

EDUCATION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Education Bill as introduced in the House of Commons on 26 January 2011. They have been prepared by the Department for Education (DfE) and the Department for Business, Innovation and Skills (BIS) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Education Bill is founded on the principles and proposals in the Department for Education November 2010 White Paper, *The Importance of Teaching* (CM-7980). The Bill includes measures to increase the authority of teachers to discipline pupils and ensure good behaviour, with a general power to search pupils for items banned under the school's rules, the ability to issue same-day detentions and pre-charge anonymity when faced with an allegation by a pupil of a criminal offence.

4. The Bill will remove duties on schools and local authorities to give them greater freedom to decide how to fulfil their functions. The Academies programme will be extended, with Academies for 16 to 19 year olds and alternative provision Academies.

5. The Bill will change school accountability, with more focused Ofsted inspections and wider powers to intervene in under-performing schools. Ofqual, the independent qualifications regulator, will be required to secure that the standards of English qualifications are comparable with qualifications awarded outside the UK. The Bill will abolish five arm's length bodies, with many of their functions ending and those which are to continue being discharged by the Secretary of State, who will be directly accountable to Parliament for them.

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6. The Bill also makes provision to give effect to proposals to increase college freedoms and make changes to the skills entitlements that were set out in the strategy documents, *Skills for Sustainable Growth* (UNR: 10/1274) and *Further Education – New Horizon* (UNR: 10/1272) published by the Department for Business, Innovation and Skills in November 2010 .

7. The Bill will enable the Government to introduce an entitlement to free early years provision for disadvantaged two year olds and take forward two elements of the Government’s response to the Browne Review on higher education funding: enabling a real rate of interest to be charged on higher education student loans and allowing fees for part-time undergraduate courses to be capped.

8. Further relevant background to the Bill is contained in the “Overview of the Structure of the Bill” section which details the contents of each Part of the Bill.

OVERVIEW OF THE STRUCTURE OF THE BILL

9. The Bill consists of 10 Parts and 17 Schedules and is arranged as follows.

Part 1: Early years provision

10. Part 1 of the Bill makes it possible to introduce free early years provision for children of two years of age from disadvantaged backgrounds.

Part 2: Discipline

11. This Part extends the power of members of staff at schools and further education institutions to search pupils without their consent for an item that has been, or is likely to be, used to commit an offence or cause injury to the pupil or another, or damage property, and to search for items banned under the school rules. It reforms the process for reviews of permanent exclusions. It also repeals the duty on schools to give 24 hours’ written notice of a detention to parents, and the duty on all schools to enter into a behaviour and attendance partnership with other schools in their area.

Part 3: School workforce

12. This Part abolishes three arm’s length bodies – the General Teaching Council for England (GTCE), the Training and Development Agency for Schools (TDA) and the School Support Staff Negotiating Body (SSSNB). The Bill provides for the relevant functions of the GTCE and the TDA to be undertaken by the Secretary of State and where appropriate by Welsh Ministers, and gives the necessary powers to make schemes for the transfer of staff from these bodies to the Secretary of State.

13. This Part also introduces restrictions on the public reporting of allegations made against teachers.

Part 4: Qualifications and the Curriculum

14. This Part requires sampled schools to take part in international education

surveys when directed by the Secretary of State.

15. It amends the governance structure of the Office of Qualifications and Examinations Regulation (Ofqual) and revises its standards objective to include international comparison.

16. This Part abolishes a further arms length body, the Qualifications and Curriculum Development Agency (QCDA). The Bill provides for the relevant functions of the QCDA to be transferred to the Secretary of State and gives the necessary powers to make schemes for the transfer of staff from this body to the Secretary of State.

17. It also amends legislation relating to provision of careers education and guidance and repeals the duty on local authorities, schools and governing bodies to secure access to the diploma entitlement for 16 to 18 year olds and pupils in the fourth key stage.

Part 5: Educational institutions: other provisions

18. This Part repeals certain duties on the governing bodies of maintained schools in England and repeals the duty on local authorities to appoint a school improvement partner in each maintained school.

19. It also makes changes to the duties of local authorities in relation to school admissions. In addition, the schools adjudicator will no longer be able to make modification to a school's admissions arrangements in response to a complaint or a referral.

20. This Part introduces a cap on the amount local authorities and the governing bodies of maintained schools in England are allowed to charge for the provision of school meals, milk etc.

21. This Part also makes changes to the arrangements for the establishment of new schools by introducing a presumption that when local authorities set up new schools they will be Academies (including free schools).

22. This Part makes changes to the composition of school governing bodies and, with the related clause in Part 6, makes it possible for one or more, but not all, of the schools in a federation to become an Academy without first having to go through the statutory process to leave the federation.

23. This Part provides for changes to the inspections framework for schools, and for the exemption of certain categories of school and further education institution from routine inspection by Her Majesty's Inspectorate, the Office for Standards in Education, Children's Services and Skills. Where a school or further education institution asks Ofsted to carry out an inspection in circumstances where such an inspection is not required, and Ofsted agrees to do so, this Part allows the Chief

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Inspector to charge the school or college for the cost of carrying out that inspection. It also makes changes to the inspection of boarding provision.

24. This Part makes provision for the Secretary of State to direct a local authority to issue a warning notice to a school on grounds of performance or safety concerns, and extends the Secretary of State's power to close schools to all schools eligible for intervention, rather than (as at present) only those deemed by Ofsted to be in need of special measures.

25. This Part repeals the power for parents to make complaints about schools to the Local Commissioner.

26. This Part also contains measures on school finance, and allows nursery schools (and schools with nursery classes) to charge for early years provision that is not funded by the local authority. It enables the Secretary of State to issue directed revisions to local authority schemes for financing schools and requires the Secretary of State to consult local authorities and others before a direction is given. It also allows the governing bodies of maintained schools to fund the costs of premature retirement and dismissal of community staff from their budget shares.

27. This Part repeals and amends a range of duties placed on further education corporations and repeals the change of the name of pupil referral units to short stay schools.

Part 6: Academies

28. This Part amends Academies legislation. It allows the establishment of 16 to 19 Academies and alternative provision Academies and removes the requirement for Academies to have a specialism.

29. It makes some changes to the consultation requirements for the setting up of an Academy, and to the way a school in a federation becomes an Academy. This Part protects the existing position in relation to discrimination in employment practices for faith schools which convert to become Academies, but makes provision for this to be changed (by order of the Secretary of State) after conversion.

30. This Part makes changes to the legislation relating to school land, to increase the Secretary of State's ability to make land available for free schools.

31. It allows for schools adjudicators to consider and determine objections to Academies' admission arrangements

Part 7: Post-16 education and training

32. This Part abolishes a further arm's length body, the Young People's Learning Agency for England (YPLA); it provides for the relevant functions of the YPLA to be transferred to the Secretary of State, and gives the necessary powers to make schemes

for the transfer of staff from this body to the Secretary of State.

33. It replaces the duty on the Chief Executive of Skills Funding to secure an apprenticeship place for certain young people with a duty to fund apprenticeship training (through securing the provision of proper facilities) for certain groups who have secured an apprenticeship place. The Part makes changes to the law relating to the issue of apprenticeship certificates.

34. This Part makes changes to the skills entitlements.

35. This Part gives a power to the Secretary of State to direct the Chief Executive of Skills Funding to consult with specified people or descriptions of persons on matters associated with the performance of the Chief Executive's functions.

36. Part 7 also retains the commencement of raising the participation age legislation in 2013 (to age 17) and 2015 (to age 18) whilst removing the requirement to commence enforcement procedures on young people, parents and employers in relation to raising the participation age on a certain date.

Part 8: Student finance

37. This Part includes measures that form part of a package of higher education reforms announced in an oral statement in the House of Commons on 3 November 2010¹ and later refined in a written statement on 8 December 2010,² in response to the Browne Review.³ It will apply the tuition fees cap for full-time courses on a pro rata basis to part-time courses, and increases the cap on the interest rates that can be charged on new student loans.

Part 9: Powers of National Assembly for Wales

38. This part gives the National Assembly for Wales framework powers in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce; and in relation to the funding of pre-16 education or training.

¹ Higher Education Funding, 3 Nov 2010; Hansard: Column 924, available at <http://www.parliament.uk/business/publications/>

² Higher Education Funding and Student Finance, 8 Dec 2010; Hansard: Column 19WS, available at <http://www.parliament.uk/business/publications/>

³ *Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding & Student Finance*, 12 October 2010, available at www.independent.gov.uk/browne-report

Part 10: General

39. This Part contains supplementary provisions about orders and regulations, interpretation of the Act, financial provision, extent, commencement and the short title.

TERRITORIAL EXTENT AND APPLICATION

40. Except where stated otherwise below, the Education Bill extends to England and Wales only and applies to and affects England only. The significant exceptions are explained in the text below, and a clause by clause summary is provided in the table at Annex A.

Scotland

41. Clauses 62, 63 and 64 deal with the abolition of the Young People's Learning Agency for England. Although this is an England only body, it has power to deliver services in Scotland, both to the Scottish Ministers and to other persons specified by them by order. Clause 62 repeals this power along with the other provisions that established the YPLA. The Scottish Government is seeking a legislative consent motion to cover this change.

42. Clause 61 deals with consequential amendments arising from AA 2010 to UK-wide legislation that refers to "Academy agreements" (the Finance Act 2003 and the Equality Act 2010), but as Academies only exist in England, it has no effect elsewhere.

Northern Ireland

43. Clauses 62, 63 and 64 deal with the abolition of the Young People's Learning Agency for England. Although this is an England only body, it has power to deliver services in Northern Ireland, both to the relevant departments and to other persons specified by the Assembly by order. Clause 62 repeals this power along with the other provisions that established the YPLA.

44. Clauses 21 and 22 deal with changes to Ofqual, which affect Northern Ireland in that Ofqual regulates vocational qualifications in Northern Ireland. Clause 21 strengthens Ofqual's governance arrangements and clause 22 ensures that international comparisons play a key role in Ofqual's objectives. The Northern Ireland Assembly Government is seeking a legislative consent motion to cover these changes.

45. Clause 61 deals with consequential amendments arising from AA 2010 to UK-wide legislation that refers to "Academy agreements" (the Finance Act 2003 and the Equality Act 2010), but as Academies only exist in England, it has no effect elsewhere.

Wales

46. Clauses 72 and 73 are framework powers which give legislative competence to

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the National Assembly for Wales and have the same extent as the Government of Wales Act 2006. However, their practical application will largely be confined to Wales, since the Assembly may only legislate in relation to Wales and for certain ancillary purposes.

47. Clause 72 gives the Assembly competence in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce.

48. Clause 73 gives the Assembly competence in relation to the funding of pre-16 education or training.

49. Clause 70 gives the Welsh Ministers the same powers in relation to interest rates on student loans as it gives to the Secretary of State.

50. Clause 71 gives the Welsh Ministers the same powers in relation to course fees for part-time students at higher education institutions as it gives to Secretary of State.

51. Clause 13, dealing with the protection of teacher anonymity, is concerned with criminal justice and so applies to and affects England and Wales in the same way.

52. Clauses 14 to 17, dealing with the abolition of Training and Development Agency for Schools (TDA), ensure that, in relation to Wales, the Welsh Ministers have the same powers, subject to the same constraints, as they previously exercised through the TDA.

53. Schedule 2 widens the powers that Welsh Ministers have to share information with the General Teaching Council for Wales.

54. Clause 42 makes the same change to the definition of boarding provision in Wales as in England, but makes further particular provision in relation to Wales. It enables Welsh Assembly Government Ministers to take steps to determine whether a child's welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in Wales, in circumstances where their duty to do so has been suspended by virtue of section 87A of CA 1989.

55. Section 409 of EA 1996 applies to England and Wales and provides for local authorities to consider complaints about the curriculum. This section was repealed in error for both England and Wales by ASCLA 2009. The repeal has only been commenced in fourteen local authority areas in England as part of the new Local Government Ombudsman complaints service, and clause 44 has the effect that section 409 is repealed in England and restored in respect of Wales.

56. The Welsh Assembly Government intends to seek a legislative consent motion

in relation to the above clauses. Clause 47 has the same effect in Wales as in England.

Summary

57. For the reasons set out above, this Bill contains provisions that trigger the need for legislative consent motions in Scotland, Northern Ireland and Wales. Westminster will not normally legislate with regard to devolved matters without the consent of the devolved administrations. If there are any amendments to the Bill relating to devolved matters in Scotland, Wales or Northern Ireland which trigger a legislative consent motion then consent will be sought for them from the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly respectively.

58. The table at Annex A sets out the application of the individual provisions.

GLOSSARY

59. The following abbreviations have been used to refer to the Acts mentioned in these explanatory notes:

“AA 2010” means the Academies Act 2010;

“ASCLA 2009” means the Apprenticeships, Skills, Children and Learning Act 2009;

“CA 1989” means the Children Act 1989;

“CA 2006” means the Childcare Act 2006;

“CSFA 2010” means the Children, Schools and Families Act 2010;

“EA 1994” means the Education Act 1994;

“EA 1996” means the Education Act 1996;

“EA 1997” means the Education Act 1997;

“EA 2002” means the Education Act 2002;

“EA 2005” means the Education Act 2005;

“EIA 2006” means the Education and Inspections Act 2006;

“ESA 2008” means the Education and Skills Act 2008;

“FHEA 1992” means the Further and Higher Education Act 1992;

“HEA 2004” means the Higher Education Act 2004;

“LSA 2000” means the Learning and Skills Act 2000;

“SSFA 1998” means the School Standards and Framework Act 1998;

“THEA 1998” means the Teaching and Higher Education Act 1998.

COMMENTARY ON CLAUSES

PART 1: EARLY YEARS PROVISION

Clause 1: Free of charge early years provision

60. Clause 1 inserts three new sections into Part 1 of CA 2006.

61. *Subsection (2)* replaces the existing section 7 in CA 2006. As with the old section 7, the new section places a duty on English local authorities to secure that certain early years provision is available free of charge for certain young children in their area. Early years provision is defined in section 20 of CA 2006 as being childcare for a young child (a child from birth up to the 1st September after the child turns five).

62. Currently, the regulations made under section 7 require local authorities to secure 15 hours per week of free early years provision for all three and four year olds. The new section 7 will enable the regulations to retain this universal entitlement for children of those age-groups whilst also extending the requirement on local authorities to secure free early years provision for a targeted group of two year olds.

63. The regulations under the new section 7 will be able to define an entitlement for children based on criteria other than age, such as criteria related to the family’s economic circumstances as the Government intends for two year olds. Under the current section 7 it is only possible to require local authorities to secure free early years provision for all children of a prescribed age.

64. The new section 7 enables the Secretary of State to set out in regulations the nature of the early education, the description of children for whom it must be made available, and to make other provision about how the local authority must make it available. This can include the amount of early education to be made available and the timing of it (for example, whether there is a minimum number of weeks in a year over which it should be available, or certain times of the day at which it must be made available).

65. *Subsection (3)* inserts new sections 13A and 13B into CA 2006. New section 13A allows tax credits information held by Her Majesty’s Revenue and Customs

(HMRC) and social security information held by the Department for Work and Pensions (DWP) to be supplied to the Secretary of State, and ultimately to local authorities in England (new section 13A(5)), for use in determining eligibility of children for free early years education under section 7 of CA 2006. The information received by the Secretary of State can only be passed to local authorities and only for the purpose of determining eligibility. *Subsection (4)* allows for information held by HMRC to be supplied directly to local authorities. *Subsection (6)* allows information also to be supplied to a contractor exercising the function of determining eligibility on behalf of the local authority. The sharing of data allowed under this section will enable easier checking of eligibility by local authorities, for example through an electronic database containing the relevant information. This new section mirrors that in section 110 of the EA 2005 which allows data to be shared for the purposes of determining eligibility for free school meals and free school milk.

66. New section 13B makes unlawful disclosure of information received under section 13A and relating to an individual a criminal offence. New section 13B(2) sets out the circumstances in which disclosure is authorised, including where the individual consents to its disclosure. This provision is similar to section 182 of the Finance Act 1989 and section 123 of the Social Security Administration Act 1992, which impose criminal sanctions for the unauthorised disclosure of information held by HMRC and DWP.

67. *Subsection (4)* repeals a transitional provision in CA 2006 which is no longer needed.

