

EDUCATION AND SKILLS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Education and Skills Bill as introduced in the House of Commons on 28th November 2007. They have been prepared by the Department for Children, Schools and Families 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. In July 2007, the Government published *World Class Skills: Implementing the Leitch Review of Skills in England* which can be accessed at <http://www.dfes.gov.uk/skillsstrategy/uploads/documents/World%20Class%20Skills%20FINAL.pdf>. This document set out the Government's plans to improve the skill levels of young people and adults.

4. The Green Paper *Raising Expectations: staying in education and training post-16*, published in March 2007, dealt specifically with young people and set out, for consultation, proposals to raise to 18 the age until which young people must remain in education or training. The Green Paper and a summary of the responses can be found at: <http://www.dcsf.gov.uk/consultations/downloadableDocs/Raising%20Expectations%20Consultation%20Report.pdf>. More detailed legislative proposals drawn up following the consultation were set out in November 2007 in the publication, *Raising Expectations: staying in education and training post-16 – from policy to legislation*, which can be found at <http://www.dcsf.gov.uk/14-19/index.cfm?sid=42&pid=344&ctype=TEXT&ptype=Single>.

5. The purpose of the Bill is, first, to change the statutory framework to put a duty on all young people to participate in education or training until the age of 18, with corresponding duties on local education authorities and employers to enable and support participation. Second, it amends legislation about the provision of adult education and training, and support for young people. Third, the Bill changes the regulatory framework for inspection of independent educational institutions, non-maintained special schools and providers of initial teacher training. The Bill also includes a number of miscellaneous provisions in relation to behaviour, the Qualifications and Curriculum Authority (QCA) and schools forums.

6. The Bill is organised into five parts with two schedules. Schedule 1 deals with minor and consequential amendments, schedule 2 covers repeals and revocations. In summary, the Bill:

Part 1: Duty to participate in education or training: England

- Places a duty on young people to participate in education or training until the age of 18;
- Requires local education authorities to promote the effective participation of young people in their areas who are subject to the duty to participate;
- Allows for the sharing of data between the Secretary of State and local education authorities to facilitate the provision of support services and enable the authorities to identify young people that are failing to participate;
- Makes provision for duties on employers to enable young people who are their employees to participate;
- Sets out the circumstances in which a local education authority may issue a parenting contract or order to a parent of a young person who is failing to fulfil the duty to participate;
- Provides for local education authorities to issue attendance notices to young people who are not participating and to set up independent attendance panels to monitor the ensuing enforcement process and provide a mechanism for appeal;

Part 2: Support for participation in education or training: Young adults with learning difficulties and young people in England

- Makes provision for the transfer to local education authorities of the support services currently carried out by the Connexions service;
- Places a duty on local education authorities to arrange for the assessment of the educational and training needs of a person with a statement of special educational needs at some time during the person's last year of schooling;

- Amends the requirements on secondary schools to require them to present careers information in an impartial manner and to provide careers advice which is in the best interests of the pupils;
- Makes explicit the duty on the Learning and Skills Council (LSC) to provide proper facilities for apprenticeships for 16 to 18 year olds, and requires that the LSC must make reasonable provision for apprenticeships for those aged 19 and over;
- Introduces a requirement on local education authorities to have regard to journey times in preparing their transport statements for people of sixth form age to attend educational establishments;
- Requires local education authorities to co-operate with partners who are responsible for 14-19 education and training;

Part 3: Adult skills

- Places a duty on the LSC to secure proper provision for education and training to enable learners aged 19 and over to undertake certain courses of study;
- Requires the LSC to pay the tuition fees of learners studying on specified courses;
- Allows the Secretary of State, the devolved administrations and Her Majesty's Revenue and Customs to share information on tax and employment and benefit and training information in prescribed circumstances;

Part 4: Regulation and inspection of independent educational provision in England

- Creates a new category of independent educational institution to which the regulatory regime for independent schools in England is extended. That regime (currently in Chapter 1 of Part 10 of the Education Act 2002) is restated in Chapter 1 of this Part;
- Provides that Her Majesty's Inspector of Education, Children's Services and Skills ("the Chief Inspector") is the registration authority for independent educational institutions;
- Enables the Secretary of State to appoint an independent inspectorate to carry out inspections of registered independent educational institutions and requires the Chief Inspector to prepare a report about independent inspectorates;
- Provides the Chief Inspector with the power to require an action plan from a proprietor of an independent educational institution where the standards are not being met;

- Provides a power for the Chief Inspector to apply to a Justice of the Peace to impose an immediate restriction on an independent educational institution in an emergency where there is significant risk of harm to a student at the institution;
- Enables the Secretary of State to make regulations to apply any provisions of the regime for the regulation of independent educational institutions to independent post-16 colleges;
- Amends the Education Act 1996 to transfer the function of approving non-maintained special schools from the Secretary of State to the Chief Inspector;
- Provides a right for sixth form pupils in non-maintained special schools to opt out of religious worship;
- Provides a power to make regulations under which the Chief Inspector could apply to a Justice of the Peace for an order to withdraw approval from a non-maintained special school in an emergency where there is significant risk of harm to a student at the institution;
- Amends section 347 of the Education Act 1996 which requires the Secretary of State to approve independent schools for the placement by local education authorities of pupils with statements of special educational needs, and to give his consent for the placement of such pupils in “non-approved” independent schools. The amendments alter the section so that the approval and consent for which it provides are only necessary for schools in Wales (where they are given by the Welsh Ministers);

Part 5: Miscellaneous and general

- Creates a framework power for the National Assembly for Wales to legislate in relation to the inspection of pre-16 education and training;
- Extends an existing power for governing bodies of maintained schools in England to direct pupils to learn outside the school premises to receive provision to improve their behaviour;
- Amends the Learning and Skills Act 2000 to remove the requirement for the Secretary of State or Welsh Ministers to give his consent to all decisions of a designated body to approve qualifications as eligible to receive public funding;
- Creates additional functions for the QCA or Welsh Ministers to recognise bodies that wish to award or authenticate qualifications;
- Removes the legislative requirement for the Chief Inspector to notify providers of initial teacher training in England eight weeks before an inspection;

- Enables regulations to require schools forums to include non-schools representatives amongst their members.

TERRITORIAL EXTENT

7. At Introduction this Bill contains provisions that trigger the Sewel Convention. The relevant clauses 71, 72, 73, 74 and 75 relate to sharing information on tax and employment and benefit and training information for specified purposes. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are subsequent amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will also be sought for them.

8. The provisions relating to Northern Ireland concern changes to the remit of the QCA. Clause 137 extends the remit of the QCA in Northern Ireland to enable it to develop and publish criteria for the recognition of bodies wishing to award or authenticate qualifications. Clause 139 extends the powers of the QCA in Northern Ireland to cover the regulation of vocational qualifications currently excluded from its scope. A legislative consent motion from the Northern Ireland Assembly will be required before the clauses can be brought into force.

TERRITORIAL APPLICATION: WALES

9. The Bill confers a number of new or expanded powers on the Welsh Ministers, in line with changes being made to certain powers of the Secretary of State in relation to England.

10. Table 1 lists the provisions that affect the existing powers of the Welsh Ministers, confer new powers on them, or otherwise affect Wales.

Table 1: Clauses which affect the existing powers of the Welsh Ministers, confer new powers on them, or otherwise affect Wales

Clause	Subject of clause	Effect on the powers of the Welsh Ministers
33	Other amendments of Employment Rights Act 1996	This is a consequential amendment and does not alter the existing powers of the Welsh Ministers.
71	Revenue and Customs information	Allows Her Majesty's Revenue and Customs to share information about individuals' tax and employment with the devolved administration
72	Benefit and training information	Enables information on individuals' benefits to be disclosed to the Welsh Ministers and for information on individuals' learning activities to be disclosed between the Secretary of State and the Welsh Ministers

73	Use of information	Provides a power for the Welsh Ministers to use revenue and customs and benefit and training information in specified ways supplied by HMRC
74	Wrongful disclosure of information	Creates a new offence in England and Wales for wrongful disclosure of information
115	Directions under section 113: information	Enables the Welsh Ministers to provide information about persons in connection with the Ministers' statutory duties to protect children and vulnerable adults
129	Abolition of requirement of approval for independent schools: England	Names the Welsh Ministers as having the power to approve an independent school for the placement of children with statements of special educational needs in Wales (consequential). Welsh Ministers will have the power to consent to a child with a statement of special educational needs in Wales being sent to an independent school in England
130	Approval of independent schools: consequential amendments	Welsh Ministers will have the power to consent to a child with a statement of special educational needs in Wales being sent to an independent school in England
131	Approval of independent schools: transitional provision	Names the Welsh Ministers as having a power to withdraw consent for an independent school to educate children with statements of special educational needs (consequential)
132	Pre-16 education and training: Wales	Confers a new power on the National Assembly for Wales to make provision in connection with the inspection of education and training for those aged 16 and under
136	Approved external qualifications: Wales	Removes the requirement that Welsh Ministers consent to approve an external qualification provided in Wales
138	Functions of Welsh Ministers etc	Aligns the Welsh Ministers' remit in relation to the recognition of persons wishing to award or authenticate qualifications in relation to Wales with the functions of the QCA in relation to England and Northern Ireland
141	Constitution of schools forums	Power for Welsh Ministers to make regulations for a schools forum to contain non-schools members
142	Orders and regulations	Welsh Ministers are to make commencement orders by way of statutory instruments
146	Power to make consequential and transitional provision etc	Power for the Secretary of State to make by regulations consequential or transitional provisions
148	Extent	Sets out that the Act extends to England and Wales

149	Commencement	Enables the Welsh Ministers to lay an order to bring certain clauses into force
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COMMENTARY ON CLAUSES

11. The following definitions occur in the notes in relation to the whole of the Act:

- * *1996 Act* is the Education Act 1996
- * *1997 Act* is the Education Act 1997
- * *1998 Act* is the School Standards and Framework Act 1998
- * *2000 Act* is the Learning and Skills Act 2000
- * *2002 Act* is the Education Act 2002
- * *2005 Act* is the Education Act 2005
- * *2006 Act* is the Education and Inspections Act 2006

Local education authority

Legal background

12. Throughout the notes the term “local education authority” is used to refer to those local authorities with education functions identified in section 12 of the 1996 Education Act. The term “local education authority” has been in use since 1944 to identify those authorities but it has given rise to some perceptions that a local education authority has an identity of its own separate from the local authority.

