

*These notes refer to the Apprenticeships, Skills, Children and Learning Bill
as introduced in the House of Commons on 4 February 2009 [Bill 55]*

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Apprenticeships, Skills, Children and Learning Bill introduced in the House of Commons on 4 February 2009. They have been prepared by the Department for Children, Schools and Families (DCSF) and the Department for Innovation, Universities and Skills (DIUS) 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 both DCSF and DIUS.

4. The Bill incorporates proposals previously published in July 2008 as the *Draft Apprenticeships Bill*. The *Draft Apprenticeships Bill* was the subject of pre-legislative scrutiny by the Innovation, Universities, Science and Skills Select Committee and the Children, Schools and Families Select Committee, whose reports are available on the Parliament website (www.parliament.uk).

5. A key element of the Bill is the continued reform of 14 to 19 education and training. This builds on the Education and Skills Act 2008, which raised the age of participation in education or training to 18 for all young people from 2015. In line with proposals originally included in the March 2008 White Paper *Raising Expectations: Enabling the system to deliver*, the Bill will put in place the underpinning legislation required to deliver this policy.

6. The Bill will transfer responsibility for funding education and training for young people over compulsory school age but under 19 from the Learning and Skills Council to local education authorities. Local education authorities will also take on responsibility for the education of young people in custodial establishments, and for the education and training of certain learners with learning difficulties or disabilities up to the age of 25.

7. The Bill will also establish the Office of Qualifications and Examinations Regulation (Ofqual) as a new independent regulator of qualifications and assessments, while the Qualifications and Curriculum Authority (the QCA) will continue to exercise its non-regulatory role under the new name of the Qualifications and Curriculum Development Agency (the QCDA).

8. The Bill will create the Young People's Learning Agency for England (YPLA), which will support local education authorities in their new role. It will also create the office of Chief Executive of Skills Funding. The holder of this office will head the Skills Funding Agency (SFA), which will be established by administrative means. The Chief Executive of Skills Funding will be responsible for establishing and leading a new, demand-led system of skills provision for adults.

9. Further background is included on these and the other elements of the Bill in the "Overview of the Structure" section.

10. A glossary of terms and abbreviations used in these Explanatory Notes is provided at the end of these Notes.

Local education authority

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

12. In line with government policy to improve outcomes for children by promoting greater cooperation between agencies delivering children's services, and the introduction of the post of director of children's services and lead member for

children's services in the Children Act 2004, local authority children's services (mainly education and children's social services) are being integrated. To reflect this it is now government policy that the terms "local education authority" and "children's services authority" should no longer be used. To make this fully effective requires an equivalent change in the terminology used in legislation.

13. Education legislation, however, uses the term "local education authority" and, as the Bill both amends and builds on a number of Education Acts, it has been necessary to continue to use the term local education authority in the Bill. It is therefore used throughout these Notes (and, where appropriate, is abbreviated to LEA). But in due course an order made under section 162 of the Education and Inspections Act 2006 will convert references in legislation to "local education authority" (and references in legislation to "children's services authority") to references to "local authority".

OVERVIEW OF THE STRUCTURE

Part 1: Apprenticeships, Study and Training

14. This Part makes provision about apprenticeships, including provision about the issue of apprenticeship certificates, and for the issue of apprenticeship frameworks. It also obliges schools, when advising pupils on careers, to consider whether it would be in the best interests of pupils to receive advice relating to apprenticeships.

Part 2: Local Education Authority (LEA) Functions

15. This Part sets out the new duties LEAs will have to provide education and training for those who are over compulsory school age but under 19 and for those aged 19 or over but under 25 who have had a learning difficulty assessment. It also places obligations on LEAs in respect of the transport to be provided to those groups.

16. In respect of individuals in young offender institutions (YOIs), it places an obligation on the LEA in whose area an individual normally lives to promote the individual's education, and an obligation on the LEA in whose area the individual is in custody to provide suitable education.

Part 3: The Young People's Learning Agency for England

17. Part 3 establishes the Young People's Learning Agency for England (YPLA) and sets out its core functions. The YPLA will support and enable local education authorities to carry out their new duties.

Part 4: The Chief Executive of Skills Funding

18. This Part creates the office of Chief Executive of Skills Funding. The Chief Executive, with his or her staff, will constitute the Skills Funding Agency and will take on responsibility for funding post-19 education and training. All the necessary functions will be conferred on the Chief Executive. Many of the duties relate to responsibilities to ensure there are appropriate and sufficient numbers of apprenticeship places available.

Part 5: Parts 2 to 4 Supplementary

19. Part 5 puts in place arrangements to ensure that the various bodies involved in providing education and training for those aged 16 and above may appropriately share information that is needed to carry out their functions. It also abolishes the Learning and Skills Council and makes consequential provision.

Part 6: The sixth form college sector

20. Part 6 gives sixth form colleges a distinct legal identity within the further education sector.

Part 7: Office of Qualifications and Examinations Regulation

21. Part 7 establishes Ofqual, which has existed in interim form as a committee of the QCA since April 2008, and sets out its functions. Specifically it sets out the mechanics for how Ofqual will regulate awarding bodies and the qualifications they award or authenticate, and the regulation of assessment arrangements for the National Curriculum (NC) and those for the Early Years Foundation Stage (EYFS).

Part 8: Qualifications and Curriculum Development Agency

22. The Bill repeals the existing legislation which established and conferred functions on the QCA. The body will continue in existence under the Bill under the new name of the Qualifications and Curriculum Development Agency. The principal difference will be that it will no longer exercise any regulatory functions (responsibility for these will in future lie with Ofqual).

Part 9: Children's Services

23. This Part establishes Children's Trust Boards and provides for them to take over from local authorities responsibility for preparing a children and young people's plan.

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24. It also defines children's centres in legislation and requires local authorities to arrange for sufficient numbers of children's centres in their area to meet local need, as well as making further provision for the inspection of children's centres.

Part 10: Schools

25. Chapter 1 will amend the current intervention powers which local education authorities and the Secretary of State have in respect of schools which are causing concern. It will also give local education authorities and the Secretary of State specific powers to intervene to ensure schools comply with the School Teachers' Pay and Conditions Document.

26. Chapter 2 will streamline the process by which parents can make complaints about schools, transferring responsibility to hear complaints from the Secretary of State to the Local Government Ombudsman.

27. Chapter 3 will enable the Chief Inspector of Education and Children's Services (Ofsted) to publish an interim statement on schools between inspections.

28. Chapter 4 will establish the School Support Staff Negotiating Body (SSSNB) as a statutory body and give the Secretary of State powers to ratify agreements reached by the SSSNB on school support staff pay and conditions and to make orders that will determine how those ratified agreements will be given effect to in schools.

Part 11: Learners

29. This Part will extend the power that teachers and staff in schools and further education (FE) institutions currently have to search pupils (or students in the case of FE institutions) for weapons, so that it also covers illegal drugs, alcohol and stolen items.

30. It will also require schools and FE institutions to report to parents significant incidents where force is used on pupils and students aged 19 or under.

31. It will also require schools to enter into partnerships with each other for the purpose of improving behaviour and attendance.

Part 12: Miscellaneous

32. This Part will make amendments to change the way in which local education authorities provide information about expenditure on schools, allow for data necessary to support the "Raising the Participation Age" policy to flow to LEAs and will make changes which would mean that recipients of student loans would not reduce their liability to repay these if they entered into Individual Voluntary Arrangements. It will also allow FE institutions in Wales to be authorised to award Foundation Degrees.

TERRITORIAL EXTENT AND APPLICATION

33. Most of the provisions contained in the Bill extend to England and Wales only, with a small number of provisions extending more widely. These are shown in the table at Annex A.

Territorial application: Scotland

34. At introduction the Bill contains provisions that trigger the Sewel Convention. The provisions are those re-stating powers conferred by sections 11 and 12 of the Further Education and Training Act 2007. Those sections currently enable the Learning and Skills Council to make arrangements to provide services to the Scottish Executive. These powers will be replicated for both the Chief Executive of Skills Funding and the Young People's Learning Agency for England, in clauses 65, 66, 103 and 104. The Sewel Convention provides that the UK Parliament will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

35. In addition, clause 39 – which cover the right to request time to train – will apply in Scotland. As this clause amends legislation which relates to the reserved matter of employment rights and duties, it does not trigger the Sewel Convention.

Territorial application: Wales

36. The Bill confers a number of new or expanded powers on the Welsh Ministers, in line with changes being made to certain powers of the Secretary of State in relation to England. In addition, the Bill makes two changes which are specific to Wales:

- a measure to enable institutions within the further education sector in Wales to apply to the Privy Council for the power to grant foundation degrees;
- an amendment to section 29 of the Education Act 2002 to require all schools in Wales to adopt a complaints procedure established by regulations made by Welsh Ministers.

Territorial application: Northern Ireland

37. At introduction the Bill contains provisions that require a legislative consent motion with regard to Northern Ireland. Clause 127 gives Ofqual a role in regulating certain vocational qualifications in Northern Ireland. By convention, Westminster will not normally legislate with regard to devolved matters in Northern Ireland without the consent of the Northern Ireland Assembly. If there are amendments relating to such matters which trigger the Convention, the consent of the Assembly will be sought for them.

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38. In addition, the Bill re-states powers conferred by section 13 of the Further Education and Training Act 2007, which currently enables the Learning and Skills Council to make arrangements to provide services to the Northern Irish Executive. These powers will be replicated for both the Chief Executive of Skills Funding and the Young People's Learning Agency for England, in clauses 65, 67, 103 and 105. A legislative consent motion is not, however, required for this matter.

COMMENTARY ON CLAUSES

PART 1: APPRENTICESHIPS, STUDY AND TRAINING

Chapter 1: Apprenticeships

Apprenticeship certificates: England

39. Clauses 1 to 4 make provision about apprenticeship certificates, and specify when an apprenticeship certificate must, or may, be issued to a person.

Clause 1: Duty to issue apprenticeship certificates: England

40. *Subsection (1)* requires the English certifying authority (see explanation of clause 4 which explains who the Government intends will carry out this function) to issue an apprenticeship certificate to a person who applies to it as described in that subsection and who satisfies the conditions in *subsection (3)*, or any conditions prescribed under *subsection (5)*. The conditions in *subsection (3)* are that the person has been a party to an English apprenticeship agreement (see clauses 30 to 34) and at the date that the agreement was entered into, it related to a recognised English apprenticeship framework. In addition, the certifying authority must be satisfied that while working under the English apprenticeship agreement the applicant completed a course of training for the principal qualification identified by the framework, and that the applicant has met all the other requirements specified for the award of a certificate.

41. The effect of *subsection (4)* is that a person can be party to a succession of apprenticeship agreements relating to the same framework while working towards the principal qualification specified in the framework and/or can take two or more courses of training towards the principal qualification without losing the entitlement to an apprenticeship certificate.

42. The effect of *subsections (5) and (6)* is to enable regulations to provide for circumstances where a person has not entered into an apprenticeship agreement but is working under alternative working arrangements. The power to make regulations might be exercised, for instance, give a self-employed person or someone working as

an unwaged volunteer an entitlement to an apprenticeship certificate, provided they had met all the other requirements specified for the award of a certificate.

Clause 2: Power to issue apprenticeship certificates: England

43. This clause gives discretion to the English certifying authority to issue a certificate to a person who applies to it who is not within clause 1. The Government's intention is that in most cases a certificate should not be issued to a person who has never entered into an apprenticeship agreement. This clause makes it possible for a certificate to be issued in exceptional circumstances where the English certifying authority considers that a person should be issued with a certificate even if they have not entered into an apprenticeship agreement. For example, this clause would permit the issuing of a certificate where persons have not entered into an apprenticeship agreement or where they have done the training for the principal qualification before entering into an apprenticeship agreement.

Clause 3: Issue of certificates by the English certifying authority: supplementary

44. *Subsection (1)* makes provision for English certifying authority to charge a fee for issuing an apprenticeship certificate where authorised to do so by the Secretary of State in accordance with the regulations. *Subsection (2)* allows the Secretary of State to make regulations to enable the English certifying authority to supply duplicate certificates, and *subsection (3)* specifies that these regulations may also include provision for the English certifying authority to charge a fee for that service.

Clause 4: The English certifying authority

45. *Subsection (1)* enables the Secretary of State to designate a person to act as the English certifying authority for apprenticeship certificates. *Subsection (2)* requires a person authorised under subsection (1) to comply with directions and to have regard to guidance from the Secretary of State about the issue of certificates. The Government's intention is that the Chief Executive of Skills Funding will be designated by the Secretary of State to exercise this and other apprenticeship functions and that the Chief Executive of Skills Funding will delegate this responsibility to the Chief Executive of the National Apprenticeship Service (see Notes to Clause 79), who will act as the certifying authority in England, and who may sub-delegate this function to sub-contractors.

Clause 5: Duty to issue apprenticeship certificates: Wales, Clause 6: Power to issue apprenticeship certificates: Wales, Clause 7: Issue of certificates by the Welsh certifying authority: supplementary, Clause 8: The Welsh certifying authority

46. Clauses 5 to 8 make provision about the issue of apprenticeship certificates in Wales. In particular, Clause 8 provides that the certifying authority for apprenticeships in Wales will be persons designated for that purpose by the Welsh Ministers.

Clause 9: Contents of apprenticeship certificate

47. This clause applies to England and Wales. It sets out the required contents of an apprenticeship certificate whether issued under clauses 1, 2, 5 or 6.

Apprenticeship frameworks: England and Wales

48. Clauses 10 to 20 cover apprenticeship frameworks which are high level curricula for an apprenticeship in a specified career. The frameworks typically include an integrated programme which contains a competence element; a knowledge element; transferable or key skills; and employment rights and responsibilities. The frameworks require a person to obtain a qualification such as an NVQ at level 2, 3 or 4 in a particular subject to meet the competence and knowledge elements, as well as key skills in literacy and numeracy. These clauses set out the procedures for the issue of apprenticeship frameworks which will be developed by employers, Standard Setting Bodies and Sector Skills Councils according to the specification of apprenticeship standards in England and Wales. The separate provision for a specification of apprenticeship standards for England in clauses 21-25 and for Wales in clauses 26-29 enables variations between the specification of apprenticeship standards for England and the specification of apprenticeship standards for Wales and the related recognised frameworks.

Apprenticeship Frameworks: England

Clause 11: English issuing authority

49. This clause enables the Secretary of State to designate a person to issue recognised English apprenticeship frameworks. A person designated under this clause is referred to as “the English issuing authority”. *Subsection (2)* provides that there is to be only one person authorised to issue frameworks for a particular apprenticeship sector. The intention is that, in England, frameworks will be issued by Sector Skills Councils working in partnership with Standard Setting Bodies. *Subsection (3)* requires a person authorised to issue apprenticeship frameworks to comply with directions and guidance given by the Secretary of State in carrying out this function.

Clause 12: Issue of apprenticeship frameworks etc.: England

50. This clause allows the English issuing authority to issue apprenticeship frameworks that comply with the specification of apprenticeship standards for England. Recognised English frameworks will remain current until withdrawn by either the English issuing authority or the Secretary of State. *Subsection (4)* allows for a recognised English framework to be withdrawn at any time by the English issuing authority or, if the issuing authority has ceased to exist, by the Secretary of State.

Clause 13: Recognised English frameworks: notification and publication requirements

51. This clause requires the English issuing authority to publish recognised English frameworks which it issues and to notify the Chief Executive of Skills Funding of the issue of a framework and send him a copy of the framework.

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Subsection (3) requires a person withdrawing a framework to publish notice of this and to advise the Chief Executive of Skills Funding of the withdrawal. *Subsection (4)* permits the English certifying authority to publish a recognised English framework or a notice of withdrawal however it chooses; but the effect of clause 11(3) is that in doing so the English certifying authority would still be required to have regard to guidance from the Secretary of State.

Clause 15: Transitional provision for apprenticeship frameworks: England

52. This clause enables the Secretary of State to make an order providing that a framework already existing as at the date when clause 12 comes into force is to be treated as if it were a framework issued under clause 12. This would enable a person to enter into an apprenticeship agreement relating to a framework of this type. The effect of *subsection (4)*, though, is that an order under this clause will not be able to permit a person to enter into a first apprenticeship agreement, in relation to an order of this type, after the date specified in that subsection, which is no later than the day after the day that is the school leaving date for 2013. This will provide a reasonable period for deemed frameworks to continue while arrangements are made to issue new frameworks under the specification of apprenticeship standards for England. If new frameworks are issued before that date that would replace deemed frameworks, the Government intends to withdraw the deemed framework. *Subsection (3)* sets out provision which an order under this clause must include, in order to apply the provisions of the Chapter.

Apprenticeship frameworks: Wales

Clause 16: Welsh issuing authority, Clause 17: Issue of apprenticeship framework etc.: Wales, Clause 18: Recognised Welsh apprenticeship frameworks: notification and publication requirements, Clause 19: Submission of draft apprenticeship framework for issue: Wales, Clause 20: Transitional provision for apprenticeship frameworks: Wales

53. These clauses relate to apprenticeship frameworks in Wales. In particular, clause 16 provides Welsh Ministers with the power to designate a person to issue apprenticeship frameworks in Wales, or to issue apprenticeship frameworks relating to a particular sector. The clauses make provision about the issue and publication of apprenticeship frameworks in Wales. Broadly speaking, these provisions mirror those made by clauses 11 to 15 in relation to England.

Specification of apprenticeship standards for England

54. Clauses 21 to 25 make provision about the preparation, modification and contents of the specification of apprenticeship standards for England and the means of giving them effect. English apprenticeship frameworks must conform to the specification of apprenticeship standards for England if they are to be issued by the English issuing authority. The specification will set out requirements with which each recognised English framework must comply. It could contain, for example, requirements as to competence and knowledge based elements, transferable skills

such as key skills in literacy and numeracy or functional skills in English and Maths, employment rights and responsibilities and clear progression routes. It must require each English framework to identify a qualification that is the “principal qualification” for the purposes of the framework.

Clause 21: Duty to prepare and submit draft specification of apprenticeship standards: England

55. This clause empowers the Secretary of State to direct the Chief Executive of Skills Funding to produce a draft specification of apprenticeship standards for England.

Clause 22: Order bringing specification of apprenticeship standards for England into effect

56. This clause empowers the Secretary of State to give effect by order, which would be subject to the negative resolution procedure, to the specification of apprenticeship standards for England, provided the contents comply with clause 25. *Subsection (3)* requires that there may be only one specification of apprenticeship standards for England at any time.

Clause 23: Modification of specification of apprenticeship standards for England

57. This clause allows the Secretary of State to direct the Chief Executive of Skills Funding to modify the specification of apprenticeship standards for England provided the contents of the specification, as modified still complies with the requirements of Clause 25.

Clause 24: Replacement or modification of specification of apprenticeship standards: recognised English frameworks

58. If a new specification of apprenticeship standards for England is given effect to under clause 22, or if an existing specification is modified under clause 23, frameworks that have already been issued under clause 12 may not comply with the requirements of the new or modified specification. *Subsection (1)* provides that a recognised English framework that fails to comply with a new or modified specification will not automatically cease to be recognised. But *subsection (2)* provides that an order under clause 22, which would be subject to the negative resolution procedure, may provide for such a framework to cease to have effect as a recognised English framework.

Clause 25: Contents of specification of apprenticeship standards for England

59. This clause sets out what must be included in the specification of apprenticeship standards for England. *Subsection (1)* provides that the specification must specify requirements in relation to the content of recognised English frameworks at level 2 (known as Apprenticeships); and level 3 (known as Advanced Apprenticeships); and that it may specify requirements in relation to the content of recognised English frameworks at other levels. For instance, the specification might make provision about the content of recognised English frameworks for level 4 apprenticeships (known as Higher Apprenticeships). The effect of *subsection (2)* is

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that the specification must require English frameworks to specify requirements for the issue of apprenticeship certificates, including levels of attainment required for the award of a certificate. It must also require each framework to identify the principal qualification in respect of that framework.

Specification of apprenticeship standards for Wales

Clause 26: Specification of apprenticeship standards for Wales, Clause 27: Modification of Welsh specification of apprenticeship standards, Clause 28: Replacement or modification of specification of apprenticeship standards: recognised Welsh frameworks, Clause 29: Contents of specification of apprenticeship standards for Wales

60. These clauses make mirror provisions in respect of the specification of apprenticeships standards for Wales. Welsh Ministers are given the power to prepare and consult on a draft specification of standards.

Apprenticeship Agreements: England and Wales

Clause 30: Meaning of “apprenticeship agreement”

61. This clause applies to both England and Wales. The apprenticeship agreement will be a contract entered into between the employer and the apprentice. The Government expects that it should set out both the on-the-job training and the learning away from the workstation that will be delivered; make clear what job role an apprentice will be qualified to hold upon completion; and stipulate the supervision that an apprentice will receive throughout the period of the apprenticeship.

62. *Subsection (2)* sets out the conditions which must be satisfied by an apprenticeship agreement. The agreement must be in a form to be prescribed by the Secretary of State. *Subsection (3)* gives the Secretary of State the power to specify provisions which must and must not be included in an apprenticeship agreement. *Subsection (4)* enables an apprentice to enter into successive apprenticeship agreements relating to the same framework, even where that framework has ceased to be a recognised English framework.

Clause 31: Ineffective provisions in an apprenticeship agreement

63. This clause provides that if terms are included in an apprenticeship agreement which conflict with provisions that the Secretary of State has required to be included in the agreement, those terms have no effect.

Clause 32: Variation of an apprenticeship agreement

64. A variation to an agreement might be such that the agreement ceases to be an apprenticeship agreement. Clause 32 provides that a variation of this type will not have effect unless, before it is made, the employer gives the apprentice written notice that it will have this effect.

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Clause 33: Status of an apprenticeship agreement

65. This clause provides that an apprenticeship agreement is not a contract of apprenticeship (as recognised at common law) but is instead to be treated as a contract of service.

Clause 34: Crown servants and Parliamentary staff

66. This clause makes particular provision for Crown servants, members of the armed forces and Parliamentary staff. *Subsection (5)* empowers the Secretary of State to modify the application of the Bill, or of provisions amended or inserted by the Bill, in relation to Crown servants, members of the armed forces, and Parliamentary staff. This power is needed to make the Bill work properly in relation to these classes of person, given their particular circumstances: for instance the fact that they may not have contracts of employment.

Careers education in schools: England

Clause 35: Careers education

67. This clause amends section 43 of the Education Act 1997, which requires a state secondary school in England to provide pupils with a programme of careers education. The effect of the new *subsection (2C)* inserted into section 43 by this clause is to require the governing body of a secondary school, or its proprietor, and its head teacher, or the local education authority and teacher in charge of a pupil referral unit to ensure that any consideration of what careers advice would be in the best interests of their pupils covers consideration of whether it would be in their best interests to include apprenticeships as part of their careers education. In support of this provision, the Government intends issue statutory guidance provided for by section 81 of the Education and Skills Act (2008).

Duty to participate in education or training: England

Clause 36: Duty to participate in education or training

68. This clause amends section 2 of the Education and Skills Act 2008. The effect is that a person may satisfy the participation duty imposed by section 2 (duty to participate in education or training) by participating in training in accordance with an apprenticeship agreement.

General

Clause 37: Apprenticeship Sectors

69. This clause requires the Secretary of State to specify apprenticeship sectors. The Government intends that these will be based upon the current sectoral coverage of Sector Skills Councils which are employer-led, independent organisations whose goals are to reduce skills gaps and shortages, improve productivity and increase

opportunities to boost the skills and productivity of everyone in the sector's workforce.

Chapter 2: Study and Training

Clause 39: Employer support for employee study and training

70. This clause inserts a new Part 6A (sections 63D to 63K) and two new sections (47F and 104E) into the Employment Rights Act 1996.

71. New section 63D introduces a right for qualifying employees to make a statutory application to their employer in relation to study or training – essentially a request to their employer to allow them to undertake study or training, whether in the form of “on the job” training provided by the employer, or separately. The application is called a “section 63D application” in the legislation, but is likely to be known as a “time to train” application or request in practice. Later provisions provide that the request has to be considered by the employer and accepted unless one of the reasons for refusal allowed by the legislation applies.

72. Under section 63D the request must meet certain conditions in order to qualify for the scheme. For example, it must be for study or training that is intended to improve an employee's effectiveness at work and the performance of the employer's business.

73. The type of training which may be requested is further defined in new section 63E. Subsections (1) and (2) of that section allow a request to be for training of any sort. This means that an employee may request study or training that is undertaken outside the place of work with an external training provider or in-house training provided by the employer. The study or training might also include unsupervised learning, for example e-learning. Subsection (1) also allows for more than one course of training or study to be included in one request. For example a person may have identified that they have a need for basic skills training in numeracy and, following the completion of that training, would wish to undertake a full level 2 course related to their job. An employee would be able to include both courses of training in their request.

74. Subsection (3) of section 63E provides that it is not essential that the training lead to the award of a qualification of any sort. It will therefore be possible for an employee to request to undertake any study or training that they think will make them more effective in their current or future role in the employer's business and improve their employer's business performance, for example training to become more effective in the use of commercial software packages.

75. Section 63D defines which employees are eligible to make a request. The Secretary of State may specify in regulations the period employees must have been employed in order to qualify. The intention is that only employees who have been continuously employed by their current employer for 26 weeks or more will be

eligible. However, the regulation making power will allow different employment durations to be set in the future after a period of operation of the policy if required.

76. Subsection (7) of section 63D lists employees who are not eligible to make a request for study or training under these provisions. The effect of this is to exclude employees whose learning needs are already catered for in other ways, for example employees who:

- are of compulsory school age (subject to restrictions, it is possible for people of compulsory school age to undertake employment) (paragraph (a)); or
- are young people who already have a statutory right to paid time off to undertake study or training (paragraph (d)); or
- are 16 or 17 year olds who are already under a duty to participate in education or training as a result of Part 1 of the Education and Skills Act 2008 (paragraph (b)).

77. Agency workers are also excluded. In addition, the Secretary of State has the power to make regulations specifying other types of person to be excluded from the right. This will allow the Secretary of State flexibility to react to changes as needed and to exclude other employees from being qualifying employees if appropriate.

78. Subsection (8) of section 63D provides that an employee and employer can make other arrangements in relation to study or training if they so choose. Employees may choose to ask for training in ways other than those specified in the new Part 6A and may choose not to exercise their statutory right under this Part, for example if their employer is already undertaking annual performance reviews which result in their training needs being met.

79. To ensure the employee has considered and explained their study or training needs, how the proposed study or training would impact on the business and what the benefits to the employer are thought to be, section 63E(4) sets out precisely what an employee must include in their request. They must give details of the subject matter of the study or training, how long it would last, who would provide or supervise it and whether it would lead to a qualification, and state how they think it would make them more effective and improve the performance of the employer's business. *Subsection (5)* also includes a power for the Secretary of State to make regulations specifying the form of the application.

80. New section 63F specifies that employers must deal with requests under section 63D in line with regulations made by the Secretary of State. Subsection (1) of section 63F means that an employer has to deal with only one application from the employee in any 12 month period. However, in certain circumstances, an employer

could be required to disregard an application which has been submitted. These circumstances would be set out in regulations made under section 63F(3).

81. Subsection (4) of section 63F enables the Secretary of State to make regulations specifying how employers should deal with an application. The Government intends that regulations made in exercise of this power will set out the procedure for employers to follow. For example, they would include requirements concerning the holding of a meeting to discuss the application; for the employer to give the employee notice of the employer's decision on the application; about the procedure for exercising the right of appeal; for applications to be treated as withdrawn in certain circumstances; and in relation to companions which the employee may bring to meetings. The intention is to use the procedure set out in regulations made under the flexible working provisions (Part 8A of the Employment Rights Act 1996) as a model.

82. An employer may refuse a request for "time to train" only where they think that certain permissible business reasons apply. These are listed in subsection (7) of section 63F. An employer could refuse a request where they thought that the training would not improve the employee's effectiveness in the employer's business or improve the performance of the business; or that the study or training would impose a burden of additional costs on the business; or that it would mean that the business could not service its customers properly; that work could not be re-organised among existing staff; that there would be a negative impact on the quality of the output of the business; that there would be a negative impact on the performance of the business; that there would not be enough work for the employee during the periods during which the employee proposes to work; or that the business has planned structural changes. The Secretary of State has a power to make regulations to add reasons to this list.

83. An employer could also refuse part of a request for one of the reasons above. This could mean that an employee requesting to undertake two courses may have only one approved.

84. Where an employer agrees to a request for "time to train" an employee will be required under the new section 63H to inform their employer if they do not start the course or cease to attend the course. They will also need to let them know if they change the type of training they undertake from what they have agreed with the employer. Regulations made under this section may specify how employees should inform their employer of any changes in the training.

85. New section 63I makes provision for an employee to complain to an employment tribunal in two specific circumstances:

- where the employer has failed to comply with the duties concerning the consideration of a request (including procedural requirements); and

- where the employer's decision to refuse a request, or part of it, was based on incorrect facts

86. A complaint to an employment tribunal must (unless the tribunal exercises its discretion to grant an extension) be made within three months of either an employer notifying an employee following an appeal of the decision to refuse a request, or (in certain kinds of cases specified by the Secretary of State) from the point where the employer is alleged to have failed to comply with a duty.

87. Subsection (4) of section 63I excludes employees from complaining to employment tribunals under section 63I in relation to the right to be accompanied at meetings, if provision about complaints in such circumstances has instead been made in regulations under section 63F.

88. New section 63J provides that an employment tribunal, where they find the applicant's complaint well-founded, must make a declaration to that effect and may require the employer to reconsider the request for "time to train". They may also make an award of compensation. The limit on the number of weeks' pay which a tribunal may award as compensation will be specified in regulations.

89. New section 63K provides that regulations made under these new provisions may make different provision for different cases.

90. New section 47F ensures that an employee has a right not to be subjected to any detriment by their employer as a result of making, or proposed to make, a request for "time to train", or submitting a complaint to an employment tribunal under section 63I, or alleging circumstances that would justify such a claim.

91. New section 104E ensures that an employee would be able to claim that they were unfairly dismissed if the reason for their dismissal was that they made, or proposed to make, a request for "time to train" or submitted a claim to an employment tribunal under section 63I, or alleged circumstances that would justify such a claim.

Schedule 1: Minor and consequential amendments

92. Schedule 1 makes minor and consequential amendments to the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Tribunals Act 1996 which are consequent upon the new statutory right for employees to request "time to train". In particular, paragraph 12 will allow the Advisory, Conciliation and Arbitration Service to prepare a scheme to provide conciliation of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal under section 63I.

PART 2: LEA FUNCTIONS

Education and training for persons over compulsory school age

Clause 40: Education and training for persons over compulsory school age: general duty

93. This clause inserts sections 15ZA and 15ZB into the Education Act 1996. These new sections set out the new core responsibilities being transferred to local education authorities from the Learning and Skills Council in respect of the provision of education and training for young people.

94. Section 15ZA requires local education authorities to secure enough suitable, full- and part-time, education and training opportunities to meet the reasonable needs of the following people in their area:

- young people who are over compulsory school age but under 19; and
- learners aged 19 or over, but under 25, who have (or should have had) a learning difficulty assessment under section 139A or 140 of the Learning and Skills Act 2000.

95. Responsibility for all other learners aged 19 or over will fall to the Chief Executive of Skills Funding as covered in Part 4 of the Bill.

96. Local education authorities will have powers to secure this provision either within or outside their areas to enable them to secure the most appropriate provision for young people and reflect the normal means by which learners travel to their places of learning (“travel-to-learn patterns”). In securing education and training opportunities, local education authorities must take account of people’s ages, abilities and aptitudes; any learning difficulties they may have; the quality of education or training; and the locations and times at which those opportunities are provided. In performing these functions, local education authorities must also act with a view to encouraging diversity (in both type of provider and provision) and increasing opportunities for young people to exercise choice; support those learners who are subject to the duty to participate in education or training until they reach the age of 18 (once that duty comes into force); and make the best use of the authority’s resources and avoid provision that might give rise to disproportionate expenditure.

97. Subsection (6) requires a local education authority to co-operate with the Chief Executive of Skills Funding in determining and securing the provision of apprenticeship training under subsection (1).

98. Local education authorities will also have powers to fund provision for the duration of the course being undertaken by a young person, even if that course

continues after they have reached the age of 19 (or 25 in the case of a learner with a learning difficulty assessment).

99. Subsection (10) provides definitions for education, training, and learning difficulty assessment.

100. Local education authorities will meet this duty by commissioning provision which meets the requirements set out in section 15ZA. Commissioning is a cycle of activity that ensures that the courses learners want to take — “learner demand” — is understood and the right provider is funded or contracted with to meet that demand. The Government envisages that local education authorities will work together in sub-regional groupings to plan and agree how to commission provision across an area. These groupings will reflect travel-to-learn patterns of young people. Local education authorities will develop commissioning plans (working with other local education authorities and regional partners such as the Government Offices and Regional Development Agencies) which will be signed off by the new proposed Young People’s Learning Agency for England (“the YPLA”) (see Part 3 of this Bill) who will ensure that all local education authority plans are coherent with the plans of other local education authorities and are in budget. The YPLA will then fund local education authorities in accordance with the planned provision, and local education authorities will in turn fund providers for the courses they have secured.

101. Section 15ZB requires local education authorities to co-operate with each other in the exercise of their new duties under section 15ZA(1). The Government intends that this duty will support sub-regional working and reflect the need of local education authorities to work with each other in securing education and training opportunities across an area. This duty will require co-operation by a local education authority with only those other local education authorities which may provide education or training for young people in the authority’s area. In the vast majority of cases, the Government anticipates that this duty to co-operate will be fulfilled through sub-regional working (as described above), but it also caters for those instances where learners may need to travel to a local education authority outside the sub-regional grouping to receive their education or training.

Clause 41: Encouragement of education and training for persons over compulsory school age

102. This clause inserts section 15ZC into the Education Act 1996 and requires local education authorities to encourage young people for whom they are responsible to participate in education and training. This will enable local education authorities to encourage full participation in education and training before the provision in section 10 of the Education and Skills Act 2008 (to promote fulfilment of the provisions to raise the participation age) comes into force in 2013. Section 15ZC also requires local education authorities to encourage employers to participate in the provision and delivery of post-16 education and training as they will have a particular role in relation to the provision of diplomas and apprenticeships.

Clause 42: LEA directions: children over compulsory school age

103. This clause amends the definition of a “child” in section 84 of the School Standards and Framework Act 1998 so that it includes children over compulsory school age but under 19 for the purposes of sections 96 and 97 in England. This enables a local education authority in England to use its powers under section 96 and 97 to direct a maintained school for which it is not the admissions authority to admit a particular child to its sixth form. *Subsection (3)* amends section 96(3) of that Act to ensure that any permitted academic selection criteria adopted by a school (including the school sixth form) are satisfied by the child before the local education authority may use its powers to direct the school to admit that child.

Clause 43: Power to require provision of education by institution within further education sector

104. This clause inserts new section 51A into the Further and Higher Education Act 1992 and applies to England only. It replicates, for local education authorities, the Learning and Skills Council’s existing power to direct institutions within the further education sector in England which provide education suitable to the requirements of young people over compulsory school age but under 19, to provide specified young people of that age and within their authority’s area with such education. The governing body of such an institution must comply with the direction. In exercising this power, a local education authority must have regard to any guidance provided by the Secretary of State.

The core and additional entitlements

Clause 44: Duties in relation to the core and additional entitlements

105. This clause inserts four new sections (sections 17A, 17B, 17C, 17D) into the Education Act 1996. It places responsibility for securing the core entitlement and the additional entitlement (defined in section 17A(7)) for all young people who are over compulsory school age but under 19, on local education authorities (rather than the Learning and Skills Council, where the responsibility currently lies).

106. The core entitlement is to a course of study in mathematics, English and information and communications technology.

107. The additional entitlement is to a course of study in a diploma entitlement area specified by the Secretary of State.