PART 2: DISCIPLINE

Clause 2: power of members of staff to search pupils

68. A head teacher or an authorised member of school staff has a statutory power, under section 550ZA of EA 1996, to search a pupil or his possessions without consent if there are reasonable grounds for suspecting that the pupil is in possession of a weapon, alcohol, illegal drugs, stolen property and other items specified in regulations (“prohibited items”). Clause 2 extends the list of prohibited items.

69. *Subsection (2)(a)* inserts into section 550ZA(3) a new paragraph (ea) which adds to the list of prohibited items any article which the member of staff reasonably suspects has been, or is likely to be, used to commit an offence or to cause personal injury to, or damage to the property of, any person, including the pupil being searched.

70. *Subsection (2)(b)* inserts into section 550ZA(3) a new paragraph (g) which adds to the list of prohibited items any other item which the school rules identify as an item for which a search can be undertaken.

71. *Subsection (2)(c)* inserts new subsections (4A) to (4C) into section 550ZA.

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The new subsection (4A) specifies that “offence” in section 550ZA(3)(ea) includes behaviour by younger pupils that would be an offence if they had attained the age of criminal responsibility. New subsection (4B)(a) defines the school rules for maintained schools and non-maintained special schools as rules made and publicised by the head teacher in accordance with section 89 of EIA 2006. New subsection (4B)(b) provides that in the case of other schools, measures relating to behaviour must be made and publicised in accordance with regulations. New subsection (4C) specifies the types of school to which subsection (4B)(a) applies.

72. *Subsection (3)(a)* amends section 550ZB(5) of EA 1996 so that reasonable force may only be used in executing a search for items within section 550ZA(3)(a) to (f), and so not for items which the school rules identify as an item for which a search may be made.

73. *Subsection (3)(b)* amends section 550ZB(6) of EA 1996 and enables searches to be carried out by a member of staff who is of the opposite sex to the pupil being searched, and searches to be carried out without another member of staff being present, but only where the condition in new subsection (6A) is met. The new subsection (6A) is inserted by *subsection (3)(c)*. The condition in new subsection (6A) is that the member of staff carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search urgently and that it is not reasonably practicable for the search to be carried out by a member of staff of the same sex as the pupil, or for the search to be witnessed by another member of staff.

74. *Subsection (3)(d)* amends section 550ZB(7) and enables searches of a pupil or his or her possessions to be carried out in the absence of another member of staff where the condition in new subsection (7A) is met. The new subsection (7A) is inserted by *subsection (3)(e)*. The condition is that the member of staff carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search urgently and that it is not reasonably practicable for the search to be witnessed by another member of staff.

75. *Subsection (4)(a)* amends section 550ZC(2), which is about the power of teachers to use reasonable force to seize items found during a search. The effect of the amendment is that force may be used to seize items that are prohibited by virtue of section 550ZA(3)(a) to (f), but not items prohibited by virtue of section 550ZA(3)(g).

76. *Subsection (4)(b)* inserts new subsections (6A) to (6G) into section 550ZC of EA 1996. Section 550ZC provides a power to seize items found as a result of a search under section 550ZA. New subsection (6A) provides that where a person carrying out the search seizes an item listed as prohibited under new section 550ZA(3)(ea) the item must be delivered to the police, returned to its owner, retained, or disposed of.

77. New subsection (6B) provides that where an item is prohibited by virtue of

section 550ZA(3)(g) it must be returned to its owner, retained or disposed of.

78. New subsections (6D) to (6G) provide specific powers regarding electronic devices seized under these provisions. New subsection (6E) provides that the person who has seized the item may examine any data or files if they believe there is a good reason to do so. New subsection (6F) allows data or files from the device to be erased if the person has decided to return it to its owner, retain it or dispose of it and thinks there is a good reason to do so. New subsection (6G) stipulates that, in determining whether there is a good reason to examine any data or files, or erase data or files for the purposes of subsections, regard must be had to guidance issued by the Secretary of State.

79. *Subsection (5)(a)* provides that the Police (Property) Act 1897 applies in relation to articles that are delivered to the police under section 550ZC(6A)(a). The Act enables an application to be made to a magistrate's court for an order that property in possession of the police be returned to its owner.

80. *Subsection (5)(b) to (e)* amends section 550ZD to provide that, where a person conducting a search, lawfully seizes, retains, disposes or erases an article seized under any of the new provisions in section 550ZC, they shall not be liable for the seizure, loss or disposal, or any damage arising.

Clause 3: Power of members of staff at further education institutions to search students

81. This clause provides similar powers of search in relation to further institutions as clause 2 provides in relation to schools. The only substantive difference between the two search powers is that the power to search for items identified in the school rules is not replicated for further education institutions.

Clause 4: Exclusion of pupils from schools in England: review

82. *Subsection (2)* of clause 4 inserts a new section 51A into EA 2002, which applies to England only, providing for the exclusion of pupils from maintained schools and pupil referral units (PRUs). *Subsection (3)* of this clause makes amendments to section 52 (exclusion of pupils) of the EA 2002 so that it will only apply now to Wales. The following therefore applies only to England; the current appeal procedure will continue to exist in relation to Wales.

83. Subsections (1) and (2) of new section 51A keep the power in section 52 for head teachers of maintained schools and teachers in charge of PRUs in England to exclude any pupil from school on disciplinary grounds for a fixed period or permanently.

84. Subsection (3) of new section 51A requires the Secretary of State to make regulations regarding the procedure relating to the exclusion of pupils and subsections (3) and (5) to (12) set out what these regulations must cover and what they may also cover. These regulation-making powers broadly mirror those in the current section 52,

though the powers of the new review panel are significantly different from those of the current appeal panel.

85. Subsection (4) sets out the powers of a review panel to make a decision when a prescribed person applies to it for a review of a decision by a responsible body (a maintained school or a PRU) not to reinstate a pupil. A review panel may uphold the decision of the responsible body; or recommend that the responsible body reconsiders the case. If it considers that the decision of the governing body was flawed when viewed in the light of the principles of judicial review it can direct the responsible body to reconsider the matter, but the review panel does not have the power to order reinstatement. Subsection (5) allows the Secretary of State to make regulations to give the review panel additional powers when it has recommended reconsideration or quashed a decision of the governing body. This might be used, for example, to allow the panel to make recommendations about what should go on the pupil's record.

86. Subsections (6) and (7) provide that where a panel has quashed a decision of the responsible body and directed that the responsible body considers the decision again, then, in prescribed circumstances, an adjustment of a school's budget may be made. The Secretary of State is required to make provisions which set how the amount of such a payment is to be determined and what effect such adjustments will have on the budget shares of other maintained schools.

87. Subsection (8) deals with the payment of allowances to members of the review panel; and creates regulation-making powers which allow for provision requiring a person or body making the exclusion to have regard to guidance from the Secretary of State; requiring local authorities to provide prescribed information to the Secretary of State; and a general regulation-making power to cover any other matters associated with an exclusion decision.

88. Subsection (10) defines the terms used in this section and provides that regulations may prescribe who is the "responsible body" in relation to a pupil referral unit.

89. Subsection (11) provides that when regulations have not prescribed who the "responsible body" is in relation to a permanent exclusion from a PRU, the procedure in subsection (3) has effect with two exceptions; the responsible body is not required to consider whether the child should be reinstated and the review panel will review the decision of the teacher in charge not to reinstate the pupil.

90. Subsection (12) provides a regulation-making power to allow the Secretary of State to apply new section 51A and regulations made under it, to Academies, or a description of Academy, with or without modifications.

91. *Subsection (3)* of this clause makes amendments necessary to section 52 of EA 2002 because it will only apply now to Wales.

92. *Subsection (4)* gives effect to *Schedule 1* which makes amendments to other legislation consequential on the changes made by subsections (2) and (3).

Schedule 1

93. *Paragraph 1* makes consequential amendments to the Local Government Act 1972 to allow the payment of members of review panels for travel expenses and attendance at meetings. It provides that this does not affect existing provisions in Wales.

94. *Paragraphs 2 to 6* amend legislation to replace references to “appeals panels” with references to “review panels”, and replace references to section 52 with references to the new section 51A.

95. *Paragraph 8* inserts a new subsection (3A) into section 87 of SSFA 1998 which established that there is no requirement to admit children permanently excluded from two or more schools. The new subsection (3A) sets out the circumstances in which a child should not be treated as excluded for the purposes of that section, for example, when the child has been reinstated in line with new section 51A.

96. *Paragraph 9* amends section 87(4) of SSFA 1998 so that it applies to Wales only. Section 87(4) covers the impact of decisions made by an independent appeal panel on provisions relating to pupils who have been permanently excluded from two or more schools. As the new clause will abolish independent appeal panels in England, section 87(4) is no longer relevant.

97. *Paragraphs 10 to 12* amend relevant parts of the Equality Act 2010 so that it applies to Wales only.

Clause 5: Repeal of requirement to give notice of detention to parent: England

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

Clause 6: Repeal of duty to enter into behaviour and attendance partnership

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

PART 3: SCHOOL WORKFORCE

Abolition of the General Teaching Council for England

Clause 7: Abolition of the General Teaching Council for England

100. Clause 7 amends section 1 of THEA 1998 to remove references to the General Teaching Council for England (the “GTCE”). The amendment has the effect of abolishing the GTCE, but the General Teaching Council for Wales (the “GTCW”) continues unaffected.

Clause 8: Functions of Secretary of State in relation to teachers

101. *Subsection (1)* inserts new sections 141A to 141E into EA 2002, providing for the Secretary of State to provide regulatory functions for the teaching profession in England.

102. New section 141B allows the Secretary of State to consider allegations of unacceptable professional conduct, conduct that may bring the profession into disrepute or convictions of a relevant offence and to decide whether to prohibit the person from teaching. (Teachers covered by these arrangements are set out in the new section 141A.)

103. New section 141C provides that the Secretary of State must keep a list (available for the public to view) of teachers who are subject to a prohibition order (barred from teaching) or teachers who have failed the teacher induction period in circumstances that may be prescribed. The Secretary of State can include a person on the list who has been banned from teaching in Wales, Scotland or Northern Ireland.

104. New section 141D provides that where a teacher has been dismissed for serious misconduct (or where they would have been dismissed had they not resigned) the employer must consider whether to refer the case to the Secretary of State. Section 141E ensures that the same applies in respect of teachers employed through supply agencies or contractors.

105. *Subsection (2)* inserts new Schedule 11A into EA 2002 which makes provision about the regulations to be made by the Secretary of State under new section 141B. Paragraph 2 of the new schedule provides that the regulations must make provision about the procedures to be followed by the Secretary of State in making decisions about prohibiting a person from teaching, including allowing the Secretary of State to make an interim prohibition order to prevent the person from teaching whilst their case is being considered. Paragraph 3 provides that the regulations may specify the effect of a prohibition order, including what teaching work the teacher may nevertheless carry out and may make provision about the publication of information relating to cases. Paragraph 4 provides that the regulations must allow for the right to appeal against a prohibition order, within 28 days, to the High Court, from where there will be no further right to appeal (this replicates current regulatory arrangements under the GTCE). They may also provide for a teacher who is subject to a prohibition

order to apply to have the order set aside and the procedures for this. Paragraph 5 allows regulations to provide that notice of a prohibition order be served on the teacher's employer and to require the employer to take action, such as dismissal. They may also make provisions about the effect in England of teachers being banned from teaching in Wales, Scotland or Northern Ireland.

Clause 9: Requirement for teachers in England to serve induction period

106. Clause 9 inserts new sections 135A to 135C into EA 2002. The new sections largely reproduce section 19 of THEA 1998 regarding teachers' induction periods, and transfer existing provisions regarding induction from the GTCE to the Secretary of State as far as these relate to England. Arrangements for Wales are unaffected and remain covered by section 19 of THEA 1998.

107. New section 135A allows regulations to make provision for teachers to have completed an induction period of not less than three school terms and provides for a range of detail to be set out in regulations regarding the induction process. This includes the determination by the Secretary of State of the standards against which a person is to be assessed for the purpose of deciding whether the person has satisfactorily completed an induction period.

108. New section 135B provides that the regulations must include a right of appeal to the Secretary of State by a person aggrieved by an induction decision. There is to be no further right of appeal.

109. In addition, the new sections provide that regulations may allow teachers to complete their induction period within an independent nursery school where the school meets the conditions for induction. The regulations can also allow a teacher to serve more than one induction period. Other than the transfer of functions to the Secretary of State, these are the only substantive changes from section 19 of THEA 1998.

Clause 10: Abolition of the GTCE: transitional provision

110. Clause 10 makes transitional provisions in respect of certain functions currently undertaken by the GTCE. It provides that any prohibition orders made by the GTCE will continue as if they had been made by the Secretary of State under new section 141B. Any conditional orders made by the GTCE will continue for the specified period or until revoked. The investigation of any teachers in England by the GTCE immediately prior to commencement may be continued by the Secretary of State.

Clause 11: Abolition of the GTCE: consequential amendments

111. Clause 11 gives effect to Schedule 2 which makes consequential amendments to other enactments to reflect the changes made by provisions of this Bill. Most of the changes are to remove references to the GTCE or to replace them with references to the Secretary of State.

Clause 12: Abolition of the GTCE: transfer schemes

112. Clause 12 gives effect to Schedule 3 which enables the Secretary of State to create a scheme whereby members of GTCE staff can have their contracts of employment transferred to the Secretary of State, with appropriate civil service terms and conditions, unless they give notice of objection.

113. The Secretary of State may also create a property transfer scheme, through which the GTCE's assets and liabilities may transfer to the Secretary of State.

Reporting restrictions

Clause 13: Restrictions on reporting alleged teacher misconduct

114. Clause 13 inserts three new sections into EA 2002 to restrict the reporting of allegations of offences by teachers in England and Wales. New section 141F restricts the publication of any information that would identify a teacher who is the subject of an allegation of misconduct that would constitute a criminal offence where the alleged victim of the offence is a registered pupil at the school. Such restrictions would remain in place unless or until the teacher is charged with a criminal offence, though they may be dispensed with on the application to court by any person. This restriction will apply to allegations made against any teacher who works at a school, including supply and peripatetic teachers.

115. New section 141G makes it an offence to publish any information in breach of section 141F. It sets out who is guilty of an offence in the case of different forms of publication. Publication is defined in the provision and includes any communication which is addressed to the public at large or any section of the public. This will include communication via the Internet which falls within this definition. New section 141H sets out the circumstances of a defence for a person charged with an offence under section 141G.

Abolition of the Training and Development Agency for Schools

Clause 14: Abolition of the Training and Development Agency for Schools

116. Clause 14 repeals sections 74 to 84 of, and Schedule 13 to, EA 2005 which established the Training and Development Agency for Schools ("the TDA") and conferred functions on it. Repealing these sections will abolish the TDA.

Clause 15: Training the school workforce: functions of Secretary of State and Welsh Ministers

117. Clause 15 amends Part 2 of EA 2002 and Part 3 of EA 2005 to ensure that, after the abolition of the TDA, the Secretary of State has the power to exercise the functions that the TDA currently exercises and to confer functions on the Welsh Ministers in relation to teacher training.

118. *Subsection (2)* amends section 14 of EA 2002. Section 14 gives the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales) the power to give, or make arrangements for the giving of, financial assistance to any person for or in connection with any of the purposes mentioned in section 14(2). This

amendment enables the Secretary of State and Welsh Ministers to provide financial support to any person to receive training to become a teacher or a member of the school workforce. It also allows financial support to be given for training for people who are already teachers or members of the school workforce. The amendment to section 14(2ZA) enables financial support under section 14 to be given to those receiving training in higher education institutions.

119. *Subsection (3)* amends section 16 of EA 2002 which sets out the terms on which financial assistance under section 14 may be given. It provides that, when financial assistance is given for the purposes of teacher training, the Secretary of State will not be able to impose terms and conditions on higher education institutions relating to the admission of students or the selection of staff as a condition of funding. This is to ensure that the autonomy of higher education institutions is not compromised.

120. *Subsection (5)* amends Part 3 of EA 2005 to ensure that Welsh Ministers have the power to exercise the functions that the TDA currently exercises in relation to Wales. It imposes a general duty on Welsh Ministers to ensure sufficient facilities are available for the training of teachers to serve in Wales and confers a power to promote careers in the school workforce in Wales.

