

# **CHILDREN, SCHOOLS AND FAMILIES BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Children, Schools and Families Bill as brought from the House of Commons on 24 February 2010. 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.

### **BACKGROUND AND SUMMARY**

3. The Bill contains provisions on a range of policies which span the responsibilities of the Department for Children, Schools and Families.
4. The Bill contains legislative provisions to give effect to aspects of the White Paper *Your Child, Your School, Our future: building a 21<sup>st</sup> Century Schools system* (Cmd 7588), to introduce a system of “guarantees” for parents and pupils in the school system and to make changes to the way schools operate together. It also introduces a licensing scheme for teachers announced in the White Paper.
5. The Bill also implements the recommendations of a number of independent reviews.
6. The Bill makes provision to introduce reform to the primary curriculum, recommended by Sir Jim Rose in the *Independent Review of the Primary Curriculum* (April 2009) (available at <http://www.dcsf.gov.uk/primarycurriculumreview>) to introduce areas of learning at key stage 1 and 2.

*These notes refer to the Children, Schools and Families Bill  
as brought from the House of Commons on 24 February 2010 [HL Bill 36]*

7. It also provides for the implementation of the recommendations of Sir Alasdair MacDonald in the *Independent Review of the proposal to make Personal, Social, Health and Economic (PSHE) education statutory* (27 April 2009) (available at <http://publications.dcsf.gov.uk/>), to make PSHE a foundation subject in the National Curriculum at key stage 3 and 4, and incorporating it into one of the areas of learning in the primary curriculum at key stages 1 and 2.
8. As recommended by Graham Badman in the *Report to the Secretary of State on the Review of Elective Home Education in England* (11 June 2009) (available at <http://www.dcsf.gov.uk/everychildmatters/ete/independentreviewofhomeeducation/irhomeeducation/>), the Bill introduces a registration scheme for home-educated children in England.
9. The Bill also contains provision following the White Paper *Back on Track: A strategy for modernising alternative provision for young people* (published 20 May 2008) and the report of Sir Alan Steer *Lessons Learned: Learning Behaviour* (15 April 2009).
10. The Bill makes provision permitting greater access to the media in Family Court proceedings, and increasing the ability of the media to publish reports of those proceedings, and information released during hearings. On 16 December 2008 the Secretary of State for Justice laid the report *Family Justice in View* before Parliament. In his accompanying statement to the House he set out his intention to provide greater transparency of family courts.
11. Further background is included on these and the other elements of the Bill in the “Overall Structure of the Bill” section.
12. A glossary of terms and abbreviations used in these Explanatory Notes is included at the end of these Notes.

## **OVERALL STRUCTURE OF THE BILL**

13. The Bill consists of 3 Parts and 5 Schedules. The Bill is arranged as follows:

### **Part 1: Children and Schools**

14. This Part provides for the introduction of pupil and parent guarantees, and amendments to existing provisions on home-school agreements. It also provides for local authorities to conduct parental satisfaction surveys annually and to prepare response plans where there is material parental dissatisfaction with the provision of schools in an area.
15. It requires school inspections by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) to take into account the

needs of pupils who have a disability or special educational needs (SEN). It provides for an additional right for parents of children with SEN to appeal to the Tribunal when a local authority decides not to alter a child's statement following a review under section 328(5)(b) of the Education Act 1996 ("EA 1996").

16. It makes changes to existing legislation on exceptional provision for those children who are not being educated in a school, or at home.
17. It makes changes for England to the primary curriculum in maintained schools to introduce areas of learning in place of foundation subjects at key stages 1 and 2 and to the curriculum in maintained schools and Academies to introduce Personal, Social, Health and Economic (PSHE) education as a foundation subject at key stages 3 and 4.
18. The Part makes changes to the powers of governing bodies of maintained schools in England to allow them to use their delegated budget to spend money on wider community purposes, and to allow designated governing bodies to be involved in the establishment of new maintained schools and Academies.
19. It makes provision for expanding the remit of school improvement partners. In order to provide for the introduction of the "School Report Card", it expands the Secretary of State's existing powers to request information from schools, and introduces a new power for the Secretary of State and the Welsh Ministers to request information relating to education provided under section 19 of the EA 1996. It repeals the existing statutory requirement for a school to prepare and publish a school profile.
20. The Part increases the powers of local authorities and the Secretary of State in relation to failing schools.
21. It makes provision for the introduction of a licence to practise for teachers and for application for and renewal of that licence, and connected purposes.
22. The Part introduces the registration scheme for home-educated children.
23. The Part confers power on Local Safeguarding Children Boards ("LSCBs") in England and Wales to require the supply of information for the purpose of their functions. It makes provision for the Chief Inspector to review the operation of LSCBs in England.
24. The Part also makes provision for co-operation of Youth Offending Teams with the Youth Justice Board and for the Secretary of State to be able to give directions in relation to Youth Offending Teams.

**Part 2: Family Proceedings**

25. The provisions in this Part will enable wider reporting of family proceedings, within a scheme which is consistent for all levels of court rather than differing according to the court hearing the proceedings as at present.
26. The rules of court governing most family proceedings were amended in April 2009 to allow for the attendance of accredited media representatives, without allowing for attendance by the public more generally. The existing statutory reporting restrictions remained unchanged, however, with the effect that the media are able to report only limited information about the proceedings they attend and are unable to report the substance of those proceedings without the express permission of the court.
27. These clauses introduce new arrangements for the publication of information from family proceedings other than those governed by the Judicial Proceedings (Regulation of Reports) Act 1926 (which deals with reporting of divorce and related proceedings). The new arrangements provide for a general restriction on publication by any person of information relating to the proceedings covered, subject to three major exceptions for types of authorised publication: authorised publication of a court order or judgment, “authorised news publication” and authorisation by way of provision made in rules of court. Of the three exceptions, publication of court orders and judgments will be possible in much the same way as at present, and it is anticipated that the rules of court will continue to permit similar sorts of disclosure of information as at present; but the “authorised news publication” exception is new and will allow for wider reporting of family proceedings than at present. In addition to these three exceptions, the court will also retain a general discretion to permit the publication of information relating to family proceedings.
28. The exception for authorised news publication of proceedings is for reporting of information acquired by an accredited media representative who has attended the proceedings in question. The news reporting scheme turns on automatic prohibition on reporting of certain sorts of information which is particularly sensitive, with other information being reportable unless the court specifically imposes restrictions. Thus—
  - a) publication of any information likely to lead to the identification of children, parties or witnesses (save professional witnesses) in the proceedings (“identification information”) or of other sorts of particularly sensitive information (“sensitive personal information”, “restricted adoption information” and “restricted parental order information”) is prohibited, but with the court having power to relax the prohibition and allow publication;
  - b) publication of all other information is permitted, but with the court having power to prohibit or restrict publication.

### **Part 3: Miscellaneous and Final Provisions**

29. This Part provides for amendments to the pupil and parent complaints system in Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (“ASCLA 2009”) and makes an amendment to the fees regime for independent schools under the Education and Skills Act 2008. It also includes standard provisions on extent and commencement.

### **Schedules**

30. Schedule 1 contains provisions related to the registration scheme for home-educated children.
31. Schedule 2 contains amendments to Part 2 of the Bill. The amendments will alter the circumstances in which “sensitive personal information” relating to certain family proceedings may be published. Clauses 40 and 41 set out conditions which must be met before an order bringing Schedule 2 into force may be made.
32. Schedule 3 contains a list of information which is to be regarded as “sensitive personal information” for the purposes of Part 2. Schedule 4 contains minor and consequential amendments relating to the substantive provisions in all Parts of the Bill. Schedule 5 contains a list of provisions repealed by the Bill.

## **COMMENTARY ON CLAUSES**

### **PART 1: CHILDREN AND SCHOOLS**

#### *Pupil and parent involvement*

#### **Clause 1: Pupil and parent guarantees**

33. Clause 1 requires the Secretary of State to issue a document setting out the “pupil guarantee” and the “parent guarantee”. The documents will set out entitlements for pupils and parents which they can expect with regard to their, or their child’s, school. The clause enables these documents to impose requirements with mandatory force on local authorities, governing bodies, other proprietors and head teachers of schools in England. The Secretary of State may revise the documents from time to time.
34. The documents may also include guidelines setting out aims and objectives and local authorities, governing bodies, other proprietors and head teachers must have regard to the matters contained in them.
35. The guarantee documents are to be framed with a view to realising the five pupil ambitions set out at *subsection (4)* and the four parent ambitions set out at *subsection (5)*. The provisions of the guarantees may be different for pupils

at different types of schools and for pupils of different descriptions (e.g. the guarantees may differ for children of different ages (e.g. primary or secondary) or for children with SEN statements with detailed provision).

36. “Pupils” and “parents” for the purposes of the clause are defined in the EA 1996. Parent would, therefore, include someone with parental responsibility for the child, or who has “care” of the child, and would generally include a local authority for a child in care. *Subsection (10)* provides the Secretary of State with a power to make an order which amends the schools to which these guarantees apply and the bodies upon whom duties can be placed in the documents. The power conferred by subsection (10) is subject to the affirmative resolution procedure, which means that an order under the subsection may not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
37. *Subsection (8)* provides that the inclusion of any matter in the guarantee documents does not, of itself, give rise to any liability in tort.

**Clause 2: Procedure for issuing and revising pupil and parent guarantees**

38. This clause sets out the process for making and revising pupil and parent guarantee documents. The Secretary of State must prepare a draft of the guarantee, and then consult on that draft. The Secretary of State must consult whoever he or she considers appropriate and consider any representations made. That consultation may predate the commencement of the section or the passing of the Act. A draft must be laid before both Houses of Parliament, and approved by a resolution of both Houses. The Secretary of State must then issue the guarantee document in the form approved by Parliament and may by order specify the date on which the document comes into force. The process for amending the guarantee documents is identical but is confined to the revisions and is not a re-issue of the whole document.

**Clause 3: Complaints relating to pupil and parent guarantees**

39. Clause 3 deals with the issue of who can make a complaint in relation to a failure to act in accordance with the pupil and parent guarantees, and under what circumstances. This clause amends the complaints process in Part 10, Chapter 2 of the ASCLA 2009 so as to allow pupils and parents to complain about an injustice sustained by a pupil or parent in consequence of a failure by the head teacher of a school to comply with any requirement imposed by the pupil or parent guarantee. The clause also amends the Local Government Act 1974 so that pupils and parents will be able to make complaints about local authorities in connection with the guarantees. A complaint under either Act is made to the Local Commissioner for Administration (the Local Government Ombudsman) and allows the Ombudsman to investigate complaints, report and make recommendations.
40. A parent or pupil will be able to make a complaint under ASCLA 2009

whenever there is injustice to them resulting from a failure by the head teacher or governing body to comply with the requirements of the guarantees.

41. *Subsections (3) to (5)* of the clause restrict the operation of the Secretary of State's direction-making powers in sections 496, 497 and 497A of the EA 1996 so as to prevent the Secretary of State giving a direction to a local authority on the basis of a breach of a guarantee, unless a) a complaint has been made to the Ombudsman and disposed of by him or her; or b) the circumstances are such that the Secretary of State considers it appropriate to give a direction without such a complaint being made and disposed of.

