



RESEARCH PAPER 00/39
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The Learning and Skills Bill [HL]

Bill 96 of 1999-2000

This Bill creates new structures for the planning, funding and inspection of post-16 education and training. It provides powers to establish a new support service for young people and sets out the Secretary of State's guidance on the objectives of sex education. It was brought from the Lords on 24 March 2000 and is to be debated in the House of Commons on second reading on 30 March 2000.

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Summary of main points

The Bill provides for:

- a new body, the Learning and Skills Council (LSC) for England to be responsible for the planning, funding and management of post-16 education and training (other than higher education) in England
- a new body, the National Council for Education and Training for Wales (CETW) to be responsible for post-16 education and training in Wales. The CETW will have broadly similar functions to the LSC in England.
- new arrangements for the independent inspection of post-16 education and training by the Adult Learning Inspectorate and OFSTED in England and Estyn in Wales
- the approval of external qualifications for funding purposes
- enabling provision for individual learning accounts (referred to in Bill as qualifying accounts)
- the removal of the ballot procedure on the future of selective admissions to grammar schools
- LEAs' power to maintain 16 to 19 institutions
- powers for the Councils to intervene in inadequate sixth form provision
- an enabling framework for youth support services (in England, the Connexions service)
- arrangements for the transition from school to post-16 education for young people with special educational needs
- new guidelines on sex education
- other miscellaneous provisions relating to further education

The explanatory notes to the Bill provide the clause-by-clause analysis. This paper seeks to outline the current situation and give details of the proposals for which the Bill provides a legislative framework. It gives an outline account of the amendments and debate in the Lords. With the exception of Clause 96 (individual learning accounts) which extends to England and Wales, Scotland and Northern Ireland, the provisions of this Bill extend to England and Wales only.

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I Learning and Skills Council for England

A. Background: current arrangements for post-16 education and training in England

Publicly funded education and training for those over 16 (other than those in higher education) is at present planned and funded through:

- The Further Education Funding Council for England (FEFC), which mostly funds colleges in the FE sector but also funds external institutions and other institutions providing further education;
- LEAs, which fund school sixth forms from part of the funds they distribute to maintained schools, and adult and community education; and
- Training and Enterprise Councils (TECs), which fund work-based training.

Each sector works differently for the purposes of planning, funding, audit and inspection.

The Bill provides for the Learning and Skills Council for England (LSC), a new Non-Departmental Public Body, to take over the functions performed by the FEFC and the functions currently contracted by the Secretary of State to the TECs. It will also take over responsibility for adult and community learning from Local Education Authorities (LEAs).

The Employment Service (ES) offers advice and other services to unemployed adults. It also takes the lead responsibility for a range of programmes available to unemployed people, such as the New Deal for Young People and the New Deal for Lone Parents.¹ Some of these programmes offer short work-related training. The delivery of ES provision varies from area to area and is often contracted out to other providers including those in the private sector. The provisions in the Bill do not affect the arrangements for the delivery of existing ES programmes but, under the Government's proposals, the Employment Service will take responsibility for Work Based Learning for Adults from the TECs in April 2001.

The following sections 1 to 3 outline the current roles of the FEFC, TECs and LEAs for the planning and funding of post-16 education and training (up to higher education). Section B looks at the proposed new framework.

¹ Details of ES programmes are contained in Library Research Paper 98/111 an updated version of which will be available later this year.

1. Further Education Funding Council for England

In 1991 the then Conservative Government published a White Paper, *Education and Training for the 21st Century*, proposing an independent further education sector.² At the time, further education and sixth form colleges were funded by LEAs through the local government finance settlement. The then Government considered that in England and Wales the new sector should instead be funded directly by the Government through separate funding councils for England and Wales. The *Further and Higher Education Act 1992* enacted the Government's proposals.

The FEFC was established in July 1992 as an executive Non-Departmental Public Body and assumed its full responsibilities on 1 April 1993, when the further education sector was established. The FEFC's functions are set out in the *Further and Higher Education Act 1992*, and in guidance on the exercise of those functions issued by the Secretary of State for Education. The *Quinquennial Review of the FEFC for England* describes the background to the creation of the FEFC, its responsibilities and how it works.³

Section 1 and Schedule 1 of the 1992 Act provided for the establishment of the FEFC for England consisting of between 12 and 15 members, appointed by the Secretary of State. The present membership of the Council is listed in the FEFC's *Council News No 58*. The Act provides for the Secretary of State to appoint the chairman and the first chief officer but for subsequent chief officer appointments to be made by the Council with the approval of the Secretary of State.⁴ The Secretary of State has the right for a representative to attend all Council and committee meetings (but not to take decisions) and to receive papers.⁵ The appointment process is in line with the Nolan principles of public life.

The Council has three standing advisory committees: the Audit Committee, the Quality Assessment Committee (a statutory committee) and the Remuneration Committee. There are operational sub-committees dealing with reorganisations and capital programmes and operational working groups, and committees looking at various policy matters. Nine regional committees, established under the 1992 Act, review the requirements and facilities for the population in each region, and advise the Council.⁶ Regional committee members are appointed by the Secretary of State.

The FEFC's Chief Executive is the principal accounting officer directly accountable to Parliament for the use of public funds allocated to the Council. The National Audit Office audits the Council's accounts. The Council's relationship with the DfEE and Parliament is set out in a Financial Memorandum. A summary of the main functions of the Council

² Cm 1536, May 1991

³ *Quinquennial Review of the Further Education Funding Council for England*, Prior Options Review Report, DfEE, March 1999

⁴ *Further and Higher Education Act 1992*, section 1(2) and Schedule 1 paragraph 2

⁵ Schedule 1, paragraph 11

⁶ Schedule 1, paragraph 9

and how it is held accountable is provided in a Memorandum submitted by the FEFC to the Select Committee on Public Administration and published in the Committee's report on Quangos.⁷

The main statutory duties of the FEFC under the 1992 Act are:

- under section 2 of the Act, to secure the provision of sufficient facilities in the further education sector for full-time education for 16-18 year olds;
- under section 3 of the Act, to secure the provision of adequate facilities for part-time education for persons of any age over compulsory school age, and full-time education for persons aged 19 or over, where such education falls within the scope of Schedule 2 of the 1992 Act. Schedule 2 falls into nine paragraphs and includes courses that lead to formal national qualifications, access courses to higher education, basic literacy and numeracy courses and independent living courses for persons with learning difficulties which prepare them for entry to other courses. Guidance on Schedule 2 provision is given in FEFC Circular 99/10.⁸ The *Teaching and Higher Education Act 1998*, section 36, amended section 3 of the 1992 Act to give the FEFC the power to fund non-schedule 2 courses.
- under section 4 of the Act, to have regard to the requirements of students with learning difficulties and/or disabilities, between the age of 16 and 25.

In fulfilling its duties, the FEFC is required to make the most effective use of resources and, in particular, to avoid provision which might give rise to disproportionate expenditure.

The FEFC receives funds on an annual basis from the DfEE as part of the public expenditure settlement agreed by Parliament. The Council decides how recurrent and capital funds will be allocated to colleges and others, and monitors the use of these funds and the financial health of individual colleges. It makes a main funding allocation to institutions each year to support the provision set out in their strategic plans. The FEFC funding method allocates resources to colleges reflecting the main elements of each student's programme of study. Each category and aspect of provision is assigned a value of funding units in a tariff. The main elements are: an entry element (when learners join a course), course delivery element and a completion element. The method also takes account of other factors related to the student's particular circumstances, for example, additional support elements for special needs, child-care costs, and fee remission. The categories of provision included in the tariff, and detailed guidance on the arrangements,

⁷ HC Paper 209-1, Session 1998-99, pp 103-115

⁸ FEFC Circular 99/10, Schedule 2, 5 March 1999

are set out in FEFC Circulars.⁹ Each institution's performance is monitored against its funding agreement.

Under section 56 of the *Higher and Further Education Act 1992* the FEFC is required to comply with directions given by the Secretary of State. Section 56 (3) of the 1992 Act extended the Secretary of State's power to prevent the unreasonable exercise of functions¹⁰ by the FEFC.

In the period since the incorporation of the further education and sixth form colleges, there has been a dramatic rise in student numbers and increased pressure for efficiency. While the vast majority of colleges have responded successfully to these demands, some colleges showed a pattern of poor financial control and weak governance. Following critical reports on Bilston, Halton and Wirral Colleges by the Further Education Funding Council, Baroness Blackstone announced new measures to improve governing bodies, and improve management and auditing arrangements.¹¹ The new governance measures announced included allowing the FEFC to be able to nominate up to two governors at any college where it considers it necessary. The Bill seeks to give the new Learning and Skills Council for England the power to appoint rather than nominate up to two members of a governing body of an institution in the FE sector. The Bill also seeks to strengthen the Secretary of State's powers to intervene in FE sector colleges.

2. Training and Enterprise Councils¹²

TECs were established throughout the country during 1990 and 1991 to take over responsibility for running the training and enterprise programmes previously organised by what was then the Department of Employment's Training Agency. The Conservative government of the time announced its proposals in a White Paper published in December 1988, *Employment for the 1990s*.¹³ This proposed devolving responsibility for these programmes to a local level and injecting a strong degree of private enterprise.

The first TECs became operational in April 1990 and the last, the Central London TEC, was launched in October 1991. Since these dates a number of TECs have changed their names and some have merged both with each other and local Chambers of Commerce to form Chambers of Commerce Training and Enterprise (CCTE). There are currently 72 TEC/CCTEs in England and 4 in Wales and they are represented nationally by the TEC National Council.

TECs are responsible for the planning and delivery of Work Based Training for Young People, including National Traineeships (these are to be replaced by Foundation Modern

⁹ see FEFC Circular 99/01, Tariff 1999-2000, 14 January 1999 and FEFC Circular 99/07, Funding Guidance 1999-2000, 15 February 1999

¹⁰ under section 496 of the *Education Act 1996*

¹¹ DfEE Press Notice, "Blackstone announces crackdown on failing FE Colleges", 28 April 1999

¹² This section was written by Tim Jarvis, Business and Transport Section

¹³ Cm 540

Apprenticeships¹⁴) and Modern Apprenticeships, and Work Based Learning for Adults. TECs contract with individual providers to deliver this training. Modern Apprenticeships are aimed primarily at developing technician, supervisory and craft-level skills among 16-24 year olds. Training frameworks lead to NVQs at level 3 or above and the attainment of key skills. Most Modern Apprentices are paid a wage by their employer. National Traineeships are the main work-based route to NVQ level 2 and aim to help 16-18 year olds as a priority. Both programmes operate within agreed frameworks set by industry and employers. These frameworks are usually set up by the relevant National Training Organisations (NTOs) which are the government recognised industry training bodies. Responsibility for the delivery of training for young people will transfer to the local Learning and Skills Councils from April 2001 (subject to the passage of the Bill).

Work Based Learning for Adults provides employment-related training to unemployed adults. This programme will transfer to the Employment Service from April 2001. TECs are also involved in the delivery of Investors in People, Career Development Loans, Small Firms Training Loans and programmes funded by the European Social Fund. The “enterprise” function of the TECs’ work, supporting local businesses, will transfer to the DTI’s new Small Business Service and therefore government funding of TECs will cease.

TECs are not statutory bodies and therefore the Bill does not provide for their dissolution. The Government has notified the TECs that their current licences will end in April 2001 and will not be renewed.¹⁵ However, as they are private companies individual TECs may seek to continue operations, albeit in a different form, and at least one TEC has indicated that it intends to do so.¹⁶ In most cases, the TECs will be wound up and the Government has indicated that it expects many TEC staff to transfer to the new LSCs or the Employment Service.¹⁷ The new arrangements will “evolve from the present system and will build on the strengths of the current TEC network”.¹⁸ The debates on the Bill in the House of Lords discussed these transition arrangements and the procedures for the transfer of staff and the disposal of assets.¹⁹

Government funding of TECs comes from a variety of sources, including the Department of the Environment, Transport and the Regions (DETR), and the Department of Trade and Industry (DTI). However, the largest funding block is paid by the DfEE for Work Based Learning for Adults and Work Based Training for Young People. In the period from 31 March 1997 to 29 March 1998, income from the DfEE accounted for 87% of total Government expenditure on TECs and Government spending accounted for over

¹⁴ DfEE press notice, *Blunkett announces major expansion and reform of vocational learning*, 16 February 2000

¹⁵ HL Deb 11 October 1999 c 69W

¹⁶ “TECs hang on to their kecks”, *Guardian*, 7 March 2000

¹⁷ HL Deb 15 February 2000 c 1191

¹⁸ *TEC/CCTE Planning Prospectus 1999-2001*, para A7.4

¹⁹ e.g. HL Deb 15 February 2000 cc 1190-7

90% of TECs total income during this period.²⁰ The value of the government funds administered by the TECs in 1997-98 was £1,455 million.²¹ The remaining income mainly comes from funds secured by TECs in their direct applications to the European Social Fund (ESF) and the European Regional Development Fund (ERDF). Additionally, TECs generate their own income through charging fees to clients for business services which support local competitiveness.

TECs are private companies, usually limited by guarantee, operating under contract to the DfEE. In 1996, the Employment Select Committee described TECs as "private companies with a public role, organisations of a hybrid nature, quite unlike any other body".²² They operate under contract to the appropriate Government Offices of the Region (GO) through which government funds are disbursed. TECs agree business and corporate plans with the GO and planning and contracting information is produced each year. This outlines the policy on the delivery and planning of government training and contains a guide to funding. TECs, in turn, contract with local training providers to deliver training for unemployed people. It is therefore difficult to gain an overall impression of the scale of TEC funding and activity because it is so fragmented. The Education and Employment Committee criticised this omission in its 1996 report on the *Department for Education and Employment's Expenditure Plans 1996-97 to 1998-99*.²³

Since TECs were established, the DfEE and the TECs themselves have both been criticised for various aspects of the funding regime. In 1998, the Public Accounts Committee (PAC) criticised the level of TEC reserves.²⁴ Similarly, the complex funding mechanism, some of which is related to the achievement of numerical targets and is dependent on payment by results (output-related funding), has lent itself to abuse. For example, there have been reported cases of training providers who place trainees in a job for just one week in order to trigger an output-related payment. Similarly, conflicts of interest can arise where local businessmen on TEC boards bid for contracts with the TEC. The Report of the Comptroller and Auditor General in the DfEE Appropriation Accounts 1997/98 addressed these issues and summarised the Department's response to them.²⁵ This cited a number of examples of financial irregularities and noted an increase from £8.6 million to £14.6 million, in the amount of incorrect or uncertain payments compared with the previous year.

Controversies about the financial arrangements of individual TECs have continued. In May 1999, the board of Solotec, the South London TEC, resigned following criticism from David

²⁰ *Training and Enterprise Councils and Chambers of Commerce, Training and Enterprise in England: Income and Expenditure Account 1997-98*, HC 90, 10 January 2000

²¹ HC Deb 23 April 1999 c 715W

²² Employment Committee, First Report 1995-96, *The Work of TECs*, HC 99, para 1

²³ HC 76, 1996/97, paras 15-16

²⁴ see *Treasury Minute on the Forty-first, Forty-fifth and Forty-eighth to Fifty-sixth Reports from the Committee of Public Accounts*, Cm 4055, October 1998, pp 44-5

²⁵ *Appropriation Accounts 1996-7 Volume 9: Class IX – Education and Employment*, HC 251-IX, 11 February 1998, pp iii-iv

Blunkett, Secretary of State for Education and Employment, over a £285,000 severance package to its former chief executive.²⁶ On 7 May 1999, the Government Office of the North-West wrote to the North and Mid Cheshire TEC about the TEC's breach of its licence and to express the Secretary of State's "serious concerns regarding the TEC's financial controls".²⁷ An action plan was included in the letter which set out the action the TEC must take to prevent the Secretary of State terminating its licence. The White Paper highlights weaknesses in TEC funding and administration and states that at its worse the contracting system between the DfEE, GOs, TECs and providers can 'absorb resources which would otherwise benefit the trainee'.²⁸

3. Local Education Authorities

At present LEAs are responsible for the funding of school sixth forms through the local government finance system. The statutory provisions for the financing of maintained schools are contained in the *School Standards and Framework Act 1998*.

Section 15 of the *Education Act 1996* sets out the functions of LEAs for the provision of further education. Under section 15 (1) LEAs have a duty to secure the provision for their area of adequate facilities for further education. The duty does not apply to the education covered by section 2(1) and 3(1) of the *Further and Higher Education Act 1992* (i.e. those courses listed in Schedule 2 of the Act). Essentially, the responsibility of the LEAs for further education covers 'non-Schedule 2' provision, broadly described as leisure and recreational education and preliminary studies to courses leading to vocational and academic qualifications funded by the FEFC. Under section 508 of the *Education Act 1996* LEAs have a duty to secure adequate facilities for recreation and social and physical training.

B. Proposed new framework for post-16 learning: an overview

The White Paper, *Learning to Succeed: a new framework for post-16 learning*,²⁹ set out the Government's proposals to reform the arrangements for planning, funding, delivery and quality assurance of post-16 education and training (other than higher education) and invited comment on issues relating to the proposals. It built on the wider proposals for lifelong learning set out in the Green Paper, *The Learning Age*³⁰ and on a wide-ranging review of the TECs.³¹ A separate consultation paper on school sixth form funding was also published.³² The Secretary of State published his conclusions following the consultations, and set out his proposals in the *Learning and Skills Council Prospectus*,

²⁶ "Solotec board resigns", *Financial Times*, 14 May 1999

²⁷ Deposited Paper 99/1078

²⁸ DfEE, *Learning to succeed: a new framework for post-16 learning*, June 1999, Cm 4392, p 19

²⁹ Cm 4392, June 1999

³⁰ Cm 3790, February 1998

³¹ *TECs: Meeting the Challenge of the Millennium*, DfEE July 1998. See also DfEE Press Notice, *Blunkett builds on training and enterprise councils review*, 10 March 1999

³² *School Sixth Form Funding: a consultation paper*, DfEE, June 1999

published in December 1999.³³ In January 2000 a technical consultation paper was published setting out initial thinking on the revenue funding arrangements for the proposed new Learning and Skills Council (LSC) for England. The consultation runs until 3 April 2000, and a further, more detailed, technical consultation is planned for May.³⁴ A transitional plan was published alongside the White Paper, which is being updated as policy develops.³⁵

The White Paper acknowledged the significant progress that has been made in raising the aspirations of individuals and in removing barriers to learning. However, it concluded that much more needed to be done to achieve the Government's vision of a learning society. Current problems were identified as: low staying on rates at 16, poor levels of basic skills amongst adults, the creation of a cycle of deprivation for those with poor skills, skill shortages and recruitment difficulties for employers, and inadequate advice and guidance for young people. Setting out the case for structural change, the White Paper stated that there is too much duplication, confusion and bureaucracy in the current system, an absence of effective strategic planning, and insufficient focus on skill and employer needs at national, regional and local level.³⁶

The weaknesses of the current funding and planning systems were summarised as follows in the White Paper:

- funding school sixth forms through council tax, supplemented by a block grant based on Standard Spending Assessments allows local judgements about priorities but provides too few incentives for excellence and improvement;
- the tariff-based FEFC funding regime is relatively simple and transparent and has supported a major expansion in participation in further education at relatively modest bureaucratic cost. But current tariffs were designed to meet the needs of colleges, not the skills needs of employers and individuals; and
- funding through TECs can at its best ensure that work based training is highly responsive to the needs of local employers, but the system carries a large overhead with 72 different funding and administrative systems. At its worst, the system can mean a long chain of intermediaries. This can blur lines of accountability and the extra administrative costs absorb resources which would otherwise benefit the trainee.³⁷

³³ *The Learning and Skills Council Prospectus*, DfEE 1999

³⁴ *Post-16 Funding and Allocations: First technical Consultation Paper*, DfEE, January 2000

³⁵ *National Transition Plan*, DfEE, 26 November 1999. The next update is expected to be available in late March.

³⁶ Cm 4392, June 1999, paragraph 2.11

³⁷ Cm 4392, June 1999, paragraph 2.7

The White Paper noted that the interaction between these separate systems has resulted in a ‘bureaucratic minefield that is confusing, difficult to negotiate and often impedes rather than encourages the learner.’³⁸

The following provides an outline of how the new planning and funding structure will operate at the national and local level under the proposed Learning and Skills Council. It draws mainly upon information given in the White Paper, the *Learning and Skills Council Prospectus*, other DfEE consultation papers and Ministers’ statements. (The inspection arrangements and the new support service for young people are dealt with in other sections of the paper.)

a. *The Learning and Skills Council*

The LSC will be a single non-departmental public body responsible for strategic development, planning, funding and management and quality assurance of all post-16 education and training (excluding higher education) in England. It will replace the FEFC and the training functions of the TECs. There will be a national LSC with two statutory committees (one covering young people, the other covering adult learning) and a network of 47 local LSCs, which will be the arms of the national Council ensuring that the right blend of provision for local areas is achieved. The national and local councils, which will be part of a single organisation, will be fully operational from April 2001 (subject to the passage of the Bill). The headquarters of the LSC will be in Coventry.

The Learning and Skills Council Prospectus sets out in some detail the responsibilities of the national LSC. To summarise, the national LSC will:

- Assess national skills and learning needs and advise on how these can best be met.
- Allocate the majority of its budget (around £6 billion) each year to the local LSCs for them to determine, within a national framework, how resources should be used to raise participation, attainment and learning skills in their area. Allocate funds to LEAs for their sixth forms. There will be a national funding system, including a national tariff.
- Advise the Government on the National Learning Targets and set a strategy for achieving post-16 and Investors in People targets. (The National Learning Targets are set out in paragraph 1.10 of the White Paper.)
- Develop an annual operational plan and a three-year corporate plan.
- Promote learning opportunities and learning accounts.

³⁸ paragraph 2.8

- Develop equal opportunities strategies and co-ordinate a national strategy to ensure learning opportunities are available to the most socially disadvantaged and to those with learning difficulties.
- Develop a comprehensive quality improvement strategy, drawing upon inspection findings.
- Working with others, secure information, advice and guidance for adults.
- Develop national partnerships with local authorities, Regional Development Agencies, the Small Business Service, the Employment Service, the University for Industry, the new support service for young people, the national council of the National Training Organisations, trade unions, employers and education and training providers.³⁹

The Secretary of State will set out his policy priorities for the LSC through an annual letter of direction.

The White Paper stated that the Secretary of State's annual remit letter to the Council will set indicative budgets for the client groups for the two Committees with direct responsibility respectively for young people (pre 19) and adult learners. Within these budgets, each committee will be responsible for advising the LSC, in relation to its relevant groups, on:

- the range and level of provision necessary to meet their needs;
- measures to improve the standards and quality of provision;
- measures to promote excellence, social inclusion and equality of opportunity;
- measures to increase participation and retention; and
- the funding tariffs and systems required to give effect to their advice and encourage responsiveness to learning and skill needs.

b. The local Learning and Skills Councils

As noted above, there will be 47 local LSCs; their boundaries were announced on 28 October 1999, following consultation with the RDAs and the London Development Partnership. A map with details is reproduced in Annex A of the *Learning and Skills Council Prospectus*. The locations of the offices of the local councils were announced on 29 February 2000⁴⁰ (see Appendix 1).

³⁹ For further details see *The Learning and Skills Council Prospectus* pp 13 and 14

⁴⁰ H L Deb 29 February 1999 c WA 66; DfEE Press Notice, *Blackstone announces locations of new learning and skills councils*, 29 February 1999. The locations are given in annex 1.

The Learning and Skills Council Prospectus sets out in some detail the proposed responsibilities of the local LSCs.⁴¹ The local LSCs will identify current and future learning and skill priorities for individuals, businesses and communities. This will involve:

- analysing local labour market and skill needs;
- discussing and agreeing the plans and budgets for individual FE colleges and training providers;
- deciding how, within nationally agreed limits, rates within the national funding formula may be varied locally to meet priority needs;
- deploying locally-managed development budgets to meet learning, skills and workforce development needs; and
- using discretionary expenditure to support innovative projects adapted to local needs.

The LSCs will manage and develop the local provider infrastructure; draw up workforce development strategies; and reinforce and invest in Education and Business Partnerships. Planning to meet the National Learning Targets will be a fundamental aspect of the work of local LSCs together with supporting adult and community education and promoting equal opportunities to ensure that all local young people, including those with disabilities and learning difficulties, have access to high quality learning. The local LSC will be expected to integrate its activities with local economic development and regeneration by consulting and developing close links with RDAs, local authorities, the Employment Service, University for Industry, local Learning partnerships, Local Economic Development Partnerships and the Small Business Service.

c. *Membership of the national LSC and local LSCs*

The national LSC will consist of between 12 and 16 members appointed by the Secretary of State, and the local LSCs will consist of between 12 and 16 members appointed by the national LSC, with the approval of the Secretary of State. Members of the local council may also be members of the national LSC. The Bill does not specify who must be represented nor that there should be a particular proportion of places for particular representatives. However, in appointing members to the national LSC the Secretary of State ‘must have regard to the desirability of appointing a person who has experience relevant to the Council’s functions.’

The White Paper made it clear that there would be a strong customer influence in the new arrangements. On 28 October 1999 the Government announced that 40% of the members of the national and local LSCs, together with the chair of the national council and the majority of local chairs, would have substantial recent business or commercial experience.⁴² This is restated in *The Learning and Skills Council Prospectus*, which also states that the national and local LSC will each include a senior RDA figure to reinforce

⁴¹ pp 16 and 17

⁴² “Business gets biggest say in learning and skills network”, *DfEE Press Notice*, 28 October 1999

the important links between the LSC and the RDAs. Emphasising the importance of workforce development, the Prospectus states that business members of the local LSCs will be expected to develop effective links with an appropriate National Training Organisation: “Every effort will be made to ensure key local industries are represented on local LSCs, and that all broad industry sectors are represented within a region.”⁴³ The Prospectus also states that the Government expects the national and local LSCs to have members who understand the needs of:

- local communities (through local authority experience);
- people who are disadvantaged or excluded (through voluntary sector experience);
- employees (through trade union representation);
- young people;
- people with special learning needs, learning difficulties and/or disabilities;
- adult learners; and
- people who face discrimination.⁴⁴

The Prospectus reiterates that the majority of those serving on LSCs will speak for consumers (the individual and employers). However, it notes that it will be important that learning providers are also represented, including people with experience of working in a senior capacity in schools, FE, higher education and private and voluntary training provider services. It also emphasises that the national and local LSCs should reflect the diversity of the population, better than previous structures, and that active steps would be taken to encourage applications from women and people from ethnic minorities and other under-represented groups, such as disabled people.

In the debates on the Bill in the Lords, and in answers to PQs, Ministers have reiterated that the Government expects the national and local LSCs to include members who understand the needs of local communities through current local authority experience. But they have stressed that in their view it would be wrong to specify a particular proportion of places for local authority representation.⁴⁵

Appointments to the positions of chair, chief executive and members of the national LSC and local LSCs will be made in line with Nolan principles, following open, national advertisements. Chapter 6 of the Prospectus proposed a timetable for the appointment process. However, this has been revised; the new timetable was explained in a letter to Tim Boswell MP following a PQ.⁴⁶ The advertisements for chair and chief executive of the national LSC will appear in April. The appointment of chair (designate) will be made in June and the appointment of the chief executive (designate) in July. Advertisements for national LSC members will appear in June with appointments made from October. Details of the timetable for other appointments are given in the DfEE letter.