121. *Subsection (6)* is concerned with the joint exercise of functions relating to the training of the school workforce by the Secretary of State and the Higher Education Funding Council for Wales (HEFCW). *Subsection (7)* enables the Secretary of State to request efficiency studies of institutions that are receiving financial support in the same way that HEFCW can and *subsection (8)* enables HEFCW and the Secretary of State to share information about training the school workforce and to require such information from others.

Clause 16: Abolition of the TDA: consequential amendments

122. Clause 16 gives effect to Schedule 4 which makes consequential amendments to other legislation to reflect the changes made by provisions in this Bill relating to the training of the school workforce. Most of the changes are to remove references to the TDA or to replace them with references to the Secretary of State.

Clause 17: Abolition of the TDA: transfer schemes

123. Clause 17 gives effect to Schedule 5 which provides for the transfer of staff and property from the TDA to the Secretary of State.

Abolition of the School Support Staff Negotiating Body

Clause 18: Abolition of the School Support Staff Negotiating Body

124. Clause 18 abolishes the School Support Staff Negotiating Body, which was established to consider matters relating to the remuneration and conditions of school support staff, with a view to reaching agreement on them.

Staff: minor amendments

Clause 19: Staffing of maintained schools: suspension of delegated budget

125. Clause 19 amends sections 35(7) and 36(7) of EA 2002 which make provision for the effect on staffing of any suspension of a school's delegated budget under section 17 of, or Schedule 15 to, SSFA 1998.

126. Section 66 of the EIA 2006 replaced section 17 of the SSFA 1998 in relation to England, with section 17 continuing to apply in relation to Wales only. These amendments are necessary to give effect to the intention that the effect on staffing of the suspension of a school's delegated budget should be the same for schools in England and Wales.

PART 4: QUALIFICATIONS AND THE CURRICULUM

International comparison surveys

Clause 20: Requirement for schools to participate in international surveys

127. Clause 20 inserts new section 538A into Chapter 4 of Part 9 of EA 1996. It enables the Secretary of State to secure the participation of community, voluntary and foundation schools, in England, in international education surveys.

128. England takes part in a number of international comparison surveys which generate comparative data on pupil performance, attitudes to learning and the education environment, such as the Programme for International Student Assessment (PISA). This clause is intended to ensure that sampled schools participate in specified surveys.

Ofqual

Clause 21: The Chief Regulator of Qualifications and Examinations

129. Clause 21 gives effect to Schedule 6.

Schedule 6

130. *Paragraph 2(2)* amends Schedule 9 to ASCLA 2009 to provide that the chief executive of Ofqual will be appointed by Her Majesty by Order in Council and will be known as the Chief Regulator of Qualifications and Examinations ("the Chief Regulator"). Provision is made so that the person appointed as chair of Ofqual will be appointed by the Secretary of State rather than (as ASCLA 2009 provides at present) Her Majesty, and for the chair of Ofqual no longer to be known as the Chief Regulator.

131. The amendments in *paragraph 3* of the Schedule have the effect that the provisions set out in paragraph 3 of Schedule 9 to ASCLA 2009, relating to the arrangements for appointing the Chief Regulator (who is currently the chair), will apply under the new arrangements in relation to the Chief Regulator who is also the chief executive.

*These notes refer to the Education Bill
as introduced in the House of Commons on 26 January 2011*

132. *Paragraph 4* inserts a new paragraph into Schedule 9, setting out the arrangements for appointing the chair of Ofqual and setting the terms of his or her appointment.

133. *Paragraphs 7 and 10* provide that the Chief Regulator may benefit from a scheme for pensions, allowances or gratuities under the Superannuation Act 1972.

134. *Paragraph 7* amends paragraph 5 of Schedule 9 to include provision for the Secretary of State to have responsibility for determining the remuneration, allowances and expenses of the Chief Regulator who is also the chief executive.

Clause 22: The qualifications standards objective

135. Clause 22 replaces section 128(2) of ASCLA 2009 with a new subsection, which sets out Ofqual's qualifications standards objective. The new objective is for Ofqual to secure that regulated qualifications: (a) give a reliable indication of knowledge, skills and understanding; and (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications, and, in addition, (c) indicate a consistent level of attainment (but not over time) between regulated qualifications and comparable qualifications which Ofqual does not regulate, including qualifications awarded outside the UK.

136. The effect is to add to Ofqual's qualifications standards objective to require that Ofqual should also perform its functions with the aim of ensuring that regulated qualifications indicate a consistent level of attainment with comparable qualifications that Ofqual does not regulate whether from outside the UK or from other parts of the UK. It is for Ofqual to decide which qualifications are comparable, and to decide the action that they have to take in the context of the totality of their objectives, to ensure that comparable qualifications indicate a consistent level of attainment.

Abolition of the Qualifications and Curriculum Development Agency

Clause 23: Abolition of the Qualifications and Curriculum Development Agency

137. Clause 23 provides for the repeal of sections 175 to 191 of, and Schedule 11 to, ASCLA 2009. This will abolish the body established as the Qualifications and Curriculum Authority ("QCA"), and continued in existence as the Qualifications and Curriculum Development Agency ("QCDA") under that Act.

Clause 24: Abolition of the QCDA: consequential amendments

138. Clause 24 gives effect to Schedule 7, which removes references to the QCDA from other legislation, and enables the Secretary of State to make further changes to subordinate legislation by order in consequence of clause 23.

139. *Paragraphs 1, 2, 3, 4, 9 and 10* all remove references to the QCDA from other legislation.

140. *Paragraph 6* amends EA 1996 to remove the requirement for Standing Advisory Councils on Religious Education (SACREs) for an area in England to send

the QCDA a copy of their annual report.

141. The amendment in *paragraph 7* to EA 1996 removes the power of the Secretary of State to make regulations requiring a local authority or head teacher to provide information relevant for the purposes of provisions in ASCLA 2009 relating to the QCDA.

142. *Paragraphs 12* and *20(a)* amend section 85 of EA 2002, in its current form and as substituted by section 74 of EIA 2006, which is not yet in force. Section 85 makes provision about curriculum requirements for the fourth key stage (in other words, for pupils aged 14 to 16) and subsection (9) imposes a duty on local authorities, governing bodies and head teachers to have regard to guidance issued by the QCDA. The amendments make provision for such guidance to be issued by the Secretary of State rather than the QCDA. *Paragraph 20(b)* amends section 85A of EA 2002, as it is inserted by section 74 of EIA 2006, which makes provision about entitlement areas for the fourth key stage and imposes a duty on local authorities, governing bodies and head teachers to have regard to guidance issued by the QCDA or the Secretary of State. The reference to the QCDA is omitted.

143. *Paragraphs 13* and *17* respectively amend provisions in EA 2002 relating to National Curriculum assessment arrangements and CA 2006 relating to Early Years Foundation Stage assessment arrangements. In each case the amendment removes the QCDA from the bodies subject to the powers of the Secretary of State to confer or impose functions in an order specifying assessment arrangements.

144. *Paragraph 14* amends section 90 of EA 2002, which gives the Secretary of State the power to direct in respect of a particular maintained school that, for a specified period, the National Curriculum does not apply or applies with modifications. The amendments have the effect that the QCDA is no longer able to make, or agree to make, an application for a direction from the Secretary of State, and is no longer able to act as a reviewing body where such a direction has been given.

145. *Paragraph 15* replaces section 96 of EA 2002 so as to change the way in which persons must be consulted before the Secretary of State makes certain orders or regulations relating to the National Curriculum. Under section 96 as substituted, the Secretary of State must give notice of the proposal to specified persons and other persons whom the Secretary of State thinks it is desirable to consult. The Secretary of State must give the bodies and persons consulted an opportunity to submit evidence and representations which the Secretary of State must consider before publishing a summary of the views expressed in the consultation and a draft of the proposed order or regulations. The Secretary of State must allow at least one month for further evidence and representations and may then make the order or regulations with or without modifications.

146. Section 46 of CA 2006 provides for regulations to be made allowing the Secretary of State to direct in respect of one or more early years providers that, for a

specified period, the Early Years Foundation Stage does not apply or applies with modifications. The amendments in *paragraph 18* will mean that the QCDA is no longer able to act as a reviewing body where such a direction has been given.

147. *Paragraph 21* amends the Safeguarding Vulnerable Groups Act 2006 so that work carried out for or on behalf of the QCDA will no longer be a controlled activity relating to children for the purposes of that Act.

148. *Paragraph 23* amends ASCLA 2009 to remove reference to the QCDA as a person who may provide information to which Ofqual is required to have regard.

149. *Paragraph 25* amends Schedule 5 to ASCLA 2009 (learning aims for persons aged 19 or over) to remove the reference to the QCDA providing advice or information relating to qualifications to which the Secretary of State may have regard in forming an opinion for the purposes of that Schedule.

Clause 25: Abolition of the QCDA: transfer schemes

150. Clause 25 gives effect to Schedule 8, giving power to the Secretary of State to make a scheme to enable the transfer of staff, property, rights and liabilities from the QCDA to Ofqual and the Secretary of State (to provide, for example, for any transfers to the Department for Education).

Careers education and guidance

Clause 26: Education and training support services in England

151. *Subsection (2)* removes the Secretary of State's power under section 69 of ESA 2008 to give local authorities directions relating to the exercise of their functions under section 68 of that Act.

152. The duty in section 68 (which remains in force) requires local authorities in England to make available to young people and relevant young adults for whom they are responsible such services as they consider appropriate to encourage, enable or assist them to engage and remain in education or training. A "young person" means a person who has attained the age of 13 but not the age of 20. A "relevant young adult" is a person aged 20 to 24 years who has a learning difficulty within the meaning of subsections (6) and (7) of section 15ZA of EA 1996.

153. *Subsection (3)*, as a consequence of omitting section 69, removes all references to section 69 and the Secretary of State's direction making powers in sections 68, 70(2) and 71(8) of ESA 2008. This section retains the provision for local authorities to have regard to any guidance issued by the Secretary of State (section 68(4)(b) of ESA 2008).

154. *Subsection (4)* omits the duty in section 73 of ESA 2008 which requires schools and other educational institutions to allow persons involved in providing education and training support services (for example, Connexions personal advisers)

access to pupils or students, and facilities on their premises.

155. *Subsection (5)* repeals section 76A(5) of ESA 2008. Section 76A(1) of ESA 2008 enables the Secretary of State to make arrangements with another person for the holding and supply of certain information in connection with education and training support services provided in pursuance of section 68 or 70(1)(b) of ESA 2008. This power has been used to make arrangements with a contractor to hold information on the participation of young people in education and training in a database known as the National Client Caseload Information System (NCCIS). Subsection (3) of section 76A allows anyone holding “relevant information” as referred to in 76A(2) to supply it to either the Secretary of State or the NCCIS contractor. Section 76A(5) prevents information obtained by either the Secretary of State or the NCCIS contractor under 76A(3) from then being disclosed to each other in a way that reveals, or could reveal, the identity of an individual. The repeal of this subsection removes this prohibition.

156. The Government intends to use this power to generate data about the kinds of activities that pupils from a school or college go on to do after they leave. This will be done by “matching” information from the NCCIS (which contains information about where individuals go on to work or study) with information the Secretary of State holds on individuals’ education outcomes in the National Pupil Database. Published information will not identify individuals. Both the NCCIS contractor and the Secretary of State will continue to be required to comply with the Data Protection Act 1998 which protects the use of individuals’ personal data.

Clause 27: Careers guidance in schools in England

157. *Subsection (2)* inserts a new section 42A into EA 1997 to require maintained schools and pupil referral units in England to secure independent careers guidance for pupils in the school year in which they reach the age of 14 until they have ceased to be of compulsory school age.

158. New section 42A(4) provides that the guidance must be impartial, and as is currently set out in section 43(2ZB) (which has not been brought into force), it must also include information on all 16 to 18 education or training options, including apprenticeships.

159. New section 42A(5) specifies the way in which the guidance must be provided to be independent: a school cannot fulfil the duty by asking a teacher or another person employed by the school to provide guidance to all pupils. However, this would not prohibit a teacher from offering some careers advice.

160. *Subsections (3) to (9)* make consequential amendments to sections 43 to 46 of EA 1997, principally to confine their application to schools in Wales. However, the duty in section 45 to provide careers information continues to apply to further education institutions in England.

Repeal of the diploma entitlement

Clause 28: repeal of diploma entitlement for 16 to 18 year olds

161. Clause 28 amends sections 45, 48 and 86 of ASCLA 2009 by removing references to the “additional entitlement”.

162. Section 45 of ASCLA 2009, which has not yet been brought into force, provides for EA 1996 to be amended by inserting into it new sections 17A to 17D. These currently place a duty on local authorities in England to secure for 16 to 18 year olds the “core” and “additional” entitlements. The additional entitlement is defined by section 17D(1) of EA 1996 as an entitlement to follow a course of study in an area specified by order by the Secretary of State and no order has been made. *Subsections (2) to (6)* amend new sections 17A to 17D by removing from them all references to “additional entitlements” so that when section 45 is commenced the duties under sections 17A to 17D of EA 1996 will only relate to the “core” entitlement.

163. Reference to the “additional entitlements” are also removed from sections 48 (provision of education for persons subject to youth detention) and 86 of ASCLA 2009, which require the Chief Executive of Skills Funding to have regard to the desirability of the additional entitlement in exercising certain functions.

Clause 29: repeal of diploma entitlement for fourth key stage

164. Clause 29 amends section 74 of EIA 2006, which replaces section 85 of EA 2002 with new sections 85 and 85A. Under section 85A(1)(b), all Key Stage 4 pupils (that is, those aged from 14 to 16) are entitled to follow a course of study in an entitlement area specified by the Secretary of State by order. No order has been made, and the legislation is not yet in force. It was the public intention of the previous Government that the additional entitlement was to be to the new 14 to 19 diplomas. This would have placed duties on local education authorities, governing bodies and head teachers of maintained secondary schools to secure this entitlement. The clause will remove this duty so that section 85A will simply entitle key stage 4 pupils to study the subjects listed at subsection (2). *Subsection (3)* of the clause makes amendments which are consequential on the amendments to section 85A of EA 2002.

PART 5: EDUCATIONAL INSTITUTIONS: OTHER PROVISIONS

Repeal of duties of governing bodies, local authorities and others

Clause 30: Duties to co-operate with local authority

165. Clause 30 amends section 10 (duty of co-operation to improve well-being) of the Children Act 2004. Section 10 requires the “relevant partners” listed in section 10(4) to co-operate with the local authority in making arrangements to improve children’s well-being under section 10 and to be represented on the local Children’s Trust Board.

166. *Subsection (2)* amends section 10(4) by removing from it the following

“relevant partners”:

- governing bodies of maintained schools;
- proprietors of non-maintained special schools;
- proprietors of city technology colleges, city colleges for the technology of arts and Academies; and
- governing bodies of further education institutions (including sixth form colleges).

167. These bodies will be able to decide for themselves how to engage in arrangements to improve well-being. Section 10 applies only in relation to England, so the changes do not affect Wales.

Clause 31: Duties to have regard to children and young people’s plan

168. Clause 31 amends section 47A of SSFA 1998 and section 21 of EA 2002 to remove for England the requirement for schools forums and the governing bodies of maintained schools respectively to have regard to the children and young people’s plan prepared by their local children’s trust board.

169. *Subsection (2)* amends section 21 so that the duty only applies to governing bodies of maintained schools in Wales and consequentially amends the definition of the “relevant children and young people’s plan” and omits the definition of “the relevant Children’s Trust Board”.

Clause 32: Duty to prepare and publish a school profile

170. Clause 32 repeals the duty in section 30A of EA 2002 for maintained schools in England to prepare and publish a school profile which is required to contain information provided by the Secretary of State for inclusion, information about matters specified by the Secretary of State, and other prescribed information.

Clause 33: Duty to appoint school improvement partners

171. Clause 33 repeals section 5 of EIA 2006, removing the duty on a local authority to appoint a school improvement partner (known as a “SIP”) for each school they maintain. The SIP provides advice to the school and governing body in order to help improve the attainment and outcomes of pupils.

Clause 34: Duties in relation to school admissions

172. Clause 34 amends Part 3 of SSFA 1998 which is concerned with school admissions.

173. *Subsection (2)(a)* removes the requirement under section 85A of SSFA 1998 on English local authorities to establish an admission forum for their area.