13. In line with government policy to improve outcomes for children by promoting greater cooperation between agencies delivering children’s services, and the introduction of the post of director of children’s services and lead member for children’s services in the Children Act 2004, local authority children’s services (mainly education and children’s social services) are being integrated. To reflect this it is now government policy that the terms “local education authority” and “children’s services authority” should no longer be used. To make this fully effective requires an equivalent change in the terminology used in legislation.

14. Education legislation, however, uses the term “local education authority” and, as the Bill both amends and builds on a number of Education Acts, it has been necessary to continue to use the term local education authority in the Bill. It is therefore used throughout these notes (and, where appropriate, is abbreviated to LEA). But in due course an order made under section 162 of the 2002 Act will convert references in legislation to “local education authority” (and references in legislation to “children’s services authority”) to references to “local authority”.

Part 1: Duty to participate in education or training: England

Clauses 1 and 2: Duty to participate in education or training

15. The first two clauses establish a duty on young people to participate in a form of education or training, and set out the young people to whom that duty applies. *Clause 2* creates the central duty (“the duty to participate in education or training”) and details the ways in which young people may fulfil that duty. The eligible forms of education or training are:

- a) appropriate full-time education or training;
- b) a contract of apprenticeship; or
- c) part time education or training towards an accredited qualification as part of full-time occupation or alongside occupation of more than 20 hours a week.

16. *Clause 1* sets out the people subject to the duty to participate in education or training. It applies to any person who is resident in England, has ceased to be of compulsory school age but not yet reached the age of 18, and has not attained a qualification at level 3.

Clauses 3, 4, 5, 6, 7, 8 and 9: Interpretation

17. In *Clause 3*, level 3 is defined as the level of attainment which is demonstrated by two A levels. The clause enables regulations to set out the qualifications that will count for this purpose. It is intended that these will include the Progression Diploma and the Advanced Diploma once these are available. *Clauses 4 to 9* provide definitions for the types of participation that will fulfil the duty. *Clause 4* defines appropriate full-time education or training as efficient full-time education or training suitable to the person's age, ability, aptitude and any learning difficulty they have, provided at a school, college of further education or otherwise. For example, this provides that home education would fulfil the central duty to participate. "Full-time" is not defined in legislation for compulsory school age, but this clause mirrors section 7 of the 1996 Act which provides for compulsory education pre-16.

18. For the purposes of this Part, *clause 5* defines full-time occupation as working for 20 hours or more per week under a contract of employment or in any other way which may be prescribed in regulations. *Clause 5* provides for regulations to be made determining whether people should be treated as working 20 hours where their normal working hours vary from week to week. Regulations made under *subsection 1(b)* can prescribe any other kinds of occupation that should count for these purposes, including volunteering, agency work and working as the holder of an office (for example, police officers or public appointees). By virtue of *clause 50*, Crown employment (for example civil servants or those in the armed forces) counts as work under a contract of employment.

19. *Clause 6* defines relevant training or education for people. It must consist of a course or courses leading towards a qualification accredited by the QCA.

20. *Clause 7* defines a relevant period. The time when a person is subject to the duty is divided into relevant periods. This is any period of time starting when the duty to participate in *clause 2* applies to a young person if they are not fulfilling the duty through full-time education or training or under a contract of apprenticeship. It ends either when the duty no longer applies to them, or they start full-time education or training, or commence a contract of apprenticeship, or at a date set in regulations. Prescribing the end date allows the provisions to apply only to the time when the person is fulfilling the duty under *clause 2(1)(c)* so that he or she could, for example, go back into full-time education under *clause 2(1)(a)* after a period of relevant training and then change back to relevant training when a new relevant period would start.

21. *Clause 8* provides that, if a person fulfils the duty to participate by working and pursuing part time education or training towards an accredited qualification, then the training provided by a person's employer, or any other education or training towards accredited qualifications, must be equivalent to 280 guided learning hours per year. It establishes that those guided learning hours may be actual hours of guided learning or a value assigned to an accredited qualification by the QCA. Regulations will prescribe what constitutes sufficient education or training where this option is pursued for periods of less than a whole year, for instance where a young person changes the way they are fulfilling the duty mid-way through a year, or because their 18th birthday falls before the end of the year. *Clause 9* requires the QCA to assign guided learning hours in accrediting qualifications. Provision is made for sufficient education or training to be defined through regulations where a course runs for a period of time that is not one year.

Chapter 2: Local Education Authorities and Educational Institutions etc

Clause 10: Duty to promote fulfilment of duty imposed by section 2

22. *Clause 10* establishes a duty on local education authorities to promote participation of young people in education or training in their area who are subject to the duty to participate under clause 2.

Clause 11: Duty to promote good attendance

23. *Clause 11* places a new duty on governing bodies of certain institutions in England to promote attendance for the purpose of enabling young people to meet the duty to participate under clause 2. The duty applies to community, foundation or voluntary schools and special schools, to pupil referral units, and to further education institutions. The LSC will be asked to place the same duty on the private providers that it funds, through its existing power to attach conditions to funding under section 6 of the 2000 Act. This new requirement to promote attendance applies in relation to young people subject to the new duty to participate.

Clause 12: Duty to make arrangements to identify persons not fulfilling duty imposed by section 2

24. This clause places a duty on local education authorities to identify those young people in their area who are subject to the duty to participate and failing to fulfil it.

Clauses 13, 14, 15, 16 and 17: Information

25. Educational institutions are under a duty to notify the appropriate service provider if a person is not participating and they believe that the person is not fulfilling the duty (*clause 13*). The clause sets out to which institutions the duty applies, and who is the appropriate service provider. "Service provider" means the local education authority where the authority provides services in exercise of its functions under *clause 54* or, alternatively, where, in the exercise of those functions, the authority makes arrangements for the provision of those services, the person providing those services.

26. *Clause 14* sets out the information that learning providers must provide to enable local education authorities to identify those young people who are not

participating, and what information the young person (or their parent, where the young person is younger than 16) can instruct not to be provided.

27. The Secretary of State, under *clause 15*, may supply social security information to enable a local education authority to fulfil its functions under this Part. The clause sets out under what circumstances further disclosure of this information is permissible, under what circumstances it is an offence and the penalty that may be imposed.

28. *Clause 16* sets out which other public bodies may share information about a young person with a local education authority in order for it to fulfil its duty. The purpose of the clause is to allow public bodies to provide information to local education authorities where other statutory provisions would prevent their doing so. *Clause 17* allows data held by local education authorities and data held by their service providers to be shared and used, either for purposes under Part 1 of the Bill, or for the purposes of clauses 54 to 63. The intention is that local education authorities will continue to maintain the database currently established and maintained under the Learning and Skills Act 2000 to help them provide the right support services to young people (under Part 2 of this Bill) and promote fulfilment of the duty to participate (under Part 1).

Clause 18: Guidance

29. This clause requires local education authorities when exercising their functions in this Part to have regard to any guidance given by the Secretary of State.

Chapter 3: Employers

Clauses 19 and 20: Interpretation

30. *Clause 19* defines the contracts of employment to which duties in this Chapter apply. These are contracts with a duration of more than eight weeks and which include more than 20 hours work per week. *Clause 20* explains what counts as making appropriate arrangements. A person has made appropriate arrangements if they have enrolled on a course or courses constituting relevant education or training (defined in clause 6), or arrangements have otherwise been made for them to receive relevant education or training, or if they are participating in full-time education or training. A person does not need to have enrolled for sufficient (that is, enough hours in the relevant period) relevant education or training in order to count as having made appropriate arrangements.

Clauses 21, 22, and 23: Commencement of employment

31. *Clause 21* places a duty on employers not to employ a person unless they have taken reasonable steps to check that the person has made appropriate arrangements to participate in relevant education or training. For example, an employer would check that a potential employee could produce a letter from a learning provider indicating that he or she had enrolled on a course. It provides for an exception to this if the contract is made conditional on the person making arrangements to undertake appropriate education or training, in which case they must have done so before employment commences. This enables an employer to have a role in a young person's decision about the type of education or training to pursue.

32. If an employer does not fulfil this duty, *clause 22* provides for a local education authority to serve a penalty notice on the employer and sets out the circumstances in which the notice can be given. It provides for the amount of the financial penalty to be determined by regulations, and sets out the requirements for what is included in the notice. A local education authority is given the power to withdraw a penalty notice under *clause 23*.

Clauses 24, 25, 26, 27, 28, 29 and 30: Employer to enable participation in education or training

33. These clauses place a duty on employers to permit an employee, who is subject to the main duty, to participate in education or training. *Clauses 24* and *25* set out how a young person can notify an employer of the arrangements for appropriate education or training that they have made, what form that notification should take and what information the young person must tell the employer. Where a young person notifies the employer before beginning employment, the employer may fulfil the duty by arranging the employee's working hours around the time he or she is required to attend training, by allowing the employee time off to participate, or through a combination of these two mechanisms. Hours spent training will not count towards the 20 hours of work per week a young person must be doing to be counted as being in full-time occupation. This may mean that the employer needs to rearrange working hours rather than allowing time off during working hours, in order not to take the employee below the 20 hours per week required.

34. If notification is given after employment has begun, for example where arrangements have changed, under *clause 25* the employer must, so far as is reasonable, permit the employee to participate in education or training in accordance with appropriate arrangements. The employer may fulfil the duty by offering to vary the terms and conditions of the employment contract, or by permitting the employee to take time off to participate, as far as is reasonable. What is reasonable is determined by having regard both to the needs of the young person in fulfilling the duty to participate and the circumstances of the employer's business.

35. *Clause 26* provides that, if a person reaches 18 years of age, remains in employment and has been participating in education or training in order to fulfil the main duty, the duty on the employer remains in place until the course finishes, the young person ceases to be resident in England, the person attains a level 3 qualification or the person attains the age of 19. *Clauses 24* to *26* replace in England the existing right in section 63A of the Employment Rights Act 1996 for 16 and 17 year olds to paid time off from work to attend training if they do not have a level 2 qualification.