⁴³ *The Learning and Skills Council Prospectus* 4.18

⁴⁴ paragraph 2.30

⁴⁵ e.g. see HC Deb 16 February 2000, 579W

⁴⁶ DfEE letter, 13 March 2000 referred to in HC Deb 20 March 2000 c 437W

The Secretary of State will appoint a senior DfEE official to act as his representative on the LSC. The *Learning and Skills Council Prospectus* made it clear that the Secretary of State expects the chief executives of the Employment Service, the SBS and the HEFC and the head of the new support service for young people to be invited to LSC meetings. The local LSCs will also be expected to invite to their meetings the directors of relevant services.⁴⁷

Nick Reilly, the chairman and managing director of Vauxhall Motors Ltd., has set up a Business Champions Group to raise awareness in the business community about the LSC and to encourage business involvement.⁴⁸

d. Planning and funding framework

The White Paper set out the Government's concerns about the incoherence of the current planning arrangements and the inconsistencies and complexity of the existing funding system. The proposals for a new planning and funding framework for the LSC are described in the *Learning and Skills Council Prospectus*, Annex 2 of which outlines the planning framework. This will begin with an annual letter from the Secretary of State setting out the LSC's budget and the Government's priorities. Following wide consultation, the LSC will publish a three-year rolling corporate plan, published annually and supported by an operational plan. These plans will 'inform and steer the bottom-up planning process of individual providers and the 47 local LSCs.' Local LSCs will also publish an annual statement of learning and skill needs and priorities for their areas. Each local LSC will invite local providers to submit plans to meet the needs of customers and will agree those plans with providers as a basis for funding. The arrangements will include local authority planning for adult and community education. When the process is completed the local LSC will finalise its local operational plan, which will set out in detail the provision it intends to fund.

The *Learning to Succeed: Post-16 Funding and Allocation: First Technical Consultation Paper* set out initial thinking on the revenue funding arrangements for the LSC.⁴⁹ The consultation runs until 3 April 2000; a further, more detailed, technical consultation is planned for May. The first technical consultation paper sets out the objectives of the new funding system and makes it clear that the fundamental requirements are fairness, transparency and objectivity. It states that the LSC and the Employment Service will be expected to work closely together to develop a unified approach wherever possible, within a simplified system that is flexible enough to accommodate a wide variety of different types of provision. It suggests that a high proportion of the funds will be distributed through a national funding formula, supported by a structure of national rates. While noting that the current FEFC structure of paying for starts, retention and

⁴⁷ *The Learning and Skills Council Prospectus*, paragraph 2.32

⁴⁸ HC Deb 20 March 2000 c 438W

⁴⁹ *Post-16 Funding and Allocations: First technical Consultation Paper*, DfEE, January 2000

completion elements has attractions, the technical consultation paper emphasises that the new funding system will also need to make proper allowance for the higher cost of recruiting, retaining and teaching learners who are disadvantaged. It will need to weight funding to help such learners, in order to break the link between social and educational under-achievement.

Two key issues raised relate to (a) the scope of local LSCs to vary national rates when these are out of line with local circumstances (e.g. where there is a local shortage of a particular type of provision) and, (b) the extent to which local LSCs should have local discretionary budgets. The technical consultation paper suggests examples of provision that would be appropriate for non-formula funding (e.g. some adult and community learning, workforce development including Investors in People, pump-priming initiatives etc). It proposes that local LSCs should have discretionary budgets for such provision amounting to about 10% to 15% of the LSC's total budget.

e. School sixth form funding

There are just over 3,500 maintained secondary schools in England and just over half of these, 1,800, have a sixth form.⁵⁰ At present LEAs are responsible for the funding of school sixth forms through the local government finance system. The statutory provisions for the financing of maintained schools are contained in the *School Standards and Framework Act 1998*.

The White Paper emphasised the Government's belief that it is essential to co-ordinate planning of all 16-19 provision in schools and colleges in order to raise standards and improve opportunities, and announced a separate consultation on sixth form funding outlining options for funding school sixth forms under the new framework.⁵¹ The consultation paper noted that in an earlier consultation there had been wide support for integrating post-16 planning and quality management arrangements, but no consensus on whether school sixth form funding should be managed by a new single body. The consultation paper invited views on whether LEAs should continue to distribute funds to school sixth forms through the local government finance system (but with detailed guidance from the Secretary of State), or whether LEAs should be funded by the LSC for school sixth form provision. LEAs would continue to make the allocation decisions to individual schools. A third alternative, the LSC funding school sixth forms directly, was ruled out as this would place extra administrative burdens on schools having to deal with two sources of funding.⁵²

The *Learning and Skills Council Prospectus* announced that Ministers had decided that LEAs should in future receive their funding for school sixth forms through the LSC.⁵³

⁵⁰ HC Deb 20 March 2000 c 439W

⁵¹ *School Sixth Form Funding: a consultation paper*, DfEE, June 1999

⁵² paragraph 4.10

⁵³ *The Learning and Skills Council Prospectus*, paragraph 3.4

The Post-16 Funding and Allocation: First Technical Consultation Paper confirmed the new funding arrangements for school sixth forms, and said that the changes are not expected to be introduced before 2002-03. It gave a commitment that schools will be safeguarded so that a school's sixth form budget will not be reduced in real terms provided numbers are maintained. Views were invited on issues of safeguarding, timing of introduction, and a consistent 16-19 funding allocation system. Further consultation is expected in May.⁵⁴

The Local Government Association is opposed to the proposed change and has said that there is concern in local government that the ability of LEAs to provide a key co-ordinating role in post-16 education will be impeded.⁵⁵

f. LSC and other bodies

The Learning and Skills Council Prospectus describes how the national and local LSC will work with other bodies, including Regional Development agencies, local authorities and Local Learning Partnerships:

Regional Development Agencies. The national and local LSCs will include a senior RDA figure. At national level the LSC will be required to consult RDAs in drawing up its guidance to the local LSCs. Local LSCs will be required to consult their RDAs in drawing up their plans, and to have regard to the RDA's regional economic and sub-regional economic strategies. RDAs will assess local plans and advise the national LSC on whether the plans are consistent with their regional strategies. The LSCs will work closely with the RDAs and NTOs to develop appropriate skill packages.

Local authorities. Under the new arrangements the LSC rather than local authorities will be responsible for adult and community education. However, local authorities will contribute to arrangements for provision at local level. LEAs will be responsible for submitting strategic plans which demonstrate how they will contribute to securing adult and community provision for their area. Local LSCs will be required to consult local authorities on their plans, and set out in them the provision that they would like the relevant LEA to secure. The Prospectus emphasised that local authorities will be central partners in the new arrangements. It states that each LEA will receive funding, in the first two years of the LSCs operation, at a level comparable with their current spend on adult and community education provided they maintain their current level of spending and produce and implement their strategic plans.⁵⁶

Local Learning Partnerships. These will continue to be voluntary groupings with a local focus, involving local providers in voluntary partnership. The Prospectus states that the

⁵⁴ *Post-16 Funding and Allocations: First technical Consultation Paper*, DfEE, January 2000, paragraph 4.2

⁵⁵ e.g. LGA, *Post 16 White paper: school sixth forms*, September 1999 and LGA briefing No 234 on The Learning and Skills Prospectus, 14 December 1999

⁵⁶ *The Learning and Skills Council Prospectus*, paragraph 4.33

Secretary of State will require the local LSC to consult local Learning Partnerships in drawing up their plans, and will expect the local LSCs to work closely with the Local Learning Partnerships.⁵⁷ The DfEE has developed detailed guidance for the local Learning Partnerships on their responsibilities, including those stemming from the White Paper proposals.⁵⁸ On 17 January 2000 the Secretary of State issued a policy statement to inform MPs in England about the ways in which the partnerships will link up with the local LSCs.⁵⁹ He stressed that Learning Partnerships and local LSCs will be distinct but complementary:

“The local LSCs will cover relatively large areas and their work will need to be informed by an understanding of local labour market needs. Learning Partnerships are ideally placed to provide that understanding. Learning Partnerships will continue to be voluntary groupings of education and training providers and users with a more local focus; identifying local needs and representing them to the local LSCs.

Learning Partnerships will also continue to bring coherence and co-ordination to post-16 learning in their areas, to identify local targets which underpin the post-16 National Learning Targets, and make proposals for raising standards and improving the quality of provision in a local learning plan in preparation for the new post 16 arrangements.”⁶⁰

The Government expects the LSC and the local learning partnerships to promote effective school-business links. A discussion paper proposing a revised local structure for the organisation of school business link activity was issued in February 2000.⁶¹

g. Transition

An updated version of the Transition Plan was issued at the end of November and will be updated again as policy develops.⁶² Malcolm Wicks, the Minister for Lifelong Learning, made a statement on the transition of essential staff to the LSCs in a recent written answer to a PQ:

Mr. Boswell: To ask the Secretary of State for Education and Employment if he will make a statement on the application of TUPE as it affects existing employees of (a) TECs and (b) the FEFC; and what steps he is taking to encourage a smooth transition of essential staff to the new local learning and skills councils.

Mr. Wicks: In respect of TECs, their functions are being split several ways; some will transfer to the Learning and Skills Council (LSC), some to the Employment Service and some to other bodies. We expect a significant proportion of TEC staff to transfer under TUPE to these organisations. In respect

⁵⁷ paragraph 2.44

⁵⁸ *Information and Guidance for Learning Partnerships*, DfEE, January 2000

⁵⁹ HC Deb 27 January 2000 c 308W

⁶⁰ Letter from David Blunkett, 17 January 2000

⁶¹ *Developing a new structure to provide an effective delivery mechanism for education business links*, DfEE, February 2000

⁶² *National Transition Plan*, DfEE, 26 November 1999, the next update is expected to be available in late March.

of the FEFC, some functions transfer to the LSC, some to the Adult Learning Inspectorate and some to OFSTED. Again we expect the majority of staff to transfer under TUPE to these organisations.

We are working closely with partner organisations to ensure a smooth transition to the new arrangements.⁶³

h. Savings

As a result of the structural changes the Government expect savings of at least £50 million per annum to be made:

Mr. Boswell: To ask the Secretary of State for Education and Employment if he will publish a detailed analysis of the anticipated net administration savings arising from the restructuring proposals of Learning to Succeed, Cm. 4392.

Mr. Wicks: The new arrangements for learning and skills will cut through the present duplication and bureaucracy and will secure savings of at least £50 million a year across post 16 learning, which will be invested in improving the quality of learning. The savings come from two main sources. Nearly £15 million will be saved because Government Offices for the regions will no longer need to contract with 72 TECs. The remainder will come partly from operating through fewer local branches--47 instead of 72, and partly from operating through more efficient systems, with less negotiation and contracting.⁶⁴

i. Reaction to the White Paper

There was wide support for bringing greater coherence to the system for post-16 learning and for removing inconsistencies that characterise the present structure. The FEFC welcomed the proposals observing that the proposed demand-led framework for the delivery of education and training would be a major strength of the new arrangements. It stressed the importance of maintaining investment in the college sector.⁶⁵ The LGA recognised the need to bring greater coherence to the post-16 system but questioned whether the Government's proposals were the best way of achieving this. It opposed the removal of LEAs' lifelong learning responsibilities arguing that adult and community education need to be tailored to meet specific local needs and should not be controlled by remote boards.⁶⁶ The LGA put forward an alternative model based on local authorities co-ordinating and leading partnerships of agencies and interests locally.⁶⁷

⁶³ HC Deb 7 February 2000 c 37W

⁶⁴ HC Deb 7 February 2000 cc 35-6W

⁶⁵ FEFC, Learning to Succeed-The Council's response; "A chance to build on good work" [article by David Melville, chief executive of the FEFC for England], *THES*, 19 November 1999, p iv in further education

⁶⁶ LGA, learning to Succeed white paper-LGA briefing, 30 June 1999

⁶⁷ LGA, Post-16 White Paper: the local option, September 1999

David Blunkett stated during the White Paper debate that the TECs will “be merged in to the new structure”. The TEC National Council welcomed this and pledged to work with the Government while seeking to offer constructive criticism.⁶⁸ The chief executive said that the Council would continue to lobby for three principles: demand-led provision; an integrated approach to enterprise and learning; and strategic executive bodies at a local level with the capacity to influence economic development.⁶⁹

Organisations representing both consumers and providers raised concerns about specific aspects of the proposals relating to the new planning and funding arrangements.⁷⁰ The following notes some of the responses, but is not meant to be a comprehensive account.

Bureaucracy and centralisation. Concern was expressed that the new structure would lead to too much bureaucracy and runs the risk of over-centralisation. For example, both the Local Government Association (LGA)⁷¹ and the Institute of Directors⁷² raised such concerns in their comments on the White Paper and stressed the need for local flexibility.

Membership of the national LSC and the local councils. Interested bodies were concerned that they should be adequately represented on the national and local councils. For example, the Association of Colleges⁷³ called for significant provider representation on the local councils. The LGA wished to see local government adequately represented as a reflection of local authorities’ role as providers, community advocates and employers. The Institute of Directors stressed the importance of the national LSC and the local councils being demand-led bodies, and wanted private sector employers having an absolute majority of representatives and control over a substantial proportion of the budget. The CBI⁷⁴ also raised the issue of employer representation and called for private sector employers making up the bulk of this representation. On the other hand, NATFHE pointed out that the White Paper focused too much on the needs of the employers and not enough on those who deliver lifelong learning. NATFHE also expressed concern about, amongst other things, the trend to create a new divide in post-16 education training between provision for 16-18 year olds and adults.⁷⁵

The Government’s subsequent announcement that 40% of the members of the Learning and Skills Council and the local LSCs would be drawn from business was welcomed by those representing business and commerce.⁷⁶ The LGA welcomed the expectation that the

⁶⁸ TEC National Council press release, *TECs urge government to keep business leaders on board in new arrangements for skills and business support services*, 30 June 1999

⁶⁹ *Agenda*, August, 1999, p 10

⁷⁰ “Reforms shy of the mark, say critics”, *TES*, 15 October 1999, FE Focus p III

⁷¹ Response from the LGA to Learning to Succeed—a new framework for post-16 learning,

⁷² Response from the Institute of Directors to Learning to Succeed—a new framework for post-16 learning

⁷³ Response from the AOC to Learning to Succeed—a new framework for post-16 learning

⁷⁴ CBI response to the Learning to Succeed White Paper

⁷⁵ Learning to Succeed, Response from NATFHE

⁷⁶ “Concessions on Training Network”, *Financial Times*, 29 October 1999, p 7

national and local LSCs would have members with local authority experience, but wants to ensure that the proportion of seats is adequate.⁷⁷

The role of local learning partnerships. Some commentators pointed out that the White Paper did not define clearly enough the respective roles of the local LSCs and the local learning partnerships within the new framework.⁷⁸ (The *Learning and Skills Council Prospectus* acknowledged this concern and, as noted above, the Education Secretary wrote to MPs on 17 January 2000 about the role of Learning Partnerships.)

Powers of intervention. In its response to the White Paper the Association of Colleges noted that it expected the Learning and Skills Council to have duties and powers broadly consistent with those currently exercised by the FEFC, with only limited rights of intervention in the event of serious failure on the part of a provider.

C. The Bill and the debate in the Lords

Part I of the Bill, clauses 1 to 29 and Schedules 1 to 3, make provision for setting up the LSC for England, its functions, the establishment of local councils, and the powers of the Secretary of State in relation to the LSC. The following two sections of the paper (a) outline these provisions and the amendments made to them in the Lords, and (b) note some of the other issues raised in the debate.

a. The Bill as amended in the Lords

Clause 1 and Schedule 1 provide for the establishment of a new corporate body, the LSC for England, consisting of between 12 and 16 members, appointed by the Secretary of State. In making appointments to the LSC, the Secretary of State must have regard to the desirability of appointing people with experience relevant to the LSC's functions. The Bill does not specify further who should be represented on the Council. However, as noted above, the Government has announced that 40% of the members of the LSC together with the chair of the national council and the majority of chairs of the local LSCs would have substantial recent business or commercial experience.⁷⁹ This is restated in *The Learning and Skills Council Prospectus*, which also indicates the Government's expectations about other representation.

Schedule 1 makes provision for the appointment of the chief executive, terms of office of members of the LSC, salaries and allowances, appointment of staff, delegation of functions, proceedings, accounts and other matters, including the status of the Council.

Clauses 2 to 4 set out the main duties of the LSC. A distinction is drawn in the LSC's duties in respect of provision for 16 to 18 year-olds and provision for those aged 19 and

⁷⁷ LGA, Briefing on the Learning and Skills Prospectus, 14 December 1999

⁷⁸ "Learning vision slips out of focus", *TES*, 8 October 1999, FE Focus, II

⁷⁹ "Business gets biggest say in learning and skills network", *DfEE Press Notice*, 28 October 1999

over. The effect is that the LSC will give priority to meeting the learning and skills needs of the younger age group. Clause 2 places a duty on the LSC to secure the provision of ‘proper’ facilities for the education and training of people from 16 up to the age of 19 years. Facilities are ‘proper’ if they are of sufficient quantity and adequate quality to meet the reasonable needs of individuals. Clause 3 sets out the duty of the LSC to secure the provision of ‘reasonable’ facilities for the education and training of people aged 19 and over. Facilities are ‘reasonable’ if they are of a quality and quantity which the LSC can reasonably be expected to provide taking account of the resources available to it. (The duties do not extend to the provision of higher education.) Explaining the distinction, Lord Bach said that ‘there is an entitlement for those between 16 and 19 and ... the LSC will do all it can in relation to those who are over the age of 19. However, it cannot give to them the entitlement which applies to those between the ages of 16 and 19.’⁸⁰

Unlike the duties of the FEFC under the *Further and Higher Education Act 1992*, no distinction between full-time and part-time education is drawn in the education and training provision that the LSC must secure for the two age groups. Nor is there a limitation on the education and training that may be secured by reference to a particular course. Therefore, the current distinction between provision covered by schedule 2 of the 1992 Act and ‘non-schedule 2’ provision will end.⁸¹ Schedule 10 of the Bill repeals schedule 2 of the 1992 Act.

In performing its duties under clauses 2 and 3 the Council must take into account a number of factors, including provision which the Council thinks might reasonably be secured by other persons. During the Report Stage the importance of workforce development was debated, and a Government amendment provided for the education and training required in different sectors of employment to be added to the list of factors to be taken into account by the Council.⁸² (The Explanatory Notes to the Bill state that the Government has recognised that National Training Organisations have particular expertise and will advise the LSC in this area.) The Council must make the best use of its resources and in particular avoid provision which might give rise to disproportionate expenditure.

A definition of ‘disproportionate expenditure’ for the purposes of Clause 2 was added to the Bill by an amendment moved by Lord Pilkington, which was carried by 173 votes to 127. ‘Disproportionate expenditure’ is expenditure that is wasteful or unrelated to the duties and functions of the Council, but not expenditure on provision which, by its nature, has higher unit costs than other forms of provision. Lord Pilkington was concerned to protect school sixth forms, particularly in rural areas, which may have higher unit costs than other provision. Lord Pearson supported the amendment specifically from the point of view of special educational needs provision. Lord Bach argued that the definition was unnecessary. He stressed that there was nothing in the Bill that would prevent the LSC

⁸⁰ HL Deb 8 February 2000 c 603

⁸¹ HL Deb 8 February 2000 c 580

⁸² HL Deb 13 March 2000 c 1333-4 and c 1348

from funding particular provision simply because it might be more expensive than provision elsewhere, and that the Government fully recognises that some provision will be more expensive than others. He emphasised that the needs of those with learning difficulties would be met under clauses 13 and 14.⁸³

Clause 4 sets out the LSC's duty to promote participation in post-16 education and training and to encourage employers to get involved by participating in the provision of post-16 education and training by contributing towards the costs.

Clauses 5 and 6 set out the powers of the LSC in relation to financial resources. The details are summarised in the Explanatory Notes to the Bill. Under clause 5 the Council may give funding to other persons for the purpose of fulfilling its duties and exercising its powers. The Government amended clause 5 at Committee Stage to enable the LSC to fund not only the provision of information and advice but also the provision of guidance⁸⁴ about education or training or connected matters, including employment.⁸⁵

Clause 6 enables the LSC to attach conditions to payments it makes. The conditions may include giving the LSC, or another person specified by the Council, access to the education and training provider's accounts and records, including computer records. Other conditions may include a requirement that the provider charge fees and make awards in accordance with criteria specified by the LSC; publish statements about its facilities for disabled people; and make provision of a type specified in an assessment of learning difficulties made under clause 114. Peers expressed serious concerns about the extent of the powers contained in clause 6.⁸⁶ During the Committee stage, Lord Bach assured Peers that the powers in clause 6 were derived from the current precedents of the work of the FEFC and TECs.⁸⁷ On 28 February he wrote to Baroness Blatch giving further details about the current powers and the proposals.⁸⁸

Clause 7 empowers the LSC to fund LEAs for school sixth form provision. (This change is not expected to be introduced before 2002-03 - see the section on school sixth forms above.)

Other powers of the LSC are contained in clauses 8 to 11. Clause 8 gives the LSC powers to secure the provision of work experience for pupils in their last two years of compulsory schooling and for those in education up to the age of 19, and to provide for education business links. The proposed role and responsibilities for the LSC and the local

⁸³ HL Deb 23 March 2000 c 415-21

⁸⁴ HL Deb 8 February 2000 cc 624-30

⁸⁵ HL Deb 8 February 2000 cc 626-31

⁸⁶ HL Deb 8 February 2000 cc 631-3 and HL Deb 13 March cc 1350-6

⁸⁷ HL Deb 8 February 2000 cc 631-6

⁸⁸ House of Commons Library Deposited Paper 00/504

LSCs to encourage education and business links are set out in the DfEE consultation paper, referred to earlier.⁸⁹

The first part of clause 9 gives the LSC the power to assess the quality of provision it funds and to take such assessments into account when deciding which providers to fund. This will form part of the LSC's quality improvement strategy. The Explanatory Notes on the Bill state that the LSC may draw up a list of accredited provision which meets certain quality thresholds, and cease to fund provision that does not. The second part of clause 9 covers the LSC's powers to provide for means-tests when making resources available for individual students.

Clause 10 provides for the powers of the LSC in relation to 'qualifying accounts and grants', commonly known as individual learning accounts (see clauses 96 and 97).

Under clause 11 the LSC may appoint up to two governors to the governing body of an institution in the FE sector that mainly serves the population of England. The purpose of the provision is to enable the LSC to make an early intervention where there are concerns about a college. During the Committee debate Government amendments clarified the extent of the clause, and other consequential amendments were made relating to the instruments of government of institutions.⁹⁰

Clause 12 sets out the LSC's role in relation to research and information provision. Government amendments in Committee extend the Council's functions to secure not only information and advice but also guidance about education and training or connected matters, including employment.⁹¹

Clause 13 requires the LSC when discharging its functions under clauses 2, 3 and 8 to pay regard to the needs of people with learning difficulties (as defined in clause 13(3)), and in particular to any report of an assessment made under clause 114 (assessments relating to special educational needs). The scope of the LSC's functions was extended to include clause 8 (covering work experience and other links between education and training and employment) by a Government amendment at Report stage.⁹² Clause 114 was amended, by a Government amendment at Third Reading, to bring within its scope those aged 19 to 25 with learning difficulties.⁹³ Clause 13 also sets out the LSC's main responsibilities regarding the funding of boarding accommodation for those with learning difficulties. For those under the age of 25, the LSC must provide boarding accommodation where it is satisfied that it cannot make adequate arrangements for an individual unless it secures boarding accommodation. For those over the age of 25, the LSC has a power to make such arrangements.

⁸⁹ *Developing a new structure to provide an effective delivery mechanism for education business links*, DfEE, February 2000

⁹⁰ HL Deb 8 February 2000 cc 646-9 and HL Deb 27 February 2000 cc 1421-3

⁹¹ HL Deb 10 February c 818

⁹² HL Deb 13 March cc 1387-8

⁹³ HL Deb 23 March 2000 c 431, see also cc 412

Clause 14 was added as a new clause by Government amendment at Report stage.⁹⁴ It requires the LSC to have regard to the need to promote equality of opportunity between persons of different racial groups, men and women, and persons who are disabled and persons who are not. The Council must publish an annual report on the progress it has made during the year and its future plans to promote equality of opportunity. It must send a copy of its report to the Secretary of State. As originally drafted, clause 14 required the LSC to report on the progress it had made in relation to provision for disabled people.

Clauses 15 and 16 require the LSC to make and publish annual plans and strategy statements. Two separate plans are envisaged in the *Learning and Skills Council Prospectus*: an annual business plan and a three-year rolling strategic plan.

Clause 17 provides for the LSC to have regard to any information received from a body designated by the Secretary of State.

Clause 18 sets out the supplementary powers of the LSC, including acquiring and disposing of land and entering into contracts. The LSC may not borrow money nor may it lend money or hold shares in a company, unless the Secretary of State gives consent (clause 18(3)). The Secretary of State may by order confer additional relevant functions (clause 18(4)). An order made under clause 18(4) would be subject to the negative procedure.⁹⁵ In response to concern expressed by peers about clause 18, Lord Bach wrote to Baroness Blatch on 28 February 2000 describing the Government's thinking on each of the powers, and referred to the existing powers of the FEFC and TECs.⁹⁶

Clauses 19 to 20 relate to the local LSCs. Clause 19 and Schedule 2 provide for the establishment of local LSCs, for each area specified by the Secretary of State. A local LSC will consist of between 12 and 16 members, appointed by the national LSC with the approval of the Secretary of State. The chairman of each local LSC will be appointed by the Secretary of State, after seeking the national LSC's advice. Clause 20 provides for the duties and powers of the local LSCs to be those the national LSC which it chooses to delegate. The Explanatory Notes summarise the activities which the Secretary of State will expect the local LSCs to undertake. The Secretary of State has already announced that there will be 47 local areas; their boundaries, location, and the activities that they will be expected to carry out are set out in the *Learning and Skills Council Prospectus*.

Schedule 2 makes provision for tenure of members, allowances, appointment of staff, delegation of functions and proceedings. A Government amendment in Committee

⁹⁴ HL Deb 13 March c 1394, see also cc 1299-1308

⁹⁵ Select Committee on Delegated Powers and Deregulation, Third Report, Session 1999-2000, HL Paper 23, January 2000

⁹⁶ House of Commons Library Deposited Paper 00/504

sought to clarify the provisions for appointment of staff, including the director of the local LSC.⁹⁷

Clauses 21 and 22 set out the details of the planning arrangements that the LSC and local LSCs must put in place. The LSC must prepare guidance and the local LSCs must prepare plans in response. A local LSC's plan must include a statement of the education and training provision it would like a relevant LEA to secure, and the financial resources that it will provide to the LEA for this purpose. In preparing a plan, the local LSC must consult any relevant Regional Development Agency, local authority and any other body specified by the Secretary of State. Originally the Bill required the local LSCs to consult LEAs but a Government amendment made at Report stage changed the wording to cover local authorities. Also, provision was made to require the local LSC to take account of the wider duties that will be imposed on local authorities to promote 'well-being' under section 4 of the *Local Government Act 2000*, subject to the Local Government Bill's passage through Parliament.⁹⁸

Under clause 23 the Secretary of State may direct a LEA to make provision if it has not secured provision in accordance with the local LSC plan.

Clause 24 makes provision relating to the timing of the preparation of guidance and plans.

Clause 25 empowers the Secretary of State to give directions to the LSC, with which the LSC must comply. (The Secretary of State's current powers to issue direction to the FEFC are contained in Section 56 of the *Further and Higher Education Act 1992*.) As originally drafted the clause included directions relating to the objectives of the LSC in carrying out its functions, and to the management of the Council. The Government introduced an amendment at Report stage to extend the direction-making power to enable the Secretary of State to issue a direction if he is satisfied that the LSC has failed to discharge a duty or has acted or is proposing to act unreasonably.⁹⁹ Peers had expressed concern about the LSC's powers to appoint governors to the governing bodies of FE institutions. Baroness Blackstone explained that the amended provision would allow any college that considered that the LSC was using its powers inappropriately, to refer the matter to the Secretary of State.

Clause 26 and Schedule 3 require the LSC to establish a young people's learning committee and an adult learning committee, and to set up other committee as it thinks fit. The schedule makes provision for the functions of the committees, the terms of office of members, allowances and proceedings. Baroness Blackstone announced at Third Reading that the provisions relating to the young people's learning committee in Schedule 3 would be amended (in the Commons), to meet concerns raised by Lord Northbourne about

⁹⁷ HL Deb 10 February 2000, c 852-3

⁹⁸ HL Deb 13 March 2000 cc 1414-6

⁹⁹ HL Deb 13 March 2000 cc 1382-5 and c 1416

ensuring that the LSC considers the need for education for adult life outside the workplace.¹⁰⁰

Clause 27 empowers the Secretary of State to fund the LSC by making grants, which may be subject to conditions, including conditions on the funding of others by the LSC.