108. New section 17A(1) and (2) places a duty on the local education authority to exercise its functions with a view to securing that the core entitlement and courses of study within all the additional entitlement areas are made available in relation to young people in their area who are over compulsory school age but under 19. The intention is that the additional entitlement refers to the diploma entitlement. In securing the additional (diploma) entitlement, local education authorities are able to take into account whether providing a particular course would involve disproportionate expenditure, in which case the requirement to secure the course

would not apply (subsection (3)). The entitlement does not entitle a young person to follow a course of study within a particular additional (diploma) entitlement area or to follow more than one course of study within different (diploma) entitlement areas (subsection (5)). A local education authority may satisfy the entitlement by securing that courses of study are available either within or outside their local education authority boundaries (subsection (4)).

109. Subsection (8) defines “course of study” for the purposes of the core and additional (diploma) entitlements. It does so by reference to the resulting qualification, and enables the Secretary of State to specify by order (subject to the negative resolution procedure) both the type and the level of the qualification. Local education authorities must have regard to statutory guidance issued by the Secretary of State in exercising their functions under this section (subsection (6)).

110. New section 17B describes the entitlements. Young people who are over compulsory school age but under 19 may elect for either or both of the core entitlement and the additional (diploma) entitlement.

111. New section 17C defines the core entitlement, which is to follow courses of study in mathematics, English and information and communications technology. The entitlement is satisfied if a course of study in each of the subjects is made available to a young person. The entitlement will cease if a course of study is made available but not begun before a person’s 19th birthday.

112. New section 17D provides that the additional entitlement is to follow a course of study in an entitlement area. Additional entitlement areas refer to diploma lines which will be specified by the Secretary of State. The entitlement is satisfied if a course of study in one of the entitlement areas is made available to a young person. The entitlement will cease if a course of study is made available but not begun before a person’s 19th birthday.

Provision of boarding accommodation: persons subject to learning assessment

Clause 45: Provision of boarding accommodation: persons subject to learning difficulty assessment

113. This clause inserts a new section 514A into the Education Act 1996. It enables local education authorities, when securing suitable education and training provision for young people with learning difficulties who are over compulsory school age but under 25, also to secure boarding accommodation for these learners, either within or outside their local authority area, where they consider it appropriate.

Work experience

Clause 46: Work experience for persons over compulsory school age

114. This clause inserts a new section 560A into the Education Act 1996, providing local education authorities with a power to secure the provision of work experience

for people within their area who are over compulsory school age but under 19, and those aged 19 but under 25 for whom a learning difficulty assessment has been (or should be) conducted. This also places local education authorities under a duty to encourage these learners to participate in work experience, and to encourage employers to provide opportunities for work experience.

Persons detained in youth accommodation

Clause 47: Provision of education for persons subject to youth detention

115. This clause inserts a new section 18A into the Education Act 1996.

116. New section 18A will have the effect that local education authorities in England and Wales (LEAs) with relevant youth accommodation in their area (“host authorities”) will be required to secure that enough suitable education and training is provided to meet the reasonable needs of the children and young people in the youth justice system who are held in those establishments.

117. “Relevant youth accommodation” is defined in section 562(1A) of the Education Act 1996 (as amended by clause 48 of this Bill) and covers most kinds of youth detention accommodation (which, in turn is defined in section 107 of the Powers of the Criminal Courts (Sentencing) Act 2000 as a young offender institution, secure training centre and accommodation provided by or on behalf of a local education authority (or the Secretary of State under section 82(5) of the Children Act 1989) for the purpose of restricting the liberty of children and young persons. There is also power for the Secretary of State under section 107(1)(e) of the Powers of the Criminal Courts (Sentencing) Act 2000 to specify other accommodation by order.) However, “relevant youth accommodation” does not include Young Offender Institutions (YOIs) accommodating 18-20 year olds.

118. LEAs will not therefore be responsible for securing the provision of education in YOIs accommodating 18-20 year olds. In England this will be the responsibility of the Chief Executive of Skills Funding under clause 92. In Wales this will remain the responsibility of the Welsh Ministers under section 32 of the Learning and Skills Act 2000.

119. Local education authorities will be required to have regard to guidance issued by the Secretary of State for England and the Welsh Ministers for Wales when exercising their functions under this provision.

Clause 48: Persons detained in youth accommodation: application of provisions

120. Under section 562 of the Education Act 1996, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under the Education Act 1996 (and those Education Acts read as one with that Act) do not apply in relation to persons detained pursuant to a court order or an order of recall of the Secretary of State.

121. Clause 48 reverses the effect of section 562 for children and young people detained in relevant youth accommodation. Therefore, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under those Acts will generally apply towards such persons detained pursuant to a court order or an order of recall of the Secretary of State in relevant youth accommodation.

122. This clause applies to England and Wales.

123. New section 562B of the Education Act 1996 (inserted by clause 49 of this Bill) provides a power to prescribe for certain modifications to be made to provisions of the Education Acts in their application to children and young people who are detained. The power will be exercisable by the Secretary of State for England and the Welsh Ministers for Wales.

Clause 49: Persons detained in youth accommodation: further provision

124. This clause inserts a new Chapter 5A into the Education Act 1996 after section 562 of that Act.

125. New section 562A of that Act imposes responsibilities on home LEAs in England and Wales — the local education authority where the young person is ordinarily resident (excluding any period when the person is subject to a detention order) — to monitor the education or training of a child or young person subject to a detention order. The home LEA will have to take such steps as they consider appropriate to promote the person's fulfilment of his or her learning potential while they are in custody and on their release.

126. Following the amendments made to section 13A of the Education Act 1996 by clause 56 and Schedule 2 to the Bill, Host LEAs will be required under that section to exercise their functions under section 18A of that Act (inserted by clause 47) with a view to promoting the fulfilment by every child concerned of his or her educational potential.

127. New section 562C of the Education Act 1996 inserted by clause 49 requires LEAs when they are exercising any of their functions under new Chapter 5A to have regard to any guidance issued by the Secretary of State for England and the Welsh Ministers for Wales.

Clause 50: Detention of child or young person: local education authority to be notified

128. Clause 50 inserts new subsections (8), (9) and (10) into section 39 of the Crime and Disorder Act 1998 and requires Youth Offending Teams in England and Wales (established under section 39 of that Act) to notify the person's home LEA when they become aware that a child or young person has been detained in relevant youth accommodation. "Home LEA" here has the same meaning as it has in section 562A of the Education Act 1996 (inserted by clause 49 of the Bill).

Transport in England

129. Local education authorities have a duty under section 509AA of the Education Act 1996 to publish an annual transport policy statement setting out the transport provision they will make to facilitate the attendance of young people of sixth form age at establishments of education and training. LEAs also have a duty to make the transport arrangements they deem necessary to support adults to attend institutions of education and training. Clauses 51 to 54 amend the sixth form duty so that young people and their parents will be consulted in the drawing up of transport policy statements, so that the statements provide sufficient information to inform young people's and their parents' choice between establishments, and so that the statements may be revised in response to complaints. The clauses also re-enact the adult transport duty and place a new duty on LEAs to set out in a transport policy statement the arrangements they will make for learners aged 19 to 24 (inclusive) who may have a learning difficulty.

Clause 51: Transport policy statements for persons of sixth form age: consultation

130. Section 509AB of the 1996 Act contains requirements about the preparation of transport policy statements for people of sixth form age. Clause 51 amends section 509AB to add people who will be of sixth form age when the statement has effect and their parents to the list of persons or bodies LEAs must consult when preparing the statements.

Clause 52: Transport policy statements for persons of sixth form age: content and publication

131. Clause 52 amends section 509AB to insert a new subsection (7A). This requires LEAs to have regard to the need to include sufficient information in their transport policy statement, and the need to publish the statement in good time, so that young people and their parents are able to take account of those matters when choosing an establishment.

132. *Subsection (2)* amends section 509AA so that the Secretary of State has more freedom than before to amend the provision about when statements must be published. Previously the Secretary of State could choose a deadline only within the calendar year during which the academic year started; now he or she will be free to choose an earlier deadline.

Clause 53: Complaints about transport arrangements etc for persons of sixth form age

133. This clause inserts section 509AE into the Education Act 1996, which makes provision about sixth form transport complaints. A sixth form transport complaint is a complaint about how an LEA have carried out (or failed to carry out) their transport responsibilities in relation to people of sixth form age. It can be made by a person who is (or will) be of sixth form age at the relevant time, or the person's parent.

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134. Section 509AE(1) allows LEAs to revise transport policy statements to amend transport provision or financial assistance arrangements as a result of a sixth form transport complaint, if they deem this to be necessary. Section 509AE(2) requires them to do so if the Secretary of State directs them to as a result of a sixth form transport complaint. Section 509AE(3) states that any LEA who amend their statement following a complaint must publish the revised statement as soon as practicable, along with a description of the changes. Under section 509AE(4) the Secretary of State need not consider whether to use direction making powers in response to a sixth form transport complaint unless it has already been brought to the attention of the LEA concerned and the LEA have had a reasonable opportunity to investigate and respond.

135. Section 509AE(7) provides that where an authority have published their sixth form statement and their transport policy statement for adult learners in the same document, the requirement in section 509AE(3) to publish a revised statement is to be read as a requirement to publish a version of the document that includes the revised statement.

136. *Subsections (3) to (6)* of clause 53 amend the Secretary of State's direction-giving powers to make clear that they are subject to section 509AE.

Clause 54: Local education authorities in England: provision of transport etc for adult learners

137. This clause inserts two new sections into the Education Act 1996.

138. New section 508F re-enacts section 509 of the 1996 Act (which is repealed) in respect of LEAs' travel duties towards adult learners. It continues to impose a duty on LEAs to make any transport or other arrangements that they consider necessary, or that the Secretary of State directs, for the purpose of facilitating the attendance of learners who are aged 19 and over at certain education institutions. The transport must be provided free of charge. The LEA must have regard to the age of the learner, and the nature of the route, when considering what arrangements to make. Also, the authority may pay all or part of the reasonable travel expenses of a learner for whose transport no arrangements are made.

139. New section 508G places a new duty on LEAs to make available in a transport policy statement information about the travel provision they have put in place for people aged 19 to 24 (inclusive) in respect of whom the LEA have carried out or are under a duty to carry out a learning difficulty assessment under section 139A or 140 of the Learning and Skills Act 2000. LEAs may publish this information in a joint statement with their sixth form transport policy statement under section 509AA of the 1996 Act, or as a separate statement if they prefer. This measure is designed to ensure that young people with learning difficulties aged 19 to 24 (inclusive) and their parents are able to access information about what transport is available, so that they are able to make informed choices between institutions.

140. When preparing the statement, the LEA are required to consult other LEAs, education institutions, affected learners and their parents. The authority must also have regard to guidance about the preparation of the statement.

141. Under subsections (2) to (4) of section 508G, the statement must specify any transport or other arrangements, any payment of travel expenses, and any concessionary schemes which the LEA plans to make available to this group of learners in the following academic year. Subsection (5) of that section states that the statement must be published by the end of May before the start of the relevant academic year, in line with the sixth form transport policy statement duty. Subsection (6) of the section requires the LEA to have regard to the need to supply sufficient information and the need to publish the statement in good time, so that, as with the sixth form transport policy statement duty, young people and their parents are able to use this information to help them choose their institution. Section 508G(8) enables LEAs to make additional arrangements, payments or concessions which are not included in the statement during the course of the year. Section 508G(9) allows the Secretary of State to amend subsection (5) to change the deadline for publication of the statement.

Powers in respect of non-maintained schools

Clause 55: Power of LEAs to arrange provision of education at non-maintained schools

142. This clause repeals section 128 of the School Standards and Framework Act 1998. Section 128 amended section 16 of the Education Act 1996 and substituted a new section 18 in that Act. The new section 18 gave the Secretary of State the power to make regulations, under which a LEA could assist primary and secondary schools outside the maintained sector, or make arrangements for pupils to be educated at such schools—an assisted places scheme. The section has never been commenced, and the Government therefore now considers that it should be repealed. The effect of the repeal is that the original section 18 remains in force. LEAs will continue to retain powers under sections 16 and 18 of the Education Act 1996 to assist, and arrange provision of education at, non-maintained schools.

PART 3: THE YOUNG PEOPLE’S LEARNING AGENCY FOR ENGLAND

143. Clause 40 imposes a new duty on local education authorities to secure that all young people in their area who are over compulsory school age but under 19, and persons aged 19 and over but under 25 for whom a learning difficulty assessment has been carried out, have access to enough suitable education and training provision to meet their reasonable needs. The Government propose to create a small non-departmental body, the Young People’s Learning Agency for England (“the YPLA”), sponsored by DCSF and reporting to the Secretary of State, whose core purpose is to provide the funding to enable local education authorities to fulfil this duty.

Chapter 1: Establishment

Clause 57: The Young People's Learning Agency for England

144. This establishes the YPLA as a body corporate. The YPLA will perform its functions in relation to England only, except under the powers to provide services and assistance (see clauses 65 to 67) where it may exercise functions in relation to, and within, the devolved administrations' areas.

145. Further detailed provisions about the body are contained in Schedule 3.

Schedule 3: The Young People's Learning Agency for England

146. Schedule 3 sets out the detail on the constitution, governance and organisation of the YPLA as a non-departmental public body.

147. Under paragraph 1, the YPLA will not be a servant or agent of the Crown and its staff will not be civil servants. Paragraphs 2 to 4 make provision about the membership and remuneration of the YPLA, including:

- how the YPLA's first chair, chief executive and members will be appointed;
- how subsequent chief executives and ordinary members will be appointed;
- provision for the Secretary of State to remove any member from office on the grounds of persistent non-attendance, inability or unfitness for office;
- tenure of office; and
- the YPLA's powers and duties in relation to remuneration of current and former members.

148. Paragraphs 5 and 6 allow the YPLA to appoint staff, and make provision about employment terms.

149. Under paragraphs 7 and 8, the YPLA is permitted to set up committees and sub-committees. These may consist of or include persons who are not members or staff of the YPLA. The YPLA has the power to establish a committee jointly, and any joint committee is given power to regulate its own proceedings. This may be used, for example, to enable the YPLA to chair jointly with the Qualifications and Curriculum Development Agency (the new name for the Qualifications and Curriculum Authority: see Part 8 of the Bill) the proposed Joint Advisory Committee for Qualifications Approval.

150. The YPLA may regulate its own proceedings, and the procedure of its committees (paragraph 9). Under paragraph 10, the Secretary of State or a

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representative of the Secretary of State is given the right to attend meetings of the YPLA and YPLA committees (including joint committees).

151. Under paragraphs 11 and 12, the YPLA and its committees may delegate functions.

152. The YPLA must:

- make a plan for each academic year, which must be published before the start of the academic year (*paragraph 13*);
- prepare an annual report, a copy of which must be sent to the Secretary of State (*paragraph 14*); and
- keep proper accounts and proper records in relation to the accounts, and prepare annual accounts for each financial year, copies of which must be sent to the Secretary of State and the Comptroller and Auditor General (*paragraph 15*).

153. The Secretary of State must lay a copy of the annual accounts and a copy of the Comptroller and Auditor General's report on the accounts before Parliament.

154. Paragraph 16 makes provisions about the application of the YPLA's seal: the references to "member" in this context includes the chief executive.

155. Paragraph 18 sets out that the YPLA will receive its funding from the Secretary of State, and that payments will be made at such times and subject to such conditions (if any) as the Secretary of State thinks appropriate. Conditions may require the YPLA to use the grant for specified purposes, but may not impose conditions relating to the YPLA's securing of the provision of financial resources to a particular person or organisation.

156. Under paragraph 19 the YPLA is given supplementary powers to do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions (subject to any restrictions imposed by or under any provision of this or any other Act). However, the YPLA cannot borrow money, and must obtain the Secretary of State's permission to do certain things, including, for example, lending money.

Chapter 2: Main Functions

Funding

Clause 58: Provision of financial resources

157. *Subsection (1)* places a duty on the YPLA to secure the provision of financial resources to those who provide education and training to young persons covered by

the new LEA duty imposed by section 15ZA of the Education Act 1996 (see clause 40), and also to LEAs themselves.

158. Under *subsection (2)*, the YPLA must also secure the provision of financial resources as directed by the Secretary of State. This would, for example, allow the Secretary of State to require the YPLA to secure in future the provision of financial resources to a specific group of learners not covered in its duties or powers. However, this would not allow the Secretary of State to require the YPLA to secure the provision of financial resources to a particular person (for example, to provide a certain amount of money to a specific LEA) because of the prohibition in *subsection (10)*.

159. In addition, *subsection (3)* empowers the YPLA to secure financial resources in respect of provision to learners of and under compulsory school age, and learners aged 19 and over (who have not had a learning difficulty assessment) who started their courses before they were 19. These powers will enable provision to be secured, for example, for:

- young people under the age of 16 who are attending courses in a 16 to 19 institution, whether this is because they are starting a course early, or because the course is specifically designed for those under 16, for example, young apprenticeships;
- young people who start a course before they reach 19 which ends after their 19th birthday; and
- provision for young offenders aged 10 to 17 (and some 18 year olds) in youth detention accommodation.

160. Under *subsection (4)* the YPLA will have power to pay grants and allowances to learners of all ages. These powers enable the YPLA to secure, for example Care to Learn grants (which are provided to young people who begin their course or learning programme before their 20th birthday), Education Maintenance Allowances (EMAs) (provided to 16 to 18 year olds) and the Adult Learning Grant (a means tested grant provided to adults of all ages). *Subsection (8)* gives the YPLA the power to take account of fees, charges, and other matters such as the cost of travel or childcare when securing these grants.

161. *Subsection (4)* also gives the YPLA the power to secure the provision of financial resources for other purposes. This covers:

- Persons providing goods or services in connection with the provision of education or training to persons up to the age of 19, over 19 where a course has been started before the young person reaches 19, or learners under 25 for

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whom a learning difficulty assessment has been made. This would allow the YPLA to fund, for example, accommodation on a field trip;

- Persons undertaking research in relation to education or training;
- Persons providing work experience for persons receiving education;
- Persons carrying out means tests, for example, in relation to learner support grants.
- Persons providing information, advice or guidance about education or training, or connected matters.

162. *Subsection (7)* provides that the YPLA may secure financial resources not only by providing them directly, but also by:

- making arrangements for another person to provide the resources, for example delivering learner support funds through contracts; and
- making arrangements for two or more persons (whether or not this includes the YPLA) to jointly provide the resources, for example, to deliver shared services with the Chief Executive of Skills Funding.

Clause 59: Financial resources: conditions

163. This clause enables the YPLA to set certain conditions on the financial resources it provides. The conditions are divided into three broad categories: information, operational and repayment.

164. Under *subsection (3)* information conditions may require:

- the YPLA, or a person designated by the YPLA (such as an accountant or the National Audit Office) to have access to the accounts and records, including computer records of the person to whom financial resources are provided; and
- that the person must give the YPLA such information as it requests for the purpose of exercising any of its duties and powers.

165. *Subsections (4) and (5)* provide that operational conditions may require providers of education and training to make arrangements:

- to charge fees, make awards and recover costs from other persons in accordance with criteria established by the YPLA; and

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- to make the provision specified in a report of a learning difficulty assessment (conducted under section 139A or 140 of the Learning and Skills Act 2000)

166. Under *subsection (6)* the YPLA may require repayment (which may be with interest) where the conditions subject to which the sums were paid were not complied with.

Clause 60: Performance assessments

167. This clause enables the YPLA to:

- adopt existing schemes, such as the Framework for Excellence, when assessing the performance of providers for whom it is proposed it provides funding in local education authority commissioning plans; and
- develop performance assessment schemes, for example tools for scrutiny of local education authority commissioning plans or self-assessment tools for local education authorities to use when ensuring quality of provision in their commissioning plans.

Clause 61: Means tests

168. This clause enables the YPLA to carry out, or to arrange for others to carry out on its behalf, tests against eligibility criteria (financial or otherwise) which may be taken into account when the YPLA is securing financial resources for those receiving, or proposing to receive, education and training under its powers in clause 58. This will enable the YPLA to administer grants or allowances to learners or prospective learners according to clearly defined criteria. For example, it will enable the YPLA to administer the Education Maintenance Allowance scheme to 16 to 19 year olds.

Clause 62: Prohibition on charging

169. This clause requires the YPLA to ensure, so far as is practicable, that no charge is made for education or training funded by the YPLA that is provided for young people over compulsory school age.

170. The Secretary of State may specify through regulations the circumstances under which charges are to be treated as made for the purposes of this section. These regulations could ensure that tuition fees would be prohibited for these learners, but may allow providers of education to apply fees where appropriate, such as in relation to the conditions of attendance to free examination entry, charges for equipment, and charges for learners from overseas. The YPLA would then be able to enforce this through the conditions it imposed on its funding.

171. This clause does not cover education provided at a school maintained by a local education authority, for example in a school sixth form, because these institutions are already required by law to provide free education.

Securing provision of education and training

Clause 63: Securing provision of education or training

172. Clause 63 gives the YPLA the power to commission education or training for persons aged 16 or over but under 19, or for learners aged 19 but under 25 for whom a learning difficulty assessment has been made. This power will enable the YPLA to secure provision directly, for example:

- from the small number of national providers from whom it may be appropriate to commission at national rather than local level;
- where sub-regional groups of LEAs are not yet ready to take on this role; or
- where a local education authority is failing or is likely to fail to fulfil its duty under clause 40 of this Bill to commission suitable education or training.

173. The circumstances under which the YPLA would be expected to exercise these powers will be set out by the Secretary of State in his remit letter to the YPLA.

Clause 64: Intervention for purpose of securing provision of education and training

174. Clause 64 gives the YPLA the power to make directions where it is satisfied that a local education authority is failing, or likely to fail, in its new duty under *section 15ZA* of the Education Act 1996 (clause 40) to secure enough suitable education and training for young people aged over compulsory school age but under 19, and those aged 19 or over but under 25 for whom a learning difficulty assessment has been conducted.

175. The directions may be for the purpose of ensuring that the LEA secure suitable education and training, or may require the LEA to permit specified action to allow the YPLA itself, or another body, to take on the local education authority's functions on its behalf. The YPLA must consult the Secretary of State before giving a direction, and this direction may be enforced by mandatory order on application by the YPLA.

176. Clause 70 requires the YPLA to publish a statement that sets out the circumstances under which it will intervene and the nature of that intervention.

Provision of services and assistance

Clause 65: Provision of services

177. Clause 65 gives the YPLA the power to provide and receive payment for services to those persons or bodies listed in *subsection (4)* in connection with any of the recipient's functions relating to education and training. Those listed include the Secretary of State, the Welsh Ministers, the Scottish Ministers, a Northern Ireland department, the Chief Executive of Skills Funding, any person wholly or partly

funded from public funds who has functions in relation to education or training, and any other person specified by order made by the appropriate national authority.

178. Examples of these services could include:

- providing accommodation and other facilities; and
- support services such as software management systems, management information systems, payroll administration, human resources functions, finance services and procurement services.

179. For example, the YPLA would be able to use this power to provide shared services with the Chief Executive of Skills Funding, or the YPLA and Chief Executive could provide services on each other's behalf for reasons of efficiency.

180. In Wales, Scotland and Northern Ireland, arrangements for such services will be made only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service. The YPLA will also need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

Clause 66: Assistance with respect to employment and training, Clause 67: Assistance with respect to employment and training: Northern Ireland

181. Both of these clauses allow the YPLA to take part in arrangements in relation to Wales, Scotland and Northern Ireland for assisting persons to select, train for, obtain and retain employment. Consent of the Welsh and Scottish administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland but this is not required in respect of Northern Ireland. The consent of the Secretary of State will be required for arrangements made by all the devolved administrations which involve the YPLA.

Miscellaneous

Clause 68: Research, information and advice

182. Clause 68 gives the YPLA the power to carry out research relating to any matter relevant to any of its functions. This is likely to include, for example, collating and analysing regional research and intelligence to support local education authority 14 to 19 partnership plans and 16 to 18 commissioning plans.

183. It enables the Secretary of State to require the YPLA to provide information or advice, and gives the YPLA the power to provide information or advice to the Secretary of State, in relation to any of its functions.

184. The YPLA will have the power to provide information to any person designated by the Secretary of State. This will, for instance, enable the YPLA:

- To provide local education authorities with analysis of provider performance covering all types of provision they will be required to secure under their new powers conferred upon them under this Bill (see Part 2 of this Bill).
- To inform local education authorities about the type and extent of the support their learners are receiving.

185. In order to carry out these functions, the YPLA must establish systems for collecting information which are designed to secure that YPLA decisions are made on a sound basis.

186. The YPLA may also secure facilities and services for providing information, advice or guidance about education, training or connected matters including employment.

Clause 69: Guidance by YPLA

187. Clause 69 requires the YPLA to issue guidance to local education authorities about the performance of their duties to secure that all young people in their area over compulsory school age but under 19, and persons aged 19 and over but under 25 for whom a learning difficulty assessment has been carried out, have access to enough suitable education and training provision to meet their reasonable needs. Local education authorities must have regard to this guidance. The main guidance to be issued under this power will be the *National Commissioning Framework and Supporting Guidance*, which will cover how local education authorities should work independently and together in sub-regional groupings to develop commissioning plans that will set out how they intend to secure education and training provision for learners within their area. The YPLA also has the power to issue guidance about other matters in respect of which it has a function.

Clause 70: Intervention powers: policy statement

188. The YPLA will be required to prepare and consult on a policy statement which sets out the detail of its policy on its powers of intervention. It will set out the triggers for, and the nature of, such interventions. Having considered representations made during consultation, the YPLA must send a copy of the final policy statement for approval by the Secretary of State, and then publish the approved statement. The YPLA must then have regard to the latest published statement when exercising its powers to intervene. *Subsection (6)* sets out the instances in which the YPLA has powers of intervention, which are under clause 64 of this Bill (YPLA powers to intervene for the purposes of securing appropriate education and training for young people); section 56H of the Further and Higher Education Act 1992 and section 56I of that Act (inserted by Schedule 8 to this Bill) which concern powers to intervene in sixth form colleges.

Clause 71: Power of Secretary of State to confer supplementary functions on YPLA

189. The Secretary of State may by order (subject to the negative resolution procedure) give the YPLA supplementary functions that are both exercisable in relation to a function of the Secretary of State and relevant to the provision of education and training within the YPLA's remit. Education and training within the YPLA's remit is defined in clause 77. This could, for example, include conferring additional functions on the YPLA in relation to the provision of a new learner support grant for young people.

Chapter 3: YPLA's Functions: Supplementary

Clause 72: Directions by Secretary of State

190. This clause requires the YPLA to comply with directions from the Secretary of State. Directions under *subsection (1)* may set objectives that the YPLA should achieve in carrying out its functions and time limits within which they are to be achieved. They may also relate to the management of the YPLA.

191. *Subsection (2)* provides that if the Secretary of State considers that the YPLA has failed to carry out a statutory duty or has acted, or is proposing to act, unreasonably in carrying out its functions, a direction may be given which relates to the performance of the YPLA's functions, even where the YPLA has discretion in the exercise of its functions.

192. Under *subsection (4)* directions under this clause may not relate to the funding of activities carried on by particular individuals or bodies. For example, the Secretary of State could not require the YPLA to fund a particular provider to deliver a particular course in respect of a young person. This is to ensure that the YPLA has sole responsibility for individual funding decisions without influence from the Secretary of State.

Clause 73: Guidance by Secretary of State

193. This clause requires the YPLA, in performing its functions, to have regard to any guidance provided to it by the Secretary of State. That guidance may include provision about who the YPLA must consult, and from whom it must take advice, in connection with particular decisions.

Chapter 4: Academy Arrangements

Clause 74: Academy arrangements

194. This clause will enable the Secretary of State to require the YPLA to enter into arrangements with the Secretary of State, under which the YPLA may be required to carry out specified functions of the Secretary of State relating to Academies, city technology colleges ("CTCs") and city colleges for the technology of the arts ("CCTAs"). Under the arrangements, the YPLA would carry out these functions on the Secretary of State's behalf.

195. Several of the Secretary of State's functions relating to these schools are functions arising under funding agreements entered into by the Secretary of State under section 482 of the Education Act 1996. This section makes provision for the setting up and running of schools known as Academies. Under a previous version of section 482 of the 1996 Act, provision was made for the setting up of CTCs and CCTAs.

196. Schedule 35A to the 1996 Act contains functions of the Secretary of State related to land and Academies. For instance, the Schedule allows the Secretary of State to require the transfer of land back from an Academy to an LEA, if the LEA provided it, at no cost should the school cease to be an Academy.

197. Under this clause the Government intends that, from September 2010, the YPLA may be required to provide, on the Secretary of State's behalf, support to and performance management of, Academies, CTCs and CCTAs. The Secretary of State intends that under these arrangements the YPLA will work with only those Academies which are open (and since there can be no new CTCs or CCTAs, all schools in those categories are already open). For example, the YPLA may be required to carry out the following of the Secretary of State's functions: calculating and paying grants; supervising budgets; managing specific cases concerning admissions, exclusions and special educational needs; monitoring, enforcing and terminating funding agreements; monitoring the standard of performance of pupils; managing school building work. The YPLA may be required to report to the Secretary of State in accordance with the arrangements.

Clause 75: Grants for purposes of Academy arrangements functions

198. This clause allows the Secretary of State to pay grants to the YPLA in order for the YPLA to carry out the functions specified in the arrangements. *Subsection (2)* allows the Secretary of State to make the payment of grant subject to conditions. For instance, the Secretary of State may require the YPLA to use the grant for a specific programme of improvement related to literacy and numeracy in Academies or to repay all or part of the grant if such a programme is not carried out.

Clause 76: Academy arrangements: information sharing

199. This clause enables the persons listed in *subsection (3)* to provide information to each other in order to carry out a relevant function. *Subsection (4)* defines "relevant function".

200. This clause does not affect other information sharing powers, or authorise disclosure of information that would have otherwise been prevented by legislation or any Act of Parliament. For instance, this means that any information sharing carried out under this clause must still be carried out in accordance with the provisions of the Data Protection Act 1998.

PART 4: THE CHIEF EXECUTIVE OF SKILLS FUNDING

201. The White Paper *Raising Expectations: enabling the system to deliver* set out proposals to create a new system that would fund education and skills training for persons aged 19 or over (referred to in these Notes as “post 19”). A widespread consultation was undertaken on these proposals.

202. Part 4 of the Apprenticeships, Skills, Children and Learning Bill describes the powers and duties of the Chief Executive of Skills Funding, referred to in these Notes as “the Chief Executive”. The Chief Executive will be responsible for funding post-19 education and training, for exercising the apprenticeships functions, including securing provision of apprenticeship places for suitably qualified young people aged 16-18; and for the education and training of those in adult custody.

203. The Government intends that the Chief Executive will be supported by a new Skills Funding Agency, which will administer the funding system, and make payments to colleges, training providers and others based on the course selections of learners and employers and on a set of entitlements to learning, advice and financial support. The Skills Funding Agency will also manage the new Adult Advancement and Careers Service (AACS), the National Apprenticeship Service and the Train to Gain service. The Train to Gain service is the set of skills services provided to business including public sector employers. Together with its role in funding colleges and providers, these services will provide advice and support on jobs, skills and funding.

204. The Skills Funding Agency will also oversee the development of the Further Education Sector, working with the aim of ensuring that the supply of learning provision meets the needs of learners and employers. This will include working with other agencies such as Jobcentre Plus to ensure those out of work or likely to be made redundant, receive an integrated employment and skills service, taking account of labour market needs.

205. The Skills Funding Agency is not defined in this Bill – instead the Government intends that it will operate through the powers and duties of the Chief Executive of Skills Funding, as described in Part 4 of the Bill. The detailed role and functions of the Skills Funding Agency will be set out in a Framework Document which will be issued by the Secretary of State. The Secretary of State will also provide the agency with an annual letter setting out its budget and performance targets for each forthcoming financial year.

206. Both the Chief Executive and the staff of the Skills Funding Agency will work within the Department for Innovation, Universities and Skills. The Chief Executive will be a civil servant and a member of the DIUS Board, and will be accountable to the Permanent Secretary and through him to Ministers.

207. The Bill provides the Secretary of State with powers to direct the Chief Executive in certain circumstances, but the responsibility for making decisions relating to the funding of particular individuals or bodies lies with the Chief Executive, not the Secretary of State, who is prohibited from giving directions to the Chief Executive in relation to individual funding decisions.

Clause 78: The Chief Executive of Skills Funding

208. This clause provides for there to be a Chief Executive of Skills Funding who will be appointed by the Secretary of State and whose functions will be limited to England, except where the Chief Executive participates in arrangements with devolved administrations — see clauses 103, 104 and 105 below.

209. Most provisions about the Chief Executive which could broadly be categorised as relating to the administration of the office are contained in Schedule 4 whereas the specific duties, powers and functions in relation to the provision of education and training are in the main body of the Bill.

Schedule 4: The Chief Executive of Skills Funding

210. *Paragraph 1* provides that the holder of the office of Chief Executive will exercise the functions of the office on behalf of the Crown. It also provides that the office itself will be a corporation sole, so that any contracts entered into, or property owned by, the Chief Executive will pass automatically from one holder of the office to the next. *Paragraph 2* sets out how the Chief Executive will hold and vacate office, and provides that the holder of the office will be a civil servant. *Paragraphs 3 to 5* contain provision about the staff of the Chief Executive, who will form the Skills Funding Agency. These staff may either be appointed by the Chief Executive under *paragraph 3*, who will be civil servants, or be provided by the Secretary of State to the Chief Executive under *paragraph 5*. *Paragraph 4* makes arrangements whereby the Chief Executive may delegate the functions of the office to members of the Chief Executive's staff and to staff provided by the Secretary of State under *paragraph 5*. *Paragraph 6 to 8* make provision for operational matters such as funding, including the payment of grants to the Chief Executive and how these must be accounted for, and the preparation and publication of annual reports and accounts.

211. *Paragraph 9* sets out provision for supplementary powers and restrictions, and gives the Chief Executive additional general powers to enable him or her to perform the functions of the office. For example, these powers would allow the Chief Executive to acquire and dispose of land and other property, and enter into contracts. It also sets out those things that the Chief Executive may not do. So the Chief Executive may not borrow money and may not, without the prior consent of the Secretary of State, lend money; form, participate or invest in a company; or form, participate in forming, or become a member of a charitable incorporated organisation.

Apprenticeship Functions

Clause 79: Apprenticeship functions

212. The Secretary of State may direct the Chief Executive of Skills Funding to designate a person to carry out apprenticeship functions on behalf of the Chief Executive. The Government expects that the person designated will be the Chief Executive of the National Apprenticeship Service (NAS). The NAS will be a discrete service within the Skills Funding Agency, and the Chief Executive of the NAS and his staff will undertake the apprenticeship functions, including the duty to secure places for young people under the apprenticeship scheme (clause 83). *Subsection (5)* sets out the “apprenticeship functions” that may be carried out under this section.

213. This clause allows the Secretary of State to define and regulate the relationship between the two post holders, and to set out the functions that the Chief Executive of the NAS (or any other designated person) will be required to report to the Secretary of State on. The “Secretary of State” refers here to both the Secretary of State for Innovation, Universities and Skills and the Secretary of State for Children, Schools and Families.

214. All apprenticeship functions will be conferred by the Bill on the Chief Executive of Skills Funding. Where those functions are delegated to the Chief Executive of the NAS or another designated person, regulations under *subsection (7)* may make clear which statutory references should operate as references to the designated person, and may modify other statutory provisions.

Apprenticeship training for persons aged 16 to 18 and certain young adults

Clauses 80: Apprenticeship training for persons aged 16 to 18 and certain young adults, Clause 81: Arrangements and co-operation with local education authorities

215. Clauses 80 and 81 set out the general powers relating to the provision of apprenticeship places for young people. The local education authorities will agree with the Chief Executive the amount and type of apprenticeship training required.

