learning Inspectorate (ALI) in England and Estyn in Wales, to cover the 14-19 age range.

Area inspections of the quality and availability of education and training are reported to the Learning and Skills Council (LSC). The LSC then prepares a plan of the action it proposes to take, and the timescale. Reports of the inspections are on the OFSTED website.<sup>274</sup>

This extension of the age range of the area inspections was proposed in the consultation paper *16-19 organisation and inspection*<sup>275</sup> published on 24 September 2001. The purpose of the change was “to support the developing coherence of a 14-19 phase of education and to help in securing a wider range of opportunities for all young people aged 14-19.” The change was to be introduced “once the new extended opportunities are in place.” Its introduction was to be managed so that there was no added burden of inspection on institutions. There would be no powers for the LSC to propose changes to 11-16 schools (except to propose the establishment of a sixth form). The new power for OFSTED to propose the closure of a sixth form is in **Clause 68**. It is not clear whether there would be any expectation that schools might vary their 14-16 offer as the result of an area inspection. A school inspection by OFSTED can cite e.g. extending vocational courses as an issue to be addressed. The introduction to the consultation paper stated:

“A report of 14-19 provision in an area will enable local education authorities, the LSC and Government to see the overall pattern of provision in an area and to consider jointly what steps might be needed to remedy any deficiencies revealed.”

There was also a specific proposal in the Paving Document to seek legislation to extend Estyn’s remit to include area inspections of 14-16 provision “so as to assess the coherence of learning pre and post 16 throughout Wales.”<sup>276</sup>

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<sup>272</sup> *Learning and Skills Act 2000* s5

<sup>273</sup> *Learning and Skills Act 2000* ss 65 and 83

<sup>274</sup> [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

<sup>275</sup> [www.dfes.gov.uk/consultation](http://www.dfes.gov.uk/consultation) para 29-31

<sup>276</sup> *The Learning Country* NAW 2001 para 53

The LGA felt any change to the area inspections should replace and not add to a school inspection.<sup>277</sup> They were generally opposed to an extension of the LSC remit into the funding or organisation of 14 to 16 provision.

**Clauses 173 and 174** extend rights of entry in relation to inspections. Clause 173 extends the rights of entry of school inspectors in England and Wales to include premises where schools have arranged for educational provision to be made for 14-16 year-olds. **Clause 174** extends the right of entry of inspectors carrying out an LEA inspection to any premises where education otherwise than at school<sup>278</sup> is being provided (other than a private house). The current section<sup>279</sup>, which is replaced by this clause, covers right of entry to schools and LEA premises.

## **B. Allowances in respect of education or training**

**Clauses 175 to 179** enable the Secretary of State or the NAW to make regulations which would entitle people to receive a regular maintenance allowance if they are taking part in secondary education, FE or training. Although there is a large variety of different provisions in existence which authorise or require payments to be made to young people, none of them is suitable for any national scheme, should, for example, Ministers wish to extend the Education Maintenance Allowance pilot scheme. The detailed arrangements would be set out in regulations, and **clause 176** provides for learning agreements to specify certain conditions relating to persons to whom an allowance is paid.

Education Maintenance Allowances (EMAs) are means-tested allowances paid to 16 to 19 year olds who stay in education. The aim is to increase participation in education by young people from lower-income households. The scheme is currently being piloted in 56 different LEAs using a number of different models. The Government has yet to decide whether to introduce EMAs nation-wide:

**Mr. Ivan Lewis:** The educational maintenance allowance (EMA) scheme is still in the pilot stage. There are currently eight different variants of the scheme being tested in a total of 56 local education authorities.

The Department has commissioned the Centre for Research and Social Policy to carry out a rigorous three-year evaluation study of the pilots which is now in its third year of data collection. The study is examining each of the EMA variants to determine their effect upon participation, retention and achievement in further education. It is an extensive study not only of hard figures on take-up of EMAs but also includes interviews with local practitioners and partners. 20,000

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<sup>277</sup> LGA Response to *16-19 Organisation and Inspection*

<sup>278</sup> *Education Act 1996* s 19

<sup>279</sup> *Education Act 1997* s40

interviews will be carried out with young people from both pilot and control areas to examine what factors influence their decisions at age 16 when considering post-compulsory education.