Clause 28 requires the LSC to report annually on its activities, and for the Secretary of State to present the report to Parliament.

Clause 29 defines the LSC's financial year.

Schedule 8 contains amendments to existing legislation. These are technical and consequential to the provisions establishing the LSC and the CETW. The amendments, which are described in detail in the Explanatory Notes to the Bill, include:

Paragraph 11, which replaces section 57 of the *Further and Higher Education Act 1992*. The proposed new section 57 restates the Secretary of State's existing powers of intervention where he is satisfied there has been mismanagement of an institution, or where the governing body has failed to discharge its duties or is acting unreasonably. There is a new provision to enable the Secretary of State to intervene where educational provision at an institution has been assessed by HMCI or the new Adult Learning Inspectorate as being seriously weak, or is failing or likely to fail to give an acceptable standard of education. The proposed changes would also enable the Secretary of State to act on his own account as well as on the recommendation of the LSC. The Secretary of State may remove any or all of the governors of the college and may make appointments to any vacancies on the governing body (however arising), and may issue directions.

Clause 84 provides for the dissolution of the FEFC, and Clause 86 provides for the dissolution of the FEFCW, and for the assets, rights and liabilities to transfer to the LSC and CETW respectively. Government amendments during the Committee stage added two new clauses - clauses 85 and 87 - and Schedule 9 to the Bill, which provide for managing the transition to the new arrangements.¹⁰¹

TEC memorandum and articles of association require any assets remaining on wind-up to be passed to a body with similar objectives which has been agreed by the Secretary of State.¹⁰² The Government amendments to the Bill would facilitate this. In introducing the amendments Baroness Blackstone said that TECs had evolved into complex organisations with a wide variety of functions.¹⁰³ The DfEE is therefore working with individual TECs to agree a transition plan, and the detailed position on TECs will be resolved on a TEC by TEC basis. Baroness Blackstone said that it was too early to be precise about these

¹⁰⁰ HL Deb 23 March 2000 c 415

¹⁰¹ HL Deb 15 March 2000 cc 1189-97 and cc1199-1200, and HL Deb 17 March 2000 cc 1423-5

¹⁰² HC Deb 21 February 2000 c 691W

¹⁰³ HL Deb 15 February 2000 cc 1190-1192

transition costs. The Government intends to publish a timetable for handling the transfer of staff by the end of March 2000.¹⁰⁴

Clause 122 provides for the parts of the Bill relating to England to come into force with commencement orders made by the Secretary of State.

Effects of the Bill on public sector finances and public sector manpower

The Explanatory Notes to the Bill refer to the effects of the proposals to establish the new LSC on public sector finances and manpower. They state:

As a result of the changes, the Government expects to secure administrative savings of at least £50 million per annum, which will be invested in improving the quality of learning. In the short term the savings will be abated by costs arising from winding-up existing arrangements and establishing the new bodies. The current estimate of the transitional costs of establishing the LSC and the Adult Learning Inspectorate over the next two years is between £60 and £65 million. These costs include the development of new IT systems, premises and a significant investment in staff training and development. There are also likely to be some restructuring costs in the DfEE and Government Offices for the regions. In 2000-2001, £25 million will be made available to meet the start up costs of the LSC. The remaining costs will be met from the savings made and from reprioritising other work.

The change in the way that sixth forms and adult education will be funded (through the LSC rather than through LEAs) is not expected to have public expenditure consequences.

LSC staff will not be civil servants but will be paid out of public funds by the Secretary of State. An increase in the number of staff employed in the public service is expected, because some of the activities of the LSC are carried out by TECs, which are private companies. However, the Government expects an overall reduction of between 15% and 20% in the total number of public sector staff employed to administer post-16 education and training.

b. Other issues raised in the debate

Generally speaking, peers expressed support for bringing greater coherence to post-16 education and training but raised many concerns about the operation of the proposed framework, and the lack of detail on certain provisions in the Bill. The amendments introduced by the Government (noted above) addressed some of these concerns; some of the other key issues debated are noted below.

Bureaucracy

Baroness Blatch speaking for the Opposition described the Bill as 'bureaucratic' and 'confusing' and said that it would result in 'duplication' and be 'costly and divisive'.¹⁰⁵

¹⁰⁴ HL Deb 15 February 2000 c 1195

She repeatedly expressed concern about what she regarded as the ‘top-down approach’ underlying the new framework: ‘directions will come from the Secretary of State to the national council and then cascade down to the councils’.¹⁰⁶

During the Second Reading debate, Lady Sharp for the Liberal Democrats generally welcomed the Bill, particularly the provision of a comprehensive framework for post-16 education and training, but objected to what she described as the ‘democratic deficit at the heart of the Bill’ and its ‘top-down’ approach.¹⁰⁷ Lord Tope reiterated these comments at the start of the Committee debate, and said that the Liberal Democrats’ principal concern was that the proposed structure is ‘centralising and unnecessarily complex’; he proposed an alternative structure of nine regional learning and skill councils.¹⁰⁸

Baroness Blackstone rejected these criticisms:

A number of noble Lords opposite raised concerns about bureaucracy. I believe that a number of contributors on the Conservative Benches accused the Government of introducing more bureaucracy. However, this Bill is an attack on bureaucracy and on the complexity and waste of the current system. The noble Baroness shakes her head. In the current legislative framework we have out of date and unnecessary distinctions between what the FEFC can and cannot fund and between further education colleges and local education authorities. For example, we have confusion and arbitrary barriers to which the noble Baroness, Lady Darcy de Knayth, referred over what is and what is not Schedule 2 provision. We have 72 separate training and enterprise councils with their own structures and levels of provision. Providers have a surfeit of audit. The National Audit Office has identified some 25 different agencies that could be scrutinising FE colleges annually. We have duplication and a lack of coherence at every level. We are going to get rid of that.

The Bill allows convergence and coherence across all provider sectors whether it be in funding principles, planning or quality standards. It gives business, local authorities and other key partners a role across all provision for post-16 education and training. It offers the real strength of a single national organisation planning and funding all post-16 provisions. I readily accept that we need local flexibility within that. That is why we are providing for 47 local councils, each with their own board, drawn from local communities and businesses. They will have sufficient local flexibility and autonomy to allow them to match provision to local needs and to meet skills shortages. They will typically control budgets of £100 million with very significant local discretion over spending. So I utterly refute the suggestion made by some noble Lords opposite that this is a top-down centralising Bill. Nothing could be further from the truth.¹⁰⁹

Composition of the LSC and local LSCs

There was a great deal of debate on the composition of the national LSC and its local councils, with unsuccessful attempts to specify requirements for particular representation in the Bill. Lord Dearing, during the Second Reading debate, welcomed the

¹⁰⁵ HL Deb 17 January 2000 c 884

¹⁰⁶ HL Deb 8 February 2000 c 521 and c 524

¹⁰⁷ HL Deb 17 January 2000 cc 889-94

¹⁰⁸ HL Deb 8 February 2000 c 516

¹⁰⁹ HL Deb 17 January 2000 c 942

Government's commitment on business and commercial membership, and called for a specific commitment for the inclusion of elected members of local authorities and representatives of local learning partnerships. Baroness Blatch wanted the Government's assurances about business representation to be written into the Bill and raised the issue on several occasions during Committee and Report stages.¹¹⁰ However, her amendment to provide that 40% of the LSC members must have current or recent non-public sector business or commercial experience was defeated.¹¹¹ However, as noted above, the Government has said that business representation is intended.¹¹²

Baroness Blatch also moved amendments to provide for other representation, including members to be nominated by the Local Government Association. The case was made for including members with other experience to be specified in the Bill (e.g. representatives of providers, the NTOs, those with experience of youth work and vulnerable young people, and those with experience of disability matters).¹¹³ Baroness Blackstone said repeatedly that the Government did not think it would be appropriate to put quotas on the face of the Bill, and stressed that the Prospectus provides clear guidelines for finding the best people to serve on the LSC and its local councils.¹¹⁴ The appointment of the chairs of the LSC and local LSCs, the appointment of the chief executive, their terms of office and arrangements for re-appointments were also debated.¹¹⁵

Differences in provision

Peer expressed concern about the distinction in clauses 2 and 3 between 'proper' provision for 16 to 18 year-olds and 'reasonable' provision for those aged 19 and over, and the effect of giving only the former group an entitlement to provision. The debates focused on the needs of those with learning difficulties, and on others who, for various reasons, may have missed out on opportunities to participate in education and training between the ages of 16 and 19 years but seek to participate at a later stage. For the Liberal Democrats, Lord Tope and Baroness Sharp argued for greater flexibility in the cut-off point for clause 2 provision. Baroness Blatch moved amendments at Committee stage¹¹⁶ and Report stage¹¹⁷ to extend clause 2 provision to people aged between 16 and 25 who had not acquired level 2 qualifications at age 16 (i.e. GCSE at grades A* - C, intermediate GNVQs or NVQ level 2). At Report stage she pressed her amendment, which was defeated by 128 votes to 81.

Provision for those with learning difficulties was raised in this context and on the debates on other clauses. Lord Rix moved amendments at Committee and Report Stages to

¹¹⁰ e.g. HL Deb 8 February 2000 c 541

¹¹¹ e.g. HL Deb 10 February 2000 cc 843-51 and HL Deb 13 March 2000 cc1297-9

¹¹² "Business gets biggest say in learning and skills network", *DfEE Press Notice*, 28 October 1999

¹¹³ HL Deb 8 February 2000 cc 548-5

¹¹⁴ e.g. HL Debs 8 February 2000 cc 542-3 and 10 February 2000 c 845

¹¹⁵ e.g. HL Deb 8 February 2000 cc 543-8 and c 561

¹¹⁶ HL Deb 8 February 2000 cc570-5

¹¹⁷ 13 March 2000, cc 1316-22

extend clause 2 provision to people between 16 and 25 who have learning difficulties or disabilities (or both).¹¹⁸ He drew attention to the fact that disabled learners often need longer than others to complete their studies. Baroness Blackstone acknowledged that there was a need for effective support to enable people with learning difficulties to complete courses and said that guidance to the LSC would underline this. However, she argued that it would be wrong to single out the needs of one specified group of adults and give them priority, and said that there would be difficulties in defining cases where people had experienced a delay in their progress in education because of their learning difficulty.¹¹⁹ Lord Pearson raised the issue of LEAs ceasing to fund pupils with SEN statements if they reach age 19 before the end of the school year. Baroness Blackstone said that the Government intend to use clause 7(2) of the Bill to require LEAs to ensure that funding for pupils with SEN statements in mainstream sixth forms or in special schools will not end on their 19th birthdays but will continue until the end of the course.¹²⁰

At Third Reading Baroness Sharp moved an amendment which was intended to enable the Secretary of State to extend clause 2 provision to older age groups as resources permit. In rejecting the proposal Baroness Blackstone pointed out that the Bill already contained a power in clause 27 to allow the Secretary of State to attach conditions to the funds made available to the LSC.¹²¹

Other concerns

The future of sixth forms, particularly small rural school sixth forms, and the need to retain local flexibility was raised.¹²² Lord Bach for the Government sought to allay Peers' fears about the new arrangements:

The Government have already said on a number of occasions in Committee that we want to ensure that young people have the best possible range and choice of good quality opportunities at this critical 16 to 19 stage. We have also said that effective school sixth forms have a key role to play in our drive to raise standards. I repeat: sixth forms that are providing good quality provision have nothing to fear from these proposals. We promised a real-term safeguard of funding levels where numbers are maintained.

We have gone on to make it clear that LSC funding to LEAs for their school sixth forms must be spent on schools with sixth forms and not diverted into other services. We have also said that LEAs will continue to be able to add, if they wish, to the funds provided by the LSC for the sixth forms in their area. This is important local flexibility.¹²³

Peers raised questions about the functions of the LSC, particularly the use of its powers under clause 6 to impose conditions on providers, and its supplementary functions under

¹¹⁸ HL Deb 8 February 2000 cc 575-81 and HL Deb 13 March 2000 cc 1322-30

¹¹⁹ HL Deb 8 February 2000 cc570-82 and cc 600-4; HL Deb 13 March 2000, cc 1322-30

¹²⁰ HL Deb 23 March 2000 c 413

¹²¹ HL Deb 23 March 2000 cc 407-14

¹²² e.g. HL Deb 8 February 2000 cc 611-6 and cc 636-41 and HL Deb 10 February 2000 cc 855-7

¹²³ HL Deb 10 February 2000 cc 855-6

clause 18. There was concern that clause 6 would affect the autonomy of providers. In Committee, Baroness Sharp and Baroness Blatch moved amendments to restrict the LSC's powers of access to information about providers.¹²⁴ At Report stage Baroness Blatch moved an amendment to remove clause 18 and raised detailed questions about the LSC's powers to acquire and dispose of land and property and enter into contacts. Lord Bach explained the powers, referring to a letter he had written to Baroness Blatch on 28 February 2000 describing the Government's thinking on each of the powers.¹²⁵

There was concern about the relationship between the LSC and its local councils and other bodies, particularly local Learning Partnerships. Baroness Blackstone emphasised that the Government intended that the planning process for the LSC would be as open and inclusive as possible, but she did not think it would be helpful to place additional requirements in the Bill for the LSC to consult particular groups or organisations.¹²⁶

Lord Tope, during Committee and Report stage debates, raised the need for some form of co-ordinating mechanism for the local LSCs in London. Baroness Blackstone said that the Government does not think that it is necessary to make such provision in the Bill, and that it would be a matter for the LSC and the local councils to consider.¹²⁷

Peers expressed concern about the LSC's powers to appoint governors at institutions in the FE sector. Both Baroness Sharp and Baroness Blatch felt that this would affect the autonomy of individual colleges and Baroness Blatch felt that the trigger mechanism for its use should be set out. Replying, Baroness Blackstone said that there was no question of the LSC filling normal vacancies, and that the power would be used as a last resort measure where the governing body of a college was failing in its duties.¹²⁸

During the Committee and Report Stages Lord Tope raised concern about the personal liability of governors in colleges in the FE sector. In response, Lord Bach said that the Government would consider the issue and introduce its own proposals to clarify the position at a later stage.¹²⁹

II National Council for Education and Training for Wales

A. Background

The current arrangements in Wales for provision of post-16 education and training are similar to those for England. The Further Education Funding Council for Wales

¹²⁴ HL Deb 8 February 2000 cc 631-6

¹²⁵ HL Deb 13 March 2000 cc 1396-9; House of Commons Library Deposited Paper 00/504

¹²⁶ HL Deb 10 February 2000 cc 861-6

¹²⁷ HL Deb 13 March 2000 cc 1399-1403

¹²⁸ HL Deb 8 February 2000 c 648

¹²⁹ HL Deb 14 March 2000 cc 1512-4

(FEFCW) funds the further education sector. LEAs fund school sixth forms, non-formal types of learning and adult education. The 4 TECs in Wales fund work-based training.

The FEFCW was established under the *Further and Higher Education Act 1992* - as an executive Non-Departmental Public Body - with similar responsibilities as the FEFC for England. The FEFCW's responsibilities are summarised in the Council's Corporate Plan¹³⁰ and in its Annual Report.¹³¹ General background information on the FEFC and TECs is provided in Part I of this paper.

B. Proposed new framework for post-16 learning in Wales

Following the 1997 General Election, Welsh Office Ministers established the Education and Training Action Group for Wales (ETAG). Its report, *An Education and Training Action Plan for Wales*, was published in March 1999.¹³² The National Assembly for Wales is responsible for taking decisions about its recommendations.

The Action Plan strongly recommended that the National Assembly for Wales establish a unified framework to integrate the planning, commissioning and resourcing for all post-16 publicly funded education and training programmes. It further recommended that the Assembly establish from April 2001 a National Council for Education and Training for Wales (CETW) to have lead responsibility, together with the Higher Education Funding Council for Wales, for funding all post-16 education and training. It envisaged that Community Consortia for Education and Training (CCETs) would be set up throughout Wales, which would draw up plans to advise the CETW on local provision. The action plan recommended that CCETs should represent further education institutions, local authority training and adult continuing education provision, school sixth forms, private training providers and employers who receive public funds for training, voluntary sector bodies, and, where appropriate, higher education institutions as associate members.

The National Assembly's Post-16 Education and Training Committee was asked to advise on how the recommendations in the Action Plan could be taken forward. Following consultation, the Committee reported on the views that had been put to it, and on its conclusions.¹³³ The Chairman's foreword notes that the report reflects the views of the majority of the Committee's members but that not each member agreed with every recommendation. The introduction notes that Jonathan Morgan (National Assembly Member for South Wales Central) dissented from some of the recommendations in the report. In particular, Mr Morgan felt that there was no case for abolishing the TECs; that sixth form funding should remain with local authorities and that there was no obvious need to establish a system of Community Consortia.

¹³⁰ *Corporate Plan 2000-20001 to 2002-2003*, FEFCW, February 2000

¹³¹ *FEFCW Annual Report, 1998-99*, FEFCW 1999

¹³² Education and Training Action Group for Wales, *An Education and Training Action Plan for Wales*, March 1999

¹³³ *Report by the National Assembly for Wales's Post-16 Education and Training Committee-Taking Forward the Recommendations of the Education and Training Action Group*, December 1999

The Post-16 Education and Training Committee Report observed that the vast majority of those responding to the committee welcomed the broad thrust of the ETAG proposals. However, opinions differed about aspects of the structure and delivery mechanisms. The report summarised the main points that respondents made, and in particular noted concern about school sixth form funding, the overall effects on Welsh medium education, the future of the TEC programmes, and adult education and the voluntary sector.¹³⁴

The Committee endorsed ETAG's proposal to establish a National Council for Education and Training for Wales having funding responsibility for all post-16 education up to higher education), including school sixth forms, but with funding channelled through local education authorities. The Committee recommended that the National Assembly should have discretion over the composition of the CETW, and that members should be drawn from a broad range of expertise, with no single interest dominating.

The Committee also endorsed the concept of establishing community consortia, and urged the Assembly to draw up a framework setting out how they should be established.

One of the main issues that the Post-16 Education and Training Committee had to consider was whether there should be a regional tier of the CETW. (As noted above, ETAG envisaged a structure whereby local consortia would be responsible for advising and planning for education at local level.) On 13 October 1999, the Assembly Secretary gave a paper to the Committee proposing that the CETW should have four regional boards whose boundaries would be co-terminous with the Assembly's Regional Committees, the Regional Economic Fora and the existing TECs. The regional boards' main role would be to identify the learning needs of young people and adults, and the skill needs of individuals, communities and employers across the region.

The Post-16 Education and Training Committee report noted that respondents were generally in favour of a regional element of some description, but that there were different views about what powers such a tier should have. Many organisations from within the business community, including the CBI and the Council for Welsh TECs, favoured business-led regional arms of CETW. The education sector, though broadly supportive of the need for a regional tier, was concerned that a regional tier with funding powers would dilute the model proposed by ETAG. The Committee considered a number of options, and concluded that the CETW should establish regional offices and regional advisory panels to assist CETW in its work. The panels would be expected to establish close links with Regional Economic Fora, with the Welsh Development Agency regionally, and with National Training Organisations (to widen the range of business involvement).

ETAG proposed a staged approach towards implementing the new arrangements. It envisaged the new Council becoming fully operational in April 2001. The Post-16

¹³⁴ *Report by the National Assembly for Wales's Post-16 Education and Training Committee, section 3*

Education and Training Committee report endorsed this approach and emphasised the need to get the implementation right if there is a conflict with pre-set deadlines.¹³⁵

On 1 February 2000, the National Assembly for Wales debated and approved the ETAG Action Plan and the Post-16 Education and Training Committee's report for its implementation.¹³⁶ Tom Middlehurst, the Assembly's Secretary for Post-16 Education and Training, summarised the proposed new arrangements as follows:

The new structure of CETW and the new Council will plan and manage its functions at national, regional and local level. The national Council will set the framework for delivering post-16 education and training in Wales. The Learning and Skills Bill makes provision for the Council to establish regional committees to cover the same areas as the Assembly's regional Committees and the areas of the existing TECs. The regional committees will be chaired by a member of the Council. They will have a key role in identifying regional skills needs and a strong, vital influence over the way the budget for work-based training is used. They will also be in a position to influence the use of funds for post-16 education within their areas. I envisage that the business community will have significant representation on these committees.

At local level the community consortia for education and training will help plan the delivery of programmes in their localities. The distinct components of local community consortia will have equal status and will be funded directly by the Council. In this field, too, business will have the important role of bringing its expertise and influence to bear on the local skills needed, and for their delivery. Business people will have a major impact on the skills revolution we intend to bring into effect. It is vital that business is involved at all levels in the new arrangements, and that various voices are heard loud and clear. I want the business community to know that the Assembly gratefully acknowledges the leadership and commitment of business leaders to the development of work-based training over the years. I welcome their offers of active participation in the new structures and confirm our determination that business will have a continuing substantial role in the new arrangements.¹³⁷

It has been announced that Steve Martin, who is to become the new Chief Executive of the FEFCW, will be appointed as Chief Executive of the new CETW, subject to the passage of the Bill through Parliament.¹³⁸

C. The Bill and debate in the Lords

The Bill seeks to provide the legislative framework to implement the main proposals contained in the ETAG Action Plan and the report of the Post-16 Education and Training Committee (see above).

Part II of the Bill seeks to create a new body - the National Council for Education and Training for Wales (CETW) - with broadly similar functions to the LSC in England, but

¹³⁵ *Report by the National Assembly for Wales's Post-16 Education and Training Committee*, section 4

¹³⁶ 'Welsh vision gets go-ahead' *TES*, 11 February 2000, FE Focus, p III

¹³⁷ National Assembly for Wales Official Record, 1 February 2000

¹³⁸ *Welsh Funding Councils Press Release*, 18 February 2000

with some differences to reflect Welsh circumstances. The main difference between the two councils is that the English council is accountable to the Secretary of State, the Welsh council to the National Assembly for Wales.

Clause 30 and Schedule 4 provide for the setting up of a new corporate body - the National Council for Education and Training for Wales (CETW) - consisting of between 10 and 12 members appointed by the National Assembly. In making the appointments, the National Assembly must have regard to the desirability of appointing people with relevant experience. Schedule 4 makes provision about members, staff, procedural matters and accounts.

During the Committee and Report stage debates, Lord Roberts of Conwy moved amendments to provide for the CETW to be the same size as its English counterpart, and to specify in the Bill that particular interests should be represented, particularly business interests. Replying for the Government, Baroness Farrington said that the Government was confident that the CETW would have the right balance of membership, and drew attention to the National Assembly's conclusion that to set a proportion of the membership for any particular group or interest would be too restrictive.¹³⁹

Clauses 31 to 33 set out the main duties of the CETW, which are similar to those for the LSC for England. The duties do not extend to the provision of higher education, which remains the responsibility of the Higher Education Funding Council for Wales. Clauses 31 and 32 make a distinction in the CETW's duty to secure the provision of 'proper' facilities for the education and training for 16 to 18 year olds, and the provision of 'reasonable' facilities for people 19 and over. The effect of these two clauses is that the CETW will give priority to meeting the needs of the younger group. In performing its duties in respect of both age groups the CETW must take into account a number of factors, including the provision that other bodies might reasonably be expected to provide. Following debate on the importance of workforce development, the Government amended the clauses to ensure that the council takes specific account of the education and training required in different sectors of employment.¹⁴⁰ (The provisions relating to the LSC for England were similarly amended.)

Unlike the duties of the FEFCW no distinction is drawn between full and part-time education in the provision that the CETW must secure for the two age groups. Nor is there a limitation by reference to the type of course on the education that may be secured. The current distinction between 'Schedule 2' and 'non-schedule 2' courses under the *Further and Higher Education Act 1992* will be removed.

Clause 33 sets out the CETW's duty to promote participation in post-16 education and training, and to encourage employers to become involved in its support and delivery.

¹³⁹ HL Deb 10 February 2000 cc884-3 and HL Deb 13 March 2000 cc1421-6

¹⁴⁰ HL Deb 13 March 2000 c 1426

Clauses 34 to 39 set out the main powers of the CETW, which are similar to those of the LSC for England. Clauses 34 and 35 contain the funding powers of the CETW and are similar to those for the LSC for England (set out in clauses 5 and 6). Under clause 35 the CETW may impose conditions on the funding it provides. Clause 36 provides for the CETW to have the same role in respect of the funding of school sixth form provision, as the LSC will have for England. Clause 37 provides for the CETW to assess the quality of the provision it funds. The Explanatory Notes explain the intention that the CETW will secure value for money. The findings from the inspectorate, Estyn, will help inform the CETW's judgements. Clause 38 gives the CETW the power to promote individual learning accounts.

Clause 39 was introduced into the Bill as a Government amendment, making similar provision in Wales as the LSC will have in England to allow the CETW to appoint up to two governors to the governing body of an institution that is part of the further education sector in Wales. The purpose of the provision is to allow the council to intervene at an early stage where there are concerns about a college.¹⁴¹

Clauses 40 to 44 set out the other functions of the CETW, which are similar to the LSC's powers. Clause 40 contains the CETW's powers and duties relating to research and to the provision of information. Under clause 41 the CETW, like the LSC, must have regard to the needs of people with learning difficulties, and, in particular, to any report of an assessment under clause 114 (assessments relating to learning difficulties). Government amendments extended the CETW's duty towards people with learning difficulties to include provision that is designed to form links between employers and learners, and introduced a new clause requiring the CETW to promote equality of opportunity.¹⁴² (The same clauses had been added to the English provisions.) The CETW's duty to promote equality of opportunity is contained in clause 42 and relates to equality of opportunity between people from different racial groups, between men and women, and between people with a disability and people without.

Clause 43 requires the CETW to have regard to any information supplied to it by any body designated by the National Assembly.

Clause 44 sets out the extent of additional powers to enable the CETW to perform its functions. In particular it may acquire and dispose of land and property, enter into contracts, make investments, and receive financial resources and gifts.

During the Committee debate, Lord Roberts moved an amendment to place a requirement on the CETW to produce an annual plan. Rejecting the proposal, Baroness Farrington stressed that the planning and strategic regime of the CETW would be a matter for the National Assembly:

¹⁴¹ HL Deb 10 February 2000, c 896

¹⁴² HL Deb 13 March 2000 c 1426-7

(Lord Roberts of Conwy):

The proposed new clause replicates Clause 15 in the English part of the Bill. Clause 15 states that the LSC,

"must make and publish a plan for each of its financial years".

It goes on to specify the detailed requirement. I believe that this is a sound clause and that it should apply also to the Welsh council. It may be argued that the substance of the clause can be included in the remit given by the National Assembly to the council, but we have no certainty that it will be so included. We have an opportunity here and now to put the requirement for an annual plan on the face of the Bill. I believe that that is where it belongs. It is so fundamental a requirement that it seems to me to belong to the sphere of primary legislation rather than a remit which, of course, can enlarge on the contents of the clause. Needless to say, careful planning is all important in the sphere of education and training and I am sure that we should highlight the need for it. I beg to move.

Baroness Farrington of Ribbleton: As regards the planning and strategic regime of the CETW, the National Assembly has made it clear that it will set out its requirements on these matters in the remit letter to the new council for Wales. We are aware of the significant interest of the noble Lord, Lord Roberts, in the devolution settlement and of the impact that the Government of Wales Act has made on Wales.

We should all welcome the opportunity that devolution has given to Wales to choose its own direction to a considerable extent in post-16 education and training. The intention of the National Assembly to deal with the planning and strategic functions of the CETW through its remit letter is a very good example of that. I hope that the noble Lord will agree and will feel able to withdraw his amendment.¹⁴³

Clause 45 gives the National Assembly direction-making powers over the CETW. The Government introduced an amendment to the clause at Report stage to make specific provision to enable the National Assembly to issue a direction if it is satisfied that the LSC has failed to discharge a duty or has acted, or is proposing to act, unreasonably.¹⁴⁴ (The comparable clause relating to the LSC for England was similarly amended.) Section 56 of the *Further and Higher Education Act 1992* contains the current direction-making powers relating to the FEFCW.

