

*These notes refer to the Education Act 2005 (c.18)  
which received Royal Assent on 7 April 2005*

# EDUCATION ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 4: Miscellaneous

177. The following definitions occur in the notes in relation to Part 4:

- *SSFA 1998* is the School Standards and Framework Act 1998
- *The Assembly* means the National Assembly for Wales

#### Maintained schools

##### *Section 101: Funding of maintained schools*

178. This section introduces Schedule 16, which contains provisions relating to the funding of local education authorities and schools. Currently, local education authorities set a 'schools budget' and a 'LEA budget' annually for the forthcoming financial year, using mainly resources paid under the Local Government Finance Acts, and also calculate the budget shares of schools on an annual basis. The budget shares are shares of the individual schools budget, which is the total sum left in the schools budget after certain items of central expenditure have been deducted. Schools forums have only an advisory role in relation to authorities' school funding arrangements.
179. Subsections (1) to (3) of section 45A of SSFA 1998 define the schools budget, LEA budget and individual schools budget. These subsections provide that particular descriptions and classes of expenditure which fall within each of the different budgets, and the purposes for which the monies can be used, may be prescribed in regulations. Various sets of regulations have been made under these subsections.
180. Section 47 of SSFA 1998 deals with the calculation of individual schools' budget shares and provides that regulations may prescribe a variety of matters in relation to the calculation of such budget shares.
181. Section 47A of SSFA 1998 imposes an obligation upon local education authorities to establish schools forums and provides for the constitution and functions of schools forums to be set out in regulations.
182. New arrangements for local authorities and schools in England will be based on a ring-fenced grant made available by the Secretary of State, budgets set for a number of funding periods more than a year ahead and an enhanced role for schools forums. The enabling provisions in Schedule 16 cover both England and Wales except where otherwise specified below. Arrangements for local education authorities and schools in Wales will continue to be based on funding through the local government revenue settlement but the enabling provisions will allow for funding through ring-fenced grant, budgets set for more than a year ahead and an enhanced role for schools forums should circumstances make this appropriate.

***Schedule 16: Funding of maintained schools***

183. Various provisions of the Schedule amend sections 45, 45A and 47 of SSFA 1998 by substituting the concept of a funding period for the term financial year. There are powers to specify the funding period for the LEA budget, the schools budget and individual schools' budget shares in regulations. The financial year remains the default funding period unless otherwise prescribed in regulations.
184. *Paragraph 3(5)* of the Schedule clarifies that the amount of the schools budget of a local education authority will include any grant given by the Secretary of State under section 14 of the Education Act 2002 or any other legislation subject to a condition that it be applied towards the schools budget. In England, a ring-fenced grant paid by the Secretary of State under section 14 of the 2002 Act will replace the Revenue Support Grant currently paid to local education authorities on the basis of Schools Formula Spending Share (SFSS) allocations from 2006. In Wales, the Assembly intends to continue to provide funding for schools through the local government revenue settlement although the amendments to SSFA 1998 made by Schedule 16 will enable the funding of schools through specific grant under section 14 of the Education Act 2002 should the Assembly so decide at some future date.
185. *Paragraph 3(8)* repeals the requirement on local education authorities to notify the Secretary of State and the governing bodies of schools maintained by the authority of their proposed schools budget for the following financial year by a fixed date (31 December for England and 31 January for Wales) each year. *Paragraph 4* (new section 45AB) reinstates that requirement for authorities in Wales only, and adds a power for the Assembly to vary the deadline in regulations. The deadline will remain 31 January unless otherwise prescribed.
186. *Paragraph 4* (new section 45AA) provides that regulations can require a local education authority in England to set their schools budget for a funding period up to 48 months before the beginning of the funding period, make provision for the budget thus set to be redetermined before the funding period begins and impose requirements for notifying governing bodies of the authority's schools budget. It is intended that this power should be used in England to require local education authorities to set schools budgets at specified dates for a number of periods which total three years, although there would be scope to make later adjustments for each funding period within the total. *Paragraph 4* (new section 45AC) provides corresponding powers for the Assembly but provides that regulations under new section 45AC are not to have effect in relation to the schools budget for any funding period if new section 45AB (duty of local education authorities in Wales to determine schools budget) is in force.
187. *Paragraph 5* repeals the power in sections 45B and 45C of SSFA 1998 for the Secretary of State to determine a minimum schools budget for an authority in England or Wales where that authority's proposed schools budget appears to him to be inadequate, and replaces that with a similar power for the Assembly in relation to Welsh authorities only. New section 45D gives the Assembly power to repeal by order new sections 45AB (the duty of local authorities in Wales to determine a schools budget), 45B (power of Assembly to set a minimum schools budget for local education authorities in Wales) and 45C (effect of notices made under section 45B). These sections preserve the existing regime in Wales whereby local education authorities are required to determine their proposed schools budget and give notice of this to the Assembly. The Assembly has power to set a minimum schools budget, and notify a local education authority of this. It is envisaged that, if the Assembly decides to use the new powers in section 45AC(1) to (3), which correspond to the powers that will be operated in England, the provisions in 45AB, 45B and 45C will no longer be needed.
188. *Paragraph 6(3)(a) and (c) and (4)* makes corresponding amendments to section 47 of SSFA 1998 which have the effect of providing that individual schools' budget shares may have to be calculated for funding periods which start up to 48 months after a prescribed date, with provision for such budget shares for each period to be

