

## **EDUCATION AND SKILLS ACT 2008**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

10. The following definitions apply in the notes in relation to the whole of the Act:
- *1996 Act* is the Education Act 1996
  - *1997 Act* is the Education Act 1997
  - *1998 Act* is the School Standards and Framework Act 1998
  - *2000 Act* is the Learning and Skills Act 2000
  - *2002 Act* is the Education Act 2002
  - *2005 Act* is the Education Act 2005
  - *2006 Act* is the Education and Inspections Act 2006
  - *LSC* is the Learning and Skills Council
  - *QCA* is the Qualifications and Curriculum Authority
  - *The Chief Inspector* is Her Majesty's Inspector of Education, Children's Services and Skills

#### ***Local education authority***

#### ***Legal background***

11. Throughout the notes the term "local education authority" is used to refer to those local authorities with education functions identified in section 12 of the 1996 Act. The term "local education authority" has been in use since 1944 to identify those authorities but it has given rise to some perceptions that a local education authority has an identity of its own separate from the local authority.
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.
13. Education legislation, for the time being, uses the term "local education authority" and, as the Act 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 Act. It is therefore used throughout these notes. An order may be made under section 162 of the 2006 Act to convert references in legislation to "local education authority" (and references in legislation to "children's services authority") to references to "local authority".

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

### ***Sections 1 and 2: Duty to participate in education or training***

14. The first two sections establish a duty on young people to participate in a form of education or training, and set out the young people to whom that duty applies. *Section 2* creates the central duty (“the duty to participate in education or training”) and details the ways in which young people may fulfil that duty. The eligible forms of education or training are:
- a) appropriate full-time education or training;
  - b) a contract of apprenticeship; or
  - c) part-time education or training towards an accredited qualification as part of full-time occupation or alongside occupation of more than 20 hours a week.
15. *Section 1* sets out the people subject to the duty to participate in education or training. It applies to any person who is resident in England, has ceased to be of compulsory school age but not yet reached the age of 18, and has not attained a prescribed qualification at level 3.

### ***Sections 3 to 9: Interpretation***

16. In *section 3*, level 3 is defined as the level of attainment which is demonstrated by two A levels. The section enables regulations to set out the qualifications that will count for this purpose. It is intended that these will include the Progression Diploma and the Advanced Diploma once these are available. *Sections 4 to 9* provide detail and definitions for the types of participation that will fulfil the duty. *Section 4* defines appropriate full-time education or training as full-time education or training suitable to the person’s age, ability, aptitude and any learning difficulty he or she has, provided at a school, college of further education or otherwise. For example, this provides that home education and programmes of learning provided by voluntary sector organisations would fulfil the central duty to participate. “Full-time” in relation to a particular description of education provided otherwise than at school or training, may be defined in regulations under *subsection (2)* of *section 4*. “Full-time” is not defined in legislation for compulsory school age, but, otherwise, this section substantially mirrors *section 7* of the 1996 Act which provides for compulsory education pre-16.
17. For the purposes of this Part, *section 5* defines full-time occupation as working for 20 hours or more per week under a contract of employment or in any other way which may be prescribed in regulations. *Section 5* provides for regulations to be made determining whether people should be treated as working 20 hours where their normal working hours vary from week to week. Regulations made under *subsection (1)(b)* can prescribe any other kinds of occupation that should count for these purposes, including volunteering, agency work and working as the holder of an office (for example, police officers or public appointees). By virtue of *section 62*, Crown employment (for example, civil servants or those in the armed forces) counts as work under a contract of employment.
18. *Section 6* defines relevant training or education for people who are fulfilling the duty to participate through the route described in *subsection (1)(c)* of *section 2*. It must consist of a course or courses leading towards a qualification accredited by the QCA.
19. Where a person is not fulfilling the duty to participate through full-time education or training or under a contract of apprenticeship, the person should be fulfilling the duty in accordance with *section 2(1)(c)*. The time when the person should be fulfilling the duty in this way is divided into relevant periods and the person must participate in sufficient relevant training or education in each of those periods. *Section 7* provides for the dates on which relevant periods begin and end to be set by regulations (except in the case of relevant periods at the beginning or end of a time when the person should be fulfilling the duty in this way).

20. *Section 8* provides that if a person fulfils the duty to participate by working and pursuing part time education or training towards an accredited qualification, then the training provided by a person's employer, or any other education or training towards accredited qualifications, must be equivalent to 280 guided learning hours per year. It establishes that those guided learning hours may be actual hours of guided learning or a value assigned to an accredited qualification by the QCA. Regulations will prescribe what constitutes sufficient education or training where this option is pursued for relevant periods of less than a whole year, for instance where a young person changes the way he or she is fulfilling the duty mid-way through a year, or because their 18th birthday falls before the end of the year. *Section 9* requires the QCA to assign guided learning hours in accrediting qualifications.

## ***Chapter 2: Local education authorities and educational institutions etc***

### ***Section 10: Duty to promote fulfilment of duty imposed by section 2***

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

### ***Section 11: Duty to promote good attendance***

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

### ***Section 12: Duty to make arrangements to identify persons not fulfilling duty imposed by section 2***

23. This section places a duty on local education authorities to identify those young people in their area who are subject to the duty to participate and are not participating.

### ***Sections 13 to 17: Information***

24. Educational institutions are under a duty to notify the appropriate service provider if a person is not participating in education or training and they believe that the person is not fulfilling the duty (*section 13*). If the young person belongs to a different local authority area, the notification should be passed on to the service provider for that other area. The local education authority is responsible for ensuring that this happens, either by passing on the notification, where it receives it itself, or by arranging for its service provider to do so. The section sets out to which institutions the duty applies, and who is the appropriate service provider. "Service provider" means the local education authority, where the authority provides services in exercise of its functions under *section 68* or, alternatively, where, in the exercise of those functions, the authority makes arrangements for the provision of those services, the person providing those services. These services are currently provided under arrangements made by the Secretary of State and are known as "Connexions". This name will be retained when the responsibility for providing the Connexions service is transferred to local education authorities in accordance with the provisions in Part 2. An institution's local Connexions office will be the "appropriate service provider" for the purposes of this section.
25. *Section 14* sets out the information that educational institutions must provide to enable local education authorities to identify those young people who are not participating, and

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

26. Under [section 15](#), social security information may be supplied by the Secretary of State (or a person providing services to the Secretary of State) to enable a local education authority to fulfil its functions under this Part. The section sets out under what circumstances further disclosure of this information is permissible, under what circumstances it is a criminal offence and the penalty that may be imposed.
27. [Section 16](#) sets out certain public bodies that may share information about a young person with a local education authority in order for it to fulfil its duty. It is primarily an enabling provision as, without it, there might be doubt as to whether the particular public body involved had the legal power to share information for the purposes of fulfilling local authority functions under Part 1. [Section 17](#) allows information held by local education authorities and information held by their service providers to be shared and used, either for purposes under Part 1 of the Act, or for the purposes of sections 68 to 79. The intention is that local education authorities or service providers will continue to maintain the database currently established and maintained under the 2000 Act to help them provide the right support services to young people (under Part 2 of this Act) and promote and ensure fulfilment of the duty to participate (under Part 1).

### ***Section 18: Guidance***

28. This section requires local education authorities when exercising their functions under this Part to have regard to any guidance given by the Secretary of State.