#### **Clause 4: Home-school agreements for each pupil**

42. At present, all schools must have one home-school agreement, used for all parents and pupils, which must be reviewed 'from time to time'. It takes no account of the individual child. Clause 4 is intended to increase the personalisation of home-school agreements and inserts a new section 109A into the School Standards and Framework Act 1998 ("SSFA 1998") to make provision for annually-reviewed, personalised home-school agreements for pupils at certain types of school in England. The existing provision about home-school agreements in section 110 of the SSFA 1998 is amended by the Bill so that it will only apply to schools in Wales.
43. Section 109A places a qualified duty on the head teacher of a maintained school, a CTC, a CCTA or an Academy to provide each registered parent of each child who is a registered pupil of the school with a home-school agreement (as defined by *subsection (4)* of the new section) and a parental declaration. Where they consider it appropriate, head teachers can provide different parents of the same pupil with different home-school agreements in respect of that pupil. A home-school agreement is to be reviewed at least once a year (in consultation with the parent). Any home-school agreement lapses once the pupil leaves the school or is no longer of compulsory school age.
44. There is a qualified duty on a head teacher to take reasonable steps to ensure that the parental declaration is signed by each parent when the home-school agreement is first issued, and following every review; and a pupil may also be invited to sign the declaration.

#### **Clause 5: Home-school agreements: parenting contracts and parenting orders**

45. Clause 5 ties the discharge by parents of their responsibilities under home-school agreements to parenting contracts and orders under the Anti-social Behaviour Act 2003 ("ASBA 2003"). It makes two amendments to the ASBA 2003. Section 19 of that Act is amended so that in every parenting contract entered into by virtue of that section (in cases of misbehaviour at school or truancy), there is a statement by the parent that they agree to discharge their responsibilities set out in the home-school agreement and a statement by the party offering the contract that it agrees to provide support to the parent for the

purpose of discharging those responsibilities.

46. Section 21 of that Act is amended so that in any case where a Magistrates' Court is considering making a parenting order under section 20 of the Act (parenting orders in cases of exclusion or potential exclusion from school) it must take into account any failure of the parent to discharge the responsibilities set out in the home-school agreement.

**Clause 6: Parental satisfaction surveys**

47. This clause amends the EA 1996 so as to require local authorities in England to seek and assess parents' views on the provision of schools in their area. Where there is material dissatisfaction with existing provision, a local authority will be required to consult with parents and develop a plan (a "response plan") that addresses the dissatisfaction and deals with any other issues raised in the survey that the authority considers necessary. Parents will be given an opportunity to make representations on the content of a response plan and, where those representations are not sufficiently favourable, the local authority will be required to refer the plan to the adjudicator. (The "adjudicator", in this context, is the adjudicator appointed under section 25 of the SSFA 1998.) If the adjudicator rejects the plan, the authority will have to withdraw it and prepare and publish a further plan.
48. This clause inserts new sections 19J to 19P into Chapter 3 of Part 1 of the EA 1996.
49. Section 19J introduces a requirement for local authorities to carry out an annual survey of the views of parents about the provision of "relevant schools" in their area. The Government intends that "relevant schools" in this context will initially only refer to secondary schools, but this may be extended to primary schools in the future. Regulations under the new section may prescribe which parents are to be surveyed (by reference to children of a specified age or children in a specified age group), the issues on which their views are invited and the form which must be used to survey parents.
50. Section 19K requires local authorities to analyse the parental responses received in the survey and to publish a summary of these responses. Where their analysis shows "material parental dissatisfaction" with the provision of relevant schools in an authority's area, the local authority must publish a plan setting out proposals for responding to that dissatisfaction and for dealing with any other issues arising from the responses that they consider need to be dealt with (subsection (2)). "Material parental dissatisfaction" is to be determined in accordance with regulations made under this section (subsection (3)). How the authority must analyse and publish the results of a survey, and develop and publish their plan will also be stipulated in regulations (subsection (6)). In

preparing a plan, an authority must consult parents in their area.

51. New section 19L requires a local authority to give “eligible parents” the opportunity to make representations to the authority about the response plan (subsections (1) and (6)). If a sufficient number of unfavourable representations about the plan are received from eligible parents, an authority must refer the plan to the adjudicator. The threshold for this duty to be triggered will be determined in accordance with regulations. Regulations may also provide for the steps to be taken by an authority when a plan is referred to the adjudicator. This might include the timeframe within which they must refer the plan and the format in which it should be submitted.
52. Section 19M provides for response plans to be considered by the adjudicator. Where a plan is referred to the adjudicator, the adjudicator will need to make a determination in respect of it: this may be to approve the plan, to approve it subject to modifications, or to reject it. Regulations made under this section may make provision about the procedures to be followed and the criteria to be taken into account by the adjudicator in making a determination, and the adjudicator must have regard to any guidance issued by the Secretary of State.
53. Section 19N sets out what an authority must do when the adjudicator has made a determination about the response plan. If the determination approves the plan subject to modifications, the authority must make these modifications to the plan. If the determination rejects the plan, the authority must withdraw the plan and prepare and publish a further response plan. In preparing this further response plan the authority must have regard to the adjudicator’s determination. Subsection (4) provides that regulations may make provision about steps to be taken by an authority when modifying or withdrawing a plan, or preparing a further response plan.
54. Section 19O provides for local authorities to implement their response plans, unless doing so would be unreasonably difficult, or has become inappropriate as a result of a change in circumstances.
55. Section 19P requires a local authority, in exercising their functions in relation to response plans, to have regard to any guidance issued by the Secretary of State.

#### *Children with special educational needs etc*

#### **Clause 7: School inspections: pupils with disabilities or special educational needs**

56. This clause inserts into section 5 of the Education Act 2005 (duty to inspect certain schools in England at prescribed intervals) a requirement for the Chief Inspector to consider, in reporting on how well a mainstream school (as defined) meets the needs of its pupils, the needs of children with disabilities or

special educational needs.

**Clause 8: Right of appeal against determination by local authority not to amend statement**

57. This clause provides a new right of appeal to the First-tier Tribunal (Special Educational Needs and Disability) for parents in circumstances where, following a review of a statement of special educational needs (SEN), the local authority decides not to make any changes to the statement. Section 328 of the EA 1996 imposes requirements in relation to reviews. It provides that all statements must be reviewed within the period of 12 months beginning either with the date on which the statement was made or the date of the previous review. This means that all of the stages of the review including the local authority's decision on whether to amend a statement must be completed within the 12 month period.
58. Part 4 of the EA 1996 provides for local authorities to make provision for children with SEN, including the drawing up of SEN statements where they are considered to be appropriate. The statement describes the special educational provision that an individual child will receive. Statements must be reviewed annually but can also be reviewed at other times. Parents have the right of appeal to the Tribunal in certain circumstances.
59. Clause 8 inserts a new section after section 328 of the EA 1996 to introduce a right for parents to appeal in situations where, following a review, the local authority have not made any changes to a statement and the parents want changes which were suggested in the report on the review submitted by the head teacher to be made, or want other changes to be made. The local authority must inform the parents in writing if it decides not to amend the statement and must also inform them of their right to appeal to the Tribunal.
60. The appeal may be in relation to:
- a) the description of the local authority's assessment of the child's special educational needs in the unamended statement;
  - b) the special education provision in the unamended statement and the name of a school specified in it; or
  - c) the fact that no school is named in the unamended statement.

***Exceptional provision for ill or excluded children etc***

**Clause 9: Exceptional provision of education in short stay schools or elsewhere**

61. Section 19 of the EA 1996 imposes a duty on local education authorities to make arrangements for securing suitable education for children who, because of exclusion from school, illness or for any other reason, may not receive such education if the arrangements are not made for them. Thus the authority has a

duty to arrange education for every child of compulsory school age if, for some reason, they cannot attend a mainstream or special school.

62. *Subsection (2)* of clause 9 inserts a new subsection (1A) into section 19. This provides that the duty to make arrangements for the provision of education under section 19(1) does not apply in the case of a child who will cease to be of compulsory school age within the next six weeks (ie a child in the final weeks of year 11 at school) and who does not have any further public examinations or assessments for public qualifications to complete. This amendment ensures that the duty to make arrangements for the provision of education does not apply in the case of a pupil who has effectively come to the end of their compulsory schooling by completing any public examinations etc. taken at the end of that stage of a child's education (but who is technically still in the final weeks of compulsory schooling). This reflects the practice in maintained schools where equivalent pupils at a school will be excused from attending after the completion of their public examinations etc.
63. *Subsection (3) and (4)* of the clause replace the existing subsection (3A) of section 19 of the EA 1996 with new subsections (3A) and (3AA) and amend subsection (3B) of the section. The existing subsection (3A) requires local authorities in England to arrange suitable full-time education for excluded pupils. The amendments extend the requirement to arrange full-time education to all children in England who qualify under section 19(1). The existing provisions allow for regulations to prescribe exceptions from the duty to provide full-time education. There will continue to be exceptions but these will appear in the primary legislation rather than in subordinate legislation.
64. The new subsection (3A) (as inserted by clause 9) requires local authorities in England to make arrangements for the provision of full-time education for children who fall under section 19(1) but allows for part-time education to be arranged in the case of a child falling within the new subsection (3AA). That subsection applies to children for whom the local authority consider that, for reasons which relate to their physical or mental health, it would not be in the child's best interests for full-time education to be provided. Where part-time education is considered appropriate it must be education arranged on such part time basis as the authority considers to be in the child's best interests. The new subsection (3A)(1)(b) will govern the local authority's decision only as to the amount of provision to arrange for any child. The nature and type of any provision will still be governed by the requirement of 'suitability' in subsection (1) and (6) of section 19.
65. Examples of the types of situation in which it is envisaged a child might fall within the exception to full-time provision might be children with chronic illness, or disability after an accident or some other reason connected to their welfare.

66. Subsection (3B) of section 19 is amended by the clause so as to provide a power to make regulations which determine the day from which education must be provided for a child in England under section 19(1). The current intention is to replicate the provisions of the existing regulations which provide for the duty to have effect from the 6<sup>th</sup> day.