174. *Subsection (3)* restricts the powers of the school adjudicator. It repeals section 88J of SSFA 1998 which requires schools adjudicators, upon referral of a specific matter concerning a maintained school’s admission arrangements, to consider

whether it would be appropriate for changes to be made to any aspect of those admission arrangements in consequence of the matter referred, and gives them the power to consider whether any other changes to the arrangements are appropriate.

175. *Subsection (4)* removes the requirement under section 88P of SSFA 1998 for local authorities to provide to the adjudicator reports on admissions to schools in their area. The power of the Secretary of State to make regulations prescribing the content of these reports is also removed and instead the School Admissions Code will contain the requirements for such reports.

176. *Schedule 9* makes amendments that are consequential on the repeals and amendments made by this clause.

Clause 35: Duties in relation to school meals etc

177. Clause 35 amends sections 512ZA (power to charge for meals etc) and 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc) of EA 1996.

178. *Subsections (2)(a)* and *(3)(a)* will prohibit local authorities and governing bodies of maintained schools in England from charging more than the cost of providing milk, meals or other refreshments to pupils. Currently there is no cap on how much a pupil can be charged. It will not affect the provision of free school meals (and free milk) to eligible pupils.

179. *Subsections (2)(b)* and *(3)(b)* repeal the requirement that any charge made for the provision of “milk, meals and other refreshments” in a school must be the same for every person for the same quantity of the same item. The repeal of this requirement will, in effect, allow them to charge different prices for the same quantity of the same item.

180. Flexible charging will, for example, enable local authorities and governing bodies in England to charge less for school meals provided to children in reception classes at the start of term or children of families on low incomes not eligible for free school meals, in order to encourage them to take school meals. Use of flexible charging will be optional and subject to local circumstances. This change will not affect the provision of free school meals (and free milk) to eligible pupils.

New schools

Clause 36: Establishment of new schools

181. Clause 36 gives effect to Schedule 10 which makes amendments to Part 2 of EIA 2006, which deals with the establishment of new schools.

Schedule 10

182. *Paragraph 2* inserts new section 6A into EIA 2006, placing a duty on local authorities to seek proposals for the establishment of an Academy where they are of the view that there is a need for a new school in their area. The local authority must

*These notes refer to the Education Bill
as introduced in the House of Commons on 26 January 2011*

specify a date by which proposals must be submitted and after that date must notify the Secretary of State of the steps taken to satisfy this duty and the proposals that have been submitted or if there have been no proposals. The notification to the Secretary of State must identify a site for the school and any other matters prescribed by regulations.

183. *Paragraph 3* amends section 7 of EIA 2006 so that before publishing proposals for a competition for the establishment of a new school the local authority must obtain the consent of the Secretary of State. In addition, section 7 is amended to remove the ability of the local authority to publish any of its own proposals for a new foundation or community school in a section 7 competition. In consequence, *paragraph 5* repeals section 8 of EIA 2006, which prescribed the circumstances in which the local authority could enter its own proposals for a new school in a competition.

184. *Paragraph 4* inserts new section 7A into EIA 2006 which provides for the local authority (with the consent of the Secretary of State) to withdraw, or for the Secretary of State to direct the withdrawal of, a section 7 notice at any time before the end of the period that proposals may be submitted. The effect of this new provision is that a competition can be halted at this early first stage.

185. *Paragraphs 6 and 7* make amendments to sections 10 and 11 of EIA 2006 which deal with publication of proposals outside a competition. The amendments to section 10 (proposals that require the Secretary of State's consent) provide that the following proposals for a new school can be published with the consent of the Secretary of State:

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

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

- Local authority proposals for a new community or foundation primary school to replace a maintained infant and a maintained junior school;
- Proposals for the establishment of a new voluntary aided school;
- Proposals for a new foundation or voluntary controlled school resulting from an existing religious school changing or losing its religious designation; and

- A new foundation or voluntary controlled school with a religious character replacing an existing religious school, resulting from the reorganisation of faith schools in an area.
- Local authority proposals for a new community or foundation school where following publication of a section 7 notice no proposals are approved by the local authority, no Academy arrangements are entered into, or no proposals are received.

187. *Paragraphs 10 to 17* make amendments to Schedule 2 to EIA 2006 which deals with the consideration and approval of proposals under Part 2 of EIA 2006 by the local authority or the adjudicator (in respect of local authority proposals). These amendments are consequential on the amendments made by paragraphs 3 to 9.

188. In addition, these paragraphs have the effect that Academy proposals are not longer submitted to local authorities for approval. Instead, any Academy proposals entered into a section 7 competition will be referred to the Secretary of State, for him to decide if he wishes to enter into Academy arrangements with the proposer. Where there are both Academy and non-Academy proposals in a competition, the Secretary of State must first decide the Academy proposals and notify the local authority if he enters into Academy arrangements as a result of the proposals. If the Secretary of State decides against entering into Academy arrangements in such a case, the non-Academy proposals will be considered by the local authority. Even if the Secretary of State approves the Academy proposals, paragraph 7A of Schedule 2 also enables him to direct that all or any of the non-Academy proposals be considered by the local authority. In such a case, it would be possible for a section 7 competition to result in the approval of both Academy proposals (by the Secretary of State) and non-Academy proposals (by the local authority). This might happen, for example, where Academy proposals are for a small school but the local authority has identified a need for a larger school in its area.

Governing bodies: constitution and dissolution

Clause 37: Constitution of governing bodies: maintained schools in England

189. Clause 37 amends section 19 of EA 2002 by reducing the number of categories of governor that regulations must require the governing body of a maintained school in England to have. The requirements in relation to Wales remain unchanged.

190. Section 19(1) will continue to require each maintained school to have a governing body constituted in accordance with regulations, but *subsection (2)* amends section 19 to provide that for such schools in England, the regulations only have to provide for the governing body to consist of parent governors, of the head teacher, such other persons as are prescribed and, in the case of foundation schools, voluntary aided schools and voluntary controlled schools, of foundation governors or partnership governors. The regulations may provide that the head teacher can resign

as a governor.

Clause 38: Discontinuance of federated school: governing body not to be dissolved

191. Clause 38 amends paragraph 5 of Schedule 1 to EA 2002, which provides for the dissolution of the governing body of a maintained school on its discontinuance. Currently paragraph 5 of Schedule 1 dissolves a federated governing body on the occasion of one of the schools in the federation being discontinued. Clause 38 prevents dissolution from happening in circumstances where two or more schools will remain in the federation after the school concerned has discontinued.

192. This will enable a school to close or convert to an Academy, without having to first undertake a statutory procedure to leave the federation in order to avoid dissolving the federated governing body.

193. A federated governing body is a single governing body for two or more maintained schools, as provided for in sections 24 and 25 of EA 2002.

Standards

Clause 39: School inspections: exempt schools

194. Clause 39 amends the current requirement under section 5 of EA 2005 for the Chief Inspector to inspect and report on every school in England at intervals prescribed in regulations. *Subsection (2)* provides for regulations to stipulate that certain schools (to be known as “exempt schools”) are to be exempt from inspection under section 5.

195. Exempt schools remain eligible for inspection under section 8 of EA 2005 and so may be subject to inspection as part of the Chief Inspector’s programme of surveys of curriculum subjects and thematic reviews, including those focused on best practice provision in schools. Exempt schools may also be inspected under this section in circumstances where the Chief Inspector or the Secretary of State has concerns about the performance of the school.

196. *Subsection (5)* amends section 9 of EA 2005 to enable the Chief Inspector to treat an inspection of an exempt school conducted under section 8 as if it were an inspection under section 5, and to require the Chief Inspector to do so where requested by the Secretary of State.

197. *Subsection (4)* allows the Chief Inspector to be able to charge for the cost of an inspection where the Chief Inspector inspects a school in response to a request from that school and the Chief Inspector is not required to inspect the school. Such an inspection must be treated as if it were an inspection under section 5. The provision is likely to be particularly relevant in cases where an exempt school is seeking an updated independent assessment of its performance, or where a school believes its performance has improved and wishes an early assessment of this.

Clause 40: School inspections: matters to be covered in Chief Inspector's report

198. Clause 40 redefines the areas that the Chief Inspector is under a general duty to report on as part of an inspection conducted under section 5 of EA 2005.

199. The clause replaces subsections (5) and (5A) and inserts a new subsection (5B). New subsection (5) sets out the general duty of the Chief Inspector to report on the quality of education provided in the school, and new subsection (5A) sets out details of what the report must in particular cover. These areas are:

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

200. In reporting on the quality of education provided in a school, including in relation to the four specified areas above, the Chief Inspector must consider the areas set out in new subsection (5B). This includes consideration of how well a school provides for different groups of pupils. Such groups include but are not limited to gender and minority ethnic groups, those eligible for free school meals and the pupil premium, looked after children and gifted and talented pupils. The Chief Inspector must in particular consider how well the school meets the needs of pupils with a disability and those with special educational needs. In addition, the Chief Inspector must consider the school's provision for the spiritual, moral, social and cultural development of pupils.

Clause 41: Inspection of further education institutions: exempt institutions

201. Clause 41 makes provision to exempt certain sixth form and general further education colleges from routine inspection by regulation and will enable an exemption to be given to those colleges who have been judged to be outstanding in their most recent inspection. The clause also enables the Chief Inspector to charge providers of exempt institutions where they request an inspection.

202. Clause 41 amends the current requirement in section 125 of EIA 2006 for the Chief Inspector to inspect and report on all institutions within the further education sector. *Subsection (2)* of this clause provides for regulations to stipulate that certain types of sixth form and general further education colleges are to be exempt from inspection under section 125 of EIA 2006 in certain circumstances ("exempt institutions").

203. The Chief Inspector will retain the power to inspect exempt institutions under section 126 of EIA 2006 which will allow for inspections in circumstances where the Chief Inspector has concerns about the performance of an exempt institution, and will also allow for inspections as part of a programme of surveys or curriculum subjects

and thematic review. *Subsection (4)* inserts a new provision into section 126 that requires the Chief Inspector to inspect an exempt institution under that section where requested to do so by the Secretary of State.

204. *Subsection (5)* requires the Chief Inspector to make a written report on completion of an inspection conducted under subsection (1) or (1A) that has been requested either by the Secretary of State, or any other person or body, for example, the provider of the education or training that has been inspected. The Chief Inspector must also arrange for the inspection report to be published.

205. *Subsection (8)* allows the Chief Inspector to charge for inspections under section 126(1) where they are conducted as a result of a request from a provider of education or training.

Clause 42: Inspection of boarding accommodation

206. *Subsection (2)(a)* clarifies what is meant by a school or college providing accommodation for a child for the purposes of sections 87 and 87A to 87D of CA 1989. The new section 87(1A) extends the meaning of “providing accommodation” to include circumstances in which a school or college arranges boarding accommodation for a child otherwise than on its own premises, for example, with host families.

207. *Subsection (2)(c)* inserts a new section (3A) into section 87 which will allow the Secretary of State to direct the Chief Inspector to take steps to determine whether a child’s welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in England. This power can be exercised even where the Chief Inspector’s duty to take such steps has been suspended by virtue of section 87A and an appointed inspectorate has entered into an agreement with the school or college concerned. A new subsection (3B) is also inserted to enable Welsh Ministers to take steps in respect of a school or college in Wales in circumstances where their duty has been suspended by virtue of section 87A.

208. *Subsection (3)(b)* allows for regulations to be made specifying the matters to be taken into account in appointing, or terminating the appointment of, independent inspectorates in England.

209. *Subsection (4)* provides for Ofsted to monitor the work of independent inspectorates appointed to conduct welfare inspections of boarding schools under section 87, and for the Chief Inspector to report annually to the Secretary of State on those inspectorates. Both of these provisions mirror existing provisions in sections 106 and 107 of ESA 2008 for independent inspectorates conducting inspections of education provision in independent schools in England.

Clause 43: Schools causing concern: powers of Secretary of State

210. Clause 43 amends Part 4 of EIA 2006 which sets out the legal framework for maintained schools causing concern in England.

211. Under section 68 of EIA 2006 the Secretary of State can currently direct the closure of a school because the school “requires special measures” (section 62 of EIA 2006). *Subsection (2)* of this clause amends section 68 of EIA 2006 to extend the situations in which the Secretary of State can direct the closure of a school.

212. The effect of this clause is therefore that the Secretary of State will also be able to direct the closure of a school when a school has failed to comply with a performance standards or safety warning notice (as defined in section 60 of EIA 2006) and when a school has been identified as requiring significant improvement by the Chief Inspector and has been issued with a notice to improve (as defined in section 61 of that Act).

213. *Subsection (3)* of this clause amends section 69A of EIA 2006. Section 69A currently gives the Secretary of State the power to direct a local authority to “consider” giving performance standards and safety warning notices in terms specified by him.

214. This clause strengthens the Secretary of State’s power set out in section 69A so that where a local authority has been directed to consider giving a performance standards and safety warning notice and has decided not to do so, the Secretary of State may direct the authority to give a warning notice in specified terms. Where any warning notice has been given, whether following a direction or not, failure to comply with it would result in the school becoming eligible for intervention. The warning notice will inform the governing body of their right to make representations to the Chief Inspector against the giving of the warning notice. The Chief Inspector, as an independent body, may confirm the warning notice or otherwise.

Clause 44: Complaints: repeal of power to complain to Local Commissioner

215. Clause 44 repeals sections 206 to 224 of ASCLA 2009. These sections give the Local Commissioner for England (more commonly known as the Local Government Ombudsman) responsibility for considering complaints received from parents and pupils about maintained schools. They also amend the Secretary of State’s powers of intervention (where he is satisfied that the school’s governing body has acted, or is intending to act, unreasonably, or in breach of a duty) under section 496 or 497 of EA 1996 to provide that those powers may not be exercised in respect of a matter that has, or in his opinion could be, complained about to the Local Commissioner. The effect of the repeal is that the Secretary of State’s powers of intervention are no longer so restricted.

216. The clause makes a number of consequential amendments, at *subsection (2)*, including

- paragraphs (a) and (d) - the amendment of section 409 of, and paragraph 6 (3) and (4) of Schedule 1 to, EA 1996, to remove the duty on local authorities in England to consider complaints relating to the curriculum. Local authorities in

Wales retain this duty.

- paragraphs (b) and (c) – the amendments of sections 496 and 497 of EA 1996 to remove the restrictions on the Secretary of State’s intervention powers.

Finance

Clause 45: Local authorities’ financial schemes

217. Section 48 of SSFA 1998 requires each local authority to prepare and maintain a scheme which sets out the financial relationship between it and the schools it maintains. Regulations prescribe the matters which must be dealt with in local authority schemes, but do not prescribe their detailed content. Schedule 14 to SSFA 1998 allows a local authority to revise their scheme provided that they take into account any guidance given by the Secretary of State about the provisions the Secretary of State regards as appropriate for inclusion in the scheme; they consult the governing body and head teacher of every school maintained by them; and the revisions are approved by their schools forum.

218. Clause 45 amends Schedule 14 to SSFA 1998, enabling the Secretary of State to revise the whole or any part of a local authority scheme by giving a direction. It also requires the Secretary of State to consult the relevant local authority and such other persons as the Secretary of State thinks fit before a direction is given.

Clause 46: Payments in respect of dismissal, etc

219. Clause 46 amends section 37 of EA 2002 which sets out how the costs of premature retirement, dismissal or securing the resignation of school staff in maintained schools are funded. Under current legislation, where a local authority incurs these costs in relation to school staff employed for community purposes, such as an adult education tutor, the costs must be recovered from the governing body of the school, unless the local authority agrees otherwise, but the costs cannot be met out of the school’s budget share. This means that these costs must be met by the governing body out of grants which can be used for community purposes or other external income.

220. The amendment to section 37 provides that a local authority must still recover these costs from the governing body of a maintained school in England, but that they may be met by the governing body out of the school’s budget share. This is subject the governing body being satisfied that this will not interfere to a significant extent with the performance of any duties imposed on them by the Education Acts, including the requirement to conduct the school with a view to promoting high standards of educational achievement.

221. Section 4 of CSFA 2010 amended section 50 of SSFA 1998 to enable governing bodies of maintained schools to use their budget shares to finance the provision of community facilities or services under section 27 of EA 2002; this amendment comes into force on 1 April 2011. Clause 46 provides consistency in relation to the funding of the costs of premature retirement, dismissal and securing the

resignation of staff employed for community purposes.