216. Within these general powers, the Chief Executive has a specific duty to secure sufficient suitable apprenticeship places for every suitably qualified young person aged 16-18 who wants one. This duty is set out as the apprenticeship scheme in clauses 83 to 91. A suitable place is in one of the two available chosen apprenticeship sectors, at the appropriate level, and within the reasonable travel area of the person concerned. The definitions and levels in these clauses relate solely to the apprenticeship scheme. The clauses do not define an apprenticeship, the characteristics of which are set out in the specification of apprenticeship standards in Part 1.

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as introduced in the House of Commons on 4 February 2009 [Bill 55]*

Clause 80: Apprenticeship training for persons aged 16-18 and certain young adults

217. This clause enables the Chief Executive to secure the provision of facilities for apprenticeship training of young people, that is, people above compulsory school age but under 19 and those aged 19 or over but under 25 who are subject to a learning difficulty assessment. These are the people for whose training and education local education authorities will be responsible under section 15ZA of the Education Act 1996 (inserted by clause 40 of the Bill). This apprenticeship training will be provided in response to the need for such training agreed with the local education authorities.

218. Apprenticeship training is defined as training provided in connection with an apprenticeship agreement, any other contract of employment or other kinds of working which may lead to the award of apprenticeship certificates.

Clause 81: Arrangements and co-operation with local education authorities

219. This clause enables the Chief Executive to enter into arrangements with local education authorities when securing apprenticeship training for young people. It also requires the Chief Executive to co-operate with local education authorities when deciding on the number of places for apprenticeship training to be secured. The arrangements need to enable local education authorities to meet their responsibilities under clause 40 of the Bill and to enable the Chief Executive to meet demand for apprenticeship places under the apprenticeship scheme in accordance with clause 83.

Clause 82: Encouragement of training provision etc for persons within section 80

220. This sets out the general duty on the Chief Executive to promote apprenticeships for young people to employers, and encourage them to employ young people as apprentices.

Apprenticeship scheme for persons aged 16 to 18

Clause 83: Duty to secure availability of apprenticeship places for persons aged 16 to 18

221. The Chief Executive has a specific duty to secure sufficient apprenticeship places for every suitably qualified young person who wants one. This duty is one of the apprenticeship functions which is expected to be delegated to the Chief Executive of the National Apprenticeship Service. The arrangements for fulfilling this duty are set out in the following clauses and are known as the apprenticeship scheme. *Subsection (3)* allows the Secretary of State to prescribe when the duty has or has not been met.

Clause 84: Election for apprenticeship scheme

222. This specifies the eligibility criteria for persons who may elect for the apprenticeship scheme, and provides that the person who elects for the scheme should select two apprenticeship sectors for the purposes of the scheme. Within each sector there will be a number of different frameworks. The intention is that the sectors will

follow those of the Sector Skills Councils. It also provides that persons who satisfy the apprenticeship requirements at both level 2 and level 3 must choose one of those levels.

Clause 85: Meaning of “apprenticeship place”

223. This defines an apprenticeship place for the purposes of the apprenticeship scheme set out in clause 83. A place consists of arrangements comprising both a place on a training course and a place for employment under an apprenticeship agreement, which together relate to an English framework (clause 13).

Clause 86: Suitability and availability of apprenticeship places: further provision

224. This makes provision about the suitability and availability of apprenticeship places and defines what is meant by the “appropriate level” of an apprenticeship place and “reasonable travel area”. Under *subsection (6)* the Secretary of State must specify areas; the Government intends that that these will be the “travel to work areas” (TTWAs) defined by the Office for National Statistics. TTWAs were introduced to provide self contained labour markets and indicate an area within which the population would generally commute for the purposes of employment. The Government expects that that the duty to secure places will usually enable young people to take places within the specified area in which a person lives; and only exceptionally, where there neither choice of sector cannot be met because there are very few or even no employers in those sectors in the specified area, the Chief Executive might reasonably conclude that travel outside the specified area is warranted to take up a place.

Clause 87: Apprenticeship scheme requirements: interpretation

225. This clause sets out the qualifications a person must have to elect for the apprenticeship scheme at level 2 or level 3, and Clause 88 contains definitions for the purposes of this clause. These qualifications relate solely to the apprenticeship scheme and do not affect anyone’s ability to work towards an apprenticeship certificate outside the apprenticeship scheme. The clause also specifies that a person must be available for employment under an apprenticeship agreement and allows regulations which will be subject to the negative resolution procedure, to set out what that means.

Clause 89: Suspension of scheme

226. The Secretary of State may suspend the apprenticeship scheme in a specified geographical area in relation to particular apprenticeship sector or at a particular level for up to two years. This would allow the duty to secure suitable apprenticeship places to be suspended where the economic difficulties, or other circumstances, are so severe that it cannot be fulfilled.

Clause 90: Power to amend apprenticeship scheme

227. This allows the Secretary of State to amend the age range or level of qualification for the apprenticeship scheme by order, which will be subject to the affirmative resolution procedure.

Clause 92: Education and training for persons aged 19 or over and others subject to adult detention

228. This clause sets out the general duty of the Chief Executive to secure the provision of “reasonable” facilities for the education and training of people aged 19 or over, (other than those aged under 25 who are subject to learning difficulty assessment) and those who are detained in a prison or an adult young offender institution. Facilities are “reasonable” if they are of a quality and quantity which the Chief Executive can reasonably be expected to provide taking account of the resources available to him or her (*subsection (3)*).

229. The duties do not extend to higher education, which is the responsibility of the Higher Education Funding Council. This is because the Education Act 1996 applies for the interpretation of this Part, and section 1(4) of that Act excludes higher education from its ambit.

230. The duty includes funding and securing delivery of education and training for those detained in prisons and adult young offender institutions, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise. This aligns the Chief Executive’s responsibilities with the age arrangements for holding prisoners within the criminal justice system, thereby avoiding shared responsibility for learning delivery between local education authorities and the Chief Executive in individual establishments. Local education authorities will be responsible for all those detained within the youth criminal system (which includes nearly all those aged 17 year and under, and those aged 18 who are close to the end of their sentence and who will therefore not transfer to adult prisons). Where a person in adult detention has already begun education or training, the Chief Executive must have regard to the desirability of those persons continuing such programmes whilst in custody. Feasibility of such provision as well as budgetary considerations may be taken into account.

231. *Subsection (4)* sets out the factors the Chief Executive must take into account in exercising his or her duty under *subsection (1)*, which include ensuring that the education and training required by different employment and industry sectors are met. It also requires the Chief Executive to act with a view to encouraging diversity in education and training; and to increasing opportunities for individuals to exercise choice.

232. The Chief Executive should make the best use of resources and avoid provision which might give rise to disproportionate expenditure. Disproportionate expenditure is that which, although not necessarily wasteful, is too much or too little in view of the overall functions and expenditure of the Chief Executive. For example, in respect of courses for which there are high levels of demand fairly consistently across the country, the duty would be satisfied if provision for learners and employers (via Train to Gain) were accessible widely across many institutions and with a good regional distribution. This position would differ where demand both for courses and for skills is more limited, and for these the Chief Executive must have regard to

proportionate expenditure. Meeting this duty may require, for example, a more limited offer of places concentrated in geographical areas with links to a particular industry sector. Learners (and employers) seeking to access these more unusual courses may need to travel to take up the offer of a course.

233. No distinction is drawn between full-time and part-time education in the provision that the Chief Executive must secure.

234. “Organised leisure time occupation” is defined in *subsection (8)*. The Chief Executive’s duties in this regard do not apply to those who are detained in prison or adult young offender institutions; such facilities are provided by the prison or other institution.

Clause 93: Learning aims for persons aged 19 or over: provision of facilities

235. Clauses 93, 94 and 95 re-enact section 86 of the Education and Skills Act 2008, but conferring functions on the Chief Executive rather than the LSC. Clause 93 places a duty on the Chief Executive to secure the provision of proper facilities (in contrast to the reasonable facilities provided for in clause 92) for education and training to enable adults who lack particular skills to obtain relevant qualifications. *Subsection (4)* of clause 93 defines proper facilities as those which are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. This clause effectively gives higher funding priority to those adults who lack certain particular skills to enable them to obtain relevant qualifications.

236. The broad standards of achievement (or “learning aims”) for this purpose are set out in Schedule 5. They are a specified qualification in literacy, a specified qualification in numeracy and a specified vocational qualification at level 2. The specification of the particular qualifications to which the duty applies will be in regulations.

237. The duty will apply only to a learner’s first qualification at the specified level. For example, the Chief Executive will not be under a duty to secure the provision of proper facilities for a learner with a level 2 National Vocational Qualification (NVQ) in Beauty Therapy who then applies for a level 2 course in Hairdressing. However, the Secretary of State may by regulations made under clause 95 provide that despite having a specified qualification, a person is to be treated as not having that qualification. This could apply, for example, where an individual had achieved a school leaving qualification in English or maths but was later identified, as a result of diagnostic assessment, as having skills below the basic levels of literacy or numeracy.

238. The qualifications will be those at relatively low levels of learning, which are designed to equip people with basic and intermediate skills for work and everyday living

239. In performing the duty, the Chief Executive must take account of a number of factors, such as the education and training needs in different sectors of employment.

The Chief Executive must also act with a view to encouraging diversity of education and training and to increasing opportunities for individuals to exercise choice; and must make the best use of resources, particularly with a view to avoiding provision which might give rise to disproportionate expenditure.

Clause 94: Learning aims for persons aged 19 or over: payment of tuition fees

240. This clause places a duty on the Chief Executive to ensure that learners will not be liable to pay fees for courses of study provided as a result of clause 93. There are two categories of learners that the Government intends will not have to pay fees for their courses:

- *Subsection (2)* covers those that are at least 19 years of age and are following a course of study for their first specified qualification in literacy, numeracy, or a specified vocational qualification at level 2;
- *Subsection (4)* covers those that are at least 19 but less than 25 who are following a course to get their first specified level 3 qualification (for example, two A-levels).

241. The intention is that these learners will not be liable to pay fees for these courses of study.

242. Fees include the course fees, but the Secretary of State may also specify in regulations, which will be subject to the affirmative resolution procedure, that other fees relating to the course; for example, examination fees and costs of diagnostic assessment, are included. Costs which are not fees (for example, the costs of buying books, equipment and materials) will not come within the scope of the duty.

243. *Subsection (5)* gives the Secretary of State the power to amend by order, which will be subject to the affirmative resolution procedure, the relevant provisions of this clause so as to vary the ages at which learners qualify for financial help under this section. This provides the flexibility, for example, to be able to adapt to changing economic conditions.

Clause 95: Sections 93 and 94: supplementary

244. This clause sets out supplementary provisions relating to regulations relating to clauses 93 and 94. Regulations may make provision about the circumstances in which a person is to be treated as having or not having a particular qualification for the purposes of meeting the entitlement. It also provides that clauses 93 and 94 do not apply to people detained in prisons or adult young offender institutions.

Schedule 5: Learning aims for persons aged 19 or over

245. The Schedule sets out the learning aims for people aged 19 or over, that is the broad categories from which qualifications may be specified as ones for which the

Chief Executive must secure proper facilities (clause 93) or pay for tuition fees (clause 94).

246. These categories are:

- a specified qualification in literacy (at the level of attainment in literacy at which an adult's skills are the minimum required to operate in day-to-day life);
- a specified qualification in numeracy (at the level of attainment in numeracy at which an adult's skills are the minimum required to operate in day-to-day life);
- level 2 (as demonstrated by 5 GCSEs at Grade C or above);
- level 3 (as demonstrated by 2 A-levels).

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

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

248. The Secretary of State may amend the Schedule by order to specify that a particular category of qualification is no longer within scope of the duties or to add a

new category of qualification. Any such amendment will be subject to the affirmative resolution procedure.

Clause 96: Encouragement of education and training for persons aged 19 or over and others subject to adult detention

249. This clause sets out the Chief Executive's general duty to encourage participation by individuals and employers in education and training amongst people aged 19 or over and others in adult detention.

Clause 97: Provision of financial resources

250. This clause gives the Chief Executive powers to fund other persons for the purpose of fulfilling the duties and exercising the powers vested in the Chief Executive. It provides powers for the Chief Executive to pay persons who provide or are proposing to provide education or training within the Chief Executive's remit, and to pay persons who may not be providers themselves but who supply services which support the delivery of such education and training by providers, for example, delivery of transport and other support services. The powers also provide for the Chief Executive to pay persons providing or proposing to provide information, advice or guidance about education or training or connected matters.

251. A person may be any natural or legal person and includes FE colleges, private and voluntary sector training providers and individuals. *Subsection (1)(c)* allows the Chief Executive to make direct grants to students.

252. In exercising the powers under this section, the Chief Executive may use his own financial resources – namely the grant provided by the Secretary of State; assist in the transfer of financial resources from one person to another; and do either of these jointly with other persons or assist in the transfer of financial resources from other persons who are acting jointly, for example, to jointly commission with other Government Departments, for example the Department for Work and Pensions, skills provision for people who have, or are likely to be made, redundant.

253. In order to fulfil his or her powers to fund colleges and providers, the Chief Executive will receive an annual letter setting out the available budget and the Secretary of State's priorities. It is anticipated that under this section, the Chief Executive will exercise his or her funding powers in order to fund FE colleges, training providers and others for learning provision which responds to the choices of individuals and employers.

Clause 98: Financial resources: conditions

254. This clause permits the Chief Executive to attach conditions to the financial resources which he or she makes available. *Subsection (2)* provides that these conditions may in particular fall into three categories: information, operational or repayment. For example, information conditions may include a requirement to provide information to the Chief Executive or other persons so designated by the Chief Executive and could also enable the Chief Executive and designated persons to

have access to the accounts and computers, for example, of funded persons (subsection (3)).

255. Subsections (4) and (5) define “operational conditions”; these include a requirement on the provider to charge fees by reference to specified criteria, the making of awards and recovery of costs from other persons in accordance with criteria established by the Chief Executive. Operational conditions may also place a requirement on a provider to make available provision which meets requirements identified in learning difficulty assessments conducted under section 139A or 140 of the Learning and Skills Act 2000.

Clause 99: Performance assessments

256. This clause re-enacts the performance assessment elements of section 9 of the Learning and Skills Act 2000, replacing references to the LSC with references to the Chief Executive of Skills Funding. It enables the Chief Executive to adopt or develop schemes for the assessment of the performance of individual providers of education and training. The Chief Executive may take this assessment into account when deciding which providers he or she will continue to fund under powers in clause 97.

Clause 100: Means tests

257. This clause re-enacts the means elements of section 9 of the Learning and Skills Act 2000, replacing references to the LSC with references to the Chief Executive of Skills Funding. It enables the Chief Executive to carry out means tests or arrange for others to do so in order to establish how much financial support students may be eligible to receive in respect of the costs of education or training, which may include childcare or transport costs, or where living costs are a concern.

Clause 101: Assistance and support in relation to apprenticeship places

258. This clause places a duty on the Chief Executive to provide or secure provision of services to assist people to find apprenticeships. The clause provides the statutory basis for the services provided by the National Apprenticeships Vacancy Matching Service launched in December 2008 which include a web based service for individuals, employers and providers which enables employers to advertise their apprenticeship vacancies through a national portal. The Government’s expectation is that the portal will provide information to assist people interested in apprenticeships to understand the opportunities that exist for them and where appropriate apply on-line for those opportunities that interest them.

Clause 102: Advice and Assistance in relation to apprenticeships

259. This clause allows the Secretary of State to require Chief Executive of Skills Funding to provide advice and assistance to enable the Secretary of State to discharge responsibilities for statutory apprenticeships set out in Part 1, Chapter 1. These include responsibility for the specification of apprenticeship standards for England and giving directions and guidance in relation to the issue of English frameworks.

Clause 103: Provision of services

260. This clause re-enacts section 11 of the Further Education and Training Act 2007, replacing references to the LSC with references to the Chief Executive of Skills Funding. It provides the powers for the Chief Executive to provide services for individuals and to bodies exercising education and training functions in relation to those functions. It enables the Chief Executive to offer support services such as management information systems, software management systems, payroll administration, human resources functions, finance services and procurement services, including to people and to bodies outside England where that is appropriate, and required by the devolved administrations. Such services may include the provision of accommodation or facilities where that is appropriate to the delivery or provision of the service.

261. The Chief Executive may provide these services to: publicly-funded education and training providers (including schools and universities); publicly-funded institutions that have functions relating to the provision of education and training; and persons or bodies specified by order (who may or may not be publicly funded but have functions relating to education or training).

262. *Subsection (3)* provides that the terms and conditions of such arrangements may include provision for making payments to the Chief Executive in respect of costs incurred in performing any function under the arrangements. This might be used where the delivery of services requires the Chief Executive to incur costs that might not normally be incurred in the delivery of services in England alone. This might include costs associated with adapting systems, providing “additional” services, or simply providing the service to devolved administrations.

263. *Subsection (4)* defines “permitted recipients”, which are those persons with whom the Chief Executive may make arrangements under this clause and *subsection (8)* defines “the appropriate national authority”.

264. The orders specifying additional persons or bodies may be made by the Secretary of State or, where a person or body has education and training functions only in Wales, Scotland or Northern Ireland, by the relevant devolved administration.

265. In Wales, Scotland and Northern Ireland, these services will be supplied only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service.

266. The Chief Executive will need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

267. An example of such a support service is the Further Education Data Service which the Government intends that the Chief Executive will operate as a shared service across the Further Education and skills sector. This service will collect

information from colleges and providers and produce and disseminate reports on performance of the further education sector to all those with a direct interest in the performance of particular colleges and providers, for example the colleges and providers themselves; local education authorities; and the Young People's Learning Agency.

268. Another example of such a support service is the Managing Information Across Partners (MIAP) Learner Registration and Learner Record Service through which the Chief Executive will provide services, when requested to do so, which support the sharing of data with the aim of benefiting of individual learners. The Chief Executive will manage these services on behalf of participating partners. The Welsh Assembly and Northern Ireland Government have already asked the LSC to provide such services and this clause will enable the Chief Executive to carry out the same functions.

Clause 104: Assistance with respect to employment and training, Clause 105: Assistance with respect to employment and training: Northern Ireland

269. Clauses 104 and 105 give the Chief Executive the same powers which the LSC currently has under section 12 and 13 of the Further Education and Training Act 2007, to allow him or her to take part in arrangements in relation to Wales, Scotland and Northern Ireland for assisting persons to select, train for, obtain and retain employment. Consent of the Welsh and Scottish administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland. The consent of the Secretary of State will be required for arrangements made by all the devolved administrations which involve the Chief Executive. Arrangements may include a loans scheme for learners such as Career Development Loans (CDLs) or its successor Professional and Career Development Loans (under which commercial lenders provide loans to help pay for learning) which operate throughout Great Britain and are currently administered by the LSC on behalf of the devolved administrations.

Clause 106: Research, information and advice

270. This clause sets out the role of the Chief Executive in relation to research and the provision of information and advice, and the establishment of systems for collecting information. The Chief Executive has a duty to report to the Secretary of State on such matters as the Secretary of State may require. In practice, this is likely to include information about progress towards the Government's targets and priorities in connection with post-19 learning; a description of the Chief Executive's learning and skills funding strategy; and information on the application of funding. This will also include information about 16-18 apprentices.

271. *Subsection (4)* gives the Chief Executive the power to provide information to any person designated by the Secretary of State, in relation to a function of the Chief Executive. This will, for instance, enable the Chief Executive to provide the Office of Qualifications and Examinations Regulation (Ofqual) (if so designated) with

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information to assist with the establishment and maintenance of the framework of qualifications and monitoring of the standards of qualifications.

272. *Subsection (6)* allows the Chief Executive to secure the provision of facilities and services for providing information, advice or guidance about education or training or connected matters.

Clause 107: Power to confer supplementary functions on Chief Executive

273. This power enables the Secretary of State to confer by order additional functions on the Chief Executive, which are connected to the functions of the Secretary of State and relevant to the provision of facilities for education or training within the remit of the Chief Executive.

Chapter 3: Chief Executive's functions: supplementary

Strategies

Clause 108: Strategies for functions of Chief Executive

274. This clause re-enacts with modifications, existing powers under section 24A of the Learning and Skills Act 2000. It allows the Secretary of State by order to specify an area of England as an area for which a specified body (which could either be a body that already exists or one which is specifically set up), to put in place and keep under review a strategy for how education and training for those persons that the Chief Executive is responsible for, will be delivered. This would typically be a city region, for which a specified body — for example, an Employment and Skills Board — is able to set out a strategy for the actions of the Chief Executive in that particular area. The Secretary of State may not specify an area comprising Greater London or a part of it because specific powers in respect of Greater London apply and are set out in clause 109.

275. *Subsection (4)* allows the Secretary of State to give directions and guidance to the specified body in relation to the formulation and review of its strategy, including such matters as form and content of the strategy, updating and reviewing the strategy and those bodies which need to be consulted on the formulation and review of the strategy. The specified body must comply with any directions and have regard to any guidance given by the Secretary of State.

276. *Subsection (6)* allows the Chief Executive to reimburse this body for costs and expenses it incurs in formulating and reviewing its strategy.

Clause 109: Strategy for functions of Chief Executive: Greater London

277. This section re-enacts with modifications section 24B of the Learning and Skills 2000 (which was inserted by the Further Education and Training Act 2007) This clause requires the Secretary of State to provide, by regulations, for the establishment of a London body to formulate a strategy setting out how certain

functions of the Chief Executive are to be carried out in Greater London and keep it under review.

278. The body that is established must include the Mayor of London and other members appointed by the Mayor in accordance with the regulations and the Mayor must be the chairman of the body.

279. Under *subsection (4)*, the Secretary of State may give directions and guidance to the London body in relation to the formulation and review of the strategy, including such matters as the form and content of the strategy; updating it; procedures to be followed when formulating or reviewing the strategy; and the consultation procedures to be followed.

280. The London body must act in accordance with any such directions and have regard to guidance given by the Secretary of State (*subsection (5)*) and it must publish the strategy, or the revised strategy (*subsection (6)*).

281. The Chief Executive may contribute to costs and expenses incurred by the London body or the Greater London Authority (*subsections (8) and (9)*).

Clause 110: Strategies: duty of Chief Executive

282. This clause puts the Chief Executive under a duty to implement any strategy formulated by a body set up under the powers contained in clauses 108 and 109.

283. The clause sets out circumstances in which the Chief Executive may refuse to comply with the strategy. This might be for example where the strategy has been formulated without compliance with any directions or regard to guidance concerning its formulation or review. If provision in a strategy conflicts with provisions of strategies of different specified bodies, the Chief Executive may disregard relevant provision in one or both of the strategies (*subsection (4)*).

284. The Chief Executive is not required to carry out his or her functions in accordance with a strategy in a manner that he or she is satisfied might involve disproportionate cost or in a manner which he or she considers to be unreasonable (*subsection (6)*).

285. The Chief Executive may not carry out a function in accordance with a strategy if to do so would mean failing to comply with a duty imposed on him or her by or under any enactment (*subsection (3)*). Where the Chief Executive proposes not to, or does not, carry out a function in compliance with a strategy, the Chief Executive must refer the matter to the Secretary of State (and the strategy setting body may also refer the matter to the Secretary of State) (*subsection (7)*). In such circumstances, the Secretary of State may give such direction to the Chief Executive as he or she thinks fit regarding the carrying out of that function (*subsection (8)*).

Clause 111: Persons aged 19 or over with learning difficulties

286. This clause provides that in performing the functions of the office, the Chief Executive must have regard to the needs of persons who are aged 19 or over who have learning difficulties but who are not subject to a learning difficulty assessment (under section 139A of the Learning and Skills Act 2000). “A learning difficulty” is defined in *subsections (2) and (3)*.

Clause 112: Persons subject to adult detention

287. This clause provides that the Chief Executive must have regard to the needs of persons in adult prisons in the performance of the functions of the office.

Clause 113: Use of information by Chief Executive

288. This clause provides that the Chief Executive must have regard to any information which has been provided by a person designated by the Secretary of State for the purposes of this section.

Clause 114: Guidance

289. This clause sets out a requirement similar to that on the Learning and Skills Council in section 14A of the Learning and Skills Act 2000 (inserted by section 7 of the Further Education and Training Act 2007). It places a duty on the Chief Executive to have regard to any guidance given by the Secretary of State. In particular, guidance may relate to consultation with learners, potential learners (who fall within the Chief Executive’s remit) and employers; and taking advice from such persons or descriptions of persons as may be specified in the guidance. In relation to consultation with learners and potential learners, the guidance must provide for the views of such persons to be considered in the light of their age and understanding.

Clause 115: Directions: funding of qualifications

290. This clause provides for the Secretary of State to direct the Chief Executive to secure (by way of imposing a condition) that funding he provides is not used to make payments in respect of certain specified qualifications. The direction from the Secretary of State would be expected to specify the qualification or qualifications which he considers to be inappropriate for public funding and should therefore be excluded, and may set out the details under which financial resources should not be provided, such as a course leading to a qualification, or exam fees for a qualification.

291. *Subsection (2)* defines the terms “an excluded payment” and “relevant institution or employer” for the purposes of this clause.

292. The overall purpose of the clause is to ensure that the funding provided by the Secretary of State to the Chief Executive is used to fund qualifications which the Secretary of State thinks are appropriate to receive public funding, and provides a mechanism for the Secretary of State to prevent the public funding of qualifications where he deems it inappropriate to provide such funding.

Clause 116: Directions: funding conditions requiring co-operation

293. This section gives a power to the Secretary of State to direct the Chief Executive to use funding conditions to require a training provider to cooperate with other training providers or other specified bodies. The Secretary of State may require the Chief Executive to make it a condition of the funding that financial resources made available to a specified provider or providers of education or training (within the Chief Executive's remit) must be dependent upon a requirement that they cooperate with other specified providers or with other specified persons. The provider or providers specified in the direction must have regard to any guidance issued by the Secretary of State under this clause.

294. The direction will specify the providers or types of providers, and the circumstances and purpose of the co-operation. Subsection (3) sets out the additional persons (other than other providers) with whom the provider may be required to co-operate, which include a local education authority in England and the Young People's Learning Agency for England.

Clause 117: Other directions relating to the functions of the office

295. This clause allows the Secretary of State to give directions to the Chief Executive which must be complied with about what overarching objectives he or she should be seeking to achieve in performing the functions of the office, and by when. Directions may not relate to the funding of specific individuals or individual bodies. This is to ensure that the Chief Executive has responsibility for funding decisions, without influence from the Secretary of State. The Secretary of State is able to intervene if he or she considers that the Chief Executive has failed to discharge a statutory duty or has acted or is proposing to act unreasonably in the exercise of his or her functions.

PART 5: PARTS 2 TO 4: SUPPLEMENTARY

Clause 119: Sharing of information for education and training purposes

296. This clause will allow the Chief Executive of Skills Funding, the YPLA, and LEAs, to share information to enable or facilitate the exercise of their functions.

297. The clause does not allow information to be passed on if doing so would be an offence, nor where there are other statutory restrictions which prohibit its disclosure.

The Learning and Skills Council for England

Clause 120: Dissolution of the Learning and Skills Council: for England, Clause 121: Dissolution of the Learning and Skills Council: transfer schemes

298. These clauses provide for the dissolution of the LSC and give effect to Schedule 7, which provides for the transfer of staff and property from the LSC to various bodies.

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Schedule 7: Learning and Skills Council for England: transfer schemes

299. This Schedule gives power to the Secretary of State to make a scheme to enable the transfer of staff and property from the LSC to various bodies.

300. In relation to staff, the Secretary of State may make a scheme providing for designated employees of the LSC to become employees of “a permitted transferee” or to become members of the civil service. The Government envisages that some of the LSC staff will become civil servants as a result of transferring to DIUS and the Chief Executive of Skills Funding. In relation to property, the scheme may provide for the transfer from the LSC of designated property, rights or liabilities to the Secretary of State, the Chief Executive of Skills Funding, or to a permitted transferee.

301. “Permitted transferee” is defined in *paragraph 7* as an English LEA, the YPLA or any other person specified by the Secretary of State by order.

PART 6: THE SIXTH FORM COLLEGE SECTOR

Clause 122: Sixth form college sector

302. This Part introduces Schedule 8, which contains provisions for a new sixth form college sector.

Clause 123: Removal of power to establish sixth form schools

303. This clause prevents LEAs from establishing additional sixth form schools, but does not affect existing sixth form schools, which will continue to operate in exactly the same way as other schools maintained by the LEA.

Schedule 8 - Sixth form college sector

304. Paragraph 3 of Schedule 8 inserts new provisions for sixth form college corporations in England into the Further and Higher Education Act 1992 (“the FHEA 1992”).

Section 33A: Initial designation of existing bodies corporate as sixth form college corporations

305. This new section gives the Secretary of State a power to designate, by order, specified existing further education (“FE”) corporations as “sixth form college corporations”. This initial designation power will take the form of a list of institutions. Designation will take effect from a date that is specified in the order. The designation order may provide for the continuity of governance between the former FE corporation and the new sixth form college corporation and may specify the initial name of the new corporation.

306. The sixth form college corporations designated under this section will include both FE corporations established under section 16 of the FHEA 1992 and “designated institutions”. Some colleges that were sixth form colleges before 1992 entered the further education sector by being designated under section 28 of the FHEA 1992, and

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were later incorporated as FE corporations under section 143 of the Learning and Skills Act 2000.

307. This power is exercisable only once and not after a date specified by order.

Section 33B: Subsequent designation of existing bodies corporate as sixth form college corporations

308. This new section gives the Secretary of State further power to designate, by order, FE corporations as sixth form college corporations once the power in section 33A is no longer exercisable. A designation order may be considered only after the governing body of a FE college has applied to the Secretary of State and if, on the date of application, at least 80% of the total enrolment number at the institution is aged 16 or over but under 19. The “total enrolment number” is defined as the full-time equivalence number (as calculated under Schedule 3 to the FHEA 1992). The designation order may provide for the continuity of governance between the former FE corporation and the new sixth form college corporation and may specify the initial name of the new corporation.

Section 33C: Establishment of new bodies corporate as sixth form college corporations

309. This section gives the Secretary of State the power to establish, by order, a sixth form college corporation. The local education authority must first publish proposals in line with the requirements set out in subsection (3). On establishment, at least 80% of the total enrolment number at the institution must be aged 16-18. The order will specify the date of establishment and may provide for the name of the new corporation.

Section 33D: Conversion of sixth form college corporations into further education corporations

310. Under this new section, the Secretary of State may, by order, convert a sixth form college corporation into a FE corporation. This is the opposite of the process under section 33B for the designation of a sixth form college. The governing body of the sixth form college must apply to the Secretary of State and he must be satisfied that it is no longer appropriate for the college to remain a sixth form college. So that change does not destabilise colleges, subsection (3) prevents a sixth form college from seeking to convert for five years from the date that it is designated or established as a sixth form college. The order may, as with designation or establishment orders, ensure the continuity of governance from sixth form college status to FE college status.

Section 33E: Principal powers of a sixth form college corporation, Section 33F: Supplementary powers of a sixth form college corporation, Section 33G: Further provision about supplementary powers

311. These sections set out the principal and supplementary powers of sixth form college corporations, reflecting powers of FE corporations in sections 18 and 19 of the FHEA 1992.

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Section 33H: Duty in relation to promotion of well-being of local area

312. This new section will place a duty on sixth form college corporations, when providing education and training for young people and adults, to take account of the way in which they contribute to the economic and social well-being of people who live and work in the area. This mirrors clause 242 which places a similar duty on FE corporations.

Section 33I: Constitution of sixth form college corporation and conduct of sixth form college, Section 33J: Special provision for certain institutions, Section 33K: Instrument and articles of new sixth form college corporations, Section 33L: Changes to instruments and articles

313. These new sections contain provisions relating to the instruments and articles of government of sixth form colleges. Under section 33I, all sixth form colleges must have instruments and articles of government. Section 33J makes provision requiring sixth form colleges of a particular character — mainly faith-based institutions and those established by foundations — to reflect those characteristics in their trust deeds and the membership of their governing bodies. The initial instruments and articles of government of a new sixth form college established under section 33C will be drawn up by the YPLA (section 33K). Section 33L sets out procedures by which the YPLA may modify instruments and articles of government in consultation with sixth form college corporations.

Section 33M: Charitable status of a sixth form college corporation

314. This new section establishes that sixth form college corporations are exempt charities within the meaning of the Charities Act 1993.

Section 33N: Dissolution of sixth form college corporations

315. Section 33N gives power to the Secretary of State to dissolve a sixth form college corporation and transfer the property, rights and liabilities of the corporation to another person or corporation, which may include the responsible LEA. Orders may make provision for the transfer of staff (subsection (8)). Before making an order to dissolve a sixth form college corporation and transfer assets and liabilities, the Secretary of State must consult the corporation and the responsible LEA.

316. Paragraphs 4 to 7 of Schedule 8 make amendments to the FHEA 1992 to distinguish sixth form colleges and sixth form college corporations from FE colleges and FE college corporations. Paragraph 8 of the Schedule amends the provisions of the FHEA 1992 relating to intervention in colleges to add new sections 56E to 56J.

317. Section 56D (inserted by paragraph 11 of Schedule 6) requires a LEA or the YPLA to notify the Chief Executive of Skills Funding about concerns that they have about FE colleges other than sixth form colleges. The Chief Executive must have regard to those views when considering whether to intervene.

Sections 56E and 56F: Intervention by LEAs: sixth form colleges

318. Section 56E replicates for local education authorities the powers previously

held by the LSC for intervention in sixth form colleges. This section sets out the matters that would trigger consideration of intervention in a college (subsection (2)) and the arrangements by which the LEA must notify the Secretary of State and the YPLA, and the college, of their intention to intervene and the reasons for doing so. The powers of the LEA are explained in subsection (6). The LEA may give directions to the governing body to make arrangements for collaboration (subsection (7)) and to dismiss a member of staff, if the governing body have power under their institution's instruments and articles of government (subsection (10)). The governing body must comply with any directions made under this section. In addition section 56F allows a local education authority to appoint no more than two additional members of a governing body of a sixth form college.

Section 56G: Intervention policy: sixth form colleges

319. This section requires the YPLA to prepare a statement of the intervention policy, to which LEAs are required to have regard (subsection (7)) when using their powers under section 56E. The YPLA must consult on the statement and send a copy to the Secretary of State, which he is required to lay before each House of Parliament. The YPLA must then publish that policy, as approved by the Secretary of State.

Sections 56H & 56I: Intervention by YPLA

320. Section 56H allows the YPLA to intervene in the running of a sixth form college in the circumstances set out in subsection (1). These are that the YPLA proposes to commission the provision of education or training at the college and is satisfied that the grounds in section 56E for intervention by a LEA are satisfied (and that it would be appropriate for a LEA to exercise its powers under that section). The YPLA's intervention powers correspond to those of a LEA (section 56H(5)). Section 56I gives the YPLA power to appoint additional governors, mirroring LEAs' powers under section 56F.

Section 56J: Notification by Chief Executive of Skills Funding of possible grounds for intervention

321. This new section requires the Chief Executive of Skills Funding to notify the responsible local education authority and YPLA if he has concerns about post-19 provision at sixth form colleges. The local education authority, or the YPLA where it is involved under its powers in section 56H, must have regard to the Chief Executive's views when considering whether to intervene. This is the mirror provision of section 56D.

322. Paragraphs 9 to 15 make further consequential amendments including to definitions of terms used in the new sections.

PART 7: OFFICE OF QUALIFICATIONS AND EXAMINATIONS REGULATION

323. This Part provides for the establishment of a new Non-Ministerial Department, Ofqual. In relation to England, the new body will regulate academic and vocational qualifications (excluding foundation, first and other degrees awarded by higher education institutions) and NC and EYFS assessment arrangements. Ofqual will also regulate vocational qualifications (again excluding qualifications awarded by higher education institutions) in Northern Ireland.

324. Ofqual will take over the regulatory functions of the QCA, although with differences in the ways the functions are exercised, and with a different set of powers, principles and objectives governing their exercise. Part 8 of the Bill re-names the QCA the Qualifications and Curriculum Development Agency, with that body retaining its non-regulatory functions.