36. *Clause 27* provides that an enforcement notice may be issued by the local education authority where the employer has not fulfilled the duty to enable participation. The Government's intention is to issue guidance to local education authorities to the effect that an employer should first be asked to fulfil the duty and given the chance to remedy the mistake voluntarily before an enforcement notice is issued. The notice sets out the steps the employer must take in order to meet the duty.

37. If the employer fails to comply with the requirements in an enforcement notice, *clause 28* provides that a local education authority can issue a penalty notice and states what information the penalty notice must contain. *Clause 29* enables a local education authority to withdraw an enforcement notice, in which case no penalty notice can be issued. *Clause 30* provides that a penalty notice can be withdrawn by a local education authority.

Clauses 31, 32 and 33: Supplementary

38. *Clause 31 and 32* amend existing legislation to add taking time off or seeking to take time off (or to rearrange working hours) in order to participate in education or training as a result of the duty in *clause 2* to the grounds on which a person has a right not to suffer detriment, and to the grounds on which dismissal is to be treated as automatically unfair. *Clause 33* provides that section 63A of the Employment Rights Act 1996, which establishes a right to paid time off for young people aged 16-19 if they do not already have a level 2 qualification, does not apply to people subject to the duty to participate but will continue to apply only in Wales and Scotland.

Chapter 4: Parenting contracts and parenting orders

39. This Chapter enables local education authorities to take certain enforcement action against parents of young people who are not fulfilling their duty to participate, where this would be in the interests of ensuring that the young person participates.

40. *Clause 34* confers on local education authorities in England the power to enter into parenting contracts with a parent of a young person who is subject to the duty to participate and is not fulfilling that duty.

41. A parenting contract is a voluntary agreement. *Subsection (6)* means that parenting contracts cannot result in certain types of legal action by either party. Those types of legal action are for breach of contract and for civil damages. A parenting contract is a document signed by the parent and on behalf of the local education authority, containing a statement by the parent agreeing to comply with the requirements in the contract, and a statement by the local education authority that it agrees to provide support to the parent for the purpose of complying with the contract's requirements. The aim is to ensure that the young person fulfils their duty to participate. Parenting contracts under *clause 34* are similar to parenting contracts under the Anti-Social Behaviour Act 2003. If a parent does not enter into a parenting contract when it is offered, or fails to comply with one, a court must take this into account in deciding whether to make a parenting order (see *clause 36*).

42. *Clause 35* enables local education authorities to apply to a magistrates' court for a parenting order in respect of a parent of a young person who is subject to the duty to participate and is not fulfilling that duty. A parenting order requires the parent to comply with the requirements specified in the order, for a specified period not exceeding 12 months. The requirements can include a counselling or guidance programme, part of which may be residential if certain conditions are met. A parent may, under *clause 37*, appeal to the Crown Court against a parenting order. Failure to comply with a parenting order is an offence.

43. Clause 36 requires the court, in making a parenting order, to take into account any refusal by the parent to enter into a parenting contract, or any failure to comply with a parenting contract they have entered into. But a parenting order can be made without a parenting contract having been entered into.

44. *Clause 38* provides that local education authorities and responsible officers, in considering parenting contracts and parenting orders, must have regard to how a parent's actions, or lack of, affect a young person's duty to participate. A responsible officer in relation to a parenting order means an officer of a local education authority who is specified in the order. This clause also allows regulations to make provision about the exercise by local education authorities of their functions in relation to parenting contracts and parenting orders, and to require information to be provided by one local education authority to another. The reason for this provision is that a young person who is failing to fulfil the duty may be in the area of one local education authority, but his parent may be in the area of another.

Chapter 5: Attendance Notices

Clauses 39, 40, 41, 42, 43 and 44: Initial steps, attendance notices, attendance panels and appeals

45. These clauses set out the procedure that a local education authority may follow should it believe that a person is failing without reasonable excuse to fulfil the main duty to participate under clause 2. *Clause 39* makes clear that before commencing this process, the local education authority must ensure that appropriate support has been made available and that the young person has been given the opportunity to take advantage of services designed to support participation. It provides that the local education authority must then give the young person 15 days notice in writing of its intention to issue an attendance notice. If the only way in which the young person is failing to fulfil the duty is that the relevant education or training in which they are participating is not "sufficient" (not enough hours in the relevant period), it is for the local education authority to show that there is no reasonable excuse for not having made such arrangements, putting the burden of proof on the local education authority rather than on the young person. This may arise, for example, where a young person needs to await results for one course before enrolling on a subsequent course.

46. If the young person fails to participate without reasonable excuse after the local education authority has given 15 days' notice in writing, *clause 40* enables the local education authority to issue an attendance notice. The attendance notice must specify the type of provision that should be undertaken, a description of the course, and details of where and when the young person should attend. An attendance notice ceases to have effect when a young person is no longer subject to the duty to participate, for whatever reason.

47. *Clause 41* provides that the education or training specified in the attendance notice must be a course provided at a school, college or other education establishment or a contract of apprenticeship, and be a way of fulfilling the clause 2 duty. It must be suitable to the person and the local education authority must consult the provider of education or training.

48. *Clause 42* requires a local education authority to set up an attendance panel in accordance with regulations, with a chair that is not a member of the authority. The panel's functions include hearing appeals against attendance notices (as set out in *clause 43*), appeals against penalty notices (set out in *clause 48*), making recommendations to local education authorities, and considering local education authorities' intentions to commence court proceedings. Regulations will specify how the panel must be constituted and its procedures in carrying out those functions. The panel will be able to confirm or dismiss attendance notices and penalty notices, and make recommendations to the local education authority. Regulations under *clause 42* may also apply sections 173 to 174 of the Local Government Act 1972 in relation to an appeals panel which put beyond doubt the kinds of allowances that could be payable.

49. *Clause 44* provides that a local education authority can vary or revoke an attendance notice in certain circumstances, and can specify additional education or training. In particular, where the education or training specified in the notice ends, and the young person is still subject to the duty, the local education authority may specify additional education or training.

Clauses 45, 46, 47 and 48: Failure to comply with attendance notice

50. These clauses set out the enforcement procedures if a young person fails to comply with an attendance notice. *Clause 45* sets out that non-compliance is an offence and liable to a fine of a maximum of level 1 on the standard scale. Currently level 1 is a maximum of £200, with the actual amount in each case being decided by the court in light of individual circumstances. *Clause 46* provides that proceedings cannot be commenced unless a penalty notice has first been given under *clause 47* and has not been paid. The attendance panel must also have been consulted. Proceedings cannot be started after the young person has ceased to be subject to the duty to participate.

51. *Clause 47* enables a local education authority to issue a penalty notice which gives the young person the opportunity to make a payment to the local education authority in order to release them from the possibility of being convicted for the offence of failing to comply with an attendance notice. Regulations can be made to specify the contents of penalty notices and to set out the amount of the penalty (which can be different in different circumstances).

52. *Clause 48* sets up the appeals procedure to an attendance panel against a penalty notice, which may be further provided for in regulations made under this clause.

Chapter 6: Miscellaneous

53. For the purposes of Part 1, *clause 49* enables regulations to state who is to be treated as the employer in relation to ways of working prescribed under *clause 5*, and to modify provisions in their application to these prescribed ways of working, to reflect different circumstances. One effect of this clause is that persons who are not normally regarded as employers (for example, the person in charge of a young person's voluntary work) could be treated as employers for these purposes.

54. *Clauses 50 and 51* set out how Crown employees and Parliamentary staff are to be treated in relation to Part 1 of the Bill.

55. *Clause 52* provides that financial penalties are payable to the local education authority and that funds from them can only be used for specified functions, which will be the process of giving and administering of penalty notices, or paid to the Secretary of State.

Part 2: Support for participation in education or training: young adults with learning difficulties and young people in England

Clauses 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64: Provision of support services

56. *Clauses 54 to 64* and *clause 65* give effect to proposals set out in the Green Paper *Youth Matters* http://www.everychildmatters.gov.uk/_files/Youth%20Matters.pdf (July 2005) to devolve the responsibility for delivering the service known as “Connexions” to local education authorities. The funding for the Connexions service will transfer to local education authorities in April 2008.

57. *Clause 54* places a duty on local education 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 relevant young adult is a person aged 20 to 24 years who has a learning difficulty within the meaning of subsections (5) and (6) of the 2000 Act. The services made available will continue to be known as Connexions services. This clause also provides for local education authorities to have regard to any guidance issued by the Secretary of State, and places them under a duty to comply with any directions given by the Secretary of State relating to the exercise of their functions under clause 54.

58. *Clause 54* enables a local education authority to make services available either by providing them or by making arrangements with others, including other local education authorities, for their provision. In addition, *subsection (5)* provides that the duty on a local education authority to make services available to a young person or relevant young adult for whom it is responsible does not apply if another local education authority is also responsible for the person and services are being provided to the person by that other authority or under arrangements made by it. Taken together with the definition of which persons are in the scope of a local education authority’s responsibility in *clause 63(2)*, *clause 54(5)* addresses the potential situation where two local education authorities are both under a duty to make services available to the same person.

59. *Clause 55* gives the Secretary of State the power to give directions to a local education authority relating to the exercise of its duty to provide support for effective participation (*subsection (1)* of *clause 54*). The clause provides that directions may specify the services to be made available to young persons and relevant young adults (for example, services for young people who are not in education, employment or training), and how those services are to be made available. Directions may also specify standards which are to be met in the provision of such services, for example, the minimum qualifications of Connexions personal advisers. In addition, directions

may impose requirements as to record keeping and the provision of information in connection with service provision. The intention is that local education authorities will continue to maintain the Connexions database so as to help them provide the right support services to young people (under Part 2 of this Bill) and promote fulfilment of the duty to participate (under Chapter 2 of Part 1).