### ***Chapter 3: Employers***

#### ***Sections 19 and 20: Interpretation***

29. [Section 19](#) defines the contracts of employment to which duties in this Chapter apply. These are contracts with a duration of more than eight weeks and which include more than 20 hours work per week. [Section 20](#) explains what counts as making appropriate arrangements. A person has made appropriate arrangements if he or she has enrolled on a course or courses constituting relevant education or training (defined in section 6), or arrangements have otherwise been made for him or her to receive relevant education or training, or if he or she is participating in full-time education or training. A person does not need to have enrolled for sufficient (that is, enough hours in the relevant period) relevant education or training in order to count as having made appropriate arrangements. For example, he or she may be waiting for a course to end before enrolling on another.

#### ***Sections 21 to 26: Commencement of employment***

30. [Section 21](#) places a duty on employers not to employ a person unless they have taken reasonable steps to check that the person has made appropriate arrangements to participate in relevant education or training. The duty does not require the employer to check that the arrangements cover relevant training or education that is sufficient (that is enough hours in the relevant period). For example, an employer would check that a potential employee could produce a letter from a learning provider indicating that he or she had enrolled on a course. The section provides for an exception to this if the contract is made conditional on the person making arrangements to undertake appropriate education or training, in which case he or she must have done so before employment commences. This enables an employer to have a role in a young person's decision about the type of education or training to pursue.
31. If an employer does not fulfil this duty, [section 22](#) provides for a local education authority to serve a penalty notice on the employer and sets out the circumstances in which the notice can be given. It provides for the amount of the financial penalty to be determined by regulations, and sets out the requirements for what is included in the

notice. Should the employer fail to pay the financial penalty, the local authority could pursue the debt in a county court.

32. *Section 23* provides for an employer to object to a penalty notice within two weeks of being given the notice under section 22. The local education authority must consider the employer's notice of objection and either withdraw the penalty notice, reduce the amount of the penalty (if the amount was incorrect) or confirm the penalty notice. The local education authority must then notify the employer of its decision within a prescribed time period.
33. *Section 24* enables an employer to appeal to the First-tier Tribunal against a penalty notice given under section 22. The employer could appeal on the grounds that: they did not commit the contravention stated in the penalty notice; the circumstances in which the contravention took place make the penalty notice unreasonable; or the amount stated in the penalty notice is too high. Any appeal must be made within the time limit set by the Tribunal Procedure Rules under paragraph 4 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007. The First-tier Tribunal has the power to: allow the appeal and cancel the penalty notice; replace the penalty with a smaller amount (if the amount was incorrect); or dismiss the appeal. If an appeal has been made, but not yet determined, *section 25* provides the local education authority with the power to withdraw the penalty notice. *Section 26* sets out the sums that must be repaid to an employer if a penalty notice is withdrawn under sections 23 or 25.

#### ***Sections 27 to 36: Employer to enable participation in education or training***

34. These sections place a duty on employers to permit an employee, who is subject to the duty in section 2, to participate in education or training. *Sections 27* and *28* set out how a young person can notify an employer of the arrangements for appropriate education or training that he or she has made, what form that notification should take and what information the young person must tell the employer. Where a young person notifies the employer before beginning employment, the employer may fulfil the duty by arranging the employee's working hours around the time he or she is required to attend training, by allowing the employee time off to participate, or through a combination of these two mechanisms. Hours spent training will not count towards the 20 hours of work per week a young person must be doing to be counted as being in full-time occupation. This may mean that the employee needs the employer to rearrange working hours rather than allowing time off during working hours, in order not to take the employee below the 20 hours per week required.
35. If notification is given after employment has begun, for example where arrangements have changed, under section 28 the employer must, so far as is reasonable, permit the employee to participate in education or training in accordance with appropriate arrangements. The employer may fulfil the duty by offering to vary the terms and conditions of the employment contract, or by permitting the employee to take time off to participate, as far as is reasonable. What is reasonable is determined by having regard to the needs of the young person in fulfilling the duty to participate, the circumstances of the employer's business and the effect of the person's absence from work on the running of the business.
36. *Section 29* provides that if a person reaches 18 years of age, remains in employment and has been participating in education or training in order to fulfil the main duty, the duty on the employer remains in place until the course finishes, the young person ceases to be resident in England, the person attains a level 3 qualification or the person attains the age of 19.
37. *Section 30* provides that an enforcement notice may be issued by the local education authority where the employer has not fulfilled the duty to enable participation. The Government's intention is to issue guidance to local education authorities to the effect that an employer should first be asked to fulfil the duty and given the chance to remedy the mistake voluntarily before an enforcement notice is issued. The notice sets out

the steps the employer must take in order to meet the duty. Section 18 requires local education authorities to have regard to such guidance issued by the Secretary of State.

38. If the employer fails to comply with the requirements in an enforcement notice, *section 31* provides that a local education authority can issue a penalty notice and states what information the penalty notice must contain. Should the employer fail to pay the financial penalty, the local education authority could pursue the debt in a county court.
39. *Section 32* enables a local education authority to withdraw an enforcement notice (provided that, if a penalty notice has been issued, any appeal against it has not yet been determined). Where an enforcement notice is withdrawn, no penalty notice can be issued and any penalty notice already issued ceases to have effect.
40. *Section 33* provides for an employer to object to a penalty notice within two weeks of being given the notice under section 31. The local education authority must consider the employer's notice of objection and either withdraw the penalty notice, reduce the amount of the penalty (if the amount was incorrect) or confirm the penalty notice. The local education authority must then notify the employer of its decision within a prescribed time period. Under *section 34* an employer may appeal to the First-tier Tribunal against a penalty notice given under section 31. The employer could appeal on the grounds that: they did not commit the contravention stated in the penalty notice; the circumstances in which the contravention took place make the penalty notice unreasonable; or the amount stated in the penalty notice is too high. Any appeal must be made within the time limit set by the Tribunal Procedure Rules under paragraph 4 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007. The First-tier Tribunal has the power to: allow the appeal and cancel the penalty notice; replace the penalty with a smaller amount (if the amount was incorrect); or dismiss the appeal.
41. *Section 35* provides that a penalty notice can be withdrawn by a local education authority, until any appeal under section 34 has been determined, regardless of whether a notice of objection has been given. If a penalty is reduced or withdrawn, *section 36* provides that any sums of money already paid must be repaid to the employer with interest at the appropriate rate.

#### ***Sections 37 to 39: Supplementary***

42. *Sections 37, 38 and 39* amend existing legislation to add taking time off or seeking to take time off (or to rearrange working hours) in order to participate in education or training as a result of the duty in section 2 to the grounds on which a person has a right not to suffer detriment, to the grounds on which dismissal is to be treated as automatically unfair, and to the grounds on which selection for redundancy is to be treated as automatically unfair. In order to claim unfair dismissal a person does not need to have the usual period of one year's continuous employment. Section 39 provides that section 63A of the Employment Rights Act 1996, which establishes a right to paid time off for young people aged 16-19 if they do not already have a level 2 qualification, does not apply to people subject to the duty to participate and will continue to apply only in Wales and Scotland.

#### ***Chapter 4: Parenting contracts and parenting orders***

43. This Chapter enables local education authorities to take certain enforcement action against parents of young people who are not fulfilling their duty to participate, where this would be in the interests of ensuring that the young person participates.
44. *Section 40* confers on local education authorities in England the power to enter into parenting contracts with a parent of a young person who is not fulfilling their duty to participate and where the authority considers that such a contract would be in the interests of the young person's fulfilment of that duty.