325. Regulation of qualifications is, and will remain, voluntary: there is no prohibition on any person offering a qualification without having been recognised by Ofqual. There are two key reasons why bodies will choose to seek recognition by Ofqual and so to have the qualifications they award regulated: first, because being regulated shows that the body has been checked as being fit to award trustworthy qualifications; and second, because, as a matter of policy, the Government will normally only approve qualifications for funding by maintained schools or in colleges if they are regulated.

326. In April 2008, as a first step towards the establishment of Ofqual as a statutory regulator, the Secretary of State for Children, Schools and Families directed the QCA to set up a committee for the purpose of “exercising on behalf of QCA functions and powers in relation to the regulation of qualifications and National Curriculum assessments”. In this way “Interim Ofqual” was established, operating within the parameters of the current legislation. The provisions of the Bill complete the transition to having a separate regulator for qualifications and assessment arrangements by establishing Ofqual.

Chapter 1: Establishment, objectives and general duties

Clause 124: The Office of Qualifications and Examinations Regulation

327. This clause establishes the Office of Qualifications and Examinations Regulation as a body corporate, specifies that the body will be referred to as “Ofqual” in this Bill, and gives effect to Schedule 9, which contains further detailed provisions about matters such as Ofqual’s constitution and proceedings.

Schedule 9 - The Office of Qualifications and Examinations

328. This Schedule makes provision about the constitution and governance of Ofqual.

Status

329. Ofqual is to perform its functions on behalf of the Crown (paragraph 1). This provision makes Ofqual a Non-Ministerial Government Department.

Membership

330. The Chair of Ofqual is appointed by the Crown. The “ordinary members” are appointed by the Secretary of State, who may appoint one of the ordinary members as the deputy chair. One of the ordinary members must be the Northern Ireland member, appointed following consultation with the Department for Employment and Learning in Northern Ireland, reflecting Ofqual’s responsibilities there.

331. The Chair will be known as the Chief Regulator of Qualifications and Examinations. The Government does not intend this title to imply that the chair has any statutory functions in his or her own right – all the functions in Part 7 are functions of Ofqual itself – but in practice the Chief Regulator is likely to be the public face of Ofqual.

332. Paragraphs 2 to 5 set out the arrangements for appointing the Chief Regulator and ordinary members, the terms of appointments, and the responsibility of the Secretary of State for determining their remuneration, allowances and expenses.

Chief executive and other staff

333. The chief executive of Ofqual is an ex-officio member of Ofqual. The first chief executive will be appointed by the Secretary of State (because Ofqual will not exist at that stage, it may not appoint); thereafter the appointment will be for Ofqual. Ofqual may appoint staff; the numbers of staff and their conditions and remuneration are to be agreed with the Secretary of State.

Committees

334. Paragraphs 7 to 11 set out the arrangements for Ofqual establishing and delegating to committees and sub-committees, and give Ofqual the power to establish a committee jointly with another body. (The latter power would, for example, allow Ofqual to set up a joint committee with other qualifications regulators in the United Kingdom.) Joint committees are allowed to regulate their own procedure. Paragraph 10 also allows Ofqual to delegate functions to a member of Ofqual or of its staff.

Supplementary powers

335. Ofqual may do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions, but may not lend money.

Objectives and general duties

Clause 125: Objectives

336. This clause sets out five objectives for Ofqual in discharging its functions:

- the qualifications standards objective,
- the assessments standard objective,
- the public confidence objective,
- the awareness objective, and
- the efficiency objective.

337. The statutory objectives in the current legislation, which apply to both QCA's regulatory and non-regulatory functions, are much broader.

338. Various of Ofqual's objectives relate to "regulated qualifications", which is a term defined in clause 127.

339. Various of Ofqual's objectives relate to "regulated assessment arrangements", as defined in clause 128.

340. The qualifications standards objective – set out in *clause 125(2)* – is for Ofqual to secure that regulated qualifications: (a) give a reliable indication of knowledge, skills and understanding; and (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications.

341. Similarly, the assessment standards objective – set out in *subsection (3)* – is for Ofqual to promote the development and implementation of regulated assessment arrangements which: (a) give a reliable indication of achievement, and (b) indicate a consistent level of attainment (including over time) between comparable assessments. The ultimate responsibility for regulated assessment arrangements, which are statutory assessments, lies with the Secretary of State, so Ofqual's role is to monitor and report on those arrangements, and in doing so to promote the maintenance of standards.

342. Ofqual must perform its functions with the aim of ensuring that comparable qualifications and assessments – whether they are contemporaneous or delivered at different times – indicate a consistent level of attainment. If the requirements of a qualification have changed over time, perhaps because the requirements of the industry they relate to have evolved (this will be a particular issue in the IT industry, for example), it may be that a modern qualification is not comparable with its predecessor and therefore that Ofqual does not have to secure a consistent level of attainment. But if two qualifications are comparable, Ofqual must act to ensure that they do indicate a consistent level of attainment.

343. The standards of qualifications and assessments – the benchmarks against which learners are measured – are not the same thing as the standards of education more broadly. "Standards" in this first sense are like the height of a hurdle, and

Ofqual's objective is to keep that height consistent between comparable qualifications and assessments. Whilst it is generally a policy objective of the Government to improve the quality of teaching and learning such that the number of people able to jump the hurdle increases (which is how the term "standards" is more commonly used), that is not a concern of Ofqual's under its standards objectives.

344. The public confidence objective is set out in *subsection (4)* and requires Ofqual to promote public confidence in regulated qualifications and regulated assessment arrangements. This is to ensure not only that qualifications are reliable but that they are trusted.

345. The awareness objective is set out in *subsection (5)* and, unlike the standards and public confidence objectives, it applies only in relation to regulated qualifications. The Secretary of State has statutory responsibility for regulated assessment arrangements, so it is for him to determine how to ensure that there is sufficient awareness of them.

346. This objective is concerned with promoting awareness of the range of regulated qualifications on offer, the benefits of regulated qualifications to learners, employers and institutions within the higher education sector and the benefits to awarding bodies (including, for example, employers awarding their own qualifications) of regulation.

347. The efficiency objective is set out in *subsection (6)* and requires Ofqual to ensure that regulated qualifications are delivered efficiently and that fees payable for the award or authentication of a regulated qualification represent value for money. This objective reflects the fact that Ofqual will have a role as an economic regulator, with a remit that includes a power to cap examination fees. Ofqual does not have a specific efficiency objective in relation to regulated assessments, because these are statutory assessments delivered on behalf of the Secretary of State, rather than – as with qualifications – by independent organisations operating in a regulated market.

Clause 126: General duties

348. *Subsection (1)* requires Ofqual in carrying out its functions so far as is practicable to act in a way that is compatible with its objectives under clause 125 and which it considers most appropriate for the purposes of meeting its objectives.

349. *Subsection (2)* sets out the matters to which Ofqual must have regard in performing its functions.

350. *Subsection (2)(a)* requires Ofqual to have regard to the need to ensure that the number of regulated qualifications is appropriate. *Subsection (3)* provides that an "appropriate" number of qualifications is based on ensuring a reasonable level of choice for learners in terms of both the number of different types of regulated qualifications on offer, and the number of regulated qualifications of each type; but

that the number of different types of qualifications in similar subject areas or serving similar functions should not be excessive.

351. For example, Ofqual would have regard to the need to avoid having an excessive number of separate qualifications with different titles all related to, say, retail management, if they all covered much the same subject area and served broadly the same purpose.

352. Subsections (2)(b) and (c) require Ofqual to have regard to the reasonable requirements of:

- those who are seeking to obtain or who might reasonably be expected to seek to obtain regulated qualifications, and
- pupils and children in relation to regulated assessment arrangements,

including in each case those with learning difficulties.

353. The terms used in these subsections are defined in *subsections (8) to (10)* and clause 163(1).

354. Under subsections (2)(d) and (e), Ofqual must have regard to the reasonable requirements of employers and institutions within the higher education sector (as defined in clause 163(1)).

355. Under subsection (2)(f), Ofqual must have regard to information provided to it by the QCDA and Ofsted, and any bodies specified by the Secretary of State which have knowledge of or expertise in the requirements of industry, commerce, and finance or other employers. This provision will allow the current arrangements to continue, by which the regulator must take into account the views of Sector Skills Councils in relation to qualifications in their sectors. Under a similar provision in the current legislation (Education Act 1997), Sector Skills Councils in England have been designated by the Secretary of State as bodies to which the regulator must have regard in regulating vocational qualifications. This is in support of the Government's policy for improving the relevance to employers of vocational qualifications as part of its skills strategy.

356. Under subsection (2)(g), Ofqual must have regard to the desirability of facilitating innovation in connection with the provision of regulated qualifications.

357. Subsection (2)(h) requires Ofqual to have regard to the specified purposes of regulated assessment arrangements, as defined in clause 128(7). The definition operates by reference to definitions in section 76(1) of the Education Act 2002 and section 41(2)(c) of the Childcare Act 2006. These make provision about the purposes respectively of National Curriculum assessment arrangements (NC assessment arrangements) and of assessment arrangements in connection with the learning and

development requirements of the Early Years Foundation Stage (EYFS assessment arrangements). Those provisions are amended by paragraphs 25 and 32 of Schedule 12 to allow the Secretary of State to specify additional purposes of assessment arrangements to which Ofqual would then need to have regard.

358. *Subsection (6)* requires Ofqual to have regard to such aspects of Government policy as the Secretary of State directs. This provision is modelled on a similar provision in the legislation setting up Ofsted. The Government would expect this provision to be used, for example, to specify that the Government wished to ensure that assessment was not unduly burdensome for schools.

Regulated qualifications and regulated assessment arrangements

Clause 127: Meaning of “regulated qualifications” etc.

359. This clause describes the types of qualifications that Ofqual has the power to regulate.

360. For a qualification to be a “regulated qualification”, three criteria must be met:

- it must not be a qualification at foundation degree level or any comparable level or first degree level or a comparable or higher level that is awarded or authenticated by a higher education institution (as defined in clause 163(1));
- it must either (a) be awarded or authenticated in England, or (b) be a vocational qualification awarded or authenticated in Northern Ireland;
- it is awarded or authenticated by a body which is recognised by Ofqual under clause 129 in relation to that qualification.

361. The meaning of awarding or authenticating a qualification “in England” and “in Northern Ireland” is explained in *subsection (4)*: there must be, or may reasonably be expected to be, persons seeking to obtain the qualification who are or who will be assessed wholly or mainly in England or Northern Ireland.

362. Ofqual’s role in regulating relevant vocational qualifications in Northern Ireland may be removed by order of the Secretary of State. Before making such an order he would have first to consult the Department for Employment and Learning in Northern Ireland and the order would be subject to the affirmative procedure. This is to allow for the possibility that the Northern Ireland authorities may in future wish to change the arrangements for the regulation of qualifications in Northern Ireland.

*These notes refer to the Apprenticeships, Skills, Children and Learning Bill
as introduced in the House of Commons on 4 February 2009 [Bill 55]*

363. In the Education Act 1997, the QCA's regulatory responsibilities relate to external qualifications, defined as:

“any academic or vocational qualification authenticated or awarded by an outside person...” (section 24(6)(a)).

364. The restriction to external qualifications has been removed in the Bill, which means that Ofqual may recognise bodies which both teach and award qualifications – for example, employers or colleges which have the capability to do so. This change has implications for other legislation, for example for section 96 of the Learning and Skills Act 2000, which is amended by paragraph 20 of Schedule 12.

Clause 128: Meaning of “regulated assessment arrangements” etc.

365. This clause describes the types of assessment that Ofqual has the duty to keep under review. “Regulated assessment arrangements” means the arrangements made for assessing pupils in England in respect of each key stage of the NC; and the arrangements for assessing children in England. (This equates currently to NC tests at Key Stages 1 and 2, teacher assessment as part of Key Stages 1-3 and the EYFS Profile.) In each case there is a new provision in the Bill for the Secretary of State to specify by order specified additional purposes for assessment. These defined specified purposes provide Ofqual with a policy framework within which it is to monitor and report upon regulated assessment arrangements, and it is required to “have regard to” these purposes.

366. The NC assessment arrangements are made under the Education Act 2002, setting out the arrangements for assessing pupils at each key stage of the NC. The EYFS assessment arrangements are made under the Childcare Act 2006.

Chapter 2: Functions in relation to qualifications

367. Under the Education Act 1997, which established the QCA as the regulator of qualifications, the QCA regulates at qualification level – in other words, it accredits individual qualifications. The Education and Skills Act 2008 amended the 1997 Act to give the QCA the additional function of recognising awarding bodies. Under the 1997 Act as so amended, only qualifications offered by recognised bodies are eligible to be accredited. The Government intends to commence these provisions by early spring 2009. Under the provisions in this Bill, the general requirement to accredit individual qualifications will be removed, so that the focus of Ofqual's regulation will be at organisational level. Provided that a body has been recognised in respect of a specific qualification or description of qualification, it will not necessarily have to obtain accreditation for the qualification. But Ofqual will still be able to require individual qualifications to be accredited, either where it judges that this is required in relation to a particular qualification, or where it is concerned about the performance of a specific awarding body.

*These notes refer to the Apprenticeships, Skills, Children and Learning Bill
as introduced in the House of Commons on 4 February 2009 [Bill 55]*

368. The following table sets out the possible combinations of recognition and accreditation.

	Awarding Body Recognised	Awarding Body Not Recognised
Qualifications not Accredited	The default position	The awarding body may offer qualifications provided it does not claim they are regulated. It is unlikely that the Secretary of State would approve them for public funding.
Qualifications Accredited	Ofqual may take a judgement to introduce an accreditation requirement for a qualification or a description of qualification (clause 135). This could be: - because it decided that a particular qualification needed particular scrutiny, because it was for example widely used, was new or was judged to be particularly high risk; or - because it was concerned about a specific awarding body and wished to ensure that any new qualifications it developed would comply with the terms of its recognition.	Not possible

Recognition of awarding bodies

Clause 129: Recognition

369. This clause requires Ofqual to “recognise” awarding bodies in respect of specific qualifications or classes of qualification (or in respect of credits for components of qualifications). Recognition will enable Ofqual to confirm that a body is fit to award or authenticate the qualifications or categories of qualification for which it is recognised, in other words that it has the appropriate systems, expertise and organisational robustness to allow it to do so effectively. Ofqual must recognise a body to award or authenticate particular qualifications or categories of qualification (or credits in respect of components of qualifications) where a body applies for

recognition and meets Ofqual's criteria for recognition. The terms "awarding body", "recognised body" and "recognition" are defined at clause 129(8).

370. Ofqual may not charge for recognition of an awarding body.

371. Recognition may be subject to three types of condition: general conditions, an accreditation condition, and other conditions imposed by Ofqual on individual recognitions. General conditions are dealt with in clause 131 (see paragraphs 375 to 378 below). Accreditation conditions apply only to qualifications, or descriptions of qualifications, subject to the accreditation requirement – that is a requirement imposed by Ofqual that the qualification or qualification of the relevant description is to be accredited. An accreditation condition prohibits the recognised body from awarding the relevant qualification, or a qualification of the relevant description, until accreditation for the qualification has been obtained.

372. Conditions may be imposed either when recognition is granted or at a later time. In the case of general conditions, these may be disapplied in individual cases, either at the time of recognition or later.

Clause 130: Criteria for recognition

373. Ofqual will have discretion to set the criteria it will use to decide whether to recognise an awarding body. It must consult with such persons as it considers appropriate before setting the criteria and must publish those criteria.

374. In exercising this function, Ofqual is to be able to set criteria that differ as between descriptions of awarding bodies, between qualifications (or credits in respect of components of qualifications) and between descriptions of qualifications (and descriptions of credits in respect of components of qualifications). Examples of criteria may include requirements as to the evidence to be provided to give adequate assurance of organisational stability; the existence of adequate processes for quality assurance; financial soundness of the organisation concerned; and evidence as to the appropriateness of the processes of the awarding body for developing qualifications. Criteria may also cover factors such as the previous history of an awarding body prior to any application.

Clause 131: General conditions of recognition

375. This clause allows Ofqual to impose general conditions on recognition. Conditions are general in the sense that they are able to apply to all recognised bodies or particular classes or types of recognised body. Under *subsections (3), (4) and (5)*, these conditions may be changed at any time, provided Ofqual publishes them following consultation with such persons that it considers appropriate.

376. The conditions in clause 131 will be central to Ofqual's regulatory role – it is through the setting of conditions (and where necessary enforcing compliance with

those conditions) that Ofqual will be able to achieve its objectives in relation to qualifications.

377. Under the current regime, the QCA can impose conditions on accreditation and (when the relevant provisions of the Education and Skills Act 2008 are commenced) recognition. Under the provisions of the Bill conditions will be imposed only on recognition, but in doing so Ofqual will be able to impose conditions which relate to particular qualifications or even to specific versions of a particular qualification, including conditions that flow from the accreditation process where it applies.

378. Examples of the general conditions Ofqual might impose under this power include:

- conditions requiring an awarding body to work within a specified framework for setting standards to ensure consistency with other awarding bodies offering similar qualifications;
- broad regulatory principles, such as a condition that awarding bodies must deal with Ofqual in an open and cooperative way, including for example an obligation to disclose any information about changes to the awarding body of which Ofqual could reasonably expect notice; or
- the specific requirements that apply in relation to the award of a particular qualification or type of qualifications – for example that vocational qualifications must meet the requirements of the relevant Sector Skills Council.

Clause 132: Other conditions of recognition

379. Ofqual has a broad power to impose other conditions in relation to a recognition (see clause 129(2)(c)). This clause makes provision about two such types of condition:

- conditions limiting the amount a recognised body may charge for the award of a regulated qualification or for a service provided in connection with such a qualification (a “fee capping condition”). This is the main mechanism by which Ofqual may pursue its efficiency objective. A fee capping condition may be applied to any charge levied in relation to the award or authentication of a qualification or any other service provided in relation to such a qualification. It might include, for example, any fees charged by the recognised body to recognise a school or college wishing to offer the qualification;
- conditions requiring a recognised body to permit Ofqual to enter the body’s premises for the purposes of inspecting and copying documents (an “entry and inspection condition”). However such a condition may be imposed only to enable Ofqual to investigate the maintenance of standards in relation to the

award by a recognised body of a regulated qualification or the need for a fee capping condition.

380. Further provisions about these conditions are in clauses 133 and 134.

Clause 133: Fee capping conditions: supplementary

381. This clause sets out the process that must be used where Ofqual proposes to apply a fee capping condition. It must give notice of its intention to impose a fee capping condition, and it must take account of any representations made by the recognised body in question before reaching a decision. Where Ofqual decides to impose a fee capping condition it must establish arrangements for reviewing the decision if requested to do so by the relevant recognised body. In performing its functions in relation to fee capping conditions, Ofqual must have regard to guidance from the Secretary of State. This latter provision reflects the fact that a significant proportion of the bodies which will be paying fees for many qualifications will be publicly funded. The current legislation gives the QCA a power to impose a fee capping condition, but the exercise of the power is subject to the consent of the Secretary of State.

Clause 134: Entry and inspection conditions: supplementary

382. This clause sets out the limits on what Ofqual may require under an entry and inspection condition. Under the current legislation the QCA has a power to set a similar condition, but in the context of this legislation the safeguards in *subsection (1)* have been added. *Subsection (3)* refers to Ofqual having the power to do anything mentioned in section 58 of the Education Act 2005 in relation to the inspection of documents. In summary, this provision enables a person to inspect records or other documents that they are entitled at any reasonable time to have access to, including checking the operation of any computer and associated apparatus or material relating to these records or documents. Subsection (3) will also enable an entry and inspection condition to require the user or person in charge of the computer, apparatus or material to give Ofqual any assistance that it may reasonably require.

Accreditation of certain qualifications

Clause 135: Qualifications subject to the accreditation requirement

383. Under this clause Ofqual may decide that a certain qualification, or qualifications falling within a certain description, must be individually accredited. This requirement may be applied to all recognised bodies or a specific recognised body.

384. Before deciding to apply the accreditation requirement to all recognised bodies, Ofqual must consult such persons as it considers appropriate. Where the requirement it is to be applied to an individual recognised body it is that body alone that Ofqual must consult. Any decision reached by Ofqual to impose the requirement

in relation to all recognised bodies must be published. Ofqual is given the power to revise any determination made under this clause.

Clause 136: Accreditation

385. This clause provides for the process of accrediting qualifications. Where a qualification is submitted to Ofqual for accreditation it must be accredited if it meets the criteria for accreditation. Ofqual may not charge for accreditation. (In contrast, the QCA currently has a power to charge for accreditation.)

Clause 137: Criteria for accreditation

386. This clause requires Ofqual to publish the criteria for accreditation or any subsequent revisions of those criteria. Ofqual must consult before setting or changing these criteria.

387. The criteria for accreditation are a threshold requirement – a recognised body must meet these criteria before it may award or authenticate a qualification that is subject to the accreditation requirement. Once that threshold requirement is met, satisfying the criteria is not as such an ongoing requirement of the recognised body. However, Ofqual will be able to mirror all relevant criteria in general or specific conditions in order to ensure continued compliance by the recognised body with the criteria.

Recognition and accreditation: supplementary

Clause 138: Power of Secretary of State to determine minimum requirements

388. This clause allows the Secretary of State to determine the minimum requirements in respect of skills, knowledge, or understanding that someone must be able to demonstrate to gain a particular qualification or type of qualification. For example, it could be used to ensure that the content of GCSEs properly reflects the NC Key Stage 4 Programmes of Study, such as specifying which authors' works needed to be studied for someone to gain a GCSE in English. Any such determination would have to be published and notified to Ofqual. Ofqual then has to ensure that these minimum requirements are delivered through the criteria for recognition and/or accreditation. As in other cases, it would be open for Ofqual to request help from the QCDA in developing the relevant criteria (see clause 171), which would then be considered for adoption by Ofqual. (In such circumstances, where the QCDA has consulted on draft criteria, it may be that Ofqual will consider it unnecessary to consult as well.) The clause restricts the Secretary of State to specifying minimum requirements relating, in effect, to the content of a qualification. It does not allow the Secretary of State to make determinations relating to parts of the qualification such as grading or assessment. Such matters remain solely for Ofqual to determine.

389. The Government intends that this power would be used only in exceptional circumstances. It envisages that normally any policy requirements relating to the content of a qualification would be reflected in the criteria by agreement, without any need for a determination. The Secretary of State intends to put in place a

Memorandum of Understanding with Ofqual about the use of this power, setting out a clear process to ensure that the regulator's independence and ability to maintain standards are not compromised. The Secretary of State's power does not extend to qualifications that are "Northern Ireland-only qualifications", as defined in *subsection (6)*.

Clause 139: Assignment of numbers of hours of guided learning

390. This clause is for the purposes of the Education and Skills Act 2008, which imposes a duty on people under 18 to participate in education or training, unless they have attained a level 3 qualification (the level of attainment demonstrated by obtaining A levels in two subjects). The Government's intention is to commence the duty in 2013.

391. Where people are in full time employment, the 2008 Act duty means they need to be undertaking sufficient relevant education or training, which is defined as the equivalent of 280 hours in a year. This clause requires a recognised body which is offering a relevant qualification to assign to it a number of hours of guided learning, for the purposes of determining whether a person studying for the qualification is able to meet this requirement. The duty on a recognised body applies in relation to a qualification if the body considers that there are, or may reasonably be expected to be, persons seeking to obtain it for the purposes of discharging their duty under section 2(1)(c) of the 2008 Act to participate in sufficient relevant education and training (see *subsection (8)* of the clause). Ofqual may review any determination made by an awarding body as to whether a qualification needs to have guided learning hours assigned to it and, if necessary, require it to revise the determination. Ofqual may also review, and require a recognised body to revise, any determination of the number of hours of guided learning to be assigned to a particular qualification. This will allow Ofqual to ensure, for example, that there was consistency between awarding bodies in how they assigned guided learning hours to comparable qualifications.

392. The duty on awarding bodies to assign guided learning hours does not extend to qualifications that are "Northern Ireland-only qualifications", as defined in clause 138(6).

Clause 140: Criteria for assignment of numbers of hours of guided learning

393. This clause requires Ofqual to publish the criteria which recognised bodies must apply in order to determine whether they need to assign guided learning hours to a qualification, and if so the number of hours they should assign. The clause allows Ofqual to revise its criteria and so to take account of changing circumstances. The duty of recognised bodies under clause 139 is to apply the most recently published criteria in deciding whether a qualification is relevant for the purposes of the duty under section 2(1)(c) of the 2008 Act and, if so, the number of hours of guided learning to be assigned to the qualification. Recognised bodies are obliged to review

their determinations under clause 139 when Ofqual revises the criteria set under this clause.

Clause 141: Register

394. This clause sets out Ofqual's obligation to maintain a register of recognised bodies and the details of the qualifications they offer, including the guided learning hours assigned to the qualification where appropriate. The register may include other information that Ofqual considers appropriate, so it could for example include details of qualifications that are regulated in other parts of the UK should the authorities there decide to work alongside Ofqual in this way.

Recognised bodies: monitoring and enforcement

Clause 142: Review of activities of recognised bodies

395. This clause allows Ofqual to keep under review any "connected" activities of a recognised awarding body as defined in *subsection (2)* of the clause. This will allow it to keep under review any activities which may, for example, impact on the credibility of the qualifications offered or the effective or fair operation of the qualifications system. This may include, for example, any awarding activities overseas in relation to qualifications that are similar to those that Ofqual is regulating, or any arrangements made for the publication of textbooks relating to an Ofqual-regulated qualification.

Clause 143: Investigation of complaints

396. Ofqual may investigate complaints in respect of a regulated qualification, or arrange for an independent party to do so.

397. Ofqual's complaint mechanisms will replace those that are currently in place through the Examinations Appeals Board (in relation to GCSEs, A-levels for example) and the QCA (in relation to vocational qualifications).

398. Ofqual will be free to work jointly with its counterparts in other parts of the UK in relation to the investigation of complaints should it and they so wish.

399. Ofqual's powers of redress in the event of its upholding a complaint are those that it has generally. Where the complaint suggested that the recognised body had acted in breach of a condition of recognition it would be for Ofqual to consider what action to take to ensure compliance with the condition. As under the existing arrangements of the Examinations Appeals Board, the Government would expect any complaints that are upheld about, for example, the marking of an exam, in the first instance to be referred back to the awarding body concerned for review.

Ofqual's enforcement powers

400. Ofqual has the ability to safeguard standards through the imposition of recognition and accreditation criteria (the "hurdle" that awarding bodies must initially clear). It may then impose general and specific conditions to ensure continued

compliance with these requirements. Underpinning the conditions are the enforcement powers conferred by the Bill: the power to direct compliance with a condition and ultimately a power to withdraw recognition for breach of a condition.

Clause 144: Power to give directions

401. This clause confers power on Ofqual to direct a recognised body in order to secure compliance with a condition imposed on its recognition. There are however limits on the circumstances in which this power may be exercised. *Subsection (1)* specifies the circumstances in which a direction may be made. These are that the recognised body has not complied (or is likely to fail to comply) with a condition, and that this would or would be likely to prejudice either the proper award or authentication of a qualification or someone who might reasonably be expected to seek to obtain such a qualification. In these circumstances, Ofqual may give a formal direction to the awarding body. The direction may specify steps the body must or must not take.

402. *Subsections (3) to (5)* set out the steps that Ofqual must take before giving a direction, including giving notice of its intention to do so and taking account of representations from the recognised body. The length of the notice period is not specified, and could vary depending on the urgency of the need to address the non-compliance. An awarding body is required to comply with the direction. *Subsection (7)* sets out the means by which Ofqual may enforce its directions through the courts.

403. The QCA has a similar power, but without the explicit requirements over process set out in subsections (3) to (5).

Clause 145: Power to withdraw recognition

404. This clause confers a power on Ofqual to withdraw recognition in respect of some or all of the qualifications in respect of which a body is recognised, if the body has breached a condition of recognition. The power may be exercised only if the recognised body has actually failed to comply with a condition and if this failure prejudices or would be likely to prejudice either the proper award or authentication of a qualification or someone who might reasonably be expected to seek to obtain such a qualification.

405. *Subsections (3) to (8)* set out the steps that Ofqual must take before withdrawing recognition, including giving notice of its intentions, taking account of representations from the awarding body, and arranging for the decision to be reviewed.

406. If it withdraws a recognition, Ofqual may make saving or transitional provision to deal with impact of the withdrawal. For example, it may be appropriate to provide for the qualification not to be recognised other than to the extent that it is taken by those who began studying for the qualification before the decision to withdraw recognition was made.

407. The power for the QCA to withdraw accreditation or recognition is currently implicit in the Education Act 1997 as amended by the Education and Skills Act 2008.

Clause 146: Qualifications regulatory framework

408. This clause requires Ofqual to publish:

- a statement on how it will perform its monitoring and enforcement functions (including its functions in relation to the setting of conditions), and
- guidance to recognised bodies in relation to the award and authentication of qualifications.

409. Together these are known as the qualifications regulatory framework. Ofqual must consult on, and may revise, the framework.

410. *Subsections (3) and (4)* set out in more detail what the guidance must include. In particular, it must include guidance which helps determine whether or not particular behaviour complies with the general conditions. Recognised bodies are obliged to have regard to the guidance given by Ofqual when they award regulated qualifications.

Other

Clause 147: Review of other qualifications to which this Part applies

411. A “regulated qualification” is a qualification awarded or authenticated by a body which is recognised in respect of that qualification. This clause gives Ofqual the power to keep under review all aspects of qualifications to which Part 7 applies irrespective of whether or not they are regulated qualifications. This would allow Ofqual, for example, to review why some awarding bodies were choosing not to seek recognition for their qualifications and whether that was detrimental to the interests of learners.

Clause 148: Co-operation and joint working

412. This clause allows Ofqual to co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of its functions in connection with any qualifications. This would allow it, for example, to work with other UK regulators of qualifications or with the UK Commission for Employment and Skills on the arrangements for overseeing Sector Skills Councils’ work on vocational qualifications, or with the competition authorities if it had concerns about the effective operation of the qualifications market.

Clause 149: Power to provide information to other qualifications regulators

413. This clause allows Ofqual to provide information to qualifications regulators elsewhere in the UK to support the qualifications functions of the other regulator. This will enable the continued operation of the three-country framework, whereby the qualifications regulators in England, Wales and Northern Ireland work together on the

regulation of qualifications across the three countries. Such co-operation will remain subject to restrictions in other legislation relating to the sharing of information, such as the Data Protection Act 1998.

Chapter 3: Functions in Relation to Assessment Arrangements

414. The Secretary of State is responsible for specifying the arrangements for pupil assessments in relation to each of the key stages of the NC (see section 87 of the Education Act 2002). The Secretary of State is also responsible for specifying the arrangements which are required for assessing the achievements of children in relation to the learning and development requirements of the EYFS (see sections 39 to 42 of the Childcare Act 2006). In this context, the Secretary of State may impose functions on other bodies in relation to developing, implementing or monitoring assessment arrangements. Ofqual's role, under the new arrangements delivered through this Bill, is to keep these assessment arrangements under review and to report to Parliament on the assessment arrangements and how well they are achieving their purposes. The arrangements are intended to strengthen the assessment system, and to help improve public confidence following the problems with delivery of NC tests in 2008. The Government asked Lord Sutherland to investigate what went wrong with NC test delivery in 2008, the reasons for the problems experienced and what should be done to avoid a recurrence in future years. The Government accepted all the recommendations in his report¹, and the provisions in this Bill reflect those recommendations.

Development etc. of regulated assessment arrangements

Clause 151: NC assessment arrangements: duty to consult Ofqual etc., Clause 152: EYFS assessment arrangements: duty to consult Ofqual etc.

415. These clauses require the Secretary of State to consult Ofqual before making an order specifying assessment arrangements. They also require any person acting on the Secretary of State's behalf under such an order in connection with the making of assessment arrangements to consult Ofqual before doing so. The relevant order making powers are in section 87(3)(c) of the Education Act 2002 (in relation to the NC) and section 39(1)(a) of the Childcare Act 2006 (in relation to the learning and development requirements of the EYFS). The new obligations reflect Ofqual's status as independent regulator and particularly its interest in ensuring that the proposed assessment approaches are appropriate given the specified purposes, and can be effectively monitored.

¹ Lord Sutherland (2008), *The Sutherland Inquiry: An independent report into the delivery of National Curriculum tests in 2008*, London: The Stationery Office

Review etc. of regulated assessment arrangements

Clause 153: Review of regulated assessment arrangements

416. This clause requires Ofqual to keep all aspects of these NC and EYFS assessments under review. This constitutes the principal regulatory role of Ofqual in relation to the regulated assessment arrangements (as defined in clause 128).

417. Ofqual's powers of review will enable it to consider all aspects of the implementation of the regulated assessment arrangements, including looking at the way in which specified bodies exercise monitoring and review functions, including functions concerned with investigating complaints about the way in which tests and other assessments have been conducted.

Clause 154: Powers to require information

418. To enable Ofqual to carry out its review role effectively, this clause grants it powers to require certain persons to provide it with the information it considers it needs to perform this role. Those persons are the Secretary of State, NC responsible bodies and EYFS responsible bodies (as defined in the clause) and Ofsted. *Subsection (2)(d)* includes a power for the Secretary of State to specify in regulations (subject to the negative procedure) other persons who are to be subject to this requirement. This power is required to allow for flexibility for further organisations to be added should, for example, assessment arrangements change in the future and different bodies become involved in the process.

Clause 155: Duty to notify significant failings

419. One of the recommendations in Lord Sutherland's inquiry report was that Ofqual should have a duty to inform the Secretary of State and the QCA if it had concerns about the delivery and quality of NC tests. Reflecting this recommendation, these provisions impose a duty on Ofqual covering both NC and EYFS assessment arrangements. Ofqual must notify the Secretary of State and any responsible body whose act or omission appears to Ofqual to have contributed to a significant failing if it considers that there is or is likely to be a significant failing in the assessment arrangements. Such a failure is defined as a failure in a significant way to achieve one or more of the specified purposes of the assessment arrangements.

420. Examples of circumstances in which Ofqual should notify the Secretary of State might include the following:

- if one of the Secretary of State's specified purposes for the NC assessment arrangements was to provide information for a pupil's secondary school on their level of attainment at the end of primary school (in other words, Key Stage 2), and it became evident to Ofqual that there was a significant risk that

*These notes refer to the Apprenticeships, Skills, Children and Learning Bill
as introduced in the House of Commons on 4 February 2009 [Bill 55]*

significant numbers of results would not be available before the pupils left primary school, this would cause the purpose not to be met and the duty would be triggered; or

- if a new type of NC test was being developed which Ofqual judged would not provide a reliable assessment of a pupil's level of attainment.

Regulatory frameworks

Clause 156: NC assessments regulatory framework, Clause 157: EYFS assessments regulatory framework

421. These clauses require Ofqual to publish and keep under regular review two documents: the “NC assessments regulatory framework” and the “EYFS assessments regulatory framework” in relation to NC and EYFS assessment arrangements respectively.

422. The regulatory frameworks will give guidance to bodies with responsibilities for the development, implementation and monitoring of NC and EYFS assessment arrangements on how to perform their functions. This may also include the measures of success which Ofqual considers will demonstrate evidence of effective development and delivery of assessments. The regulatory frameworks will also set out how Ofqual will carry out its review function at all stages of the assessment process.

423. Those bodies with responsibility for developing, implementing and monitoring NC and EYFS assessment arrangements (the NC and EYFS responsible bodies) must have regard to the relevant regulatory framework document in doing so. Ofqual must consult on a regulatory framework document before publishing it or revising it. The persons Ofqual must consult are the Secretary of State, such of the NC responsible bodies or, as the case may be, EYFS responsible bodies and any other persons as Ofqual considers appropriate. Ofqual may revise a regulatory framework document at any time.