Clause 46 and Schedule 5 enable the CETW to establish such committees as it thinks fit. Under Schedule 5 paragraph 2 the CETW may establish regional committees.

Lord Robert of Conwy moved amendments at the Committee and Report stages seeking to require the CETW to set up regional committees, and to bring the proposed arrangements for Wales more into line with those for England by requiring the establishment of committees for young people's learning and adult learning.¹⁴⁵ Baroness Farrington, replying for the Government, observed that the National Assembly, with the

¹⁴³ HL Deb 10 February 2000 c 899

¹⁴⁴ HL Deb 13 March 2000 c 1427

¹⁴⁵ HL Deb 10 March 2000 cc 901-6 and HL Deb 13 March 2000 cc 1427-32

support of the cross-party Post-16 Education and Training Committee, had made it clear that its strong preference was for the CETW to have a permissive power rather than a duty with regard to the setting up of committees.¹⁴⁶

Lord Roberts also raised the role of the non-statutory community consortia. Baroness Farrington confirmed that these would be voluntary partnerships of education and trainer providers.¹⁴⁷

Clause 47 gives the National Assembly the power to fund the CETW. Clause 48 requires the CETW to report annually on its activities to the National Assembly. Clause 49 defines the CETW's financial year.

Clause 122 provides for the provisions relating to Wales to come into force with commencement orders made by the National Assembly for Wales.

Effects of the Bill on public sector finances and public sector manpower

The Explanatory Notes to the Bill state that the changes in Wales are expected to bring estimated public expenditure savings of £7.5 million by 2003 to 2004, although it is too early to provide an accurate estimate of the transitional costs of putting in place the new arrangements. The CETW will be an Assembly-sponsored public body. Its staff will not be civil servants but will be paid out of public funds by the National Assembly. The new arrangements in Wales are likely to result in a reduction in the total number of staff funded by public money by at least 15% and 20%.

III Inspections in England

Parts III and IV of the Bill make provision for the inspection of post-16 education and training. In both England and Wales the responsibility for inspection is to be separated from funding. In England there are to be two inspectorates. The Adult Learning Inspectorate is established to inspect education provision post-19 (adult education) and work-based training provision for all ages. OFSTED's remit is extended to cover all provision for 16 to 19 year olds in schools and colleges. In Wales there is a single inspectorate: the remit of Her Majesty's Chief Inspector of Schools is extended to all post-16 education and training.

A. Background: current arrangements

1. OFSTED

OFSTED, the Office for Standards in Education set up by the *Education (Schools) Act 1992*, is responsible for inspecting sixth forms as part of its school inspections.¹⁴⁸ The aim

¹⁴⁶ HL Deb 10 February 2000 c 904

¹⁴⁷ HL Deb 10 February 2000 cc 906-8

in creating OFSTED was to give Her Majesty's Chief Inspector (HMCI) and a much smaller body of HMI a more powerful role and greater independence of Government.¹⁴⁹ OFSTED was to be responsible for training registered inspectors and then contracting with them and their teams to provide inspections of schools. The changes were intended to reflect the principle in the Citizen's Charter that inspection should be carried out independently of the producer interest.¹⁵⁰ As a result, the number and role of local education authority inspectors was greatly reduced. OFSTED's remit has since been extended to cover pre-school education, teacher education and training and, with the Audit Commission, LEA support for school improvement. LEA youth services, LEA-funded or assisted adult education and voluntary youth organisations are also inspected.¹⁵¹ The *Care Standards Bill [HL]*¹⁵² currently in the Lords will establish a new arm of OFSTED with responsibility for inspecting not only educational settings for under fives but also care settings.

In all areas, the work of OFSTED and, at times, the comments of the current HMCI Chris Woodhead have been the subject of controversy. In a recent article Chris Woodhead outlined the six principles underpinning OFSTED's work:

- The inspectorate must be independent from the government, on the one hand, and the profession, on the other
- Judgements must be made against objective and transparent standards
- The inspection must focus on the relationship between the quality of teaching and the achievement of the student
- Bureaucratic demands must be kept to a minimum
- Reports must be as intelligible and as useful to our potential audiences (students, parents, schools and colleges, government) as we can make them
- Intervention must, as the government likes to put it, be in inverse proportion to success.

He put the argument for external inspection as a necessary companion to an institution's internal review processes.

It is the rigour and the process of an external inspection, reflected in the comments on both areas of success and weaknesses in HMCI's annual report,¹⁵³ which has made it 'a stressful experience' for many schools. However, the Select Committee report, which recorded that comment recommended that the 'optimal tension' should exist between inspectors and teachers; the relationship should be neither too stressful nor too close.¹⁵⁴ The Committee also agreed with HMCI that self-evaluation by schools (or internal

¹⁴⁸ *School Inspection Act 1996*, s.10

¹⁴⁹ New arrangement for school inspection. DES letter to Chief Education Officers 2 October 1991

¹⁵⁰ *The Citizen's Charter: raising the standard*. Cm 1599 July 1991

¹⁵¹ *Corporate Plan 1999*, OFSTED 1999 p.20; *Further and Higher Education Act 1992* s.55

¹⁵² HL Bill 18 Part V

¹⁵³ *Standards and Quality in Education 1998/9*. HMCI's annual report. OFSTED February 2000 HC 157 of 1999/2000

¹⁵⁴ *The Work of OFSTED*. Fourth Report. Education and Employment Committee 1998-99. Vol.1 Summary of Conclusion and Recommendations para.21

review) could not replace external inspection.¹⁵⁵ The strongest criticism recorded was in the area of inspection of initial teacher training where the Committee recommended, 'as a matter of priority', a differentiated system of inspection, with a light touch inspection for providers of good quality courses.¹⁵⁶ Finally, the committee listed three principles as central to the work of HMCI:

- First, the role of the Chief Inspector should include encouraging the formation of a consensus about the importance of OFSTED's work across a wide field
- Second, we support the view that HM Chief Inspector should, where appropriate, speak out on education issues. However, we feel strongly that such public expression of views should be based firmly on clear and scientific evidence emerging from inspections undertaken by OFSTED's inspectors and other reputable sources
- Third, in carrying out his or her role the Chief Inspector should be concerned to improve morale and promote confidence in the teaching profession.¹⁵⁷

The Government response to these suggested principles was:

Under the leadership of Chris Woodhead, OFSTED is making a significant contribution to the Government's drive to raise standards in schools, nursery education, local education authorities and teacher training. Part of HMCI's job is to 'tell it as it is', speaking plainly and openly about the strengths and the weaknesses identified through inspection. Chris Woodhead has been prepared to speak up where standards have not been good enough and the Government believes that this has contributed to the raising of standards. He has also highlighted successes and identified good practice. The Government shares the Committee's view that it is regrettable that much of the perception of Chris Woodhead amongst the education community has been shaped by unbalanced and unhelpful media coverage. We agree that it is for OFSTED to identify and share good practice wherever possible, but here the media's willingness to ignore good news can prove difficult.¹⁵⁸

2. Further Education Inspectorate

The Further Education Inspectorate is the inspectorate arm of the FEFC. The *Further and Higher Education Act 1992*¹⁵⁹ gave the FEFC the statutory duty of assessing the quality of education in the FE sector in England. Kenneth Clarke, then Secretary of State for Education, wrote an article just before the presentation of the Bill suggesting that the

¹⁵⁵ op cit. Overview p. vi

¹⁵⁶ Summary para. 43-45

¹⁵⁷ HC 62-I 1998/99 p.vii

¹⁵⁸ *Government's and OFSTED's response to the Fourth Report from the Committee*, Session 1998-1999: *The Work of OFSTED*. Education and Employment Committee Fifth Special Report. Annex 1 para. 65

¹⁵⁹ s.9 (1)(a)

some 135 HM inspectors working in further and higher education would transfer to the new funding councils to continue their inspection and monitoring duties.¹⁶⁰ There was, however, no reference in the Bill to such a transfer.

The FEFC decided to fulfil its responsibility with respect to quality assessment by inspection by its own inspectorate and the collection and comparison of performance indicators from FE colleges.¹⁶¹ 70 full time inspectors drawn mainly from HMI were supported by over 500 part-time inspectors drawn from the FE colleges. College inspection teams also include a nominated member of the staff of the college being inspected. Dr Terry Melia, the first Chief Inspector FEFC, argued last year in his evidence to the Select Committee that this approval had been successful.¹⁶² Each college also prepares a self-assessment report before inspection.

Although FEFC Inspectorate have published grades for all colleges and highlighted recurring problems, the Chief Inspector and the inspectorate seem to have had an easier relationship with the colleges than OFSTED's with schools.¹⁶³

FEFC and OFSTED have worked together. *Post-16 Collaboration: School Sixth Forms and the Further Education Sector*¹⁶⁴ examined joint provision and consortia.¹⁶⁵

Published reports suggest that colleges are concerned about the future of self-assessment in the new inspection proposals.¹⁶⁶ Malcolm Wicks, the lifelong learning Minister, is also reported as being aware of the deep hostility to OFSTED in the FE sector and to see the value of combining both methods of inspection.¹⁶⁷

3. Training Inspectorate¹⁶⁸

On 26 August 1997, the Government confirmed that it intended to establish a new Training Standards Council (TSC) to improve the quality of government-funded training delivered through Training and Enterprise Councils (TECs) in England.¹⁶⁹ The TSC and its operational arm, the Training Inspectorate (TI), came into formal existence from 1 April 1998 and the programme of full inspections began on 5 May 1998. The TSC is a private company limited by guarantee which operates under an annual contract with the

¹⁶⁰ *TES* 1 November 1991

¹⁶¹ *Quality and Standards in Further Education in England*. Chief Inspector's Annual Report FEFC 1994 para. 44

¹⁶² *The Work of OFSTED*. HC 62-I 1998/99 para.116

¹⁶³ Ten colleges hog the poor grades. *TES* 29 October 1999 FE I

¹⁶⁴ FEFC and OFSTED September 1999

¹⁶⁵ 'Post-16 Collaboration: a summary.' *Education Journal* October 1999

¹⁶⁶ FEDA briefing, December 1999

¹⁶⁷ 'Enter the Minister for lifelong levelling'. *Education Journal* October 1999 p.16

¹⁶⁸ Written by Tim Jarvis, Business and Transport Section

¹⁶⁹ DfEE press release, *New standards council set to boost training – Howells*, 26 August 1997

Government. It is funded by the Government under powers contained in section 2 of the *Employment and Training Act 1973*.¹⁷⁰

The terms of reference of the TSC are:

- To advise the Secretary of State for Education and Employment and the TEC National Council on the quality of training in England offered by training providers supported by public funding.
- To oversee the development and implementation of a quality assurance framework for training providers, embracing self-assessment and external inspection.
- To recommend to the Secretary of State for Education and Employment and the TEC National Council and keep under review methods for assessing quality and standards of training provision and related methods of assessing competence.
- To receive assessment reports, from the national inspectorate, on government-funded training providers, sector provision and on other aspects of training provision in England and elsewhere, and to advise on necessary action.
- To report annually to the Secretary of State for Education and Employment and the TEC National Council, including an evaluation of the overall quality of training in England.
- To advise on other matters as requested from time to time by the Secretary of State for Education and Employment and the TEC National Council.¹⁷¹

The council has 15 members including the chief inspector and members are drawn from industry, training organisations, education and TECs. A team of about 30 staff is based in Oxford and the inspectorate is made up of a network of 30 full-time inspectors and five senior inspectors who work from home. According to the chief inspector's annual report in 1998-99, their responsibilities include: leadership of inspections, which are conducted with the participation of part-time associate inspectors; leadership in matters related to the occupational areas in which they are qualified and experienced; representing the inspectorate locally and maintaining close links with TECs, government offices and Employment Service regional offices; representing the Council on professional bodies and other national organisations.¹⁷²

¹⁷⁰ Explanatory Notes Bill 96-EN, p 6

¹⁷¹ Training Standards Council, *Reaching new standards: annual report of the chief inspector 1998-1999*, 1999, p 69

¹⁷² *Ibid*, p 70

The scope of inspection focuses on Modern Apprenticeships, including Foundation Modern Apprenticeships, Work-Based Learning for Adults and other adult and youth training programmes. Pilot inspections of the New Deal began in October 1998. The TSC carried out 400 inspections in its first year and providers are inspected over a four year inspection cycle.¹⁷³ The TSC/TI is funded by the DfEE; in 1998-99 expenditure on inspections was £4.9 million and the planned expenditure for 1999-00 is £6.9 million.¹⁷⁴ The TSC is currently part of a range of bodies which inspect education and training and its relationships with these relevant bodies are covered by a series of protocols and memoranda of understanding. These arrangements are summarised in the chief inspector's annual report.¹⁷⁵

The TI assesses providers in occupational and generic aspects. There are three occupational aspects: training and assessment; trainees' achievements; and resources. There are four generic aspects: equal opportunities; trainee support; management of training; and quality assurance. Providers are awarded grades on a range from 1 to 5. Grade descriptors are:

- Grade 1 Outstanding provision which has many strengths and few weaknesses
- Grade 2 Good provision, in which the strengths clearly outweigh the weaknesses
- Grade 3 Satisfactory provision, with a mixture of strengths and weaknesses
- Grade 4 Less than satisfactory provision in which the weaknesses clearly outweigh the strengths
- Grade 5 Poor provision, which has few strengths and many weaknesses¹⁷⁶

The same grading system operates in the years of self assessment in the four-year cycle. All those providers who receive a grade 4 or 5 in any aspect of their provisions are being re-inspected.¹⁷⁷ This involves 147 of the 300 providers considered in the first annual report. In the first 300 inspections, 20 organisations were awarded a grade 1 or 2 in every aspect of provision. Twelve providers, 4% of all those inspected, were awarded grades at least 80% of which were less than satisfactory or poor.¹⁷⁸

¹⁷³ DfEE, *Departmental report: the government's expenditure plans 1999-00 to 2001-02*, March 1999, Cm 4202, p 80

¹⁷⁴ Ibid

¹⁷⁵ Training Standards Council, *Reaching new standards: annual report of the chief inspector 1998-1999*, 1999, p 70

¹⁷⁶ Training Standards Council, *Raising the standard: guidelines for self-assessment and inspection of work-base training*, April 1998, p 18

¹⁷⁷ DfEE, *Departmental Report*, March 1999, p 80

¹⁷⁸ Training Standards Council, *Reaching new standards: annual report of the chief inspector 1998-1999*, 1999, p 12

The TSC has said that the change to the new arrangements could result in a loss of specialist staff.¹⁷⁹ This is because the TSC is currently based in Oxford but the new Adult Learning Inspectorate is to be based in Coventry with the Learning and Skills Council.

B. Proposals

The Green Paper, *The Learning Age*, stated:

5.13 Effective internal quality assurance systems, combined with regular independent inspections against a consistent framework of standards, are critical to raising quality and achievement and reducing drop-out rates. We propose now to build on the best practice which already exists and harmonise post-16 inspection arrangements across schools, further education colleges, LEAs' adult education and training providers. We will work with inspectors and providers and consult widely to develop a national framework and common procedures and marking systems. We propose to publish appropriate performance indicators and targets for individual providers.¹⁸⁰

A priority for early action was to harmonise inspection arrangements and set in place an independent Training Inspectorate.¹⁸¹

The White Paper, *Learning to Succeed*, announced an independent, rigorous and effective inspection regime to complement the Learning and Skills Council and the support service for young people. The Secretary of State cited the responses to *The Learning Age* as confirming the Government's view that the current arrangements for post-16 learning provided 'an insufficient focus on quality'.¹⁸² Weakness in the inspection and quality control system were outlined:

- 2.9 Similar types of provision have different quality assurance systems and are inspected by different agencies according to their location. For example:
- the Moser report¹⁸³ comments that there are three different inspectorates - FEFC, TSC and OFSTED - operating in the area of adult basic skills with different frameworks and criteria. It makes recommendations for harmonising inspection approaches. A levels and GNVQs are inspected by both OFSTED and FEFC;

¹⁷⁹ 'Inspection shake-up threatens standards', *Times Educational Supplement*, 5 November 1999

¹⁸⁰ *The Learning Age: a renaissance for a new Britain*. DfEE February 1998 Cm 3790 para.5.13

¹⁸¹ Cm 3790 Chapter 5. p.61

¹⁸² *Learning to Succeed: a new framework for post-16 learning*. DfEE June 1999 Cm 4392 Foreword by the Secretary of State p.3

¹⁸³ *Improving literacy and numeracy - a fresh start*. Report of the working group chaired by Sir Claus Moser. February 1999

- schools sixth forms are inspected by OFSTED, while identical types of provision in colleges are inspected by the FEFC on a wholly different basis;
- the frequency of inspections varies. FEFC and TEC funded provision is inspected and reported on more frequently than sixth form provision. LEA adult education is hardly inspected at all;
- there has been duplication between the FEFC and TECs, although there has been recent agreement of new working arrangements to improve co-operation in relation to inspection;
- there are no shared frameworks, self-assessment arrangements, grading systems, formats for reports, or post-inspection requirements; and
- different intervention arrangements and performance indicators hinder benchmarking and make it difficult to compare rates of retention and achievement across the different delivery routes.

2.10 These arrangements do not help deliver the consistent and co-ordinated approaches or the proper evidence base necessary to drive forward our agenda for raising standards. Nor do they establish the clear accountability necessary for ensuring quality. The case for integration and harmonisation is compelling.¹⁸⁴

The new arrangements were set out:

- 5.9 To ensure quality, independent rigorous inspection is vital. We intend to rationalise the existing inspection systems. Our aim is to provide a new coherence and unity in the inspection process for provision for young people through to the age of 19. We will also bring together the current arrangements for the inspection of provision for adults, and of work-based training, into a single new system.
- 5.10 OFSTED will be responsible for the inspection of provision for 16-19 year olds in schools and colleges. For post- 19 provision in colleges, and for work-based provision for all age-groups, there will be a new independent Inspectorate. OFSTED will continue to inspect provision for the Youth Service. Adult and community education will be inspected by the new Inspectorate, as will appropriate provision within the ambit of the Ufl. The two Inspectorates will work together, where appropriate, to plan a joint inspection programme for sixth form, further education and tertiary colleges.
- 5.11 All inspections should be based on a common framework. The inspectorates must ensure that:

¹⁸⁴ Cm 4392 para. 2.9 and 2.10

- inspections report on the quality of education and training provided, standards achieved, the supporting provider infrastructure, management, governance and value for money;
 - the responsibilities of inspectors are clearly set out in relation to cross-college provision on the one hand, and curricular areas on the other; and
 - a single reporting approach is adopted.
- 5.12 The Government will look to OFSTED to increase its focus on sixth form provision in schools. We wish to ensure that it is inspected in as much depth and as frequently as other school provision and 16-19 provision elsewhere. The Government will also look to OFSTED to lead area wide inspections for 16-19 education and training, encompassing all providers and in partnership with the new adult Inspectorate. These will focus on areas where the challenge to raise achievement and participation is particularly acute. Such inspections will not only make 16-19 providers more accountable by commenting on the match of provision to local demand, but will also support the Learning and Skills Council in its wider planning role.
- 5.13 In addition to carrying out their inspections of individual providers, both Inspectorates will:
- advise the Learning and Skills Council on the adequacy of action plans produced by providers to address weaknesses revealed in inspections, in return for funding to support improvement;
 - monitor providers causing most concern on a continuing basis (including through formal reinspections) until they can be moved out of that category or be subject to remedial action on the basis of continuing poor performance, as outlined above;
 - prepare good practice reports drawn from inspection findings;
 - undertake national surveys of key policy areas, and
 - carry out international comparative studies.¹⁸⁵

The Learning and Skills Council Prospectus gave further details of the remits of the two inspectorates, including appropriate UFI *learn direct* provision and community learning as the new Adult Learning Inspectorate's responsibility.¹⁸⁶ It also added further detail on the inspection framework and the area-based inspections of 16-19 provision. These are

¹⁸⁵ Cm 4392 para. 5.9 - 5.13

¹⁸⁶ *The Learning and Skills Council Prospectus: Learning to Succeed*. DfEE 1999 para.5.8

already under way with collaboration between OFSTED, the FEFC Inspectorate and the TSC:

What will area inspections cover?

Areas will usually be a single LEA. Sometimes an area may comprise more than one or part of an LEA, or part of a local LSC area.

Most school sixth forms, colleges and major training providers in the area will be visited but the focus will be on the quality of what is provided in the area as a whole.

Inspectors will draw on other evidence of recent or current inspections of individual institutions or providers to complement their activity, and in order to minimise burdens on providers.

Inspections will be in two stages:

Stage 1 - collecting evidence, including performance, curriculum, programmes, costs/resources from LSC, LEAs and providers.

Stage 2 - subsequently inspectors will visit a sample of lessons/sessions to look at provision and learner reaction to it. Themes across sectors will be addressed at this stage. Inspectors will also consider the contribution which the LEA(s), local TEC(s) (and later LSCs) and the Careers Service, make to 16-19 provision in the area. Local labour market and skill needs information will also be considered

5.12 Area inspection reports will lead to action plans involving both the local LSC and the LEA(s), who will work in close consultation with all parties: schools, colleges and training providers. These action plans will link directly to the strategic roles of both the LSC and the LEA(s) to ensure that emerging themes receive appropriate attention to spread good practice and avoid common problems.

5.13 A separate report will be published annually by each local LSC on action taken to promote quality improvement in its area, including action taken to address weaknesses identified by inspections. This report will help individuals and businesses make judgements on the quality of learning and skills available locally. The Inspectorates will also publish Annual Reports on their activities. Individual provider reports will continue to be published.¹⁸⁷

Reactions

The Associations of Colleges, the representative body for FE colleges, welcomed the separation of inspection from funding but would have preferred a single post-16

¹⁸⁷ op cit. p.46 and para.5.12 and 5.13

inspection agency.¹⁸⁸ NATFHE, the University and College Lecturers' Union, also expressed grave concerns about proposals for a divided inspection system. It would have preferred a system separated from funding but 'based around a regime and process similar to that of the FEFC and the Training Standards Council - giving support and advice as well as inspection.' The union expressed astonishment at the intention to extend OFSTED's remit to an area where the inspection regimes had had the backing of provider, lecturers and trainers.¹⁸⁹ Chris Woodhead signalled a tough approach to FE colleges in a recent speech but David Gibson Chief Executive of the Association of Colleges stated that he had received assurances from him that both self-assessment and external assessment were necessary.¹⁹⁰

C. The Adult Learning Inspectorate

The Bill and the debate in the Lords

Clauses 50-57 and Schedule 6 establish the Adult Learning Inspectorate (ALI) as a new Non-Departmental Public Body with nine members including the chairman and chief officer appointed by the Secretary of State.¹⁹¹ Schedule 6 makes provisions for the membership, staff and procedures of ALI. Clause 51 sets out ALI's remit to inspect FE for people over 19 funded by the LSC or an LEA; training taking place partly or wholly on employers' premises for people aged over 16, which is wholly or partly funded by the LSC; and training funded (through the Employment Service) under the *Employment and Training Act 1973*. There is a regulation making power¹⁹² to enable other education and training to be prescribed as being within the remit.

Clause 51(2) was added by the Government at Report Stage to allow ALI to inspect all FE teacher training.

Lord Bach explained how FE teacher training was delivered and the intention that ALI should inspect the full range.¹⁹³

Clauses 52-57 set out the functions of ALI and the Chief Inspector. They encompass a duty upon the Inspectorate to keep the Secretary of State informed about quality and standards of provision within its remit and to make an annual report to the Secretary of State. In addition the Chief Inspector has a duty to carry out inspections as requested by the Secretary of State, and the new inspectorate has powers to carry out inspections of any provision within its remit as it thinks fit. Clause 52 was amended on Third Reading to

¹⁸⁸ *Learning to Succeed*: a response from the Association of Colleges. para. 29

¹⁸⁹ *Learning to Succeed*: Response from NATFHE October 1999 pp.14-15

¹⁹⁰ 'Ofsted hints at hardline on FE'. *THES*. 3 March 2000

¹⁹¹ Clause 1

¹⁹² Clause 51 (1)(e)

¹⁹³ HL Deb 14 Mar 2000 cc. 1448-9

cover Baroness Blatch's request that the inspectorate should give notice if it wished access to the workplace.¹⁹⁴ In accepting the point on Report, Lord Bach said:

Employers are in a different situation to colleges and schools, in that they are not solely concerned with education. We want to ensure that inspection will not interfere unduly with normal business.¹⁹⁵

The financial memorandum notes that the overall expenditure on inspection as a result of the provisions of this Bill is not expected to rise substantially.¹⁹⁶ LSC and ALI together are likely to employ a total of around 5,000 staff.¹⁹⁷

Debates in the Lords focused on the need for two inspectorates, the operation of the joint framework and the relationship between the inspectorates. Lord Dearing on second reading asked why ALI should be cast as a junior partner.¹⁹⁸

In Committee Baroness Sharp for the Liberal Democrats moved amendments to rationalise and simplify the inspection framework, giving ALI responsibility for all post-16 learning except that carried out in schools. She drew attention to the apparent division of OFSTED looking at the educational side of provision and ALI at training and cited FEFC as the only one of 250 consultees to support a joint inspection.¹⁹⁹

Baroness Blatch for the Conservatives described this part of the Bill as 'a dog's breakfast' and questioned whether the two Inspectorates would manage to work together given different approaches: ALI being evaluative and OFSTED observational.²⁰⁰ The Government rejected the amendments and reiterated the need for two inspectorates, separate working within a common framework. Baroness Blackstone also clarified the separate role of the Accreditation Board set up by the Guidance Council in inspecting information, advice and guidance for adults.²⁰¹

Baroness Sharp returned to the theme on Report with amendments aimed at putting the two sets of inspectors on a par. Baroness Blackstone for the Government again rejected the notion of two totally different cultures, claiming that colleges had feared the idea of duplicate inspections.²⁰²

¹⁹⁴ HL Deb 23 March 2000 c.422

¹⁹⁵ HL Deb 14 March 2000 c. 1459-60

¹⁹⁶ Bill 96 - EN para.220 and 222

¹⁹⁷ para. 206

¹⁹⁸ HL Deb 17 January 2000 c. 895

¹⁹⁹ HL Deb 15 February 2000 c.1141

²⁰⁰ HL Deb 15 February 2000 cc.1143-4

²⁰¹ HL Deb 15 February 2000 c.1166

²⁰² HL Deb 14 March 2000 cc. 1443-7

Other unsuccessful amendments included attempts to extend the influence of ALI to initiating area inspections²⁰³ and to remove from ALI's remit any FE teacher training in universities.²⁰⁴ Baroness Blackstone made clear the Government's view that the focus of area inspections was on 16-18 provision and therefore within OFSTED's remit.²⁰⁵

D. Her Majesty's Chief Inspector of Schools in England

Clauses 58-66 provide for the extended remit of OFSTED for 16-19 provision, the duty to make inspections at the Secretary of State's request and the power to make its own inspections. These provisions include area inspections (if appropriate, with ALI's advice and involvement) and the duty on the LSC and local education authorities to produce action plans in the light of area inspections. The financial memorandum notes that this will lead to some additional expenditure by OFSTED but that it is not possible at this time to provide an accurate estimate.²⁰⁶

The amendments proposed on the previous clauses setting up ALI had allowed peers to express views on the extension of OFSTED's remit. Baroness Sharp repeated the Liberal Democrat view that the extension of the remit was ill advised.²⁰⁷

Baroness Blackstone in Committee expanded on the purpose of area inspections.²⁰⁸ She summarised this on Report:

We need area inspections to have a 16 to 18 focus in order to ensure that local providers really do meet local needs, including the labour market need for well qualified young people. Where 16 to 18 standards need to be raised, we must ensure that there is a sound basis for intervention. Our provisions in Clauses 63 to 65 will secure that policy.²⁰⁹

E. The Common Inspection Framework and Joint Inspections

Clauses 67-69 provide for the common inspection framework to be agreed between the two inspectorates and for regulations to govern the arrangements for joint inspection.