45. A parenting contract is a voluntary agreement. *Subsection (6)* means that parenting contracts cannot result in certain types of legal action by either party. Those types of legal action are for breach of contract and for civil damages. A parenting contract is a document signed by the parent and on behalf of the local education authority, containing a statement by the parent agreeing to comply with the requirements in the contract, and a statement by the local education authority that it agrees to provide support to the parent for the purpose of complying with the contract's requirements. The aim is to ensure that the young person fulfils their duty to participate. Parenting contracts under section 40 are similar to parenting contracts under the Anti-Social Behaviour Act 2003. If a parent does not enter into a parenting contract when it is offered, or fails to comply with one, a court must take this into account in deciding whether to make a parenting order (see *section 42*).
46. *Section 41* enables local education authorities to apply to a magistrates' court for a parenting order in respect of a parent of a young person who is subject to the duty to participate and is not fulfilling that duty. A parenting order requires the parent to comply with the requirements specified in the order, for a specified period not exceeding 12 months. The requirements can include a counselling or guidance programme, part of which may be residential if certain conditions are met. A parent may, under *section 43*, appeal to the Crown Court against a parenting order. Failure to comply with a parenting order is an offence.
47. *Section 42* requires the court, in making a parenting order, to take into account any refusal by the parent to enter into a parenting contract, or any failure to comply with a parenting contract he or she has entered into. But a parenting order can be made without a parenting contract having been entered into.
48. *Section 44* provides that local education authorities and responsible officers, in exercising their functions in relation to parenting contracts and parenting orders, must have regard to how a parent's actions, or lack of, affect a young person's duty to participate. A responsible officer in relation to a parenting order means an officer of a local education authority who is specified in the order. This section also allows regulations to make provision about the exercise by local education authorities of their functions in relation to parenting contracts and parenting orders, and to require information to be provided by one local education authority to another. The reason for this provision is that a young person who is failing to fulfil the duty may be in the area of one local education authority, but his parent may be in the area of another, and it will need to be clear which authority should lead, and to ensure that both authorities cannot take action against the same parent for the same reason at the same time.

## ***Chapter 5: Attendance notices***

### ***Sections 45 to 50: Initial steps, attendance notices, attendance panels and appeals***

49. These sections set out the procedure that a local education authority may follow should it believe that a person is failing without reasonable excuse to fulfil the main duty to participate under section 2. The Government intends to issue guidance to local education authorities to assist them in interpreting what would be a reasonable excuse. *Section 45* makes clear that before commencing this process, the local education authority must ensure that appropriate support has been made available and that the young person has been given the opportunity to take advantage of services designed to support participation. It provides that the local education authority must then give the young person 15 days' notice in writing of its intention to issue an attendance notice. If the only way in which the young person is failing to fulfil the duty is that the relevant education or training in which he or she is participating is not "sufficient" (not enough hours in the relevant period), it is for the local education authority to show that there is no reasonable excuse for not having made such arrangements, putting the burden of proof on the local education authority rather than on the young person. This may

arise, for example, where a young person needs to await results for one course before enrolling on a subsequent course.

50. If the young person fails to participate without reasonable excuse after the local education authority has given 15 days' notice in writing, [section 46](#) enables the local education authority to issue an attendance notice. The attendance notice must specify the type of provision that should be undertaken, a description of the course, and details of where and when the young person should attend. An attendance notice ceases to have effect when a young person is no longer subject to the duty to participate, for whatever reason.
51. [Section 47](#) provides that the education or training specified in the attendance notice must be a course provided at a school, college or other education establishment or a contract of apprenticeship, and be a way of fulfilling the section 2 duty. It must be suitable to the person, having regard to their age, ability and aptitude and any learning difficulty he or she may have, and the local education authority must consult the provider of education or training.
52. [Section 48](#) requires a local education authority to set up an attendance panel in accordance with regulations, with a chair that is not a member of the authority. The panel's functions include hearing appeals against attendance notices (as set out in [section 49](#)), appeals against penalty notices (set out in [section 54](#)), making recommendations to local education authorities, and considering local education authorities' intentions to commence court proceedings. Regulations will specify how the panel must be constituted and its procedures in carrying out those functions. Regulations under section 48 may also apply sections 173 to 174 of the Local Government Act 1972 in relation to an appeals panel which put beyond doubt the kinds of allowances that could be paid.
53. [Section 50](#) provides that a local education authority can vary or revoke an attendance notice in certain circumstances, and can specify additional education or training. In particular, where the education or training specified in the notice ends, and the young person is still subject to the duty, the local education authority may specify additional education or training.

### ***Sections 51 to 60: Failure to comply with attendance notice***

54. [Section 53](#) enables a local education authority to issue a penalty notice which gives the young person the opportunity to make a payment to the local education authority in order to release him or her from the possibility of being convicted for the offence of failing to comply with an attendance notice. Regulations can be made to specify the contents of penalty notices and to set out the amount of the penalty (which can be different in different circumstances). The amount of the financial penalty must not exceed the maximum fine that could be imposed on conviction of the offence, which is level 1 on the standard scale of fines for summary offences.
55. There is an enforcement procedure if a young person fails to comply with an attendance notice. [Section 51](#) sets out that non-compliance is a criminal offence and liable to a fine of a maximum of level 1 on the standard scale. Currently level 1 is a maximum of £200, with the actual amount in each case being decided by the court in light of individual circumstances. [Section 52](#) provides that proceedings cannot be commenced unless a penalty notice has first been given under [section 53](#) and has not been paid. The attendance panel must have recommended that proceedings be instituted. Proceedings cannot be started after the young person has ceased to be subject to the duty to participate, or if the young person is participating in some way that is different from the provision specified in the notice but nevertheless fulfils the duty to participate.
56. [Section 54](#) sets up the procedure for appealing to an attendance panel against a penalty notice, which may be further provided for in regulations made under this section.



57. *Sections 55 to 60* provide that ordinary adult fine enforcement procedures will not apply in the case of a person who received a fine for an offence under clause 51 of failure to comply with an attendance notice without reasonable excuse.
58. *Section 56* applies to a person who reaches 18 after being given a fine. Once the individual turns 18, fine enforcement is transferred from the magistrates' court to a county court, provided that the magistrates' court is satisfied that the young person has the means to pay the fine (and any enforcement processes already begun have been completed). The magistrates' court's powers (apart from those relating to enforcement processes already started) cease when the person reaches 18, so that subsequent enforcement can take place only in a county court. The county court has no power to impose custody for non-payment. Any amount outstanding in relation to the surcharge and costs orders is transferred to the county court, together with the amount of the fine.
59. *Section 57* makes similar provision in respect of a person who is 18 when given a fine. In that case the fine (and associated surcharge and costs) is enforceable from the outset only in a county court.
60. *Subsection (9)* of section 56 and *section 58* provide for the Lord Chancellor to make further detailed provision by subordinate legislation about the orders, warrants and statutory provisions relating to enforcement of fines, costs or surcharges or to any power to enforce payment of such sums that continue and cease to have effect after the young person reaches 18.
61. Where a person aged under 18 fails to pay a fine, a youth default order could be made under section 39 of the Criminal Justice and Immigration Act 2008. Paragraph 90 of Part 2 of Schedule 1 will amend Schedule 7 to that Act to allow the magistrates' court to revoke a youth default order relating to a fine in respect of an offence under section 51 once the young person reached the age of 18, and to state how much of the original fine is to be treated as remaining outstanding. In doing that the court can take into account the extent to which the young person has complied with the youth default order. That amount would (if the magistrates' court so ordered under section 56) be enforceable only in a county court.

### ***Section 60: Review of initial operation of Chapter***

62. *Chapter 5* of Part 1 makes provision about the actions and proceedings that may be taken if a young person fails to fulfil their duty under clause 2 to participate in education or training. *Section 60* provides for a review of, and report on, the initial operation of that Chapter. It is the Government's intention that this review will be conducted by a person independent of the Government. Under clause 173, Part 1 must be fully in force by the school leaving date for 2015 (and will have come into force for certain year groups before then). The period reviewed will, therefore, cover the first full year for which Part 1 is in force.