Chapter 4: Other Functions

Clause 159: Provision of services

424. This clause gives Ofqual the power to provide services to other persons in connection with any of its functions. Ofqual may charge for its services. Ofqual would be able, for example, to provide services to qualifications regulators in other countries if Ofqual considered that such services would also benefit its ability to regulate qualifications in England or Northern Ireland.

Clause 160: Provision of information or advice

425. This clause requires Ofqual to provide the Secretary of State with information or advice relating to its functions where the Secretary of State requests it. Where requested, Ofqual must also provide information or advice on its functions (so far as they relate to Northern Ireland) to the Department for Employment and Learning in

Northern Ireland. This is a similar relationship to that between the Secretary of State and Ofsted.

Clause 161: Research and development

426. This clause provides Ofqual with the power to carry out research in relation to qualifications that would be eligible for regulation or regulated assessment arrangements; and to commission, co-ordinate or facilitate such research.

Clause 162: Annual and other reports

427. This clause requires Ofqual to publish an annual report, which must state how Ofqual has performed its functions during the reporting period. Ofqual has flexibility to determine when during its first year of life its reporting period should end, after which the annual reporting period will be set: it may be, for example, that it would decide that the reporting period should end in the autumn, in order that it can report on the previous summer's exams and tests. Ofqual may also prepare and publish other reports.

428. Ofqual must lay its annual reports before Parliament and (so far as it relates to Northern Ireland) the Northern Ireland Assembly. It may choose to publish a single document or separate documents in relation to England and Northern Ireland.

429. If Ofqual has established arrangements for the referral of complaints about regulated qualifications to an independent party (under clause 143(2)), the annual report must describe the activities of the independent party during the reporting period.

Chapter 5: General

Clause 163: Interpretation of Part

430. This clause sets out the definitions of various terms used in Part 7. It also provides that a reference to the award or authentication of a qualification throughout the Part includes a reference to the award or authentication of credits in respect of components of a qualification. This reflects the launch of the Qualifications and Credit Framework, through which students are able to build up composite qualifications through the obtaining of components.

Clause 164: Transfer schemes

431. The clause gives effect to Schedule 10.

Schedule 10: Ofqual: transfer schemes

432. This Schedule gives power to the Secretary of State to make a scheme to enable the transfer of staff and property from the QCA to Ofqual.

Clause 165: Minor and consequential amendments

433. This clause, with clause 183, gives effect to Schedule 12. That Schedule makes minor and consequential amendments in connection with the provisions about Ofqual and the QCDA. It is discussed below in the commentary on the QCDA.

PART 8: THE QUALIFICATIONS AND CURRICULUM DEVELOPMENT AGENCY

Chapter 1: The QCDA, objective and general duties

The QCDA

Clause 166: The Qualifications and Curriculum Development Agency

434. This clause provides for the renaming of the QCA, which was established under the Education Act 1997 and will now be known as the Qualifications and Curriculum Development Agency. The clause also gives effect to Schedule 11, which contains detailed provisions with respect to the constitution and proceedings of the QCDA. The QCDA will remain a Non-Departmental Public Body (NDPB), accountable to Ministers.

435. The QCDA will retain the QCA's non-regulatory functions, including supporting Ministers on developing the curriculum and related qualifications and delivering National Curriculum tests. Regulatory functions will instead be exercised by Ofqual, established under Part 7.

Schedule 11: The Qualifications and Curriculum Development Agency

436. This Schedule makes detailed provisions relating to the QCDA, particularly in relation to its constitution and proceedings.

437. Paragraph 1 provides that the QCDA is not to be regarded as a servant or agent of the Crown, and that its property is not to be regarded as property of the Crown. There is no change in this regard to the status of the QCA.

438. Paragraph 2 sets out the membership of the QCDA. Members are appointed by the Secretary of State, who must appoint one as the chair and may appoint another as the deputy chair. Paragraph 5 makes provision for the tenure of office of the members, and how they may be removed or resign from membership. Paragraph 6 allows the Secretary to require that members be remunerated and that expenses and allowances be paid, with the amounts to be determined by the Secretary of State. Paragraphs 12 to 15 provide for the QCDA to regulate its own proceedings, and for the Secretary of State or his representatives (which in practice can mean a representative of both the DCSF and DIUS), Ofsted and any other body directed by the Secretary of State to attend meetings of the QCDA.

439. Paragraph 3 provides for a chief officer who is appointed by the QCDA subject to the approval of the Secretary of State. The chief officer is an ex-officio member of the QCDA. Under paragraph 4, the Secretary of State may confer functions on the chair, but any such functions must not duplicate functions conferred on the chief officer.

440. Paragraphs 7 and 8 provide for the QCDA to have staff, and for their continued membership of the relevant pension scheme.

441. Paragraph 9 allows the QCDA to establish committees, and for the committees to establish sub-committees. It also allows the Secretary of State to direct it to set up a committee for a specified purpose. The committee structure must be reviewed by the QCDA at least once every five years. A committee must include at least one member of the QCDA or its staff. Under paragraph 13, the QCDA may delegate any of its functions to a committee or a member of the QCDA or its staff. Paragraph 14 allows the QCDA to establish joint committees with other bodies.

442. Paragraphs 14 and 15 provide respectively for a committee to delegate its functions to a sub-committee, and for the Secretary of State to authorise a committee established under a direction to perform functions of the QCDA.

443. Paragraph 16 requires the QCDA to prepare an annual report for each financial year, setting out how it has performed its functions in that year. The QCDA must publish the report and the Secretary of State must lay a copy before Parliament.

444. Paragraph 17 requires the QCDA to keep and prepare accounts in line with Directions of the Secretary of State.

445. Paragraph 18 makes provisions about the application of the QCDA's seal: the references to "members" in this context includes the chief officer

446. Paragraph 20 allows the Secretary of State to make grants to the QCDA and attach conditions to those grants. This will be central to the relationship between the QCDA and the Secretary of State — it is the way in which the Secretary of State will give a remit to the QCDA over particular pieces of work he requires it do.

447. Paragraph 21 of the Schedule confers on the QCDA wide supplementary powers to do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions. But the QCDA may not form companies or other bodies or enter into joint ventures without the Secretary of State's consent. The powers are also subject to restrictions provided for elsewhere in the clauses (for example, the QCDA may not lend money).

Objective and general duties

Clause 167: Objective

448. This clause sets out the QCDA's objective: to promote quality and coherence in education and training in England. For the purposes of the QCDA's functions, education includes learning by, and development of, young children pursuant to the Early Years Foundation Stage, which was established under the Childcare Act 2006.

449. The QCA has somewhat broader objectives and has roles in Wales and Northern Ireland. The QCDA will have no responsibilities outside England.

Clause 168: General duties

450. This clause sets out the matters to which the QCDA must have regard in exercising its functions and pursuing its overall objective. There is some equivalent material in section 26 of the Education Act 1997 setting out requirements to which the QCA must have regard. The duties under clause 168 differ in some respects to those under the 1997 Act as described below.

451. The QCDA must have regard to the reasonable requirements of all learners, as defined in *subsection (6)* (this includes young children). The 1997 Act specified a duty to have regard to only learners with special learning needs.

452. The clause adopts a new definition of "persons with learning difficulties" (as defined in clause 126) to replace the concept of "learners with special learning needs" in the 1997 Act. The only difference of substance is that the new definition provides that a person is not to be taken to have a learning difficulty solely because of a difference in the language in which he or she is to be taught and the language which he or she speaks at home.

453. The QCDA must (like the QCA) have regard to the requirements of section 78 of the Education Act 2002 in relation to curriculum. That section provides—

“The curriculum for a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—

(a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and

(b) prepares pupils at the school for the opportunities, responsibilities and experiences of later life.”

454. The QCDA must have regard to the reasonable requirements of all employers (rather than just to those of various sectors thereof, as is the case with the QCA) and of higher education institutions.

455. The QCDA must have regard to the desirability of facilitating innovation.

456. There is an explicit requirement for the QCDA to perform its functions efficiently and effectively.

457. The QCDA must also have regard to such aspects of Government policy as the Secretary of State may direct.

458. As is the case with the QCA at present, the QCDA will also have to have regard to information provided by Ofqual, Ofsted and any other bodies specified by the Secretary of State.

Chapter 2: Functions in relation to qualifications

Clause 169: Qualifications within the QCDA's remit

459. This clause defines which qualifications fall within the QCDA's remit. This remit is very similar to that of Ofqual and covers all qualifications awarded or authenticated in England other than those which are both (a) at foundation degree level or equivalent or first degree level or above, and (b) awarded or authenticated by a higher education institution. As with Ofqual, the QCDA's remit is no longer restricted to qualifications awarded by an external body (so, for example, a qualification awarded by an employer following completion of its own training would fall within the QCDA's remit).

460. The Secretary of State is given the power by order to exclude qualifications from QCDA's remit. The order-making power is subject to the negative procedure. This provision is designed to allow for any future changes to the QCDA's role. The intention is that this power could be used in particular to remove the QCDA's functions in relation to vocational qualifications, if the Department for Innovation, Universities and Skills were to conclude at a later date that it did not wish the QCDA to have advice and review functions with respect to these qualifications. Any such decision would not affect Ofqual's role in regulating these qualifications.

Clause 170: Qualifications: general functions

461. This clause sets out the QCDA's duties and powers in relation to qualifications within its remit (see above). These include its duty to keep all aspects of qualifications under review, its duty to provide advice or carry out research at the request of the Secretary of State and its power to conduct independent research. It may also publish information relating to qualifications.

462. *Subsection (5)* provides the QCDA with the power to make arrangements to develop, set or administer tests which are taken with a view to obtaining a qualification and are of a description prescribed in regulations made (subject to the negative procedure) by the Secretary of State. Qualifications which are assessed under regulated assessment arrangements are excluded, to avoid any possible overlap with the QCDA's functions in relation to National Curriculum assessment arrangements.

This provision is intended to allow the QCDA to work with awarding bodies to develop key and basic skills qualifications, a role currently undertaken by the QCA.

Clause 171: Assistance etc. in relation to recognition and accreditation

463. This clause creates the power for the QCDA to provide information, advice or other assistance in connection with Ofqual's functions in relation qualifications and in particular to assist Ofqual in developing "the qualifications criteria". These are the criteria for recognition of awarding bodies, for accreditation of individual qualifications and for the assignment of a number of guided learning hours to a qualification. The Government intends that this provision will be used principally to enable the QCDA to develop criteria for qualifications whose content is determined as a matter of policy by Ministers, for example, GCSEs or A-levels. The criteria would then be considered for adoption by Ofqual, and provided it was content to adopt them, it would then regulate the qualifications developed against them. This process will allow Ofqual to avoid the conflict of interest inherent in the QCA's current set of functions, whereby it both develops the criteria and is responsible for providing assurance that the qualifications developed against those criteria are of a high standard. This process is supported by clause 138, which allows the Secretary of State to determine the minimum requirements for specified qualifications or descriptions of qualifications in terms of the skills, knowledge or understanding a person must demonstrate to obtain the qualification in question.

Chapter 3: Functions in relation to curriculum, Early Years Foundation Stage and assessment

464. The functions of the QCA in relation to curriculum and assessment were established under section 23 of the Education Act 1997. The functions included: keeping under review all aspects of the curriculum, school examinations and assessment; advising the Secretary of State on these matters, and on research and development connected with them, and helping him to carry out research and development if requested to do so; and publishing and disseminating information about them. The QCA also has a range of function relating to National Curriculum assessments as a result of orders made under section 87 of the Education Act 2002.

465. Similar functions have been conferred on the QCA in relation to the EYFS learning and development requirements by the Qualifications and Curriculum Authority (Additional Functions) Order 2008 (S.I. 2008/1744).

466. Under the provisions of this Chapter, the QCDA will continue much of the QCA's role in relation to these functions, such as advising and supporting Ministers in the monitoring and development of curriculum and assessments.

Clause 172: Curriculum

467. This clause sets out the QCDA's duties and powers with respect to the curriculum in maintained schools in England for pupils who are of compulsory school age, and pupils in maintained nursery schools. The requirements for the curriculum in

such schools are set out in section 78 of the Education Act 2002. It must be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and which prepares pupils at the school for the opportunities, responsibilities and experiences of later life. The role of the QCDA in relation to the curriculum is similar to its general role in relation to qualifications within its remit and includes a duty to keep all aspects of the curriculum under review, a duty to provide advice or carry out research at the request of the Secretary of State and a power to conduct independent research. It may also publish information relating to the curriculum.

Clause 173: Early learning goals and educational programmes

468. This clause sets out the QCDA's duties and powers with respect to early learning goals and educational programmes, which mirror those in clause 172 relating to the curriculum. They include its duty to keep all aspects of these under review, its duty to provide advice or carry out research at the request of the Secretary of State and its power to conduct independent research. It may also publish information relating to the early learning goals and educational programmes.

469. The early learning goals establish learning and development expectations for most children to reach by the end of the Early Years Foundation Stage. They are established by order made under section 39(1)(a) of the Childcare Act 2006 and are defined in section 41(2) of that Act as "the knowledge, skills and understanding which young children of different abilities and maturities are expected to have before the 1st September next following the day on which they attain the age of five". Educational programmes are also established by such an order and are defined in section 41(2) of the 2006 Act as "the matters, skills and processes which are required to be taught to young children of different abilities and maturities".

Clause 174: Assessment arrangements

470. This clause sets out the QCDA's duties and powers with respect to assessment arrangements within its remit. These include National Curriculum assessment arrangements for each key stage and assessment arrangements under the EYFS learning and development requirements (together referred to as "the regulated assessment arrangements"). It also includes any other testing and assessment arrangements for pupils of compulsory school age at maintained schools and for pupils at maintained nursery schools. The QCDA's duties and powers broadly mirror those relating to curriculum, including its duty to provide advice or carry out research at the request of the Secretary of State, its power to conduct independent research and its power to publish information relating to assessment. It has a duty to only keep under review all assessment arrangements within its remit that are not regulated assessment arrangements. This is because the review of regulated assessment arrangements becomes the responsibility of Ofqual, which has a general duty to keep those arrangements under review (see clause 153), and report to Parliament. However, the QCDA will have a role advising the Secretary of State on how regulated assessment arrangements can support the Government's policy objectives, which is a distinct role from the regulatory purposes for which Ofqual will be conducting

reviews. The Government expects that the QCDA will also keep under review any assessment arrangements which it delivers, to ensure they are fit for purpose and meeting their objectives.

471. Paragraphs 28(3) and 33(2) of Schedule 12 allow the QCDA (and any other body designated by the Secretary of State) to be given specific functions in relation to National Curriculum and EYFS assessment arrangements respectively.

Chapter 4: Other functions and supplementary provision

Other functions

Clause 175: Provision of services or other assistance

472. This clause enables the QCDA to provide services or other assistance in relation to the matters listed in *subsection (1)*. The consent of the Secretary of State is not required for the provision of services or other assistance, unless it is outside the scope of the list in subsection (1), or involves providing financial assistance or charging for services. The clause prohibits the QCDA from loaning money. The QCDA may use the powers under this clause to provide services such as support and advice to schools on implementing the curriculum, or to awarding bodies in relation to the development of qualifications. In particular, this clause will enable the QCDA to operate systems and support services such as the Diploma Aggregation Service (a web-based IT system that supports the administration and award of Diplomas).

Clause 176: Provision of information or advice

473. This clause provides a duty for the QCDA to advise the Secretary of State on issues he refers to it.

Clause 177: Ancillary activities

474. This replicates the existing duty for the QCA to comply with a direction of the Secretary of State to carry out ancillary activities relating to its functions (under sections 25(2) and 25(3) of the Education Act 1997).

Clause 178: Co-operation and joint working

475. This clause allows the QCDA to co-operate or work jointly with other public bodies, where it is appropriate for the efficient and effective performance of its functions. This would enable it, for example, to seek the advice of the Welsh qualifications regulator on qualifications that are regulated in Wales but offered in England, or to work with a Sector Skills Council to advise on the qualifications needed in a particular employment sector.

Clause 179: Power to confer supplementary functions on the QCDA

476. This clause provides a power for the Secretary of State to confer supplementary functions on the QCDA by order, where such new functions are exercisable in connection with the matters listed in the clause. This measure is designed to enable the functions of the QCDA to develop over time to meet changing

needs and circumstances. An order under this clause is subject to the negative procedure.

Supplementary provision

Clause 180: Directions etc. by the Secretary of State

477. The Secretary of State may issue directions to the QCDA as to the performance of any of its functions. This power sits alongside those of the Secretary of State to direct the QCDA in relation to “ancillary activities” – see clause 177, and to set up a committee for a specified purpose – see paragraph 9(2) of Schedule 12. The QCDA must also, in performing its functions, act in accordance with any plans approved by the Secretary of State.

478. The provisions in this clause reflect the QCDA’s role as an NDPB, accountable to Ministers

Clause 181: Guidance by the Secretary of State

479. The QCDA must, in performing its functions, have regard to any guidance given from time to time by the Secretary of State. As with the previous clause, this duty reflects the QCDA’s role as an NDPB accountable to Ministers.

Chapter 5: General

Clause 182: Interpretation of Part

480. This clause sets out the interpretation of various terms used in the Part.

Clause 183: Minor and consequential amendments

481. This clause introduces Schedule 12, which contains minor and consequential amendments resulting from the establishment of Ofqual and the revised regime for the QCDA. The changes to section 87 of the Education Act 2002 and to section 41 of the Childcare Act 2006 are particularly relevant to the QCDA’s role, in that these Acts along with the Education Act 1997 contain the full range of the QCA’s current statutory functions. In other words, a significant amount of the QCA’s work relates to functions conferred under the 2002 and 2006 Acts, and potentially this will also be the case for the QCDA.

Schedule 12: Ofqual and the QCDA: minor and consequential amendments

482. The amendments in this Schedule fall into seven categories:

(1) Those that relate to the establishment of Ofqual as a new Government Department and to the change of name and charitable status of the Qualifications and Curriculum Authority (paragraphs 1-7 and 23).

483. In this category there are amendments to the following Acts: the Public Records Act 1958; the Parliamentary Commissioner Act 1967; the Superannuation Act 1972; the House of Commons Disqualification Act 1975; the Northern Ireland

Assembly Disqualification Act 1975; the Race Relations Act 1976; the Charities Act 1993 and the Freedom of Information Act 2000.

484. Ofqual does not need to be named explicitly as falling under some of these Acts, because its status as a Non-Ministerial Department means that no explicit provision is needed for some of these Acts to apply to it.

485. Additionally, the QCDA, unlike the QCA, will not be a charity, so there needs to be an amendment to the Charities Act 1993 to remove the reference to the QCA being an exempt charity.

(2) The repeal of sections 21 to 26A, section 36 and Schedule 4 to the Education Act 1997 (paragraphs 9 and 15-18)

486. Sections 21 to 26A and Schedule 4 establish the QCA, make provision for its constitution, governance and proceedings, and confer functions on it. These provisions are repealed in consequence of the provisions of the Bill in relation to Ofqual and the QCDA.

487. Section 36 provided a power for the Secretary of State to provide by regulations for the QCA and the Welsh Ministers to receive payment from persons who award vocational qualifications accredited by these authorities. The statutory levy on an awarding body for National Vocational Qualifications accredited by the QCA was replaced by direct grants to Sector Skills Councils from autumn 2008, and the relevant regulations have been revoked. The power has therefore become redundant.

(3) Amendments to the legislation governing the regulation of qualifications in Wales, keeping the regulatory powers of Welsh Ministers broadly in step with those of Ofqual (paragraphs 10-14)

Paragraph 11

488. Paragraph 11(2) amends section 30 of the 1997 Education Act to provide revised functions for the Welsh Ministers in relation to vocational and academic qualifications. The new subsection (1) for section 30 reflects the Welsh Ministers' existing functions, except in the following cases: the Welsh Ministers now have a function of determining whether a relevant qualification – or a description of qualification – is to be subject to a requirement that they be accredited. The Welsh Ministers also have an additional function of publishing and disseminating (or assisting in the publication or dissemination of) information relating to recognised bodies. The qualifications falling within the Welsh Ministers' remit have also changed. As a result of the amendments, the provisions will refer to “relevant qualifications”, replacing the reference to “external qualifications”. A definition for relevant qualifications is provided in paragraph 11(6), as outlined below.

489. Paragraphs 11(4) and 11(5) make consequential amendments to update references to subsections in section 30(1) of the 1997 Act. This reflects the insertion of new functions and the re-numbering of the paragraphs in section 30(1).

490. Paragraph 11(6) provides a description of the qualifications (the “relevant qualifications”) that fall within the Welsh Ministers’ remit. Qualifications awarded or authenticated by higher education qualifications (that is, foundation degree level or any comparable level; first degree level, and any at a comparable or higher level) are excluded from that remit. A qualification is to be considered as awarded or authenticated in Wales where there are (or expected to be) people in Wales seeking to obtain that qualification who will be assessed wholly or mainly in Wales.

491. Paragraph 11(7) repeals the description of external qualifications in section 30(6) of the 1997 Act. References to “externality” are removed which means that the Welsh Ministers will be able recognise bodies which both teach and award qualifications – for example, employers or colleges which have the capability to do so.

Paragraph 12

492. Paragraph 12(2) and (5) substitutes “persons with learning difficulties” for “persons with special learning needs”. This is consistent with the phrase used in section 41 of the Learning and Skills Act 2000. The word “reasonable” is also added, so section 32 of the 1997 Act will provide that the Welsh Ministers must have regard to the reasonable requirements of persons with learning difficulties in carrying out their functions. Paragraph 12(2)(a) also qualifies the function of having regard to the requirements of industry, commerce, finance and the professions by reference to reasonableness.

493. Paragraph 12(3) amends the power for the Welsh Ministers to place a limit on fees charged by a recognised body for the award of a qualification. A fee capping condition may be applied to any charge levied in relation to the award or authentication of a qualification or any other service provided in relation to such a qualification. It might include, for example, any fees charged by the recognised body to recognise a school or college wishing to offer the qualification.

494. Paragraph 12(4) removes the power for the Welsh Ministers to act as agents for the QCA. It is not intended that the QCDA will exercise any functions in relation to Wales and this provision therefore becomes redundant.

Paragraph 13

495. Paragraph 13(2) is a consequential amendment to reflect the QCA’s regulatory functions being transferred to Ofqual.

Paragraph 14

496. Paragraph 14 inserts a new section 32B into the 1997 Act. This new section provides that if an awarding body has not complied with a condition of recognition or

accreditation, the Welsh Ministers may withdraw recognition in relation to some or all of the qualifications for which it is recognised or withdraw accreditation of a qualification. However, the Welsh Ministers may only do this if the awarding body's breach of the condition seems likely to prejudice either the proper award of a qualification or a person expecting to be awarded with a qualification.

497. Subsections (5) to (11) of the new section 32B set out the steps that the Welsh Ministers must take before withdrawing recognition or accreditation, including giving notice of their intention, taking account of representations from the awarding body, and arranging for the decision to be reviewed.

498. The power for the Welsh Ministers to withdraw accreditation or recognition is currently implicit in the Education Act 1997 as amended by the Education and Skills Act 2008. The insertion of an express power clarifies the scope and operation of what otherwise would have been implied powers and provides greater transparency.

(4) Amendments to the provisions of the Learning and Skills Act 2000 governing eligibility for public funding for qualifications in maintained schools etc (paragraphs 19-22)

499. Under sections 96 and 98 of the Learning and Skills Act 2000, the Secretary of State has the power to approve qualifications for which a course may be taught to persons aged under 19 in a maintained school or in a provider funded by the Learning and Skills Council. The amendments to that Act in paragraphs 19 to 21 allow the Secretary of State to approve a qualification only if either the qualification is a "regulated qualification" in accordance with Part 7 of this Bill (and where the accreditation requirement applies, it is accredited), or if the Secretary of State consults Ofqual before approval. This ensures that, if the Secretary of State is considering granting approval for funding for a qualification which Ofqual does not regulate, he is aware of any views Ofqual has about the qualification. The change is part of implementing the Government's new qualifications strategy for under-19s². The amendments to section 96 bring the qualifications to which this approval regime apply into line with the qualifications in respect of which an awarding body may apply to be recognised by Ofqual.

500. Paragraph 22 amends section 99 of the Learning and Skills Act 2000, which is the Welsh equivalent of section 98. The amendment provides that a qualification is automatically approved for the purposes of section 96 if it is awarded by a body which is recognised by the Welsh Ministers (and, if required, the qualification is accredited).

(5) Amendments to the legislation governing NC and Early Years Foundation Stage assessments (paragraphs 24 to 28 and 31 to 34)

² *Promoting achievement, valuing success: a strategy for 14-19 qualifications*, DCSF, Cm 7354, 31 March 2008, <http://www.dfes.gov.uk/publications/14-19qualifications/pdfs/14-19Qualifications.pdf>

Education Act 2002 and Childcare Act 2006

501. Paragraphs 24 to 28 and 31 to 34 amend the provisions of the Education Act 2002 and the Childcare Act 2006 respectively relating to the NC, and in particular the NC assessment arrangements, and the EYFS learning and development requirements and the EYFS assessment arrangements. The changes primarily reflect the provisions of the Bill which establish Ofqual and provide for the QCA to become the QCDA.

502. Section 87 of the 2002 Act makes provision for the NC to be set out in orders made by the Secretary of State. Paragraph 28 amends section 87 and in particular the provisions of that section relating to the Secretary of State's powers to make orders specifying assessment arrangements. The amendments relate to the powers of the Secretary of State to confer functions on specified bodies, including the QCDA, and to delegate the making of supplementary provision to the QCDA and other persons.

503. Section 87(9) of the 2002 Act currently states that provisions will be made to determine the extent to which the assessment arrangements achieve their purpose. Given that Ofqual is established to regulate assessments, section 87(9) is no longer required. Paragraph 28(4) therefore repeals this subsection.

504. Similar changes are made to the provisions of the Childcare Act 2006 relating to the learning and development requirements of the EYFS. Paragraph 33 amends section 42(2) of the 2006 Act to include the QCDA and any other person with whom the Secretary of State has made arrangements in connection with assessment arrangements, as persons on whom functions may be conferred in an order specifying assessment arrangements for the learning and development requirements of the EYFS. That paragraph also enables the Secretary of State to delegate the making of supplementary provisions in relation to assessment arrangements.

505. Section 42(4) of the 2006 Act states that provision will be made to determine the extent to which the assessment arrangements achieve their purpose. Given that Ofqual is established to regulate assessments, section 42(4) is no longer required. Paragraph 33(3) therefore repeals this subsection.

(6) Changes to procedures for exemptions from the National Curriculum and Early Years Foundation Stage: Education Act 2002 and Childcare Act 2006 (paragraphs 29 and 35)

506. Section 90 of the 2002 Act gives the Secretary of State the power to direct in respect of a particular maintained school or maintained nursery school that, for a specified period, the NC does not apply or applies with modifications. This is designed to support development work or experiments that will support learning. The amendment made by paragraph 29 establishes a reviewing body for these cases, which will comprise the QCDA or another person assigned by the Secretary of State. The amendments give the Secretary of State the power to require any such school or nursery to report to the reviewing body, or to require the reviewing body to keep the

development or experiment work of any such school or nursery under review.

507. Section 46 of the 2006 Act provides for regulations to be made allowing the Secretary of State to direct in respect of a particular early years provider or description of early years providers that, for a specified period, the EYFS does not apply or applies with modifications. Paragraph 35 of this Schedule amends section 46 to allow the regulations to include provision establishing a reviewing body for these cases, which will comprise the QCDA or another person assigned by the Secretary of State. The amendment will also allow the regulations to give the Secretary of State the power to impose conditions when making such a direction, or to require the reviewing body to keep the effects of the direction under review.

(7) Changes to streamline consultation relating to the National Curriculum: section 96 of the Education Act 2002 (paragraph 30)

508. Paragraph 30 amends section 96 of the Education Act 2002 which makes provision about the procedure for making orders relating to the NC. The amendments make changes to the way in which persons must be notified of the proposed order or regulations.

509. Under section 96(3), the QCA is required to give notice of the proposal. Notice must be given to any person with whom consultation appears desirable to the Authority. Paragraph 30(3) amends this provision so instead the QCDA is under a duty to publish notice of the proposal in a way that it considers likely to bring to the attention to those concerned with it.

510. Under section 96(6) the Secretary of State is required to publish drafts of a proposed order or regulations and a statement explaining any failure to give effect to the recommendations of the QCA. Paragraph 30(6) and (7) removes the requirement for the Secretary of State to send copies of the above statement and proposed order or regulations to every person consulted by the QCDA. Instead, the Secretary of State is required to take steps to bring the documents to the attention of those consulted. This will enable documents to be published, for example on the internet, rather than being provided to each of the persons consulted by the QCDA.

PART 9: CHILDREN'S SERVICES

Co-operation to improve well-being of children

Clause 184: Arrangements to promote co-operation

511. Section 10 of the Children Act 2004 ("the 2004 Act") requires each children's services authority to make arrangements to promote co-operation between the authority itself, its relevant partners and such other persons or bodies as it considers appropriate, to improve the well-being of children. These arrangements are commonly known as "Children's Trusts". This clause amends section 10 to include new "relevant

*These notes refer to the Apprenticeships, Skills, Children and Learning Bill
as introduced in the House of Commons on 4 February 2009 [Bill 55]*

partners” who must co-operate with the local authority in the making of arrangements under that section. It also allows those bodies more flexibility over how they share resources and pool funds.

512. *Subsection (2)* amends section 10(4) of the 2004 Act to set out the additional “relevant partners” which will now include the governing bodies of maintained schools and further education institutions (including sixth form colleges), and proprietors of non-maintained special schools, city technology colleges, city colleges for the technology of arts and Academies. The inclusion of the Secretary of State’s functions under section 2 of the Employment and Training Act 1973 refers to Jobcentre Plus. The extension of the duty to cooperate to these new partners is to give them a stronger voice within the arrangements made under section 10 to improve children’s well-being, greater influence over the local strategic direction taken, and better support from other partners.

513. *Subsection (3)* amends section 10 of the 2004 Act to allow local authorities and relevant partners to provide staff and other resources to each other, another local education authority or to the relevant partners of another local authority for the purposes of arrangements made under section 10 (new section 10(5A)(a)).

514. New section 10(5A)(b) also permits local authorities and relevant partners when they are making arrangements to improve children’s well-being to pay money into a fund which may be used by any of the contributors in respect of their functions. It will permit multiple local authorities and/or their relevant partners to operate one single fund.

515. *Subsection (4)* repeals subsections (6) and (7) of section 10 of the 2004 Act as these are replaced with new subsection (5A).

516. *Subsection (5)* inserts new subsections (10) and (11) in to section 10 of the 2004 Act. New subsection (10) will require local authorities and governing bodies of further education institutions (FEIs) where the FEI is spread over several sites to have regard to the Secretary of State’s guidance when determining of which authority the FEI will be a “relevant partner”.

517. *Subsection (11)* defines key terms used in the amendments to section 10 of the 2004 Act.

Clause 185: Children’s Trust Boards

518. This clause makes two changes to Part 2 of the 2004 Act. It will require local authorities to expand on the current arrangements to improve children’s well-being made under section 10 of the 2004 Act by setting up Children’s Trusts Boards (“CTBs”) as part of those arrangements. The clause will also transfer the duty of preparing and implementing Children and Young People’s Plans from local authorities to CTBs.

519. *Subsection (2)* inserts new section 12A in to the 2004 Act to build on section 10 of the 2004 Act by introducing a statutory requirement for all local authorities in England to establish a Children's Trust Board ("CTB") for their area as part of their section 10 arrangements. The CTB must include representatives of the that establishes the CTB and its "relevant partners" unless they are prescribed in regulations, which will be subject to the negative resolution procedure, as relevant partners who need not be included on the CTB (*subsection (4)*). A relevant partner would be placed in this category because their circumstances made it unlikely that they could easily take on the more strategic and involved role of member of a CTB. For example, a body that is more regional than local would not be well-placed to be a member of all the CTBs its region covered. The CTB may also include other persons or bodies that the local authority thinks appropriate. Subsection (5) allows one or more people to represent more than one CTB member or group of CTB members.

520. The effect of subsection (1) of new section 12B of the 2004 Act (inserted by *subsection (2)*) is that a CTB's functions are preparing and implementing their local Children and Young People's Plan (CYPP), as set out in new sections 17 and 17A of the 2004 Act (inserted by *subsection (3)*). New section 12B(1)(b) also creates a power for the Secretary of State to add further functions to the work of CTBs by regulations subject to affirmative resolution.

521. Subsection (2) of new section 12B of the 2004 Act ensures that any function added by the Secretary of State under subsection (1)(b) must be related to improving the well-being (defined in subsection (3) as relating to one or more of the five Every Child Matters outcomes listed in section 10(2)(a) to (e) of the 2004 Act) of children and relevant young persons in the local area.

522. Subsection (4) of new section 12B requires CTBs to have regard to guidance issued by the Secretary of State relating to CTB procedures and the exercise of their functions.

523. Subsection (5) of new section 12B defines "relevant young persons", referring back to section 10 of the 2004 Act. The term "relevant young persons" includes people aged 18 and 19, care-leavers over the age of 19, and people over the age of 19 but under the age of 25 who have a learning difficulty within the meaning of section 13 of the Learning and Skills Act 2000 and who are receiving services under that Act.

524. New Section 12C (inserted by *subsection (2)*) sets out the arrangements for the provision of funds and resources relating to the work of a CTB. It also allows two or more CTBs to pool funds for the purposes of their work.

525. New section 12D sets out the arrangements for sharing data between the CTB and its members for the purpose of enabling it or assisting it to perform its functions.

526. *Subsection (3)* replaces section 17 of the 2004 Act (which places responsibility for Children and Young People's Plans ("CYPPs") on local authorities) with new

section 17 (which places responsibility for CYPPs on CTBs), and adds a new section 17A (which covers the implementation of a CYPP).

527. Subsection (1) of new section 17 provides a power for the Secretary of State, through regulations, to require the CTB to prepare and publish a CYPP. The plan should set out the CTB partners' strategy for co-operating with each other in order to improve the well-being of local children and young people (subsection (2)). The Government intends that regulations will broadly mirror the structure of existing regulations and the CYPP will continue to be the single strategic overarching plan for all local services for children and young people. However, the new regulations will apply to the whole CTB and not, as is currently the case, apply only to the local authority. The regulations will be subject to the negative resolution procedure.

528. Subsection (3) of new section 17 defines "well-being" as relating to the five Every Child Matters outcomes as set out in section 10(2) of the 2004 Act:

- physical and mental health and emotional well-being;
- protection from harm and neglect;
- education, training and recreation;
- the contribution made by them to society;
- social and economic well-being.

529. Subsection (4) of new section 17 provides for regulations to cover the preparation, consultation, publication, review and revision of the CYPP. The regulations will cover matters to be dealt with in the plan and may additionally be used to require CTB partners to set out their resourcing and budgetary commitments to meet the priorities of the plan. Under current regulations only the local authority must state how its budget will be used to contribute to improved outcomes.

530. Subsection (5) of new section 17 ensures that the CYPP also covers those young people who are included in arrangements made under section 10 of the 2004 Act. These are persons aged 18 and 19, persons over 19 receiving services as care leavers under the Children Act 1989 and persons over 19 but under 25 who have a learning difficulty within the meaning of section 13 of the Learning and Skills Act 2000 and who are receiving services under that Act.

531. New section 17A of the 2004 Act introduces a new statutory requirement for CTB partners to "have regard" to their CYPP when they exercise their functions (subsection (2)). Currently, "relevant partners" under section 10 of the 2004 Act, for example PCTs and police authorities, are not required to have regard to the CYPP. Extending the duty to have regard to the CYPP brings the "relevant partners" in the

CTB in line with maintained schools which under section 38 of the Education and Inspections Act 2006 are already placed under a duty to “have regard” to the CYPP.