Early findings of the study show that EMAs are having a positive effect not only on participation and retention but also on student behaviour. However, it is important that we do not make any decisions on the future of EMAs until we have received satisfactory evaluation conclusions.<sup>280</sup>

The Explanatory Notes state that the annual amount currently spent on the EMA pilots is £195 million. This amount will now be paid under the new power so the overall financial effect will be neutral.<sup>281</sup>

### C. Student loans

**Clause 180** enables the Secretary of State to make regulations to reduce or write off student loans made to English or Welsh domiciled students<sup>282</sup> who meet eligibility requirements set out in regulations. There is a power to repay other educational loans, including loans entered into outside England and Wales. According to the *Explanatory Notes* that provision enables the Government to meet its obligation under EU law to provide an equal benefit to those from other EU countries. The purpose of the clause is to allow the Government to implement plans to pay off loans for newly qualified teachers in shortage subjects in maintained school or the FE sector. No details of this appear in the clause.

Regulations under this clause are made by the Secretary of State, not the NAW, as student support matters are not devolved.

The cost of the scheme is estimated to be around £15-£20 million per year for each cohort that joins the scheme, until their debts are repaid. The cost will fall to the Consolidated Fund, by means of Annual Votes.<sup>283</sup>

The White Paper included a commitment to legislate to pay off, over time, the student loans of new teachers in shortage subjects.<sup>284</sup> The Secretary of State in her evidence to the Select Committee referred to paying off student loans “for those in teaching over a ten-year period.”<sup>285</sup>

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<sup>280</sup> HC Deb 16 November 2001 c 929W

<sup>281</sup> paragraph 432

<sup>282</sup> Bill 55-EN para 335-337

<sup>283</sup> Bill 55-En para 425-6

<sup>284</sup> *School achieving success* Cm 5230 para 7.6

<sup>285</sup> HC 304-I of 2001-02 Q 11

## D. Education Action Zones (EAZs)

EAZs were established under the *School Standards and Framework Act 1998*<sup>286</sup>. They are groups of schools, designated by the Secretary of State and managed by an Education Action Forum. The partnerships are intended to tackle entrenched problems of underachievement and social exclusion in disadvantaged areas. EAZs are funded initially for three years, with a possible two year extension. As well as receiving Government funding, EAZs were supposed to raise up to £250,000 a year from the private sector. Few of them managed to achieve this.<sup>287</sup> Schools in an EAZ had powers to alter pay and conditions of teachers and to ask the Forum to discharge any of the governing body's functions. These powers were hardly used.

OFSTED reports on 14 individual EAZs and a commentary on the first six zones inspected<sup>288</sup> suggested that most zones made a difference at the primary stage, but had little effect on standards in secondary schools.

On 14 November 2001 School Standards Minister Stephen Timms announced the Government's plans to combine the country's 73 EAZs with the Excellence in Cities initiative.<sup>289</sup> The Government has stressed that EAZs are not being abolished; all will complete their agreed statutory term.<sup>290</sup>

**Clause 181** brings into effect **Schedule 16** which allows for nursery schools, pupil referral units (PRUs) and independent schools to join EAZs, together with amendments relating to their establishment and constitution.

## E. School Inspections

**Clause 182** brings into effect **Schedule 17** which amends the *School Inspections Act 1996*. The reporting duties at both national and local level now include the duty to report on the quality of leadership and management. This has always been included in the framework for inspection<sup>291</sup>, but was not previously in the legislation except in relation to financial resources. Other changes<sup>292</sup> include allowing members of the Inspectorate (HMIs and additional inspectors) to conduct a school inspection as well as registered inspectors.

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<sup>286</sup> ss 10-13

<sup>287</sup> HC Deb 18 July 2001 cc 245-6W

<sup>288</sup> *Education Action Zones: commentary on the first six Zone inspections* [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

<sup>289</sup> "Continued support for Education Action Zone schools—Timms" DfES PN 14 November 2001

<sup>290</sup> HL Deb 27 November 2001 WA 26-27 HC Deb 23 November 2001 c523W

<sup>291</sup> *Inspecting Schools: The Framework* OFSTED 1999

<sup>292</sup> Bill 55-EN para 344-350



OFSTED is currently consulting on proposals for changes in the inspection system.<sup>293</sup>

## F. Qualifications

**Clause 183** brings into effect **Schedule 18**. The schedule, by amending the *Education Act 1997*, extends the powers of the Qualifications and Curriculum Authority (QCA) and the Qualifications, Curriculum and Assessment Authority for Wales (ACCAC). It allows them, together with other changes, to limit the fees charged by awarding bodies and, in accrediting qualifications, to take into account whether there are not already an excessive number of qualifications in similar subject areas or serving similar functions. This clause and schedule, uniquely in this Bill, extend to Northern Ireland as well as England and Wales.