### ***Chapter 6: Miscellaneous***

63. For the purposes of Part 1, *section 61* enables regulations to state who is to be treated as the employer in relation to ways of working prescribed under section 5, and to modify provisions in their application to these prescribed ways of working, to reflect different circumstances. One effect of this section is that persons who are not normally regarded as employers (for example, the person in charge of a young person's voluntary work) could be treated as employers for these purposes.
64. *Section 62* sets out how Crown employees are to be treated in relation to Part 1 of the Act. They are to be treated as if employed under contracts of employment.
65. Although the duties on employers in Chapter 3 of Part 1 apply in relation to employment in the House of Lords and House of Commons respectively in the same way that they

do to employment of all other young people, *section 63* and *subsection (3)* of *section 64* provide that the powers for local authorities to take enforcement action not to apply.

66. *Section 65* provides that financial penalties are payable to the local education authority and that funds from them can only be used for specified functions, which it is intended will be the process of giving and administering of penalty notices, or paid to the Secretary of State. Where a penalty notice has been given to an employer, it is not enforceable whilst a notice of objection or an appeal is outstanding.
67. *Section 67* enables the Secretary of State, by order, to make provision for Wales corresponding to the duties on employers in sections 19 to 36, and related provisions in sections 37, 38, 39, 61, 62 and 65. This power would apply only if the National Assembly for Wales made a Measure that appeared to the Secretary of State to correspond to section 2 of the Bill – effectively a Measure raising the participation age in Wales. The National Assembly for Wales could not currently make such a Measure, but could gain the competence to do so in future through a Legislative Competence Order under section 95 of the Government of Wales Act 2006. This section ensures that if the participation age were raised in Wales in future, the duties on employers could be applied in Wales too, and would apply in the same way to employers on either side of the border. Before an order can be made under this section the Welsh Ministers must be consulted.

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

### ***Sections 68 to 79: Provision of support services***

68. *Sections 68 to 79* give effect to proposals set out in the Green Paper *Youth Matters* <http://www.everychildmatters.gov.uk/youthmatters/> (July 2005) to devolve the responsibility for delivering the service known as “Connexions” to local education authorities. The funding for the Connexions service transferred to local education authorities in April 2008. The sections replace sections 114 to 121 of the 2000 Act, but transfer responsibility for provision of the services from the Secretary of State to local education authorities and extend them to adults aged 20 to 24 with learning difficulties. Amendments consequential on these changes are made in Schedule 1 to the Act.
69. *Section 68* places a duty on local education authorities in England to make available to young people and relevant young adults for whom they are responsible such services as they consider appropriate to encourage, enable or assist them to engage and remain in education or training. A relevant young adult is a person aged 20 to 24 years who has a learning difficulty within the meaning of subsections (5) and (6) of section 13 of the 2000 Act. The services made available will continue to be known as Connexions services. This section also provides for local education authorities to have regard to any guidance issued by the Secretary of State, and places them under a duty to comply with any directions given by the Secretary of State relating to the exercise of their functions under section 68.
70. *Section 68* provides that a local education authority can fulfil the duty to make services available either by providing them itself or by making arrangements with others, which could include other local education authorities. In addition, *subsection (5)* provides that the duty on a local education authority to make services available to a young person or relevant young adult for whom it is responsible does not apply if another local education authority is also responsible for the person and services are actually being provided to the person by that other authority or under arrangements made by it. Taken together with the definition of which persons are in the scope of a local education authority’s responsibility in *section 78(2)*, section 68(5) addresses the situation where two local education authorities are both potentially under a duty to make services available to the same person.

71. *Section 69* gives the Secretary of State the power to give directions about matters specified in the section to a local education authority relating to the exercise of its duty to make support services available for effective participation (*subsection (1)* of section 68). Directions may specify the services to be made available to young people and relevant young adults (for example, it may be that directions are given about services for young people who are not in education, employment or training). Directions may also specify the descriptions of individuals who may be involved in ways specified in the direction in providing services. This may include specifying minimum qualifications for personal advisers. In addition, directions may require the local education authority to secure that it or its service providers co-operate with the provider of the national telephone helpline and internet-based service for young people, currently known as Connexions Direct (provided under section 74). Local education authorities may be directed to cooperate with those exercising functions or providing services relating to social security or connected with finding suitable employment, education or training, such as JobCentre Plus. Directions may also be given about the use of the Connexions brand, and may impose requirements as to record keeping and the provision of information. Record keeping requirements may include requirements for authorities and their Connexions service providers to maintain a Connexions database so as to help service providers offer the right support services to young people (under Part 2) and support for local education authorities in promoting fulfilment of the duty to participate (under Chapter 2 of Part 1). Directions about the provision of information would include directing authorities to ensure that, where there was a change in statutory responsibility for the provision of Connexions services in respect of a person, information would speedily pass from the earlier authority or its service provider to the authority that was now responsible or its service provider.
72. *Subsection (2)* allows a direction to require a local education authority to exercise its functions under section 68 in such a way that Connexions services are provided in conjunction with other services or the exercise of other functions specified in the direction. *Subsection (3)* makes clear that the other functions or services specified in the direction need not relate to education or training and may be functions or services relating to social security. These subsections give the Secretary of State the power to direct local education authorities to ensure that the person providing Connexions services also carries out social security functions under relevant powers contained in social security legislation. Under arrangements made with the Secretary of State, Connexions service providers currently conduct work focused interviews for 16 and 17 year olds within the meaning given in sections 2 and 2AA of the Social Security Administration Act 1992. The interviews aim to enable participation in education or training and focus on training or educational opportunities. The intention is that the direction-making power may be used to ensure that the current arrangements will continue. It is also intended that it may also be used in the future in relation to functions within the Welfare Reform Act 2007 such as:
- work focused interviews within the meaning of section 12 of that Act;
  - work related activity within the meaning of section 13 of that Act; and
  - action plans within the meaning of section 14 of that Act,
- with the aim of helping the person into employment or keeping him or her in employment.
73. *Section 70* gives local education authorities the power to enter into arrangements made with them by other local education authorities for the provision of Connexions services (see section 68(1)). It also gives local education authorities the power to provide, secure the provision, or participate in the provision of Connexions services other than in respect of persons for whom they are responsible, including persons from other areas.
74. *Section 71* allows the Connexions service provider, as part of the Connexions service, to enter into a learning and support agreement with a young person aged 13 to 19.

This includes a young person who is not participating, or at risk of not participating, in education or training as required by section 2.