Clause 47: Determination of permitted charges for early years education

222. Clause 47 amends section 456 of EA 1996 dealing with charges which maintained schools are permitted to make for “optional extras” provided by a school. Optional extras include education outside of school hours, entry for certain public examinations, some school transport, and board and lodging provided on residential trips.

223. Section 451 of EA 1996 prohibits charges for education for registered pupils during school hours, but regulations can be made under section 451(2A) to lift this prohibition on charging for early years provision where this is for a pupil who is below compulsory school age and is additional to the hours which must be made available free of charge pursuant to the duty on local authorities to secure a certain amount of early years provision free of charge (under section 7 of CA 2006). The Government intends to make these regulations and a school governing body will then be able to charge for early years provision as an optional extra.

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

225. *Subsection (4)* inserts a new subsection (6A) into section 456 of EA 1996. The new subsection (6A) is only relevant where the optional extra is education which is early years provision. It provides that the charges for early years provision imposed by the school may include costs attributable to teaching staff who are employees of the school and who provide the early years provision. Currently this would be prohibited by section 456(5) and only the costs attributable to any self-employed staff with whom the school has contracted could be included. This will ensure that the key costs of providing early years provision over and above that delivered free of charge under section 7 of CA 2006 for children under compulsory school age can be reflected in the charges.

Further education institutions

Clause 48: Further education institutions: amendments

226. Clause 48 gives effect to Schedule 11 which makes amendments to the duties on further education corporations and sixth form college corporations.

227. A further education corporation is a body corporate established under section 15 or 16 of FHEA 1992, or which has become a further education corporation by

virtue of section 33D or 47 of that Act.

228. A sixth form college corporation is a body corporate that is designated as a sixth form college corporation under section 33A or 33B of FHEA 1992, or established under section 33C, of that Act. References to sixth form colleges are to institutions conducted by sixth form college corporations.

Schedule 11

229. *Paragraphs 2, 8 and 9* amend sections 19, 33F and 33G respectively of FHEA 1992. They remove the requirement for further education corporations in England and sixth form college corporations to gain the consent of the relevant body – the relevant local authority or in some cases the Young People’s Learning Agency for England (the YPLA) in the case of sixth form college corporations, and the Chief Executive of Skills Funding for further education corporations – before they exercise their supplementary powers to borrow money, and form or invest in a company or a charitable incorporated organisation for the purposes of conducting an educational institution.

230. The Schedule provides for the repeal of the duty on colleges to promote the economic and social wellbeing of the local area. *Paragraph 3* repeals section 19A of FHEA 1992 that places a duty on further education corporations in exercising their function under sections 18 and 19 of FHEA 1992; *paragraph 10* repeals section 33H of the FHEA 1992 that places a corresponding duty on sixth form college corporations in exercising their function under sections 33E and 33F. *Paragraph 31(2)* makes a consequential amendment to section 256 of ASCLA 2009.

231. The Schedule also makes provision relating to the dissolution of sixth form college corporations and further education corporations. *Paragraph 4* amends section 27(7A) of FHEA 1992 by removing the requirement for the Secretary of State to consult the YPLA before making an order to dissolve a further education corporation. *Paragraph 13* revises section 33N of FHEA 1992, which empowers the dissolution of a sixth form college by order of the Secretary of State. Section 33N stipulates that the relevant local authority must make an application for closure before the Secretary of State can exercise this power. The amendment allows sixth form college corporations to make applications directly to the Secretary of State and allows the Secretary of State to instigate the process for dissolution.

232. *Paragraph 7* amends section 33C of FHEA 1992 which provides for the establishment of new sixth form college corporations by order of the Secretary of State. At present, an order may only be made where the responsible local authority makes a proposal which meets specified requirements. The effect of the amendment is to enable any person or body to make a direct application to the Secretary of State, to establish a sixth form college corporation.

233. *Paragraph 11* amends section 33K of FHEA 1992. It transfers responsibility from the YPLA to the Secretary of State for the drawing up of the initial instruments

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and articles of government of a new sixth form college corporation established under section 33C. *Paragraph 12* makes similar amends to section 33L by transferring powers for the making of modifications to the instruments and articles in consultation with the sixth form college corporation from the YPLA to the Secretary of State. In the case of colleges to which section 33J of FHEA 1992 applies, it also provides that such modifications may not be made unless the trustees of the college have given their consent.

234. *Paragraph 14* makes consequential amendments to section 38 of FHEA 1992 in light of the dissolution of the YPLA. It transfers to the Secretary of State the YPLA's power to make payments, on such terms and conditions as the YPLA may determine, to a local authority in respect of the principal of, and any interest on, any excepted loan liability of that authority.

235. *Paragraph 15* amends section 49A of FHEA 1992, removing the requirement for governing bodies of sixth form and further education colleges to have regard, when exercising their functions, to the content of any guidance that has been issued by the Secretary of State about consulting certain groups in connection with decisions which affect them. The groups concerned are people who are, or are likely to become, students and employers.

236. *Paragraph 16* amends section 56A of FHEA 1992, removing the power of the Chief Executive of Skills Funding to direct the governing body of a further education college to consider taking disciplinary proceedings against a senior post holder.

237. *Paragraphs 19 and 22* respectively revise section 56E and repeal section 56H of FHEA 1992. These changes remove the powers the responsible local authority and the YPLA have to intervene in sixth form college corporations, and transfer these powers to the Secretary of State. *Paragraph 19* also reduces the powers of intervention in the same way as *paragraph 16*, removing the power of the responsible local authority and the YPLA to direct the governing body of a sixth form college to consider taking disciplinary proceedings against a senior post holder, without transferring this power to the Secretary of State. In the case of colleges to which section 33J of FHEA 1992 applies, *paragraph 19* also provides that the Secretary of State must provide a notice, detailing the nature of the planned intervention and the reasons for it, to the trustees of the college before exercising his intervention powers.

238. *Paragraph 17* repeals section 56AA of FHEA 1992 so that the power of the Chief Executive of Skills Funding to appoint up to two additional members of the governing body of a further education corporation is removed. *Paragraphs 20 and 23* repeal sections 56F and 56I of FHEA 1992. They remove the corresponding powers of the relevant local authority and the YPLA in respect of sixth form college corporations. *Paragraphs 5, 6 and 30* respectively make consequential amendments to sections 29 and 31 of, and Schedule 4 to, FHEA 1992. *Paragraph 31(3)* makes consequential amendments to Schedule 6 to ASCLA 2009. The consequential amendments remove references to the two additional members of the governing body

appointed by the Chief Executive of Skills Funding or the relevant local authority and the YPLA.

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

240. *Paragraph 21* repeals section 56G of FHEA 1992, removing the duty on the YPLA to produce and publish an intervention policy.

241. *Paragraphs 25, 26, 27, 28 and 29* make consequential amendments in light of the dissolution of the YPLA and the amendments to FHEA 1992 contained within this Schedule.

Pupil referral units

Clause 49: repeal of provision changing name of pupil referral units

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

243. Section 249(1) stipulates that “pupil referral units” established in England under section 19(2B) of the EA 1996 would, from the date when the section came into force, be known as “short stay schools”. *Subsection (2)* of this clause repeals section 249(1) of the ASCLA 2009, meaning that they will continue to be known as pupil referral units.

244. Section 249(2) empowers the Secretary of State to make orders to amend primary or secondary legislation so that legislation applying to pupil referral units would continue to apply notwithstanding the change of name effected by section 249(1). With the repeal of section 249(1), 249(2) is no longer needed.

PART 6: ACADEMIES

Academy arrangements

Clause 50: Academies: removal of requirement to have specialism

245. Clause 50 removes section 1(6)(b) from AA 2010, which requires Academies providing secondary education to have an emphasis, or specialism, on a particular subject area or particular subject areas. Section 1(6)(b) replaced similar provisions in section 482 of EA 1996.

246. The removal of section 1(6)(b) means that new schools which are set up as Academies and existing schools which convert to become Academies will no longer

be required, where they provide secondary education, to have an emphasis on a particular subject area or subject areas. However, an Academy can, if it so chooses, have or continue to have a secondary curriculum which retains such an emphasis and it will still be required to provide a balanced and broadly based curriculum, in accordance with the requirements of section 78 of EA 2002.

Clause 51: Academy arrangements: post-16 education and alternative provision

247. Clause 51 amends section 1 of AA 2010. These amendments provide that a person entering into Academy arrangements with the Secretary of State may undertake to establish and maintain one of three different types of Academy. Prior to this there was only one type of Academy. The new types are Academy schools (which broadly have the same characteristics as existing Academies), 16 to 19 Academies and alternative provision Academies. All three different types of educational establishment are to be known by the generic term “Academy”.

248. *Subsection (2)* inserts a new subsection (5) into section 1 of AA 2010. Section 1(5) currently sets out the undertakings that are to be given by those entering into Academy arrangements with the Secretary of State in order to be able to establish an Academy. The new subsection (5)(a) also sets out the undertakings are to be given but now provides for different undertakings reflecting the type of Academy being established. In addition to undertaking that the educational establishment will have the characteristics relevant to the particular type of Academy, subsection (5)(b) also provides that a person entering into Academy arrangements with the Secretary of State must undertake to run or provide for the running of the institution.

249. *Subsection (3)* removes the current section 1(6) of AA 2010. Section 1(6) is replaced by the new sections 1A, 1B and 1C of AA 2010, inserted by *subsection (7)* of this clause.

250. *Subsections (4), (5) and (6)* make consequential amendments to section 1 of AA 2010 to reflect the fact that Academies will no longer necessarily be “schools”. In particular, 16 to 19 Academies will not be “schools” for the purposes of section 4 of EA 1996.

251. *Subsection (7)* inserts new sections 1A, 1B, 1C and 1D into AA 2010. New section 1A sets out the characteristics required of an educational establishment for it to be an Academy school. With one exception these characteristics are the same as those which applied to Academies in AA 2010. The one exception is the requirement that if the Academy is providing secondary education its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Academy arrangements. This characteristic will no longer apply. New section 1A (2) provides that an educational institution may also meet the requirements for an Academy school if it is an independent school and it is specially organised to make special educational provision for pupils with special educational needs.

252. New section 1B(1) sets out the requirements to be met by 16 to 19 Academies.

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They must be educational institutions that are principally concerned with providing full-time or part-time education suitable to the requirements of those over compulsory school age but under 19 years old. Education is defined at section 1B(2) as including vocational, social, physical and recreational training. Section 1B(3) provides that an educational institution meeting these requirements will be known as a 16 to 19 Academy. The government intends to use this legislation to allow providers to set up free schools for those aged 16 to 19.

253. New section 1C(1) sets out the requirements to be met by alternative provision Academies. They must be principally concerned with the provision of full-time or part-time education for children of compulsory school age who are not in school because of illness, exclusion or other reason and who would not receive suitable education unless alternative provision was made for them. They must also provide education for children of different abilities, and provide education for children who are wholly or mainly drawn from the area in which the alternative provision Academy is situated. “Alternative provision” means arrangements made under 19(1) of EA 1996. The effect of this is to provide that alternative provision Academies must provide educational provision principally to children to whom the duty in section 19 of EA 1996 is owed. Section 19 of EA 1996 imposes a duty on local authorities to make arrangements for children of compulsory school age who cannot attend mainstream school because of illness, exclusion or other reason and who will not receive suitable education unless such arrangements are made for them. A local authority may establish a school to discharge its duty under section 19 and such a school in England is known as a pupil referral unit (section 19(2B) of EA 1996).

254. New section 1D gives the Secretary of State powers to make regulations to apply statutory provisions to, or to disapply statutory provisions from, alternative provision Academies. This follows the way in which legislation is currently applied to pupil referral units. In the main, legislation applying to mainstream maintained schools is applied to pupil referral units through regulations. This is because of the need to modify/disapply it because of the different nature of alternative provision. These regulation-making powers allow the Secretary of State to follow this model for alternative provision Academies and to ensure, where appropriate, that legislation is consistent across alternative provision.

255. New section 1D(1) can be used to apply provisions that relate to maintained schools or pupil referral units to alternative provision Academies or to a description of alternative provision Academy. A “description of alternative provision Academy” is intended to provide for the likelihood that there may be different types of alternative provision Academy, for example an alternative provision Academy which only provides part-time provision, and legislation is likely to be applied to them differently. It is the Government’s intention to make regulations under paragraph 3 of Schedule 1 to EA 1996 (power to apply provisions which apply to maintained schools to pupil referral units by regulation) so that pupil referral units will be able to convert to alternative provision Academies in the same way as maintained schools convert to Academy schools. The powers taken in new section 1D to apply legislation to

alternative provision Academies in this way are intended to be used to ensure that a consistent legislative approach is taken in relation to alternative provision, which will include pupil referral units and alternative provision Academies.

256. New section 1D(2) is a power to apply with modifications provisions that relate to Academies, Academy schools or 16 to 19 Academies to alternative provision Academies or a description of alternative provision Academy (or to disapply such provisions from alternative provision Academies or a description of alternative provision Academy).. Again this reflects the different educational environment of an alternative provision Academy.

257. New section 1D(3) is a power to apply with modifications provisions that relate to alternative provision Academies generally to a description of an alternative provision Academy (or to disapply such provisions from a description of alternative provision Academy). This is to reflect the fact that legislation may need to be applied differently to different types of alternative provision Academy, for example in relation to part time alternative provision Academies or for alternative provision Academies which only provide education to children under 11.

Clause 52: Consequential amendments: 16 to 19 Academies and alternative provision Academies

258. Clause 52 gives effect to Schedule 12.

Schedule 12

259. *Paragraphs 1 to 4 of Schedule 12* reflect the fact that there are now three different types of Academies. Many of these changes reflect the fact that Academies are no longer necessarily schools and amend references to “school” to “educational institution”. Others specify the type of Academy to which the provision applies.

260. *Paragraph 5* amends EA 1996 *Paragraph 5(2)* specifically places 16 to 19 Academies outside the scope of the definition of school in section 4 of EA 1996. This is to provide certainty to 16 to 19 Academies, because otherwise some of them would fall within the definition of “school” in section 4 of EA 1996 and “independent school” in section 463 of that Act, and others would not. and would sometimes fall outside the definition. Paragraph 5 provides that 16 to 19 Academies will always fall outside the definition of “school” (and therefore “independent school”) and legislation referring solely to “school” or “independent school” will not therefore apply to them.

261. *Paragraph 5(3)* concerns the definition of the term “Academy” for the purposes of the Education Acts: this definition has been amended to reflect the creation of three different types of Academy.

262. *Paragraph 5(5)* is an amendment which is necessary to reflect the fact that it is the Government’s intention to provide for pupil referral units to convert to alternative provision Academies. It is to provide for what happens to a management committee if a pupil referral unit closes. Paragraph 15(2) of Schedule 1 to EA 1996 provides details

of what can be included in regulations in relation to the management committees of pupil referral units. The effect of the amendment is that management committee regulations can set out what effect the closure of a pupil referral unit will have on the members of the management committee for that unit or members of any sub-committee.

Academy orders

Clause 53: Academy orders: involvement of religious bodies etc

263. Clause 53 amends section 4 of AA 2010.

264. Under section 4(1)(b) of the AA 2010, the Secretary of State can make an Academy order in respect of a school if the school is eligible for intervention (within the meaning of section 59(2) of EIA 2006).

265. *Subsection (2)*, which inserts a new subsection (1A) into section 4 of the AA 2010, provides that before making an Academy order under section 4(1)(b) in respect of a foundation or voluntary school that has a foundation, the Secretary of State must first consult the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.

266. *Subsection (3)* amends subsection (4) so that if an Academy order is made by the Secretary of State in respect of a foundation or voluntary school with a foundation, either on an application from the governing body or in respect of a school that is eligible for intervention, then he must give a copy of the order to the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.

267. *Subsection (4)* amends subsection (5) so that if the Secretary of State decides not to make an Academy order in respect of a foundation or voluntary school with a foundation following an application from the governing body, then he must inform the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body, of his decision and the reasons for it.

Clause 54: Academies: consultation on conversion

268. Clause 54 substitutes a new section 5 into AA 2010 which provides that before a maintained school can convert into an Academy, its governing body must consult those they think appropriate on the question of whether the school should convert into an Academy. The consultation may take place before or after the application, or before or after an Academy order is made, but must take place before the Academy arrangements are entered into.

269. The new section provides that, in the case of a school eligible for intervention (within the meaning in Part 4 of EIA 2006) either the school's governing body or the person with whom the Secretary of State proposes to enter into Academy

arrangements can carry out the consultation. In the case of a federated school the consultation can be carried out by any one or more members of the governing body.