redetermined before the start of the funding period in question, if necessary. However, there could also be provision to redetermine the budget shares during the funding period to reflect data changes, or in the subsequent funding period in the form of retrospective adjustments. There is also provision for requiring governing bodies to be notified of schools' budget shares. It is intended to use these provisions to introduce three-year budgets for schools in England.

189. At present the extent to which a local education authority may deduct expenditure within their schools budget (that is, retain funding to spend on pupil-related provision which is managed centrally rather than delegating it to individual schools in the form of budget shares) is in England subject to control through regulations which may set limits on the size of specified types of expenditure or set other conditions. Any variation on this has so far had to be allowed by amending regulations.
190. *Paragraph 3(7)* of the Schedule allows regulations to make provision for a local education authority to apply to their schools forum or the Secretary of State for approval to make deductions not otherwise authorised in the regulations. This may relate either to a higher deduction for specific items, or the total of deducted items, or the deduction of items not normally permitted by the regulations. It is however intended that in respect of schools forums in England, regulations will include a power only to allow them to agree to a local education authority deducting from its schools budget a higher total than any national limit. If the forum does not authorise the local education authority's proposals, the authority will have the right to make an application to the Secretary of State. A schools forum will not be able to originate and approve its own proposals for central spend; it may only approve those put forward by its local education authority. For the City of London and the Isles of Scilly (which do not have schools forums) such applications would be made direct to the Secretary of State.
191. At present the Secretary of State may authorise (but not require) arrangements for calculating schools' budget shares which vary from those normally permitted by the regulations made under section 47 of SSFA 1998. *Paragraph 6(3)(d)* provides that regulations may extend this power to schools forums. Again, the proposal must be made by the local education authority themselves, and regulations will provide that if the forum does not approve the proposal, the local education authority may apply instead to the Secretary of State. It is intended that the regulations in England will allow schools forums to approve only limited variations in the operation of the minimum funding guarantee in respect of individual schools or groups of schools to avoid them receiving anomalous budget shares.
192. Currently in Wales, no limits are prescribed in regulations on the size of specified types of expenditure which may be deducted within the school budget to be spent centrally by the local education authority; and no minimum funding guarantee for schools is prescribed in regulations. However, the provisions in paragraphs 3(7) and 6(3)(d) will also apply in Wales and if, at a future date, regulations prescribe such limits or guarantees, then paragraph 3(7) or 6(3)(d) as appropriate will allow for regulations to provide for an authority's proposals to be conditional on approval by their schools forum or by the Assembly.
193. *Paragraph 7* amends the description of schools forums' functions in section 47A of SSFA 1998 so as to include the exercise of the new powers to approve certain local education authority proposals conferred on schools forums by paragraphs 3(7) and 6(3)(d).