75. A learning and support agreement comprises agreement by a young person to comply with certain requirements, and agreement by the Connexions service provider to provide specified support (which could, for example, include financial support or an incentive payment) on condition that the young person complies with those requirements. It does not amount to a legally binding contract. The process of entering into a learning and support agreement involves identification and assessment of need, and the young person must be involved in negotiating the agreement.
76. [Section 45\(5\)](#) requires a local education authority to ensure that Connexions support has been offered to a young person to whom Part 1 applies before taking enforcement action for failure to comply with the duty imposed by section 2. Entering into a learning and support agreement is an example of the kind of support that might be offered in this situation.
77. [Section 72](#) sets out the information that educational institutions must provide to persons involved in the provision of Connexions services to help ensure that all young people or relevant young adults are offered support appropriate to their circumstances and, in particular, that any not in education, employment or training are identified and offered prompt support. The section also sets out what information a pupil or student (or their parent, where the person is younger than 16) can instruct not to be provided.
78. The purpose of [section 73](#) is to allow Connexions services to be provided at schools and other educational institutions that young people attend. It places a duty on the responsible persons for educational institutions to allow Connexions service providers reasonable access to pupils and students and to provide reasonable facilities on the institution's premises for providing services, when requested to do so by a Connexions service provider.
79. [Section 74](#) gives the Secretary of State the power to provide or secure the provision of remote Connexions services on a national basis, for example, through the internet and other electronic media, for all 13-19 year olds and for "relevant young adults".
80. [Section 75](#) places a duty on the Chief Inspector to inspect and report on Connexions services (provided under sections 68 and 74), when requested to do so by the Secretary of State. In addition, the section gives the Chief Inspector the power to carry out such other inspections of the provision of those services as the Chief Inspector thinks fit.
81. [Subsection \(5\)](#) gives the person carrying out or participating in the inspection the necessary powers concerning rights of access to the premises and records of Connexions service providers. [Subsection \(6\)](#) provides the Chief Inspector with the power to report on and publish his findings. [Subsection \(7\)](#) makes it a criminal offence for anyone to wilfully obstruct an inspection.
82. Under [section 76](#), social security information may be supplied by the Secretary of State (or a person providing services to the Secretary of State), to a local education authority or other person involved in the provision of Connexions services for young people, for the purposes of the provision of those services. The section sets out under what circumstances further disclosure of this information is permissible, under what circumstances it is a criminal offence and the penalty that may be imposed. Information may only be supplied in respect of young people, not relevant young adults, because the concern is to ensure that Connexions services are aware of all young people who may not be in education, employment or training and for whom it is a policy priority to provide support. [Section 77](#) gives the persons and bodies listed in [subsection \(2\)](#) the power to supply information about a young person or relevant young adult to any other person or body involved in the provision of Connexions services for the purposes of the provision of those services.

83. **Paragraph 74** of Part 2 of Schedule 1 amends the Welfare Reform and Pensions Act 1999. This is to ensure that social security information may be shared between the Department for Work and Pensions (DWP) and a county council, where that county council is exercising social security functions in respect of a young person for whom they are required to provide support via the Connexions services. Regulations made under this social security legislation define a “local authority” by reference to the Social Security Administration Act 1992. The definition of local authority in that Act does not include a county council in England. Therefore, but for these amendments, the current data sharing would not be able to continue where a county council is exercising Connexions functions. Other minor and consequential amendments are made in Schedule 1.
84. **Section 79** repeals sections 114 to 121 of the 2000 Act which provided for the establishment in England of the Connexions service by the Secretary of State.

***Section 80: Assessments relating to learning difficulties***

85. **Section 80** inserts sections 139A to 139C into the 2000 Act. The effect is to transfer to local education authorities, and to expand, the existing duty of the Secretary of State to arrange for assessments of a person’s educational and training needs in certain circumstances, and his power to arrange such assessments. New subsections 139A (2) and (4) place a duty on a local education authority to arrange for an assessment of a person in respect of whom it maintains a statement of special educational needs, who is either in his or her last year of compulsory schooling or over compulsory school age but still at school, at some time during the person’s last year of schooling. In either case, the assessment is only required where it is believed that the person will leave school at the end of their last year of compulsory schooling or during or at the end of their current school year to pursue post-16 education, training or higher education. This expands on the current duty on the Secretary of State under section 140 of the 2000 Act to arrange for these assessments at some time in year 11 (the last year of compulsory schooling), where the Secretary of State believes that the person will be leaving school at the end of that year to receive post-16 education or training.
86. Inserted section 139A(5) gives local education authorities a power to arrange for an assessment at any time of a person:
- a) who is in their last year of compulsory schooling; or
  - b) who is over compulsory school age but has not reached the age of 25; and
  - c) who appears to the authority to have a learning difficulty within the meaning of section 13 of the 2000 Act; and
  - d) who is either already receiving, or likely to receive in the opinion of the authority, post-16 education, training or higher education.
87. Inserted section 139C of the 2000 Act applies the assessment provisions to those being educated at home. In relation to England, these new sections replace the existing provision for assessments in section 140 of the 2000 Act.
88. Consequential amendments to the 2000 Act are made in paragraphs 75 to 77 of Schedule 1.

***Section 81: Careers education***

89. **Section 81** amends Part 7 of the 1997 Act which requires state secondary schools to provide all pupils with a programme of careers education and appropriate information, and up-to-date reference materials related to career options. Section 44 of the Act requires schools to provide access to external careers advisers to provide career advice and guidance to pupils. **Subsection (2)** of this section requires all local education authority maintained secondary schools in England to present careers information in



an impartial manner and to provide careers advice which is in the best interests of the pupil, and not to promote the interests of the school or other persons or institutions contrary to the pupil's interests. *Subsection (3)* requires the information and reference materials provided to present a full range of learning and career options and not to promote unduly one option over another. *Subsection (4)* requires schools to have regard to guidance issued by the Secretary of State, which is intended to support them in delivering effectively the duties in Part 7 of the 1997 Act, as amended by subsections (2) and (3) of section 81.

### ***Section 82: Apprenticeships***

90. This section amends sections 2, 3 and 4 of the 2000 Act to make clear that the LSC is under a duty to provide proper facilities for apprenticeships for 16 to 18 year olds and reasonable facilities to those over the age of 19. The section also requires the LSC to encourage employers to offer apprenticeship contracts and contracts of employment where training is provided. The wording of the section makes clear that it covers all forms of apprenticeship.

### ***Section 83: Provision of transport etc for persons of sixth form age: duty to consider journey times***

91. Local education authorities must prepare transport policy statements each academic year, which set out transport arrangements for people of sixth form age to attend educational establishments. Transport statements are required under section 509AA of the 1996 Act (inserted by the 2002 Act). *Section 83* introduces a requirement on local education authorities to have regard to journey times in preparing their transport statement. This section has the effect of ensuring that travelling time will be one of a range of factors a local education authority must consider, along with cost, the distance a young person will have to travel and the need for choice of education provision.
92. The proposed Learner Transport (Wales) Measure was passed by the National Assembly for Wales on 30 September 2008. If approved by Her Majesty in Council, it will confine the application of section 509AA of the 1996 Act to England, so section 83 would not affect local education authorities in Wales.

### ***Section 84: Exercise of travel functions by local education authorities in England: duty to have regard to religion or belief of persons of sixth form age***

93. *Section 84* deals with the duties placed upon a local education authority with regards to the religion or belief of young people of sixth form age. Where local education authorities already have regard, in exercising their functions in relation to transport, to a parent's wishes where these are based on religion or belief, this section has the effect of ensuring that the local education authority must also consider the wishes of a young person of sixth form age where these are based on religion or belief.

### ***Section 85: Co-operation as regards provision of 14-19 education and training***

94. *Section 85* deals with local collaborative arrangements in relation to the education and training of 14 to 19 year olds. It refers to section 10 of the Children Act 2004. That section places a duty on children's services authorities (i.e. local authorities) to make arrangements to promote co-operation between the authorities, specified partners and other relevant persons with a view to improving the well-being of children relating to a range of factors, including education and training. Section 85 provides that the arrangements under section 10 of the Children Act 2004 must include arrangements to promote co-operation between the children's services authority and its partners and persons who are responsible for providing 14-19 education or training. Section 85 provides that the arrangements under section 10 must include arrangements to promote co-operation between the local education authority, its partners and persons who are responsible for providing 14-19 education or training. The section also enables

children's services authorities to set up joint arrangements for co-operation on 14-19 education or training covering the areas for which they are responsible.