Clause 55: Academy conversions: federated schools

270. Clause 55 makes amendments to AA 2010 to enable a federated school to apply for an Academy order without requiring the agreement of the whole federated governing body.

271. *Subsection (2)* inserts a new subsection (6) into section 3 of AA 2010 to allow regulations to prescribe the proportion of the total number of members of a federated governing body, and members of a particular description, that can apply for an Academy order on behalf of a particular school in the federation.

272. *Subsection (4)* amends section 7 of AA 2010, which deals with the transfer of school surpluses after a maintained school converts to Academy status. *Subsection (4)(d)* provides for the amount of any school surplus held by a federated governing body that should be attributed to a school in the federation converting to Academy status to be determined in accordance with regulations.

Clause 56: Transfer of property, rights and liabilities to Academies

273. Clause 56 amends section 8 of AA 2010. Section 8 applies when an Academy order has effect and a school is converting into an Academy. In those circumstances the Secretary of State has a power to make a property transfer scheme for the transfer of property (other than land), rights and liabilities held by local authorities in relation to a school or a school's governing body to the proprietor of the new Academy. *Subsections (2)* and *(3)* provide that a property transfer scheme is now to be called a transfer scheme and that such a scheme includes, in addition to other property, rights and liabilities of local authorities or governing bodies, the rights and liabilities in relation to staff.

274. *Subsection (4)* changes the description of the recipient of property, rights and liabilities under a transfer scheme from "the proprietor of the Academy" to "a person concerned with the running of the Academy". This ensures consistency with the terms of the new Schedule 1 to AA 2010 (inserted by *Schedule 13*) concerning the transfer of land.

275. The new Schedule 1 to AA 2010 also contains a power (at paragraph 14(3)) for the Secretary of State to make a direction for the transfer of land, other property, rights and liabilities to vest in a person concerned with the running of an Academy where the governing body of a school are to be dissolved following an Academy order.

Academies: other provisions

Clause 57: Academies: new and expanded educational institutions

276. *Subsection (1)* substitutes a new section 9 into AA 2010. Under the current section 9 the Secretary of State, when considering whether to enter into Academy

arrangements in relation to an additional school, must take into account the impact on maintained schools, Academies and institutions within the further education sector in the area in which the additional school is, or is proposed, to be. An additional school is a school which does not replace a maintained school and is not subject to an Academy order under subsection 4 of AA 2010.

277. The new section 9 is similar, but removes the term “additional school”. The new section will apply when the Secretary of State is deciding whether to enter into Academy arrangements in relation to a new educational institution or an existing educational institution that, if arrangements are entered into, will provide education for pupils of a wider range of ages.

278. An educational institution that replaces a discontinued maintained school, Academy or sixth form and caters for the same age range as the institution or institutions it replaces is not a new school for the purposes of this section. The Secretary of State must consider the impact on alternative provision such as pupil referral units of entering into Academy arrangements in addition to considering the impact on the educational institutions previously listed in section 9.

279. *Subsection (2)* substitutes a new section 10 into AA 2010. The existing section 10 provides that before entering Academy arrangements with the Secretary of State in relation to an additional school the person entering into those arrangements must consult those they think appropriate as to whether the arrangements should be entered into. As with new section 9 above, new section 10 no longer uses the term “additional school”. The duty to consult will apply to the person entering into arrangements in relation to a new educational institution or an existing educational institution that caters for a wider age range than the institution it replaces.

280. The duty to consult does not apply to persons entering into Academy arrangements for a new educational institution following an invitation from a local authority under section 7 of EIA 2006. A local authority has a duty to consult those they think appropriate under section 9 of that Act before issuing a notice inviting proposals for a new school under section 7.

Clause 58: staff at Academies with religious character

281. Clause 58 amends Part 5A of SSFA 1998 (employment of teachers at independent schools having a religious character). In the maintained sector, a foundation or voluntary controlled school must include “reserved” teachers, the number of which must not exceed one-fifth of the total number of teachers including the principal. Reserved teachers are those who have been selected for their fitness and competence to give religious education in accordance with the tenets of the religion or religious denomination of the school, and who are appointed on such grounds. In contrast, a voluntary aided school may apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school.

282. Section 124A of SSFA 1998 provides that independent schools which have a religious character may also apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school.

283. *Subsection (3)* inserts a new section 124AA into SSFA 1998 which will apply to all voluntary controlled and foundation schools with a religious character who have converted into Academies. It will provide that teachers at these Academies must include reserved teachers, the number of which must not exceed one-fifth of the total number of teachers including the principal, thereby preserving the distinction between such schools in the maintained sector.

284. In addition, subsection (2) of new section 124AA provides that the Secretary of State may make an order for a specific school which will disapply section 124AA for that individual school. In these cases, section 124A will apply. The Secretary of State intends to use this power if he has agreed changes to an Academy's governance arrangements such that the religious body has majority control over the Academy in the same way that it does over a voluntary aided school governing body.

Clause 59: Academies: land

285. Clause 59 gives effect to Schedule 13 which makes provision about land in relation to Academies. Schedule 13 replaces Schedule 1 to AA 2010 with a new Schedule 1 to that Act. Schedule 13 also amends section 77 of, and Schedule 22 to, SSFA 1998 to give the Secretary of State additional powers to transfer the publicly funded land of maintained schools to Academies, whilst ensuring that the public interest in land at Academies continues to be protected.

Schedule 13

286. *Paragraph 1* of Schedule 13 replaces Schedule 1 to AA 2010 with a new Schedule which re-enacts and extends existing legislation and contains some new provisions. In particular, the new Schedule 1 incorporates and amends the remaining provisions of Schedule 35A to EA 1996 and provisions in the original Schedule 1 to AA 2010. Schedule 35A to the EA 1996 is repealed by *paragraph 16* of Schedule 13.

287. Schedule 1 is divided into four parts, the first three parts reflecting the fact that land at a particular school or Academy may be held by any of the following: a local authority, a governing body, a foundation body or the trustees of a maintained school, or by any person holding land for an Academy.

288. Other than paragraph 16, Schedule 1 relates to land that is publicly owned or publicly funded as defined in paragraph 22(3) of the Schedule, but does not apply to land that is wholly privately owned.

289. Part 1 of Schedule 1 concerns local authority land. It re-enacts and extends provisions in Schedule 35A to EA 1996 and in Schedule 1 to AA 2010, which this Schedule is replacing. It enables the Secretary of State to make a scheme to transfer

*These notes refer to the Education Bill
as introduced in the House of Commons on 26 January 2011*

an existing or former school's land (now including an Academy) from a local authority to a person concerned with the running of an Academy where the land is no longer needed for the school (paragraphs 1 and 3). It also enables the Secretary of State to make a scheme to transfer any local authority land that has been identified by the local authority as a possible site for a new school to a person concerned with the running of an Academy (paragraphs 2 and 3). Part 1 also requires a local authority to seek the Secretary of State's consent to any proposed disposal or appropriation of existing or former school land and enables the Secretary of State to compulsorily purchase land back from a third party and transfer it to a person concerned with the running of an Academy if the land is sold in contravention of any requirement to seek his consent (paragraphs 4, 5, 6 and 7).

290. Part 2 of Schedule 1 concerns publicly funded land held by governing bodies, foundation bodies or trustees of foundation or voluntary schools. It incorporates and amends some provisions from Schedule 1 to AA 2010, which this Schedule is replacing, and includes new provisions. Part 2 enables the Secretary of State to make directions to transfer publicly funded land at foundation and voluntary schools to persons concerned with the running of Academies in the situations where such a school: converts to Academy status pursuant to an Academy order, is discontinued, or wishes to dispose of surplus land (paragraphs 10, 11 and 12). Provision is made for the payment of compensation in respect of any private share in the land. Paragraph 13 enables land and other property held by a governing body to transfer automatically to either the local authority or, if the Secretary of State directs, to a person concerned with the running of an Academy on dissolution of the governing body pursuant to an Academy order.

291. Part 3 of Schedule 1 concerns publicly funded land held for the purposes of an Academy. Paragraph 14 enables the Secretary of State to protect public investment in private land held for Academies. Paragraph 15 enables the Secretary of State to make a direction in respect of publicly funded land on the closure of an Academy, subject to the payment of compensation for any private share in the land. Paragraph 16 requires that where trustees of a maintained school retain land for the purposes of the successor Academy on conversion of any such school to Academy status, they are required to give a minimum period of two years' notice to the Academy proprietor if they wish to terminate the Academy's occupation of the land. If the land is publicly funded, the Secretary of State can make a direction in relation to the land, subject to the payment of compensation for any private share. Paragraph 17 requires a person who holds land for the purposes of an Academy to notify the Secretary of State if they wish to dispose of publicly funded land, and provides a power for the Secretary of State to make a direction in respect of the land, subject to the payment of compensation for any private share.

292. Part 4 contains miscellaneous provisions designed to give full effect to the Schedule. In particular, paragraph 21 provides a regulation power which enables secondary legislation to give full effect to the powers to make schemes and to direct the transfer of land. Paragraph 22 contains a definition of publicly funded land for the

purposes of the Schedule.

293. *Paragraphs 2 to 15* of Schedule 13 amend Schedule 22 to SSFA 1998 to ensure that surplus publicly funded land held by the governing body or trustees of a foundation or voluntary school may be made available for Academies.

294. Part A1 of Schedule 22 to SSFA 1998, which was inserted by Schedule 4 to EA 2006, sets out a statutory procedure for the disposal of surplus publicly funded non-playing field land held by governing bodies, foundation bodies and trustees of foundations and voluntary schools.

295. *Paragraphs 2 to 11* of Schedule 13 amend part A1 of Schedule 22 to SSFA 1998 and provide that where a governing body, foundation body or trustees wish to dispose of publicly funded land they must first notify the Secretary of State, and must not take any further steps to dispose of the land without his consent. The Secretary of State then has the option of making a direction under paragraph 12 of Schedule 1 to AA 2010 (as substituted by the Bill). If he chooses not to make a direction then the governing body, foundation body or trustees of the school in question can proceed to dispose of the land under the provisions in Part A1 of Schedule 22 to SSFA 1998. *Paragraph 9* also amends paragraph A13(7) of Schedule 22 to SSFA 1998 so that a change of use of land by trustees is not to be treated as a disposal where the land will be used for an Academy (this provision previously provided that changes of use were not to be treated as disposals only where the land would continue to be used by a maintained school, and did not include a reference to Academies).

296. *Paragraph 13* amends paragraph A23 of Schedule 22 and provides that where a local authority wishes to apply to the adjudicator for the transfer to them of publicly funded land they think is no longer needed by a foundation or voluntary school, they must notify the Secretary of State of their intention, and take no further action until they have received a response. The Secretary of State may then decide to make a direction under paragraph 12 of Schedule 1 to AA 2010 (as substituted by the Bill), failing which the local authority can proceed with the application under the statutory procedure in Part A1 of Schedule 22 to SSFA 1998.

297. *Paragraph 14* amends paragraph 5 of Schedule 22 to SSFA 1998 to add an additional power for the Secretary of State to make a direction under paragraph 11 of Schedule 1.

298. *Paragraph 15* amends paragraph 7 of Schedule 22 to SSFA 1998 to enable the Secretary of State to direct that land or other property held by a governing body that is dissolving on discontinuance for reasons other than an Academy conversion is transferred to an Academy instead of a local authority.

299. *Paragraph 17* amends section 77 of SSFA 1998. Section 77 requires the Secretary of State's consent to be sought by local authorities, governing bodies or foundation bodies of maintained schools or trustees of foundation and voluntary

schools (in the case of publicly funded land) where they propose to dispose or change the use of playing field land. The amendment in paragraph 17 enables the Secretary of State to direct, on such an application for consent to dispose of or change the use of playing fields, that the land is transferred to a person concerned with the running of an Academy, subject to the payment of compensation for any private share in the land. Paragraph 17 also now requires the Secretary of State's consent to be sought where the playing fields are proposed to be used for other educational purposes or recreational facilities.

Clause 60: Academy admissions arrangements: references to adjudicator

300. Clause 60 amends Chapter 1 of Part 3 of SSFA 1998 to allow the adjudicator to consider and to determine eligible objections or referrals relating to the admissions arrangements of Academies, as they do for those of maintained schools. Under section 88H of SSFA 1998, as amended by the Bill, parents and other persons specified in regulations will be able to make objections to the adjudicator about an Academy's admission arrangements (*subsection (3)*). Under section 88I, as amended, the Secretary of State will be able to make referrals to the adjudicator where it appears to the Secretary of State that an Academy's admission arrangements do not or may not conform with the requirements relating to admission arrangements. The adjudicator also has a discretion to consider admission arrangements other than those referred by the Secretary of State (*subsection (4)*).

301. The requirements relating to an Academy's admission arrangements, including the application of the School Admissions Code, are set out in the Academy agreement between the Secretary of State and an Academy (*subsection 5(b)*).

302. Where the adjudicator decides on any objection or referral, the decision is binding on the admission authority (and in the case of an objection, the person making the objection). The adjudicator must publish a report containing that decision and the reasons behind it. The powers to make regulations under sections 88H, 88I and 88K is amended so that they will also apply to Academies.

Clause 61: Academies: minor amendments

303. This clause gives effect to *Schedule 14* which contains consequential amendments that reflect amendments made to the AA 2010.

Schedule 14

304. Schedule 14 amends Schedule 4 to the Finance Act 2003 and Schedule 17 to the Equality Act 2010, replacing references to section 482 of the EA 1996 with references to section 1 of the AA 2010. These amendments simply reproduce in textual amendments the effect of section 15 of AA 2010.

PART 7: POST-16 EDUCATION AND TRAINING

Abolition of the Young People's Learning Agency for England

Clause 62: Abolition of the Young People's Learning Agency for England

305. Clause 62 repeals the provisions in ASCLA 2009 that established the Young People's Learning Agency for England (the YPLA), an arm's length body. The clause therefore abolishes the YPLA and its functions will be discharged by the Secretary of State. The Government intends that this will be carried out by a non-statutory agency within the Department for Education, as proposed in *The Importance of Teaching: the Schools White Paper* (2010).

Clause 63: abolition of the YPLA: consequential amendments

306. Clause 63 gives effect to Schedule 15 which removes references to the YPLA from some legislation and amends other legislation to replace references to the YPLA with the Secretary of State, where applicable. Clause 63 also enables the Secretary of State to make further changes to other primary or subordinate legislation by order in consequence of clause 62. The effect of clause 74(5) is that an order made under clause 63 that amends primary legislation is subject to the affirmative procedure

Schedule 15

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

Clause 64: Abolition of the YPLA: transfer schemes

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

Apprenticeships

Clause 65: The apprenticeship offer

309. Clause 65 places a new duty on the Chief Executive of Skills Funding (the "Chief Executive") to prioritise funding for apprenticeship training for specified groups of young people. It also gives effect to *Schedule 17* which repeals sections 91 to 99 of ASCLA 2009 (which have not been commenced), which place a duty on the Chief Executive to secure an apprenticeship place for all suitably qualified young people in these groups.

310. Clause 65 inserts sections 83A, 83B and 83C into ASCLA 2009.

311. New section 83A places a duty on the Chief Executive of Skills Funding (the "Chief Executive") to fund apprenticeship training by securing the provision of proper

facilities for every young person in certain specified groups who has secured an apprenticeship opportunity. The effect of this section is to give higher funding priority for apprenticeship training for these young persons. This duty is known as “the apprenticeship offer”. The apprenticeship offer applies in England only.

312. An apprenticeship opportunity is defined in section 83A(3) as being an opportunity to enter an apprenticeship agreement; a contract of employment in connection with which training in accordance with an apprenticeship framework will be provided; or an opportunity to undertake other kinds of working in relation to which the apprenticeship alternative completion conditions in section 1(5) of ASCLA 2009 apply.

313. Proper facilities are defined in section 83A(8) as being those which are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. The training must be suitable to the apprentices’ needs, and in determining this, the Chief Executive must have regard to the factors in section 83(2) and (3) of ASCLA 2009. The Chief Executive must make best use of resources.

314. The persons who are eligible for the new apprenticeship offer are the same as those who are eligible for the current apprenticeship offer in ASCLA 2009, and are:

- all young people aged 16 to 18;
- people aged 19 to 24 who are care leavers (as defined below); and
- people aged 19 to 24 with a disability or learning difficulty who are of a prescribed description (as set out below).