532. Monitoring the CYPP will form an integral part of the CYPP’s development and implementation. Subsection (3) of new section 17A requires the CTB to monitor its partners’ progress in implementing the CYPP and report annually on how well CTB partners are acting in accordance with the strategies set out in the CYPP. The Government intends to issue statutory guidance under new section 12B(4) to outline what processes should be undertaken in monitoring the plan following implementation.

533. *Subsection (4)* amends subsection 18(2) of the 2004 Act to ensure that the new functions relating to CTBs and CYPPs are added to the list of functions of a Director of Children’s Services.

534. *Subsection (5)* extends the meaning of the term “children’s services” used in sections 20-22 of the 2004 Act to include the functions and procedures of CTBs (including all functions in relation to the preparation and review of the CYPP, and partners’ compliance with that plan), the funding of CTBs and supply of information to CTBs. Sections 20-22 of the 2004 Act address the joint inspection of children’s services. By expanding the meaning of the term “children’s services”, this subsection ensures that the CTB-related activities listed may be inspected under an inspection of children’s services.

535. *Subsection (6)* extends the list of relevant functions of a local authority, for the purposes of section 50 of the 2004 Act, to include the funding of CTBs, the supply of information to CTBs and the need to have regard to the CYPP when exercising its functions. Section 50 addresses the powers of the Secretary of State to intervene in local authorities. By expanding the list of functions, this subsection allows the Secretary of State to intervene in local authorities in connection with their CTB and CYPP activities listed above.

536. *Subsection (7)* amends subsection 66(3) of the 2004 Act with the effect that any regulations produced under new section 12B(1)(b) (adding further functions to the work of CTBs) must be subject to Parliamentary approval by resolution.

537. *Subsection (8)* adds to section 47A of the School Standards and Framework Act 1998 to place a duty on schools forums to have regard to the CYPP produced by their local CTB.

538. *Subsection (9)* amends section 21 of the Education Act 2002, which states that the governing bodies of maintained schools must have regard to their local area’s CYPP. This duty needs to be revised to reflect the fact that responsibility for preparing the CYPP is moving to the CTB. Governing bodies of maintained schools will be CTB partners and therefore under a duty to have regard to their local CYPP. However, should a governing body of a maintained school ever not be represented on

its CTB, section 21 is amended so that the governing body must still have regard to the local CYPP.

Children's centres

539. The “early childhood services” referred to in clauses 185, 186 and 188 (and in these Notes) are defined in section 2 of the Childcare Act 2006 (“the 2006 Act”). They are:

- early years provision (which means childcare and early learning for young children);
- local authority social services relating to young children and their parents, for example, supervised contact and early intervention for families identified as needing support;
- health services relating to young children and their parents, for example, health visitors, ante-natal and post-natal care;
- services provided under section 2 of the Employment and Training Act 1973, assisting or encouraging parents (and prospective parents) to obtain or retain employment. (In practice these services are currently delivered by Jobcentre Plus);
- the information services for parents and prospective parents provided by local authorities under the duty in section 12 of the 2006 Act.

Clause 186: Arrangements for children's centres

540. This clause inserts new provisions into Part 1 of the 2006 Act imposing duties on English local authorities and others in relation to children's centres.

541. New section 5A builds on the existing requirement under section 3 of the 2006 Act for English local authorities to make arrangements to secure that early childhood services in their area are provided in an integrated way that facilitates access to services and maximises the benefits to children, parents and prospective parents. Currently, a local authority is free to determine how best to do this. Children's centres are just one example of how this can be done but local authorities are currently under no legal obligation to have any.

542. Subsection (1) imposes a new requirement on local authorities that arrangements made under section 3(2) of the 2006 Act must include arrangements for sufficient provision of children's centres to meet local need. This will involve a local authority assessing the need for children's centres in their area, and then deciding what provision is required to meet that need. In making this decision about what is sufficient to meet local need, subsection (3) provides that the local authority is able to take into account other children's centres which are being provided (or which they

expect to be provided) outside the area (for example, where people in the area make use of a children's centre in a neighbouring local authority area).

543. Subsection (4) contains a definition of a "children's centre" for the purposes of these provisions and also those inserted by clauses 187 and 188. For these purposes, a children's centre is a place, or a group of places (to cover centres which operate on more than one site), which meets each of the three elements of the definition.

544. Paragraph (a) of the definition requires management of the centre by or on behalf of the local authority, and also captures arrangements where the local authority commissions a third party, such as a school governing body or a voluntary sector provider, to manage a children's centre on its behalf.

545. Paragraph (b) of the definition requires that all the early childhood services are made available through the children's centre. Subsection (5) provides that, for this purpose, "made available" means either that early childhood services are provided directly at a children's centre, or that advice and assistance are provided to parents and prospective parents on accessing early childhood services elsewhere.

546. Paragraph (c) of the definition says that the children's centre must provide activities on site for young children. This is to ensure that all centres captured by the definition in subsection (4) directly provide some activities for young children, rather than just advice and assistance for parents on gaining access to services provided elsewhere. This could be childcare, but if this is not provided at a children's centre, other activities for young children such as "stay and play" sessions, where parents and children have opportunities to join in play activities together, must be provided.

547. Subsection (6) makes explicit that statutory guidance issued under section 3(6) of the 2006 Act may be used to provide guidance to local authorities on whether a children's centre which they are responsible for should provide early childhood services at the centre, or whether it should simply provide advice and assistance to parents and prospective parents to help them access early childhood services provided elsewhere.

548. Subsection (7) provides that a children's centre provided as a result of arrangements under section 3(2) of the 2006 Act and which meets the definition in subsection (4) is to be known as a "Sure Start Children's Centre".

549. New section 5B creates a power for the Secretary of State to make regulations about the staffing, organisation and operation of children's centres. The regulations might be used to require that children's centres each have a centre leader, or to impose requirements about the qualifications which staff members must have. Subsection (2) provides that such regulations may impose a requirement for governing bodies to be established for each children's centre, and for such regulations to impose obligations

and confer powers on governing bodies. The regulations will be subject to the negative resolution procedure.

550. New section 5C places on local authorities a duty to ensure each children's centre (or group of children's centres) for which it is responsible has an advisory board. The advisory board will provide advice and assistance, for example, to the centre manager, the local authority and its "relevant partners" (defined in section 4 of the 2006 Act as the Primary Care Trust or Strategic Health Authority for an area, and Jobcentre Plus), with a view to ensuring that each children's centre provides relevant and high quality services.

551. The local authority will specify which children's centres a particular advisory board relates to. Each advisory board must include representation from parents of young children or prospective parents in the local authority's area, the local authority itself, and each children's centre covered by that advisory board. The advisory board may also include representatives of other persons or bodies that the local authority considers appropriate to be represented, for example providers of other services for children, and representatives of the local community.

552. Subsection (7) requires local authorities to have regard to any statutory guidance issued by the Secretary of State when exercising their function of securing that advisory boards are established. Under subsection (8) this may include guidance about the membership of the board (including which other people or bodies it may be appropriate to have represented on the board), and the organisation and operation of the board (including the appropriate number of children's centres for a single advisory board to advise in relation to).

553. New section 5D gives local authorities a duty to ensure that appropriate consultation is carried out when they are considering the establishment or closure of a children's centre, or making any significant change in the services provided through a children's centre (including a change to the location of those services). The consultation may be carried out by the local authority or by someone else such as a third party who is managing a children's centre. Such consultation may be relevant to a local authority's determination of what arrangements it should make to provide children's centres to meet local need, including their number and location and which services a centre should provide directly.

554. Subsection (2) requires local authorities to have regard to guidance issued by the Secretary of State when exercising their function of ensuring that consultation is carried out. This may include guidance on what would constitute a "significant change" for the purposes of subsection (1)(b).

555. New section 5E gives local authorities and their "relevant partners" (the Primary Care Trust or Strategic Health Authority for an area, and Jobcentre Plus) a duty to consider, when deciding whether and how to provide a particular early childhood service, whether it should be provided through one of the children's centres

in the area. In considering this, subsection (4) provides that the local authority or relevant partner must take into account whether providing the early childhood service through a children's centre would facilitate access to it or maximise its benefit to parents, prospective parents and young children.

556. Subsection (6) provides that the duty also applies where the local authority or relevant partner commissions a third party to provide an early childhood service, rather than doing so itself.

557. Subsection (7) clarifies that, despite the duty in this section, a local authority or its relevant partners are still free to decide that an early childhood service is better located somewhere other than a children's centre, as long as they have in fact considered a children's centre as one option for the location of the service.

558. New section 5F contains a transitional provision which ensures that, where a local authority has made arrangements before the commencement of clause 186 for a children's centre, but those arrangements were not made under section 3(2) of the 2006 Act, those children's centres will count as being made under section 3(2) so that new sections 5A to 5E will apply to them. These transitional provisions are necessary for children's centres which may have been set up before section 3(2) came into force, and therefore would not have been set up as part of arrangements under section 3(2).

Clause 187: Inspection of children's centres

559. This clause inserts a new Part 3A after Part 3 of the 2006 Act which makes provision about inspections of children's centres by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") also known as Ofsted.

560. New section 98A places new duties on the Chief Inspector to inspect children's centres. These inspections must be carried out at intervals prescribed in regulations, or at any time when the Secretary of State requests an inspection. Subsections (4) and (5) give more detail about the sort of request the Secretary of State may make.

561. Subsection (2) gives the Chief Inspector a power to inspect a children's centre at any other time the Chief Inspector considers is appropriate, for instance if a complaint or particular concern has been reported.

562. Subsection (3) creates a power for the Secretary of State to set out in regulations the circumstances in which the Chief Inspector is not required to inspect a children's centre at a prescribed interval, for instance to enable a children's centre inspection to take place at the same time as the inspection of a school which is co-located with a children's centre, where this would otherwise not be possible. The regulations made under subsections (1) and (3) will be subject to the negative resolution procedure.

563. Subsection (6) allows an inspection carried out under subsection (1)(b) or (2) to count for the purposes of the duty on the Chief Inspector under subsection (1)(a) to inspect children's centres within a prescribed interval, so that an inspection would not have to be repeated in order to meet that duty.

564. The Chief Inspector must produce a report after inspecting a children's centre under new section 98A. New section 98B(2) requires the report to address the contribution made by the centre to facilitating access to early childhood services by parents, prospective parents and young children, maximising the benefit of those services, and to improving well-being of young children. "Well-being" in this section has the same meaning as in section 1(2) of the 2006 Act, which is also the same as that set out at paragraph 530 of these Notes.

565. Subsection (3) creates a power for the Secretary of State to introduce further requirements through regulations about the specific matters that must be dealt with in a report, or to specify matters which need not be dealt with in a report. Subsection (4) specifies some of the matters that may be required in regulations. The regulations will be subject to the negative resolution procedure.

566. New section 98C sets out what a local authority must do after receiving a report by the Chief Inspector of an inspection of one of its children's centres. It also gives the local authority powers to send copies of the report to other persons (for example, any third party managing the centre on behalf of the local authority), and to publish the report or parts of it.

567. Subsections (3) to (5) require a local authority to produce a written statement setting out the action that the local authority and the person or body managing the children's centre (where not the local authority) propose to take in response to the report, and when.

568. Subsection (6) requires local authorities to have regard to any statutory guidance issued by the Secretary of State when exercising their function of producing a written statement.

569. New section 98D gives the Chief Inspector powers of entry and other related powers for the purpose of enabling the inspection of a children's centre. The power of entry may be exercised only at a reasonable time and does not apply to premises used wholly or mainly as a private dwelling (subsection (3)).

570. Under paragraph 9(1) of Schedule 12 to the Education and Inspections Act 2006, the Chief Inspector is allowed to authorise other persons to carry out the Chief Inspector's functions, including powers of entry. Subsection (4) enables the Chief Inspector to place limitations on an authorisation to exercise powers of entry under section 98D, such as authorising a person to do this only for a certain occasion or period, or by placing conditions on the authorisation.

571. Subsections (6) and (7) give further powers which may be exercised once an inspector has entered the children's centre premises, to assist with the inspection. These powers include the power to inspect the premises, inspect documents and records (and take copies of them), inspect children and interview staff in private.

572. Subsection (9) provides that section 58 of the Education Act 2005, which entitles the inspector to access and inspect computers and require persons to assist the inspector in doing so, applies for the purposes of the powers to inspect documents and records under section 98D.

573. New section 98E provides that an offence is committed if a person intentionally obstructs a person who is attempting to exercise the power of entry, or one of the other powers in section 98D.

574. New section 98F sets out what procedure must be followed before the police may assist the Chief Inspector with the exercise of the powers in section 98D. The Chief Inspector must first apply to a court for a warrant authorising a police constable to assist the Chief Inspector to exercise a power of entry or other power, including by using reasonable force if necessary. A warrant may be granted only where the exercise of the power of entry or other powers conferred by section 98D has been prevented, or is likely to be prevented.

575. Subsections (5) and (6) make provision about the type of court in which an application by the Chief Inspector for a warrant may be made.

Clause 188: Children's centres: safeguarding children

576. The Safeguarding Vulnerable Groups Act 2006 ("the SVG Act") provides for the Independent Barring Board established under section 1 (but in practice now called the Independent Safeguarding Authority ("ISA")) to maintain lists of persons barred in relation to work with children or vulnerable adults, and to monitor persons who have applied to be subject to monitoring. The SVG Act also sets out the type of work in relation to which monitoring is required, and which persons on the barred lists may not undertake. It also provides for a range of offences to enforce the monitoring requirement and the effect of barring.

577. This clause amends paragraph 3(1) of Schedule 4 to the SVG Act to add children's centres to the list of establishments used for determining whether an activity is capable of being "regulated activity" for the purposes of the SVG Act. As a result of this amendment, a person who carries out an activity in a children's centre will be engaging in regulated activity if the activity also meets the other criteria set out in paragraph 1(2) of Schedule 4 (which deal with matters such as the frequency of the activity, and whether it affords the person opportunity for contact with children).

578. Whilst many of the roles being carried out by people working at a children's centre (such as the provision of childcare) would already be regulated activity by virtue of other types of activity covered by paragraph 2 of Schedule 4, for example,

the effect of this amendment is that everyone involved in working or volunteering at a children's centre (and who meets the other criteria in paragraph 1(2) of Schedule 4) will be engaged in regulated activity. The SVG Act prevents people who are barred from working with children from engaging in regulated activity, and requires people engaged in regulated activity to be subject to monitoring by the ISA.

579. The requirements of the SVG Act relating to people engaged in regulated activity will be phased in over time and be subject to certain transitional provisions. The Government will publish clear and timely information to notify those affected when requirements will begin to apply to them.

Clause 189: Arrangements in respect of early childhood services

580. This clause amends section 3 of the Childcare Act 2006. New subsection (4A) which it inserts makes explicit that, in determining what arrangements for integrated services to make under section 3(2), a local authority must have regard to the early childhood services which are provided, or are expected to be provided, in the local authority's area, and the location of those services. Both the quantity and quality of the early childhood services is relevant. So where a local authority decides that it needs to establish a new children's centre, it may determine that the children's centre does not need to provide an early childhood service such as childcare, given the availability, quality and location of existing early childhood services. However, in such a case the children's centre would still be required to provide advice and assistance on gaining access to local childcare provision, and directly provide other activities on site for young children.

Early years provision: budgetary framework

Clause 190: Free of charge early years provision: budgetary framework: England

581. This clause amends the school funding provisions in the School Standards and Framework Act 1998 ("the Act"). It enables the Individual Schools Budget (ISB) – the Local education authority budget from which schools are funded – to also include funding for early years providers (EYPs) who will receive funding in order to provide free early years provision (childcare for a child up to 31 August following their fifth birthday – defined by section 20 of the Childcare Act 2006). It enables Local Authorities to make allocations to such providers, and for regulations similar to the Schools Finance Regulations to apply to those allocations.

582. *Subsection (2)* amends section 45A of the Act (determination of specified budgets of LEA), by inserting a new subsection (4B) into that section, so as to provide that the duty imposed on a local education authority by section 7(1) of the Childcare Act 2006 (to secure prescribed early years provision free of charge) is to be treated as imposed on the authority acting in their education capacity. Childcare (as defined in section 18(2)) includes not only education for a child but also any other supervised activity for a child, whereas section 45A of the School Standards and Framework Act 1998, and other provisions in Part 2 of that Act, apply only in relation to an LA in its education capacity and will continue to do so, even when we "remove" the Local

Education Authority concept. In order that LAs can fund EYPs out of their individual schools budget under section 45A, the duty imposed by section 7 Childcare Act 2006 — which goes beyond securing education for a young child — must be "treated" as though it were an education duty.

583. *Subsection (3)* inserts a new section 47ZA into the Act (free of charge early years provision outside a maintained school: budgetary framework), which:

- applies where a local education authority propose to allocate money to a childcare provider (other than a maintained school), for the purpose of discharging the authority's duty under section 7 of the Childcare Act 2006, out of their individual schools budget (subsections (1) and (3) of the new section). This duty is to secure sufficient childcare free of charge in accordance with regulations which set out the type of childcare and the age of the children to which it is to be provided.
- requires the amount allocated to be determined in accordance with regulations (subsection (2));
- enables regulations, subject to the negative resolution procedure, relating to such allocation to make provision for specific matters (*subsection (4)*). These matters mirror, where appropriate, those referred to in section 47(2) of the Act (which enables regulations relating to the amount to be allocated by the authority to maintained schools out of their individual schools budget to make provision for specific matters).

584. Subsection 4(a) and (b) allows regulations to set out factors that authorities have to (a), or may not (b), take into account in determining the amount of money to be provided to a childcare provider.

585. Subsection 4(c) allows regulations to set out other requirements that the authority has to comply with in determining the amount of money to be provided to a childcare provider.

586. Subsection 4(d) allows regulations to be made about consultation in connection with determining the amount of money to be provided to a childcare provider.

587. Subsection 4(e) allows regulations to be made which allow a local education authority to determine the amount of money to be provided to a childcare provider in accordance with arrangements that the Secretary of State has approved, rather than in accordance with regulations made under section 47ZA. It also requires that regulations be made which set out the circumstances and extent to which this process can happen.

588. Subsection 4(f) allows regulations to be made which require local authorities to give certain information to providers about how the amount was calculated.

589. Subsection 4(g) allows regulations to be made about when a local education authority must recalculate such an amount.

590. Subsection 4(h) allows regulations to be made which set out a time by which a local education authority must determine an amount and defines certain terms for the purposes of the new section (*subsection (5)*).

PART 10: SCHOOLS

Chapter 1: Schools Causing Concern: England

591. Part 4 of the Education and Inspections Act 2006 gives local education authorities and the Secretary of State intervention powers to tackle underperforming schools. The LEA powers consist of appointing new members to the school's governing body, establishing an interim executive board (IEB), directing the school to federate or collaborate with or seek advice from another school or other person, and suspending the school's right to a delegated budget. Before any of these powers may be exercised the school must either be in one of the Ofsted categories of requiring "special measures" or "significant improvement", or be given a warning notice by the LEA and allowed time to respond. The Secretary of State currently has reserve powers in relation to schools requiring special measures or significant improvement. Three of these are set out alongside the LEA intervention powers, and are to appoint additional governors, to impose an IEB, and to close a school (although this last power applies to schools in special measures only). Another of the reserve powers, under section 62A of the Education Act 2002, is to require the LEA to obtain advisory services if they have a poor record or appear unlikely to be effective in eliminating the deficiencies.

Clause 191: Powers in relation to schools causing concern: England

592. Subsection (1) introduces Schedule 13 which contains amendments to Part 4 of the Education and Inspections Act 2006.

Schedule 13 - Powers in relation to schools causing concern: England

593. The Education Act 2002 gives the Secretary of State power to issue orders about teachers' pay and conditions in England and Wales – see section 122 of that Act. The School Teachers' Pay and Conditions Document has been included in an order under that section.

594. Paragraph 4 of Schedule 13 to the Bill inserts a new section 60A in the Education and Inspections Act 2006. The new section introduces a system of teachers' pay and conditions warning notices which allows LEAs to issue a notice to the governing body of a maintained school where the LEA are satisfied that the governing

body has failed to comply, or failed to secure compliance by the head teacher, with the provisions of an order under section 122 of the 2002 Act relating to teachers' pay and conditions (including the School Teachers' Pay and Conditions Document).

595. Section 60A also provides that if a teachers' pay and conditions warning notice is given and, after a compliance period, the governing body has not complied with it or successfully made representations to the LEA against it, the school will become eligible for intervention. The LEA's and the Secretary of State's current powers under Part 4 of the 2006 Act will then be available (save for those powers set out in section 63 which give LEAs the power to require a governing body to enter into a contract or arrangement with a view to improving performance, and those set out in section 68 which give the Secretary of State power to direct the closure of a school). These are:

- section 64 (power of the LEA to appoint additional governors)
- section 65 (power of LEA to provide for governing body to consist of interim executive members)
- section 66 (power of LEA to suspend right to delegated budget)
- section 67 (power of Secretary of State to appoint additional governors)
- section 69 (power of Secretary of State to provide for the governing body to consist of interim executive members).

596. Paragraph 6 of Schedule 13 to the Bill amends section 64 of the Education and Inspections Act 2006 so that where a school is eligible for intervention under Part 4 of the 2006 Act an LEA's power to appoint additional governors will not be available if the Secretary of State has already appointed additional governors under section 67.

597. Paragraphs 8 and 9 of Schedule 13 amend sections 67 (power of Secretary of State to appoint additional governors) and 69 (power of secretary of State to provide for governing body to consist of interim executive members) so that the Secretary of State's powers will also be available in a case where a school is eligible for intervention by virtue of a warning notice under section 60 (performance standards and safety) or 60A (teachers' pay and conditions). Formerly these reserve powers were available only when the school was eligible for intervention because it required significant improvement or special measures.

598. Paragraph 10 of Schedule 13 makes further provision about warning notices given in relation to performance standards and safety or teachers' pay and conditions by inserting new sections 69A and 69B in the Education and Inspections Act 2006. Section 69A gives the Secretary of State power to direct an LEA to consider giving a performance standards and safety warning notice to a governing body school if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of

State's direction must be in writing and the LEA must provide a written response, copied to Her Majesty's Chief Inspector of Schools within 10 working days. If the LEA agree to issue a warning notice they must do so – copied to the Secretary of State – within five working days of their response to the Secretary of State and withdraw any previous warning notice given to the governing body under section 60. If the LEA decides not to issue a warning notice they must set out the reasons for the decision in their response to the Secretary of State.

599. New section 69B gives the Secretary of State a power to direct an LEA to consider giving a teachers' pay and conditions warning notice to a governing body if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of State's direction must be in writing and the Authority must give a copy to the school's governing body, and then provide a written response (including any response from the governing body) to the Secretary of State within 10 working days. If the LEA agree to issue a warning notice they must do so — copied to the Secretary of State — within five working days of their response to the Secretary of State and withdraw any previous warning notice they had issued to the governing body under section 60A.

600. If the LEA decides not to issue a teachers' pay and conditions warning notice to they must set out the reasons for the decision in their response to the Secretary of State. The Secretary of State may then direct the LEA to give a warning notice in the terms specified in the direction and to withdraw any previous warning notice they had issued to the governing body under section 60A.

Clause 192: Power to require LEAs in England to obtain advisory services

601. This clause amends section 62A of the Education Act 2002. Section 62A currently gives the Secretary of State the power to require LEAs in England to obtain advisory services where:

- the LEA have schools in either of the categories “requiring special measures” or “requiring significant improvement”, and
- the LEA do not appear to be effective or likely to be effective in improving those schools or other schools in their area which may be placed in these categories.

602. The advisory services can be supplied by an organisation, school or named person, who would provide advice to the LEA for the purposes of school improvement.

603. *Subsection (2)* inserts an additional trigger for the Secretary of State's power to require the LEA to obtain advisory services. The new trigger allows intervention when there are a disproportionate number of low-performing schools within the LEA's remit and it appears to the Secretary of State that the LEA are unlikely to

improve standards in those schools or in other schools in their area which may in the future become low-performing.

604. Standards of performance of pupils at a school are assessed by reference to the matters set out in new section 62A(1C), which provides that the standards of pupils when they joined the school and the standards achieved by pupils at similar schools may be taken into account.

Clause 193: Powers in relation to schools causing concern: Wales and Schedule 14: powers in relation to schools causing concern: Wales

605. This Schedule gives effect to Schedule 14 which contains the Welsh provisions corresponding to those in Schedule 13 for England. The amendments are to the School Standards and Framework Act 1998, and have broadly the same effect as those made in relation to teachers' pay and conditions in England by Schedule 13, except that the Welsh Ministers rather than the Secretary of State have reserve intervention powers.

Chapter 2: Complaints: England

606. Under the current processes, when a parent or pupil is concerned about an issue arising from their individual experience at school, they can contact the teacher or head teacher of a school. If the issue remains unresolved they can contact the governing body of the school (or management committee in the case of a pupil referral unit)

607. If the complainant remains unhappy, once the governing body has looked into their complaint, they may approach the Secretary of State under section 496 or 497 of the Education Act 1996 and ask him to consider their complaint. The Secretary of State must consider that the governing body has been acting unreasonably and that it is expedient to intervene. In practice there are few occasions when a direction may be made.

608. These clauses create a new scheme for complaints and amend section 496/7 in respect of complaints heard by school governing bodies which have been brought to the attention of the Secretary of State and repeal section 409 and *paragraph 6(3) and (4)* of Schedule 1 to the Education Act 1996. The Government intends that the Secretary of State's role will be replaced by a new parents' and young person's independent complaints service (referred to in clauses as the Local Commissioner).

609. The Local Commissioner will be able to consider complaints about school issues affecting a particular pupil where they may not appeal by another independent route.

610. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not fall within the scope of the Service as they have their own

independent appeals processes. Special educational needs cases which are currently within the remit of the First-Tier Tribunal (previously known as SENDIST) will also be outside the scope of the Service.

Clause 194: Complaints to which this Chapter applies

611. The clause specifies who may approach the Local Commissioner under the new independent service (the Service). “The Commission for Local Administration” and “The Local Commissioner” are statutory names but they are generally known as the Local Government Ombudsman.

612. A “qualifying school” is a community, foundation, or voluntary aided school, community special or foundation special school, maintained nursery school or a short stay school. The Secretary of State may add to or amend this definition by order (made under clause 207) which would be subject to the affirmative resolution procedure.

613. The clause provides that a complaint against a school may be made where a pupil or parent claims to have suffered injustice because of the actions, or omissions, of the governing body or by the head teacher exercising, or failing to exercise, functions of a kind specified in regulations under this section. Where the head teacher delegates their authority to another member of staff, the head teacher remains legally accountable for the member of staff complying with that action.

614. Where a governing body makes arrangements for another individual or body to carry out functions on its behalf, this will also be capable of referral to the Service. For example, where a school contracts out services for an “after school club”, a parent or pupil could make a complaint about an act that occurred whilst a pupil was attending this provision, despite the fact that it was not run directly by the governing body.

615. Where a pupil is educated off the site of the school this will also be included within the remit of the Service. For example, a pupil might be on the roll at one school but may attend some lessons at another school. This can happen in cases where a pupil is on roll at a short stay school but attends a mainstream school as part of their education.

616. People acting on the governing body’s behalf can be complained about. This includes a person employed by a local education authority or outside agency as they will be carrying out actions with the governing body’s permission.

617. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not be capable of referral to the Local Commissioner as they have their own independent appeals processes. This also applies to cases that are

currently within the remit of the First-Tier Tribunal (previously known as the Special Educational Needs and Disability Tribunal (SENDIST)).

618. A parent or pupil may approach the Local Commissioner asking them to investigate their complaint. “Parent” includes anyone who has parental responsibility for a child or who has care of him or her. The Local Commissioner will be able to consider complaints from carers as well as parents and young people.

Clause 195: Power of Local Commissioner to investigate complaint

619. The clause enables the Local Commissioner to investigate the complaint made by the complainant. Where head teachers or governing bodies have considered the complaint and feel the complaint should be referred to the Local Commissioner, they may do so with the complainant’s consent. For example, a head teacher or governing body may feel they have done all they can to assist the complainant and the Local Commissioner may be able to resolve the issue.

620. Before proceeding to investigate a matter the Local Commissioner must be satisfied that the governing body had notice of the matter complained about and an opportunity to investigate and respond, or that it is not reasonable in the circumstances to expect the matter to be brought to the attention of the governing body (*subsection 3(b)*). A Local Commissioner is able to use discretion to take a flexible approach and proceed with an investigation if satisfied that it is not reasonable to expect the matter to have first been brought to the attention of the governing body.

621. The Local Commissioner is able to investigate or discontinue (for example, vexatious or malicious) complaints as it feels appropriate. If the Local Commissioner is satisfied with the steps the school is taking or is going to take, it may decide not to investigate the complaint.

Clause 196: Time-limit etc for making complaint

622. This clause requires complaints to be made in writing within 12 months of the incident occurring. A Local Commissioner may disapply these requirements. For example where a pupil’s particular circumstances or level of education made it difficult for them to put the complaint in writing it may be given orally. Complainants raising complaints with the Local Commissioner after the 12 month period must show a good reason for doing so.

Clause 197: Procedures in respect of investigations

623. This clause sets out the processes involved in the Local Commissioner considering a complaint. It ensures that the governing body or head teacher about whom the complaint was made and any other person involved are allowed the opportunity to comment. Investigations must be carried out in private. But otherwise it is for the Local Commissioner to decide how to conduct the investigation. The

Local Commissioner may obtain information and make enquiries from any person as they see fit.

624. If the Local Commissioner sees fit it may choose to pay any persons a sum incurred by them or an allowance for loss of their time for the purposes of carrying out the investigation.

Clause 198: Investigations: further provisions

625. The clause gives the Local Commissioner various powers in order to facilitate their investigations. The Local Commissioner may require a governing body, head teacher, or any other person who in the Local Commissioner's opinion is able to provide information or documents relevant to the investigation, to provide such information or documents.

626. The Local Commissioner has the same powers as the High Court to compel the attendance and examination of witnesses and the production of documents. This means that anyone not complying with the Local Commissioner's requests may be in contempt of court and subject to the penalties associated with that. Any person who obstructs an investigation, or is guilty of an act or omission in relation to an investigation which would constitute contempt of court in proceedings in the High Court, the Local Commissioner may certify this as an offence to the High Court. The High Court may then deal with the person charged as though they had committed the same offence in relation to the High Court.

Clause 199: Statements about investigations

627. This clause provides for statements to be issued by a Local Commissioner when he decides not to investigate or to discontinue an investigation, and when an investigation is completed. If the Commissioner decides not to investigate or to discontinue an investigation, the statement must set out the Commissioner's reasons for that decision.

628. When a Local Commissioner has completed an investigation, the statement must set out the Commissioner's conclusions and any recommendations. The Commissioner may make recommendations for action which, in the Commissioner's opinion, the governing body needs to take to remedy any injustice sustained by the person affected. Recommendations may also be aimed at preventing injustice being caused in the future as a result of similar action of the governing body or head teacher. For example, the Commissioner might recommend an apology to the pupil, or changes to the school's discipline policy.

629. The Commissioner must send a copy of the statement to the complainant, or, if the complainant is the pupil and the Commissioner thinks it appropriate, the parent) the governing body and head teacher. The statement must identify the school concerned. It will then be for the Local Commissioner to decide whether it is appropriate for the individual to be identified. The statement must not identify the

complainant or any other person unless the Commissioner considers it necessary to identify that person.

Clause 200: Adverse findings notices

630. This clause requires a governing body to consider any statement containing recommendations by a Local Commissioner and notify the Commissioner within the “required period” as set by the Local Commissioner of the action which the governing body has taken or proposes to take. If by the end of that period, the Local Commissioner has not received this notification, or is satisfied before the period expires that the governing body has decided to take no action, the Local Commissioner may require a governing body to publish an adverse findings notice. The Commissioner may also do this in two other circumstances: first, if not satisfied with the action which the governing body has taken or proposes to take; or second, if, after a further month following the end of the “notification period” (or any longer period agreed in writing by the Local Commissioner), the Commissioner has not received satisfactory confirmation that the governing body has taken the proposed action.

631. An adverse findings notice, in a form agreed between the governing body and a Local Commissioner, should include details of any action recommended in the Local Commissioner’s statement which the governing body has not taken, any supporting material required by the Local Commissioner, and an explanation of the governing body’s reasons for not having taken the recommended action (if the governing body wishes). The adverse findings notice must be published by the governing body in a manner directed by the Local Commissioner. The Local Commissioner might, for example, require publication in a local newspaper or, if the school has one, on its internet site.

632. A Local Commissioner must publish an adverse findings notice if the governing body fails to do so in accordance with *subsections (4) and (5)*, or cannot agree the form of the notice with the Local Commissioner within one month of the date the notice was received (or longer if agreed in writing by the Local Commissioner). *Subsection (7)* requires the provider to reimburse the LGO on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under *subsection (6)*.

Clause 201: Publication of statements etc. by Local Commissioner

633. A Local Commissioner may publish all or part of a statement under clause 199, or publish a summary of a statement. In deciding whether to publish a statement the Commissioner must take into account the public interest as well as the interests of the complainant and of other persons. The Local Commissioner may also supply a copy of all or part of a statement to anyone who requests it, and charge a fee for this. This fee must be reasonable and any fees charged are unlikely to be significant. *Subsections (8) and (10)* of clause 199 apply to a Local Commissioner’s publication of a statement or supply of any copy under this section. That means that, for example,

the summary must not identify the complainant or any other person (other than the school) unless the Commissioner considers it necessary to identify that person.

Clause 202: Disclosure of information, Clause 203: Permitted disclosures of information by Local Commissioner

634. These clauses restrict the disclosure by a Local Commissioner of information obtained during the course of an investigation. Information obtained must not be disclosed except for the purposes specified. Particular exemptions allowing disclosure of information include, for example, disclosure for the purposes of a complaint being investigated by Her Majesty's Chief Inspector of Education, Children's Services and Skills, a local education authority under section 12 of the Education Act 1996 and the Secretary of State.

Clause 204: Annual reports

635. This clause provides that the Local Commissioner must prepare a report on the discharge of its functions for each financial year to the Commission for Local Administration in England (the Commission). The Commission must then prepare an annual report which must be laid before Parliament.

Clause 205: Secretary of State's power of direction

636. This clause enables the Secretary of State to make a direction to a governing body that has not complied with a recommendation from the Local Commissioner. The Secretary of State may direct a governing body to comply within a specified period. That direction is enforceable by a mandatory order.

Clause 206: Disapplication of certain powers of Secretary of State

637. This clause amends sections 496/497 of the Education Act 1996. Currently, complainants may approach the Secretary of State asking him to consider the complaint. But for the Secretary of State to intervene the governing body has to be acting unreasonably and it must be expedient to intervene. In practice there are few occasions where the Secretary of State may issue a direction where the head teacher or school has failed in its statutory duty.

638. The effect of the amendments is that the Secretary of State can no longer make a direction in relation to complaints against governing bodies of schools that have or could have been made to the Local Commissioner. Instead, the complainant may approach the Local Commissioner if they are not satisfied with the governing body's response. After investigation into the complaint, the Local Commissioner will be able to recommend that the school undertake a course of action to remedy an injustice suffered by a particular individual.

639. The Local Commissioner will offer a scrutiny that is independent of central Government and will be able not only to consider if a school has been acting unreasonably or unlawfully (which is the scope of the Secretary of State's current practice) but also to recommend that a governing body carry out a remedy.

640. Regulations may prescribe that the Secretary of State may make a direction in relation to a matter that could have been referred to the new scheme where the complaint is from a “prescribed person”. The Government envisages that such prescribed persons might include the local education authority or governing bodies of other schools.

Clause 207: Power to amend meaning of “qualifying school”

641. This clause enables the types of schools that are covered by the scheme (“qualifying schools”) to be added to, or amended by order at a later date. This order would be subject to the affirmative resolution procedure.

Clause 208: Amendments consequential on Chapter 2

642. The Local Commissioner will be able to consider complaints relating to the National Curriculum where it affects an individual pupil. Previously, local education authorities had a role in the complaints process under section 409 of the Education Act 1996 and paragraphs 6(3) and (4) of Schedule 1 of the Education Act 1996. These sections have been repealed so that complainants are able to approach the Local Commissioner under the new scheme.