60. *Subsection (3)* makes clear that directions may require a local education authority to exercise its functions under clause 54 in such a way that the person providing the services is a person who also exercises such other functions or provides such services as are specified in the direction. *Subsection (4)* makes clear that the other functions specified in the direction need not relate to education or training and may be functions relating to social security. The intention behind this part of the clause is to give the Secretary of State the power to direct local education authorities to ensure that the person providing Connexions services also carries out social security functions under relevant powers contained in social security legislation. Under arrangements made with the Secretary of State, Connexions service providers currently conduct work focused interviews for 16 and 17 year olds within the meaning given in section 2 and 2AA of the Social Security Administration Act 1992. The interviews aim to enable participation in education or training and focus on training or educational opportunities. The intention is to use the direction-making power to ensure that the current arrangements will continue. It is also intended that it will be used in the future in relation to functions within the Welfare Reform Act 2007 such as:

- work focused interviews within the meaning of section 12 of that Act;
- work related activity within the meaning of section 13 of that Act; and
- action plans within the meaning of section 14 of that Act,

all with the emphasis on education and training with the aim of helping the person into employment or keeping him in employment.

61. *Clause 56* gives local education authorities the power to enter into arrangements made with them by other local education authorities for the provision of Connexions services (see clause 54(1)). It also gives local education authorities the power to provide, secure the provision, or participate in the provision of Connexions services other than in respect of persons for whom they are responsible, including persons from other areas.

62. *Clause 57* sets out the duties on responsible persons for educational institutions to provide relevant information about their pupils or students to persons delivering Connexions services, upon request of such persons. Information, other than the name, address and date of birth of any pupil or student or name and address of a parent of any pupil or student, cannot be provided if the young person (or in the case of a person under 16, their parent) has instructed the institution not to disclose that information. The records compiled from the information provided under this clause, together with that obtained under *clauses 61 and 62*, will help ensure continuity of service for young people and relevant young adults who move to another

area. Access to personal information will be strictly controlled, in compliance with the data protection regime.

63. *Clause 58* places a duty on the responsible persons for educational institutions to allow Connexions service providers reasonable access to pupils and students and to provide reasonable facilities on the institution's premises for providing services.

64. *Clause 59* gives the Secretary of State the power to provide or secure the provision of remote Connexions services on a national basis, for example, through the internet and other electronic media, for all 13-19 year olds, and for those aged 20 to 24 years old who have a learning difficulty within the meaning of subsections (5) and (6) of section 13 of the 2000 Act.

65. *Clause 60* places a duty on the Chief Inspector to inspect and report on Connexions services (provided under clauses 54 and 59), when requested to do so by the Secretary of State. In addition, the clause gives the Chief Inspector a power to carry out other inspections of provision as the Chief Inspector sees fit. Inspections may be general or in relation to specific matters; they may relate to a single provider or type of provider delivering Connexions services; they may relate to a specific geographic area; and they may cover the management of resources.

66. *Subsection (5)* gives the person carrying out or participating in the inspection, the necessary powers concerning rights of access to the premises and records of Connexions service providers. *Subsection (7)* also makes it a criminal offence for anyone to wilfully obstruct an inspection. *Subsection (6)* provides the Chief Inspector with the power to report on and publish his findings.

67. *Clause 61* enables the Secretary of State to supply information to a local education authority or other person for the purposes of the provision of Connexions services for young people. Specifically, it gives the Secretary of State the power to supply social security information in relation to young people. In order to identify young persons, it may be necessary to use information held by the Secretary of State for Work and Pensions (for example, as supplied to JobCentre Plus by a young person claiming benefits). In this way, Connexions services can maintain accurate and comprehensive records. Only a young person's name, address and date of birth and the name (and address, if different) of his or her parent or guardian will be disclosed to those involved in the provision of Connexions services, and for the purpose of the provision of those services under this clause. Anyone who discloses this information without lawful authority is liable to prosecution and, if found guilty, would be subject to a fine or imprisonment of up to two years.

68. *Clause 62* empowers the persons and bodies listed in subsection (2) to supply relevant information about a young person or relevant young adult to any other person or body involved in the provision of Connexions services for the purposes of the provision of those services.

69. *Clause 64* repeals sections 114 to 121 of the 2000 Act which provided for the establishment in England of the Connexions service by the Secretary of State.

Clause 65: Assessments relating to learning difficulties

70. *Clause 65* inserts sections 139A to 139C into the 2000 Act. The effect is to transfer to local education authorities, and to expand, the existing duty of the Secretary of State to arrange for assessments of a person's educational and training needs in certain circumstances, and his power to arrange such assessments. New section 139A(2) and (4) places a duty on a local education authority to arrange for an assessment of a person in respect of whom they maintain a statement of special educational needs, who is either in his last year of compulsory schooling or over compulsory school age but still at school, at some time during the person's last year of schooling. In either case, the assessment is only required where it is believed that the person will leave school during or at the end of the current school year to pursue post-16 education, training or higher education. This expands on the current duty on the Secretary of State under section 140 of the 2000 Act to arrange for these assessments at some time in year 11 (the last year of compulsory schooling), where the Secretary of State believes that the person will be leaving school at the end of that year to receive post-16 education or training.

71. Inserted section 139A(5) gives local education authorities a power to arrange for an assessment at any time of a person:

- a) who is in their last year of compulsory schooling; or
- b) who is over compulsory school age but has not reached the age of 25; and
- c) who appears to the authority to have a learning difficulty within the meaning of section 13 of the 2000 Act; and
- d) who is either already receiving, or likely to receive in the opinion of the authority, further education, training or higher education.

72. Inserted section 139C of the 2000 Act applies the assessment provisions to those being educated at home.

73. In relation to England, these new sections replace the existing provision for assessments in section 140 of the 2000 Act.

Clause 66: Careers education

74. *Clause 66* amends Part 7 of the 1997 Act which requires state secondary schools to provide all pupils with a programme of careers education and appropriate information, and up-to date reference materials related to career options. Section 44 of the Act requires schools to provide access to external careers advisers to provide career advice and guidance to pupils. *Subsection (2)* of this clause requires all secondary schools to present careers information in an impartial manner and to provide careers advice which is in the best interests of the pupil, and not to promote the interests of the school or other persons or institutions contrary to the pupil's interests. *Subsection (3)* requires the information and reference materials provided to present a full range of learning and career options and not to unduly promote one option over another. *Subsection (4)* requires schools to have regard to guidance issued by the Secretary of State, which is intended to support them in delivering

effectively the duties in Part 7 of the 1997 Act, as amended by subsections (2) and (3) of clause 66.

Clause 67: Apprenticeships

75. This clause amends sections 2, 3 and 4 of the 2000 Act to make clear that the LSC is under a duty to provide proper facilities for apprenticeships for 16 to 18 year olds and reasonable facilities to those over the age of 19. The clause also requires the LSC to encourage employers to offer apprenticeship contracts and contracts of employment where training is provided. The wording of the clause makes clear that it covers both employment under a traditional contract of apprenticeship with an employer, and the modern form of apprenticeships with the involvement of a separate training provider as well as an employer.

Clause 68: Provision of transport etc for persons of sixth form age: duty to consider journey times

76. Local education authorities must prepare transport policy statements each academic year, which set out transport arrangements for people of sixth form age to attend educational establishments. Transport statements are required under section 509AA of the 1996 Act (as inserted by the 2002 Act). *Clause 68* introduces a requirement on local education authorities to have regard to journey times in preparing their transport statement. This clause has the effect of ensuring that travelling time will be one of a range of factors a local education authority must consider, along with cost, the distance a young person will have to travel and the need for choice of education provision.

Clause 69: Co-operation as regards provision of 14-19 education and training

77. *Clause 69* deals with local collaborative arrangements in relation to the education and training of 14 to 19 year olds. It refers to section 10 of the Children Act 2004. That section places a duty on children's services authorities (i.e. local education authorities) to make arrangements to promote co-operation between the authorities, specified partners and other relevant persons with a view to improving the well-being of children relating to a range of factors, including education and training. Clause 69 makes it clear that the arrangements under the Children Act 2004 must include arrangements to promote co-operation between the local education authority and partners who are responsible for 14-19 education. Clause 69 provides that the arrangements under section 10 must include arrangements to promote co-operation between the local education authority, its partners and persons who are responsible for providing 14-19 education or training. The clause also enables local education authorities to set up joint arrangements for co-operation on 14-19 education or training covering the areas for which they are responsible.

Part 3: Adult Skills

Clause 70: Learning aims for persons aged 19 and over

78. *Clause 70* inserts three new sections and a new Schedule 1A into the 2000 Act. New section 4A places a new duty on the LSC to make proper (rather than reasonable) provision for facilities to enable adults who lack particular vocational skills to obtain relevant qualifications. The qualifications will typically be those at

relatively low levels of learning, which are designed to equip people with basic and intermediate skills for work and everyday living.

79. The broad standards of achievement (or “learning aims”) for this purpose are set out in Schedule 1A. They are level 1 literacy, entry level 3 numeracy and level 2. The Secretary of State may specify in regulations the qualifications to which the duty applies.

80. The duty will apply only to a learner’s first qualification at the specified level. For example, the LSC will not be under a duty to make proper provision for a learner with a level 2 National Vocational Qualification (NVQ) in Beauty Therapy who then applies for a level 2 course in Hairdressing. However, the Secretary of State may by regulations (under section 4C(1)) provide that, despite having a specified qualification, a person is to be treated as not having that qualification. This would apply, for example, where an individual had achieved a school leaving qualification in English or maths but was later identified, as a result of diagnostic assessment, as having skills below the basic levels of literacy or numeracy. This might happen where a person has not had to use these skills for a long period of time.

81. Proper provision of facilities requires that courses are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. In performing this duty, the LSC must also take account of a number of factors, such as the education and training needs in different sectors of employment, and of any guidance issued by the Secretary of State. The LSC must also act with a view to encouraging diversity in education and training and to increasing opportunities for individuals to exercise choice.

82. For example, proper provision for learners in respect of courses for which there are high levels of demand fairly consistently across the country - such as NVQ level 2 in Hairdressing - would be met if provision were accessible widely across many institutions and with a good regional distribution. This position would differ where demand both for courses and for skills is more limited. For aerospace courses, for example, the LSC must have regard to proportionate expenditure; the proper provision duty may require a more limited offer of places concentrated in geographical areas with links to the industry. Proper provision for learners seeking to access these more unusual courses may require travel to take up courses or the offer of a course which is analogous to the aerospace qualification, for example, engineering. The Secretary of State may give guidance to the LSC in respect of the duty.