### ***Section 102: LEA targets: England***

194. This section enables the Secretary of State to make regulations requiring local education authorities in England to set annual targets in respect of pupils' performance. This is a continuing power which is needed because the existing requirement contained in regulations relating to education development plans will cease to have effect when the

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repeals of sections 6 and 7 of SSFA 1998 effected by the Children Act 2004 come into force.

195. *Subsection (2)* sets out the issues to be covered in regulations, including the matters to which the targets must relate and the timetable for setting and submitting the targets to the Secretary of State. Targets will be set and submitted by a certain date each year. The Secretary of State will have power under the regulations to modify or require a local education authority to modify a target after it has been submitted. This power will be exercised in consultation and as far as possible by agreement with the local education authority concerned. The regulations will also specify how the targets should be published.

***Section 103: Removal of requirements for governors' reports and parents' meetings***

196. This section removes the requirement for the governing bodies of maintained schools in England to produce an annual report to parents, and the requirement for such governing bodies to hold an annual parents' meeting. The effect of the amendments made by *subsections (1) and (2)* is that the requirements to produce a governors' annual report and to hold an annual parents' meeting will cease to apply in England but will continue to apply in Wales. *Subsection (3)* confers on the Assembly the power to repeal one or both of these requirements in the future by way of order.

***Section 104: School profiles***

197. This section inserts a new provision into the Education Act 2002 requiring the governing bodies of maintained schools in England to prepare and publish a school profile. *Subsection (2)* of new section 30A gives the Secretary of State a power to make regulations prescribing the content, format and manner of publication of the profile, including the frequency with which it is revised and published. *Subsection (3)* requires governing bodies, in preparing the school profile, to have regard to any guidance issued by the Secretary of State. This section does not apply to Wales.

***Section 105: Provision and funding of higher education in maintained schools***

198. This section inserts new section 28A into the Education Act 2002, which enables maintained schools in England and Wales to offer to their pupils limited courses of higher education that fall within paragraph 1(g) or (h) of Schedule 6 to the Education Reform Act 1988. Schools are currently prevented from offering any higher education by section 1(4) of the Education Act 1996 (referred to in *subsection (5)* of new section 28A), which states that nothing in that Act confers any function, in effect, on maintained schools with respect to higher education.
199. Types of course that fall within paragraph 1(g) of Schedule 6 to the Education Reform Act 1988 are vocational or professional courses at level 4 (higher education level). Types of course that fall within paragraph 1(h) are modules of first degree courses or components of Higher National Diplomas (HNDs), as opposed to courses resulting in the award of a full first degree or the full HND. For example, a course on European history between the wars which is typically taken as part of a modern history degree does not on its own lead to the award of a degree, and so falls within paragraph 1(h) rather than 1(c) (which is a full first degree course).
200. *Subsection (2)* constrains the amount of higher education provided by schools to their pupils and ensures that such provision does not take precedence over the other (secondary) education being provided by the school.
201. *Subsection (3)* enables the Assembly to fund such provision in schools in Wales. The Learning and Skills Council for England (LSC) is already empowered to fund courses of higher education that fall within paragraph 1(g) or (h) of Schedule 6 to the Education Reform Act 1998 in England under section 5(1)(d) of the Learning and Skills Act 2000. This new power will enable the LSC to fund such provision in maintained schools in

England. *Subsection (4)* ensures that sections 15 and 16 of the Education Act 2002 will apply to any financial assistance given by the Assembly for such provision.