### ***The Curriculum***

#### **Clause 10: Areas of learning**

67. Clause 10 amends the National Curriculum for England at key stages 1 and 2 in maintained schools to introduce “areas of learning” at primary level. Key stage 1 equates to the period beginning at the same time as the school year in which a child turns 6 and ending at the same time as the school year in which the child turns 7. Key stage 2 equates to the period beginning at the same time as the school year in which a child turns 8 and ending at the same time as the school year in which the child turns 11.
68. The clause inserts a new section 83A into Part 6 of the Education Act 2002 (“EA 2002”). In relation to each area of learning, the National Curriculum will consist of programmes of study, and may specify attainment targets and assessment arrangements by area of learning too (new section 83A(2)). The programmes of study, attainment targets and assessment arrangements may cover both key stage 1 and 2. The areas of learning themselves are set out at new subsection 83A(3) and the Secretary of State may specify by order particular modern foreign languages which may be studied as part of the “understanding English, communication and languages” area of learning, or may specify that any modern foreign language may be studied as part of that area of learning. He or she may also by order specify how to determine what constitutes a modern foreign language (new section 83A(5)).
69. The Secretary of State may by order amend the areas of learning or the provisions about modern foreign languages (new section 83A(6)). Such an order is subject to the affirmative resolution procedure.
70. *Subsection (2)* of clause 10 inserts new subsections (2A) and (2B) into section 87 of the EA 2002 to permit the Secretary of State to make an order setting out attainment targets and assessment arrangements not only in relation to areas of learning, but in relation to specified parts only of areas of learning (new section 87(2B)) or across areas of learning (new section 87(2A)). This will permit attainment targets or assessment arrangements therefore, in relation to, for example, English, or in relation to a subject covered in more than one area of learning (for example Information and Communication Technology (ICT) which is presently a subject in the primary curriculum).
71. Paragraphs 12 to 14 of Schedule 4 provide for the same procedures for making and amending programmes of study, assessment arrangements and attainment

targets in relation to areas of learning in key stages 1 and 2 as apply to existing key stages 1 to 4.

**Clauses 11 to 14: Personal, Social Health and Economic (PSHE) Education**

72. These clauses provide for the introduction of Personal, Social, Health and Economic (PSHE) education at both key stage 3 and key stage 4 as a foundation subject within the National Curriculum for England. They also make the teaching of PSHE in Academies at these stages compulsory. They indicate the broad content of the subject and incorporate what is currently sex education into the curriculum, with changes.

**Clause 11: PSHE in maintained schools**

73. This clause makes amendments to sections 84 and 85 of the EA 2002 and section 74 of the Education and Inspections Act 2006 (“EIA 2006”) to introduce PSHE as a foundation subject in the National Curriculum for England at maintained schools. The clause should be read with paragraph 11 of Schedule 4.

74. *Subsection (4)* inserts a new section 85B into the EA 2002, which sets out the required content of the new foundation subject, though it does not prescribe the weight to be given to each component. The content of the “sex and relationships” component of the subject (referred to at section 85B(1)(c)) will also be governed by the requirements of section 403 of the EA 1996, as amended by clause 13 of the Bill. The Secretary of State may amend the content of PSHE by order subject to the affirmative resolution procedure (section 85B(2) taken with paragraph 14(2) of Schedule 4).

75. Subsection (3) of the new section 85B provides that, unlike other national curriculum subjects, the Secretary of State does not have to specify attainment targets or assessment arrangements for PSHE under section 84(1) of the EA 2002. He or she retains the power to do so, however, under section 87(3) of the EA 2002. The Secretary of State does not presently intend to set any attainment targets or assessment arrangements for this subject.

76. Subsections (5) to (7) of section 85B set out “principles” which school governing bodies and head teachers must comply with in providing PSHE education. Subsections (8) and (9) indicate that the principles in subsections (5) to (7) do not prevent the method of teaching PSHE from also reflecting the religious character of the school. Subsection (10) of section 85B requires them to have regard also to any guidance issued by the Secretary of State in exercising their functions in relation to providing PSHE teaching.

77. Schedule 4 amends section 80 of the EA 2002 to remove sex education as a separate subject in the basic curriculum for England, to avoid duplication with the content of PSHE. It does not affect the definition of “sex education” as it

applies to Wales.

**Clause 12: PSHE in Academies etc**

78. Clause 12 effectively applies the provisions of clause 11 to Academies, CTCs and CCTAs to require them to also teach PSHE at key stages 3 and 4.
79. Clause 12 ensures that PSHE will be taught in Academies etc in the same way as in maintained schools. Proprietors and head teachers of Academies etc will be under the same obligations with respect to the content of the subject, the programmes of study and the principles set out at section 85B(5) to (7) of the EA 2002. Proprietors and head teachers of Academies etc will also have to have regard to the Secretary of State's guidance. The effect of subsection (2) of new section 483B of the EA 1996 is that if the Secretary of State makes provision for attainment targets, programmes of study or assessment arrangements for PSHE in maintained schools, those attainment targets, programmes of study and assessment arrangements will also apply in Academies. As noted in paragraph 75 however, the Secretary of State does not presently intend to set attainment targets or assessment arrangements in relation to this subject.

**Clause 13: Sex and relationships education: manner of provision**

80. Clause 13 should be read together with paragraphs 3, 5, 6, 9 and 10 of Schedule 4. The clause amends references in section 403 of the EA 1996 to "sex education" to read for England "sex and relationships education". It also amends section 403 so that the requirements of that section apply not only to maintained schools but also to Academies, CTCs and CCTAs. *Subsection (4)* of clause 13 amends section 403 so that guidance issued by the Secretary of State under the section must be designed to secure that, when sex and relationships education is given at schools in England, the pupils learn about the nature of marriage and its importance for family life and bringing up children, the nature of civil partnership and the importance of strong and stable relationships. Section 403 as it applies to Wales is unaffected by these changes.
81. A new definition of "sex and relationships education" is inserted into section 579 of the EA 1996 which (like the existing definition of "sex education") excludes from the ambit of the definition teaching on human reproduction provided as part of a science curriculum.

**Clause 14: Exemption from sex and relationships education**

82. Clause 14 amends the existing parental right of withdrawal from sex education so that it allows parents in England to withdraw their child from sex and relationships education at any stage at which they are given sex and relationships education up to the age of 15 but not thereafter.

### ***Powers of governing bodies***

#### **Clause 15: Power to provide community facilities etc**

83. Governing bodies of maintained schools have a power in section 27 of the EA 2002 to provide any community facilities or services which further any charitable purpose for the benefit of their pupils, families of pupils and the wider community. However, governing bodies are prevented by section 50(4) of the SSFA 1998 from using their delegated budgets for the provision of community facilities or services.
84. Clause 15 amends section 27 so as to require governing bodies in England to give consideration at least once in every school year to whether or not to use the power to provide these facilities, and how they might use it. The clause also amends section 50 of the SSFA 1998 to allow governing bodies in England to spend their delegated budgets on the provision of those community facilities or services, subject to any specific restrictions set out in regulations.
85. *Subsection (4)* amends section 51A of the SSFA 1998 so that it no longer applies in relation to England. Section 51A enabled a local authority to recover from a governing body any amounts spent by the authority as a result of a third party claim against the authority in relation to activities undertaken by a governing body pursuant to section 27 of the EA 2002. These amounts could not be recovered directly from the governing body due to the restriction in section 50 of the SSFA 1998 on the governing body using its delegated budget for these activities but this will not be the case after the coming into force of this clause.

#### **Clauses 16 to 18: Powers of governing bodies**

86. Clauses 16 to 18 extend and define powers of governing bodies of maintained schools in England so that certain designated governing bodies can be involved in the establishment of new maintained schools and Academies, and all governing bodies are able to have further involvement in existing maintained schools and Academies.
87. Governing bodies currently have certain specific powers, set out in Schedule 1 to the EA 2002 in relation to the conduct of their own school and the provision of advice and assistance to other maintained schools and local authorities. They have other powers, set out elsewhere in legislation. For example, they can provide facilities and services to their own pupils and their families, and the wider community in the furtherance of any charitable purpose under section 27 of the EA 2002.

#### **Clause 16: Power to form company to establish Academy, etc**

88. Clause 16 provides governing bodies in England with a power to form a company (an “Academy Trust”) which can then enter into an agreement with the Secretary of State under which the company will establish and maintain an

Academy. The clause also provides governing bodies with a power to carry out necessary activities in connection with such agreements. The Secretary of State will establish a procedure for designating particular governing bodies and will only enter into such an agreement with a company formed by a designated governing body. The clause also allows any governing body of a maintained school in England to be a member of an existing Academy Trust.

**Clause 17: Powers to assist etc proprietor of Academy and be a member of a foundation**

89. Clause 17 allows all governing bodies of maintained schools in England to provide advice and assistance to the proprietors of Academies (in the same way that they can already provide advice and assistance to the governing bodies of other maintained schools). The clause also allows all governing bodies of maintained schools and maintained nursery schools in England to become members of the foundations of other maintained schools.

**Clause 18: Power to propose new schools**

90. Clause 18 allows only governing bodies in England that are designated by the Secretary of State, or by a person authorised by the Secretary of State, to publish proposals under section 7 (in a school competition) or section 11(2) of the EIA 2006 to establish new foundation, voluntary or foundation special schools.

*School improvement etc*

**Clause 19: School improvement partners**

91. Clause 19 widens the remit of school improvement partners (SIPs). Currently, each maintained school has a SIP appointed by the local authority to provide advice to the governing body and head teacher with a view to improving standards at the school. The requirement to appoint a SIP is contained in section 5 of the EIA 2006. Clause 19 amends section 5: the result is that a SIP must be appointed to provide not only advice but also other “prescribed services”, and that this is to be done not only for the purpose of improving standards at the school, but also for the purpose of improving the well-being of pupils at the school. Examples of other “prescribed services” may include identifying early a school’s underperformance, brokering any additional support the school may need to improve a school’s performance or helping the school leadership team to plan effective change.

92. *Subsection (3)* amends section 5 by inserting a requirement that local authorities have regard to guidance issued by the Secretary of State when exercising functions under section 5 or under regulations made under that section.

**Clause 20: Provision of information about schools, etc**

93. Section 537 of the EA 1996 enables the Secretary of State and the Welsh

Ministers to collect and publish information about schools. This information is currently used to compile national datasets in Wales and produce the Achievement and Attainment Tables in England. For England, these are to be replaced by the School Report Card. Clause 20 makes amendments needed to ensure that the Secretary of State will be able to collect and publish all of the information needed for the School Report Card.

94. *Subsection (1)* amends section 537 to provide that regulations under section 537 may require the supply of information about the views of specified persons about a school; and that if they do so, they may also make provision about how those views are to be obtained. This will enable the views of people such as parents and pupils to be obtained in the same way in relation to all schools, such as by survey, to ensure that they can be used to compile a national dataset for use in performance measurement. *Subsection (2)* inserts a new section 537ZA into the EA 1996, allowing the Secretary of State and the Welsh Ministers to collect information about education funded by a local authority under section 19 of the EA 1996 (alternative provision). This power mirrors that for schools (in section 537 of the EA 1996, as amended) and gives powers to collect that information from both the local authority and the education provider.
95. *Subsection (4)* removes the requirement on governing bodies of maintained schools to prepare and publish a school profile.