### **Part 3: Adult Skills**

#### ***Section 86: Learning aims for persons aged 19 and over***

95. *Section 86* inserts three new sections and a new Schedule 1A into the 2000 Act. New section 4A places a new duty on the LSC to secure the provision of proper (rather than reasonable) facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications. The qualifications will typically be those at relatively low levels of learning, which are designed to equip people with basic and intermediate skills for work and everyday living.
96. The broad standards of achievement (or "learning aims") for this purpose are set out in Schedule 1A. They are level 1 literacy, entry level 3 numeracy and level 2. The Secretary of State may specify in regulations the qualifications to which the duty applies.
97. The duty will apply only to a learner's first qualification at the specified level. For example, the LSC will not be under a duty to 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 (under section 4C(1)) 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.
98. Facilities are proper if they are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. In performing its duty, the LSC must take account of a number of factors, such as the education and training needs in different sectors of employment, and of any guidance issued by the Secretary of State. The LSC must also act with a view to encouraging diversity in education and training and to increasing opportunities for individuals to exercise choice.
99. For example, in respect of courses for which there are high levels of demand fairly consistently across the country – such as NVQ level 2 in Health and Social Care – the duty would be satisfied if provision for learners were accessible widely across many institutions and with a good regional distribution. This position would differ where demand both for courses and for skills is more limited. For aerospace courses, for example, the LSC must have regard to proportionate expenditure; the duty may require a more limited offer of places concentrated in geographical areas with links to the industry. Learners seeking to access these more unusual courses may need to travel to take up courses or the offer of a course which is analogous to the aerospace qualification, for example, engineering.

#### **Learning aims for persons over 19: payment of tuition fees**

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

101. There is also a duty for the LSC to secure the provision of sufficient financial resources for the purpose of paying tuition fees for people aged 19 up to 25 years old to attain their first level 3 qualification.
102. The Secretary of State may amend the relevant provisions of section 4B so as to vary the ages at which learners qualify for financial help under that section. This will be subject to the affirmative resolution procedure.

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

103. The Schedule sets out the learning aims for people aged 19 or over i.e. the broad categories from which qualifications may be specified as qualifications for which the LSC must secure proper facilities (new section 4A) or pay for tuition fees (new section 4B).
104. These categories are:
  - a) level 1 literacy (the level of attainment at which an adult's skills are functional and sufficient for operating effectively in day-to-day life);
  - b) entry level 3 numeracy (the functional level of attainment for numeracy);
  - c) level 2;
  - d) level 3.
105. 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 through regulations include the following:
  - a) level 1 literacy
    - level 1 certificate in Adult Literacy
  - b) entry level 3 numeracy
    - entry level 3 certificate in Adult Numeracy
  - c) level 2
    - level 2 National Vocational Qualifications (NVQs)
    - Vocationally Related Qualifications (VRQs) at level 2 of 325 guided learning hours or more
  - d) level 3
    - 2 or more A-levels
    - 1 or more A-level double Award
    - level 3 NVQs
    - level 3 Diplomas
    - International Baccalaureate
    - Access to HE certificate/diploma
106. The Secretary of State may amend the Schedule in order to specify that a particular category of qualification is no longer within scope of the duties or to add a new category of qualification. This will be subject to the affirmative resolution procedure.

***Sections 87 to 91: Assessments of effectiveness of education or training***

107. These sections allow for the sharing of information between Her Majesty's Revenue and Customs (HMRC), the Department for Work and Pensions (DWP), the Department for Innovation, Universities and Skills (DIUS) and the devolved administrations. The information will be shared in order to assess: the effectiveness of education or training of those aged 19 and over; policy in relation to the provision of such education or training; and policy in relation to social security or employment as it affects the provision of, or participation in, such training or education.
108. *Section 87* allows for information about individuals' benefit to be disclosed to the devolved administrations. It also allows information about individuals' learning activities to be disclosed in either direction between the devolved administrations and the Secretary of State (DIUS and DWP). This reflects the devolved nature of education and training. Finally, it allows for information relating to education and training and information relating to benefits to pass between DIUS and DWP. *Section 87* also defines the important concept of an assessment function in *subsection (4)* which is then referred to in sections *88(1)*, *89(1)*, *89(2)* and *90(2)*.
109. *Section 88* allows for information about individuals collected in connection with income tax or tax credits to be disclosed by HMRC to the Secretary of State (DIUS or DWP) or a devolved administration.
110. *Sections 87* and *88* only permit information to be used or disclosed for the purpose of assessing the effectiveness of learning undertaken, or the purpose of making assessments of policy. *Section 89(1)* ensures that a recipient of information disclosed under sections 87 or 88 is only permitted to use it for one of those purposes. It also requires that, so far as reasonably practicable, the information is used in a way which does not allow the individual to be identified. *Section 90* makes it an offence for an individual to disclose the information other than in accordance with the purposes outlined in section 89 where disclosure reveals the identity of a person or a person's identity could be deduced from the information disclosed. A defence is provided where the person charged reasonably believes that the disclosure is lawful or information is already lawfully in the public domain.
111. *Section 91* ensures that the disclosure or use of the same information under other statutory provisions or common law powers is unaffected. It explains the use of certain terms used in sections 87 to 91 including identifying the devolved authorities as the Scottish and Welsh Ministers.

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

***Chapter 1: Independent educational institutions in England***

112. The definition of "independent school" in section 463 of the 1996 Act applies for the purposes of this Chapter (see *section 168*). Under that definition an "independent school" means "any school at which full-time education is provided for (a) five or more pupils of compulsory school age, or (b) at least one pupil of that age for whom a statement is maintained under section 324, or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989), and which is not a school maintained by a local education authority or a special school not so maintained."
113. *Sections 92* and *93* define the term "independent educational institution" and set out that Chapter 1 of Part 4 of this Act, which provides a revised framework for the registration, inspection and regulation of such institutions, applies in England only. Section 93 explains that the framework for the registration and regulation of independent schools in Wales continues to be set out in Chapter 1 of Part 10 of the Education Act 2002, which is amended by paragraphs 15 to 24 of Schedule 1 and Schedule 2 of this Act.

114. **Section 92** does not change the definition of an independent school set out in existing legislation. However, it introduces a new definition, that of an independent educational institution, which includes independent schools and other independent educational institutions that provide part-time education. The section also sets out the amount of part-time provision an institution must offer in order to fall within the scope of this new wider definition. The amount of part-time provision is defined by reference to the number of hours per week and the number of weeks per year offered to students of a particular age group. Regulations may amend the number of weeks per year which amounts to provision that falls within the definition and may specify that certain activities do not count as educational provision for the purposes of the definition. Further, regulations may specify that an institution that would otherwise qualify as an independent educational institution because of its provision of part-time education is not to be regarded as an independent educational institution for the purposes of this Chapter.
115. The new definition of independent educational institution covers settings which are the main provider of a child's education and which otherwise would not be subject to any statutory framework.