Baroness Blackstone provided information on the progress of the framework which will enshrine the principles which both inspectorates will apply to all inspections:

Perhaps this is a good opportunity to explain to the House that some important preliminary work has taken place. I am enormously grateful to the three existing chief inspectors. Chris Woodhead from Ofsted, Jim Donaldson from the Further

²⁰³ HL Deb 15 February 2000 cc. 1167-1173 and 14 March 2000 cc. 1455-9

²⁰⁴ HL Deb 14 March 2000 cc.1447-9

²⁰⁵ HL Deb 14 March 2000 c.1457

²⁰⁶ Bill 96 - EN para.219

²⁰⁷ HL Deb 15 February 2000 cc. 1179-80 and 14 March 2000 cc. 1558-9

²⁰⁸ Clause 63-65

²⁰⁹ HL Deb 14 March 2000 c. 1458

Education Funding Council inspectorate, David Sherlock of the TSC and many of their staff have been working extremely hard to draw up the draft framework which is a 'prototype' of the statutory framework. It will therefore be possible, probably next month, to have non-statutory consultation on the framework principles. That will be in addition to the three-month statutory consultation which can take place only after enactment of the Bill.²¹⁰

Baroness Blatch moved an amendment reflecting the concern that the framework would not accommodate workplace training. Although the amendment was rejected as unnecessary, Baroness Blackstone made it clear that the confidence of employers in the inspection system was a matter of concern to the Government:

Employers have a great deal of confidence in the TSC. It was highly commended recently by the CBI for the way it has developed a rigorous and positive system for inspecting work-based provision. I am sure that we shall not find that employers are discouraged from offering training. We must certainly avoid that. One of the great challenges we face is to get every employer in this country to offer training to all employees.²¹¹

An amendment to base the lead inspectorate on the majority age group in joint inspections²¹² was moved in committee by Lord Haskel and supported by Lord Dearing and Baroness Blatch. Lord Dearing objected to HMCI being put in the lead on joint inspections whereas under the two clauses relating to the framework collaboration was required. In rejecting the amendment Baroness Blackstone said that a headcount to establish a majority would be misleading. Most 16-19 year olds in FE were full time and nearly all adults, part time. 'A numerical formula, however constructed, simply would not work.' Nonetheless a joint inspection had to have a clear lead and the Government had chosen OFSTED.²¹³

IV Inspections in Wales

A. Background: current arrangements

The Office of Her Majesty's Chief Inspector for Wales (OHMCI now Estyn), a non-Ministerial Government Department comprising Her Majesty's Chief Inspector and her staff, inspects both schools and post-16 education and training provision in Wales. The *Education (Schools) Act 1992* set up OHMCI by making parallel provisions to those for England setting up OFSTED. *The Further and Higher Education Bill [HL]*²¹⁴ was amended in the Lords to allow the new HM Chief Inspector of Schools in Wales to inspect FE institutions.²¹⁵ The Government's argument for making this provision only for

²¹⁰ HL Deb 14 March 2000 c. 1461

²¹¹ HC Deb 14 March 2000 c. 1461

²¹² Clause 69

²¹³ HL Deb 15 February 2000 cc. 1180-7

²¹⁴ HL Bill 37 of Session 1991/92

²¹⁵ HL Deb 3 February 1992 cc. 36-40

Wales was the much smaller scale of the Funding Council's operations in Wales and the need for flexibility. Section 9 of the *Further and Higher Education Act 1992* therefore places a duty on FEFCW to secure that provision is made for assessing the quality of education and carries out the inspection for the Council.

The *School Inspections Act 1996*²¹⁶ sets out Estyn's functions in relation to the inspection of schools, including sixth forms. Section 55 of the *Further and Higher Education Act 1992* provides for Estyn's inspection of LEAs' post-16 provision other than in schools.

Training provided through the four TECs in Wales is inspected by the Office of Her Majesty's Chief Inspector for Wales (Estyn) under powers contained in the *Teaching and Higher Education Act 1998*.²¹⁷ The inspections are based on a similar framework to that operating in England. The *Annual Report of Her Majesty's Chief Inspector (Estyn) 1998-99* noted that 'not all trainees were receiving satisfactory training.'²¹⁸

Estyn currently has no statutory remit to inspect New Deal provision responsibility for which is reserved with the Secretary of State for Education and Employment.²¹⁹ Estyn currently inspects this provision under contract arrangement with the Training Standards Council and the Bill would allow this to continue.

Susan Lewis, the Chief Inspector of Schools in Wales, announced that the Office of Her Majesty's Chief Inspector of Schools in Wales would be known as Estyn in June 1999. The Welsh word means 'extend' or 'stretch' and, according to the Chief Inspector, more accurately reflected the wider role the organisation had taken on in April with the extension of its remit to both education and training. The BBC report on the announcement commented:

The managers of the Welsh school inspection system have been keen to stress that their approach is based on partnership, and have tried to distance themselves from the sometimes confrontational image of their English counterpart, Chris Woodhead.²²⁰

B. Proposals

The Welsh Office Green Paper *Learning is for Everyone*²²¹ stated:

18. Schools, youth and community education services in Wales have been regularly inspected by OHMO. Then again, since 1993 the FEFCW has been responsible for the assessment of quality in the FE sector, including the college

²¹⁶ ss. 4-6

²¹⁷ s. 34

²¹⁸ Inspection shake-up threatens standards'. *TES*. 5 November 1999

²¹⁹ HL Deb 15 January 2000 c.1189

²²⁰ <http://www.bbc.co.uk/>

²²¹ Cm 3924 April 1998

based elements of vocational training; the FEFCW use the services of OHMCI to do this.

19. We propose to seek Parliament's approval to extend OHMCI's remit to cover all other training leading to vocational qualifications. This will encompass training provided by employers at the workplace as well as that offered commercial training providers' facilities. It will ensure that the same standards of assurance through inspection apply across the whole spectrum of learning, whatever the setting. We will, via the TECs, consult employers and training providers on the framework of inspection to be applied prior to commencement.

20. At the same time we propose to seek powers to enable OHMCI to inspect the services delivered by the Careers Service companies in Wales. OHMCI will in future be able to look at the extent to which careers information, advice and guidance services complement the careers education and links with business that are delivered by schools and colleges. The aim will be to determine how well the young learner is supported in making and taking forward subject, qualification and career choices, We will consult the Careers Service companies on the framework of inspection to be applied in due course.

The *Education and Training Action Plan for Wales* published in March 1999 by the Education and Training Action Group (ETAG) established by Welsh Office Ministers set the education agenda for Wales. The Plan made the specific proposal that the services provided by Careers Wales, an all age information, advice and guidance service, will be subject to inspection by the Welsh Inspectorate.²²²

The Post-16 Education and Training Committee of the National Assembly took representations from every key interest group and organisation in the education and training sectors and produced a report, *Taking Forward the Recommendations of ETAG 2000*. The report endorsed the recommendation that the new Careers Wales service should be inspected by Estyn.

The plenary debate on the report was held in the National Assembly on 1 February 2000. In moving that the report's recommendations be adopted, Tom Middlehurst, Secretary for Post-16 Education and Training said of the Learning and Skills Bill:

The Bill will also extend the remit of Estyn, the inspectorate service in Wales, to include all post-16 learning that is secured and funded by the National Council for Education and Training for Wales. This will help to ensure that CETW's annual budget of some £400 million is spent wisely and well, and in the interests of the learners it is expected to serve.²²³

²²² An Education and Training Action Plan for Wales ETAG March 1999

²²³ National Assembly Official Record 1 February 2000

C. The Bill and the debate in the Lords

Clauses 70-83 rename HMI in Wales as HM Inspectors of Education and Training. They provide for the extended remit of the Chief Inspector and for the new functions to include the inspection of all education and training in Wales funded by CETW or a local authority. Provision is made specifically for the inspection of education, training or advisory services provided by Careers Services Companies at the request of the National Assembly and education and training under section 2 of the *Employment and Training Act 1973* at the request of the Secretary of State or the Adult Learning Inspectorate in England e.g. under the New Deal.²²⁴ Clause 80 makes provision for area inspection.

The additional functions were extended, as in England, by Government amendment at Report stage²²⁵ to include the inspection of training for teachers. The regulatory powers and the right to receive reports and advice rest with the National Assembly.

The financial memorandum states that there will be some additional public expenditure on Estyn but a firm estimate cannot be provided at this point.²²⁶

Both Conservative and Liberal Democrat spokespersons in the Lords supported the idea of the single inspectorate for Wales. Baroness Farrington for the Government in reply to comments on staffing informed their lordships that there was to be a review of Estyn in the near future to establish appropriate staffing levels and the level of individual skills and experience.²²⁷

V Miscellaneous and General

A. External qualifications

a. *Background and current situation*

The *Education Act 1996* ss.400-1 and its intended successor section 37 of the *Education Act 1997* gave the Secretary of State or a designated body power to approve external qualifications for pupils of compulsory school age and those over compulsory school age but under 19. Neither section 401 of the 1996 Act, which extends the power to qualifications taken by those over 16, nor section 37(1) of the 1997 Act which would have replaced ss.400-1 with the new section has been brought into force.

The *Further and Higher Education Act 1992* Sections 3, 6 and Schedule 2(a) made provision for the Further Education Funding Councils to fund courses leading to certain

²²⁴ Clause 78 and 79

²²⁵ see Clause 51 (2)

²²⁶ Bill 96 - EN para.221

²²⁷ HL Deb 15 February 20000 cc.1187-8

qualifications or falling into defined categories. The 1992 Act created the distinction between 'Schedule 2' courses leading in the main to vocational and academic qualifications and funded by the FEFC and other adult education which was funded by LEAs.

b. *Proposals*

Learning to Succeed referred to the complexity of the current funding and planning systems.²²⁸ The structural change effected by this Bill removes that, and with it the potential confusion of qualifications funded partly by TECs and partly by the FEFC and the difficulties in interpreting the boundary between 'Schedule 2' and non-schedule 2 courses.²²⁹ The White Paper pointed out that 'the awkward and artificial distinction' between qualifications covered by Schedule 2 and those outside it would no longer be needed.²³⁰

c. *The Bill and the debate in the Lords*

Clauses 88-95 provide for the approval of external qualifications by the Secretary of State or the National Assembly or bodies designated by them for funding purposes. For under 19s the legislation covers programmes of study²³¹ but for over 19s the scope of the measure does not extend to cover programmes of study in order to allow the LSC and CETW and other providers a wide discretion in providing provision appropriate to adult learning.²³² The Explanatory Notes comment:

These provisions for qualifications approvals anticipate the potential development of:

- (for all age groups) group awards which recognise achievement in several qualifications or a combination of qualifications and other activity; and
- (for those aged 19 or over) A unitised system of external qualifications (in which qualifications are broken down into the smallest discrete blocks that can sensibly be certificated.)²³³

Clause 95 of this group clarifies and extends the powers of QCA and, in Wales, ACCAC for the development, setting and administration of tests for pupils over school age. The Explanatory Notes state:

The clause has been introduced to allow, for example, the possibility of the QCA or ACCAC developing and administering the new National

²²⁸ Cm 4392 para.2.7

²²⁹ Cm 4322 para.2.8

²³⁰ Cm 4392 para.5.28

²³¹ Clause 88

²³² Clause 89

²³³ Bill 96 EN para.132

Literacy and Numeracy Tests for adults (a recommendation from *Improving literacy and numeracy - A fresh start*, the report of the working group chaired by Sir Claus Moser, February 1999).²³⁴

On Second Reading Baroness David referred to her pleasure and the support of the National Institute of Adult Continuing Education (NIACE) for the ending of the distinction between Schedule 2 and non-Schedule 2 provision.²³⁵

In Committee Baroness Sharp for the Liberal Democrats moved probing amendments to Clause 88 and 89²³⁶ to check whether funding bodies were precluded from funding courses of education and training that did not lead to an externally recognised qualification. She was particularly concerned about enrichment courses that might be needed to build students' confidence. She felt that Clause 89 effectively recreated Schedule 2 by creating a list of qualifications. Her amendment sought to permit providers to get some support from public funds for adult and community learning in its broadest sense. Baroness Blatch echoed this concern citing sixty per cent of courses studied by adults in further education as falling outside the national qualification network. She called for local flexibility in this area.

Baroness Blackstone accepted there was a need for local LSCs to look at the needs of the local learning market. She confirmed that the clauses did not preclude funding courses which did not lead to external qualification. Decisions about those would be made by the LSC and the CETW, together with the DfEE and the National Assembly respectively. She concluded:

Although the funding framework is still being determined through consultation, it is clear that for most working adults, 100 per cent public funding will not be available in most cases. That has always been the case. There is an expectation that adult learners will contribute to the cost of their courses in further education. It will be important that public funding bodies such as the LSC, CETW and LEAs exercise control to ensure that any funds which are used for payment of fees to awarding bodies are used only in respect of approved external qualifications.²³⁷

B. Qualifying accounts²³⁸

The Labour Party manifesto for the 1997 General Election contained a commitment to establish Individual Learning Accounts (ILAs) to be funded initially from the TEC reserves.²³⁹ In June 1998, the Government announced £2 million for 12 pilot projects to carry out development work on the new accounts.²⁴⁰ TECs are currently operating local

²³⁴ Bill 96 EN para.133

²³⁵ HL Deb 17 January 2000 c.914

²³⁶ then 85 and 86

²³⁷ HL Deb 15 February 2000 cc. 1200-04

²³⁸ Tim Jarvis Business and Transport Section

²³⁹ Labour Party, *New Labour: because Britain deserves better*, April 1997, p 9

²⁴⁰ DfEE press release, *£2m to develop individual learning accounts' framework - Howells*, 25 June 1998

arrangements for ILAs in advance of the national framework and there are limited numbers of accounts available in 1999-2000. By the end of September 1999, 56,917 individual learning accounts had been opened by TECs in England to which TECs/CCTEs had contributed £2,927,749.²⁴¹ The provisions in the Bill would establish a national framework of learning accounts.

The Government intends that financial institutions will establish and run ILAs. Individuals will invest their own money in their accounts and employers may also contribute. The aim of the accounts is to help people plan and manage their retraining. Various incentives will be available to encourage people to open accounts and these include:

- a 20% discount off the cost of eligible courses on spending up to £500 in each year;
- an 80% discount on certain core courses, such as computer literacy;
- contributions to accounts will be tax deductible.²⁴²

Provided employers contribute to the ILAs of their lowest paid workers on similar terms, the following tax concessions will be available:

- employers' contributions to their employees' ILAs will qualify for a deduction from taxable profits; and
- employees will not have to pay income tax or National Insurance Contributions on contributions to their ILAs made by their employers.²⁴³

Legislation to this end will be included in the *Finance Bill 2000*.²⁴⁴

The Bill and debate in the Lords

Clauses 96 and 97 would provide for what are referred to in the legislation as 'qualifying accounts'. The Government continue to refer to these accounts as Individual Learning Accounts; the Bill would provide powers for the Secretary of State to make regulations to identify the accounts by a specified name.²⁴⁵ Clause 96 also gives regulation making powers to the Secretary of State to specify who may hold an account and the institutions with which an account may be held. The accounts cannot be joint accounts or held in the name of somebody else (clause 96(3)(c)). The regulation making powers under clause 96 would be reserved with the Secretary of State as they deal with the financial arrangements for ILAs. These provisions would extend to England, Wales, Scotland and Northern Ireland under clause 122.

²⁴¹ HC Deb 16 December 1999 c 286W

²⁴² DfEE, *Learning to succeed: a new framework for post-16 learning*, June 1999, Cm 4392, p 56

²⁴³ Budget 99 Inland Revenue press release 3, *Better targeted support for vocational training*, 9 March 1999

²⁴⁴ Explanatory Notes Bill 96-EN, p 29

²⁴⁵ Clause 96(3)(d)

Regulations under clause 97 would specify the detailed operation of the accounts such as the minimum balance and the type of learning that would attract discounts. The extent of these regulations making powers are described in the Explanatory Notes.²⁴⁶ Regulations under clause 97 would be made by the Secretary of State in England and the National Assembly in Wales.

Lord Bach confirmed during the Committee stage of the Bill in the House of Lords that the Government see the accounts as an initiative that 'will encourage employers to build on their existing levels of investment in learning and development'.²⁴⁷ Employer contributions to the accounts will not, however, be compulsory. In the debate on Report, Lord Bach outlined the Government's view of how they anticipated the accounts would operate in practice.²⁴⁸ These plans include a customer service centre through which people will be able to open an account. The customer service centre will also provide information about whether learning will qualify for government support, the balance of a person's account and a record of their learning.

C. Grammar schools: retention of selective admission arrangements

Clause 98 was added to the Bill on Report by the Conservatives.

a. Background and current position²⁴⁹

Sections 104-109 of the *School Standards and Framework Act 1998* set out the procedure for deciding whether grammar schools should retain selective admission arrangements.

The Labour Party's 1997 General Election Manifesto had given a commitment that Labour would 'never force abolition of good schools whether in the private or the state sector, and that any changes in the admissions policies of grammar schools would be decided by local parents.'

The provisions in the 1998 Act allow for change to be decided only by a ballot of local parents or as a result of proposals made by the governing body and subject to the statutory procedures for publication and approval by the school organisation committee. Regulations made under section 105 of the 1998 Act set out the procedure for ballots.²⁵⁰ The Act and the regulations distinguish between all grammar schools in a selective LEA, a prescribed group of grammar schools or an individual grammar school. Ballots are to be triggered by a petition from eligible parents.

²⁴⁶ Explanatory Notes Bill 96-EN, pp 28-30

²⁴⁷ HL Deb 8 February 2000 c 618-619

²⁴⁸ HL Deb 14 March 2000 c 1465

²⁴⁹ see Library Research Papers 96/101 and 97/136 for fuller background.

²⁵⁰ *Education (Grammar School Ballots) Regulations* SI 1998/2876; *Education (Proposals for Grammar Schools to cease to have Selective Admission Arrangements)* SI 1999/2130

For grouped or stand-alone grammar schools eligible parents are those with children at a feeder school. Feeder schools are defined as those from which, over the last three years, a total of five or more children have transferred to the grammar school or schools. For petitions and ballots relating to all grammar schools in a selective LEA, all parents with children under 16 are eligible, together with parents who live outside the LEA but have a child under 16 at an LEA school.

The petition must be signed by 20% of eligible parents for a ballot to be held. Electoral Reform (Ballot Services) Ltd. (ERBS) draw up a list of eligible parents, calculate the number needed to meet the 20% threshold, check the signatures on a petition and manage the ballot.²⁵¹

The ballot procedure has been attacked by both those in favour of grammar schools and those opposed to them. Those in favour dislike the wording on the ballot paper:²⁵²

Are you in favour of all the schools listed introducing admission arrangements which admit children of all abilities?

They also dislike parents of children in grammar schools (in grouped or stand-alone ballots) being denied a vote and the limits on the information that may be provided for parents.²⁵³

Those opposed to grammar schools object to the disenfranchisement (in group or stand-alone ballots) of primary school parents from those schools who have not sent children to grammar schools in previous years while parents of children at private preparatory schools have a vote.²⁵⁴

If the result of the ballot is a vote in favour of keeping selective admissions, it triggers a moratorium period of five years during which no further petitions may be raised.

Ripon Grammar School was the first school to be the subject of a ballot on its admission arrangements. The result announced on Friday 10 March was that parents had voted two-to-one in favour of retaining the selective admission arrangements. Press reports centred on Labour policy on selection.²⁵⁵ David Blunkett, Secretary of State for Education and Employment, made a statement to the House clarifying that policy on 15 March.²⁵⁶

²⁵¹ *A guide to petitions and ballots about grammar schools admissions*. DfEE 1998 <http://www.dfes.gov.uk/gsb ballots/>

²⁵² SI 1998/2876 Reg. 13

²⁵³ SI 1998/2876; Grammar school vote is 'outrage to democracy'. *Daily Telegraph*. 2 September 1999

²⁵⁴ 'How to cheat at 11-plus ballots'. Roy Hattersley. *Observer*. 12 March 2000

²⁵⁵ 'Blunkett's education'. *Daily Telegraph*. 12 March 2000 and 'Blunkett defends 11-plus stance'. *Guardian*. 13 March 2000

²⁵⁶ HC Deb 15 March 2000 cc.299-306

b. *The Bill and the debate in the Lords*

The Conservative amendment removes from the 1998 Act the petition and balloting arrangements. The Government have made a commitment to seek to reverse it in the Commons.²⁵⁷

In moving the new clause, Baroness Blatch cited as the crux of her amendment the fact that the 1998 Act would allow the collection of signatures for a petition to start again in four years time.

However, for the schools concerned, their staff, the parents, and, most significantly, for the children, this is a most unsettling, disruptive and debilitating process. Time, energy and money are expended in fending off those who hold a political grudge and have a philosophical objection to grammar schools.

I welcome the response to the Ripon Grammar School ballot result on Friday from Mr Blair, Mr Blunkett and certain of their colleagues. They wish to end hostilities against grammar schools. They have said that arguments about selection are now a past agenda and, instead, they wish to draw a line in the sand on this issue. I welcome, too, Mr Blunkett's comment that he is not 'hunting grammar schools', but that he would rather concentrate on the issue of raising standards. We all say 'Amen' to that.

The timing of this Bill is fortuitous and I hope that I can be forgiven for taking advantage of it. But this opportunity gives us all - including the Government - a chance to make a reality of the statements made over the weekend by the Secretary of State and his colleagues. The provision of education should, as far as possible, match the needs of all of our children. That means that there should be an extension of choice, a widening of diversity and the freeing of schools to offer education to young people with learning disabilities or those with particular talents and aptitudes for science, music, the arts or sport, and for those who are academically able. The issue should be to encourage more, rather than less, choice.²⁵⁸

Lord Hattersley attacked the system of parental ballots as being 'so prejudiced as to be ridiculous' and itemised that argument in the case of Ripon. He urged the Minister to consider a clause changing parental ballots to be ballots of all parents in the area. His conviction was that the campaign against selective education would continue and he cited the success of comprehensive schools in fuelling the explosion in further and higher education.

The debate focused on the arguments for and against selective education. Baroness Young supported the amendment and returned to the argument of the unsettling effect of repeated ballots. Lord Tope for the Liberal Democrats agreed with Lord Hattersley's

²⁵⁷ HL Deb 14 March 2000 c.1486

²⁵⁸ HL Deb 14 March 2000 c.1467

arguments in favour of comprehensive education and felt that the ballot system was 'a dreadful system':

For a party that says it is still opposed to selection and committed to ending it, the ballot system it has introduced with all the hoops and hurdles that those of us who want a fair ballot have to go through is a very strange way of showing a commitment to abolishing selection. What has happened since has been shameful. Whichever way one would vote in such a ballot assuming one was lucky enough to get a vote in such a ballot it has been shameful. The Government do not come out of this with any credit at all.²⁵⁹

Liberal Democrats had argued for decisions to be made 'by the democratically elected and accountable local education authority after full and proper consultation.' That remained their position.²⁶⁰

In replying, Baroness Blackstone stated that the amendment did not address the main purpose of the Bill and sought to overturn a manifesto commitment fulfilled through the passing of the 1998 Act. The Government's belief was that selection by ability did not enhance standards:

Acceptance of the amendment would mean that we were letting Ripon parents vote for all parents, which would be a very odd position to adopt. By analogy, it would be like the result of a by-election determining the governance of the country as a whole. Ripon parents have voted, as the legislation allows, on their local circumstances. Of course, we respect that vote although I understand that my noble friend Lord Hattersley does not like it. The first ballot has taken place. Parents in Ripon have been able to express their view clearly. There were complaints during the ballot process that it was unfair, particularly as regards the composition of the electorate. But those complaints have been made by both sides, and indeed back in 1998 when the School Standards and Framework Bill received its Second Reading in this House on 7th April, the noble Baroness, Lady Blatch, alleged:

'The survival of grammar schools would be at the mercy of a biased balloting system.' [Official Report, 7/4/98; col. 624.]

Finding myself between my noble friend Lord Hattersley - who I must say is ageing extremely well, and who is certainly much loved, always has been and always will be - puts me firmly in the centre, and in quite a reasonable position.

The claims made by the noble Baroness do not stand up to scrutiny. The electorate was composed of parents whose children attend the schools which most regularly send children to Ripon Grammar School. These are therefore the parents with the greatest interest in the future of the school.

²⁵⁹ HL Deb 14 March 2000 c.1482

²⁶⁰ *School Standards and Framework Act 1998 s.105(8); SI 1998/2876 Reg. 16*

Placing the future of selection by ability for the 164 remaining grammar schools in the hands of parents allows us to concentrate on our main agenda of raising standards in all 3,600 secondary schools.

She concluded by pointing out the success of the comprehensive system and making a commitment that the Government would seek to reverse the amendment in another place.²⁶¹

A later amendment was moved by Baroness Blatch to amend Schedule 8 by inserting a new clause into the *School Standards and Framework Act 1998* providing a power to set up new grammar schools. She argued that it would be 'a bottom up power from a local community'. Baroness Blackstone, in reply, said that the amendment would be disruptive and made nonsense of the existing legislation. The amendment was disagreed to on a division.²⁶²

D. Sixth-form education

Clauses 99-102 allow LEAs to maintain 16-19 institutions; extend the definition of secondary education to include provision made under collaborative arrangements between schools and FE or HE institutions and give the LSC and CETW the powers to intervene in inadequate sixth form provision and, if necessary, propose closure.

a. Background and current situation

The *Further and Higher Education Act 1992* removed further education colleges and sixth form colleges from LEA control. They were transferred to a new sector to be funded directly by the new funding councils for England and Wales. The Act amended the Education Acts to remove LEAs' power to establish or maintain 16-19 schools.