Clause 209: Interpretation of Chapter 2

643. This clause provides that the definitions of the terms “act”, “Local Commissioner” and “respondent” provided in the relevant clauses apply throughout Chapter 2.

Chapter 3: Inspections

Clause 210: Interim statements

644. This clause inserts three new sections into the Education Act 2005 in relation to the powers of the Chief Inspector and associated duties of schools.

645. Section 10A enables the Chief Inspector to publish an interim statement (which it is expected will be commonly known as a “health check”) where the Chief Inspector considers that a school’s performance is such that it is appropriate to defer a routine inspection of the school for at least a year. The statement must set out the Chief Inspector’s opinion that inspection can be deferred and the reasons for that opinion. It is made on the basis of information available at the time and does not prevent the Chief Inspector from inspecting the school at any time if this is deemed necessary in light of changed circumstances. As its name indicates, the statement is only an interim measure. It cannot be used to defer an inspection beyond the end of the maximum period allowed between scheduled inspections.

646. Section 14A applies in cases where the Chief Inspector makes an interim statement about a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school. Subsections (1) to (3) of 14A require the Chief Inspector to send a copy of the interim statement to the appropriate authority of the school (either the governing body or the local education

authority) and to other specified people. Subsection (4) of 14A requires the appropriate authority of the school to make the statement available to members of the public and to take steps to ensure a copy of the statement is received by parents within a prescribed period.

647. Section 16A broadly mirrors the provisions in section 14A but applies to Academies; city technology colleges, city colleges for the technology of the arts; and special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the Education Act 1996. Under section 16A, the Chief Inspector must send a copy of the interim statement to the school's proprietor and others.

Clause 211: Powers of persons providing administrative support in connection with inspections

648. This clause amends Part 2 of Schedule 12 to the Education and Inspections Act 2006 to entitle administrators supplied by inspection service providers to enter schools and assist inspectors by performing administrative tasks during the course of an inspection. The amendment prohibits inspection administrators from conducting inspections.

Chapter 4: School Support Staff Pay Conditions: England

649. This Chapter establishes the School Support Staff Negotiating Body. This Body will be responsible for negotiating matters referred to it that are related to the remuneration, duties or working time of school support staff, with a view to reaching and submitting agreements to the Secretary of State for his consideration.

650. The provisions enable the Secretary of State to make orders relating to those agreements submitted to him where he believes they properly address any matters referred to the SSSNB; are practicable for schools and local education authorities (as employers of school support staff) to implement; and have taken into account any factors that the Secretary of State has asked the SSSNB to have regard to during its negotiations.

The SSSNB

Clause 212: The School Support Staff Negotiating Body

651. This clause establishes the SSSNB and introduces Schedule 15 which makes further provision about the SSSNB.

Schedule 15: The School Support Staff Negotiating Body

652. This Schedule makes provision for the constitutional arrangements, membership and proceedings of the SSSNB and certain administrative matters relating to the SSSNB.

*These notes refer to the Apprenticeships, Skills, Children and Learning Bill
as introduced in the House of Commons on 4 February 2009 [Bill 55]*

653. It provides that the SSSNB is to be constituted in accordance with arrangements made by the Secretary of State.

654. The constitutional arrangements must:

- provide for the members to include representatives of the prescribed organisations, the Secretary of State and an independent chair;
- not provide for a member of the SSSNB to have voting rights, unless the member represents the interests of one of the prescribed organisations;
- provide for the SSSNB to issue an annual report about the performance of its functions in each 12 month period.

655. The constitutional arrangements may:

- provide for the SSSNB to include other members;
- make arrangements for the provision of administrative support for the SSSNB;
- require the annual report to be sent to particular persons or published in a particular manner;
- provide for the payment of fees to the independent chair and the payment of expenses incurred by the SSSNB.

Clause 213: Matters within SSSNB's remit

656. This clause describes the matters that fall within the remit of the SSSNB, these matters being the pay and conditions of employment relating to the duties and working time of school support staff in England, and allows the Secretary of State to include or exclude matters by order.

Clause 214: Referral of matter to SSSNB for consideration

657. This clause enables the Secretary of State to refer a matter to the SSSNB for consideration where that matter falls within the remit of the Body; specify factors which the SSSNB must have regard to in considering the matter; and specify a date by which the SSSNB must submit any agreement it reaches about the matter or notify him that it has been unable to reach agreement.

658. It requires the SSSNB to consider the matter referred, taking into account any factors specified by the Secretary of State, and submit any such agreement to the Secretary of State or notify him that it has been unable to reach agreement, by any date specified by the Secretary of State.

Clause 215: Consideration of other matters by SSSNB

659. This clause allows the SSSNB to consider and reach agreement on a matter

within the remit of the Body where the matter has not been referred to it by way of a Secretary of State referral letter. Once agreement has been reached the Body may submit the agreement to the Secretary of State with the prior consent of the Secretary of State.

Clause 216: Submission of agreement under section 214 or 215: SSSNB recommendation

660. This clause requires that where an agreement is submitted to the Secretary of State by the SSSNB the Body must make a recommendation about how the agreement should be applied.

661. The Body may recommend that the Secretary of State makes an order ratifying the agreement, the effect of which will be to require particular persons to comply with the agreement.

662. Alternatively, the Body may recommend that the Secretary of State makes an order requiring particular persons to have regard to the agreement when exercising particular functions.

Clause 217: Agreement submitted by SSSNB under section 214 or 215: ratification recommended

663. This clause applies where the SSSNB submits an agreement to the Secretary of State with a recommendation that the Secretary of State make an order to ratify that agreement.

664. Upon receipt of the agreement, the Secretary of State may either ratify the agreement or refer the agreement back to the SSSNB for further consideration.

Clause 218: Agreement submitted by SSSNB under section 214 or 215: ratification not recommended

665. This clause applies where the SSSNB submits an agreement to the Secretary of State with a recommendation that the Secretary of State make an order requiring particular persons to have regard to that agreement when exercising particular functions.

666. Upon receipt of the agreement the Secretary of State may either make an order requiring those persons to have regard to the agreement or refer the agreement back to the SSSNB for further consideration.

Clause 219: Reconsideration of agreement by SSSNB

667. Where the Secretary of State refers an agreement back to the SSSNB for reconsideration, this clause provides that he may specify factors that the SSSNB must take into account, and the date by which the SSSNB must submit its revised agreement or notify him that it has not been able to reach agreement on any revisions.

The SSSNB may also reconsider the recommendation it made to the Secretary of State

in respect of the agreement at the time it submitted it.

668. Following reconsideration of the agreement, the SSSNB must submit any revised agreement back to the Secretary of State or, if it has not agreed any revisions, resubmit the existing agreement. The SSSNB may also make a recommendation that the Secretary of State make an order ratifying the agreement or requiring particular persons to have regard to it when exercising particular functions.

669. This clause also enables the Secretary of State to withdraw or vary the matter referred, withdraw or vary any factor which must be taken into account, specify additional factors to be taken into account or postpone any deadline set to a later date, at any time before the SSSNB submits the revised agreement or resubmits the existing agreement.

Clause 220: SSSNB's submission of agreement following reconsideration: powers of Secretary of State

670. This clause applies where the SSSNB has resubmitted an agreement following reconsideration. The Secretary of State may:

- make an order ratifying the agreement;
- refer the agreement back to the SSSNB for further consideration;
- make an order requiring particular persons to have regard to the agreement;
- make an order which makes provision otherwise than in terms of the agreement.

671. The Secretary of State may refer an agreement back to the SSSNB for further reconsideration only if it appears to the Secretary of State that:

- the agreement does not properly address the matter that was referred to the Body;
- it is not practicable to implement the agreement;
- the SSSNB has failed to take into account factors specified by the Secretary of State in the referral letter.

672. The Secretary of State may make an order otherwise than in terms of the agreement only where one or more of the above conditions apply and there is an urgent need to make such an order.

Clause 221: Powers of Secretary of State in absence of SSSNB agreement

673. Where the SSSNB notifies the Secretary of State that it has been unable to reach agreement or fails to submit an agreement to the Secretary of State by any

deadline imposed, this clause allows the Secretary of State to extend any such deadline or make provision in relation to the matter referred to the SSSNB, by order, where he considers there is an urgent need to do so.

674. Similarly, where the SSSNB notifies the Secretary of State that following reconsideration it has been unable to agree revisions to an agreement or fails to submit a revised agreement to the Secretary of State by any deadline imposed, the Secretary of State may extend any such deadline or make provision in relation to a matter to which the agreement relates, by order, where he considers there is an urgent need to do so.

675. Where the Secretary of State makes provision the order will either require particular persons in exercising particular functions to have regard to the order or provide for the order to have effect for determining the conditions of employment of particular persons.

676. The clause requires the Secretary of State to consult the SSSNB before making an order in the absence of an agreement.

Clause 222: Effect of order ratifying SSSNB agreement

677. Where the Secretary of State by order ratifies an agreement this clause provides that:

- if it relates to a person's remuneration, that remuneration is to be determined and paid in accordance with it;
- if it relates to any other condition of a person's employment that condition becomes a term of the person's contract of employment.

678. It also provides that any other term of the person's contract of employment which conflicts with the agreement has no effect.

Clause 223: Effect of order making provision otherwise than in terms of SSSNB agreement

679. Where the Secretary of State make an order otherwise than in terms of an agreement that order must either:

- require particular persons to have regard to the order when exercising particular functions; or
- provide that the order has effect for the purpose of determining the conditions of employment of the persons to whom it applies.

Clause 224: Orders: supplementary

680. This clause provides that orders made under this Chapter may apply retrospectively but may not reduce a person's pay or alter their conditions of

employment to their detriment retrospectively.

681. It also provides that where an order makes provision by reference to an agreement or other document it must make provision about the publication of that agreement or document.

Clause 225: Guidance

682. This clause provides that, with the Secretary of State's approval, the SSSNB may issue guidance relating to-

- an order which ratifies an agreement, or
- an order which requires particular person to have regard to an agreement.

683. It also allows the Secretary of State to issue guidance relating to an order which makes provision otherwise than in terms of the agreement.

684. It provides that local education authorities and governing bodies of schools maintained by local education authorities must have regard to guidance issued under this section.

Clause 226: Non-statutory School Support Staff Negotiating Body

685. This clause provides for the establishment of the non-statutory School Support Staff Negotiating Body to be treated as the establishment of the SSSNB.

686. It also provides for:

- the non-statutory body's constitutional arrangements;
- any matters referred to the non-statutory body by the Secretary of State;

to be treated as if they were:

- arrangements made in respect of; or
- matters referred to;

the statutory body under the provisions of this Chapter.

Clause 227: "School support staff"

687. This clause defines "school support staff" for the purposes of this Chapter. It excludes school teachers and persons of descriptions described in regulations. The Government envisages that the power to make regulations will be exercised so as to exclude from the definition of "school support staff" persons whose terms and conditions of employment are determined in accordance with agreements of other

bodies such as the Soulbury Committee.

Clause 228: General interpretation

688. This clause defines other terms used in the Chapter.

PART 11: LEARNERS

Power to search for prohibited items

Clause 229: Power of members of staff to search pupils for prohibited items: England

689. A head teacher or an authorised member of the school staff has a statutory power to search a pupil or his possessions without consent if there are reasonable grounds for suspecting that the pupil is in possession of a weapon. This clause extends this power to cover illegal drugs, alcohol and stolen property.

690. It creates new sections 550ZA, 550ZB, 550ZC and 550ZD of the Education Act 1996 for England. These new sections re-enact existing powers in section 550AA of the Education Act 1996 for headteachers, or staff authorised by them, to search a student and his or her possessions without the student's consent for weapons, and extends the powers to enable searches, to be made for, controlled drugs, stolen items or alcohol (for students under 18) where the member of staff has reasonable ground to suspect possession of a prohibited item. They give authorised members of staff a power to search where a pupil refuses a reasonable request to, for example, turn out their pockets, but do not impose any duty upon members of staff to carry out a search.

691. The new powers will be supported by guidance. The guidance will explain how the powers should be exercised by providing advice to schools on what they must and must not do if and when choosing to search a pupil or pupil's possessions for a prohibited item; as well as good practice that can help those exercising search powers to ensure they comply with the law and make an effective search.

Section 550ZA: Power of members of staff to search for prohibited items: England

692. Subsection (1) specifies that the power may be used only where a member of staff has reasonable grounds to suspect that a pupil has with him or her, or in his or her possession, a prohibited item. It also provides that a person may carry out a search only if he or she is the head teacher of the school, or he or she has been authorised by the head teacher to carry out the search.

693. Subsection (3) sets out which items are prohibited and hence may be searched for. There is already a power in 550AA to search for items (a) and (b). (c) to (e) are the additional ones.

694. Subsections (4) and (5) define what is meant by "stolen", "member of staff"

and “possessions”.

695. Subsection (6) provides that the powers in 550ZA, 550ZB and 550ZC do not restrict any common law, or other statutory, powers members of staff have to search pupils and their possessions.

Section 550ZB: Power of search under section 550ZA: supplementary

696. Section 550ZB sets out who may carry out the searches and how those searches must be conducted.

697. Subsections (1), (2) and (3) provide that only head teachers and authorised members of staff may conduct searches, and that a member of staff may have (a) a general authorisation to search, for example a member of staff may be authorised to search for any prohibited item at any time; (b) be authorised to conduct a particular search, for example given authorisation to search a particular individual in a particular circumstance; or (c) be authorised to conduct particular types of searches, for example given authorisation to conduct searches for some prohibited items (but not others), or where a particular set of circumstances arise. Subsection (3) provides that a headteacher may not require anybody other than security staff to conduct a search. This means teachers can never be placed under any obligation to search a pupil.

698. Subsection (4) stipulates that a search may be carried only out on school premises or where the member of staff has lawful control or charge of the pupil. These powers apply only in England; they therefore do not apply on school trips to other countries.

699. Subsection (5) provides that reasonable force may be used in executing a search.

700. Subsection (6) states that a search of a pupil may only be made by a person of the same gender as the pupil and in the presence of another member of staff. It also provides that the person carrying out the search may not require the pupil to remove any clothing other than outer clothing (as defined in (8)).

701. Subsection(7) states that a pupil’s possessions may be searched only in the presence of the pupil and another member of staff.

702. Subsection (8) defines “member of the security staff” and “outer clothing”.

Section 550ZC: Power to seize items found during search under section 550ZA

703. Section 550ZC sets out the powers members of staff will have to seize and dispose of any prohibited items.

704. Subsections (1) and (2) provide for the person carrying out the search to seize any prohibited items and any other items suspected to be evidence of an offence found during the search, and to use reasonable force when exercising this power. This would

allow the person conducting the search to not only seize prohibited items such as weapons, drugs, alcohol and stolen items but could for example allow them to seize any non-prohibited items they find whilst conducting the search which might be evidence in relation to any other unconnected offence.

705. Subsections (3) to (8) state what may and must be done with items that are seized.

- Where a person conducting a search finds alcohol, they may retain or dispose of it.
- Where they find controlled drugs, these must be delivered to the police as soon as possible, unless there is a good reason not to do so — in which case the drugs must be disposed of.
- Where they find stolen articles, these must be delivered to the police unless there is a good reason not to do so — in which case they must be returned to the owner. These articles may be retained or disposed of where returning them to their owner is not practicable.

706. In determining what is a “good reason” for not delivering items to the police, regard must be had to guidance issued by the Secretary of State.

707. Any weapons or items which are evidence of an offence must be passed to the police as soon as possible. Except that, where a person searching for a specific prohibited item finds evidence of an offence in the form of another prohibited item, the item found will be dealt with in accordance with any specific provision made for that item. So, for example, in a case where a person searching for alcohol finds controlled drugs, the drugs must be taken delivered to the police as soon as possible, but there will also be a discretion to dispose of them.

708. Subsection (9) provides that the powers and duties relating to what must be done with any alcohol, controlled drugs, stolen articles and weapons seized apply to items reasonably suspected to be alcohol, controlled drugs, stolen articles and weapons.

Section 550ZD: Section 550ZC: supplementary

709. Subsection (1) provides that the Police Property Act 1987 applies in relation to items seized. The Act enables an application to be made to a magistrates court for an order that property in possession of the police be returned to its owner.

710. Subsections (2) and (3) provide that, where a person conducting a search, lawfully seizes, retains or disposes of an item seized under section 550ZC, they shall not be liable for the seizure, loss or disposal, or any damage arising. These provisions replicate provisions in section 94(2) of the Education and Inspections Act 2006. Subsection (5) therefore stops the provisions in that section from applying in relation

to items seized under section 550ZC.

711. Subsection (4) provides that subsections (2) and (3) do not prevent a person who has seized items under section 550ZC from relying on any other available defence in proceedings.

Clause 230: Power of members of staff to search pupils for weapons: Wales

712. This clause makes consequential amendments to retain the status quo in Wales. Members of staff in schools in Wales will continue to have powers to search for weapons only as set out in Section 550AA of the 1996 Act on weapons searching, (which was inserted by Section 45 of the Violent Crime Reduction Act 2006).

Clause 231: Power of members of staff to search students for prohibited items: England

713. A principal or an authorised member of the college staff has a statutory power to search a student or his possessions without consent if there are reasonable grounds for suspecting that the student is in possession of a weapon. This clause extends this power to cover illegal drugs, alcohol and stolen property.

714. This clause inserts new sections 85AA, 85AB and 85AC for England, into the Further and Higher Education Act 1992 (“the 1992 Act). These new sections re-enact existing powers in section 85B of the 1992 Act for principals at institutions within the FE sector (including sixth form colleges), or staff authorised by them, to search a student and his or her possessions without the student’s consent for weapons, and extends the powers to enable searches, to be made for, controlled drugs, stolen items or alcohol (for students under 18) where the member of staff has reasonable ground to suspect possession of a prohibited item. The section gives members of staff a power to search but does not impose any duty on them to carry out any searches.

715. The new powers will be supported by guidance. The guidance will explain how the powers should be exercised by providing advice to institutions on what they must and must not do if and when choosing to search a student or student’s possessions for a prohibited item; as well as good practice that can help those exercising search powers to ensure they comply with the law and make an effective search.

Section 85AA: Power of members of staff to search for prohibited items: England

716. Subsection (1) specifies that the power may only be used where a member of staff has reasonable grounds to suspect that a student has with him or her, or in his or her possession a prohibited item. It also provides that a person may carry out a search only if he or she is the principal of the institution, or he or she has been authorised by the principal to carry out the search.

717. Subsection (3) sets out which items are “prohibited items” and hence may be searched for. There is already the power in section 85B to search for items (a) and (b); items (c), (d) and (e) are additional items.

718. Subsection (4) defines what is meant by “stolen”.

719. Subsection (5) states that a student may not be searched for alcohol under this power if he or she is aged 18 or over.

720. Subsection (6) defines what is meant by “member of staff” and “possessions”.

721. Subsection (7) provides that the powers in 85AA, 85AB and 85AC do not restrict any common law, or other statutory, powers members of staff have to search pupils and their possessions.

Section 85AB: Power of search under section 85AA: supplementary

722. Section 85AB sets out who may carry out the searches and how those searches must be conducted.

723. Subsections (1), (2) and (3) provide that only principals and authorised members of staff may conduct searches, and that a member of staff may have (a) a general authorisation to search, for example a member of staff may be authorised to search for any prohibited item at any time; (b) be authorised to conduct a particular search, for example given authorisation to search a particular individual in a particular circumstance; or (c) be authorised to conduct particular types of searches, for example given authorisation to conduct searches for some prohibited items (but not others), or where a particular set of circumstances arise. *Subsection (3)* sets out that a principal may not require anybody other than security staff to conduct a search. This means lecturers can never be placed under any obligation to search a student.

724. Subsection (4) stipulates that a search may be carried out only on the premises of the FE institution or where the member of staff has lawful control or charge of the student, such as on a field trip. These powers apply only in England; they therefore do not apply on trips to other countries.

725. Subsection (5) provides that reasonable force may be used in executing a search.

726. Subsection (6) states that a search of a student may be made only by a person of the same gender as the student and in the presence of another member of staff. It also provides that the person carrying out the search may not require the student to remove any clothing other than outer clothing (as defined in *subsection (8)*).

727. Subsection (7) states that a student’s possessions may be searched only in the presence of the student and another member of staff.

*These notes refer to the Apprenticeships, Skills, Children and Learning Bill
as introduced in the House of Commons on 4 February 2009 [Bill 55]*

728. Subsection (8) defines “member of the security staff” and “outer clothing”.

Section 85AC: Power to seize items found during search under section 85AA

729. Section 85AC sets out the powers members of staff will have to seize and dispose of any prohibited items.

730. Subsections (1) and (2) provide for the person carrying out the search to seize any prohibited items and any other items suspected to be evidence of an offence found during the search, and to use reasonable force when exercising this power. However, alcohol may not be seized from a student aged 18 or over under this power.

731. Subsection (3) provides that where a searcher finds alcohol they may retain or dispose of it, at their discretion.

732. Subsection (4) requires that controlled drugs must be delivered to the police as soon as possible but may be disposed of if the person who has seized them considers that there is a good reason to do so.

733. Subsection (5) requires that stolen items must be delivered to the police as soon as possible but may be returned to the rightful owner, retained or disposed of if in the view of the person who has seized them, there is good reason to do so.

734. Subsection (6) requires that in relation to subsections (4) and (5), the person who has seized the controlled drug or stolen article must have regard to any guidance issued by the Secretary of State, in determining whether there is good reason not to deliver it to the police.

735. Subsection (7) requires any person seizing a knife, offensive weapon or evidence in relation to an offence to deliver the item to the police as soon as reasonably practicable.

736. Subsection (9) provides for a member of staff to have reasonable grounds for suspecting that the seized item falls within the definition of “prohibited item”.

Section 85AD: Section 85AC: supplementary

737. Subsection (1) provides that the Police Property Act 1897 applies in relation to items seized. The Act enables an application to be made to a Magistrates Court for an Order that property in possession of the police be returned to its owner.

738. Subsections (2) and –(3) provide that, where a person conducting a search, lawfully seizes, retains or disposes of an item seized under section 85AC, they shall not be liable for the seizure, loss or disposal, or any damage arising. These provisions replicate provisions in section 94(2) of the Education and Inspections Act 2006. Subsection(5) therefore stops the provisions in that section from applying in relation to items seized under section 85AC.

739. Subsection (4) provides that subsections (2) and (3) do not prevent a person who has seized items under section 85AC from relying on any other available defence in proceedings.

Clause 232: Power of members of staff to search pupils for weapons: Wales

740. This clause makes consequential amendments to retain the status quo in Wales. Members of staff in schools in Wales will continue to have powers to search for weapons only as set out in 85B of the 1992 Act on weapons searching.

Recording and reporting use of force

741. Staff at schools and FE institutions who supervise learners have powers to use force to prevent the commission of any criminal offence, injury, damage to property or serious breaches of discipline. The legislation that provides this power for schools has existed in its current form since 1998 and was re-enacted by section 93 of the Education and Inspections Act 2006. The analogous legislation for colleges is section 85C of the Further and Higher Education Act 1992 (inserted by the Education and Inspections Act 2006).

742. The Department for Children, Schools and Families issued revised guidance, entitled *The Use of Force to Control or Restrain Pupils* in November 2007.

743. This guidance is supplemented by two specialist guidance documents which provide additional information for staff working with pupils with special educational needs and/or disabilities, namely:

- *Guidance on the Use of Restrictive Physical Interventions for Staff Working with Children and Adults who display Extreme Behaviour in Association with Learning Disability and/or Autistic Spectrum Disorders (Circ LEA/0242/2002)*; and
- *Guidance on the Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties (Circ LEA/0264/2003)*.

744. The Association of Colleges in partnership with the then Department for Education and Skills issued revised guidance, entitled *The Use of Force to Control or Restrain in Further Education* in April 2007. This document refers to the specialist guidance documents prepared for schools which may help FE Institutions in working with similar client groups. With the re-designation of sixth form colleges, this guidance will cover both general FE and sixth form colleges.

Clause 233: Recording and reporting the use of force in schools: England

745. This clause inserts a new subsection 93A into the Education and Inspections Act 2006, to be inserted after section 93. Subsections (1), (2) and (3) of 93A require the governing body of a school in England to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a pupil and

to take reasonable steps to ensure that the procedure is followed by staff at the school. The procedure must provide that such incidents are both recorded in writing, and reported to the pupil's parents (except where the pupil is aged 20 or over) as soon as possible after the incident.

746. Subsection (1b) specifies that the report must be made to each of the pupil's parents. Subsection (5) states that "parent" has the meaning given by Section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a pupil has a mother and father whom both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the child's mother, father and the relevant local education authority must be told about the incident.

747. Subsection (4) specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force. A considerable amount of good practice guidance has been issued about the use of force upon pupils. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording. This guidance (paragraphs 44 and 45) sets out some questions that schools may find helpful in deciding whether an incident is significant and requires a written record.

Clause 234: Recording and reporting the use of force in FE colleges: England

748. This clause creates a new section 85D of the Further and Higher Education Act 1992 ("the 1992 Act"), to be inserted after section 85C. Subsections (1), (2) and (3) of this section require the governing bodies of institutions within the FE sector in England (including sixth form colleges) to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a student and to take reasonable steps to ensure that the procedure is followed by staff at the institution. The procedure must provide that such incidents are both recorded in writing, and reported to the student's parents (except where the student is aged 20 or over) as soon as possible after the incident.

749. Subsection (1)(b) specifies that the report must be made to each of the student's parents. Subsection (5) states that "parent" has the meaning given by Section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a student has a mother and father whom both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the student's mother, father and the relevant local education authority must be told about the incident.

750. Subsection (4) specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant

incidents of the use of force. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording.

School behaviour partnerships

751. Since September 2007, the Government has expected that all secondary schools be members of partnerships to improve behaviour and tackle persistent absence. Currently 98% of maintained secondary schools and 94% of Academies are members voluntarily, but the extent to which existing partnerships are aligned to DCSF design principles and outcomes, as outlined in (currently non-statutory) guidance is variable.

752. Partnerships typically comprise approximately 6 to 10 members, but this varies due to local circumstance. Some partnerships have links to primary schools, special schools, pupil referral units and/or other forms of alternative provision.

Clause 235: Co-operation with a view to promoting good behaviour, etc.: England

753. This clause places a duty on the governing body of a maintained secondary school in England (defined in *subsection (5)*), and the proprietor of an Academy, city technology college or city college for the technology of the arts in England ("relevant partners"), to make arrangements to co-operate with at least one other relevant partner with a view to achieving the objectives referred to in *subsection (2)*. 98% of maintained secondary schools and 94% of existing Academies are already in partnerships voluntarily.

754. *Subsection (1)* defines the bodies to which this clause applies. The Government intends to apply the duty in the clause to pupil referral units through regulations made under Schedule 1 to the Education Act 1996.

755. *Subsection (2)* provides that a relevant partner is required to make arrangements with only one other such body. The Government intends to publish statutory guidance that will set out an expectation that behaviour and attendance partnerships consist of more than two members. This has not been specified in the clause as in some cases bigger partnerships may prove impractical – such as in the case of rural schools.

756. To comply with the duty relevant partners must make arrangements with other such bodies within the same "area" as them (see further *subsection (4)*). In practice, partnerships will not generally cross local education authority boundaries.

757. *Subsection (2)* describes the issues schools must make arrangements to co-operate on. The arrangements are to co-operate with a view to promoting good discipline and behaviour generally on the part of pupils and reducing persistent absence on the part of pupils. DCSF considers that a pupil missing 20% or more of the

sessions in a school year is persistently absent (whether the absence is authorised or unauthorised).

758. *Subsection (3)* requires relevant partners to have regard to the Secretary of State's guidance in the exercise of the duty placed on the partners by subsection (2).

Short stay schools

759. Section 19 of the Education Act 1996 imposes a duty on local education authorities to make arrangements for securing suitable education for children who, because of exclusion from school or for any other reason, may not receive such education if the arrangements are not made for them. Thus the LEA has a duty to provide education for every child of school age, if for some reason they cannot attend a mainstream or special school.

760. Section 19(2B) recognises that LEAs may fulfil the duty under section 19 by establishing and maintaining schools which are specifically organised to make educational provision for children falling within that section. Section 19(2B) says that such schools will be known as pupil referral units (PRU). A PRU is therefore a school set up and run directly by the LA to provide education for children who cannot, for whatever reason, attend a mainstream or special school.

761. LAs are given the power to establish and maintain schools by section 16 of the Education Act 1996. There is no express power to close a school included here, but it is taken as implicit that where an LA is free to maintain schools, it is also free to cease to maintain them.

762. The Education and Inspections Act 2006 limits the powers of an LEA to close schools maintained by it (sections 15 and 16 and Schedule 2). However, PRUs are not covered by these limitations as they are not mentioned in the list of schools covered by the act. Therefore there are no restrictions on the ability of an LA to close a PRU maintained by it.

763. The Secretary of State has the power to direct the closure of a school that is causing concern (section 68, Part 4 of the Education and Inspections Act 2006). This power may be exercised in cases where Ofsted have described the school as requiring special measures. Section 68 is applied to PRUs by paragraph 23 of Schedule 1 to SI 2007/2979.

Clause 236: Short stay schools: miscellaneous

764. *Subsection (1)* changes the name of pupil referral units. This clause re-names pupil referral units as "short stay school". This change applies only to pupil referral units in England; those in Wales will continue to be called "pupil referral units". The name change will apply in law only. Individual pupil referral units will be free to use any name they wish for their own purposes (as they do currently).

765. *Subsection (2)* gives the Secretary of State powers by order, which would be subject to the affirmative resolution procedure, to make amendments to legislation consequential on the change of name from “pupil referral unit” to “short stay school”. This power applies to all primary legislation enacted before the end of the Session in which the Apprenticeships, Skills, Children, and Learning Bill passes, and in all statutory instruments made before the passing of this Bill.

766. *Subsection (3)* inserts a new paragraph 3A into Schedule 1 of the Education Act 1996. This extends the Secretary of State’s regulation-making powers in this area.

767. New clause 3A(a) gives the Secretary of State the power to make regulations which would require the LA obtain the consent of the Secretary of State before closing a “short stay school”. The Government intends to use this power to make the closure of a PRU subject to the Secretary of State’s consent where:

- The PRU has been described by Ofsted as requiring special measures; or
- Ofsted have given notice to the Local Education Authority that an inspection is due

768. The Government expects that the Local Education Authority will be required to provide information about the provision they are intending to replace the closing PRU with, and the Secretary of State will give his consent dependent on an assessment of the adequacy of these plans.

769. Subsection 3A(b) gives the Secretary of State the power to make regulations enabling the Secretary of State to give directions to a LEA about the exercise of its functions under section 19 of the Education Act. The Government envisages that the powers will be used to enable the Secretary of State to give directions to a LA about the provision to be made under section 19 to replace the provision lost where a PRU is closed at the direction of the Secretary of State.

770. Under subsection 3A(c) any regulations the Secretary of State makes in relation to pupil referral may include provisions requiring LAs to comply with directions made under the regulations. If a LA failed to comply it would be open to the Secretary of State to enforce the directions using powers under section 497 of the Education Act 1996.

771. The Government envisages that these regulation-making powers will be used to allow the Secretary of State to direct the alternative that will replace a PRU he decides should close. The Secretary of State already has the power to direct the closure of a PRU that has been described by Ofsted as requiring special measures. This power is conferred by section 68 of Part 4 of the Education and Inspections Act 2006. “Special measures” is defined in section 44(1) of the Education Act 2005. The local education authority is under a duty (under section 19 of the Education Act 1996) to provide other suitable education for those pupils who are displaced by the closure

of the PRU, but how they do this is their decision. They could find places in independent schools, open a replacement PRU, or use another provider of alternative provision.

772. The Secretary of State does not envisage using this direction-giving power to specify exactly who or what will replace the closing unit, but rather to specify the features it should exhibit. This might include directions in areas such as:

- The nature of the educational provision to be provided, such as the specific courses and subjects to be provided, and the ages and numbers of pupils to be catered for.
- The manner in which the educational provision is to be provided, such as through a replacement PRU, a third sector partner or another institution such as an FE college (NB specific institutions or providers would not be named, only types).
- The management of the educational provision, such as specifying the internal management and review structures of provision, or specifying certain clauses which must be included in any contract with external providers.

773. The Secretary of State intends to use the powers to give directions to require the LA to invite bids from external providers for the delivery of the alternative provision. The Secretary of State might specify the way in which the LA should invite bids; for example by advertising in local newspapers or on the LA website. He might also specify the date by which an invitation should be issued, and the length of time respondents are given to reply.

774. The Secretary of State does not intend to give directions as to the way that the LA assesses the bids, but to require the Local Education Authority to report back to the Secretary of State once the process of inviting and assessing the bids has been completed. In its report the LA would be expected to set out:

- The actual steps taken by the LEA in inviting bids,
- Details of any bids received, and
- A description of the arrangements (if any) the LEA has entered into, or is proposing to enter into with any of the bidders.
- Reasons why the LA has reached the decision it has (including details of why they have decided not to enter into arrangements with any bidders, if this situation arises).

775. *Subsection (4)* makes an amendment to the Anti-Social Behaviour Act 2003. Section 24 of this Act was not amended when section 19 of the Education Act

1996 was amended by SI 2007/1507 to make separate provision for England and Wales. This meant that section 24 of the Anti-Social Behaviour Act 2003 (which refers to PRUs) worked only in relation to Wales. This amendment rectifies this oversight.

PART 12: MISCELLANEOUS

Information about local authority expenditure

776. The Secretary of State for Children, Schools and Families currently uses two separate powers (one specific and one general) to collect information about a local education authority's planned and actual expenditure on its education functions and its children's social services functions. These are section 52 of the School Standards and Framework Act 1998 ("the 1998 Act") and section 230 of the Local Government Act 1972 ("the 1972 Act") respectively. Section 52 of the 1998 Act imposes a duty on local education authorities to prepare and publish financial statements containing information about their planned and actual expenditure on their education functions and accountable resources held, received or expended, in accordance with regulations made by the Secretary of State. Section 230 of the 1972 Act allows the Secretary of State to collect such information as he may require from local education authorities with respect to their functions and is used to collect financial information about their planned and actual expenditure on their children's social services functions. The new sections will provide the Secretary of State with one specific power to collect both types of information but only in relation to local education authorities in England and to do so by means of a direction. This enables the Secretary of State to collect the information he needs without having to make or amend regulations. These new sections do not impose additional burdens on local education authorities.

Clause 237: Information about planned and actual expenditure

777. *Subsections (1) and (2)* enable the Secretary of State to direct a local authority to provide information about its planned and actual expenditure on its education and its children's social services functions and about accountable resources held, received or expended by any person in relation to a school maintained by the authority. Accountable resources are those funds which were provided by the Secretary of State for education and defined in 238(4).

778. *Subsections (3) to (5)* respectively provide that the information must be provided in accordance with the direction, the direction may specify the period to which the information relates; the form and manner in which the information is to be provided; the persons to whom the information is to be provided; and requirements for the publication of this information; and, where a direction requires information to be provided to a person other than the Secretary of State, it may also require that person to make that information available for inspection in accordance with the direction.

779. The purpose of the financial statements is to provide schools, parents and other interested bodies such as the Local Government Association and CIPFA, for example, with details about local authority funding and expenditure on schools and children's social services. The Government sees it as important that finance data is available to help inform debate and planning about differing levels of expenditure between local authorities. The information informs policy making in the Department for Children, Schools and Families as well as providing information to Parliament in its role of monitoring that Department's accountability for public funds.

780. *Subsection (6)* provides that a direction may be varied or revoked by a later one.