### ***Section 94: Standards***

116. **Section 94** requires the Secretary of State to set standards for independent educational institutions in England. The section lists the heads under which standards must be set. It reproduces the existing heads for independent schools under section 157 of the 2002 Act. Those heads cover the quality of education; spiritual, moral, social and cultural development of students; welfare, health and safety; suitability of proprietors and staff; premises and accommodation; provision of information; and handling of complaints. The section imposes an additional head relating to the quality of leadership and management in an institution. The detailed standards are prescribed in regulations.
117. These standards do not apply to early years provision (for children under the age of three), which must provide the Early Years Foundation Stage as set out in section 39 of the Childcare Act 2006. Paragraphs 30 to 36 of Schedule 1 and Schedule 2 to the Act amend the Childcare Act 2006. The duty on local authorities to secure the provision of advice, training and assistance is extended to cover persons who provide childcare at independent educational institutions in the authority's area. The exemptions to the duties to register on the Early Years Register, the Later Years Register and the General Register (kept under Part 3 of the Childcare Act 2006) are extended so that they apply to all independent educational institutions (including the part-time institutions).
118. **Paragraph 9** of Schedule 1 to the Act amends section 548 of the 1996 Act so that there is no right to use corporal punishment in a part-time independent educational institution.

### ***Sections 95 to 97: Requirement of registration***

119. The Secretary of State must maintain and publish a register of independent educational institutions under **section 95**. **Section 140(1)** (transitional provisions) provides for the existing register of independent schools in England to become the new register of independent educational institutions. **Section 96** creates an offence of conducting an unregistered independent educational institution and sets out the penalty for doing so.
120. **Section 97** allows the Chief Inspector to enter any premises and carry out an inspection where he or she has reasonable cause to believe that an unregistered independent educational institution is being operated. He or she is able to inspect and copy any relevant records and documents, including computer records, except those which are subject to legal professional privilege or which fall within the categories of "excluded material" and "special procedure material". This section creates an offence for obstructing the Chief Inspector and sets out the penalty for doing so.



***Sections 98 to 100: Registration Procedure***

121. An institution that wishes to register as an independent educational institution may apply to the Secretary of State under *section 98*, who must notify the Chief Inspector of any application received. The application must be made in a manner prescribed in regulations and contain certain information which is explained in this section and the detail of which is set out in regulations.
122. Where the Chief Inspector is notified of an application under *section 98(4)*, he or she is required by *section 99* to inspect an independent educational institution prior to registration and prepare a report for the Secretary of State detailing the extent to which it appears from the inspection that the institution is likely to meet the required standards. On the basis of the report and any other relevant evidence, the Secretary of State must decide whether the institution is likely to meet the required standards and, if it is, he must add the institution to the register along with the information referred to in *subsection (5)* (“the registered details”). The Secretary of State must inform the proprietor of the institution of his decision. If the Secretary of State decides to refuse registration where he considers that the institution is not likely to meet the required standards, the proprietor may appeal against this decision to the First-tier Tribunal.
123. If any establishment no longer meets the definition of an independent educational institution and is unlikely to do so within the next twelve months, *section 100* allows the Secretary of State to remove it from the register. The Secretary of State must inform the proprietor of this action, who may appeal to the First-tier Tribunal against the decision to deregister.

***Sections 101 to 105: Approval of material changes to registered details***

124. *Section 102* requires the proprietor of a registered independent educational institution to seek, in writing, prior approval from the Secretary of State for any change which is defined as a material change. *Section 101* defines a material change. The definition varies depending on the type of institution. Special institutions are those that are specially organised to make provision for students with special educational needs. For special institutions, a material change which requires prior approval is a change of proprietor, a change of address or any change in the institution’s registered details. For any other institution, a material change is a change which results in either the introduction of boarding provision or the institution becoming a special institution.
125. In determining whether to approve the request for a material change, the Secretary of State may under *section 103* direct the Chief Inspector to inspect the institution and make a report on the extent to which any standards (which the Secretary of State or the Chief Inspector consider to be relevant) are likely to continue to be met if the change is made.
126. The Secretary of State will decide whether to approve a material change in light of all relevant evidence and on the basis of any report from the Chief Inspector setting out whether the standards are likely to continue to be met if the change is made. Where this is the case, the Secretary of State must approve the change. The proprietor will have a right to appeal where the Secretary of State refuses to approve the change (*section 104*).
127. An independent educational institution which makes an unapproved material change may be removed from the register by the Secretary of State. The Secretary of State must inform the proprietor, who has a right to appeal against de-registration (*section 105*).

***Sections 106 and 107: Independent inspectorates***

128. *Section 106* allows the Secretary of State to approve inspectorates (in addition to Ofsted) to undertake certain inspections of independent educational institutions. These inspectorates will be known as “independent inspectorates”. The section also allows the Secretary of State to withdraw approval from such a body. The Secretary of State

is given powers to specify in regulations criteria for the approval and withdrawal of approval of independent inspectorates.

129. *Section 107* allows for the quality assurance of independent inspectorates approved under section 106. It requires the Chief Inspector at least once a year to prepare a report for the Secretary of State about the independent inspectorates. In doing so, the Chief Inspector must have regard to any directions from the Secretary of State, which may cover matters to be taken into account in preparing a report and the manner in which the report is prepared.

### ***Sections 108 to 113: Inspections and reports***

130. *Section 108* requires the Chief Inspector to inspect independent educational institutions at regular intervals, to be prescribed in regulations. The purpose of this section is to ensure that there are regular inspections of independent educational institutions. The Chief Inspector is not required to inspect those institutions where the Secretary of State has notified him or her that they will be inspected by an independent inspectorate. The Chief Inspector must prepare a report on the extent to which any relevant standard is met and is likely to continue to be met. This section does not apply to Academies, city technology colleges and city colleges for the technology of the arts, for which provision is already made (section 5 of the 2005 Act).
131. The Secretary of State may direct the Chief Inspector to inspect an independent educational institution at any time (*section 109*). Where a direction is made, the Chief Inspector must report back to the Secretary of State on the extent to which relevant standards are being met. The Secretary of State may also at any time arrange for an independent inspectorate to inspect an independent educational institution in relation to which it is approved and report to him on the extent to which relevant standards are being met. In both cases, the Secretary of State may specify standards which must be considered, alongside any standards considered by the inspectorate to be relevant, during the inspection.
132. The Chief Inspector is permitted to enter any registered independent educational institution at any reasonable time, and to inspect and copy any relevant records and documents, including computer records, except those which are subject to legal professional privilege or which fall within the categories of “excluded material” and “special procedure material”. These rights of entry and inspection of records can only be exercised for the purposes of an inspection. *Section 110* creates an offence for obstructing the Chief Inspector and sets out the penalty for doing so.
133. *Section 111* allows the Secretary of State, in regulations, to require proprietors to pay fees for inspections carried out by the Chief Inspector under this Chapter and to set the amount payable. The regulations can provide for:
- a) fees to be paid annually in advance of inspection;
  - b) fees to be determined by reference to circumstances which exist before the inspection takes place;
  - c) more than one fee to be paid in relation to a periodic inspection (for example, this will allow for an annual fee to be charged); and
  - d) a discretion to be granted to the registration authority, to determine which institutions qualify for reduced tariff inspections.
134. The regulations cannot require a fee to be paid to the Chief Inspector for a periodic inspection where an independent inspectorate is approved for the institution. Regulations can include a power to vary or waive a fee and may also provide for a fee not to be paid where an inspection does not take place (which is designed to address a case where an institution has paid a fee in advance of an inspection but closes before the periodic inspection takes place). *Section 140(2)* extends the power to waive inspection

fees so that any fees charged under section 162B of the 2002 Act may be waived. *Subsection (5)* provides some flexibility so that different fees can be applied in different cases. Academies, city technology colleges and city colleges for the technology of the arts are not required to pay inspection fees.

135. If any proprietor of an independent educational institution does not pay the appropriate fee, the Secretary of State may remove the establishment from the register (*section 112*). The Secretary of State must inform the proprietor who may appeal against the decision.
136. The Chief Inspector must publish any report of an inspection which he or she has prepared when directed by the Secretary of State (*section 113*).