***Section 106: Admission arrangements to make special provision for looked-after children***

202. This section inserts a new subsection (1A) after section 89(1) of the School Standards and Framework Act 1998, enabling regulations to be made that require admission authorities for maintained schools to ensure that looked after children, within the meaning of section 22 of the Children Act 1989, are to be offered admission in preference to other children. The regulations will set out how this will apply to all admission authorities, including faith and grammar schools, and specify exemptions.

***Section 107 and Schedule 17: Restrictions on disposal of land***

203. **Section 107** and Schedule 17 amend the provisions of Schedule 22 to SSFA 1998 governing the disposal of publicly-funded foundation school land: that is, land which was originally provided by a local authority or purchased with the proceeds of disposal of such land.
204. Foundation schools are a category of maintained school. There are three different types of foundation school: those with no foundations; those which are part of a foundation body established under section 21 of SSFA 1998; and those with a foundation established otherwise than under SSFA 1998. The term “trustees” is used in that Act to describe a foundation established otherwise than under that Act. Where a foundation school has no foundation, its land is vested in the governing body. Otherwise it is vested in the foundation body or trustees.
205. **Schedule 22** to SSFA 1998 makes different arrangements for the disposal of foundation school land depending on which body it is vested in and the circumstances in which it was acquired. A governing body or foundation body (of a foundation school) wishing to dispose of publicly funded land must seek the Secretary of State’s consent. The Secretary of State may attach conditions to his consent, including requiring the governing body or foundation body to transfer all or part of the land to the local authority which originally provided it, or to compensate the local authority. Trustees disposing of land are not required to seek the Secretary of State’s consent but in most cases must compensate the local authority which originally provided it. An exception to this general rule arises where a school without a foundation acquires a foundation. In these circumstances the school’s land would be transferred from the governing body to the trustees; but the trustees would be under no obligation to compensate the local authority which originally provided the land if they subsequently disposed of it.
206. The Department’s five-year strategy for children and learners encourages community and voluntary-controlled secondary schools to change category to foundation. This will entail the transfer of local authority land to school governing bodies, foundation bodies and trustees. The strategy also encourages foundation schools without foundations to acquire them, in which case their land would be transferred to their trustees.
207. **Section 107** introduces Schedule 17, which amends Schedule 22 to SSFA 1998 so that the same arrangements apply to the disposal of all foundation school land, whether by governing bodies, foundation bodies or trustees. In all circumstances, those wishing to dispose of publicly funded foundation school land will be required to seek the Secretary of State’s consent, and the Secretary of State will be able to attach conditions to his consent. The aim of the provisions is to ensure that publicly funded land which is no longer required for a foundation school, or the proceeds of disposal of such land, remains available for alternative educational use.
208. These provisions apply to both England and Wales. Where the section, the Schedule and this note refer to the Secretary of State, this should be construed as a reference to the Assembly in the application of the section and Schedule to Wales.