Learning aims for persons over 19: payment of tuition fees

83. Section 4B places a duty on the LSC to ensure that learners will not be liable to pay fees for courses of study provided as a result of section 4A. The learner must be at least 19 years of age and following a course of study for a specified qualification as set out Schedule 1A (at level 1 literacy, entry level 3 numeracy or level 2). Fees include the course fees, but the Secretary of State may also specify in regulations that other fees relating to the course, e.g. examination fees and costs of diagnostic assessment, are included. Costs which are not fees (for example, the costs of buying books, equipment and materials) will not come within the scope of the duty.

84. There is also a duty for the LSC to secure the provision of sufficient financial resources for the purpose of paying tuition fees for people between 19 and 25 years old to attain their first level 3 qualification.

85. The Secretary of State may amend the relevant provisions of section 4B so as to vary the ages at which learners qualify for financial help under that section. This will be subject to the affirmative resolution procedure.

Schedule 1A: Learning aims for persons aged 19 and over

86. The Schedule sets out the learning aims for people aged 19 or over i.e. the broad categories from which qualifications may be specified as qualifications for which the LSC must secure proper facilities (4A) or pay for tuition fees (4B).

87. These categories are:

- a) level 1 literacy (the level of attainment at which an adult's skills are functional and sufficient for operating effectively in day-to-day life);
- b) entry level 3 numeracy (the functional level of attainment for numeracy);
- c) level 2;
- d) level 3.

88. The Secretary of State may by regulations specify particular qualifications or descriptions of qualifications which are to fall within scope of the duties. Qualifications which might be specified include the following:

- a) level 1 literacy:
 - level 1 certificate in Adult Literacy
- b) entry level 3 numeracy
 - entry level 3 certificate in Adult Numeracy
- c) level 2
 - level 2 National Vocational Qualifications (NVQs)
 - Vocationally Related Qualifications (VRQs) at level 2 of 325 guided learning hours or more
- d) level 3
 - 2 or more A-levels
 - 1 or more A-level double Award
 - level 3 NVQs
 - level 3 Diplomas
 - International Baccalaureate
 - Access to HE certificate/ diploma

89. "Guided learning hours" in this context may be defined as the estimated number of hours of directed learning in which the learner needs to be engaged in order to achieve the qualification. This includes, for example, time in formal classroom or workshop teaching; project or research activities; distance learning; guidance or tutorial activities.

90. The Secretary of State may amend the Schedule in order to specify that a particular category of qualification is no longer within scope of the duties or to add a new category of qualification. This will be subject to the affirmative resolution procedure.

Clauses 71, 72, 73, 74 and 75: Assessments of effectiveness of education or training

91. These clauses allow for the sharing of information between Her Majesty's Revenue and Customs (HMRC), the Department for Work and Pensions (DWP), the Department for Innovation Universities and Skills (DIUS) and the devolved administrations in order to assess the effectiveness of education or training of those aged 19 and over, and to assess policy in relation to the provision of such education or training and in relation to social security or employment as it affects the provision of, or participation in, such training or education. Such sharing is provided for through an information gateway. *Clause 71* defines the information on revenue and customs which is included in the information gateway. It covers identifying information about income, start and end dates of employment and tax credits. The clause allows for information about individuals' income, employment, tax and tax credits to be disclosed by HMRC to the Secretary of State (DIUS and DWP) and the devolved administrations.

92. *Clause 72* defines the information about learning and benefits which is included in the information gateway. It allows for information about individuals' benefit to be disclosed to the devolved administrations (subsection (1)). It also allows information about individuals' learning activities to be disclosed in either direction between the devolved administrations and the Secretary of State (DIUS and DWP). This reflects the devolved nature of education and training and also enables DWP to share data on benefits with the devolved administrations. Finally it allows for information relating to education and training and information relating to benefits to pass between DIUS and DWP.

93. The information defined in clauses 71 and 72 above can be used for assessing the effectiveness of learning undertaken and making assessments of policy; the clauses do not permit the making of operational decisions in relation to individuals who are the subjects of the information. *Clause 73* restricts use of the information in a way which may identify or disclose the identity of the individual. *Clause 74* makes it an offence for an individual to disclose data other than in accordance with the purposes outlined in clause 73 where disclosure reveals the identity of a person or a person's identity could be deduced from the information disclosed. A defence is provided where the person charged reasonably believes that the information is already lawfully in the public domain.

94. *Clause 75* ensures that the disclosure or use of the same information where it is disclosed under other statutory gateways or common law powers is unaffected. It explains the use of certain terms used in clauses 71 to 74 including identifying the devolved authorities as the Scottish and Welsh Ministers.

Part 4: Regulation and inspection of independent educational provision in England

Chapter 1: Independent educational institutions in England

* An *independent school* is defined in section 463 of the 1996 Act as “any school at which full-time education is provided for (a) five or more pupils of compulsory school age, or (b) at least one pupil of that age for whom a statement is maintained under section 324, or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989), and which is not a school maintained by a local education authority or a special school not so maintained.”

* Under the Children Act 1989 section 22, a *child is looked after by a local authority* if he or she is in their care or is provided with accommodation for more than 24 hours by the authority.

95. *Clause 76* does not change these definitions. It introduces a new definition, that of an independent educational institution, which includes independent schools and other educational institutions which provide part-time education. The clause also sets out the amount of provision an institution must offer in order to fall within the scope of this new wider definition. Regulations may further specify that an institution or type of institution is not to be regarded as an independent educational institution for the purposes of this Chapter.

96. The new definition includes settings which are the main provider of a child’s education (*clause 76*) and which otherwise would not be subject to any regulatory or monitoring framework.

97. The clauses contained in this Chapter apply to institutions in England only. Institutions in Wales will continue to be regulated as set out in Chapter 1 Part 10 of the 2002 Act.

Clause 78: Standards

98. *Clause 78* extends the application of the existing standards for independent schools as currently provided for in section 157 of the 2002 Act to independent educational institutions, and creates an additional standard, relating to the quality of leadership and management in an institution. The standards are prescribed in regulations. These standards do not apply to early years provision (for children under the age of three), which must provide the Early Years Foundation Stage provision as set out in section 39 of the Childcare Act 2006.

Clauses 79, 80 and 81: Requirement of registration

99. The Chief Inspector must maintain a register of independent educational institutions under *clause 79*. *Clause 80* creates an offence of conducting an unregistered independent educational institution and sets out the penalty for doing so.

100. *Clause 81* allows the Chief Inspector to enter any premises and carry out an inspection where he or she has reasonable cause to believe that an unregistered independent educational institution is being operated. He or she is able to inspect and copy any relevant records and documents, including computer records. It creates an offence for obstructing the Chief Inspector and sets out the penalty for doing so.

Clauses 82, 83 and 84: Registration Procedure

101. *Clause 82* sets out the requirements for registration of an independent educational institution, and explains the type of information that must be provided to the Chief Inspector in any application.

102. The Chief Inspector is required by virtue of *clause 83* to inspect an independent educational institution prior to registration, prepare a report detailing the extent to which it will meet the required standards, take a decision on registration on the basis of his conclusions and any other relevant evidence as to whether the standards will be met, inform the proprietor of the institution and, where it meets the standards, enter it on the register.

103. If any establishment no longer meets the definition of an independent educational institution, *clause 84* allows the Chief Inspector to remove it from the register. The Chief Inspector must inform the proprietor of this action, who may appeal to the Care Standards Tribunal against the decision to deregister.

Clauses 85, 86, 87, 88 and 89: Approval of material changes to registered details

104. *Clause 86* requires the proprietor of a registered independent educational institution to seek, in writing, prior approval for any change which is defined as a material change. *Clause 85* defines those changes for which the proprietor of a registered independent educational institution is required to seek approval from the Chief Inspector. Special institutions are those that are specially organised to make provision for students with special educational needs, and they will be required to seek prior approval in a wider range of circumstances than other institutions.

105. In determining whether to approve the request for a material change, the Chief Inspector may inspect the institution in question (*clause 87*). The inspection will focus on those standards which the Chief Inspector considers to be relevant.

106. The Chief Inspector will decide whether to approve a material change on the basis of whether the standards are likely to continue to be met. The proprietor will have a right to appeal where the Chief Inspector refuses to approve the change (*clause 88*).

107. An independent educational institution which makes an unapproved material change may be removed from the register by the Chief Inspector. The Chief Inspector must inform the proprietor, who has a right to appeal against de-registration (*clause 89*).

Clauses 90 and 91: Independent inspectorates

108. *Clause 90* allows the Secretary of State to approve inspectorates (in addition to Ofsted) to undertake certain inspections of independent educational institutions. These inspectorates will be known as “independent inspectorates”. The clause also allows the Secretary of State to withdraw approval from such a body. The Secretary of State is given powers to specify in regulations criteria for approval of an independent inspectorate.

109. *Clause 91* requires the Chief Inspector to quality assure inspections carried out by approved bodies. At least once a year, the Chief Inspector must prepare a report for the Secretary of State about the independent inspectorates. In doing so, the Chief Inspector must have regard to any directions from the Secretary of State.

Clauses 92, 93, 94, 95, 96, 97 and 98: Inspections and reports

110. *Clause 92* requires the Chief Inspector to inspect independent educational institutions at regular intervals, to be prescribed in regulations. The Chief Inspector is not required to inspect those institutions which are inspected by independent inspectorates. The purpose of this clause is to ensure that there are regular inspections of independent educational institutions. It does not apply to Academies, city technology colleges and city colleges for the technology of the arts, for which alternative arrangements are already in place (section 5 of the 2005 Act). The Chief Inspector is not required to inspect an institution under this clause if the institution has been the subject of an appropriate inspection by a relevant independent inspectorate and the Chief Inspector has received a report of the inspection.

111. The Secretary of State may direct the Chief Inspector to inspect an independent educational institution at any time outside of the regular inspection cycle and to specify which standards are relevant to the inspection (*clause 93*). Equally the Chief Inspector is permitted, under *clause 94* to carry out or arrange for the inspection of an independent educational institution at any time outside of the regular inspection cycle and to decide which standards are relevant to the inspection. In either case, a report is written on the extent to which any relevant standards are being met.