The London Borough of Hammersmith and Fulham established the William Morris Academy in September 1994. It provides sixth form education for pupils from five feeder schools within the LEA and also accepts other pupils. The Government's view of its position was stated by Baroness Blackstone in a Written Answer:

The Secretary of State considers that the authority has no power to establish or maintain this institution. The control of the academy, and all aspects of its operation are matters for the authority. The previous Secretary of State invited the Further Education Funding Council to consider the possible incorporation of the academy as a further education institution. The outcome of that consideration is awaited. In the meantime, the academy stands outside the statutory framework for schools and FE establishments, and the normal processes that apply to the

²⁶¹ HL Deb 14 March 2000 cc.1466-1492

²⁶² HL Deb 14 March 2000 cc.1518-1522

collection of information. It is also outside the scope of the School Inspections Act 1996.²⁶³

A later Written Answer made it clear that the legal situation would be considered by the Secretary of State in the light of the proposed changes to post-16 education arising from the publication of the White Paper *Learning to Succeed*.²⁶⁴

Reactions

The London Borough of Hammersmith and Fulham have expressed their pleasure with these provisions which are seen as a positive reflection on the LEA's action in setting up the William Morris Academy. The Local Government Association also commented favourably on the power being restored to LEAs and looked on it as an exciting opportunity to improve the rationalisation of sixth-form provision in its area.²⁶⁵

b. The Bill and the Debate in the Lords

Clause 99 amends the definition of secondary education in section 2 of the *Education Act 1996* to include full-time education at an LEA maintained institution for 16-19 years. This restores the position prior to the implementation of the 1992 Act. Any existing institution such as the William Morris Academy cannot become a school under this section unless it has been properly established under the *School Standards and Framework Act 1998*. This requires the publication of statutory notices and the approval of proposals. Clauses 100 and 102 give the Secretary of State power, with the consent of the LEA and the governing body, to incorporate or designate (in the case of a voluntary aided institution) such institutions. This would transfer them to the FE sector and Lord Bach made clear in Committee that such transfers were expected to be rare.²⁶⁶

The Clause also extends the definition of secondary education to include collaborative arrangements between schools and FE or HE institutions.²⁶⁷

On Second Reading Baroness Blackstone made it clear that these provisions were to be seen as extending choice and regularising the position of existing 16-19 arrangements such as William Morris.²⁶⁸

In Committee both the Liberal Democrats and the Conservatives drew attention to the need for wide consultation on the effects on other providers of opening a new 16-19 institution.²⁶⁹

²⁶³ HL Deb 20 January 1998 c.WA232

²⁶⁴ HL Deb 13 July 1999 c.WA27-28

²⁶⁵ quoted by Baroness David HL Deb 17 January 2000 c.915

²⁶⁶ HL Deb 15 February 2000 c.1215

²⁶⁷ see Clause 115

²⁶⁸ HL Deb 17 January 2000 c.882 and c.945

²⁶⁹ HL Deb 15 February 2000 cc.1214-1216

E. Inadequate Sixth Forms

Clause 102 and Schedule 7 give the LSC and CETW powers to intervene in inadequate LEA maintained sixth-form provision where the necessary improvements have not been made following an adverse report by school inspectors.

a. *Proposals*

The White Paper *Learning to Succeed* stated:

The Government will expect the Council to take firm action where any provider is shown to fall short of the necessary standards of quality, support for students and probity. Except in cases of serious fraud, such providers should be given the opportunity to implement improvements. But where the response of providers is inadequate, the Secretary of State will look to the Council to propose remedial action.²⁷⁰

There were also reference to the Government requiring OFSTED to increase its focus on sixth form provision in schools.²⁷¹

In his foreward to the consultation paper *School Sixth Form Funding*²⁷² published with the White Paper, the Secretary of State affirmed 'good sixth forms will thrive.' The principles which were to govern funding decisions made it clear that inadequate sixth forms would not. Those principles create a definition of adequate sixth form provision:

In coming to decisions, the Secretary of State will be guided by the principles set out in the White Paper:

- a. the objective must be to improve overall standards of provision and tackle poor performing institutions;
- b. there should be no disruption for high-quality sixth forms or colleges, but weaker sixth forms and colleges should be tackled, for instance by drawing them more fully into the pattern of local provision, increasing overall participation rates and standards;
- c. young people should be able to gain access to a broad learning programme, including A levels and vocational qualifications, wherever they are enrolled.;
- d. improved co-ordination should ensure the best use of physical resources and scarce expertise in a system which should put the user rather than the competition between providers at its heart;
- e. funding arrangements should be entirely transparent, taking account of the views of all interested parties; and

²⁷⁰ CM 4392 para.5.17

²⁷¹ para.5.12

²⁷² DfEE June 1999

- f. LEAs should continue to have a key role in planning local secondary school education.²⁷³

HMCI commented on small sixth forms in his annual report, stating that students on A level courses usually made best progress in classes of between 11 and 16 students and worst progress in very small classes or classes of over 20 students. A limited curriculum was evident in small sixth forms and HMCI questioned the cost-effectiveness of such provisions. He accepted that it could work in consortium arrangements.²⁷⁴ From September 2000 16-18 providers will be offering the broader curriculum outlined in *Qualifying for Success*.²⁷⁵ No assessment has been made of the size of sixth form necessary to offer the broader curriculum effectively.²⁷⁶

Reactions

The Local Government Association recorded their desire to discuss in detail the procedures and protocols around the use of the intervention powers. They made no statement challenging the need for such powers.²⁷⁷

b. *The Bill and the debate in the Lords*

Clause 102 and Schedule 7 give the LSC and the CETW powers to intervene in inadequate LEA maintained sixth form provision where the necessary improvements have not been made following adverse reports by the school inspectors. It applies to school sixth forms and the LEA maintained 16-19 institutions introduced by this Act.

The Explanatory Notes on the Schedule explain in detail the trigger for intervention: two consecutive adverse reports - and the procedure for proposing closure of a sixth form or a 16-19 school. Those procedures are broadly similar to those to be followed by LEAs and governing bodies in the *School Standards and Framework Act 1998*²⁷⁸ for proposals to discontinue a school or change its age range.²⁷⁹

The procedures in Schedule 7 distinguish between an inadequate sixth form and a whole secondary school requiring special measures because it is failing or likely to fail to give pupils an acceptable standard of education. If the whole school is failing, sections 14 to 19 of the *School Standards and Framework Act 1998* apply which include a power for the Secretary of State or the National Assembly to direct closure.

²⁷³ School Sixth Forms Funding: a consultation paper. DfEE June 1999. para.2.7

²⁷⁴ *Annual Report of Her Majesty's Chief Inspector of School*. 1998-99. HC 157 of 1999/2000 *Sixth forms in schools* para.162-190

²⁷⁵ DfEE 1997

²⁷⁶ HC Deb 18 January 2000 c.389W

²⁷⁷ Learning and Skills Bill. LGA briefing. 17 December 1999

²⁷⁸ Part II and Schedule 6

²⁷⁹ Bill 96 - EN pp.37-41

The Schedule was amended by the Government in committee to add paragraphs 6, 7 and 13, 14 together with other minor changes and consequent amendments to Schedule 8. The amendments required inspection report to be sent to interested parties including parents. A second group of amendments added to Part III paragraphs 32(5) and 36(2) which corrected a technical omission in the decision making process in local school organisation committees. The amendments bring Schedule 7 into line with the equivalent provisions in Schedule 6 of the *School Standards and Framework Act 1998*.²⁸⁰

Baroness Blatch expressed opposition to the system of school organisation committees and adjudicators and asked for clarification of the timescale involved. Baroness Sharp for the Liberal Democrats was concerned with the timescale for inspection reports and accepted the Minister's reassurance that the time allowed for a school to make the necessary improvements following a first adverse report would generally be around two years.²⁸¹

Lord Bach, in rejecting Liberal Democrat amendments, which had Conservative support, for communication with governing bodies and headteachers, made it clear that guidance would list the interested parties to be consulted by the two councils in making proposals for closure. Communication with schools under Schedule 7 would be with governing bodies. In all cases, regulations and guidance would be broadly similar to those issued under the 1998 Act.

The Government rejected a Liberal Democrat amendment to require a school organisation committee in England to have regard to assurances given by the Secretary of State on the future of school sixth forms on the grounds that it would fetter the decision making process.²⁸²

A further point raised by Baroness Sharp in Committee²⁸³ led to a Government amendment on Report when a paragraph was omitted from the Schedule²⁸⁴ which would have allowed the first adverse report to have been made before the Schedule came into force. Lord Bach did not accept that the paragraph omitted amounted to retrospective legislation. In Committee Baroness Blackstone had defended it on the grounds that for the improvements needed to be made quickly. However, the Government decided to remove the paragraph in the light of concerns expressed by peers, a decision welcomed by Baroness Sharp on account of concerns among the providers of sixth-form education.

The substance of Schedule 7 had been attacked by Baroness Blatch on Second Reading:

Schedule 7 to the Bill constitutes the greatest threat to sixth forms, with powers vested in the learning and skills council to propose the closure of 'inadequate'

²⁸⁰ HL Deb 17 February 2000 cc.1357-1360

²⁸¹ HL Deb 17 February 2000 cc.1360-1362

²⁸² HL Deb 17 February 2000 cc.1364-1369

²⁸³ HL Deb 17 February 2000 cc.1360-1

²⁸⁴ HL Bill 14. Schedule 7 para.15

sixth forms. What is the definition of 'inadequate'? Is it a small number of pupils overall, a small number of pupils taking a particular subject, a school offering minority subjects, the results of students in any one or more years, or the cost of courses, which could discriminate against high-cost vocational courses? What weight will be given to the wishes of staff, governors, students, parents and/or local education authorities where they wish to keep a sixth form in the event of a recommendation to close? Who, other than Ofsted, would be authorised to make an inspection? Would the Government contemplate a minimum period between inspections? Why is it that the Bill allows the first report on a school to be one that pre-dates this Bill?²⁸⁵

A number of other Peers spoke in support of sixth forms but viewed any threat to them as coming from the funding proposals. Baroness Young, however, cited the concerns of the National Association of Head Teachers at the lack of procedures to help turn sixth forms round.²⁸⁶

Lord Tope hoped that the deliberations on the Bill would not turn into a 'save our sixth forms' campaign. He cited personal experience to counter the either/or argument: for sixth forms or for all post-16 provision in FE colleges.²⁸⁷

F. Support for 13 to 19 year olds.

Clauses 103-112 provide in the main enabling legislation to allow the establishment of a comprehensive new service to support young people. In England, this is the youth support service or Connexions service, a major part of the Government's Connexions strategy.²⁸⁸ It is expected that clauses on the Welsh youth support service will be added in the Commons.

1. Current providers: Careers Service, Youth Service and others

The new service will integrate and build on the existing ranges of services provided at local level by careers services companies, youth service and other statutory and voluntary services for young people. This section outlines the current functions of the main players.

a. Careers Service²⁸⁹

From 1974 until 1 April 1994, local education authorities (LEAs) had a statutory duty to provide a Careers Service under sections 8-10 of the *Employment and Training Act 1973*. In 1990, the Conservative Government of the time undertook a review of the service to consider 'the effectiveness of existing organisational arrangements with the aim of recommending the most relevant system for delivering careers information, advice and

²⁸⁵ HL Deb 17 January 2000 c.887

²⁸⁶ HL Deb 17 January 2000 c.931

²⁸⁷ HL Deb 17 January 2000 cc. 936-7

²⁸⁸ *Connexions: the best start in life for every young person*. DfEE 2000

²⁸⁹ Written by Tim Jarvis, Business and Transport Section

guidance for young people in the 1990s'.²⁹⁰ The subsequent White Paper proposed legislation which would facilitate a mix of provision including direct management by Training and Enterprise Councils (TECs), joint TEC/LEA provision and a local service contracted out to the private sector.²⁹¹

The legislation was included in sections 45 and 46 of the *Trade Union Reform and Employment Rights Act 1993*. This amended the 1973 Act and transferred the responsibility for Careers Service provision from LEAs to the Secretary of State. In England, the Secretary of State has a duty under the Act to secure the provision of careers guidance and placing services for people attending schools and colleges and for those ceasing to undergo such education. The Act gives the Secretary of State powers to arrange for the provision of such services for other people. It also requires careers services to be provided in accordance with guidance issued by the Secretary of State. The transfer of responsibilities from the LEAs to the Secretary of State allowed for arrangements to be made for local careers service provision with organisations considered most suitable, including the private sector. These powers and responsibilities in relation to careers service provision in Wales were transferred to the National Assembly under powers contained in the *Government of Wales Act 1998*.²⁹²

Shortly after the 1993 Act received Royal Assent, the Department issued a prospectus inviting bids to run the Careers Service in thirteen 'Pathfinder' areas of the country.²⁹³ The successful bidders were mainly LEAs themselves, often in conjunction with TECs. They started running the Service in these areas in April 1994. There were subsequent bidding rounds for contracts starting in April 1995 and April 1996 and now all careers service companies are contracted to the DfEE. There are currently 66 local careers service companies contracted to the DfEE to deliver the Careers Service in England and most are companies limited by guarantee and operate as non-profit-making bodies.²⁹⁴ A number of the contracts are held by commercial companies and where these are able to generate a surplus dividends to shareholder or the transfer of resources to a parent company may be possible.²⁹⁵

The Secretary of State sets the requirements for the service to be provided in the *Requirements and Guidance for Careers Service Providers* (RGP). In England, standards are monitored by the careers service inspectorate, led by the Chief Inspector, who makes an annual report to parliament on the Careers Service.²⁹⁶ In Wales, the provision is inspected by Estyn. The specific terms for 1999-2000 are set out in the contracts between careers service companies and the DfEE, and the *Careers Service Planning Guidance 1999*. The Guidance encourages providers to prioritise resources on those who are at risk of 'dropping out.' It sets

²⁹⁰ Department of Employment Press Notice, 10 May 1990

²⁹¹ Department of Education, *Education and Training for the 21st Century*, Cm 1536, Vol 1 - May 1991

²⁹² *National Assembly for Wales (Transfer of functions) Order 1999*; SI 1999/672

²⁹³ Employment Department Press Notice, 27 July 1993

²⁹⁴ HC Deb 28 July 1998 c 137

²⁹⁵ Ibid

²⁹⁶ HC Deb 17 May 1996 cc 599-600W

out how this may be achieved in practice by limiting the provision available to other school leavers:

2.5.2 The task is for the careers service and the school or other relevant partners to put in place the processes that will ensure that at each Key Decision Point students reach well-informed decisions that they will carry through. This does not necessarily mean interviewing or action planning high percentages of Year 11. For some in school, a programme of careers education from Year 9 and the provision of good careers information will be enough. They can make their own decisions. Others will need group discussions to develop their ideas, and the opportunity to check points, formally or informally, with a careers adviser. Some will need group interviews, and others intensive one to one help. The key task is to meet the needs of individuals.

In March 1999, the DfEE Departmental Report announced that the Department was consulting with relevant interests in order to develop a Learning Gateway for 16/17 year olds.²⁹⁷ This began in September 1999 and is delivered jointly between the Careers Service and the TECs working closely with other agencies such as the Youth Service and organisations in the voluntary sector. It is based on the Gateway part of the New Deal for Young People: after a period of assessment, young people on the Learning Gateway agree an action plan from a menu of options. The two main elements of the Learning Gateway and the responsibility for delivery are summarised in the TEC planning guidance:

- (i) outreach, initial assessment, guidance, support and planning overseen by a Personal Adviser. Careers services will be responsible for this aspect of the Learning Gateway;
- (ii) follow on provision drawing on a menu of options, including some which TECs will be responsible for delivering.²⁹⁸

The interaction of the Careers Service with schools is set out in the Explanatory Notes:

27. Section 44 of the Education Act 1997 requires the heads and governors of publicly funded schools and colleges to provide careers advisers on request with the names and addresses of pupils or students, information about pupils or students that careers advisers need in order to give guidance, and access to those pupils or students at reasonable times. A 'careers adviser' is defined as a person employed by a body providing services under Section 10 of the *Employment and Training Act 1973*. Section 43 of the Education Act 1997 requires maintained schools to provide programmes of careers education in years 9 to 11; such programmes are a necessary foundation for careers information and guidance. Section 45 of the Education Act 1997 requires the heads and governors of schools and colleges to give pupils and students access to careers guidance materials.²⁹⁹

²⁹⁷ DfEE, *Departmental report and expenditure plans 1999-00 to 2001-02*, Cm 4202, March 1999, p 87

²⁹⁸ *TEC/CCTE Planning prospectus and guidance 1999-2001*, para C9.1

²⁹⁹ Bill 96 - EN para.27

b. Youth Service³⁰⁰

The Government has described the existing youth service as a service to promote the personal and social education of young people aged 11 to 25, with special focus on the 13 to 19 age group, that aims to offer challenging experiences and opportunities designed to help young people develop their potential as individuals and members of groups in the transition from childhood to adult life.³⁰¹

The statutory basis of this service has sometimes been described as weak in that it is largely up to local authorities to decide what sort of a youth service to provide. The main legislative provisions under which local authorities may provide what is generally referred to as the Youth Service are contained in Sections 2 and 508 of the Education Act 1996 (which consolidated provisions in earlier legislation). The powers are broad and do not specifically require local authorities to provide a Youth Service. The delivery and funding of the Youth Service are matters for decision by individual local education authorities out of the resources made available to them through the annual local government finance settlement.

Section 2 of the Education Act 1996 defines primary, secondary and further education and the last is defined to include *organised leisure time provided in connection with the provision of such education*. Organised leisure time is defined as *'leisure-time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by facilities provided for that purpose'*. Section 508 deals with the functions of local education authorities in respect of facilities for recreation and social and physical training:

(1) a local education authority shall secure that the facilities for primary, secondary and further education provided for their area include adequate facilities for recreation and social and physical training.

(2) For that purpose a local education authority

(a) may establish, maintain and manage, or assist the establishment, maintenance and management of,

(i) camps, holiday classes, playing fields, play centres, and

(ii) other places, including playgrounds, gymnasiums and swimming baths not appropriated to any school or other educational institution,

at which facilities for recreation and social and physical training are available for persons receiving primary, secondary or further education;

(b) may organise games, expeditions and other activities for such persons and

(c) may defray, or contribute towards, the expenses of such games, expeditions and other activities.

³⁰⁰ written by Jo Roll, Social Policy Section

³⁰¹ *Howells launches new survey of youth services*, DFEE Press Notice 22 August 1997

(3) When making arrangements for the provision of facilities or the organisation of activities in the exercise of their powers under subsection (2), a local education authority shall, in particular, have regard to the expediency of co-operating with any voluntary societies or bodies whose objects include the provision of facilities or the organisation of activities of a similar character.’

In practice local authorities have a variety of arrangements for structuring their service. The 1998 Audit of the Youth Service (see below) concluded that one of the notable findings of the audit was the variability in youth provision across the country. It also said that there were no clear national definitions of what constituted youth service spending and activity.³⁰² On the basis of the information collected, it concluded that only 13 local education authorities (out of 125) spent on the Youth Service more than 2 per cent of the authority’s overall spending on education. The average of 1.2 per cent and the lowest was 0.36 per cent. The ratio of youth workers to the 11 to 25 population ranged from 1:266 to 1:4,900.

The Audit report described the Youth Service as a diverse range of opportunities – youth clubs, information centres, specialist projects, street-based work – which was intended to support young people in their transition from childhood to responsible adulthood, encourage their social development and individual fulfilment, and help them engage fully in society. It said that youth services were undergoing substantial organisational change, in part resulting from local government reorganisation but also reflecting the imperative of keeping in step with the changing needs of young people and communities and of ensuring continuing relevance to a wider policy agenda. There had been a marked increase in the extent to which local authorities explicitly prioritised particular groups of young people, including those who were under-achieving educationally, at risk of criminal activity or risk-taking behaviour.

A major audit of youth service provision in local authorities in England was announced by the Labour Government in August 1997, soon after it came to power. The Government said that the survey would provide definitive, up-to-date information on everything from staffing levels and training, to policies on drugs awareness, youth crime and health education. It would also help the government to shape any future proposals and long-term plans for the youth service. The Government was consulting various organisations, such as the Local Government Association and the National Youth Agency to ensure that it was asking the right questions.³⁰³ When the results of the Audit were published, Lady Blackstone, Minister at the Department for Education and Employment, said that the Government would be taking the finding carefully into account before publishing a consultation paper on the future of the Youth Service.³⁰⁴

³⁰² *England’s Youth Service – the 1998 Audit*, National Youth Agency for the Department for Education and Employment, Youth Work Press, September 1998

³⁰⁴ HL Deb 8.10.98 c569

c. Other services

Other contributors to the new service listed in the Connexions document are: Youth Offending Teams set up under the *Crime and Disorder Act 1998*, the Education Welfare Service and the Care Leaver Personal Advisers being introduced by the *Children (Leaving Care) Bill [HL]*³⁰⁵ to support young people aged 16 and over in and leaving care.

Background on the role of youth offending teams (YOTs) can be found in the *Inter-Departmental Circular on Establishing Youth Offending Teams*.³⁰⁶ The Government looked to local authority chief executives to take a lead in establishing YOTs corporately with social services and education departments working with the police, probation service and health authorities.³⁰⁷

The role of Education Welfare Services in relation to secondary schools is being considered as a result of the consultation on *Tackling Truancy Together*.³⁰⁸ The consultation closed in December 1999 and the analysis of responses is currently with Ministers. One strand of the proposed action: raising the penalty for school attendance offences to level 4 of the national scale is included in the *Criminal Justice and Court Services Bill*³⁰⁹ which received its Second Reading on 28 March 2000.

Learning mentors, who will be the Personal Adviser within the new service for most 13-16 year olds, already exist in Excellence in Cities Schools in six inner city areas.³¹⁰ An extension to this programme was announced by the Secretary of State in the debate on the Budget.³¹¹ Their role was set out in the paper launching the scheme:

Learning Mentors and Learning Support Units

To ensure that barriers to learning are overcome, the Government is determined that every child in the designated areas will have the personal attention they need in order to succeed. For many families the support they are meant to get has no coherence. It demands so much energy to access it that many simply give up, and for others it delivers too little too late. From September 1999, each secondary school pupil will have access to Learning Mentors, based in schools and professionally trained for their role and responsible for making sure that any barriers to an individual's learning - in school or outside the school - are removed. Learning Mentors will build on successful models of multi-agency behaviour support teams which the Government is promoting in order to reduce truancy and exclusion.

³⁰⁵ *Children (Leaving Care) Bill [HL]* HL Bill 2 - EN

³⁰⁶ Home Office, Department of Health, Welsh Office and DfEE. 22.12.98
<http://www.homeoffice.gov.uk/cdact/gotcric.htm>

³⁰⁷ op cit. para.12

³⁰⁸ *Tackling Truancy Together*. DfEE 1999

³⁰⁹ Clause 55 Bill 91 of 1999/2000

³¹⁰ *Excellence in Cities*. DfEE March 1999

³¹¹ HC Deb 23 March 2000 c.1126

Learning Mentors will be available to all who need them and will devote the majority of their time to those individuals needing extra support in order to realise their full potential. They will liaise with primary schools to identify children about to enter secondary school who will need extra help; they will oversee a progress review of every child at the end of the first year in secondary school and again as they enter Key Stage 4. They will also ensure that arrangements for those who arrive at school after they are 11 or leave before they are 16 are managed properly. They will draw up and implement an action plan for each child who needs particular support. They will have regular one-to-one contact with those pupils and their families. They will be the point of contact for accessing a range of community and business based programmes - including out of hours learning and a network of individual volunteer mentors - to ensure that the needs and aspirations of the pupils for whom they are responsible are met.

Mentor support might involve ensuring more challenging work is available for those able to achieve at the highest levels. It might mean tackling a literacy or a bullying problem or dealing with racial harassment. A voluntary mentor would also be available to provide continuity of support where a pupil moves from one secondary school to another in the same area. Learning Mentors will also provide one stop access to specialist support services where necessary, for example liaising with outside agencies to tackle a domestic problem which is distracting the child at school. The key challenges will be to champion the learning needs of the child and to overcome any barriers to effective learning. Learning Mentors will work closely with the pastoral and other staff of the school with the individual achievement of the pupil as the common focus.³¹²

2. Proposals

This section outlines in some detail the proposals in *Learning to Succeed*³¹³, *Bridging the Gap*³¹⁴, and *Connexions: the best start in life for every young person*³¹⁵ to illustrate the policy behind the framework proposals in the Bill.

Learning to Succeed

Learning to Succeed cited patchy support, advice and guidance for young people as a weakness of the current system in providing the help needed to ease the move to further learning at the end of compulsory education.³¹⁶ The White Paper referred to the imminent announcement of the Connexions strategy and the Social Exclusion Unit report³¹⁷ (see below) and outlined the proposals for the new support service:

³¹² op cit. pp 19-20

³¹³ Cm 4392

³¹⁴ Social Exclusion Unit. Cm 4405

³¹⁵ DfEE 2000

³¹⁶ Cm 4392 para.2.2

³¹⁷ para. 6.7 and 6.9

A new support service for young people

- 6.9 Our goal is to provide consistent and co-ordinated support for all young people when and where they need it, to enable everyone to stay on in learning - in a form and environment appropriate to them. Building on the Learning Gateway and our *Excellence in Cities* initiative in schools, we intend to create new arrangements for providing support to young people. The detail will be set out in the Social Exclusion Unit's (SEU) forthcoming report on 16-18 year olds not in education, training and work. The work the Department for Education and Employment and the SEU have done reveals very clearly that young people need differing levels of support and guidance, depending on their particular circumstances, if they are to make sensible and sustainable choices. They need information on the careers opportunities available. Support must be more accessible, both in terms of timing and location, and must be more personalised to the young person's individual needs.
- 6.10 The key aims of the new service will be to create a comprehensive structure for advice and support for all young people beyond 13, improving the coherence of what is currently provided through organisations such as the Careers Service, parts of the Youth Service and a range of other specialist agencies. The new service will represent a step change in the way this support is provided to young people, ensuring a smooth transition from compulsory schooling to post-16 options. It will integrate the present range of services and will provide high quality advice, guidance and support to all young people, wherever they live. The service will need to be flexible and outward looking so that it can respond to young people's particular needs. And it will be important that it is accessible to all. This means that it should be available to all young people at times, in places and in ways which meet their needs, rather than being driven by bureaucratic structures. This will require more outreach work, more imaginative ways of providing services and more joint working.
- 6.11 The new service will need to ensure coherence across current service boundaries, so that someone has an overview of the whole of a young person's needs - their education and training needs, and other needs which if not dealt with are likely to get in the way of education and training. Through the development of a comprehensive record system, it will ensure that prompt, co-ordinated action is taken if a young person stops being involved in education or training and risks 'dropping out'.
- 6.12 Making links with the range of voluntary activities, such as Millennium Volunteers, which young people choose to be involved in will be important too. As with Millennium Volunteers, young people will need to be involved in determining what should be provided through the new service. These opportunities can offer people the chance to develop personally and contribute directly to the rebuilding of local communities.
- 6.13 The responsibilities of the new service will extend to all 13-19 year olds, but it will particularly focus on keeping track of the most disadvantaged

young people and helping those at most risk of dropping out - before and after the compulsory school leaving age - to remain in learning. It will seek to ensure that barriers to their learning are removed, and that they receive good and consistent advice and support centred on their individual needs, so that they can make the right choices to enable them to move into and stay in learning. In carrying out this function, however, it will be important that the service works with schools and colleges to make available appropriate provision to ensure that those young people who now stay on in learning continue to do so.

- 6.14 It will be important that the new service provides all young people with access to high quality, comprehensive and impartial careers information and advice, and that they are aware of both national and local labour market information to support their choices. This is an area which has been weak. The new service will need to adopt more imaginative approaches - and more innovative presentation of information making use of new and emerging technology - if it is to support all young people during their transition and also re-engage successfully those who are at risk of dropping out of learning.
- 6.15 The new service will need an innovative, effective and consistent means of local delivery, building on best current practice and substantially improving coverage and achievement. The service will be organised on the same geographical areas as the local arms of the Learning and Skills Council. The Government proposes to contract with bodies locally to provide the service in each area. Though this is a new service with a new vision, the Government's expectation is that the best careers service companies will play a major role, together with a range of other local partners. This will include working with the local Learning Partnerships on developing strategies to ensure the support meets the needs of young people at local level and that provision for young people is coherent with information, advice and guidance services for adults - see chapter 7. It will also need to work closely with the Employment Service which will continue to have responsibility, as now, for job broking services for 18 to 19 year olds who have joined the labour market, and for New Deal for 18-24 year olds. The Government intends to consult over the coming months on the detailed arrangements for the new service, including the extent to which it would include services currently provided by local authorities through the Youth Service and the Education Welfare Service.³¹⁸

A similar system of individual mentors for all young people had been outlined by Tom Bentley, senior researcher at Demos and an adviser to David Blunkett, in his book, *Learning beyond the classroom* published in 1998.³¹⁹ Bentley drew on work such as

³¹⁸ Cm 4392 para.6.9-6.15

³¹⁹ *Learning beyond the classroom: education for a changing world*. DEMOS. 1998 Chapter II: Nurturing learning relationships

Daniel Goleman's on Educational Intelligence³²⁰ to argue for the importance of learning relationships in supporting students. He adopted Charles Handy's suggestion that every young person should have a mentor to support and guide them through their transition to adulthood.³²¹ Bentley returned to this theme in *Destination Unknown* published in 1999,³²² which argues for reforms focusing on the overall coherence of support and provision, rather on the effectiveness of single institutions and programmes.