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209. *Paragraph 2* of Schedule 17 applies where a foundation school previously without a foundation acquires one. It provides that the transfer of land from the governing body to the trustees of the school in these circumstances is not a disposal for the purposes of paragraph 1 of Schedule 22 to SSFA 1998.
210. *Paragraph 4* inserts a new paragraph 2A into Schedule 22. The effect of the new paragraph is to require the trustees of a foundation school to seek the Secretary of State's consent before disposing of publicly funded land which was acquired in specified circumstances, as set out in sub-paragraphs (1) and (2). The requirement applies in relation to:
- i) land transferred from a local authority to the trustees to implement proposals to establish a new foundation school with a foundation;
  - ii) land transferred from a local authority to the trustees to implement proposals to change the category of a school from community to foundation, where the school had acquired a foundation in the process;
  - iii) land transferred from a local authority to the trustees otherwise than to implement proposals, under paragraph 2 of Schedule 3 to SSFA 1998 (for example where a school transfers to a different site nearby without closing and reopening);
  - iv) land transferred pursuant to any previous direction issued by the Secretary of State (in cases where a school has been discontinued but is connected with proposals to establish or alter another school) to the trustees of an existing or new maintained school as the case may be;
  - v) other land acquired or enhanced by the proceeds of disposal of any land acquired in the circumstances listed above; and
  - vi) land transferred from the governing body to the trustees, or from the governing of another foundation or school to trustees, where the land had originally been transferred from a local authority or acquired or enhanced with the proceeds of disposal of land transferred from a local authority.
211. *Sub-paragraph (4)* of new paragraph 2A of Schedule 22 to SSFA 1998 enables the Secretary of State to give or withhold his consent, and to attach conditions to his consent. He may require the trustees to transfer some or all of the land back to the local authority which originally provided it (if appropriate, for a financial consideration); direct them to compensate the local authority from the proceeds of the disposal; or direct the trustees as to the use to which the proceeds should be put. The Secretary of State may attach more than one of these conditions to any consent.
212. *Sub-paragraph (6)* of new paragraph 2A also requires the trustees to seek the Secretary of State's consent to put school land to non-educational use, in which case the Secretary of State could attach any of the conditions listed above to his consent.
213. *Paragraph 5* amends paragraph 3 of Schedule 22 to SSFA 1998, which deals with disposals of land by the trustees of foundation and voluntary schools other than disposals under the new paragraph 2A. The effect is to make the application of the whole of paragraph 3 subject to new sub-paragraph (2A) of that paragraph. This allows for the eventuality that trustees might be disposing both of land to which paragraph 2A applied and of other land held for the purposes of the school, to which paragraph 3 would apply. Sub-paragraph (2) now provides that paragraph 3 would also apply to land transferred pursuant to any previous direction issued by the Secretary of State (in cases where a school has been discontinued but is connected with proposals to establish or alter another school) to the trustees of an existing or new maintained school as the case may be.
214. *Paragraph 6* inserts new sub-paragraphs (4A) and (4B) into paragraph 5 of Schedule 22 to SSFA 1998, which deals with the discontinuance of schools, and makes other consequential amendments to that paragraph. The effect is to require the trustees to

apply to the Secretary of State to determine what should be done with the land of a discontinued foundation school. The Secretary of State can direct the trustees to: transfer all or part of the land back to the local authority which originally provided it, subject to a financial consideration he deems appropriate; and/or use the land for another foundation or foundation special school if the trustees have power to do so; and/or pay to the local authority all or part of the value of all or part of the land; and/or transfer all or part of the land to another maintained school.

## **Information**

### ***Section 108: supply of information: education maintenance allowances***

215. **Section 108** enables the lawful sharing of certain income-related and identity-based information relating to those applying for an education maintenance allowance and those who live in the same household as the applicant and support the education maintenance allowance applicant financially.
216. The purpose of sharing this information is to enable those administering education maintenance allowances to determine the applicant's eligibility for this means-tested allowance by verifying income-related information that has been supplied in support of the application. The intention is to prevent fraud and loss of public monies.
217. The type of information which might be shared is specified in *subsection (1)* as information held by the Inland Revenue for tax or tax credit purposes and information held by the Department for Work and Pensions and its Northern Irish equivalent, the Department for Social Development, for social security purposes. This information may be supplied directly to the persons specified within *subsection (3)* for purposes relating to eligibility for education maintenance allowances.
218. *Subsection (4)* allows persons specified in subsection (3) to supply information received under this section from the Inland Revenue, the Department for Work and Pensions or the Department for Social Development in Northern Ireland to any of the persons specified in *subsection (5)* for purposes relating to eligibility for education maintenance allowances. It also allows those who have received this information to pass it on to those who are actually administering education maintenance allowance schemes. The intention is for the section to facilitate a single information sharing scheme, enabling the Secretary of State, or any other person specified in subsection (3), to receive information on specific applicants directly from the Inland Revenue and the Department for Work and Pensions on behalf of the other administrations and to pass it on to them so that they in turn can pass it on to those administering their education maintenance allowance schemes. The inclusion of *subsection (5)(d), (e) and (f)* enables information to be passed to any person administering an education maintenance allowance scheme on behalf of the Secretary of State, the Assembly or a Northern Ireland department.
219. *Subsection (6)* lists the type of information that may be supplied by those specified in subsection (3) or (5) as part of a request for information. The intention is to allow the administrator of an education maintenance allowance scheme to pass sufficient information about an applicant to those holding the relevant income-related information in order to allow that applicant to be identified and the correct information returned.
220. This section does not make provision for the Scottish Ministers or any person providing services to the Scottish Ministers to supply information specified under subsections (4) or (6) to any other person. The supply of information by the Scottish Ministers is a devolved matter and would need to be provided for in an Act of the Scottish Parliament.