112. The Chief Inspector is permitted to enter any registered independent educational institution at any reasonable time, and to inspect and copy any relevant records and documents, including computer records. *Clause 95* creates an offence for obstructing the Chief Inspector and sets out the penalty for doing so.

113. *Clause 96* allows the Secretary of State, in regulations, to require proprietors to pay fees and to set the amount payable in relation to any inspection by the Chief Inspector under this Chapter. Academies, city technology colleges and city colleges for the technology of the arts are not required to pay inspection fees. The Government intends to use the power in subsection (2)(a) to set fees for inspections that are no higher than is necessary to recover some or all of the costs associated with the inspections.

114. If any independent educational institution does not pay the appropriate fee, the Chief Inspector may remove the establishment from the register (*clause 97*). He must inform the proprietor who may appeal the decision.

115. The Chief Inspector is permitted to publish any report of an inspection which he has prepared (*clause 98*).

Clauses 99, 100, 101, 102 and 103: Failure to meet standards

116. *Clause 99* provides for the Chief Inspector to serve a notice on the proprietor of an independent educational establishment, requiring the proprietor to provide an

action plan to address any failures to meet the required standards. On receipt of a plan, the Chief Inspector may approve it with or without modifications or reject it, in which case he can request a further action plan.

117. Where the proprietor has previously failed to comply with or provide an adequate action plan or the Chief Inspector is satisfied that the institution has failed to meet the required standards for a continuous period (two years), the Chief Inspector may take enforcement action against the proprietor (*clause 100*).

118. There are alternatives available to the Chief Inspector where enforcement action is taken (*clause 101*). The Chief Inspector may remove the institution from the register, or impose a restriction as described in *clause 102*. When the Chief Inspector decides to take enforcement action he must inform the proprietor who has a right of appeal.

119. Clause 102 sets out the restrictions, short of de-registration, that can be imposed by the Chief Inspector or, in relevant cases, by orders of a Justice of the Peace or the Care Standards Tribunal. These are:

- a) ceasing to use part of the premises for all or specified purposes;
- b) closing part of the institution's operation; and/or
- c) ceasing to admit new students or students of a specified description.

120. *Clause 103* creates an offence of failing to comply with a restriction imposed by the Chief Inspector and sets out the penalty for doing so. It also allows the proprietor to apply to the Chief Inspector to have the restriction lifted, in whole or in part, and requires the Chief Inspector to notify the proprietor of his decision.

Clause 104: Unsuitable persons

121. This clause prohibits or restricts institutions from allowing unsuitable persons to carry out certain activities, or occupy certain position of authority, in an independent educational institution. This is achieved by enabling the Secretary of State to deregister an independent educational institution which allows a person who is subject to relevant barring or disqualifying orders (which will be described in regulations) to carry out certain activities in relation to the institution. It introduces a new right of appeal against deregistration for employing a barred person. The purpose of this clause is to prevent unsuitable people from working with children.

Clauses 105, 106 and 107: Emergencies

122. *Clause 105* enables the Chief Inspector to apply to a Justice of the Peace for an order imposing an immediate restriction on, or deregistering, an independent educational institution, where there is risk of significant harm to a student at the institution. It is an offence to fail to comply with a restriction imposed by a Justice of the Peace and *clause 106* sets out the penalty for doing so.

123. *Clause 107* requires the Chief Inspector to serve an order promptly and to inform the proprietor of his right of appeal. Where the institution concerned is a special independent educational institution, the Chief Inspector must also inform all

relevant local education authorities of the order (so that they may take any action they deem necessary).

Clause 108: Provision of information by proprietors

124. This clause creates a power to require the proprietor of an independent educational institution to provide information relating to the institution on request from the Secretary of State or Chief Inspector. It provides that sanctions for non-supply of information can be included in the regulations, which will be exercised by the Chief Inspector. If an institution is deregistered under the regulations there is a right of appeal to the Care Standards Tribunal.

Clauses 109, 110, 111, 112: Appeals

125. *Clause 109* sets out the circumstances and timescales in which the proprietor of an independent educational institution may appeal (to the Care Standards Tribunal) against decisions made by the Chief Inspector to deregister an independent educational institution. A proprietor may appeal where an institution has been deregistered for:

- a) no longer meeting the definition of an independent educational institution;
- b) a failure to meet standards, provide information, or pay inspection fees;
- c) making an unapproved material change;
- d) employment of unsuitable persons.

126. A proprietor may also appeal the following decisions made by the Chief Inspector under *clause 110*:

- a) conclusion that the standards are unlikely to be met on registration leading to a refusal of registration;
- b) refusal to approve a material change;
- c) imposition of a restriction on the proprietor;
- d) refusal to vary or revoke a relevant restriction.

127. There are various powers available to the Tribunal in determining such appeals, according to the circumstances under which the appeal is brought.

128. *Clause 111* allows the proprietor to appeal to the Care Standards Tribunal against an order by a Justice of the Peace made in an emergency and sets out the powers available to the Tribunal in determining such appeals.

129. *Clause 112* creates an offence of failing to comply with a restriction imposed by the Tribunal and sets out the penalty for doing so. It also allows the proprietor to apply to the Tribunal to have the restriction lifted, in whole or in part.

Clauses 113, 114, 115, 116: Prohibition on participation in management of independent educational institutions

130. The Secretary of State or Chief Inspector may make directions prohibiting or restricting the participation of unsuitable persons in the management of an independent educational institution. The grounds and procedure for making such directions will be set out in regulations. *Clause 113* also provides for a direction to be lifted, in whole or in part, in certain cases. Under *clause 114* a person can appeal to the Care Standards Tribunal such a direction, or against a decision not to lift or alter such a direction. Details relating to the Tribunal's jurisdiction on hearing such appeals can be set out in regulations.

131. *Clause 115* enables the sharing of information - between the Secretary of State, the Chief Inspector, the Welsh Ministers, the Independent Barring Board and the General Teaching Councils of England and Wales - which is held about persons in connection with their statutory duties to protect children and vulnerable adults.

132. *Clause 116* requires an authority which makes a direction prohibiting or restricting the participation of unsuitable persons in the management of an independent educational institution to notify other specified persons (e.g. the Chief Inspector or Welsh Ministers).

Clauses 117 and 118: Providers of independent education or training for 16 to 18 year olds

133. *Clause 117* enables regulations to be made allowing for any part of this Chapter to apply to this particular group of learning providers. They are not independent or maintained schools. They do not receive any state funding from the LSC. They do provide education or training through which young people may meet their duty to participate under clause 2. *Clause 117* will enable the Government, for example, to safeguard the health, safety and welfare of young people being educated in these establishments as part of that new duty.

134. *Clause 118* stipulates that any regulations that are made must include rights of appeal against decisions of the Chief Inspector as set out in this Chapter in clauses 109 and 110. It also compels the Secretary of State to consult the Chief Inspector and other appropriate people before the laying of any regulations before Parliament. Such regulations will be subject to the affirmative resolution procedure.

Clauses 119, 120, 121, 122 and 123: Supplementary

135. *Clause 119* requires proceedings for criminal offences to be commenced by, or with the consent of, the Chief Inspector or the Secretary of State.

136. *Clause 120* enables certain individuals to be prosecuted where offences are committed by bodies corporate, in limited circumstances.

137. *Clause 121* provides that where an offence has been committed by an unincorporated body, proceedings for offences should be brought in the name of the body and not its member. Any fine imposed should also be paid out of the funds of

the body. In limited circumstances, proceedings for offences may also be brought against individuals associated with the body in question.

138. *Clause 122* makes provision about how the Chief Inspector may serve notices etc on the proprietor of an independent educational institution.

Chapter 2: Schools providing for Special Educational Needs

Clause 124: Interpretation

139. *Clause 124* clarifies the definition of a special school in section 337 of the 1996 Act. See also the amendment to section 6 of that Act (which refers to this definition) in Part 1 of Schedule 1 (minor and consequential amendments). No substantive change is involved.

140. The new Section 337A defines the terms “the Chief Inspector”; a “non-maintained special school”; and “a relevant authority” for the purposes of Chapter 2 of Part 4 of the 1996 Act. The other provisions in this Chapter of the Bill amend Chapter 2 of that Act and use these definitions.

Clause 125: Function of approving schools transferred to Chief Inspector

141. *Clause 125* amends section 342 of the 1996 Act and transfers the function of approving non-maintained special schools in England from the Secretary of State to the Chief Inspector.

Clause 126: Right of sixth form pupils to opt out of religious worship

142. The 1998 Act as amended by the 2006 Act provides for a sixth-form pupil in a maintained school to withdraw from religious worship. This clause obliges the Secretary of State to make regulations to afford the same rights to sixth-form pupils in non-maintained special schools.

Clause 127: Protection of pupils in an emergency

143. *Clause 127* inserts a new section 342A into the 1996 Act and provides a power for the Secretary of State to make regulations to enable a Justice of the Peace, following an application from the Chief Inspector, to make an order for the withdrawal of approval of a non-maintained special school.

144. The Chief Inspector would only be able to make an application in an urgent case, for example, if it appears that a pupil at the school in question is suffering or is likely to suffer significant harm. *Subsection (2)* clarifies that regulations made under *subsection (1)* may make provision similar to that made in clause 105 relating to independent schools. This will ensure that a regulatory regime can be established which is consistent with that for independent schools.

Clause 128: Appeals

145. *Clause 128* inserts new sections 342B and 342C into the 1996 Act. Section 342B(1) provides the Secretary of State with the power to make regulations which set out the framework for appealing against a decision of the Chief Inspector to:

- a) withdraw approval for a non-maintained special school (*subsection (1)(a)*); or
- b) not to approve, not to approve a change to, or to withdraw approval for the school's relevant arrangements (*subsection (1)(b)*).

146. The "relevant arrangements" are defined in *sub-section (2)* as those arrangements that are specified as requiring approval by the relevant authority – in this case the Chief Inspector - in regulations made under section 342(5)(a). The Chief Inspector, working within the regulatory framework for non-maintained special schools, is given the power by clauses 124 and 125 to approve or reject applications from schools for approval of some of their arrangements. For example, the following arrangements must be approved under current regulations: the number of pupils; the type(s) of special educational needs the school caters for; and the age range of pupils at the school. Currently there are no rights of appeal against decisions about approval of arrangements and the only recourse would be to seek a judicial review of a decision.