Bridging the Gap

The Social Exclusion Report *Bridging the Gap* was published in July 1999.³²³

The report complemented the approach set out in *Learning to Succeed*. It was concerned with the 9 per cent of the 16-18 age group who do not participate in education, training or employment. This percentage has remained fairly constant since 1994 and in 1998 represented 173,000 young people³²⁴. The report suggested that the problem was even larger when the number having quite long spells of non-participation was added.³²⁵

The report sets out an aim that young people should stay in education, training or work with a strong educational or training component until they are at least 18. There are 4 main elements to the approach:

- i. a clear outcome to aim for by 19– referred to in this report as ‘graduation’;
- ii. a variety of pathways to ‘graduation’:
 - general full-time education in school or college;
 - vocational education, with a general education component, based in college or work-place;
 - a third option, building on the current right to time off for study.
- iii. financial support for individuals:
 - an extension of the current Educational Maintenance Allowance (EMAs) pilot from September 2000 to test variants for young people who are homeless and those with disabilities;
 - exploratory work on a coherent framework of support;
 - a ‘Youth Card’ combining current concessionary travel cards and the Learning Card with negotiated concessionary access to public and privately run leisure facilities and perhaps discount in shops.
- iv. the new multi-skill youth support service, already announced in the White Paper. It was to be a single national agency contracting with a lead body locally to be

³²⁰ Goleman, *D Emotional Intelligence: Why it can matter more than IQ*. 1996

³²¹ Handy, *C Beyond Certainty: The changing words of organisations*. 1995

³²² Bentley, T and Gurumurthy R. *Destination Unknown: engaging with the problems of marginalised youth*. DEMOS 1999

³²³ *Bridging the Gap: New opportunities for 16-18 year olds not in education, employment or training*. Report by the Social Exclusion Unit. Cm 4405

³²⁴ HC Deb 21.10.99 c638w

³²⁵ see Appendix II

accountable for providing the service in each area³²⁶. It would cover a network of Personal Advisers, a register of the 13-19 population, career advice and welfare support.

The report set out a detailed action plan and implementation timetable.³²⁷

The new youth support service was the subject of specific consultation on its functions, institutional arrangements, targets, staffing and professional formation, and implementation³²⁸. Consultation ran in parallel with consultation on the White Paper and closed on 15th October 1999. In addition a series of national and regional consultation events was held.

The initial response to consultation reflected a general acceptance of the need for consistent co-ordinated support for young people. There was less agreement on the right structure. Responses ranged from recommendations for a Next Steps agency contracting on a franchise basis with a lead body in each local Learning and Skills Area³²⁹ to the use of existing services and the reintegration of the careers service with local government³³⁰.

Connexions: the best start in life for every young person

The *Connexions* document was published in February 2000.³³¹

The four themes of the strategy built on the Social Exclusion report:

Flexible curriculum that engages different young people and leads to relevant, sought after qualifications (including a 'Graduation Certificate')

Ensuring high-quality provision in school sixth-forms, Further Education colleges and work-based learning.

Targeting financial support for those in learning.

Outreach, information, advice, support and guidance - including the Connexions Service.

The paper illustrated the centrality of the Connexions service as a team providing quality assurance training, tackling and co-ordinating with personal advisers working in a range of different settings.

³²⁶ para 10.9

³²⁷ Chapter 12 and Annex A: Actions 11-16 and 21-25

³²⁸ Annex G of the Report

³²⁹ TEC National Council.

³³⁰ Local Government Association.

³³¹ *Connexions: the best start in life for every young person*. DfEE 2000.

It set out plans for recruiting and training Personal Advisers, including proposals on three levels of qualification.³³²

Chapter 7 of *Connexions* sets out the results of the consultation on structures initiated by Bridging the Gap:³³³

7.2 The consultation revealed strong support for the concept of the Connexions Service. There was a clear preference that the new service should build on the good practice that has developed through initiatives such as New Start and the Learning Gateway (described in Chapter 5), with a preference for the second rather than third option in the consultation - i.e. putting in place organisational structures which enhanced partnership working, whilst ensuring proper accountability. Respondents also felt strongly that young people should be involved in the development, delivery and ongoing monitoring of the service.

7.3 A more detailed analysis of the consultation outcomes can be found on the Connexions website www.connexions.gov.uk.

A proposed structure is set out in some detail. In brief, the service would be delivered through:

- A National Connexions unit, part of the DfEE with staff from Government Departments, youth and voluntary work in the private sector, and a Chief Executive appointed through external competition;
- Connexions Partnerships in each LSC area³³⁴ responsible for strategic planning and funding;
- Committees, usually in each local authority and normally chaired by the Chief Executive or 'other top level local figure', with a broad range of membership reflecting all the potential providers of the service and young people.
- A local manager will be responsible to the committee for the day to day management of the local service.

The funding arrangements are set out below:³³⁵

7.12 There will be a contract between the National Unit and each Partnership based on the payment of central Government funding against the Partnership's delivery plan. Contracts will only be awarded if the National Unit is satisfied that the Partnerships have included in their plans the optimum mix of delivery through private, voluntary and public partners. Private and voluntary organisations will have the opportunity to

³³² Para. 6.23-6.26

³³³ para. 7.2-7.3

³³⁴ Appendix 1 lists the areas

³³⁵ op cit. para. 7.12-7.14

demonstrate their potential contribution both to the partnerships and to the services that are sub-contracted for local delivery, as is the case now in the delivery of the careers service.

- 7.13 As in every other area of service provision, our objectives will be to secure the highest standards and best value for money. The National Unit will be empowered to withhold funding for plans which do not demonstrate that first class provision will be delivered and the best value secured. If it does not consider that all potential partners have been given an adequate opportunity to play a part in the service, it will be required to take appropriate action, including contracting directly with private or voluntary sector organisations for the provision of particular services, and re-tendering for delivery of the service as a whole. In addition, as the service develops, rigorous inspection arrangements will ensure that services are held to account for standards, so that failure or poor performance can be addressed and the service re-tendered if necessary.
- 7.14 The Connexions Partnership will be responsible for ensuring that the Business Plan is delivered satisfactorily, targets are met, performance monitored, and benchmarking of services undertaken. The Partnership will ensure that a database of young people in its area is created and maintained (many young people travel across local authority boundaries for education, training or work purposes).

The mix of partnership delivery and a plan for a service which will have Government funding is similar in some ways to the model of the Early Years and Childcare Development Partnerships.

Further papers are expected from the DfEE on training and specifications for the Partnerships.

In the section on key services that will contribute to the new service³³⁶ it is made clear that the majority of careers service work will either be incorporated within the new service or provided to it under contract. However, there will still have to be adult information, advice and guidance funded by the LSC.

Local authorities will be expected to incorporate their outreach and detached youth workers with the new teams, but will be expected to preserve their wider youth work with groups of younger people. They will keep their powers to provide youth services.

Youth Offending Teams will work with the Connexions Service in providing Personal Adviser Support to young offenders, as the Care Leaver Personal Advisers will to those in or leaving care.

³³⁶ p.51

The role of the Education Welfare Service is still under consideration, but Learning Mentors in schools will be appointed and managed by headteachers.³³⁷

Reactions

The Connexions service has been welcomed by the National Young Agency (NYA),³³⁸ the Careers Services National Agency³³⁹ and the Guidance Council (the National Council for Careers and Educational Guidance).³⁴⁰ NYA, however, was concerned about what it viewed as the weakening of the frail legislative base of the youth service and felt it important that Connexions should not focus too narrowly on individual guidance. CSNA was concerned that Connexions should be a universal service with local discretion to meet local needs and effective links to Information, Advice and Guidance for Adults. The Guidance Council was concerned that there was repeated reference to a universal service but the design of the service addressed the needs of the disengaged.

The Institute of Careers Guidance has expressed grave concerns about the guidance arrangements stopping at 19.³⁴¹

3. The Bill and the debate in the Lords

The Bill as amended in the Lords

Clauses 103-112 of the Bill create a framework for establishing a youth support service. Clause 103 gives the Secretary of State powers to secure the provision of the new service by directing LEAs or making arrangements with a range of bodies. The clause includes a broad power to fund these bodies.

Clause 104 covers consultation and places duties on statutory bodies to collaborate. Clause 105 gives LEAs the powers to provide or secure services. Clause 106, 108 and 109 establish the comprehensive record system with strict controls.³⁴² Clauses 107 and 112 place a duty on the Secretary of State to make arrangements for the inspection of the service provided under Clause 103 and careers service provision made under section 8 and 9 of the *Employment and Training Act 1973*. The inspection will be by OFSTED. The Explanatory Notes make clear that, in practice, the Support Service and Careers Service provision for 13 to 19 year olds would be delivered and inspected as a single service. Clause 110 amends the *Education Act 1996* to change the duty on LEAs to provide

³³⁷ pp.51-53

³³⁸ Statement by the National Youth Agency on the launch of the new Connexions Youth Support Service. 3 February 2000 <http://www.nya.org.uk>

³³⁹ Making Connexions Work: a position statement. CSNA

³⁴⁰ Guidance Council Briefing Paper: Learning and Skills Bill

³⁴¹ Careers Guidance Today Vol.7 no.5 pp14-17

³⁴² *Connexions*. para.8.9 and 8.10

services ancillary to their FE provision to a power. This section is the basis for LEAs funding of the Youth Service.³⁴³

Clause 103(6) was added on Third Reading by an amendment from Baroness Sharp which was successful on a division. She wished to maintain the universal service provided by the Careers Service.³⁴⁴

The financial memorandum in the Explanatory Notes cites between £400 and £500 million as being currently spent on support and guidance services for young people. Additional funding, if needed, would be made available as part of the Year 2000 Spending Review.³⁴⁵

Other issues

Debates in the Lords focused on establishing how the new service would work in practice, its effect on existing services, the breadth of its remit and its funding. Baroness Blackstone, in her closing speech on Second Reading, stated that the service would 'embrace, not replace,' existing support services and would be for all young people although the personal advisers would work mostly with those who needed most help.³⁴⁶

Baroness David welcomed the new service at Second Reading but wanted clarification about the continuance of the careers service work in school in support of careers education and their work with adults. She cited a paper from the Skills Task Force³⁴⁷ expressing concern that the careers service might be subsumed within the youth support service.³⁴⁸ Baroness Young was concerned about the service's focus on young people with particular needs and the possible disregard of others.³⁴⁹ Lord Listowel gave the service an enthusiastic welcome and outlined its links with other Government programmes for the disadvantaged. He sought further clarification on training and funding.³⁵⁰

The *Connexions* policy paper³⁵¹ was published between Second Reading and Committee Stage with the result that the service is referred to as the Connexions service in subsequent debates. Although more information was available, Peers had even more questions on the themes raised at Second Reading on how the service would work in practice.

³⁴³ *Education Act 1996 s.508*

³⁴⁴ HL Deb 23 March 2000 cc.422-31

³⁴⁵ Bill 96 - EN para.218

³⁴⁶ HL Deb 17 January 2000 c.947

³⁴⁷ *Towards a National Skills Agenda, Third Report of the National Skills Task Force: Tackling the adult skills gap: Upskilling adults and the role of workplace learning*, DfEE, 2000

³⁴⁸ HL Deb 17 January 2000 cc.915-6

³⁴⁹ HL Deb 17 January 1000 c.930

³⁵⁰ HL Deb 17 January 2000 c.932

³⁵¹ *Connexions: the best start in life for every young person*. DfEE 2000

In Committee³⁵² both Baroness Blatch and Baroness Sharp warmly welcomed the idea of the Connexions service but raised, with other Peers, a raft of questions on how it would work and its effect on existing services in particular the youth services, statutory and voluntary and the Careers Service. Other issues raised were data protection concerns with the comprehensive record system, training and funding and the impartiality of learning mentors employed by schools. In response, the Government made clear that the Connexions policy document set an expected framework but was not a prospectus and that the service was to develop from the local level.³⁵³ The Careers Service, as currently constituted, would cease to exist and the staff from Careers Service companies would form the care of the Careers Service. Approximately half the total funding for the Connexions Service would come from the Careers Service Budget. The statutory duty to provide Careers Service remains on the Secretary of State. Baroness Blackstone outlined the role of the local youth services as key Connexions partners and expressed the Government's awareness of concerns that the service might attract key front line personnel from the voluntary sector. The Government hoped to recruit sufficient staff without affecting the services which would operate in tandem with the Connexions service.

The Government rejected the amendment from Baroness Darcy de Knayth which sought to ensure that the service had regard to providing equality of opportunity between disabled and non-disabled people on the grounds that it was implicit in clause 103.³⁵⁴

A Liberal Democrat amendment on a Code of Practice was rejected on the grounds that the arrangements had already been endorsed by a wide cross-section of partners and stakeholder organisations.³⁵⁵ An amendment by Baroness Sharp to give the Adult Learning Inspectorate the inspection role was rejected on the grounds that OFSTED's remit was more relevant,³⁵⁶ and her amendment to make careers education statutory for 16-19 year olds was also rejected on the grounds that, with exception of religious education in sixth forms, there was no mandatory subject for post-16s.³⁵⁷ Baroness Sharp returned with a similar amendment, again unsuccessful, at Report Stage arguing that impartial careers advice was essential for young people.³⁵⁸

At Report Peers from all parties spoke to amendments aimed at clarifying the funding of the Connexions service, the number of personal advisers and their case-load.³⁵⁹ Baroness David calculated the ratio of personal advisers to young people at about 1:200 on the Government estimate of 15,000 to 20,000 advisers. She believed that the service would

³⁵² HL Deb 17 February 2000 cc.1369-1402

³⁵³ c. 1373 and 1396

³⁵⁴ cc.1387-8

³⁵⁵ cc.1392-7

³⁵⁶ cc.1397-99

³⁵⁷ cc.1399-1402

³⁵⁸ HL Deb 14 March 2000 cc. 1209-1512

³⁵⁹ HL Deb 14 March 2000 cc. 1493-1509

not be universal.³⁶⁰ She moved her successful amendment aimed at ensuring a universal service on Third Reading.³⁶¹ Lord Northbourne was concerned about the current variability of funding of the youth service and the effect of that on local authorities' contribution to the Connexions service.³⁶²

In reply Baroness Blackstone stated that every young person had access to a careers adviser at present. Peers had cited documents suggesting that up to 47% of those under 16 and 63% of those over 16 would have information needs that would not require access to a careers adviser. A further 11% would need advice but not from a specialist careers adviser. Baroness Blackstone again stated the universal nature of the service and its focus on the disaffected. She informed the House that with support from the Careers Service National Association the DfEE had formed a group to provide guidance on transitional issues facing Careers Service companies.³⁶³

G. Induction periods for teachers

Current situation

Section 19 of the *Teaching and Higher Education Act 1998* enables the Secretary of State to make regulations about the induction period to be served by newly qualified teachers.³⁶⁴ Currently the year must be completed in relevant schools.

In a speech to the Sixth Form Colleges Employers Forum on 12 November 1999 Education Minister Malcolm Wicks announced plans to lift the legal restrictions which prevent teachers from completing their induction year in Sixth Form Colleges and Further Education Colleges.³⁶⁵

The Bill and the debate in the Lords

Clause 113 amends Section 19 of the *Teaching and Higher Education Act 1998* to allow regulations to provide for the induction year to be completed in FE colleges (which include Sixth Form Colleges). The Secretary of State and the National Assembly will have powers to define the circumstances in which FE colleges are included. In England this will be where there are sixth form type courses. The National Assembly has not yet given effect to its regulation-making powers in respect of induction.

The induction regulations refer only to those qualified to teach children in maintained schools.

³⁶⁰ cc.1495-98

³⁶¹ HL Deb 23 March 2000 cc.422-431

³⁶² HL Deb 14 March 2000 cc.1498-1501

³⁶³ cc.1497-1506

³⁶⁴ *Education (Induction Arrangements for School Teachers) (England) Regulations 1999* SI 1999/1065

³⁶⁵ Induction for schoolteachers should be extended to Sixth Form Colleges and FE Wicks. DfEE PN 505/99 12 November 1999

In Committee Lord Bach outlined the force of this clause and the Government's expectation that most sixth colleges would want to participate in the induction programme. He also referred to the consultation on the introduction of compulsory teaching qualification for FE teachers.³⁶⁶ The Government supported the principle of teachers having appropriate awareness of the needs of students with disabilities or learning difficulties but rejected Baroness Blatch's amendment to effect as inappropriate for the Clause.³⁶⁷

H. Assessments relating to learning difficulties

Background

The current arrangements for students with learning difficulties and/or disabilities in FE are set out in FEFC Circular 99/40. Annex A outlines the legal background.

If a person stays at school after 16 his statement of special needs continues unless it is formally ceased. If he leaves for FE his statement does not continue, although the annual reviews of the statement at 14 and after should have started transition planning arrangements.³⁶⁸ The FEFC and the Careers Service have duties in relation to provision for young people with learning difficulties and/or disabilities but there is no duty to assess those needs post-16.

The Bill and the debate in the Lords

Clause 114 places a duty on the Secretary of State to arrange an assessment of the needs of pupils with statements in their last year of compulsory schooling who intend to move into FE or training. The Explanatory Notes make clear that *Education (Special Educational Needs) Regulations 1994*³⁶⁹ will be amended to enable the Secretary of State's representative to participate in transitional reviews.

The Clause also gives the Secretary of State the power to arrange an assessment for other students with learning difficulties under the age of 25. This would cover those who develop learning difficulties shortly before they leave school and who do not receive a statement and those who develop learning difficulties after leaving school.

Clause 13 refers to the LSC's duties to have regard to these assessments. Clause 6(3) provides the powers for funding institutions to provide the learning and support set out in the assessment.

³⁶⁶ Consultation Paper on Compulsory Teaching Qualifications for Teacher in Further Education. DfEE February 2000

³⁶⁷ HL Deb 17 February 2000 cc. 1407-1411

³⁶⁸ Education (Special Educational Needs) Regulations 1994

³⁶⁹ SI 1994/1047

Clause 114 was amended by the Government in Committee to refine the definition of education and training in sub-section (1)(b) and to add the requirement (in subsection 4) for a written report setting out education and training needs.³⁷⁰ Baroness Darcy de Knayth moved an amendment to ensure that the needs of all pupils with learning difficulties were met. In outlining the difficulties facing the 18% with learning difficulties but no statement, she conceded that there could not be duty to assess them all. She returned with the same probing amendment on Report seeking reassurance on record about the Government's intention: Baroness Blackstone outlined the role of the Connexions service in this area and the likely use of the power to assess. Guidance will be issued on how assessment should operate.³⁷¹

The Clause was amended by the Government on Third Reading to raise the upper limit to 25 from 19.³⁷²

I. Further and higher education corporations: secondary education.

Current position

FE corporations currently have some powers to provide secondary education for 14-16 year olds under arrangements made with an LEA or a governing body.³⁷³

The Bill and the debate in the Lords

Clause 115 enables both FE corporations and HE corporations as providers of FE to provide secondary education for 14 to 16 year olds and 16 to 19 year olds. The Explanatory Notes set out in detail the three groups of young people who are likely to study at FE colleges:

- i. pupils on school rolls following some work related learning at an FE college;
- ii. young people not registered at school possibly because they are being educated at home or have been excluded from school or are being educated at the FE college under arrangements made by the LEA;
- iii. young people not registered at school but attending FE college, but not under arrangements made by the LEA.

The LSC and CETW will have the power to fund this provision but are only likely to do so for young people in the third category. Presumably, as now, the funding for young people in the first two categories will come from schools or the LEA.

It is anticipated that similar powers will be available to designated institutions incorporated by an order under Clause 116.

³⁷⁰ HL Deb 17 February 2000 cc. 1417-8

³⁷¹ HL Deb 14 March 2000 cc. 1514-6

³⁷² HL Deb 13 March 2000 c.1328; 14 March 2000 c.1515; 23 March 2000 cc.409 and c.413

³⁷³ *Further and Higher Education Act 1992* s.18 as amended by the *School Standards and Framework Act 1998*

Baroness Blackstone, on Second Reading, described the Clause as removing some legal obstacles to desirable collaboration between schools and colleges in order that they might better tailor education for young people with particular needs.³⁷⁴

J. Further education sector: designated institutions.

Current situation

FE institutions are governed either by FE corporations or governing bodies of designated institutions.³⁷⁵ The governing bodies of designated institutions, usually voluntary aided sixth form colleges, were not incorporated when they entered the FE sector.

The Bill and the debate in the Lords

Clause 116 allows for new institutions to be designated and funded by the LSC. Like section 30 of the *Further and Higher Education Act 1992* which it amends, it protects the established character of a designated institution. It also gives the Secretary of State and the National Assembly the power to incorporate designated institutions.

The Clause is intended to deal with a long-standing anomaly.³⁷⁶

Baroness Sharp in Committee raised the concerns of grant-aided institutions such as the Working Men's College and the residential colleges, also designated institutions, that their particular character would be protected if incorporated. She accepted the Minister's assurances³⁷⁷ but returned on Report to ask for a reply which specifically addressed these colleges not the voluntary aided sixth form colleges. Lord Bach gave the desired assurances in relation to designated adult colleges and pointed out how they would gain from the abolition of the Schedule 2 divide.³⁷⁸

K. Sex education

Clause 117 sets out the Secretary of State's guidance on sex education.

1. Background

Law

The statutory provisions for sex education are in sections 352 and 403-405 of the *Education Act 1996*. In primary schools, governing bodies must have a written policy on

³⁷⁴ HL Deb 17 January 2000 c. 883

³⁷⁵ *Further and Higher Education Act 1992 s.28*

³⁷⁶ HI Deb 17 January 200 c.883

³⁷⁷ HL Deb 17 February 2000 cc. 1418-9

³⁷⁸ HL Deb 14 March 2000 cc. 1516-8

sex education but decide themselves whether or at what stage to provide such education. In secondary schools, sex education must be provided for all pupils and must include education about AIDS, HIV and other sexually transmitted diseases.³⁷⁹ The governing body in a secondary school is also required to have a written policy on sex education which, like primary school policies, must be available to all parents.

Sex education given to any pupils must be 'given in such a manner as to encourage those pupils to have due regard to moral considerations and value of family life.'³⁸⁰ Parents have the right to withdraw their child from all or part of any sex education provided.³⁸¹ This right does not extend to sex education within the National Curriculum.

The programme of study for science in the National Curriculum at Key Stages 1-4 (5-16 year olds) covers the biological aspects of sex education under the heading; Science 2; Life processes and living things.³⁸²

Guidance

The current guidance on sex education was issued in 1994: *Education Act 1993: Sex Education in Schools* DfEE circular 5/94. The guidance sets sex education in the context of the general duty of LEAs, governors and headteachers to provide a curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils and prepares them for adult life.³⁸³ The guidance covers the content and purpose of sex education but does not set out what materials or information might be appropriate at what stage. The recent Social Exclusion Unit report: *Teenage Pregnancy* found that that led to a wide variety of practice in schools.³⁸⁴ The guidance does make an explicit statement on Section 28.

Section 2 of the Local Government Act 1986 (as amended by section 28 of the Local Government Act 1988) prohibits local authorities from intentionally promoting homosexuality or publishing material with that intention, and from promoting the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship. This prohibition applies to the activities of local authorities themselves, as distinct from the activities of the governing bodies and staff of schools on their own behalf.³⁸⁵

The Government intended to issue new guidance on sex education to replace Circular 5/94 as part of the action plan to reduce teenage pregnancy.³⁸⁶ The main elements of the

³⁷⁹ s. 352 (3)

³⁸⁰ s. 403 (1)

³⁸¹ s. 405

³⁸² National Curriculum. Science. Key Stages 1-4. DfEE 1999. <http://www.nc.uk.net>

³⁸³ Education Act 1996. s. 351 originally in s. 1 of the Education Reform Act 1988.

³⁸⁴ Cm 4342 para. 5.11-5.22.

³⁸⁵ DfEE Circular 5/94. Annex A: Sex Education: Schools' Legal Obligations.

³⁸⁶ *Teenage Pregnancy*. Social Exclusion Unit. Cm 4342 Chapter 11 para. 11.9 and Annex 4.

new guidance outlined in the Social Exclusion Unit Report emphasised making pupils aware of the risks of pregnancy and the consequences of early pregnancy.

Following the controversy over the repeal of Section 28, the DfEE issued details of the core principles of the new guidance on what is now called sex and relationship education.³⁸⁷ This set the guidance within the framework for Personal, Social and Health Education (PSHE) and stated:

The guidance will also make it clear that it is not the job of teachers to promote a particular sexual orientation. Teachers will not be promoting homosexual relations. They will be teaching pupils to understand human sexuality and to respect themselves and others. Pupils should be given accurate information to enable them to understand difference and to help to remove prejudice.

There is no intention for the new guidance to be a vehicle for the deliberate promotion of any sexual orientation. The guidance will set sex and relationships education within a broader base of self-esteem, respect and responsibility, and will give young people a clear understanding of the arguments for delaying sexual activity.

It will ensure that teachers are in a position to offer information and support to all young people as they develop into adults and to address incidents of homophobic bullying. Pupils have a right to develop without being subject to any physical or verbal abuse about sexual orientation.

New draft guidance

A draft of *Sex and Relationship Education Guidance* was issued for consultation on 16 March.³⁸⁸ The consultation closes on 20 April 2000. The guidance replaces Circular 5/94 and gives more specific information on suitable content. The introduction states:

It has been written to take account of the revised National Curriculum, published in September 1999, the need for guidance arising out of the new Personal, Social and Health Education (PSHE) framework and the Social Exclusion Unit report on teenage pregnancy.

We have also taken account of the need for clarification arising out of Government proposals to repeal Section 28 of the Local Government Act 1988.³⁸⁹

There is specific guidance on sexual identity and sexual orientation:

1.30. It is up to schools to make sure that the needs of all pupils are met in their programmes. Young people, whatever their developing sexuality, need to feel that

³⁸⁷ DfEE PN 046/00: Sex and relationship education. 7 February 2000.

³⁸⁸ <http://www.dfes.gov.uk/sre-guidance/index.htm>

³⁸⁹ op. cit p.2.

it is relevant to them and sensitive to their needs. The Secretary of State for Education and Employment is clear that teachers should be able to deal honestly and sensitively with sexual orientation, answer appropriate questions and offer support. There should be no direct promotion of sexual orientation.

1.31. Sexual orientation and what is taught in schools is an area of concern for some parents. Schools that liaise closely with parents when developing their sex and relationship education policy and programme should be able to reassure parents of the content of the programme and the context in which it will be presented.

1.32. Guidance issued by the Department (Social Inclusion: Pupil Support Circular 10/99) dealt with the unacceptability of and emotional distress and harm caused by bullying in whatever form - be it racial, as a result of a pupil's appearance, related to sexual orientation or for any other reason.³⁹⁰

The summary of legal requirements makes it clear that Section 28 does not apply to schools:

A.9. Section 28 of the Local Government Act 1988 prohibits local authorities from intentionally promoting homosexuality or promoting the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.

A. 10. Section 28 does not apply to schools and should not affect the delivery of sex and relationship education in schools. It does not affect the activities of school governors or of teachers. It does not prevent the objective discussion of homosexuality in the classroom, and schools can provide counselling, guidance, advice and support to pupils.³⁹¹

The Local Government Bill and Section 28³⁹²

Section 28 of the *Local Government Act 1988* inserted a new section 2A into *the Local Government Act 1986*. The provision is intended to prevent local authorities from promoting the acceptability of lesbian and gay relationships, and is part of civil, not criminal, law. It does not bind teachers in England and Wales as far as sex education is concerned, as this is a matter for school governors rather than local education authorities. A council as a whole would be the subject of any legal action rather than its individual employees, but as yet no local authority has been taken to court for a breach of the section.

The supporters of the provision consider it a necessary protection from proselytising, whereas homosexual organisations and human rights groups feel Section 28 to be

³⁹⁰ op. cit para. 1.30-1.32. p.9.

³⁹¹ op. cit p. 29. para A.9 and A.10.

³⁹² Arabella Thorp, Home Affairs Section

unjustifiably discriminatory. Many health, welfare and education organisations see Section 28 as a hindrance to providing children with information and support. Neither side considers the wording to be entirely satisfactory.

The Government has on many occasions committed itself to repeal of Section 28. A clause of the *Local Government Bill 1999-2000* was intended to implement this commitment, but was thrown out by 210 votes to 165 by the House of Lords on 7 February 2000.³⁹³ An amendment by Baroness Young was put in its place, which leaves Section 28 in force but adds that it should not prevent the headteacher or governor of a maintained school, or a teacher employed by a maintained school, from taking steps to prevent any form of bullying.