**Clause 21: Schools eligible for intervention: powers of local authority**

96. Section 63 of the EIA 2006 provides local authorities with a power to direct the governing body of a maintained school in England that is eligible for intervention to enter into specified partnership arrangements with a view to improving the school's performance.
97. Clause 21 amends section 63 to extend the existing powers of a local authority to require the governing bodies of maintained schools that are eligible for intervention to enter into specified arrangements. Certain of these arrangements will include the involvement of a body that is designated as suitable for these purposes by the Secretary of State or by a person authorised by the Secretary of State.
98. Clause 21 amends section 63 so as to provide a local authority with a power to require a school that is eligible for intervention to create a federation with another school which has a designated governing body. The clause also amends section 63(1) so as to provide a local authority with a power to require a school that is eligible for intervention to take steps, as specified by the local authority, to become a foundation school with a foundation where the majority of governors are appointed by the foundation. One of the members of that foundation must be designated as suitable for these purposes by the Secretary of State or by a person authorised by the Secretary of State. Finally, section 63

is amended so as to provide a local authority with a power to require a foundation school (with a foundation) that was established, or acquired its foundation, pursuant to the EIA 2006 to publish proposals to remove its existing foundation.

99. Paragraphs 15 and 16 of Schedule 4 contain amendments to Part 2 of the EIA 2006 which allow regulations to be made using existing powers that require a governing body to refer to the adjudicator proposals to acquire or remove a foundation published pursuant to the provisions in this clause.
100. *Subsection (4)* of clause 21 provides that “creating” a federation can also mean joining an existing federation and that the reference to “foundation” means one established otherwise than under the SSFA 1998.

**Clause 22: Schools causing concern: powers of Secretary of State, etc**

101. Section 60 of EIA 2006 makes provision about the giving of a warning notice to a school by a local authority in respect of performance standards or safety. *Subsection (2)* of clause 22 amends section 60 to require a local authority to provide a copy of a warning notice to the Secretary of State, as well as to the other persons and bodies currently listed in section 60(6). *Subsection (3)* imposes an equivalent requirement in respect of a notice served under section 60A of the EIA 2006 (as inserted by Schedule 13 to ASCLA 2009).
102. *Subsection (4)* amends section 68 of the EIA 2006. The effect is to enable the Secretary of State to direct a local authority to close a school where it is eligible for intervention as a result of failing to comply with a performance, standards and safety warning notice, or where the school requires significant improvement, as well as where the school requires special measures. It does not, however, enable this power to be exercised where the school has failed to comply with a warning notice given for failing to comply with the teachers’ pay and conditions document.
103. *Subsection (5)(a) to (c)* amends section 69A of the EIA 2006 (as inserted by Schedule 13 to ASCLA 2009). The result is that the Secretary of State may direct a local authority to give a performance, standards and safety warning notice to a school, where the Secretary of State has already directed that the local authority consider giving one and they have decided not to do so. Where such a direction is made, the local authority must give the warning notice within 5 working days from the day on which the direction is given.
104. *Subsection (5)(d)* modifies section 60 of the EIA 2006 in its application to a notice served in compliance with a direction under section 69A. The effect is that where a warning notice is given under section 60 in compliance with a direction by the Secretary of State under section 69A, the governing body does not have the right to make representations under section 60(7) to the Chief Inspector against the notice. The warning notice is final. In such

circumstances, the period in which the governing body must comply or secure compliance with the notice is fifteen working days following the day on which the notice is given.

105. *Subsection (6)(c)* similarly modifies section 60A of the EIA 2006 to provide that where a teachers pay and conditions warning notice is given under section 60A by virtue of a direction by the Secretary of State under section 69B (as inserted by Schedule 13 to ASCLA 2009), the governing body does not have the right to make representations under section 60A(7) to the local authority against the notice. The warning notice is final. In such circumstances, the period in which the governing body must comply or secure compliance with the notice is fifteen working days following the day on which the notice is given.

### ***School teachers' qualifications***

#### **Clauses 23 to 25**

106. These clauses make provision to introduce a requirement for all registered teachers in maintained schools, non-maintained special schools, Academies, CTCs and CCTAs to have a licence to practise as a teacher which is to be renewed periodically.

#### **Clause 23: Licence to practise**

107. This clause inserts two new sections (sections 4B and 4C) into the Teaching and Higher Education Act 1998. New section 4B gives the Secretary of State the power to make regulations concerning a "licence to practise" system for teachers registered with the General Teaching Council for England ("GTC"). Regulations made under this provision will establish a licensing system through which registered teachers may apply for and be issued with a "licence to practise". The licence will be renewable on a periodic basis where a teacher demonstrates that they continue to meet the provisions for the issue of a licence. Regulations will set out when such a licence may be granted or refused, renewed or withdrawn.
108. Section 4C gives the Secretary of State the power to make regulations concerning an appeals process. Regulations will give registered teachers a right of appeal against decisions to refuse to grant or renew a licence, withdrawal of a licence and, in certain circumstances, decisions to grant or renew a licence conditionally and about the duration of a licence. They will require the GTC to establish a committee to consider these appeals, and will set out how appeals should be made and determined.

#### **Clause 24: Requirement to be licensed**

109. Under section 133 and 134 of the EA 2002, the Secretary of State has the power to require persons conducting specified work to hold particular

qualifications and to be registered with the GTC.

110. This clause amends Part 8 of the EA 2002 to insert a new section 134A giving the Secretary of State the power to make regulations which make it a requirement that in order to undertake “specified work” in a relevant school a qualified teacher has to hold a “licence to practise”.

**Clause 25: Requirements to be qualified, registered and licensed: Academies etc**

111. This clause extends the existing powers of the Secretary of State to require teachers in maintained schools and non-maintained special schools to hold qualified teacher status and to be registered with the GTC to Academies, CTCs and CCTAs.
112. This clause also provides that the Secretary of State’s power under section 496 of the EA 1996 to prevent the unreasonable exercise of functions can be used if an Academy, CTC or CCTA fails to comply with regulations made under sections 133, 134 and 134A of the EA 2002. So, if regulations required teachers teaching in an Academy to hold qualified teacher status, be registered with the GTC and to hold a valid licence to practise, the Secretary of State could intervene if an Academy employed a teacher who did not meet these requirements.

***Home education***

**Clause 26: Home education: England**

113. This clause needs to be read with Schedule 1. This clause and Schedule 1 introduce a registration scheme for children who are being educated at home in England. Home education is lawful and at present it is largely unregulated. Where a child has never attended school, parents are not required to inform their local authority that the child is being educated at home, or to seek approval of the home education being provided. The Schedule introduces a new registration scheme to enable local authorities in England to keep track of home-educated children. In terms of enforcement of the new system, the Schedule links the home education registration scheme to the school attendance order regime.

**Home Education: registration and monitoring**

114. Clause 26 gives effect to the provisions of the Schedule. Paragraph 1 of the Schedule inserts new sections 19A to 19I into Part 1, Chapter 3, of the EA 1996 (local authorities). The new sections impose new duties on English local authorities in relation to children who are to be electively home-educated.
115. New section 19A requires a local authority to keep a register of all children of compulsory school age in their area who are being educated entirely at home – i.e., none of whose education is provided at a school, or under section 19 of the EA 1996 (exceptional provision of education in pupil referral units or

elsewhere).

116. Subsections (2) and (3) of new section 19A enable the Secretary of State to make regulations about how local authorities will maintain and amend the register. Subsection (4) of new section 19A defines what is meant by a “home-educated child” and “home education register”.
117. New section 19B sets out what a local authority is required to do when the parent of a home-educated child of compulsory school age in their area applies, in the prescribed way, for the child to be placed on their home education register. The authority must register the child unless they consider that the child is within subsection (6) or (7), or that subsection (8) applies to the child’s application. If they consider the child is within subsection (7), they must not register the child. But if they think the child is within subsection (6), or that subsection (8) applies to the child’s application, they may choose whether or not to register the child. For example, a child may be within subsection (7) if that child is subject to a child protection plan and is thought to be safer at school or in alternative provision than being educated at home. Giving local authorities the discretion to register in relation to children falling within subsections (6) and (8) will allow a local authority to consider issues and circumstances which are likely to be relevant to whether those children should be registered. The local authority must notify the child’s parent of registration or, if registration is refused, of this fact and the reasons for it (subsection (5)).
118. New section 19C confers power on the Secretary of State to make regulations about steps to be taken by a local authority in connection with an application for registration, and specifies that this may include provision as described in subsection (2).
119. New section 19C also specifies that the power conferred by section 19B(1)(a) may be used to make provision about the form and content of any application for entry on the home education register, and as described in subsection (5). There is a specific reference in subsection (4) of new section 19C to a statement giving information about the child’s prospective education. The Government envisages that all applications will be required to provide such a statement, or to provide an undertaking to provide such a statement. In addition the power under new section 19B(1)(a) is likely to be used as described in subsection (5), i.e. to make provision enabling an authority that has refused a child’s application, or revoked a child’s registration, to require a period of time to elapse before a fresh application is made in respect of the child. This would prevent local authorities from having to process immediate, subsequent re-applications for registration from parents where there have been no material changes in circumstances.
120. New section 19D makes provision about how long registration will last. It also

provides that, for enforcement purposes, a child will be treated as registered as soon as an application for registration has been made.

121. The effect is that once an application has been made in respect of a child, the child will be treated as registered until the application is rejected, or (assuming that the application is successful) until the expiry of the period of 12 months from the date of registration. But if the child's registration is revoked during that 12 month period, then the child will cease to be treated as registered as from the date of the notice of revocation that needs to be given to the child's parent. The registration will also terminate if the child ceases to be of compulsory school age.
122. New section 19E obliges a local authority to make arrangements to monitor the education provided to a child on their home education register. The objective of the arrangements is to ascertain, as far as reasonably practicable, whether the child is receiving a suitable education, whether the education accords with the information given about it, what the child's wishes and feelings about it are, and whether it would be harmful for the child's welfare for the education to continue.
123. Subsection (2) of new section 19E defines what is meant by a suitable education for this purpose. Subsection (3) provides that the arrangements made by a local authority under new section 19E must include arrangements, in each registration period, for at least the meetings and visits described in that subsection- unless the registration period begins less than 6 months from the end of compulsory education, in which case the local authority has a power to make arrangements of the sort described in subsection (3) rather than a duty. The duty requires an authority to see a child, the parent and the place (or at least one of the places) where the education is to take place, at least once in any registration period. Where a local authority consider that someone other than the parent is primarily responsible for providing education then the local authority will be under a duty to see that other person as well, at least once in any registration period. For most home-educated children, these visits will be carried out concurrently. Subsection (4) explains that the local authority cannot make arrangements to see the child on their own if the child or the parent objects to such a meeting.
124. Subsection (5) explains that a local authority must give at least two weeks written notice of a proposed meeting or of a visit to a place where education is provided.
125. New section 19F gives a local authority the power to revoke registration on their home education register in certain circumstances. Where a local authority exercises this power, it must give notice of the revocation to the child's parent (subsection (3)).