315. For the purposes of the apprenticeship offer, a “care leaver” is a person aged under 21 who was looked after by the local authority before and after turning 18 and to whom a local authority owes duties under section 23C of the CA 1989, or a person to whom an authority owes duties under section 23CA of that Act (that is, a person to whom the authority no longer owes duties under section 23C, but who wishes to pursue education or training). The duties provided for by section 23CA may continue to be owed until the person reaches the age of 25.

316. Section 83A(6)(b) provides a regulation-making power to specify descriptions of persons who will be eligible for the apprenticeship offer. It is intended that these will be people with disabilities or learning difficulties, and that the definition of the people to be included in the prescribed description will be based on the advice of external disability experts. These regulations will be subject to the negative resolution procedure in Parliament.

317. Section 83A(12) gives the Secretary of State powers to amend the description of the persons covered by the apprenticeship offer, through the affirmative resolution

process in Parliament.

318. New section 83B limits the scope of the apprenticeship offer by specifying that the duty to fund apprenticeship training under the offer applies to one completed apprenticeship at each apprenticeship level. This would mean that a person who has already completed an apprenticeship or holds an apprenticeship certificate, at that level has no right to be funded under the apprenticeship offer to train for a second apprenticeship in a different skill, trade or occupation at the same level. Other evidence of experience and attainment at a similar or higher level could also be taken as equivalent to an apprenticeship certificate.

319. New section 83C provides a power for the Secretary of State to suspend the apprenticeship offer in relation to a specified skill, trade or occupation or to training at a specified apprenticeship level, for up to two years. This reflects a similar power to suspend the current apprenticeship offer as set out in section 97 of ASCLA 2009, which is repealed by Schedule 17. The power in section 83C would allow the duty to fund apprenticeship training to be suspended where economic difficulties or other circumstances are so severe that it cannot be fulfilled, or where the supply of people trained in a particular occupation or up to a particular level of that occupation is such that Government investment in more training in that occupation or to that level is not merited. This power is subject to the negative resolution procedure.

Schedule 17: the apprenticeship offer: consequential amendments

320. This Schedule repeals sections 91 to 99 of ASCLA 2009, which have not been commenced. These sections place a duty on the Chief Executive to secure an apprenticeship place for every suitably qualified person within specified categories of people, set out the terms of this offer and criteria for its fulfilment, specified eligibility criteria and gave the Secretary of State powers to suspend the offer. This Schedule also repeals section 104 of ASCLA 2009, in consequence of the repeal of sections 91 to 99. The Chief Executive retains a power to provide assistance and support under section 110(6) of ASCLA 2009.

321. This Schedule also makes consequential amendments related to the repeal of sections 91 to 99 and 104 of ASCLA 2009, and to the new sections inserted by clause 65.

Clause 66: apprenticeship certificates

322. Clause 66 replaces section 6 of ASCLA 2009. The new section provides that the certifying authority for apprenticeships in England will be the person designated for that purpose by the Secretary of State. Where a person has not been designated, the Secretary of State will be the English certifying authority. *Subsection (2)* provides that only one person at any one time may be designated to issue apprenticeship certificates for a particular sector and *subsection (3)* provides that the designated person must comply with directions and have regard to guidance given by the Secretary of State. *Subsection (4)* allows the Secretary of State to amend or revoke the

designation.

323. The effect of the clause is that the Chief Executive of Skills Funding is no longer the English certifying authority. Section 6 is now largely similar to the arrangements for Wales in section 10.

324. The clause also makes minor and consequential amendments to ASCLA 2009 relating to the new section 6.

The Chief Executive of Skills Funding

Clause 67: Consultation by Chief Executive of Skills Funding

325. Clause 67 inserts new section 118A into ASCLA 2009. The new section provides a power for the Secretary of State to direct the Chief Executive of Skills Funding to consult with specified people or descriptions of persons on matters associated with the performance of the Chief Executive's functions. A direction issued under this section can also set out the way in which the consultation is to be carried out. For example, the direction could specify that the consultation must take place through the establishment of a formal advisory group consisting of specified individuals or representatives of specific named bodies. The new section does not prevent the Chief Executive from carrying out other forms of consultation, including with individuals and representative bodies who are not named in any direction.

Clause 68: Functions of the Chief Executive of Skills Funding

326. Clause 68(2) amends section 88 of ASCLA 2009 so that the entitlements to fee remission on the first full vocational qualification at level 2 and specified qualification at level 3 are restricted to those aged over 19 and under 24.

327. Section 88 places a duty on the Chief Executive of Skills Funding to ensure that students will not be liable to pay fees for courses of study provided as a result of section 87, which places a duty on the Chief Executive to secure the provision of proper facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications. This clause amends the section 88 duty on the Chief Executive to restrict it to the first full specified vocational qualification at level 2 and specified level 3 qualifications for those over the age of 19 and under 24.

328. The definitions of level 2 and level 3 qualifications are set out in Schedule 5 of ASCLA 2009:

- level 2 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Secondary Education in five subjects, each at Grade C or above.
- level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects.

329. *Subsection (3)* repeals section 112 to 114 of ASCLA 2009 and so removes the power of the Secretary of State to specify a body to set out a strategy for the delivery of education and training in a specified area in England and keep it under review; and the requirement for him to provide, by regulations, for the establishment of such a body in relation to Greater London. This repeal also removes the requirement for the Chief Executive of Skills Funding to carry out any function to which any such strategy relates, in accordance with that strategy.

330. Subordinate legislation made under these provisions provides for three such bodies – in London, Manchester and Birmingham. While the repeal of this legislation removes the statutory basis for these bodies, it does not prevent them from agreeing strategies and priorities with their local training organisations and colleges. Those relationships may proceed on the basis of a shared concern to meet the skills needs of the local economy rather than a requirement for one body to exert control over the others.

Raising the participation age: commencement

Clause 69: Duty to participate in education or training: commencement

331. Part 1 of ESA 2008 places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier) and is commonly known as “Raising the Participation Age”. Clause 69 amends section 173(9) and (10) (the commencement provisions) of ESA 2008 to give the Secretary of State more flexibility as to the timing of the commencement of elements of Part 1 of that Act.

332. This amendment will not affect the commencement of sections 1 to 10 of ESA 2008, including the duty on young people to participate in education and training and the duty on local authorities to promote fulfilment of that duty. These sections must still be brought into force in part by 2013, and fully by 2015.

333. However, the amendment enables the remainder of Part 1 to be commenced at a point decided by the Secretary of State. In particular, the Secretary of State will keep under review the appropriateness of commencing Chapter 5 of Part 1, which provides for an enforcement mechanism involving local authority enforcement notices, panels, penalty notices, and ultimately a criminal offence for failure to comply with an attendance notice. The commencement of other duties may be affected, including those on employers, parents, and the requirement on local authorities to identify those young people not meeting the central duty.

PART 8: STUDENT FINANCE

Clause 70: Student loans: interest rates

334. Clause 70 amends the power given to the Secretary of State in section 22(4) of THEA 1998 to make regulations setting interest rates. Section 22(4)(a) provides that the rates set must be no higher than the rates required to maintain the value of the loan

in real terms or the amount specified for low interest rate loans, whichever is the lower.

335. For students who start their courses on or after 1 September 2012, the Secretary of State will have a wider power to set interest rates in regulations, provided that the rates set do not exceed those commercially available: the new restriction in *subsection (1)* reflects the terminology of the exemption in Article 2.2(1) of Directive 2008/48/EC on Credit Agreements for Consumers, and the Consumer Credit (EU Directive) Regulations 2010 which implement it. This new cap will ensure that section 8 of the Sale of Student Loans Act 2008, which exempts student loans from the regime in the Consumer Credit Act 1974, continues to be compliant with EU law.

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

Clause 71: Limit on student fees: part-time courses

337. Clause 71 amends the definition of “course” in section 41(1) of HEA 2004 to remove the exclusion of part-time courses from that definition. The effect of this amendment is that references to “course” in Part 3 of HEA 2004 will include part-time courses. This will enable the Secretary of State to apply a regime of capping the amounts which institutions providing higher education courses can charge part-time students, as can currently be done in relation to full-time students. In particular, the Secretary of State will be able to specify in regulations under section 24 the amounts which can be charged for part-time courses, and to prescribe the type of part-time courses which are subject to these amounts. This will ensure that part-time undergraduate students can be treated in a way which is commensurate with the treatment of full-time undergraduate students.

338. *Subsection (2)* provides that this amendment applies in relation to a part-time course which begins on or after 1 September 2012, unless the case is within a prescribed exception.

PART 9: POWERS OF NATIONAL ASSEMBLY FOR WALES

Clause 72: professional standards etc of teachers and others

339. Clause 72 gives the Welsh Assembly Government the power to make measures in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce.

Clause 73: funding of pre-16 education and training

340. Clause 73 gives the Welsh Assembly Government the powers to make measures in relation to the funding of pre-16 education or training. This will enable the National Assembly for Wales to legislate in relation to the financing of the entire education system in Wales apart from higher education: with this framework power

the Assembly will be able to make a measure that would allow for the funding of the education functions of a local authority, the funding of schools and the funding of independent schools in Wales.

FINANCIAL EFFECTS OF THE BILL

341. Part 1 of the Bill amends the Secretary of State's power to make regulations which he intends to use to place a duty on local authorities to provide early years education to disadvantaged two-year olds. The Department for Education will fund this with an estimated £308 million per year from within its Departmental Expenditure Limit.

342. The changes to Ofsted inspections proposed under Part 5 will save the Government an estimated £4 million per year.

343. The removal of the requirement on local authorities to provide schools with a School Improvement Partner (SIP) proposed under Part 5 is associated with a saving of the £30 million per year with which the Department used to fund the SIP programme.

344. The transfer of parental complaints from the Local Government Ombudsman to the Department, also under Part 5, would save the Department between £2 million and £6 million per year. The associated additional burden on the Department will not have a significant effect on public sector manpower, as it will be absorbed into existing departmental staffing levels.

345. We estimate that the changes to the Skills Entitlement proposed under Part 7, to restrict it at level 2 and 3 to those over the age of 23, will involve cost savings to government of £160 million in 2012/13 rising to £650 million in 2014/15. We estimate that approximately two thirds of this cost will transfer to students and employers, by means of increased fees, and the remaining third will no longer be incurred.

346. Part 8 of the Bill gives the Secretary of State the power to set real interest rates in secondary legislation, on loans issued to new higher education students in England and Wales. It is expected to be used to set real interest rates and is part of a wider range of proposals, which include increasing the earnings threshold for loan repayments from £15,000 to £21,000 and increasing the new threshold annually in line with earnings instead of inflation. Part 8 also gives the Secretary of State the power to specify in regulations the maximum tuition fee that higher education institutions may charge part-time undergraduate students in a given year. Under the current system, fees for part-time students are not regulated but the fee grant is capped at £1,230 a year for eligible students on designated courses studying at a minimum of 50% intensity. Under the new system, which will apply to new students starting part-time courses from 1 September 2012 onwards, new part-time students will no longer

have access to means-tested grant but instead to non means-tested loans. These will be available to pay tuition costs in the case of eligible part-time students who are on designated courses and studying at a minimum of 25% of the intensity of an equivalent full-time course. Part-time students entering from 2012 will be able to defer contributing towards tuition costs until they are in employment and earning over £21,000.

347. The provisional impact assessment accompanying the Bill sets out details of the financial effects of these changes (see below).

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

348. In relation to the school, college and local authority sectors, the Bill reduces administration costs and regulation, for example by removing duties on governing bodies, removing duties on local authorities in relation to certain school reporting requirements and streamlining processes for establishing new schools. However, we cannot calculate the potential cost-savings or manpower reductions associated with these changes.

349. The removal of five statutory arm's lengths bodies (ALBs) through this Bill, with some of their functions stopping altogether and the remainder falling to the Secretary of State, will involve a transfer of some of those staff from those ALBs into the Department, and an overall reduction in public sector manpower.

350. The Department for Business, Innovation and Skills has made an initial estimate of the impact of the higher education funding changes, which goes wider than the changes in the Bill, on administration costs for BIS, the Student Loans Company and HM Revenue and Customs. This was included in the published Impact Assessment.

351. The Bill proposes the transfer of complaints about Academy admissions from the Secretary of State to the Office of the Schools Adjudicator. The effect of this on the OSA is offset by the Bill's proposed reductions in the scope of the activities of the OSA. The overall effect on public sector manpower is insignificant.

352. The Departments for Education and Business, Innovation and Skills are committed to meeting from existing resources any additional public expenditure or manpower costs for their respective measures in the Bill, which cannot be met by using existing resources more efficiently.

353. There are no tax implications arising from the Bill.

SUMMARY OF THE IMPACT ASSESSMENT

354. The Bill will be accompanied by a full impact assessment. This will be available through the Vote Office, in the House Libraries and on <http://www.education.gov.uk>.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Clause 1: Free of charge early years provision

355. Clause 1(2) inserts a new section 7 in the CA 2006, changing the current duty on local authorities to secure that a prescribed amount of early years provision is available free of charge to certain young children by providing that regulations can prescribe eligibility by characteristics other than age. While it might be argued that aspects of this provision would engage Article 2 of Protocol 1, which provides that no person shall be denied the right to education, the Government does not consider that creating a duty on local authorities to secure that free early years provision is available for a certain category of two year olds interferes with the right enshrined in Article 2 of Protocol 1.

356. The duty that new section 7 of the Childcare Act 2006 (and the regulations made under it) does not result in non-eligible children being denied access; they will continue to be able to access early years provision paid for by their parent. Therefore the Government does not consider that this provision interferes with the right of equal access to educational facilities, which is what Article 2 of Protocol 1 is intended to protect.

357. The Government has considered whether the fact that only some two year olds will be able to access free early years provision could engage Article 14, read with Article 2 of Protocol 1. Were the courts to consider a person's economic status (for example, whether his or her parent is in receipt of certain social security benefits, or has an income below a certain threshold) to be a status which Article 14 protects so that Article 14 is engaged, the Court's case law says that promoting disadvantaged groups through affirmative action is compatible with Article 14 (*Belgian Linguistics Case No. 2*). The Government considers that the approach being taken is proportionate to the legitimate aim of encouraging and facilitating access to good quality early years provision for those children otherwise least likely to get access to it or take it up.

358. The Government considers that the sharing of information under new section 13A CA 2006 engages Article 8(1) of the ECHR and amounts to an interference but that the interference is justifiable under Article 8(2) as being necessary for the purposes of the economic well-being of the country, since the purpose behind the

sharing of information is to ensure that local authorities are easily able to establish eligibility for free early years provision, and therefore reduce fraudulent claims or mistakes. The measure is proportionate, as section 13A makes clear that the information can only be shared and used for that specific purpose. It is also subject to the protections of the Data Protection Act 1998.

359. Section 13B makes provision for a defence for a person who has disclosed information unlawfully, if they can prove (on the balance of probabilities) that they reasonably believed the disclosure to be lawful. Reverse legal burdens of proof have been considered in the Strasbourg case law since they can engage Article 6 of the ECHR, in particular the right under Article 6(2) that “everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law”. The Government considers that the reverse burden of proof in relation to this defence is proportionate and reasonable in all the circumstances, strikes the right balance between the public interest and the defendant’s Article 6 rights, and does not prevent a fair trial from taking place and is accordingly compatible with Article 6.

Clause 2: Power of members of staff at schools to search pupils

360. The Government considers that the powers to search pupils under section 550ZA of EA 1996 engage, and amount to an interference with, Article 8 ECHR, but that the interference created by the addition to the list of prohibited items made by this clause is justifiable under Article 8(2).

361. The Government considers that the wording in new section 550ZA(3)(ea) is sufficiently clear and precise to meet the test of being in accordance with the law set by the Strasbourg Court. The Government also considers that the power serves a legitimate aim under Article 8(2), that is to say for the prevention of disorder or crime, for the protection of health or morals.

362. The new power to search is subject to the safeguards which are provided for in section 550ZB.

363. The Government considers that the wording in new section 550ZA(3)(g) satisfies the requirement that the interference which it amounts to be in accordance with the law: the item can only be searched for if it is identified in the school rules as an item that can be searched for and those school rules must be determined and publicised in accordance with section 89 EIA 2006 or with regulations made under section 550ZA(3B)(b).