**Clause 184** gives a statutory basis for LEA qualifications. The section comes into force on the day the Act is passed.

## G. Special Educational Needs: Wales

The NAW's *Paving Document: The Learning Country*, stated:

23. The SEN and Disability Act 2001 will itself lead to improved provision for children with SEN throughout Wales. Over the next two years, the Assembly will tackle the following priorities to:

ensure that LEAs and schools are in a position to renew their policies and **procedures** for children with special needs. Support through the Grants for Education and Support for Teachers (GEST) programme will increase to over £4 million from April 2002. The Wales Advisory Group on SEN will be re-configured to assist. Estyn will conduct a project to examine the quality of services provided by LEAs;

adopt a **strategic approach** to reduce the fragmentation of services for low incidence and high dependency disability groups. The Assembly has already examined the work of three regional pilot projects. It is the intention that they be merged and operate on an all-Wales basis from April next year. The costs will be met by the Assembly;

devise mechanisms to enable local authorities to provide regional **resources** for children with more complex needs and difficulties; putting in place a common

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<sup>293</sup> *Improving inspection, improving schools* OFSTED 2001 [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

data set covering all relevant services; and ensuring that planning can be undertaken effectively;

audit the scope and scale of funding and provision so that the **effectiveness of the investment** can be made more transparent. This will involve the preparation of common guidelines for authorities, amplifying the existing Code of Practice and eliminating the substantial assessment variations between authorities about when it is appropriate for a child to have a statement, and when not;

establish the-precise extent to which the demand for **speech and other therapies** is exceeding supply; ensuring that where there are shortfalls against evident need they are overcome; and requiring local and health authorities to work together on matters of provision much more consistently than they do at present. Action will necessarily take account of the needs for practitioners in relation to both English and Welsh; and

consult on whether it would make sense in principle for the National Assembly to have a power to enable it to establish a distinct **tribunal for SEN and educational disability rights in Wales**.

**Clauses 185 to 188** of the Bill seek to enable regional provision to be made in Wales in respect of children with special educational needs (SEN). **Clause 189** introduces **Schedule 11**, which amends the *Education Act 1996* so that SEN appeals that would otherwise be made to the Special Educational Needs and Disability Tribunal (SENDIST<sup>294</sup>) will instead be made to separate Tribunals in England and Wales. Paragraphs 356 to 362 of the Explanatory Notes describe the provisions.

On the effect of the provisions on public sector finance the Explanatory Notes state:

430. The Bill provides for the creation of a separate SEN Tribunal for Wales. It is anticipated that the Tribunal will be effective from September 2003. The estimated cost for setting up the Tribunal and running it for the remainder of the year 2003-04 would be £450,000. The running costs following this will be £450,000 per annum, all costs to be met from existing resources.

431. There will be modest savings in programme and running costs expenditure for the current SEN Tribunal when SEN appeals relating to Welsh LEAs are dealt with by the SEN Tribunal for Wales. These cases currently account for 4 - 5% of the Tribunal's case load.

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<sup>294</sup> *The Special Educational Needs and Disability Act 2001* established SENDIST

## H. Other provisions relating only to Wales

**Clause 190** extends the powers of the NAW under section 537 of the *Education Act 1996* to allow it to provide “qualifying material “to LEAs and governing bodies and require them to provide it to specified persons or to publish it. The “qualifying material “relates to material to assist parents in choosing a school, information on the standards and quality of schools and the efficiency of their financial management. The *Explanatory Notes* state that this information will relate to the value added by the school to pupils’ progress and may take into account the area’s socio-economic conditions.<sup>295</sup>

The Paving Document stated that the ELL Minister had decided, following consultation, to discontinue the publication of booklets giving performance tables for all schools in Wales. Her intention was to publish aggregate data at LEA level which would be supplemented, in due course, by value added data.<sup>296</sup>

**Clause 191** enables the NAW 1999 to make regulations requiring an LEA to enter into a partnership agreement with the governing body of any of its maintained schools.