126. Section 19F(1)(a) to (g) set out the circumstances in which a local authority may revoke registration. Subsection (4) provides that in deciding for the purpose of revoking registration whether it would be harmful to the child's welfare for home-education to continue, and whether the home-education being provided is suitable, the local authority is to take into account the wishes and feelings of the child as far as is reasonably practicable.
127. Subsection (2) of new section 19F provides a definition of suitable education for the purposes of revocation under section 19F(1). (This is the same as the definition in new section 19E.)
128. Subsection (5) of new section 19F gives power to the Secretary of State to make regulations about the specific actions that a local authority should take in connection with revocation, or proposed revocation. The regulations may (subsection (6)) include provision about matters that local authorities should and should not take into account when considering revocation.
129. New section 19G requires regulations to provide for a parent to be able to appeal against a local authority's decision to refuse or revoke registration. The provision made by the regulations may include provision about the matters listed in subsection (2) – including the time limit for bringing appeals and the procedure on appeals. The regulations may also provide that where a right of appeal has been exercised in respect of a child's registration, the child is to be treated as registered, for the purposes of enforcement, despite the refusal or revocation of registration.
130. New section 19H permits the Secretary of State to make regulations requiring information relating to a child to be supplied to a local authority in England, in certain circumstances, for the purposes of the exercise of their home-education functions. The persons who may be required to supply information are another local authority in England, and the proprietor of a school in England from which the child has been withdrawn for home-education. The Government intends to use this power, for example, to provide that if a school has been notified that a child is being withdrawn to be home-educated, and the school knows the identity of the local authority for the area where the child will be home-educated, the school must notify that local authority and pass on certain information about the child such as the child's educational attainment to date.
131. New section 19I requires local authorities to have regard to any statutory guidance issued by the Secretary of State when exercising their functions under sections 19A to 19H.

**Duty to make arrangements to identify unregistered children, etc**

132. Paragraph 3 of Schedule 1 inserts a new section 436ZA into the EA 1996. This is needed to reflect the fact that, in England, home-educated children will need to be registered on their local authority's home-education register. The new

section requires a local authority in England to make arrangements to identify two categories of children of compulsory school age in their area. The first category is that consisting of children who are not home-educated, are not registered pupils at a school, and are not receiving suitable education provided under section 19 of the EA 1996 (alternative provision). Children within this category will be those who are not receiving any education at all, or who are receiving education under section 19 that for some reason is not suitable. The second category is that consisting of home-educated children who are not on the authority's home education register.

133. Subsection (4) of new section 436ZA requires local authorities to have regard to any statutory guidance issued by the Secretary of State when exercising their function of making arrangements to identify these children.

### **School attendance orders**

134. The new registration scheme is to be enforced through the existing system of school attendance orders. Paragraphs 5 – 10 of Schedule 1 amend the EA 1996 to provide for this. The bulk of the amendments are to sections 437, 442 and 443 of the EA 1996. There are also consequential amendments to sections 438 and 441 of the EA 1996. Since the provisions in the Bill about home education apply only in relation to local authorities in England, the result is that the school attendance order system will work slightly differently in England from the way in which it works in Wales. The amendments do not change the operation of the school attendance order system in Wales.
135. The result of the amendments to section 437 is that, if a child in the area of a local authority in England appears to the authority to be being home-educated, but is not on their home education register (and has not applied to go on the register), a school attendance order will be served - provided that the authority considers that it is expedient for the child to attend school (new subsection (3A) of section 437 of the EA 1996, as inserted by paragraph 5(6) of Schedule 1.) In considering for this purpose whether it is expedient that an unregistered home-educated child should attend school, an authority is to disregard the unregistered home education being provided to the child (new subsection (3B) of section 437). But they may consider other matters, for example whether alternative provision should be made for the child under section 19 of the EA 1996.
136. If a child in the area of a local authority in England does not appear to the authority to be a home-educated child, but it appears to the authority that the child is not receiving suitable education, then the effect of section 437(B1) of the EA 1996, as inserted by paragraph 5(2) of Schedule 1 is that the authority must serve notice on the child's parent. If, in response to the notice, the parent satisfies the authority that the child is receiving suitable education provided at school or under section 19, or that the child is registered on their own or another authority's home education register, then this will be the end of the

matter. So for instance a parent of a home-educated child could respond to a notice by applying for registration, thus stopping the school attendance order process. Or a parent of a child who had not been attending school because of, for instance, bullying concerns, could decide to opt for home education, and make an application accordingly, thus stopping the process. But if the parent fails to satisfy the local authority of any of these matters then the authority will serve a school attendance order.

137. Section 442 of the EA 1996 makes provision for a school attendance order to be revoked in certain circumstances. The amendments made to section 442 by paragraph 8 of Schedule 1 reflect the fact that, in England, revocation of a school attendance order will need to take into account the new registration system. The effect of the amendments is that a local authority in England must revoke a school attendance order served by them in respect of a child if the child is registered on their home education register. They must also revoke the order if they are satisfied that the child is registered on another authority's register (provided that the child is in that other authority's area). So for instance if a home-educated child in respect of whom an order has been served by one authority moves to another authority's area after service of the order, and the child's parent applies for registration there, the parent will be able to have the order revoked by informing the original authority of the registration. The local authority must also revoke the order if the parent applies for revocation on the ground that arrangements have been made for the child to receive suitable education under section 19 of the EA 1996, unless they do not think that satisfactory arrangements for this have been made.
138. Section 443 of the EA 1996 makes it a criminal offence to fail to comply with a school attendance order. Paragraph 9 of Schedule 1 amends section 443 to reflect the new registration system. The result is that, where a school attendance order has been served by a local authority in England, a non-complying parent will not be guilty of an offence if the child is registered on the authority's home education register. Nor will a non-complying parent be guilty of an offence if he or she can prove that the child is registered on another authority's home education register, or is receiving suitable education provided under section 19 of the EA 1996.

**Clause 27: Power of National Assembly for Wales to make provision by Measure**

139. Clause 27 confers power on the National Assembly for Wales to make provision about the regulation of home education, and the inspection of services provided by local authorities for persons involved in providing home education. It achieves this by amending field 5 of Part 1 of Schedule 5 to the Government of Wales Act 2006 (legislative competence of National Assembly for Wales in the area of education and training).

## **Local Safeguarding Children Boards**

### **Clauses 28 and 29**

140. Clauses 28 and 29 make provision for the supply of information to Local Safeguarding Children Boards (LSCBs). Clause 28 makes provision in relation to LSCBs in England, and clause 29 in relation to LSCBs in Wales.

#### **Clause 28: Supply of information requested by LSCBs in England**

141. Clause 28 inserts a new section 14B into the Children Act 2004 (“CA 2004”). New section 14B provides that, if certain conditions are met, a person or body must supply information to a LSCB in England at its request. Firstly, the information must be requested for the purpose of enabling or assisting the LSCB to perform its functions. Secondly, the person or body requested to supply the information must have functions or engage in activities such that the LSCB considers it likely to have information relevant to a function of the LSCB. This would potentially encompass, for instance, a GP who provided medical advice or treatment to a child in respect of whom a LSCB was carrying out a serious case review, or to a family member or carer of that child. It would also potentially encompass a person carrying out voluntary work that brought him or her into contact with such a child or a family member or carer, or a minister of a church attended by such a child or a family member or carer. Finally, one of the conditions set out in subsection (4) or subsection (5) of the new section must be met. Subsection (4) of the new section relates to the content of the information that may be requested. Subsection (5) of the new section 14B effectively enables the onward transmission to a LSCB of information that it has requested, under the new section, to be supplied to a third party, for instance to a Primary Care Trust, for collation and onward transmission to the LSCB. (But a LSCB may request that information be supplied to a third party for collation and onward transmission only if the third party itself is within subsection (3)). Subsection (6) of the new section provides that a LSCB may use information provided under new section 14B only for the purposes of its functions. Subsection (7) of the new section provides that a LSCB must have regard to guidance issued by the Secretary of State in exercising its functions under the new section.

#### **Clause 29: Supply of information requested by LSCBs in Wales**

142. Clause 29 inserts a new section 32A into the CA 2004. This makes equivalent provision, in relation to LSCBs in Wales, to that made in relation to LSCBs in England by the new section 14B inserted by clause 28.

#### **Clause 30: review by Chief Inspector of performance of LSCBs in England**

143. Clause 30 inserts a new section 15A into the CA 2004. The new section confers power on the Secretary of State to make regulations providing for the Chief Inspector to review specified functions of a LSCB in England.

Subsection (3) of the new section provides that the regulations may make provision about reports to be made on completion of a review, and requiring information to be shared with the Chief Inspector for the purposes of a review.

### ***Youth justice***

#### **Clause 31: Supervision of youth offending teams etc**

144. Clause 31 amends the Crime and Disorder Act 1998 (“CDA 1998”) to impose a duty on a youth offending team (“YOT”) to co-operate with the Youth Justice Board (“the Board”) and for a YOT to have regard to any recommendations of the Board. The clause also provides the Secretary of State with a power to direct a YOT or local authority in the carrying out of any function in relation to the youth justice system or the provision of youth justice services.
145. *Subsection (2)* amends section 41 of the CDA 1998 by inserting a new subsection 9A requiring a YOT to co-operate with the Board for the purpose of enabling the Board to assess the performance of the YOT in the exercise of its functions.
146. *Subsection (3)* introduces a new duty into s. 42 of the CDA 1998 to provide that local authorities and YOTs shall comply with any directions given to them by the Secretary of State in relation to the carrying out of their duties under sections 37 to 41 of the CDA 1998 (dealing with youth justice) and any other function in relation to the youth justice system or the provision of youth justice services. It also requires the YOT to have regard to any recommendations made to it by the Board. Subsection 3 also sets out that before the Secretary of State gives a direction to a Welsh YOT or Welsh local authority he will consult Welsh Ministers.
147. The subsection also amends section 42(3) of the CDA 1998 and replaces the existing power of the Secretary of State to give guidance to local authorities with a new power to give guidance which applies to a wider range of functions.

## **PART 2: FAMILY PROCEEDINGS**

#### **Clause 32: Restriction on publication of information relating to family proceedings**

148. Clause 32 provides for the proceedings which are to come within the new publication framework, and for the starting point that no information relating to such proceedings is to be published. There are three exceptions (authorised categories of information). These are authorised publications of relevant court orders or judgments or authorised news publications (both of which are covered in more detail in the clauses which follow); and information

authorised by rules of court (which will govern disclosure for various purposes much as is presently done by Part XI of the Family Proceedings Rules 1991, amended in April 2009).