147. *Subsection (3)* provides that the regulations must provide that an appeal lies to the Care Standards Tribunal and must be made by the proprietor of the school.

148. In the case of an appeal brought against a decision of the Chief Inspector to withdraw approval from the school, *subsection (4)* provides that regulations may make provision prohibiting the Chief Inspector from acting on the decision:

- a) during the period in which an appeal could be brought; or,
- b) in a situation where an appeal has been brought, but the appeal has not been determined, or disposed of.

149. Regulations made in this way would have an effect similar to that for appeals against decisions to withdraw registration of an independent school. Section 342C(1) provides for regulations to be made setting out the rights of a proprietor of a non-maintained special school to appeal against an order granted in an emergency by the Justice of the Peace on the application of the Chief Inspector. Section 342C(2) provides that the right of appeal will be to the Care Standards Tribunal and must be made by the proprietor.

150. Section 342C does not enable an order made by a Justice of the Peace to withdraw approval from the school to be suspended when an appeal is made. This is because an order granted by a Justice of the Peace will only have been granted where the Justice of the Peace is satisfied in an urgent case that approval should be removed immediately, for example where pupils are at risk.

151. *Part 1 of Schedule 1* includes consequential amendments arising from these clauses.

**Clause 129: Abolition of requirement of approval for independent schools:
England**

152. This clause amends section 347 of the 1996 Act and abolishes the requirement for independent schools in England to be approved for the placement of a child with a statement of special educational needs. The clause ensures that the requirement for approval remains for schools in Wales.

153. It also amends section 347 to remove the requirement for local education authorities in England to seek consent from the Secretary of State to place pupils with statements of special educational needs in non-approved independent schools (whether in England or Wales). The requirement to seek consent (from the Welsh Ministers) remains for Welsh local education authorities.

Clause 130: Approval of independent schools: consequential amendments

154. This clause brings together consequential amendments arising from the changes to section 347.

155. Section 349 of the 1996 Act is amended to clarify that the power to vary trust deeds to secure compliance with the requirements of being an independent school in Wales under section 347 remains relevant to Wales and lies with the Welsh Ministers. The power to vary trust deeds to secure compliance with the requirements of being a non-maintained special school under section 342 is transferred to the Welsh Ministers for schools in Wales and to the Chief Inspector for schools in England.

156. Section 483A of the 1996 Act provides for local education authorities to make payments to independent schools for pupils with statements of special educational needs. It is amended in light of the changes to section 347. It will ensure local education authorities in England can continue to make payments. Welsh local education authorities will continue to be able to make payments to Welsh and English independent schools for pupils where Welsh Ministers have granted consent for the pupil to be placed there.

157. Section 59 of the Safeguarding Vulnerable Groups Act 2006 defines the term “vulnerable adult”. Subsection (3) has been amended to reflect the changes to section 347 in respect of England and Wales.

Clause 131: Approval of independent schools: transitional provision

158. This clause provides for transitional arrangements for relevant children who are already placed in English independent schools at the time the Bill becomes law. It provides that Welsh local education authorities will not have to seek consent from the Welsh Ministers for:

- a) relevant children to be placed in English independent schools which, prior to the abolition of the requirement for approval for independent schools in England, were approved under section 347; or
- b) where a child attended an unapproved independent school with the consent of the Secretary of State prior to the abolition of the category of approved independent school in England.

159. Without this provision once the Act came into force Welsh local education authorities would have to seek consent from Welsh Ministers for these pupils to continue their placements.

Part 5: Miscellaneous and general

Chapter 1: Pre-16 Education and Training: Wales

160. *Clause 132* amends Part 1 of Schedule 5 to the Government of Wales Act 2006 (“GOWA 2006”), so as to confer legislative competence on the National Assembly for Wales to make provision, by way of an Assembly Measure, for or in connection with the inspection of education and training for those aged 16 and under.

Chapter 2: Miscellaneous

Clauses 133 and 134: Maintained schools in England: behaviour and attendance etc

161. A school governing body already has the power under section 29(3) of the 2002 Act (as amended by the 2005 Act) to “require registered pupils to attend at any place outside the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school”.

162. *Clause 133* introduces a new section 29A which allows a governing body of a maintained school in England to require a registered pupil to attend at any place outside the school premises, but for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil. In exercising this power, it is intended the governing body will be obliged under regulations (made using the power in subsection 29A(4)(a)) to have regard to guidance issued by the Secretary of State.

163. The inserted section 29A compels the Secretary of State to make regulations requiring persons (normally parents) to be given information about the imposition of the requirement to attend a place off the school premises and to require the governing body to review their exercise of the power. The Secretary of State may make regulations to require the governing body to request that persons (normally parents) take part in a review of the exercise of the power, the timings of the initial and subsequent reviews and in connection with other matters relating to the exercise of the power.

164. *Clause 134* makes amendments to section 444ZA of the 1996 Act. That section extends the circumstances in which a parent or a carer can be prosecuted for failing to ensure that a child for whom he or she is responsible regularly attends the alternative provision that has been made for the child.

165. *Clause 134* extends the ambit of section 444ZA to cover pupils who have been directed off-site for receiving educational provision which is intended to improve the behaviour of the pupil. There is also a change to section 444ZA to clarify that failure of the parent to secure regular attendance at a school where provision is made by the governing body of a school under section 100 of the 2006 Act (duty of governing body or proprietor to provide education where pupil is excluded for fixed period) is within the ambit of the section 444 offence, where the governing body has not

expressly exercised its power under section 29(3) of the 2002 Act to require the attendance of the pupil there.

Clauses 135, 136, 137, 138 and 139: External qualifications

166. *Clause 135* amends section 98 of 2000 Act which describes how qualifications may be approved for the purposes of sections 96 and 97 as they apply to England. Subsection (2) provides for the Secretary of State, or a body designated by him, to approve an external qualification. An "external qualification" is one which has either been awarded or authenticated by an outside body. Without this approval an external qualification is not eligible to receive public funding. *Clause 135* removes the current requirement in subsection (4) for the Secretary of State to give his consent to all approval decisions made by a body which he has designated under subsection (2). This enables designated bodies to approve such qualifications without further recourse to the Secretary of State.

167. *Clause 135* further amends section 98 by the insertion of new subsection (2A) which enables the Secretary of State to designate a body to approve external qualifications for people under 19 (for the purposes of section 96), for people over 19 (for the purposes of section 97) or for both.

168. The changes to the Secretary of State's functions made in *clause 135* apply equally to the Welsh Ministers' functions in relation to Wales by virtue of *clause 136*. This clause removes the requirement in section 99 (4) of the 2000 Act for the Welsh Ministers to consent to all approval decisions made by a body which they have designated under subsection (2).

169. *Clause 137* amends section 24 of the 1997 Act to provide the QCA with a new function to develop and publish criteria for the recognition of bodies which wish to award or authenticate qualifications or credits in respect of components of these qualifications; and, where they meet those criteria, to recognise them. Under these provisions, the QCA would first recognise a body wishing to award or authenticate a qualification and then accredit its individual qualifications. Provision is also made for the QCA to make rules and procedures where a recognised body ceases to be recognised. The reference to "credits" anticipates the planned introduction by the QCA of the new national framework, the "Qualifications and Credit Framework", which will divide all relevant qualifications into units which, when completed, confer "credits" which may be accumulated towards achievement of the full qualification. Consequential amendments are made to sections 26 and 26A of the 1997 Act to reflect these changes. These apply broadly the same powers which the QCA currently holds in respect of placing conditions on accreditation and making directions to the accredited bodies. This clause applies to both England and Northern Ireland.

170. *Clause 138* aligns the Welsh Ministers' remit, in relation to the recognition of persons wishing to award or authenticate qualifications in relation to Wales, with the functions of the QCA in relation to England and Northern Ireland. The clause amends section 30 of the 1997 Act to provide the Welsh Ministers with a new function to develop and publish criteria for the recognition of bodies which wish to award or authenticate qualifications or credits in respect of components of these

qualifications; and, where they meet those criteria, to recognise them. The reference to "credits" anticipates the planned introduction by the Welsh Ministers of the new national Framework, the "Qualifications and Credit Framework", which will divide all relevant qualifications into units (see previous paragraph). Consequential amendments are made to sections 32 and 32A of the 1997 Act to reflect these changes. These apply broadly the same powers which the Welsh Ministers currently hold in respect of placing conditions on accreditation and making directions to the accredited bodies.

171. *Clause 139* extends the powers of the QCA in Northern Ireland to cover the regulation of vocational qualifications currently excluded from the scope of that authority. In Northern Ireland most qualifications are regulated by the Council for the Curriculum, Examinations and Assessment (CCEA). They are those which are general and vocational and are provided for school pupils or persons in full-time attendance at an institution of further education. The only exception is National Vocational Qualifications which are regulated by the QCA. This clause adds other vocational qualifications to the regulatory remit of the QCA. It is intended that legislation will be brought before the Northern Ireland Assembly to abolish the CCEA from April 2009.

Clause 140: Inspections of teacher training in England: removal of duty to notify

172. This clause provides that the period of notice given to providers of initial teacher training prior to an inspection by Ofsted will now be at the discretion of the Chief Inspector, rather than specified in section 18B of the Education Act 1994 as a minimum of eight weeks.

Clause 141: Constitution of schools forums

173. The requirement on local education authorities to establish Schools Forums was imposed by the 2002 Act, through the insertion of Section 47A into the School 1998 Act. Schools Forums are local bodies, representing schools and (if the local education authority so decides) other interests, which advise authorities on matters relating to the authority's schools budget.

174. Section 47A was amended by the 2005 Act and the 2006 Act to allow regulations to give Forums some decision-making powers in relation to the schools budget.

175. *Clause 141* amends the arrangements for constituting a Schools Forum, so that regulations may make it compulsory for a Forum to include non-schools members. Clause 137 applies to England and Wales.