Clause 238: Information about expenditure: supplementary

781. *Subsections (2) to (4)* define the education and children's social services functions of a local authority and accountable resources in relation to a school maintained by a local authority. Local authority education functions include the determination of individual school budgets, and what is spent by the local authority centrally to support those responsibilities, including provision for pupils with special educational needs, and learner support. Local authority functions for children's social services include expenditure on the children's services strategy and services to young people, including youth justice.

782. *Subsection (5)* enables the Secretary of State to amend this section by order for the purposes of adding, removing or changing the description of education functions or children's social services functions.

783. *Subsection (6)* defines certain other terms used in this section and *subsection (7)* provides that orders made under subsection (5) are subject to affirmative resolution of both Houses.

Clause 239: Information about expenditure: consequential amendments

784. *Subsection (2)* amends section 52 of the School Standards and Framework Act 1998 in order to restrict its application to local education authorities in Wales.

785. *Subsection (3)* repeals section 53 of the School Standards and Framework Act 1998, (certification of expenditure statements by the Audit Commission). The Secretary of State no longer requires Local education authorities to make arrangements for the Audit Commission to examine their expenditure statements. This power has not been used during the past three years.

Support for participation in education and training

786. Part 1 of the Education and Skills Act 2008 places a duty on young people to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier) and requires local education authorities to promote the effective participation of young people in their areas who are subject to the duty to

participate. That Act also provides for local education authorities in England to establish support services for people aged 14 to 19, and those aged up to 24 who have learning difficulties. These services are known as Connexions services provided by local education authorities themselves or contractors.

787. Sections 15 and 76 of the Education and Skills Act 2008 provide for limited social security information to be provided to local education authorities, and Connexions service providers, respectively for the purposes of functions under Part 1 of that Act or Connexions services.

788. Section 17 of that Act enables information held by LEAs and by Connexions service providers to be supplied and used either for purposes under Part 1 of that Act or for Connexions services purposes.

789. Clause 240 and 241 amend provisions of that Act about the holding and supply of information for the purposes of Part 1 of that Act or for Connexions services purposes.

Clause 240: Provision of social security information for purposes of functions under Education and Skills Act 2008

790. *Subsection (2)* omits section 15 of the Education and Skills Act 2008 so that social security information may no be longer supplied directly to an LEA for Part 1 purposes. Social security could still be provided by a Connexions service provider to a local education authority where that is permitted under section 76 of that Act.

791. The Government intends that information that can be shared by a LEA and its Connexions service provider under section 17 of the Education and Skills Act 2008 will be held on a database operated by the authority or service provider. *Subsection (4)* amends section 17(1) to make clear that this is permitted. The database for each area will be known as “the Client Caseload Information System” (CCIS).

792. *Subsection (5)* excludes, from the category of information that can be shared under section 17, information that was supplied to a Connexions service provider under section 72 of the Welfare Reform and Pensions Act 1999 (which relates to 16/17 year old benefit claimants.)

793. *Subsection (6)* amends section 17 to make it clear that the ability to share information under that section does not displace any statutory prohibition on disclosing the information.

794. At present, section 76 of the Education and Skills Act 2008 allows the Secretary of State (here the Department for Work and Pensions) or a contractor of that department, to provide limited social security information to a Connexions service provider for use for Connexions purposes. *Subsection (9)* amends section 76 to allow the information to be provided instead to the Secretary of State (here the Department for Children, Schools and Families) or a contractor of that department (inserted

subsection (3B) of section 76) for onward transmission to Connexions service providers. Inserted subsection (3A) confers the necessary power on the Secretary of State (here the Department for Children, Schools and Families) to make arrangements for the transmission of information in this way.

795. Inserted subsections (3B) to (3E) set out the circumstances in which information that originated with the Department for Work and Pensions or a contractor of that department and is supplied under section 76 may be disclosed. These include enabling or assisting the exercise of any function of a LEA under Part 1. Subsections (4) and (4A) also create an offence which prevents this information being provided for any other purpose, and replaces the offence for which section 76 already provides.

Clause 241: Provision of other information in connection with support services

796. The Department for Children, Schools and Families will make arrangements with a contractor to collect and hold relevant Connexions service information and supply to those involved in the provision of Connexions services to assist in the provision of those services. This will involve a database known as the National Client Caseload Information System (NCCIS). The NCCIS will enable a Connexions service provider to find out whether a person for whom the service provider has been providing support has moved to a different area.

797. *Subsection (2)* of clause 241 will insert a new 76A into the Education and Skills Act 2008, subsection (1) of which enables the Secretary of State to make these arrangements. *Subsection (3)* allows local Connexions service providers to provide information to the contractor operating the NCCIS. This information is information obtained by a Connexions service provider about a person for whom services are provided but excludes information provided under section 72 of the Welfare Reform and Pensions Act 1999. *Subsections (4) to (6)* contain restrictions on the disclosure of information held on the NCCIS.

798. *Subsection (1)* allows the Secretary of State to ensure that information is provided by local Connexions service providers to the NCCIS. It does this by amending section 69 of the Education and Skills Act 2008 to allow the Secretary of State to give directions to a LEA about the terms of the arrangements that it makes for the provision of local Connexions services.

Clause 242: Further education corporations: promotion of well-being

799. This clause inserts a new section 19A into the Further and Higher Education Act 1992. It provides that in carrying out their functions under sections 18 and 19 of that Act, further education corporations in England must have regard to the objective of promoting the economic and social well-being of the people who live or work in the locality of their institution.

Student loans

Clause 243: Student loans under the 1998 Act: IVAs, Clause 244: Student loans under the 1990 Act: IVAs and bankruptcy

800. These two clauses amend the Teaching and Higher Education Act 1998 (c.30) (the 1998 Act) and the Education (Student Loans) Act 1990 (c.6) (the 1990 Act) so that a student loan made to a borrower who enters an Individual Voluntary Arrangement (IVA) will be treated in a similar way as it is currently treated under a bankruptcy in England and Wales. Clause 244 also amends the 1990 Act by inserting bankruptcy provisions for Northern Ireland that correspond to those in England and Wales in regard to student loans.

801. Individual Voluntary Arrangements (IVAs) were created by the Insolvency Act 1986. An IVA enables a debtor to avoid bankruptcy by coming to an agreement with creditors to pay off a percentage of his or her debts over a given period.

802. At present, the treatment of student loans under an IVA differs from their treatment under a bankruptcy in England and Wales. There are two types of student loan. The newer type of loan, known as an Income Contingent Loan, is repayable by a borrower under the 1998 Act, and the older type of loan, known as a Mortgage Style Loan, is repayable under the 1990 Act

803. The 1998 Act excludes loans from a borrower's bankruptcy debts, so that during and upon discharge from bankruptcy, the borrower remains liable to repay his student loan. Repayments are linked directly to a borrower's income so the student debt will not need to be repaid until the borrower's income is above the income threshold. Clause 243 amends the 1998 Act to provide that similar arrangements will apply to student loans under an IVA as currently apply under a bankruptcy. This means that the liability of a borrower to repay a student loan will not be reduced when the borrower enters into an IVA.

804. Clause 244 makes similar provision in respect of the 1990 Act, so that a Mortgage Style Loan is not to be included in the voluntary agreement. This means that the liability to repay the Mortgage Style Loan will not be reduced when someone enters into an IVA. In respect of Northern Ireland, clause 244 inserts similar provision on IVAs and also makes provision about bankruptcy corresponding to the existing provision under that Act for bankruptcy in England and Wales.

805. These provisions apply to England, Wales and Northern Ireland.

806. *Subsection (4)* of clause 244 amends Schedule 2 to the 1990 Act in respect of Northern Ireland. The 1990 Act provides that, in respect of England and Wales, a Mortgage Style Loan is prevented from forming part of the estate of a person who becomes bankrupt and also from forming part of the bankruptcy debts where the loan

was taken out in England and Wales. Subsection (4) makes similar provision in respect of Northern Ireland.

Clause 245: Power to award foundation degrees: Wales

807. The Privy Council has power, under section 76 of the Further and Higher Education Act 1992 (“FHEA 1992”), to make orders that enable institutions providing higher education to grant one or both of two groups of awards. Institutions providing higher education can be given a power to grant awards to students who complete a course of study, or a power to grant awards to students who complete a programme of research, or both. These are commonly referred to as taught and research degree awarding powers respectively.

808. A number of further education institutions provide courses leading to foundation degrees. Originally, only institutions with full taught degree awarding powers could award foundation degrees in their own right. Section 19 of the Further Education and Training Act 2007 amended section 76 of the Further and Higher Education Act 1992 so as to enable the Privy Council to make orders granting further education institutions in England the power to award foundation degrees.

809. Currently foundation degrees provided by further education institutions in Wales are awarded by other higher education institutions with full, taught degree-awarding powers through franchise arrangements. This clause amends section 76 of the FHEA 1992 so as to enable the Privy Council to make orders granting further education institutions in Wales the power to award foundation degrees.

810. As a result of this provision, further education institutions in Wales providing courses leading to foundation degrees will be able to apply for powers to award foundation degrees themselves. In order to be granted this power, institutions will have to meet certain non-statutory criteria, which will be published in draft during the passage of the Bill. As with taught and research degree awarding powers, the Quality Assurance Agency for Higher Education will advise on whether an institution meets the criteria.

811. *Subsection (2)* requires Welsh Ministers to lay before the National Assembly for Wales a report about the effect of the provision within four years of it coming into force.

812. The provision applies to further education institutions in Wales as defined under section 91 of the FHEA 1992, which only includes institutions conducted by further education corporations and institutions designated under section 28 of that Act. The new legal category of sixth form college corporation created by the Bill does not apply in Wales.

Clause 246: Complaints: Wales

813. This clause amends section 29 of the Education Act 2002. Section 29 (1) places a duty on the governing bodies of maintained schools to establish procedures

for dealing with complaints. Governing bodies must publicise procedures under section 29(1)(b) and, in establishing and publicising them, governing bodies in Wales must have regard to guidance from the Welsh Ministers (section 29(2)). Currently, governing bodies have discretion to put in place whatever procedure they judge fit for handling complaints. This amendment gives a power for the Welsh Ministers to make regulations which would set out a complaints procedure that will become compulsory for all governing bodies of maintained schools in Wales. Such regulations are able to specify how and where this procedure should be published.

Clause 247 Local Government Act 1974: minor amendment

814. This clause makes a minor amendment to paragraph 5 of Schedule 5 to the Local Government Act 1974. The Local Commissioner may currently investigate complaints about maladministration by local education authorities in relation to their education functions subject to the exclusions in paragraph 5 of Schedule 5. This effect of this amendment is to provide that a complaint about special educational needs may be considered by the Local Commissioner, even where it may relate to conduct, curriculum, internal organisation, management or discipline of a local education authority maintained school.

PART 13: GENERAL

Clause 248: Orders and Regulations

815. Clause 248 contains general provisions about orders and regulations under this Bill. All orders or regulations are to be made by statutory instrument apart from any made under Chapter 1 of Part 1, or Part 3, or Part 4 which are exercisable by the Department for Employment and Learning in Northern Ireland which are to be made by statutory rule.

816. Affirmative resolution procedure is required for any orders made by the Secretary of State under the clauses listed in *subsection (6)*. These have been noted in the Commentary on Clauses section of these Explanatory Notes. All other statutory instruments have to follow the negative resolution procedure apart from orders made under clause 37 specifying apprenticeship sectors and commencement orders which require no parliamentary procedure.

Clause 250: General Interpretation of Act

817. This clause provides that the clauses in Parts 3, 4, 5, 7, 8, Chapter 4 of Part 10 and clauses 235, 237, and 238 are to be construed as if they were contained in the Education Act 1996 unless a different meaning is given in the clauses of the Bill in which case that meaning prevails. *Subsection (4)* provides that section 562 of the 1996 Act (as amended by clause 48), which provides that the Act does not apply to certain persons detained under order of a court do not apply for the purposes of Part 4 of the Bill. The effect will be that the Secretary of State's functions in respect of Part 4

which relate to the Chief Executive of Skills Funding — apply to those persons detained under order of a court.

Clause 251: Power to make consequential and transitional provision etc

818. This clause enables the Secretary of State to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of, in consequence of, or giving full effect to, any provision of the Bill. Where such an order amends or repeals primary legislation it is subject to the affirmative resolution procedure.

PUBLIC SECTOR FINANCIAL COST AND MANPOWER IMPLICATIONS

819. The transfer of responsibilities to LEAs will result in a significant transfer of public expenditure from central to local government of some £7 billion, but the Government expects that overall public expenditure on 16-18 education will remain broadly the same and will still count against the Departmental Expenditure Limit of the Department for Children, Schools and Families.

820. The costs of operating the new post-19 system, including staffing and on-costs, will be met from the LSC's current staffing budget, and are also expected to be revenue-neutral compared to the current system.

821. There are likely to be transitional costs relating to premises, assets and people and pensions. There will, however, be savings from lower transactional costs, which will ensure more of the money is used to fund learning. Further administrative savings may be possible through centralisation of functions and shared support services, and through the reduction in the number of offices that the LSC currently retains.

822. The reform will also result in significant staff movements. Roughly 1,000 of the LSC's staff are expected to transfer to local education authorities and some 1,800 will form the new Skills Funding Agency (including 400 posts in the National Apprenticeship Service) which will mean they are added to the DIUS headcount. 500 will transfer to the new YPLA and as such will remain NDPB staff.

823. The new system will, at worst, be revenue neutral for FE Colleges and other education and training providers, but there could be significant benefits in terms of better informed and integrated commissioning of services; and through a reduced bureaucracy on providers through streamlined performance management and data arrangements.

824. The reform of the QCA will result in a relatively small increase in public expenditure as a result of new functions which Ofqual will take on to improve the effectiveness of its regulation (partly though not entirely as a result of these reforms). Around 120 of the QCA's existing 600 staff will transfer to Ofqual, with around 480

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remaining with the re-named the QCDA. As Ofqual will be a Non-Ministerial Department, this will result in an increase in Civil Service headcount, and the Treasury has approved the changes. Again some transitional costs will be incurred but these will be met from existing budgets.

825. The apprenticeships proposals will underpin the Government's plans for an increase in the number of people starting apprenticeships to 250,000 by 2020, but the Government intends to deliver this number of apprenticeships within previously agreed budgets.

826. The Government does not expect any of the other measures in the Bill will result in a significant increase in public expenditure. Many of the proposals relating to children's services, schools and behaviour provisions reflect and reinforce existing practice. Other proposals should result in or facilitate savings. These include:

- the introduction of a new Ofsted Health Check will support savings of around £4.5 million by enabling longer inspection intervals for some schools;
- the extension of powers to issue warning notices to schools should result in net savings of £9 million a year which will arise from catching schools earlier before they are placed in special measures;
- the establishment of the proposed Support Staff Negotiating Body may have some bearing on the public sector pay, and HM Treasury has approved this and other relevant measures included in the Bill.

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

828. A ways and means resolution will be sought in relation to the Bill. This is in relation to a number of clauses in the Bill where powers are given to charge fees for certificates for apprenticeships, and for Ofqual and the QCDA to charge fees for certain services. There is no express limit in the Bill on the amounts of these fees and so, because it would be possible for them to be set at a level which went beyond covering the cost involved in issuing the certificates or providing the services in question, ways and means authority is required.

SUMMARY OF THE IMPACT ASSESSMENT

829. A separate Impact Assessment (IA) has been produced to accompany the Bill. This analyses the costs and potential benefits of the proposals and assesses their possible impact on race, gender and disability equality. Copies are available for Members in the Vote Office. It will also be available online at <http://www.dcsf.gsi.gov.uk/apprenticeshipsskillschildrenandlearningbill> and in hard copy from the Department for Children Schools and Families. The Impact Assessment

shows that each policy area is at least cost neutral in terms of benefits and costs to the public, private and third sector.

EUROPEAN CONVENTION ON HUMAN RIGHTS

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

831. Having considered the possible implications, the Secretary of State for Children, Schools and Families has made a statement saying that in his view the provisions of the Apprenticeships, Skills, Children and Learning Bill are compatible with the Convention rights. There are some areas where it would be helpful to provide further comments for clarification, as follows.

Clause 32: Variation of an apprenticeship agreement

832. Apprenticeship agreements are to be treated as contracts of service, as opposed to contracts of apprenticeship. Contracts of apprenticeship are more difficult to terminate by an employer, and claims for higher levels of damages can be made for wrongful termination. The Government has considered whether such treatment engages Article 1 of Protocol 1 of the ECHR, but has concluded it does not.

833. The Government's view is that the clause does not prevent the entering into of traditional apprenticeship agreements; any new agreement will be entered into voluntarily and will set out rights and responsibilities clearly; and apprentices will be entitled to damages for wrongful and unfair dismissal under such agreements.

Clauses 47 to 50: Persons detained in youth accommodation

834. The Bill will amend section 562 of the Education Act 1996 to make young offenders subject to the Education Acts so that their education, so far as is practicable, matches that of children and young people in the mainstream education system. These provisions further implement the right to education in Article 28 of the United Nations Convention on the Rights of the Child by improving both access to, and the quality of, education available for juvenile offenders.

Clause 119: Sharing of information for education and training purposes

835. Data currently used and shared by the LSC for England will be transferred to the YPLA, Chief Executive of Skills Funding and local education authorities to enable these bodies to undertake functions once the LSC is dissolved. YPLA functions will

also necessitate the collection of data from Academies and the sharing of data with certain third parties.

836. Article 8(1) may be engaged in the provision of and sharing of data. However, the Government is satisfied that any interference will be justified in line with Article 8(2). First, it protects the rights and freedoms of young people to travel to different areas and facilities to access different forms of education by enabling the necessary sharing of information; second, it promotes economic well-being by facilitating improvement of education to ensure a more skilled workforce. The provisions are subject to the protections of Data Protection Act 1998.

Clauses 129, 144 and 145: Ofqual's powers to regulate bodies awarding qualifications

837. Ofqual will assume the regulatory role currently undertaken by the QCA. Article 6 may be engaged where Ofqual refuses to recognise a body to award particular qualifications or types of qualification, or withdraws such recognition. The Government's view is that refusing to recognise a body or withdrawing such recognition may be a determination of a civil right. If Article 6 is engaged, the availability of an internal review process where recognition is withdrawn and judicial review ensure that the provisions are Article 6 compliant.

838. Withdrawal of recognition is also potentially an interference with Article 1 Protocol 1. Being recognised by Ofqual may be a "possession" for the purposes of that Convention right. Whether there is a breach of this Article would depend upon individual circumstances. Where a decision to withdraw recognition is a rational one, there would be no violation of this Convention right. If an awarding body was in breach of its conditions of recognition and that breach threatened the quality of a qualification or the interests of learners seeking to gain that qualification, that fact would form justification for any engagement with Article 1 Protocol. Withdrawal of recognition would be legitimate in the public interest and as a consequence of a recognised awarding body failing to comply with conditions provided by law.

Clauses 132 and 134: Other conditions of recognition: entry and inspection conditions

839. The Government's view is that the imposition of a condition on an awarding to permit Ofqual to enter the body's premises is not in breach of Article 8. Such a condition does not impose a right of entry. There are safeguards attached to such a condition. It cannot apply to a private dwelling. Notice must be given of any proposed entry and entry must be at a reasonable time. A direction that an awarding body should comply with such a condition may engage Article 8; please see below in relation to clause 144.

Clause 144: Power to give directions

840. The Government's view is that there is nothing inherently in breach of any ECHR Article in Ofqual's power to give directions to recognised bodies; however *use* of the power in individual cases might be challenged as being in breach of Articles 6, 8 or Article 1 of Protocol 1, in which case the availability of judicial review ensures that sufficient safeguards and remedies are available.

841. If a direction is made that impinges on the possession of recognition and the benefits which flowed from it, then a civil right for the purposes of Article 6 may be engaged. An aggrieved awarding body would have access to an impartial and impartial tribunal for the purposes of that Convention right. The provisions contain safeguards for the fair conduct of any intention to make a direction and for an internal review of such a decision, combined with the availability of judicial review. Any deprivation may engage Article 1 of Protocol but would, in the Government's view, be justified as in the public interest and as a consequence of an awarding body violating conditions provided by law. Article 8 may be engaged where the direction making power is to direct compliance with a condition requiring permission to enter premises. The proper regulation of qualifications is necessary for the well-being of the country. No direction can be enforced without an application to the court, providing judicial scrutiny of any such proposal to direct.

Clauses 154, 160 and 176: Powers to require information and provision of information or advice

842. Ofqual is able to require specified persons to supply information to enable fulfilment of duties to keep under review National Curriculum and Early Years Foundation Stage assessment arrangements. Ofqual and the QDCA will also supply information to the Secretary of State. Such information is unlikely to identify individuals. Article 8(1) may be engaged in this process in the exceptional circumstance where personal information is disclosed. However the Government's view is that any interference is justified in line with Article 8(2) in the interests of the economic well-being of the country in ensuring that assessment arrangements operate to facilitate an effective education system. The provisions are subject to the protections of Data Protection Act 1998.

Clause 184: Arrangements to promote co-operation

843. Children's Trust Boards (CTBs) will have power to request information from its board partners in order to perform its functions. It is unlikely that information identifying an individual will routinely be exchanged, but where this in the case, Article 8(1) may be engaged.

844. Assuming Article 8 is engaged, the Government is satisfied that any interference will be justified under Article 8(2). The proposals pursue a legitimate aim as the information will be shared only in order to help local services to co-operate to

improve children's well-being, and so protect their health, morals, rights and freedoms. In addition, the Children's Trust Board is a public authority for the purposes of section 6 of the Human Rights Act 1998 and will therefore be required to exercise these powers in a way that is compatible with Convention rights. In addition, the Children's Trust Board is a public authority for the purposes of section 6 of the Human Rights Act 1998 and will therefore be required to exercise these powers in a way that is compatible with Convention rights.

Clauses 186 to 188: Children's centres

845. The powers of entry and related powers conferred on the Chief Inspector by new section 98D of the Childcare Act 2006 (inserted by clause 187 of the Bill) will enable the Chief Inspector to carry out inspections of children's centres. The exercise of these powers may engage rights under Article 8 of the Convention (right to private life) and if they do, the Government's view is that any interference with those rights is justified because it pursues the legitimate aim of inspecting children's centres to ensure that services available there are appropriate and of the right quality to ensure the protection of the health and morals of children using the services, and their rights and freedoms. In addition, the Chief Inspector is a public authority for the purposes of section 6 of the Human Rights Act 1998 and will therefore be required to exercise these powers in a way that is compatible with Convention rights.

Clauses 229 and 231: Powers of members of staff to search school pupils and students for alcohol, controlled drugs and stolen articles and to seize such articles

846. Existing powers to search for offensive weapons are extended to enable searches for alcohol, controlled drugs and stolen articles to be undertaken in schools and FE and sixth-form colleges without the consent of the person being searched.

847. Article 8(1) may be engaged in the exercise of such powers; however the Government is satisfied that any interference will be justified in line with Article 8(2) as being in the interests of public safety and the prevention of disorder or crime. Students or pupils consuming alcohol or taking drugs in FE institutions and schools may become disruptive. They may place their own health and safety at risk and, where they supply alcohol and drugs to other students or pupils, place the health and safety of those other students or pupils at risk. Seizure of alcohol from them may prevent alcohol-related and alcohol-induced crime, and seizure of controlled drugs may prevent the criminal offence of supply. In relation to stolen articles, seizure of such articles and their return to the lawful owner protects the rights of the owner. Where pupils are aware that they may be searched, this may act as a deterrent to prevent theft.

848. Seizure of a prohibited item from a student or pupil amounts to a deprivation of property and potentially interferes with Article 1 of Protocol 1; however the Government believes this to be justified. In relation to alcohol, deprivation of property

is in the public interest is in the public interest in order to avoid the disruption that would result from alcohol being consumed at the institution or in school.

849. In relation to controlled drugs, possession is unlawful, therefore deprivation will prevent the continued commission of a criminal offence; may prevent the further offence of supply being committed; and may prevent harm being caused to students or pupils as a result of taking the drugs. Because of the risks to the safety of students or pupils and of the disorder that could result from allowing students or pupils to bring alcohol and controlled drugs into a school or college, the Government believes seizure of these items to be a proportionate response.

850. In the case of stolen articles, arguably there is no interference where the item doesn't belong to the student or pupil it has been seized from. It is possible that an item may be seized from its lawful owner. Nevertheless the Government believes that interferences is justified in order to establish legal ownership and to determine whether a crime has been committed.

851. Safeguards are in place and these are described in the Commentary on the clauses.

Clauses 233 and 234: Recording and reporting the use of force in schools and FE Colleges

852. Obligations are imposed upon governing bodies of FE institutions or schools to ensure that there is a procedure in place for recording each significant incident where force is used, and reporting such incidents to parents of students or pupils under the age of 20 as soon as is reasonably practicable after the incident has occurred. There is a potential interference with the rights of students or pupils and the rights of members of staff under Article 8(1) in respect of the making of the record and its retention by the institution or school. Reporting of information to parents without the consent of the students or pupils may also be an interference with the student's or pupil's rights under Article 8(1).

853. The Government, however, believes any interference to be justified and proportionate. Interference with Article 8(1) rights of staff and students or pupils in relation to the making of the record and retaining it, will be justified in line with Article 8 (2) on the basis that the purpose of recording where force has been used on children serves to ensure that the power is not misused, and so is for the purpose of protecting children's rights.

COMMENCEMENT

854. Clause 255 provides for commencement. Clause 55, concerning the power of LEAs to arrange provision of education at non-maintained schools, and clauses 186

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to189, which relate to children's centres, will come into force at the end of two months from Royal Assent.

855. Clause 255(3) lists those clauses which are brought into force in accordance with provision made by Welsh Ministers. As is clear in the subsection, some of the provisions apply to England and Wales so the Welsh Ministers have power to commence them so far as relating to Wales only; the remaining provisions in that list apply only to Wales

856. All other provisions may be commenced by the Secretary of State by way of commencement order, but following consultation with the Department for Employment and Learning in Northern Ireland in respect of any provision of Part 7 which confers functions on Ofqual in relation to Northern Ireland.

857. Subsection (5) provides that the Secretary of State must ensure that clauses 83 to 91 and 101 (which relate to apprenticeship schemes for persons aged 16 to 18) are in force no later than the day after the school leaving date for 2013.

GLOSSARY OF TERMS AND ABBREVIATIONS

AACS	Adult Advancement and Careers Service
CCIS	Client Caseload Information System
CCTA	City College for the Technology of the Arts
CDL	Career Development Loan
CIPFA	Chartered Institute of Public Finance and Accountancy
CTB	Children's Trust Board
CYPP	Children and Young People's Plan
DCSF	Department for Children, Schools and Families
DIUS	Department for Innovation, Universities and Skills
ECHR	European Convention on Human Rights
EYFS	Early Years Foundation Stage

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EYP	Early Years Provider
FE	Further Education
FEI	Further Education Institution
FHEA	Further and Higher Education Act 1992
GCSE	General Certificate of Secondary Education
HE	Higher Education
IEB	Interim Executive Board
ISA	Independent Safeguarding Authority
ISB	Individual Schools Budget
IT	Information Technology
IVA	Individual Voluntary Arrangement
LA	Local authority
LEA	Local Education Authority
LGO	Local Government Ombudsman
LSC	Learning and Skills Council
MIAP	Managing Information Across Partners
NAS	National Apprenticeship Service
NC	National Curriculum
NCCIS	National Client Caseload Information System
NDPB	Non-Departmental Public Body
NVQ	National Vocational Qualification

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Ofsted	Office for Standards in Education, Children's Services and Skills
Ofqual	Office of Qualifications and Examinations Regulation
PRU	Pupil Referral Unit
QCA	Qualifications and Curriculum Authority
QCDA	Qualifications and Curriculum Development Agency
SENDIST	Special Educational Needs and Disability Tribunal
SFA	Skills Funding Agency
SSSNB	School Support Staff Negotiating Body
SVG Act	Safeguarding Vulnerable Groups Act 2006
TTWA	Travel to Work Areas
VRQ	Vocationally Related Qualification
YOI	Young Offender Institution
YPLA	Young People's Learning Agency

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as introduced in the House of Commons on 4 February 2009 [Bill 55]*

ANNEX A: TERRITORIAL APPLICATION TABLE

Clause number	Title	Application of Clause
Part 1: Apprenticeships, study and training		
Chapter 1: Apprenticeships		
1.	Duty to issue apprenticeship certificates: England	England only
2.	Power to issue apprenticeship certificates: England	England only
3.	Issue of certificates by the English certifying authority: supplementary	England only
4.	The English certifying authority	England only
5.	Duty to issue apprenticeship certificates: Wales	Wales only
6.	Power to issue apprenticeship certificates: Wales	Wales only
7.	Issue of certificates by the Welsh certifying authority: supplementary	Wales only
8.	The Welsh certifying authority	Wales only
9.	Contents of apprenticeship certificate	England and Wales
10.	Apprenticeship frameworks: interpretation	England and Wales
11.	English issuing authorities	England only
12.	Issue of apprenticeship frameworks etc: England	England only

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13.	Recognised English apprenticeship frameworks: notification and publication requirements	England only
14.	Submission of draft apprenticeship framework for issue: England	England only
15.	Transitional provision for apprenticeship frameworks: England	England only
16.	Welsh issuing authorities	Wales only
17.	Issue of apprenticeship framework etc: Wales	Wales only
18.	Recognised Welsh apprenticeship frameworks: notification and publication requirements	Wales only
19.	Submission of draft apprenticeship framework for issue: Wales	Wales only
20.	Transitional provision for apprenticeship frameworks: Wales	Wales only
21.	Duty to prepare and submit draft specification of apprenticeship standards: England	England only
22.	Order bringing specification of apprenticeship standards into effect	England only
23.	Modification of English specification of apprenticeship standards	England only
24.	Replacement or modification of specification of apprenticeship standards: recognised English apprenticeship frameworks	England only
25.	Contents of specification of apprenticeship standards for England	England only
26.	Specification of apprenticeship standards for Wales	Wales only

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27.	Modification of specification of apprenticeship standards for Wales	Wales only
28.	Replacement or modification of specification of apprenticeship standards: recognised Welsh apprenticeship standards	Wales only
29.	Contents of specification of apprenticeship standards for Wales	Wales only
30.	Meaning of “apprenticeship agreement”	England and Wales
31.	Ineffective provisions in an apprenticeship agreement	England and Wales
32.	Variation of an apprenticeship agreement	England and Wales
33.	Status of an apprenticeship agreement	England and Wales
34.	Crown servants and Parliamentary staff	England and Wales
35.	Careers education	England and Wales
36.	Duty to participate in education or training: apprenticeship agreements	England
37.	Apprenticeship sectors	England and Wales
38.	Interpretation of Chapter	England and Wales
Chapter 2: Study and Training		
39.	Employer support for employee study and training	England, Wales and Scotland
Part 2: LEA Functions		
40.	Education and training for persons over compulsory school age: general duty	England only
41.	Encouragement of education and training for persons over compulsory school age	England only

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42.	LEA directions: children over compulsory school age	England and Wales
43.	Power to require provision of education by institution within further education sector	England only
44.	Duties in relation to the core and additional entitlements	England only
45.	Provision of boarding accommodation: persons subject to learning difficulty assessment	England only
46.	Work experience for persons over compulsory school age	England only
47.	Provision of education for those detained in youth detention accommodation	England and Wales
48.	Persons detained in youth accommodation: application of provisions	England and Wales
49.	Persons detained in youth accommodation: further provision	England and Wales
50.	Detention of child or young person: local education authority to be notified	England and Wales
51.	Transport policy statements for persons of sixth form age: consultation	England only
52.	Transport policy statements for persons of sixth form age: content and publication	England only
53.	Complaints about transport arrangements etc for persons of sixth form age	England only
54.	Local education authorities in England: provision of transport etc for adult learners	England only
55.	Power of LEAs to arrange provision of education at non-maintained schools	England and Wales

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56.	Minor and consequential amendments	England and Wales
Part 3: The Young People's Learning Agency		
Chapter 1: Establishment		
57.	The Young People's Learning Agency for England	England only
Chapter 2: Main functions		
58.	Provision of financial resources	England only
59.	Financial resources: conditions	England only
60.	Performance assessments	England only
61.	Means tests	England only
62.	Prohibition on charging	England only
63.	Securing provision of education or training	England only
64.	Intervention for purpose of securing provision of education and training	England only
65.	Provision of services	UK wide
66.	Assistance with respect to employment and training	England, Wales and Scotland
67.	Assistance with respect to employment and training: Northern Ireland	England and Northern Ireland
68.	Research, information and advice	England only
69.	Guidance by YPLA	England only
70.	Intervention powers: policy statement	England only
71.	Power of Secretary of State to confer supplementary functions on YPLA	England only

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Chapter 3: YPLA's functions: supplementary		
72.	Directions by Secretary of State	England only
73.	Guidance by Secretary of State	England only
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74.	Academy arrangements	England only
75.	Grants for purposes of Academy arrangements functions	England only
76.	Academy arrangements: information sharing	England only
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77.	Interpretation of Part	England only
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78.	The Chief Executive of Skills Funding	England only
79.	Apprenticeship functions	England only
80.	Apprenticeship training for persons aged 16 to 18 and certain young adults	England only
81.	Arrangements and co-operation with local education authorities	England only
82.	Encouragement training provision etc for persons within section 80	England only
83.	Duty to secure availability of apprenticeship places for persons aged 16 to 18	England only
84.	Election for apprenticeship scheme	England only
85.	Meaning of "apprenticeship place"	England only

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86.	Suitability and availability of apprenticeship places: further provision	England only
87.	Apprenticeship scheme requirements	England only
88.	Apprenticeship scheme requirements: interpretation	England only
89.	Suspension of scheme	England only
90.	Power to amend apprenticeship scheme	England only
91.	Apprenticeship scheme: interpretation	England only
92.	Education and training for persons aged 19 or over and others subject to adult detention	England only
93.	Learning aims for persons aged 19 or over: provision of facilities	England only
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95.	Sections 93 and 94: supplementary	England only
96.	Encouragement of education and training for persons aged 19 or over and other subjects to adult detention	England only
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97.	Provision of financial resources	England only
98.	Financial resources: conditions	England only
99.	Performance assessments	England only
100.	Means tests	England only
101.	Assistance and support in relation to apprenticeship places	England only

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102.	Advice and assistance in relation to apprenticeships	England only
103.	Provision of services	UK wide
104.	Assistance with respect to employment and training	England, Scotland and Wales
105.	Assistance with respect to employment and training: Northern Ireland	England and Northern Ireland
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107.	Power to confer supplementary functions on Chief Executive	England only
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112.	Persons subject to adult detention	England only
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115.	Directions: funding of qualifications	England only
116.	Directions: funding conditions requiring co-operation	England only
117.	Other directions relating to functions of the office	England only
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120.	Dissolution of the Learning and Skills Council for England	England only
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127.	Meaning of “regulated qualifications” etc.	England and Northern Ireland
128.	Meaning of “regulated assessment arrangements” etc.	England only
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129.	Recognition	England and Northern Ireland

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130.	Criteria for recognition	England and Northern Ireland
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134.	Entry and inspection conditions: supplementary	England and Northern Ireland
135.	Qualifications subject to the accreditation requirement	England and Northern Ireland
136.	Accreditation	England and Northern Ireland
137.	Criteria for accreditation	England and Northern Ireland
138.	Power of Secretary of State to determine minimum requirements	England only
139.	Assignment of numbers of hours of guided learning	England only
140.	Criteria for assignment of number of hours of guided learning	England only
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142.	Review of activities of recognised bodies	England and Northern Ireland
143.	Investigation of complaints	England and Northern Ireland

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144.	Power to give directions	England and Northern Ireland
145.	Power to withdraw recognition	England and Northern Ireland
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147.	Review of other qualifications to which Part applies	England and Northern Ireland
148.	Co-operation and joint working	England and Northern Ireland
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153.	Review of regulated assessment arrangements	England only
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156.	NC assessments regulatory framework	England only
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218.	Agreement submitted by SSSNB under section 214 or 215: ratification not recommended	England only
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APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING BILL

EXPLANATORY NOTES

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