149. *Subsection (1)* outlines which proceedings are covered. Family proceedings which the media, but not the general public, are entitled to attend will be included in the new framework.
150. *Subsection (2)* provides for the basic rule of no publication of information relating to proceedings within scope unless the publication comes within one of three authorised categories. It then sets out the three categories. Publication of information which is not within one of the authorised categories will be contempt of court (“publication” being defined in clause 42 to include all instances of written and spoken communication, whether between two individuals or for mass consumption by way of press, broadcast media or internet, consistent with existing caselaw). *Subsection (3)* provides a saving for the general inherent jurisdiction of the court to permit publication, which is intended to allow the courts to continue the existing practice of permitting limited disclosures of information for specific purposes on a flexible basis which may not be covered in rules.
151. *Subsection (5)* is a transitional provision which applies the new regime to proceedings which fall under the definition of family proceedings at the time of commencement but later cease to be family proceedings because of changes to the definitions in section 65 of the Magistrates’ Courts Act 1980 and section 32 of the Matrimonial and Family Proceedings Act 1984 (referred to in subsection (4)).
152. *Subsections (4) to (9)* flesh out the detail of what “relevant family proceedings” are. “Family proceedings” will mean the same as in existing legislation, but “relevant family proceedings”, to which the new reporting scheme will apply, will not include the types of proceedings listed in *subsection (6)*, which are already subject to a different reporting regime (so the scheme under the 1926 Act is left in place for proceedings it already covers). The Lord Chancellor may by order amend the definition of “relevant family proceedings”, for example to bring new sorts of proceedings into the new reporting framework.

**Clause 33: Authorised publication of court orders and judgments**

153. Clause 33 establishes what is an authorised publication of a relevant court order or judgment. These differ in their default position, as explained below.
154. *Subsection (1)* covers court orders, for which the default position is publication. Any publication of the text or a summary of the whole or a part of an order made in proceedings (other than adoption proceedings or parental order proceedings) which does not contain identification information (defined

in clause 42) relating to an individual involved in the proceedings is authorised, unless the court specifically directs otherwise. Thus, an order in relevant family proceedings other than adoption proceedings or parental order proceedings may be published provided it is anonymised or redacted so that no identification information relating to a person involved in the proceedings is included in the publication; but permission is required from the court to publish the identification information. Orders in adoption proceedings and parental order proceedings (defined in *subsection (5)*) may not be published unless the court expressly permits it and permission may be granted subject to conditions which the court may choose to impose (*subsection (4)* allows for the imposition of conditions).

155. *Subsection (2)* covers court judgments, for which the default position is non-publication. This (as with the similar position for orders in adoption or parental order proceedings) reflects the greater likelihood that the judgment will contain information which, if it were published, would carry a risk of harm to the welfare of a child or other person involved in proceedings. Any publication of the text or a summary of the whole or part of the judgment will be authorised only to the extent specifically directed by the court. Thus a judgment released for publication on the BAILII website, for example, will be publishable freely, while a judgment handed down with no other indication will not be publishable.
156. *Subsection (3)* allows for the court's powers to permit, prohibit or restrict publication of orders and judgments to be exercisable not only on application but also on the court's own initiative.

**Clause 34: Authorised news publications**

157. Clause 34 makes provision for authorised news publications. There are five qualifying conditions for a publication to be classified as an authorised news publication. These can be summarised as that publication has to be—

- a) of information gathered by an accredited news representative through attending the proceedings;
- b) by that representative, or with his consent or under a contract or similar arrangement, or taken from an existing authorised news publication;
- c) not of identification information or sensitive personal information, unless expressly permitted by the court;
- d) not of an order in adoption or parental order proceedings, or any judgment, unless expressly permitted by the court under clause 33;
- e) not of information which the court has ordered not to be published, or of an order which the court has ordered not to be published under clause 33.

158. Condition 1 (set out in *subsection (2)*) requires a news representative to be accredited. Clause 42 defines “accredited news representative” to mean a

representative of one or more news organisations who belongs to a class of representatives on which rules of court confer a right to attend the proceedings in question. The production of a UK Press Authority Card is set out in rule 10.28 of the Family Proceedings Rules 1991 as sufficient evidence of accreditation. Condition 1 also requires that the news representative acquired the information which is to be published by attending the proceedings. Attendance at family proceedings is governed by rules of court: the Family Proceedings Rules 1991 (rule 10.28) were amended in April 2009 to give the media, but not the public more generally, a right to attend most family proceedings subject to discretion of the court to exclude their attendance in specific circumstances.

159. Condition 2 (set out in *subsection (3)*) requires publication to be by the accredited news representative who acquired the information, or with that representative's consent or pursuant to a contract or other agreement with that representative (for example, a report submitted to a newspaper by a staff journalist). Publication is also allowed by a person who has obtained the information from an authorised news publication (allowing further reporting of articles already classified as an authorised news publication).
160. Condition 3 (set out in *subsection (4)*) requires that the information is not "identification information" or "sensitive personal information" or "restricted adoption information" or "restricted parental order information"; or that if it is, then either the court has specifically permitted publication of the information, or the information identifies a professional witness and has not otherwise been specifically restricted by the court. "Identification information" and "professional witness" are defined in clause 42, "sensitive personal information" in clause 42 and Schedule 3 and "restricted adoption information" and "restricted parental order information" in clause 36.
161. Condition 4 (set out in *subsection (5)*) in conjunction with Condition 5 (set out in *subsection (6)*), ensures that a publication of an order or judgment which would not qualify as an authorised publication within clause 33 cannot qualify as an authorised news publication either.
162. Condition 5 (set out in *subsection (6)*) requires that the publication has not been prohibited by the court, and that it does not breach any restriction imposed by the court, either under the power of the court given in this subsection or under clause 33(1)(b) in relation to an order
163. *Subsection (7)* allows for the Court's powers to permit, prohibit or restrict publication of information under this clause to be exercisable not only on application but also on the court's own initiative.

**Clause 35: Permitting publication for the purposes of section 34: general**

164. Clause 35 provides the conditions for the court to exercise its power to relax

the automatic restrictions on publication of identification information or sensitive personal information (permitting publication of restricted adoption or parental order information is subject to different conditions provided for in clause 36).

165. *Subsection (2)* requires the court to be satisfied of one or more of the matters listed in *subsection (3)* before it can permit the publication. The court is also required by *subsection (4)* to take account of any risk which publication would pose to the safety or welfare of any individual who is either involved in, referred to in or, more widely, connected with the proceedings. A person connected with the proceedings might be, for example, a relative of the child subject to care proceedings, who is not directly involved in the proceedings himself or herself but who frequently looks after the child.

**Clause 36: Permitting publication for the purposes of section 34: adoption etc**

166. Clause 36 provides the conditions for the court to exercise its power to relax the automatic restrictions on publication of “restricted adoption information” or “restricted parental order information”. This is information which would lead to the identification of any person as someone who is, or may be, an adopter or adopted person, or the equivalent for parental orders (as defined in subsection (9)). This includes information about the whereabouts of such a person.
167. *Subsection (4)* requires the court to be satisfied that the publication of any such information will not prejudice the welfare of the person subject to the adoption or parental order where that person is either a child, lacks the capacity to consent to the publication or cannot be found. It should be noted that the reference to “welfare” does not relate to the upbringing of the child, and there is no intention in using that general term to indicate that the welfare checklist in section 1 of the Children Act 1989 is to be imported as a test.
168. *Subsection (5)* provides that where subsection (4) does not apply the court may not permit publication except with the consent of the person subject to the adoption or parental order.
169. *Subsection (6)* requires the court to have regarded to whether any prospective or actual adopter of the child (or any parental order equivalent) has consented to the publication.
170. *Subsection (7)*, like clause 35(4), requires the court to take into account any risk which publication would pose to the safety or welfare of any individual who is either involved in or, more widely, connected with the proceedings.

**Clause 37: Prohibiting or restricting publication for purposes of section 34**

171. Clause 37 provides the conditions for the court to exercise its powers to

impose restrictions on publication of information relating to the proceedings.

172. *Subsection (2)* requires the court to be satisfied that there is a real risk that publication would prejudice any one or more of three types of interest: the *safety* of any person, the *welfare* of a *child* or vulnerable adult, or the interests of *justice* in the proceedings in question. “Welfare” has the meaning explained in relation to clause 36(4); and the reference to the interests of justice in the proceedings is intended to cover a wide range of matters, which might include undue impact on the privacy of a person involved in the proceedings.
173. *Subsection (3)* makes specific provision giving the court a power to restrict publication of information which would identify a professional witness. This information would otherwise be publishable in accordance with Condition 3 in clause 34. This power may be exercised if the court is satisfied that the information published would lead to the identification of another person involved in or otherwise connected with the proceedings (other than another professional witness), or that the information is sensitive personal information relating to the proceedings. The power may also be exercised if the professional witness is, has been or will be, involved in providing care or treatment for a child or other person involved in or connected with the proceedings, other than for the purpose of being a professional witness. The court may also restrict publication on the ground of risk to safety of the professional witness or his or her family, under subsection (2).

**Clause 38: Defences to contempt of court**

174. Clause 38 provides for defences available when information relating to proceedings has been published but is either automatically restricted or restricted by order of the court. Accredited media representatives and publishers will be required to have made every possible effort to identify information as restricted prior to publication in order to be able to use any defence. Ignorance of the legislation will not be a defence.
175. There are three defences, all based on ignorance of the nature of the information. In *subsection (2)*, the defence is that the person did not know, and had no reason to suspect, that the information was information relating to the proceedings. In *subsection (3)*, the defence is that person obtained the information from a previous publication and did not know and had no reason to suspect that the previous publication was not an authorised news publication (for example, if it turned out that the previous publication involved information not all of which was obtained by an accredited news representative attending the proceedings in accordance with condition 1 in clause 34, and the later publisher had no reason to suspect this). In *subsection (4)*, the defence is that, in a case where all other conditions for a publication to be an authorised publication were met, except condition 3, the person did not know and had no reason to suspect that the information was identification

information, sensitive personal information, restricted adoption information or restricted parental order information. (Condition 3 is defined above under clause 34). The defence in subsection (4) would not be available to a person publishing in breach of a specific restriction imposed by the court.

**Clause 39: Appeals against decisions under Section 33 or 34**

176. Clause 39 ensures that provision will be made in rules of court, so far as is necessary, to provide for a system of appeals against decisions to permit or refuse publication.

**Clause 40: Power to alter treatment of sensitive personal information**

177. This clause introduces Schedule 2, which provides for amendments designed to change the way in which sensitive personal information is treated under the new reporting regime, from being a category of information which may not be published unless the court gives permission, to being information which, together with other information which is not identification information, may be published unless the court prohibits or restricts publication. These “Part 2 amending provisions” (as they are referred to in *subsection (2)*) include changes in the test which is to apply where the court is considering whether to restrict or prohibit the publication of information in clause 37(2), to reflect the fact that information which is more sensitive will be more frequently in issue.

178. The Part 2 amending provisions will have effect only when commenced. *Subsections (3) to (6)* provide for preconditions for the exercise of the power to make an order commencing those provisions, to reflect the fact that the move in sensitive personal information from the starting version of the Act to the amended version is a significant one. The Lord Chancellor must first allow for a period of 18 months to elapse from commencement of clause 32 (for any purposes, so that if it is commenced in relation to certain kinds of court, for example, that will start the time period running), and can then (and only then) arrange for a review of the operation of the reporting regime. The review must be carried out not by the Lord Chancellor, but by an independent person appointed by the Lord Chancellor; and the independent person must carry out public consultation as part of the review. A report setting out the conclusions of the review must then be laid before Parliament. Only when all three preconditions (18 month period, review by independent person, laying of report) have been fulfilled may the Lord Chancellor make the commencement order bringing the Part 2 amending provisions into force; and the commencement order itself is subject to affirmative resolution procedure. The Lord Chancellor does not have to commission a review or lay a report before Parliament; but may not commence the Part 2 amending provisions without having done so.