Chapter 3: General

Clause 142: Orders and regulations

176. *Clause 142* contains general provisions about orders and regulations under the Bill. All orders or regulations are to be made by statutory instrument. Affirmative resolution procedure is required for an order under clause 3(5) to substitute a different qualification for the one referred to in clause 3(2), and for regulations under clauses 5(1)(b) or 49 in respect of alternative ways of working and fulfilling the full-time

occupation requirement of clause 5. Regulations made under clause 117(1), and any regulations under clause 146 which amend or repeal primary legislation, are subject to affirmative resolution. All other statutory instruments have to follow the negative resolution procedure apart from commencement orders where no parliamentary procedure is required.

Clause 143: Functions exercisable by Welsh Ministers

177. This clause ensures that the functions conferred on the Secretary of State under clause 141, so far as exercisable in relation to Wales, is taken to have been transferred to the Welsh Ministers by Order in Council under section 58 of the Government of Wales Act 2006.

Clause 144: General interpretation

178. *Clause 144* provides that the clauses in Part 1, Chapter 1 of Part 4, and clauses 131 and 149(9) are to be construed as if they were contained in the Education Act 1996 unless a different meaning is given in the clauses in the Bill in which case that meaning prevails. This means, in particular, that the general interpretation in section 579 of the 1996 Act, provision about guidance and notices in sections 571 and 572, and the Secretary of State's intervention powers in sections 496 and 497 apply to those clauses. *Subsection (4)* provides that sections 561 and 562 of the 1996 Act - which provide that the Act does not apply to a person in the service of the Crown or persons detained under order of a court - do not apply for the purposes of Part 1 of the Bill. Clause 50 makes special provision about Crown employment in relation to Part 1 of this Bill

Clause 146: Power to make consequential and transitional provision etc

179. *Clause 146* enables the Secretary of State to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill. Where such regulations amend or repeal primary legislation they are subject to the affirmative resolution procedure.

FINANCIAL EFFECTS OF THE BILL

180. Some provisions in the Bill will result in additional public expenditure. The costs are set out in detail in the accompanying impact assessment. New expenditure resulting from the Bill in the period up to 2010-11 will be met from within the Comprehensive Spending Review (CSR) Settlements for 2008-11 for the Department for Children, Schools and Families and the Department for Innovation, Universities and Skills. These are set out in the 2007 Pre-Budget Report and Comprehensive Spending Review document available at http://www.hm-treasury.gov.uk/pbr_csr/report/pbr_csr07_repindex.cfm.

181. The additional costs from Part 1 – the duty to participate in education or training – over and above the existing plans for participation of 16 to 18 year olds will fall largely in the period after 2011. The transition costs of the provisions and the direct costs of providing additional learning have been calculated in 2016-17 prices,

the year after the provisions will be fully in force for all 17 and 18 year olds. It is assumed that the costs are spread evenly over the additional two years for which young people will participate, and then discounted in the second year by 3.5% in line with Her Majesty's Treasury guidance. The additional cost to the public purse per cohort in these terms is estimated as £760 million. The accompanying impact assessment also sets out the estimated costs of the duties related to raising the participation age outside of the public sector.

182. The benefit to the economy of each additional cohort of young people above current plans that remain in education and training up to the age of 18 is estimated to be £2,400 million. This benefit will be attained over the life time of the young people.

183. There will be additional costs to government resulting from Part 3 – provision of proper facilities for courses for people aged 19 and over. The cost to government each year is estimated to be £20 million in 2007/08 prices. In terms of improved wages, the estimated benefit to one year's cohort of individuals over the course of their lifetimes is £70 million in 2007/08 prices.

184. The remaining provisions in the Bill will result in one-off public expenditure of recurring annual costs of less than £1 million in 2007/08 prices. A number of proposals in the Bill seek to ensure better value from existing programmes and will release some small savings which are set out in the accompanying impact assessment.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

185. We judge that the impact on public service manpower as a result of the provisions in this Bill will be small. The attached impact assessment sets out that increases in manpower will be required, most notably, for expanding the school and further education workforce as a result of the main duty in clause 2. Rationalising the regulatory regime for independent educational institutions and streamlining the system for approving qualifications will release some small manpower savings.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

186. The impact assessment for the Bill analyses the costs and potential benefits of the proposals and assesses their possible impact on race, gender and disability equality. Copies are available for Members in the Vote Office. It will also be available online at <http://www.dcsf.gov.uk/publications/educationandskills> and in hard copy from the Department for Children, Schools and Families. The provisions in the Bill are largely focused on public sector reforms. There will be some impact on employers both in the private and voluntary sectors from the provisions in Part 1 of the Bill, for example, checking whether young people they are intending to employ have made appropriate arrangements to participate in education or training. The costs of these provisions to individual organisations will be small.

EUROPEAN CONVENTION ON HUMAN RIGHTS

187. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before second reading about the compatibility of the provisions of the Bill with the European Convention on Human Rights (as defined by section 1 of that Act).

188. Having considered the possible implications, the Secretary of State for Children, Schools and Families believes that the Education and Skills Bill [HC] will be fully compatible with the European Convention on Human Rights. There are some areas where it would be helpful to provide further comments for clarification, as follows.

Chapter 1 of Part 1: Duty to participate in education or training

189. The Government has considered whether placing the primary duty to participate on the young person, with an ancillary but lesser obligation to assist on their parents, is consistent with ECHR law principles (given that where a child is of compulsory school age, the duty to ensure attendance rests solely on the parent).

190. The Government's view is that having the primary duty to participate on the young person is in keeping with the general emphasis in domestic and ECHR case law on the increasing autonomy of young people as they approach majority and the need to uphold the rights and independent views of young people.

Chapter 2 of Part 1: Local education authorities and educational institutions etc

191. Article 8(1) may be infringed by the requirement to provide and share data on young people. However, the Government is satisfied that the interference will be justified in line with Article 8(2). The proposals are to fulfil a social need and will be in pursuance of a legitimate aim – economic well-being – as the information collected and shared will be used for improving the general educational attainment of individuals and ensuring a more skilled workforce. The careers education and guidance provisions do not, in the Government's view, engage any of the Convention rights.

Chapter 3 of Part 1: Employers

192. Article 6 is engaged where a local authority takes enforcement action against an employer (or quasi employer). The penalty that may be imposed is financial and recoverable as a civil debt in the county court. If the local authority decides to recover the amount of the penalty as a civil debt, the employer can make objections to the county court.

193. The Government considers that the proposed system is compliant with Article 6 as the legitimacy of the fine is ultimately determined by the county court which is independent and impartial. It would also be possible to issue proceedings for judicial review in relation to an enforcement notice or a penalty notice.

Chapter 4 of Part 1: Parenting contracts and parenting orders

194. The Government considered the impact of parenting orders when introducing the 2006 Act. As then, it is considered that the proposals for parenting orders clearly engage Article 8 of the Convention (right to privacy and family life), since these have a compulsory nature. However, it is considered that the intervention is necessary in a democratic society, proportionate and in pursuance of a legitimate aim.

195. The Government considers that parenting orders made in the context of non-participation can be considered to be necessary in a democratic society, and that they are designed to balance the competing interests in Article 8(2), here the Community's right to act in the interest of the economic well being of the country against the parent's right to respect for private and family life.

196. The Government recognises that there is a respectable argument that a parenting contract engages Article 8, and there is a degree of interference in privacy and family life. The family's autonomy in the philosophy of, and practical approaches to, rearing its children, and the goals, rewards and punishments set for the young person's behaviour and the route which they follow post compulsory education, become matters for discussion with persons outside the family, and a degree of explanation and accountability to a person outside the family is set up. If Article 8 is engaged, the threshold is such as to deliver the requirements of proportionality, justification in pursuance of a legitimate aim, necessary in a democratic society and in accordance with the law.

Assessments of effectiveness of education and training

197. Article 8(1) may be infringed by the matching of data on the education and training of those aged 19 and over with information relating to their (a) income and employment histories; and (b) any state benefits claimed. However, the Government is satisfied that the interference will be justified in line with Article 8(2). The proposals are to fulfil a social need and will be in pursuance of a legitimate aim – economic well-being – as the information shared pursuant to these proposals will be used for assessing the economic value and effectiveness of the education and training received. In particular, the information shared will assist in the formulation of policy relating to the provision of education and training and assessing policy in relation to social security or employment as it affects the provision of, or participation in, training or education. The powers will be exercised in a way that is proportionate. Criminal sanctions are provided in relation to wrongful disclosure.

Part 4: Regulation and inspection of independent educational provision in England

Chapter 1: Independent Educational Institutions in England

198. There is nothing in this Part of the Bill which would amount to an unjustifiable interference with Convention rights. Conceivably, Convention rights will be engaged when the Chief Inspector and the Secretary of State exercise their functions under this Part.

Part 5: Miscellaneous and general

Maintained schools in England: behaviour and attendance etc.

199. Article 8, it appears, is engaged by the provisions conferring the new power of the governing body to require a registered pupil to attend at any place outside the school premises for the purpose of participating in any activities which are intended to improve his behaviour. Article 5 does not appear to be engaged, and to the extent Article 2 of Protocol 4 is engaged interference with it is defensible. Article 2 of Protocol 1 is thought not to be interfered with.

COMMENCEMENT

200. *Clause 149* provides for commencement. Clause 65, concerning the transfer of responsibility for assessments relating to learning difficulties of certain young persons between the ages of 16 and 25, comes into force on Royal Assent. Amendments and repeals that are consequential on this clause also come into force on Royal Assent.

201. Two other provisions (clause 132) regarding the powers of National Assembly for Wales in respect of the inspection of education and training for children not above compulsory school age, and (clause 140) inspections of providers of initial teacher training in England come into force two months after Royal Assent.

202. Two provisions (clauses 136 and 138) and the associated repeals and revocations are brought into force in accordance with provisions made by the Welsh Ministers.

203. All other provisions may be commenced by the Secretary of State by way of a commencement order, but following consultation with the Department for Employment and Learning in Northern Ireland in respect of clauses 137(4) and 139, and with the Scottish Ministers and the Welsh Ministers in respect of clauses 71, 72, 73, 74 and 75.

EDUCATION AND SKILLS BILL

EXPLANATORY NOTES

*These notes refer to the Education and Skills Bill
as introduced in the House of Commons on 28th November 2007 [Bill 12]*

*Ordered, by The House of Commons,
to be Printed, 28th November 2007.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON - THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited

£x.00