The Government has stated that it will still seek to repeal Section 28 by reversing the Lords' amendments.

Lord Whitty also gave a commitment that the Secretary of State for Education would consult with the Churches and others to see whether an amendment addressing educational concerns could be made to the Learning and Skills Bill.³⁹³

The main debates on Section 28 and associated amendments can be found in the fourth day of the Committee Stage of the Local Government Bill³⁹⁴ and the second day on Report.³⁹⁵

2. The Bill and the debate in the Lords

At Third Reading the Government amended section 403(1) of the *Education Act 1996* by the addition of 'sexual health' to the requirement to have due regard to 'moral considerations and the value of family life'.³⁹⁶

The Government had sought to add a new section³⁹⁷ to the *Education Act 1996: Sex Education: Secretary of State's Guidance* in response to the commitment given to the Lord Bishop of Blackburn at Committee stage.³⁹⁸ The Bishop had moved, and then withdrawn, an amendment to Section 403. The Government's New Clause was altered by amendments from Baroness Young, the first of which was successful on a vote and the others accepted by the Government following the vote. They inserted the additional phrase 'the key building block of society' after marriage in subsection 2(a), replaced 2(b), (d) and (c), added the requirement for approval by the affirmative procedure to subsection (6) and added the new subsection (9).³⁹⁹

³⁹³ HL Deb 7 February 2000 cc.396-486

³⁹⁴ HL Deb 2 March 2000 cc. 736-7

³⁹⁵ HL Deb 2 March 2000 cc. 733-741

³⁹⁶ see above

³⁹⁷ s.403A

³⁹⁸ HL Deb 17 February 2000 cc. 1402-07

³⁹⁹ see Marshalled List of Amendments to be moved on Third Reading HL Bill 47-I

There was a lengthy debate on the new clause and the other amendments on Third Reading.⁴⁰⁰ Baroness Blackstone made it clear that the Government's amendments had been brought forward 'to set aside fears and concerns' about the repeal of Section 28 and to place a clear statutory duty on the Secretary of State to issue positive guidance on sex and relationship education. She also gave a clear explanation of the amendment and referred to the consultation not only with the Bishop of Blackburn, as chair of the Church of England Board of Education, and Archbishop Nichols of the Catholic Education Service but also representatives of all the major faith groups and others such as health professionals.⁴⁰¹

The Government amendment had the support of the Lord Bishop of Blackburn despite his concerns about the vagueness of some of the language. He also drew attention to the essential and difficult role of teachers in delivering sex education.⁴⁰²

Baroness Young made it clear that the Government amendment was not acceptable as a substitute for Section 28. She drew attention to the very considerable support she had received, 'some 4,000 letters.' She sought both the retention of Section 28 and the removal of the major flaw in the Government's proposals which was the use of the phrase 'stable relationships' which could mean homosexual unions. She concluded:

In summing up, in my amendments I do not object to or speak against the whole of the government amendment. I have already said that I welcome the statement on marriage and, in subsection (4)(b),

'the reasons for delaying sexual activity and the benefits to be gained from such delay'.

Like all noble Lords, I am appalled that we have the highest rate of teenage pregnancy in the European Union. Clearly, if anything can be done to correct that situation then, of course, it should be done.

The amendments which I tabled today are designed to strengthen marriage, increase the safeguards against inappropriate material, safeguard Parliament's right over the curriculum and strengthen the rights of parents. Above all, they are designed to protect children. Had the government amendment been recommitted, we would have had time to discuss the matter more fully and I would have given a longer and more detailed explanation of all the points that I have put forward. As it is, I hope very much that these amendments will commend themselves to the House. I believe that that would enable us to accept an amended government amendment which would improve the Learning and Skills Bill. I beg to move.⁴⁰³

⁴⁰⁰ HL Deb 23 March cc.431-482

⁴⁰¹ cc.431-436

⁴⁰² cc.440-447

⁴⁰³ HL Deb 23 March 2000 c.440

Other amendments were tabled but not moved by Earl Ferrers who also objected strongly to the use of 'stable relationships' as a building block of the community and society when it could cover homosexual relationships.

Peers divided between those who accepted the Government's compromise and those who, like Baroness Young, felt it was not a matter for compromise.

Lord Tope urged the House to accept the compromise⁴⁰⁴ but Baroness Blatch, linking the argument with the debate in Scotland, said:

Public surveys north and south of the Border confirm that Section 28 has worked and should be kept. Childhood should be nurtured and cherished and not be made subject to the distorted message of much of the material that would surely circulate if Section 28 was repealed. My noble friend's amendments strengthen the Government's amendment by strengthening the role of marriage, protecting children from inappropriate teaching materials--there are proper tests now in the amendment to make that judgement--and give parents and governors not just the right they have at the moment but a strengthened right not only to be concerned about sex education in schools but also to have a statutory right over control of the materials and the curriculum arrangements for sex education in schools and its teaching. I believe that that is an important extension.

The people of Ayr have spoken on this matter. I hope that noble Lords, will follow my noble friend into the Division Lobby tonight, she can certainly count on my support. Meanwhile, as I said earlier, whether or not the amendment is amended, the fight to retain Section 28 on the statute book will continue.⁴⁰⁵

Baroness Blackstone made it clear that the Government, would seek to delete Baroness Young's amendment. She said:

My Lords, with the leave of the House, this amendment has demolished the carefully constructed agreement and safeguards built into the government amendment to the Learning and Skills Bill on the provision of sex education. It has deliberately excluded the key objective that pupils are given accurate information for the purposes of enabling them to understand difference and preventing or removing prejudice.

The prevention and removal of prejudice are essential to the building of a society in which citizens respect one another. The Government are not prepared to support legislation which will leave children from different family backgrounds to be stigmatised and could lead to discrimination and bullying.

In the light of this amendment, and after my right honourable friend the Secretary of State for Education and Employment has consulted the Prime Minister and the Deputy Prime Minister, I wish to tell the House that we shall seek to delete this

⁴⁰⁴ c. 467-8

⁴⁰⁵ HL Deb 23 March 2000 c.458

amendment in another place. It remains for me to pay tribute to those who at some personal cost have been prepared to sit down and work out a rational way forward.⁴⁰⁶

Reactions

The press has carried articles expressing a wide range of views. For the teachers the NAHT wrote to Peers expressing their support of the Government amendment.⁴⁰⁷

Governors' liability - unsuccessful amendments

Lord Tope moved amendments in Committee and on Report seeking to insert a clause in the Bill on the personal liability of college governors.⁴⁰⁸ He based his arguments on the recommendations of the Committee on Standards in Public Life.⁴⁰⁹

The Government believed the risk was minimal although slightly higher for designated institutions. They undertook to bring forward their own proposals at a later stage.

⁴⁰⁶ HL Deb 23 March 2000 c.480

⁴⁰⁷ Learning and Skills Bill - Sex Education NAHT PN 22 March 2000

⁴⁰⁸ HL Deb 17 February 2000 cc. 1411-1413 and 14 March 2000 cc. 1512-1514

⁴⁰⁹ *Local public spending bodies*. Second report of the Committee on Standards in Public Life. Cm 3270 1996 and *Personal liability in public service organisations: a legal research study for the Committee on Standards in Public Life*. Elizabeth Hambley (of Treasury Solicitors Department. TSO 1998)

Appendix I: Locations of Learning and Skills Councils⁴¹⁰

REGION	LOCAL LSC AREA	LSC LOCATION
North West	Cumbria	Workington
	Merseyside/Halton	Liverpool
	Lancashire	Preston
	Cheshire	Middlewich
	Greater Manchester	Manchester
North East	Tyne & Wear	Gateshead
	County Durham	Newton Aycliffe
	Tees Valley	Middlesborough
	Northumberland	Cramlington
West Midlands	Birmingham & Solihul	Birmingham
	Staffordshire	Stoke on Trent
	Shropshire	Telford
	Herefordshire & Worcestershire	Worcester
	The Black Country	Sandwell
	Coventry & Warwickshire	Coventry
Yorkshire & The Humber	North Yorkshire	York
	South Yorkshire	Sheffield
	West Yorkshire	Bradford
	Humberside	Hull
East Midlands	Lincolnshire/Rutland	Lincoln
	Northamptonshire	Northampton
	Leicestershire	Leicester
	Derbyshire	Derby
	Nottinghamshire	Nottingham
East of England	Bedfordshire	Bedford
	Essex	Chelmsford
	Cambridgeshire	Peterborough
	Hertfordshire	St Albans
	Norfolk	Norwich
	Suffolk	Ipswich
London	Central	Camden
	North	Palmers Green
	East	Stratford
	West	Ealing *
	South	Croydon
South East	Surrey	Woking

⁴¹⁰ 'Blackstone announces locations of new Learning Skills Councils'. DfEE PN. 29 February 2000

REGION	LOCAL LSC AREA	LSC LOCATION
	Sussex	Brighton
	Oxford, Milton Keynes, Bucks	Abingdon
	Kent/Medway	West Malling
	Hampshire/IOW	Fareham & satellite at Newport (IOW)
	Berkshire	Reading
South West	Devon & Cornwall	Plymouth & satellite at Truro
	Somerset	Taunton
	Gloucestershire	Gloucester
	Dorset	Bournemouth
	Wiltshire	Swindon
	Greater Bristol	Bristol

* The Government's preference is to locate the West London local LSC in Ealing but before a final decision is made, it will be necessary to look further into the financial implications.

Appendix II: Participation in education and training⁴¹¹

Young people

The following table shows trends in the proportion of 16-18 year olds in either full-time education, or in any education or training. The percentage in full-time education increased rapidly, for all ages, between 1988 and 1998. The increases were especially large for 17 and 18 year olds. Since then there has been a small fall for all age groups. The percentage in any education and training has followed a very similar trend, although the increases have not been as large.

Percentage of 16, 17 and 18 year olds in education and training, England, 1988 to 1998

Position at end of year

Age	1988	1989	1990	1991	1992	1993	1994	1994	1995	1996	1997	1998
Full-time education												
16	51.5	55.0	59.3	66.6	70.0	72.6	71.5	71.0	70.4	69.7	69.3	70.5
17	35.5	39.2	42.8	48.8	54.1	57.5	58.7	58.7	58.4	57.9	57.2	58.2
18	18.7	20.9	23.7	28.3	33.1	37.0	38.5	38.4	39.4	38.4	37.6	37.3
16-18	34.9	37.6	41.2	47.2	51.9	55.2	56.1	55.9	56.6	55.9	54.8	55.1
Government supported training												
16	23.0	21.7	18.7	16.1	13.9	12.8	12.6	12.6	10.8	9.8	9.5	9.1
17	21.5	20.8	19.4	18.5	16.7	15.9	13.4	13.4	12.2	11.8	11.0	10.6
18	5.3	5.0	5.1	6.6	7.5	8.2	7.7	7.7	7.7	8.5	8.4	8.4
16-18	16.5	15.5	14.1	13.6	12.6	12.2	11.2	11.2	10.3	10.1	9.6	9.4
All education and training												
16	80.8	81.9	83.1	86.3	86.9	88.6	88.7	88.2	86.7	85.7	84.2	85.6
17	66.6	69.1	71.8	75.6	77.4	79.4	79.6	79.4	78.7	78.8	77.4	78.3
18	40.7	42.5	45.0	49.8	55.4	58.4	59.4	59.2	60.2	60.6	59.7	59.9
16-18	62.4	63.7	65.8	69.9	72.8	75.1	75.8	75.5	75.6	75.5	73.8	74.4

Note: Age at 31 August

Due to changes in the collection of data on further education students there is a discontinuity of data from 1994.

1994 figures are given on both collection methods

Source: *DfEE statistical bulletin 13/99, Participation in education and training by 16-18 year olds in England 1988 to 1998.*

There is very little inter-regional variation in the overall proportion of young people in education or training. However, the percentage of 16 year olds in full-time education varies from 60% in the North East to 75% in London, the percentage of 17 year olds from 49% to 61% in the same regions.⁴¹²

⁴¹¹ Paul Bolton, Social and General Statistics

⁴¹² DfEE statistical bulletin 14/99 *Participation in education and training by young people age 16 and 17 in each local area and region, England, 1993/94 to 1997/98*

Adults

There were just over 1.1 million LEA adult education course enrolments in November 1998. Of these enrolments 67% are on courses not leading to formal qualifications and 14% are in provision contracted out to non-LEA institutions.⁴¹³ Recent trends in enrolments are shown below.

Adult education enrolments in England, 1992 to 1998

Thousands, November each year

	Part time day	Evening & Open and Distance Learning	Total
1992	504	775	1,280
1993	441	657	1,097
1994	456	628	1,084
1995	514	639	1,153
1996	553	679	1,232
1997	509	553	1,062
1998	550	565	1,115

Notes: The figures for 1992 and 1993 reflect the passing of the Further and Higher Education Act 1992, and the establishment of the FEFC.

Data from 1995 Includes contracted out provision. This was not separately identified prior to 1995.

Source: DfEE statistical first release SFR 17/1999 *Adult education enrolments in England -November 1998*

There is considerable variation in the enrolment rate (as a percentage of the 19-59 age group) across England. For individual LEAs the rate varies from over 6% to less than 1%. Regional variation also exists with some regions having rate more than double the level elsewhere.⁴¹⁴ These are summarised below.

⁴¹³ DfEE statistical first release SFR 17/1999 *Adult education enrolments in England -November 1998*

⁴¹⁴ *ibid.*

Adult education enrolments by region

England 1998

	Number (thousands)	Rate ^(a)
North East	49	2.6%
North West	94	2.2%
Merseyside	15	1.4%
Yorkshire & Humberside	71	1.7%
East Midlands	93	2.9%
West Midlands	83	1.9%
Eastern	124	3.1%
Greater London	219	3.9%
South East	237	3.9%
South West	130	3.5%
England	1,115	2.9%

(a) Percentage of 19-59 year olds

Source: DfEE statistical first release SFR 17/1999 Adult education enrolments in England -November 1998

Funding

Past and planned levels of funding of the further education sector in England are summarised below. The real level of funding fell in 1998-99, but is planned to increase by 5.9%, 3.8% and 7.6% in the following three years.

Expenditure on further education in England

£ million

	1997-98	1998-99	1999-00	2000-01	2001-02
Main provision	3,131	3,092	3,272	3,428	3,668
of which:					
Grant			3,237	3,368	3,608
Employer contributions			35	60	60
FE standards fund			35	80	160
Capital			40	55	100
Total					
cash prices	3,131	3,092	3,347	3,563	3,928
1998-99 prices ^(a)	3,210	3,092	3,273	3,400	3,656

(a) Adjusted using the GDP deflator

Sources: DfEE press notice 23 November 1999 Biggest ever investment of £365 for further education
DfEE annual report 1999

Despite these real increases in overall funding, the level of unit funding has fallen in real terms; this is planned to continue, as shown below.

Public funding in government-funded further education colleges (£ per FTE pupil)**England**

	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02
	actual	actual	actual	actual	actual	planned	planned	planned	planned
Government funding per FTE student ^{(a) (b)}	3,080	3,040	2,930	2,920	2,950	2,900	2,950	3,005	3,050
1998-99 prices ^(c)	3,473	3,331	3,111	3,015	3,025	2,900	2,885	2,867	2,839
£ change		-140	-220	-100	10	-120	-10	-20	-30
% change		-4.1%	-6.6%	-3.1%	0.3%	-4.1%	-0.5%	-0.6%	-1.0%

Note: rounded to the nearest £10

(a) Funding to the FEFC, with an adjustment for the provision of pension rights and the Work Related Further Education Scheme, confined to funded provision and funded students only.

(b) From 1999-00 only includes funding set aside for increasing participation and any additional employer contributions.

(c) Adjusted using the GDP deflator

Sources: *Letter from the Secretary of State to the FEFC 23 November 1999*
DfEE press notice 23 November 1999 Biggest ever investment of £365 for further education
DfEE annual report 1999

The DfEE no longer publishes information on total expenditure on the training programme. Spending is now broken down into functions that are broadly compatible with the Department's objectives. The table below shows TEC funding in real terms since 1992-93. The total budget allocated by the DfEE fell by 14% between its peak in 1996-97 and 1998-99. Programme expenditure has been falling in real terms since 1992-93.

TEC budgets and programme expenditure, England

£ million 1998-99 prices^(a)

	TEC Programmes ^(b)	TEC Budgets ^(c)
1992-93 outturn	1,823	1,348
1993-94 outturn	1,828	1,408
1994-95 outturn	1,779	1,365
1995-96 outturn	1,540	1,274
1996-97 outturn	1,568	1,515
1997-98 outturn	1,446	1,384
1998-99 estimated	1,372	1,303
1999-00 plans	1,412	1,325
2000-01 plans	..	1,324

(a) Adjusted using the GDP deflator

(b) Total expenditure on DfEE programmes managed through TECs -principally Work-Based Training for Young People and Training for Work

(c) Covers the expenditure TECs control, excluding the central budgets. Excludes funds secured in direct applications for the European Social Fund and the European Regional Development Fund

Sources: *Department for Education and Employment Departmental Report, various years*
DfEE press release 19 November 1999 £30 million training boost for young people

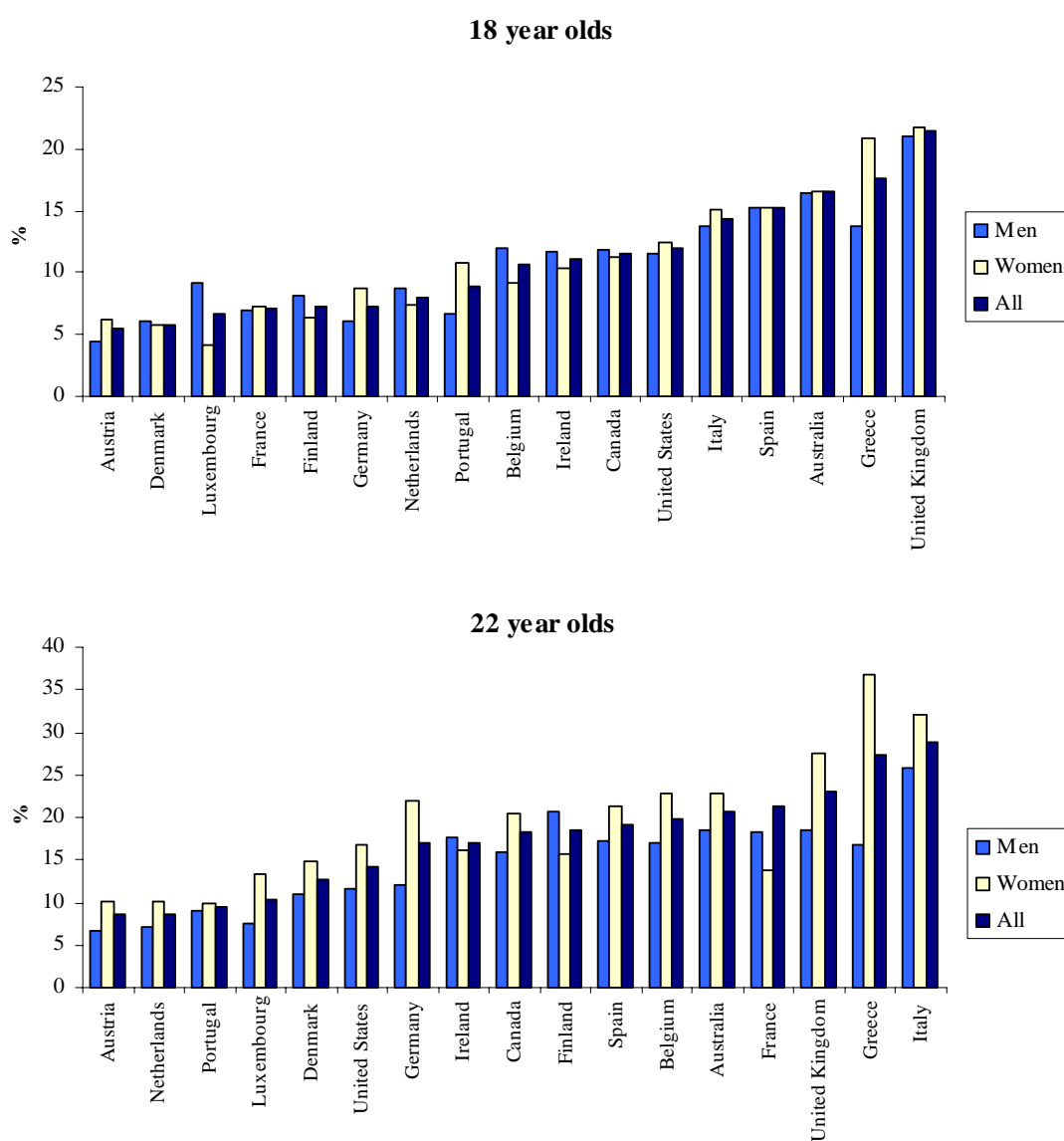
DfEE funding allocated to TECs covered around two-third of expenditure on all training programmes.⁴¹⁵

⁴¹⁵ DfEE Statistical bulletin 7/98 *Education and training expenditure since 1988/99*.

Appendix III: Non-participation: OECD and England⁴¹⁶

The following charts show international comparisons of the proportion of young people not in education or training and not employed. These OECD figures use a narrower definition of education and training than that used by the DfEE, to help improve data coverage and comparability. This results in the exclusion of a number of part-time courses. On this basis the UK had the highest rate of 18 year olds not in education, training or employment and one of the highest rates for 22 year olds. However, the limited amount of information on mode suggests that the UK has the lowest full-time participation rates but the highest part-time.⁴¹⁷ When these are combined the overall participation rate is very close to the OECD average.

Young people not in education, training or employment, 1997



Source: *Giving young people a good start: The experience of OECD countries*, OECD

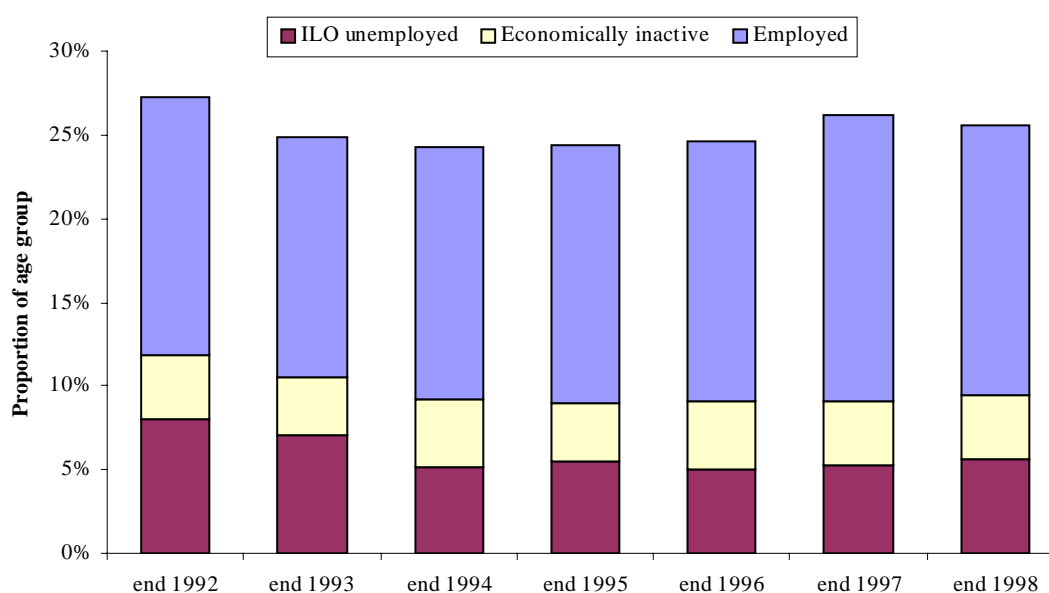
⁴¹⁶ Paul Bolton, Social and General Statistics

⁴¹⁷ *Pathways and participation in vocational and technical education and training*, OECD

England

There was an estimated 173,000 16-18 year olds in England who were not in education, training or employment at the end of 1998. This is a non-participation rate of 9.4% of this age group. The rate has increased very slightly since 1994; the major change in recent years occurred between 1992 and 1994 when the rate fell from 12% to below 9%.⁴¹⁸ The chart below gives a breakdown of economic activity for those not in education or training since 1992.

Economic activity of 16-18 year olds not in education or training



The non-participation rate is slightly higher for females in this age group. However, the differences are larger within the different classifications. There are around three times as many women in the economically inactive group, and two-thirds of unemployed non-participants are men. Black young people had the highest non-participation rate of any ethnic group at 12%; the lowest was 7% in the Asian group.⁴¹⁹

⁴¹⁸ DfEE statistical bulletin 11/99, *Education and labour market status of young people in England aged 16-18: 1992-1998*

⁴¹⁹ *ibid.*

Appendix IV: Delegated powers

The *Learning and Skills Bill [HL]* contains a large number of delegated powers. The Select Committees on Delegated Powers and Deregulation accepted that those powers were what was to be expected in a Bill of this kind. All the Secretary of State's powers to make Regulations and Orders are to be exercised by the negative resolution procedure. The exceptions are commencement orders in line with normal practice and orders relating to individual institutions.⁴²⁰ Regulations and Orders made by the National Assembly for Wales will be subject to the National Assembly's own procedures as provided for in its Standing Orders under the *Government of Wales Act 1998*.

The Select Committee Report⁴²¹ considered that the degree of Parliamentary control was appropriate, subject to minor amendments to remove unnecessary controls in Clause 116. The report drew attention to the DfEE's comprehensive memorandum⁴²² which identifies all the provisions for delegated legislation, explains their purpose and method of operation, and explains why the particular form of Parliamentary control has been selected each case.

The level of Parliamentary control has not been an issue in the debate in the Lords although Baroness Blatch called attention to the detail for implementation which had been subordinated to secondary legislation.⁴²³

⁴²⁰ Clause 116 and Schedule 8

⁴²¹ HL Paper 23

⁴²² HL Paper 23 Annex 1

⁴²³ HL Deb 17 January 2000 c.884

Appendix V: Relevant documents

- *First Report of the Committee on Standards in Public Life* (Nolan Report), Cm 2850, May 1995
- *Learning Works - Widening Participation in Further Education* (Kennedy Report), FEFC, June 1997
- *Further Education for the New Millennium, Response to the Kennedy Report*, DfEE, February 1998
- *The Learning Age Green Paper*, DfEE, Cm. 3790, February 1998
- *Learning is for Everyone Green Paper*, Welsh Office, Cm 3942, April 1998
- *TECs: Meeting the Challenge of the Millennium*, DfEE, July 1998
- *Improving literacy and numeracy – a fresh start*, (Moser Report) February 1999
- *Quinquennial Review of the Further Education Council for England - Prior Options Review Report*, FEFC, March 1999
- *Education and Training Action Plan for Wales*, Welsh Office, March 1999
- *White Paper, Learning to Succeed - a new framework for post-16 learning*, DfEE, Cm 4392, June 1999.
- *Learning to Succeed - School Sixth Form Funding: a consultation paper*, DfEE, June 1999.
- *Bridging the Gap - New Opportunities for 16 to 18 year olds not in Education, Employment or Training*, Social Exclusion Unit, Cm 4405, July 1999.
- *The Learning and Skills Council Prospectus*, DfEE, December 1999.
- First Report of the National Skills Task Force, *Towards a national skills agenda*, 1999
- Second Report of the National Skills Task Force, *Delivering skills for all*, 1999
- Third Report of the National Skills Task Force, *Tackling the adult skills gap: upskilling adults and the role of workplace learning*, 2000
- *Learning to Succeed – Post-16 Funding and Allocations: First Technical Consultation Paper*, DfEE, January 2000.

- *Reinforcing Standards*, Committee on Standards in Public Life, Cm 4557, January 2000
- *Third Report from the House of Lords Select Committee on Delegated Powers and Deregulation*, HL Paper 23, January 2000
- *Connexions – the best start in life for every young person*, DfEE, February 2000