**Clause 41: Independent review**

179. The Part 2 amending provisions will have effect only when commenced. *Subsections (1) and (2)* of clause 41 provide preconditions for the exercise of the power to make an order commencing those provisions, to reflect the fact that the Part 2 amending provisions make significant alterations to Part 2 of the Bill. Not only must the Lord Chancellor first (as with the precondition in subsection (4) of clause 40) allow for a period of 18 months to elapse from commencement of clause 32, but also a full review of the findings from the pilot scheme for publication of judgments in family proceedings must have been completed. Only when both conditions have been fulfilled may the Lord Chancellor commission an independent review and evaluation of the operation of the reporting regime.
180. This independent review and evaluation must include an evaluation of Part 2 of the Act and the impact of the changes to rules governing media attendance at family proceedings made in April 2009. A report setting out the conclusions of the review must then be laid before Parliament. Only when all three preconditions (18 month period, independent review, laying of report) have been fulfilled may the Lord Chancellor make the commencement order bringing the Part 2 amending provisions into force; and the commencement order itself is subject to affirmative resolution procedure by virtue of clause 40(6). The Lord Chancellor does not have to commission a review or lay a report before Parliament; but may not commence the Part 2 amending provisions without having done so.

**Clause 42: Interpretation of Part 2, etc**

181. Clause 42 defines various terms used in the preceding clauses. *Subsection (1)* defines specific terms; *subsection (2)* supplements the definition of “identification information” by listing matters, particulars of which will be identification information in relation to an individual if they are likely to lead members of the public to identify the individual; *subsection (3)* explains the meaning of “involved in the proceedings”, and *subsection (4)* empowers the Lord Chancellor to amend subsection (1) to change the definition of professional witness and the list of sensitive personal information set out in schedule 3, by statutory instrument subject to affirmative resolution procedure (see *subsection (6)*).
182. The definition of “identification information” refers to “someone who is or has been involved in or otherwise connected with the proceedings”. This reference to “has been” confers indefinite anonymity on those who have been involved in, referred to in or otherwise connected with the proceedings (with the exception of professional witnesses, as defined in clause 42).
183. Subsection (7) provides for courts to retain their existing powers, other than

under these clauses, to prevent or restrict the publication of information in relevant family proceedings. These may relate to different sorts of confidential information, for example.

184. *Subsection (8)* is a transitional provision which applies the new regime to proceedings commenced or still active after the legislation comes into force but leaving the existing law to apply to proceedings which were concluded before the commencement of the legislation.

### **PART 3: MISCELLANEOUS AND FINAL PROVISIONS**

#### **Clause 43: Amendments of provisions about complaints in ASCLA 2009**

185. This clause makes further amendments to the parent and pupil complaints system in Chapter 2 of Part 10 of ASCLA 2009. *Subsection (2)* amends the existing s. 207(5) of that Act, to insert the word "*frivolous*" to enable a Local Commissioner to reject a complaint on the basis that it is frivolous as well as on the basis already provided for in ASCLA that it is vexatious, because it lacks merit or does not justify investigation. *Subsection (3)* extends the absolute privilege against liability in defamation afforded to governing bodies of maintained schools in relation to their communications with a Local Commissioner, to head teachers of those schools as well.

#### **Clause 44: Fees for pre-registration inspections of independent educational institutions**

186. This clause amends section 111 of the Education and Skills Act 2008 to enable regulations to require the proprietor of an independent educational institution to pay a fee for an inspection carried out for the purposes of determining the institution's readiness for registration. (Such an inspection will be carried out under section 99 of that Act.) Academies, CTCs and CCTAs are not required to pay inspection fees.

#### **Clause 45: Interpretation of Act**

187. This clause provides definitions of terms used in the Bill.

#### **Clause 46: Amendments and repeals**

188. This clause gives effect to Schedules 4 and 5 which contains minor amendments to other Acts and repeals.

#### **Clause 48 Transitional provision**

189. Clause 48 makes provision for any reference in the Bill to a "local authority" to be construed as a reference to a "local education authority" until an order under section 162(1) EIA 2006 has been made and laid. An Order under section 162(1) will amend all statutory references to "local education authority" to "local authority".

## **TERRITORIAL EXTENT AND APPLICATION**

190. With one exception, the Bill extends to England and Wales only, though much of the Bill applies only in England. A technical amendment is made to the law of Northern Ireland as a result of other changes made by Part 2 of the Bill, but the effect of the amendment is simply to maintain the current position for Northern Ireland.
191. The Bill does not extend to Scotland.

### **Territorial Application: Wales**

192. Part 1 includes provisions at introduction that are within the legislative competence of the National Assembly for Wales. Clause 20 expands the existing powers of the Welsh Ministers to require information to be supplied in respect of schools, and confers a new power on the Welsh Ministers to make regulations requiring information to be supplied about education provided under section 19 of the EA 1996 (alternative provision). Clause 29 provides for a LSCB in Wales to be able to require a person or body to supply information to it. Legislative consent from the National Assembly for Wales is therefore required and has been sought.
193. The Part also makes an amendment to the Government of Wales Act 2006, conferring power on the National Assembly for Wales to make provision about the regulation of home education, and the inspection of services provided by local authorities for persons involved in providing home education.
194. Clause 50(3) provides that clause 29 comes into force on whatever day the Welsh Ministers appoint by order.

## **FINANCIAL EFFECTS AND EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER**

195. A number of the provisions in this Bill would have an impact on manpower in Government Departments and agencies:
196. SEND Appeals – in circumstances where, following a review of a child's statement of special educational needs, a local authority decides not to amend the statement, parents would have a new right of appeal to the First-tier Tribunal (Special Educational Needs and Disability). This may lead to a moderate increase in the number of First-tier Tribunal appeals, and to a very small manpower demand on the Tribunal Service and the Legal Services Commission, though not likely to lead to an increase in local authority staff.

Increased costs, however, are likely to be offset by improvements in the way statements are written and better conversations between parents and local authorities as a result of ongoing departmental policies to improve SEND. The overall effect is expected to be cost neutral. The anticipated financial impact is set out in more detail in the Impact Assessment.

197. Licence to Practise – the introduction of a licensing system for teachers would result in increased administration for the General Teaching Council for England (“GTCE”) who will be operating the system. The overall costs of the policy will be met from within existing budgets through re-prioritising/making savings in other areas.
198. Family Courts – The press reporting family cases would have an impact on court staff who may be required to prepare the documents which the media would be allowed to see should an application be made and accepted. There may also be other associated tasks that court ushers and staff may need to carry out as a result of the proposed changes, such as listing possibly more direction hearings and preparing documentation for judges in more cases than currently is the case. Any additional cost of these provisions would be met from within existing budgets.
199. There are also provisions in this Bill which will impact on manpower within local authorities:
200. Home Education – new arrangements from April 2011 for registering and monitoring all children who are home-educated will require additional local authority professional and administrative officer time to carry out functions relating to the establishment and maintenance of the home education register; to carry out monitoring visits; and to deal with reviews and appeals. At present, local authorities are aware of around 20,000 home educated children. Although practice varies widely between local authorities, in most cases, some monitoring is already being carried out. It is estimated that the real number of home-educated children is between 25,000 and 30,000. Any additional burdens for local authorities will be funded. The Impact Assessment shows that this policy is likely to have a net financial benefit to the economy.
201. Parental satisfaction surveys – introducing a requirement on local authorities to survey the views of parents about local school provision may increase staffing requirements within local authorities, as detailed in the full impact assessment. Many local authorities already invite parental views as a matter of good practice to inform their strategic planning of high quality school places and to realise efficiencies. One of the purposes of trialling the duty in autumn 2009 is to get a better understanding of its resource implications. Subject to the outcomes of the trial, when fully operational, the Government currently estimates the total steady state cost to local authorities could be in the region

*These notes refer to the Children, Schools and Families Bill  
as brought from the House of Commons on 24 February 2010 [HL Bill 36]*

of £1.2 million annually. Any additional burdens on local authorities will be funded by DCSF.

202. Pupil and Parent Guarantees – the redress mechanism that pupils and parents will be able to access if they are denied anything that they are entitled to expect by virtue of the Guarantees will be operated by the Local Government Ombudsman (LGO). It is anticipated that this will result in an increase in complaints to the LGO, and it is likely that more manpower will be needed to respond to those complaints. DCSF will agree the level of additional capacity needed with the LGO and provide the funding to deliver this.

### **SUMMARY OF THE IMPACT ASSESSMENT**

203. The Bill is accompanied by a full impact assessment which is available through the Vote Office, in the House Libraries and on <http://www.dcsf.gov.uk/childrenschoolsandfamiliesbill>
204. This assessment provides an overview of the whole Bill and then analyses the separate provisions. In some cases there are no extra or specific costs. In other cases it has not been possible to monetise the benefits of the individual interventions, programmes or legislative changes proposed as they contribute to improving outcomes for children and young people but not in a way that can be measured in financial terms. In all, however, as the impact assessment demonstrates, the benefits outweigh the costs.

### **COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

205. 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 Convention rights (as defined by section 1 of that Act).
206. Having considered the possible implications, the Parliamentary Under-Secretary of State for Children, Young People and Families has made a statement saying that in her view the provisions of the Children, Schools and Families Bill are compatible with the Convention rights. There are some areas where it would be helpful to provide further comments for clarification, as follows.

#### **Clauses 4 and 5: Home-school agreements**

207. The Government has considered whether the requirement on the head teacher contained in these clauses to secure that parents sign home-school agreements, engages the Article 8 rights of the parents. It is satisfied, however, that as there

can be no direct consequence for parents who do not sign, this Article is not engaged. Parenting orders under the CDA 1998 may engage Article 8 to the extent that they can require parents to attend residential courses. However, a court can only require such attendance to the extent that it is satisfied that any infringement of a parent's right to family life under Article 8 which results is proportionate; and the Government considers that any infringement will be justified as necessary in a democratic society, and for the protection of others and proportionate to the aim pursued. The parenting order regime has been held by the courts to be compliant with Article 8 and although the provisions of clauses 4 and 5 add a requirement for a Magistrates' Court considering whether to make such an order to take into account any failure of a parent to discharge their responsibilities under a home-school agreement, it makes no substantive change to the parenting order regime.

208. To the extent that a parenting contract (which is voluntary) may lead to an application for a parenting order, similar considerations may apply to a parenting contract. Likewise, however, the Government considers that this too would be compliant with the Convention Rights for the same reasons.