The Paving Document <sup>297</sup>proposed that partnerships and plans between schools and their LEA should be given a statutory basis and consulted on what they should cover. There was to be a particular emphasis on schools that were underperforming or had evident weaknesses. The *Explanatory Notes* suggest that they might cover objectives for pupil progress; the promotion of high standards; and actions to be taken to support primary/secondary transition.<sup>298</sup>

**Clause 192** specifically allows for plans, drawn up jointly by the governing bodies of primary and secondary schools, facilitating the transition from primary to secondary. The Paving Document had set out proposals on transition to tackle the dip in achievement and motivation at the beginning of Key Stage 3.<sup>299</sup>

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<sup>295</sup> Bill 55-EN para 364-366

<sup>296</sup> *The Learning Country* NAW 2001 para 57

<sup>297</sup> *ibid* para 28

<sup>298</sup> Bill 55-EN para 367-9

## **I. Provision of Services**

### **1. Transport for persons over compulsory schools age**

**Clause 193** introduces Schedule 19 which amends section 509 of the *Education Act 1996* to ensure that LEAs develop, publish and implement policies to provide transport arrangements for students aged 16 to 19. The Explanatory Notes state that LEAs will have a co-ordinating role in developing local transport policies with key partners. The provisions do not set a minimum threshold for entitlement to free transport for 16 to 19 year-olds.

### **2. Remission of charges relating to residential trips**

Section 457 of the *Education Act 1996* makes provision for LEAs and school governing bodies of maintained schools to draw up policies for charging for optional extras and board and lodging during school trips. A charging policy must provide for no charges to be made for board and lodging on school trips where a pupils' parents are in receipt of specified social security benefits. **Clause 194** amends section 457 to allow for structural changes in the Tax Credit and Benefit system. The Explanatory Notes state that the Secretary of State will be able to limit eligibility to families who are in receipt of particular tax credits by reference to their income level.<sup>300</sup>

### **3. LEAs functions concerning school lunches etc**

**Clause 195** seeks to amend section 512 of the *Education Act 1996* to ensure that all children who currently receive Government-funded education will also be entitled to receive free school meals, where their parents receive the appropriate benefits. Regulations will be able to restrict entitlement to children in attendance over the lunch period. Paragraphs 374 to 381 of the Explanatory Notes provide background on the change.

## **J. Miscellaneous**

### **1. Further education institutions: fees and records**

**Clauses 196 and 197** enable the Secretary of State to make regulations to prevent the charging of fees for specified further education courses and to limit the amount of fees that may be charged. Clause 197 makes provision for regulations concerning the

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<sup>299</sup> *The Learning Document*

<sup>300</sup> paragraph 373

retention and disclosure of educational records of FE institutions. The Explanatory Notes state that these clauses re-enact section 218(1)(f), (4) and (9)(a) of the *Education Reform Act 1988*.

## 2. Baseline assessments

**Clause 198** removes the statutory requirement for baseline assessment, as it is to be replaced by the end of foundation stage profile.(see **Clause 79**)

## 3. Application of Part 5 of the Education Act 1996 to nursery education

**Clause 199** has the effect of applying Part V of the *Education Act 1996* on the curriculum to nursery schools and nursery classes. The provisions in it on secular education are replaced by this Bill, and religious education and worship are specifically covered by **Clause 75 (4)**.

## 4. Nuisance or disturbance on educational premises

**Clause 200 and Schedule 20** extend the scope of the existing statutory provision to non-maintained special schools, independent schools and LEA maintained facilities providing instruction or leadership in sporting, recreational or outdoor activities making it an offence to create or permit nuisance or disturbance on educational premises.

## 5. Recoupment: adjustment between LEAs and special cases

**Clauses 201 and 202** relate to recoupment between LEAs. Inter-authority recoupment occurs when a child is educated outside the LEA in which he or she lives. Regulations may provide for recoupment arrangements. The Explanatory Notes state that the effect of these clauses is to remove the role of the Secretary of State (although it is retained for the NAW) in settling disputes between LEAs in England about recoupment. Currently this role extends only to provision for sick children, children with special educational needs and pupils permanently excluded from school.

**Clause 202** transfers to the NAW, so far as exercisable in relation to Wales, the power to make regulations providing for inter-authority recoupment in relation to pupils permanently excluded. Further details including plans for future arrangements in Wales are given in paragraphs 386 to 388 of the Explanatory Notes.

## 6. Paid chairmen for local learning and skills councils

**Clause 203** provides for the LSC to pay the chairmen of local learning and skills councils. The local learning and skills councils were set up under the *Learning and Skills Act 2000*.