### ***Section 109: Unauthorised disclosure of information received under section 108***

221. **Section 109** creates an offence for the unlawful disclosure of information received under section 108. It also sets out those circumstances where the information may be disclosed lawfully. These provisions are similar to those in section 182 of the Finance Act 1989

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and section 123 of the Social Security Administration Act 1992, which impose criminal sanctions for the unauthorised disclosure of information held by the Inland Revenue or the Department for Work and Pensions.

222. *Subsections (3) and (4)* set out the penalties in England, Wales, Northern Ireland and Scotland for unlawful disclosure of information.

***Section 110: Supply of information: free school lunches etc.***

223. This section allows information held by the Inland Revenue and the Department for Work and Pensions to be passed to the Department for Education and Skills and the Assembly, and ultimately to local education authorities in England and Wales, for use in determining eligibility of claimants for free school lunches and milk.

224. Under sections 512, 512ZA, 512ZB and 512A of the Education Act 1996 (as amended by SSFA 1998 and the Education Act 2002), a pupil is entitled to free school lunches or milk if he or she, or his or her parent, is in receipt of:

- i) income support;
- ii) income-based jobseekers allowance;
- iii) support provided under Part 6 of the Immigration and Asylum Act 1999; or
- iv) Child Tax Credit, provided that they do not also receive Working Tax Credit and that their annual income (as assessed by the Inland Revenue) does not exceed £13,480 (this is the figure for 2004/05, and is re-assessed annually by Inland Revenue).

225. Before receiving free school lunches or free milk, a pupil/parent must apply and have eligibility verified. The sharing of data allowed under this section will allow easier checking of eligibility for free school lunches or milk.

226. *Subsection (3)* will allow data to be passed from the Inland Revenue and the Department for Work and Pensions to the Department for Education and Skills and the Assembly. *Subsection (4)* will also allow data to be passed directly from the Department for Work and Pensions to local education authorities.

227. *Subsection (5)* restricts the onward disclosure of data once it has been supplied by Department for Work and Pensions or Inland Revenue, so that data can only be passed on to local education authorities, or by the Secretary of State to the Assembly (and vice versa), for use in determining eligibility for free school lunches or milk. *Subsection (6)* allows the data to be passed to a contractor carrying out this function on behalf of a local education authority.

228. *Subsection (7)* defines eligibility for free school lunches or milk, including in relation to pupils at non-maintained special schools and Academies. Non-maintained special schools and Academies are required to give free school lunches to those eligible, in accordance with the same eligibility criteria as set out above, as a condition of approval (for a non-maintained special school) or of the funding agreement (for Academies).

***Section 111: Unauthorised disclosure of information received under section 110***

229. This section makes it a criminal offence to disclose data otherwise than as authorised under section 110. As with section 109, the section sets out certain circumstances in which data may lawfully be disclosed.