**Clauses 11 to 14 Personal, Social, Health and Economic (PSHE) education**

209. These clauses provide for the introduction of PSHE into key stage 3 and 4 as part of the compulsory National Curriculum in both maintained schools and Academies, CTCs and CCTAs. PSHE will include what is presently "sex education" and will subsequently be "sex and relationships education" and the current parental right of withdrawal from sex education in section 405 of the EA 1996 will apply to it. Parents will not have, and do not currently have, a right to withdraw their children from teaching about biological reproduction as part of the science curriculum. The Government has considered the extent to which the parental right of withdrawal engages the rights of parents under Article 2 of the First Protocol to the ECHR; and the rights of children under the same Article and under Article 8. The Government considers that all of these rights are potentially engaged at various stages of a child's education and that it is necessary to balance these rights appropriately. The Government considers that a right of withdrawal for parents up to the point at which a child attains the age of 15 properly satisfies a parental right pursuant to Article 2 of the First Protocol to have their child educated in accordance with their religious and philosophical convictions without infringing the rights of more mature children under Article 2 of the First Protocol to access this curriculum, and to have access to important health-related information.
210. The Government considers that providing access to this information at the very least in the last year of compulsory education ensures that a child's Article 8 right to a private life is not infringed, and properly reflects Article 12 of the UN Convention on the Rights of the Child to ensure that a child can express their own views and have them given due weight. It also reflects the accepted principle that parental rights dwindle as a child matures. The

Government considers that it is acceptable and consistent with human rights principles to limit the parental right of withdrawal by reference to a child's age.

**Clauses 23 to 25 Licensing of teachers**

211. The Government does not consider that the establishment of a licensing scheme itself engages any of the Convention rights. The Government has considered, however, whether a refusal of a licence or a refusal to renew a licence might engage Article 6 or Article 1 of the First Protocol to the ECHR.
212. The effect of a decision to refuse, refuse to renew, or to withdraw a licence to teach is intended (in regulations to be made under the clauses) to be that the teacher would not be able to teach unsupervised in maintained schools or Academies, or non-maintained special schools. Further, clause 23(1) inserts a new section 4C into the Teaching and Higher Education Act 1998 which will require the Secretary of State to make regulations providing for an independent appeal for teachers to a committee of the GTC. The Government considers that this is sufficient to satisfy the requirements of Article 6, but in any event, the decision of any GTC appeal panel would be open to judicial review in appropriate circumstances.
213. The loss of a licence to practise does not lead to the loss of a teacher's professional status, and they can continue to teach under supervision (or at independent schools). It does not lead to the loss of any present legal entitlement or economic rights beyond an ability to hold a certain form of employment in future. On that basis, the Government does not consider that Article 1 of the First Protocol is engaged as the licence cannot amount to a possession within the meaning of that Article.

**Clause 26: Home education: England**

214. As noted in paragraph 113 above, the law does not presently require education at home to be regulated. The Government considers that sections 19A to 19I of the EA 1996 inserted by Schedule 1 will engage Article 2 of the First Protocol and Article 8, but that the way the registration scheme will be operated in practice will ensure that it is compatible with them. The scheme pursues a legitimate aim to ensure that home-educated children receive a suitable education and are safe and well.
215. There is no absolute right for parents to educate their children at home, and the State may prevent home education if this would be contrary to a child's wider educational interests or welfare. Requiring a child to be educated in a school in these circumstances may engage Article 2 of the First Protocol, but there is no infringement since the rights of parents are not absolute and cannot take precedence over those of their children.
216. A requirement to register and for home education to be monitored will clearly

engage the Article 8 rights of both parents and children but the Government considers that any interference with this right which results will be necessary and proportionate and pursue the legitimate aim of protecting the health of the child and the rights of others. Likewise, the limited sharing of information between local authorities which may also occur will also engage the Article 8 rights of parents and children, but will again be justifiable on the same basis.

217. A refusal or revocation of registration will also engage Article 8, but again the Government considers that any interference will be justified and proportionate. Regulations made under the new sections will specify matters to which the local authority should or should not have regard in making decisions to refuse or revoke registration. And revocation of registration may take place only if an authority is satisfied of one of the specific matters listed in new section 19F of the EA 1996.
218. The Government considers that a refusal of registration to a parent will not engage Article 6 as a parent's rights under Article 2 of the First Protocol do not amount to a civil right within the meaning of Article 6. In any event there will be a right for parents to appeal against the refusal of registration to an independent panel set up for this purpose. Parents would also have the right to seek judicial review of any refusal of registration by the local authority and a right of complaint to the local government ombudsman.

**Clauses 28 and 29: Supply of information requested by LSCBs in England and Wales**

219. The Government and Welsh Ministers have considered whether the new power of an LSCB to require a person or body to supply information to it, for the purpose of enabling or assisting it to perform its functions, engages the Article 8 rights of those whom it concerns. Although much of the information likely to be requested by an LSCB is likely to be anonymised and aggregated data, the Government and Welsh Ministers accept that to the extent that the information relates to an individual, Article 8 is engaged. However, the Government and Welsh Ministers are satisfied that any interference with Article 8 rights of individuals resulting from these powers is justifiable. The functions most likely to necessitate the disclosure of information relating to an individual are those relating to serious case reviews, and child deaths, where learning lessons and identifying areas of concern are intended to protect the rights and freedoms of others. Guidance issued to LSCBs will, also, emphasise the need to comply with Article 8.

**Clause 30: Review by Chief Inspector of performance of LSCBs in England**

220. The new section inserted into the CA 2004 by this clause permits the Secretary of State to make regulations providing for the Chief Inspector to review LSCBs' performance of specified functions. It also permits the regulations to require information to be shared with the Chief Inspector for the purposes of a review. To the extent that information about individuals is disclosed to the

Chief Inspector in pursuance of such a power, Article 8 may be engaged- but the Government is satisfied that any interference which may occur is justifiable. The purpose of any review is likely to be connected to serious case reviews, and child deaths where learning lessons and identifying areas of concern are intended to protect the rights and freedoms of others.

**Clause 31 Supervision of Youth Offending Teams etc**

221. The duty to cooperate with the Board imposed on YOTs by this clause, may include an obligation to share information with the Board. It is highly unlikely that information identifying an individual will be shared but where this is the case, Article 8 may be engaged. On the assumption that it is, the Government considers that any interference with that right can be justified and will be proportionate. The proposals pursue a legitimate aim as the information will only be shared for the purpose of assessment and making recommendations about the performance of YOTs in the carrying out of their statutory functions. This will contribute to the prevention of crime and disorder, and the protection of childrens' health and morals. The Board itself will be required to act in a way compatible with the convention rights, in any event.

222. It is conceivable that the power to direct a local authority in relation to the youth justice system contained in clause 31(3) might result in the termination of a contract between the local authority and a third party. To this extent, the rights of that third party under Article 1 of the First Protocol might be engaged. To the extent that they might be, however, any interference would be justified as pursuing the legitimate interest of the proper functioning of the youth justice system, with the aim of preventing crime and disorder and protection of childrens' health and morals. Furthermore, any contract so terminated would be likely to provide a remedy for the contractor for early termination and even if it did not, the local authority would be required to secure the rights of the contractor under Article 1 of the First Protocol in any event and ensure any burden on the contractor was not excessive.

**Clauses 32-42 Family Proceedings: attendance and reporting**

223. The clauses relating to attendance of the media at and increased reporting of family proceedings engage Articles 6, 8 and 10 ECHR. At present, the balance between Article 8 and 10 rights is very heavily in favour of the former: the reporting framework is heavily restricted and Article 8 protection of parties and witnesses is paramount. The aim of the Government in the present clauses is to rebalance the competing rights somewhat without compromising the Article 8 rights of those parties and witnesses which need protection.

224. The Bill's provisions will permit reporting by accredited media representatives of information relating to proceedings which they have attended acquired and acquired through attendance, subject to restrictions relating to information which identifies, or could lead to the identification of, individuals. They will also restrict disclosure of sensitive personal information, such as medical

reports, or details of medical treatment. This information can only be reported with the permission of the court. All other information obtained will be publishable, unless the court considers that there is an identifiable risk of harm to a child's or vulnerable adult's welfare or a person's safety, or possible prejudice to the interests of justice, and prohibits or places restrictions on publication.

225. The Government considers that these clauses will ensure that where there is most risk to parties or witnesses from disclosure, their Article 8 rights will be protected by continued, automatic restrictions on reporting. In other cases, possible infringements of Article 8 will be addressed on a case by case basis. This will allow much greater reporting and scrutiny of the substance of cases than is now the case, and will better reflect the needs of Article 6 and 10.
226. The Government is satisfied that the increased weight given to Articles 6 and 10 by these clauses is compliant with the Convention. Public scrutiny of and confidence in the operation of the courts is a vital consideration which should be given great weight. The Government is satisfied however, that the policy represented by these clauses of allowing the reporting of the substance of the case but preventing identification of persons, particularly children, concerned in proceedings, for life, continues to suitably reflect the Article 8 rights of key individuals.

## **COMMENCEMENT**

227. Commencement of the provisions in this Bill will be by order of the Secretary of State, with the following exceptions.
228. Clause 27 (the Welsh Assembly measure-making power) and clause 44 (fees for pre-registration inspections of independent schools) will commence two months after Royal Assent.
229. Clause 29 (supply of information requested by LSCBs in Wales) will come into force on a date appointed by the Welsh Ministers by order.
230. Commencement of Part 2 of the Bill and Part 2 of Schedules 4 and 5 will be by order of the Lord Chancellor.
231. Clauses 45 and 47 to 51 come into force on the day in which the Bill receives Royal Assent.

*These notes refer to the Children, Schools and Families Bill  
as brought from the House of Commons on 24 February 2010 [HL Bill 36]*

## **GLOSSARY OF TERMS AND ABBREVIATIONS**

ASBA 2003	The Anti-social Behaviour Act 2003
ASCLA 2009	The Apprenticeships, Skills, Children and Learning Act 2009
BAILII	British and Irish Legal Information Institute.
CA 2004	The Children Act 2004
CCTA	City College for the Technology of the Arts
CDA 1998	The Crime and Disorder Act 1998
Chief Inspector	Her Majesty's Chief Inspector of Education, Children's Services and Skills
CTC	City Technology College
DCSF	Department for Children, Schools and Families
EA 1996	The Education Act 1996
EA 2002	The Education Act 2002
ECHR	European Convention on Human Rights
EIA 2006	The Education and Inspections Act 2006
GTC	The General Teaching Council for England
LGO	Local Government Ombudsman
LSCB	Local Safeguarding Children Board
PSHE	Personal, Social, Health and Economic education
QCDA	The Qualifications and Curriculum Development Agency
SIPs	School Improvement Partners

*These notes refer to the Children, Schools and Families Bill  
as brought from the House of Commons on 24 February 2010 [HL Bill 36]*

SSFA 1998	The School Standards and Framework Act 1998
YOT	Youth Offending Team

# CHILDREN, SCHOOLS AND FAMILIES BILL

## EXPLANATORY NOTES

*These notes refer to the Children, Schools and Families Bill  
as brought from the House of Commons on 24th February 2010  
[HL Bill 36]*

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*Ordered to be Printed,  
24th February 2010*

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LONDON: THE STATIONERY OFFICE

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The Stationery Office Limited

£x.00