364. The Government considers that the power to search under section 550ZA(3)(g) serves the legitimate aim of the protection of the rights of others; in particular rights under Article 8. The Government considers that the power taken under section 550ZA(3)(g) is necessary and proportionate; it is subject to the existing safeguards in sections 550ZA and 550ZB. Accordingly the Government considers

that the new power to search under section 550ZA(3)(g) is compatible with the Convention rights.

365. Clause 2(3) amends section 550ZB by providing that a person carrying out a search of a child under section 550ZA need not be of the same sex as the child in very limited circumstances. Similar provision is made to relax the requirement to have another member of staff present. The Government considers that the circumstances in which the searcher can search a child of the opposite sex are sufficiently tightly drawn to make this provision compatible with Article 8.

366. Clause 2(4) amends section 550ZC by inserting provisions regarding the disposal of items found in exercise of a search under new section 550ZA(3)(ea). While the seizure of a prohibited item from a pupil amounts to a deprivation of property and potentially interferes with Article 1 Protocol 1, the Government considers that in relation to an item used or to be used to commit any interference is justified and proportionate: deprivation will prevent the commission, or continued commission, of a criminal offence; and may prevent harm being caused to pupils. Because of the risks to the safety of pupils and others and of the disorder that could result from allowing pupils to have on them such items seizure of these items is a proportionate response. Similar arguments apply in relation to the new power of seizure for items prohibited by virtue of section 550ZA(3)(g).

367. Where items are confiscated and returned at the end of the day the Government considers that Article 1 Protocol 1 rights may not be engaged; if they are then the Government considers that such circumstances would be likely to amount to an interference with enjoyment under Article 1 Protocol 1 and such interference would be proportionate and justified given the very limited duration and the aim of preventing crime and harm to others.

368. The Government considers that to the extent that the provision allowing the searcher to examine data or files on electronic devices and to erase them where there are for example any images of bullying or threatening messages extent interferes with rights under Article 8 it is justified as being for the legitimate aim of preventing and detecting crime and the protection of the rights of others.

Clause 3: Power of members of staff at further education institutions to search students.

369. The provisions in this clause largely mirror those in clause 2 and the Government considers that the same arguments will apply in support of its view that the provisions are compatible with the Convention rights.

Clause 4: Exclusion of pupils from schools in England: review

370. Clause 4 makes new arrangements for England only in relation to the exclusion of pupils from schools. Head teachers of maintained schools and teachers in pupil referral units will as now have the power to exclude any pupil from the school on disciplinary grounds. The clause provides for an independent review of any decision not to reinstate the pupil in question. The independent review panel is new and will have no power to direct reinstatement of a pupil as an appeal panel has currently.

371. The duty under section 19 Education Act 1996 to provide full time education for permanently excluded children means that a permanently excluded child will not be denied the right to education so there is no breach of Article 2 of Protocol 1.

372. Further, as case law suggests that education authorities have considerable latitude when exercising disciplinary functions before they will be held liable for breaching right of access to education the Government's view is that Article 2 of Protocol 1 is not engaged.

373. The Government considers that Article 6 ECHR is not engaged because exclusion is not determinative of a civil right (see for example *R (on the application of B) v Head Teacher of Alperton Community School* [2001] EWHC 229 (Admin)) but if it were held to be the Government would argue that the independent review board combined with judicial review is adequate and sufficient.

374. The Government does not consider that if the power of the new review panel to order an adjustment of the school's budget extends in relation to Academies then a decision to make such an order in respect of an Academy is a civil determination for the purposes of Article 6 (right to a fair hearing). If Article 6 were engaged, the Government would argue that judicial review is enough to ensure that the framework is compatible with Article 6.

Clause 5: Repeal of requirement to give notice of detention to parent

375. Article 8 ECHR is likely to be engaged in relation to any pupil punishment which means that the pupil is detained at school after the normal school hours. The Government considers that a system of detention outside of school hours is simply an extension of and so part of the necessary interference of the school day and that the imposition of detention without notice is just one aspect of the disciplinary system. In addition, the statutory framework provides for clear and transparent rules with a view to ensuring that any disciplinary penalty is necessary to ensure good discipline and therefore an effective system of schooling. The Government does not consider that the requirement to provide 24 hours' written notice adds any particular safeguard in ECHR terms.

Clause 8: Functions of Secretary of State in relation to teachers

376. New section 141B EA 2002 gives the Secretary of State the power to investigate cases of alleged unacceptable conduct or conviction of a relevant offence against a teacher. The Secretary of State may make a prohibition order in respect of the person. The potential for a teacher to be prohibited from teaching unsupervised in the institutions mentioned above potentially engages Convention rights. The Government considers that the fact that the Secretary of State is required to confer a right of appeal against such decisions, coupled with judicial review, is sufficient for the purposes of Article 6. As the Secretary of State regulates the appeal system he will have to ensure that regulations are Article 6 compliant and that appropriate safeguards are put in place to ensure a fair appeals process.

377. The Government does not consider that rights under Article 1 Protocol 1 arise here. There is no change here from the present position in that teachers can be barred from teaching currently. If Article 1 Protocol 1 rights were engaged the Government considers that regulation of this nature would come within the right of the State to enforce laws to control the use of property in accordance with the general interest and thus be justified.

378. The sharing of information concerning teachers raises issues under Article 8 but, particularly given that they are restricted to cases of a serious nature, such sharing is justified under Article 8(2). The Government considers that any interference with private life would be justified as necessary and proportionate, within the provisions of Article 8(2), with the aim of ensuring that a narrow category of information concerning teachers is available to those with a justifiable interest in it and is shared appropriately between the various agencies who may have access to it.

Clause 13: Restrictions on reporting alleged offences by teachers

379. The Government considers that Article 10 is engaged, and Article 10 rights will be interfered with, by the restriction. However, the Government is satisfied that any interference is justified under Article 10(2) as a necessary and proportionate means of achieving the legitimate aim of protecting the reputation and rights of teachers and supporting teachers in their role as the professionals responsible for classroom discipline.

380. The Government considers that while the protection of the Article 8 rights of teachers may raise arguments under Article 14 that the protection afforded to teachers is discriminatory on the grounds of “other status” (namely profession), the particular vulnerabilities of teachers and the importance of their role with responsibility for classroom discipline support an argument that the different treatment of teachers in this provision can be objectively justified and pursues a legitimate aim of maintaining classroom discipline.

381. The Government is clear that any restrictions on the right to freedom of expression in Article 10 must be proportionate and limited to what is necessary to meet the pressing social need identified above. The Government is satisfied that this is a proportionate response to the problem in that it balances the public interest in genuine cases of misconduct by teachers being reported by the media against the need to support teachers' authority in the classroom and protect their reputations and rights under Article 8 by preventing unfounded, false or malicious allegations being publicised, where there are no other effective protections for teachers who are falsely accused of harming a pupil.

382. Article 6 may also be engaged by the fact that new section 141H(1) imposes a legal burden of proof on the defendant to establish the defences to an offence under new section 141G. However, the Government is satisfied that in this particular case, it is appropriate to impose a legal burden and it is compliant with Article 6(2) to do so for the same reasons stated at paragraph 359 above.

Clause 26: Education and training support services

383. The effect of section 76A(5) of the ESA 2008 is that it currently prevents the NCCIS contractor and the Secretary of State from sharing between them information relating to individuals using the Connexions services in a way that the identity of the individuals would be revealed to either the NCCIS contractor or the Secretary of State. The Government considers that removing this prohibition engages Article 8 of the ECHR, but that any interference is justified.

384. Making sharing such information between the NCCIS contractor and the Secretary of State possible will enable the Secretary of State to form a "joined-up" view of individuals' progression through education and in particular to assess the performance of education and training providers by ascertaining what happens to individuals after they have left school or college, including whether they have been successful in entering into employment. The Government considers that to do this is in the interests of the economic well-being of the country.

385. The Government considers that any interference in Article 8(1) rights is proportionate in view of the legitimate interests being pursued. The information that is intended to be shared will not include any "sensitive" information. The clause will only permit Connexions information that identifies individuals to be shared between the NCCIS contractor and the Secretary of State. The existing restrictions preventing such information from being shared more widely will continue to apply, as will the provisions of the Data Protection Act 1998.

Clause 59 and Schedule 13: Academies: land

386. In some circumstances, taking property from a person by operation of statute

may constitute a breach of Article 1 Protocol 1.

387. In relation to land that falls within the statutory definition of “publicly funded land” on the basis that it is land enhanced through relevant public investment but held by educational foundations, charitable trusts or churches who provided some or all of the land from out of their own funds, taking the land from such bodies would engage their Convention rights to hold property without interference. If the land were to be taken without adequate compensation for the loss, this would also be likely to constitute a breach of those rights. The same principle would apply to any land that is compulsorily purchased by the Secretary of State from a third party, provided it is a body to which Convention rights apply. However, the clause and Schedule provide that in relation to such land held by private entities, or in which the private entity may have an interest, the non-public body would be compensated for any deprivation of property or interest, by compensation from the Secretary of State.

388. Compensation is to be determined by the Secretary of State on the basis of what he considers to be appropriate. This replicates the existing position in legislation for determinations of compensation where a foundation or voluntary school that holds publicly funded land closes (paragraph 5 of Schedule 22 to the School Standards and Framework Act 1998).

389. On the basis that the powers in this Schedule replicate the position in existing legislation for the determination of compensation, and that any determination of compensation by the Secretary of State would be subject to legal challenge by way of judicial review if the determination was considered to be unreasonable, the Government considers that to the extent that any rights of such landowners are engaged, there will be no breach of Article 1 of Protocol 1.

COMMENCEMENT DATE(S)

390. Clause 78 provides for commencement. The provisions listed in *subsection (1)* come into force on Royal Assent; those listed in *subsection (2)* come into force two months after the date on which the Bill is passed. The other provisions in the Bill will come into force on a day appointed by the Secretary of State by order.

*These notes refer to the Education Bill
as introduced in the House of Commons on 26 January 2011*

ANNEX A: TERRITORIAL APPLICATION TABLE

Clause number	Title	Application of Clause
PART 1 EARLY YEARS PROVISION		
1	<i>Free of charge early years provision</i>	<i>England only</i>
PART 2 DISCIPLINE		
2	<i>Power of members of staff to search pupils</i>	<i>England only</i>
3	<i>Power of members of staff at FEIs to search students</i>	<i>England only</i>
4	<i>Exclusion of pupils from schools in England: review</i>	<i>England only</i>
5	<i>Repeal of requirement to give notice of detention to parent</i>	<i>England only</i>
6	<i>Repeal of duty to enter into behaviour and attendance partnership</i>	<i>England only</i>
PART 3 SCHOOL WORKFORCE		
<i>Abolition of the General Teaching Council for England</i>		
7	<i>Abolition of the General Teaching Council for England</i>	<i>England only</i>
8	<i>Functions of Secretary of State in relation to teachers</i>	<i>England only</i>
9	<i>Requirement for teachers in England to serve induction period</i>	<i>England only</i>
10	<i>Abolition of the GTCE: transitional provision</i>	<i>England only</i>
11	<i>Abolition of the GTCE: consequential amendments</i>	<i>England and Wales</i>
12	<i>Abolition of the GTCE: transfer schemes</i>	<i>England only</i>

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Reporting restrictions		
13	<i>Restrictions on reporting alleged offences by teachers</i>	<i>England and Wales</i>
Abolition of the Training and Development Agency for Schools		
14	<i>Abolition of the Training and Development Agency for Schools</i>	<i>England and Wales</i>
15	<i>Training the school workforce in England: functions of Secretary of State and Welsh Ministers</i>	<i>England and Wales</i>
16	<i>Abolition of the TDA: consequential amendments</i>	<i>England and Wales</i>
17	<i>Abolition of the TDA: transfer schemes</i>	<i>England</i>
Abolition of the School Support Staff Negotiating Body		
18	<i>Abolition of the School Support Staff Negotiating Body</i>	<i>England only</i>
Staff: minor amendments		
19	<i>Staffing of maintained schools: suspension of delegated budget</i>	<i>England only</i>
PART 4 QUALIFICATIONS AND THE CURRICULUM		
International comparison surveys		
20	<i>Requirement for schools to participate in international surveys</i>	<i>England only</i>
Ofqual		
21	<i>The Chief Regulator of Qualifications and Examinations</i>	<i>England and Northern Ireland</i>
22	<i>The qualifications standards objective</i>	<i>England and Northern Ireland</i>
Abolition of the Qualifications and Curriculum Development Agency		
23	<i>Abolition of the Qualifications and Curriculum Development Agency</i>	<i>England only</i>
24	<i>Abolition of the QCDA: consequential amendments</i>	<i>England only</i>
25	<i>Abolition of the QCDA: transfer schemes</i>	<i>England only</i>

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Careers education and guidance		
26	<i>Education and training support services</i>	<i>England only</i>
27	<i>Careers guidance in schools</i>	<i>England only</i>
Repeal of the diploma entitlement		
28	<i>Repeal of diploma entitlement for 16 to 18 year olds</i>	<i>England only</i>
29	<i>Repeal of diploma entitlement for fourth key stage</i>	<i>England only</i>
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30	<i>Duties to co-operate with local authority</i>	<i>England only</i>
31	<i>Duties to have regard to children and young people's plan</i>	<i>England only</i>
32	<i>Duty to prepare and publish school profile</i>	<i>England only</i>
33	<i>Duty to appoint school improvement partners</i>	<i>England only</i>
34	<i>Duties in relation to school admissions</i>	<i>England only</i>
35	<i>Duties in relation to school meals</i>	<i>England only</i>
New schools		
36	<i>Establishment of new schools</i>	<i>England only</i>
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37	<i>Constitution of governing bodies: maintained schools in England</i>	<i>England only</i>
38	<i>Discontinuance of federated school: governing body not to be dissolved</i>	<i>England only</i>
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39	<i>School inspections: exempt schools</i>	<i>England only</i>
40	<i>School inspections: matters to be covered in Chief Inspector's report</i>	<i>England only</i>
41	<i>Inspection of further education institutions exempt institutions</i>	<i>England only</i>
42	<i>Inspection of boarding accommodation</i>	<i>England and Wales</i>
43	<i>Schools causing concern: powers of Secretary of State</i>	<i>England only</i>

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44	<i>Complaints: repeal of power to complain to Local Commissioner</i>	<i>England only</i>
<i>School finance</i>		
45	<i>Local authorities' financial schemes</i>	<i>England only</i>
46	<i>Payments in respect of dismissal, etc</i>	<i>England only</i>
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48	<i>FE institutions: amendments</i>	<i>England only</i>
<i>Pupil referral units</i>		
49	<i>Repeal of provision changing name of pupil referral units</i>	<i>England only</i>
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<i>Academy arrangements</i>		
50	<i>Academies: removal of requirement to have specialism</i>	<i>England only</i>
51	<i>Academy arrangements: post-16 education and alternative provision</i>	<i>England only</i>
52	<i>Consequential amendments: 16 to 19 Academies and alternative provision Academies</i>	<i>England only</i>
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53	<i>Academy orders: involvement of religious bodies etc</i>	<i>England only</i>
54	<i>Academies: consultation on conversion</i>	<i>England only</i>
55	<i>Academy conversions: federated schools</i>	<i>England only</i>
56	<i>Transfer of property, rights and liabilities to Academies</i>	<i>England only</i>
<i>Academies: other provisions</i>		
57	<i>Academies: new and expanded educational institutions</i>	<i>England only</i>
58	<i>Staff at Academies with religious character</i>	<i>England only</i>
59	<i>Academies: land</i>	<i>England only</i>
60	<i>Academy admissions arrangements: references to adjudicator</i>	<i>England only</i>
61	<i>Academies: minor amendments</i>	<i>England only</i>

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PART 7		
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63	<i>Abolition of the YPLA: consequential amendments</i>	<i>England only</i>
64	<i>Abolition of the YPLA: transfer schemes</i>	<i>England only</i>
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65	<i>The apprenticeship offer</i>	<i>England only</i>
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74	<i>Orders and regulations</i>	<i>UK wide</i>
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<i>77</i>	<i>Extent</i>	<i>UK wide</i>
<i>78</i>	<i>Commencement</i>	<i>UK wide</i>
<i>79</i>	<i>Short title</i>	<i>UK wide</i>

EDUCATION BILL

EXPLANATORY NOTES

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