***Section 112: Power to provide that function of determining eligibility remains with LEA***

230. This section amends an existing power to make an order, so that local education authorities will be legally responsible for determining eligibility for free school lunches,



etc. The current Education (Transfer of Functions Concerning School Lunches etc) (England) (No 2) Order 1999 transfers certain duties to schools which have had their budgets delegated. These transferred duties include provision of school lunches and the provision of free school lunches and milk to pupils who are eligible. The corresponding orders for Wales are: the [Education \(Transfer of Functions Concerning School Lunches\) \(Wales\) Order 1999 \(SI 1999/610\)](#); and the [Education \(Transfer of Functions Concerning School Lunches\) \(Wales\) \(No 2\) Order 1999 \(SI 1999/1779\)](#). However in Wales these orders only relate to school meals. Any order made under section 112 would place the responsibility for checking back on the local education authority, even for schools with delegated budgets.

### ***Section 114: Supply of information about school workforce***

231. This section enables regulations to require or authorise the proprietor of a school, a children's services authority in England or Wales or any person prescribed in regulations to supply information (of a kind prescribed by regulations) to the Secretary of State, the Assembly or prescribed persons. The information will primarily be used for statistical analysis and research, but will also be shared between organisations which have an independent legal right to the information. Details of the categories of information and the format in which it will be expected to be supplied will be available in guidance to be placed on the internet. Examples of the type of data to be supplied are date of birth, ethnicity and pay details.
232. *Subsections (1), (2) and (3)* give the Secretary of State or the Assembly the power to make regulations that will allow or require certain data to be supplied to specified persons for a particular purpose or purposes. Subsection (2) sets out the persons to whom the data may be supplied. The persons about whom information may be collected are defined in detail in section 113.
233. *Subsection (4)* sets out the type of person who can be prescribed under subsections (1), (2) and (3). A person can only be required or authorised to supply data under subsection (1)(c) if he is carrying out functions of a public nature and he may only receive data under subsection (1) if he is carrying out such functions. In order for a third party to be prescribed under subsection (3) as a person to whom the Secretary of State or the Assembly can supply information, that third party must be carrying out functions of a public nature or carrying out research that is expected to be for the public benefit.
234. *Subsection (5)* describes the circumstances in which data will be shared and for what purpose. The effect of subsection (5) is that a person supplied with data under subsections (1) and (3) may only use the data for evaluation, planning, research or statistical purposes. Additional purposes may also be prescribed in regulations.
235. "Evaluation purposes" is intended to cover those situations where data are used internally by the organisation holding the data in order to formulate policy. For example, in relation to a policy to promote teacher retention in London schools by increasing pay, the database would be used to monitor whether this had been effective.
236. "Planning purposes" could cover the use of data to inform a teacher supply model, with the aim of ensuring that there are sufficient places available on relevant courses so that there are enough teachers with the right skills in schools.
237. "Research purposes" could cover a situation where researchers are studying the deployment of maths and science teachers in schools. At present researchers have to approach schools directly to find out who is teaching these subjects and what sort of qualifications they hold. The database would provide researchers with this information in advance to inform their research.
238. "Statistical purposes" covers situations where data are analysed and then statistics are produced and published in aggregate form.

239. *Subsection (6)* allows regulations to be made to enable data to be shared between organisations that are already lawfully allowed to hold or be supplied with that data. Examples of the use of subsection (6) are:
- i) where a teacher moves to a new school and the school which the teacher has left should have passed information about that teacher to the new school but does not: the Department will be able to supply that data to the new school;
  - ii) where a teacher moves to teach in a different local education authority, and the new local education authority are missing some data items on that teacher, such as his date of birth: the Department will be able to send the data to the local education authority directly rather than the new authority having to ask the teacher to fill in the missing information; and
  - iii) where partner organisations such as the General Teaching Council for England or Wales and Ofsted have existing powers to hold or be supplied with specified information on the school workforce, the Department will be able to supply that information directly to them.
240. *Subsection (8)* gives the Secretary of State and the Assembly the power to make regulations that will prevent persons from disclosing information with which they are supplied under this section. It also gives the Secretary of State and the Assembly the power to make regulations which will apply the Secretary of State's general default powers under section 497 of the Education Act 1996 to specific bodies. This will allow the Secretary of State or the Assembly to make a declaration and issue directions when a body is failing to discharge its duty to supply information under subsection (1). *Subsection (9)* provides that this section does not override or limit existing powers to share information.

### **Attendance at alternative education provision**

#### ***Section 115: Power of governing body to make alternative provision for excluded pupils***

241. Section 29(3) of the Education Act 2002 gives the governing body of a school the power to direct a pupil in attendance at that school to attend alternative provision. However, pupils who are excluded from school for a fixed period or are appealing against a permanent exclusion cannot attend a school from which they have been excluded. As a result schools cannot direct such excluded pupils to attend alternative educational provision. This section amends section 29(3) by extending the governing body's power to direct pupils to attend alternative educational provision if the pupil is not in attendance but is registered at the school.

#### ***Section 116: Failure of a parent to secure regular school attendance of a child at alternative provision***

242. This section inserts a new section (section 444ZA) in the Education Act 1996. New section 444ZA extends the circumstances in which a parent or a carer can be issued with a penalty notice or be prosecuted for failing to ensure that a child for whom he is responsible attends the alternative provision that has been made for the child. This is achieved by applying section 444 of the 1996 Act to these circumstances.
243. *Subsection (1)* of the new section outlines the circumstances in which sanctions may be used against parents of children who are not registered at a school. This applies to children for whom the local education authority have made arrangements to be educated otherwise than at a school. Should these children not attend alternative provision made for them, local education authorities would have the same powers to prosecute or to issue a penalty notice as they would if the child did not attend the school at which he was registered. It does not apply to children for whom parents have made educational provision in accordance with section 7 of the Education Act 1996.

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244. *Subsections (2) and (3)* of the new section make provision for the use of these sanctions when a pupil is excluded from a school for a fixed period, or is still on the register awaiting an appeal following a permanent exclusion. In the case of pupils excluded from a maintained school or a pupil referral unit under section 52 of the Education Act 2002 this applies where they have been required to attend alternative provision under section 29(3) of that Act.
245. *Subsections (4) and (5)* of the new section provide that notice of alternative provision may be given to a child's parents by any effective means (in addition to the notice in writing required by subsection (1)(b) or (2)(d)). Use of sanctions as provided for by subsections (1) and (2) would only apply if a child regularly fails to attend the provision after notice to attend it was given.
246. *Subsection (6)* of the new section provides for a defence for a parent who proves that he is providing suitable education at home or by other means.
247. *Subsection (7)* of the new section outlines who may grant the child leave of absence from alternative provision.
248. *Subsection (8)* of the new section defines "relevant school"; the effect is that subsection (2) will apply to a pupil at a school maintained by a local education authority (including a pupil referral unit), an Academy, a city technology college, or a city college for the technology of the arts.

***Section 117: Further amendments***

249. This section introduces Schedule 18.

***Schedule 18: Further amendments related to Part 4***

250. **Paragraphs 1, 3 and 4** of this Schedule make consequential amendments to the Children Act 1989, the Education Act 1996 and the Anti-social Behaviour Act 2003, extending the relevant provisions of those Acts to pupils for whom alternative provision has been made and to whom new section 444ZA(1) or (2) of the Education Act 1996 (as inserted by section 116) could apply. The amended provisions relate to: supervision orders; penalty notices; certificates of attendance; and parenting contracts.
251. **Paragraph 4** has the effect of enabling the Assembly to make an order which applies to Wales the amended provisions regarding penalty notices.
252. **Paragraph 10** amends section 52 of the School Standards and Framework Act 1998 to make provision for the requirements upon local education authorities to prepare budget and outturn statements to relate to a period covering more than one academic or financial year. This would allow the Secretary of State to adjust the requirements in relation to both budget and outturn statements as necessary to reflect the determination of budgets on a three year, academic year basis.
253. **Schedule 18** also makes other amendments to primary legislation consequential on provisions contained in Part 4 of the Act.