### ***Sections 114 to 118: Failure to meet standards***

137. Where the Secretary of State considers on the basis of relevant evidence that an independent educational institution is not meeting one or more of the required standards, *section 114* allows for a notice to be served on the proprietor of the institution requiring the proprietor to provide an action plan. The purpose of the action plan is to address the failure to meet the required standards. On receipt of a plan, the Secretary of State may approve it, with or without modifications or reject it, in which case he can request a further action plan.
138. Where the Secretary of State concludes on the basis of relevant evidence that an institution is failing to meet the relevant standards, *section 115* sets out the conditions for taking enforcement action against the institution. The Secretary of State may take action where the proprietor has been required to provide an action plan within the last three years but has failed to provide an adequate plan or failed to comply with a plan that has been approved. Equally, where the Secretary of State is satisfied in the light of at least one inspection report that the institution has failed to meet the required standards for a continuous period of at least two years despite an action plan having been provided by the proprietor, he may take enforcement action.
139. *Section 116* sets out the alternative forms of enforcement action available to the Secretary of State. The Secretary of State may remove the institution from the register or impose a restriction as described in *section 117*. When the Secretary of State decides to take enforcement action he must inform the proprietor who has a right of appeal.
140. *Section 117* sets out the restrictions, short of de-registration, that can be imposed by the Secretary of State or, in relevant cases, by orders of a justice of the peace or the First-tier Tribunal. These are:
  - a) ceasing to use part of the premises for all or for specified purposes;
  - b) closing part of the institution's operation; and/or
  - c) ceasing to admit new students or new students of a specified description.
141. *Section 118* creates an offence of failing to comply with a restriction imposed by the Secretary of State and sets out the penalty for doing so. It also allows the proprietor to apply to the Secretary of State to have the restriction lifted, in whole or in part. The Secretary of State must, on an application, vary or revoke a restriction where it is appropriate to do so because of a change in circumstances. The Secretary of State is required to notify the proprietor of his decision.

### ***Section 119: Unsuitable persons***

142. The purpose of this section is to prevent unsuitable people from working with children and to enable action to be taken against those institutions that allow this to happen. *Section 119* permits the Secretary of State to deregister an independent educational institution which allows a person who is subject to relevant barring or disqualifying orders (which will be described in regulations) to carry out certain activities in relation

to the institution. The activities include acting as a proprietor, acting on a body of persons named as proprietor or carrying out work that will be described in regulations. It introduces a new right of appeal against deregistration for employing a barred person.

### ***Sections 120 to 122: Emergencies***

143. *Section 120* enables the Secretary of State to apply to a justice of the peace for an emergency order imposing an immediate restriction on, or deregistering, an independent educational institution, where a student at the institution is suffering or is at risk of suffering significant harm. An order may be made without notice to the proprietor but must be made in writing. A copy of the order must be served on the proprietor, together with a copy of any written statement provided in support of the application for the order and a notice explaining the proprietor's right of appeal, as soon as reasonably practicable after the order is made (sections 120 and 122). It is an offence to fail to comply with a restriction imposed by a justice of the peace and *section 121* sets out the penalty for doing so.
144. Where the institution concerned is specially organised to make special educational provision for students with special educational needs, section 122 requires the Secretary of State to inform all relevant local education authorities of the order (so that they may take any action they deem necessary).

### ***Section 123: Provision of information by proprietors***

145. This section creates a power to require the proprietor of an independent educational institution to provide to the Secretary of State, on request, information relating to the institution. The section provides that sanctions for non-supply of information can be included in regulations, which may include a criminal sanction. Removal of the institution from the register is a further possible sanction. If an institution is deregistered by the Secretary of State there is a right of appeal to the First-tier Tribunal.
146. *Paragraph 8* of Schedule 1 inserts a new section 537AA into the 1996 Act. Section 537AA applies to part-time independent educational institutions the existing sections 537 and 537A of that Act (which contain powers to require independent schools to provide certain information, including individual pupil information, to the Secretary of State or other relevant prescribed person).

### ***Sections 124 to 127: Appeals***

147. *Section 124* sets out the circumstances and timescales in which the proprietor of an independent educational institution may appeal to the First-tier Tribunal against decisions made by the Secretary of State to deregister an independent educational institution. A proprietor may appeal where an institution has been deregistered for:
- a) no longer meeting the definition of an independent educational institution;
  - b) a failure to meet standards, provide information, or pay inspection fees;
  - c) making an unapproved material change;
  - d) employment of unsuitable persons.
148. A proprietor may also appeal the following decisions made by the Secretary of State under *section 125*:
- a) conclusion that the standards are unlikely to be met on registration leading to a refusal of registration;
  - b) refusal to approve a material change;
  - c) imposition of a restriction on the proprietor;

- d) refusal to vary or revoke a relevant restriction.
149. Appeals to the First-tier Tribunal must be filed within 28 days of the proprietor receiving notice of the decision in question. There are various powers available to the Tribunal in determining such appeals, according to the circumstances under which the appeal is brought.
150. *Section 126* allows the proprietor to appeal to the First-tier Tribunal against an emergency order made by a justice of the peace and sets out the powers available to the Tribunal in determining such appeals. Where the Tribunal overturns any order made by a justice of the peace that an institution is removed from the register, this section explains that the institution must be treated as if it had never been deregistered. This removes the possibility of proceedings being brought against the person conducting the institution for an offence under section 96.
151. *Section 127* creates an offence of failing to comply with a restriction imposed by the Tribunal and sets out the penalty for doing so. It also allows the proprietor to apply to the Tribunal to have the restriction lifted, in whole or in part. The Tribunal must vary or revoke a restriction where it is appropriate to do so because of a change in circumstances.

***Sections 128 to 131: Prohibition on participation in management of independent educational institutions***

152. The Secretary of State (or another specified public authority) may make directions prohibiting or restricting the participation of unsuitable persons in the management of an independent educational institution. The grounds and procedure for making such directions will be set out in regulations. *Section 128* also provides for a direction to be lifted, in whole or in part, in certain cases. Under *section 129a* a person can appeal to the First-tier Tribunal against such a direction or against a decision not to lift or alter such a direction. Details relating to the Tribunal's jurisdiction on hearing such appeals can be set out in regulations.
153. *Section 130* enables the sharing of information - between the Secretary of State, the Chief Inspector, the Welsh Ministers, any other applicable direction making authority, the Independent Barring Board and the General Teaching Councils of England and Wales - which is held about persons in connection with their statutory functions and is relevant to the direction making powers contained in section 128.
154. *Section 131* requires the English authority which makes a direction prohibiting or restricting the participation of unsuitable persons in the management of an independent educational institution to notify other specified persons (e.g. the Secretary of State where relevant, the Welsh Ministers and, where different, the direction making authority in Wales).
155. There is no provision requiring persons to comply with a direction made under section 128. A direction made under section 128 could be enforced under section 119 (power to remove an institution from the register where an unsuitable person is the proprietor or carries out work of a prescribed kind) or by way of the standards to be prescribed under section 94(1)(d) (the suitability of the proprietors of or staff at an independent educational institution).
156. *Section 141* (transitional provisions) allows regulations to be made which will allow persons who are subject to a direction under section 142 of the 2002 Act to be treated for certain purposes as if they were subject to a direction made under section 128 of this Act. The regulations may also make provision to convert any existing appeal rights to appeal rights under section 129 of this Act.



***Sections 132 and 133: Providers of independent education or training for 16 to 18 year olds***

157. *Section 132* enables regulations to be made allowing for any part of this Chapter to apply to this particular group of learning providers. They are not independent or maintained schools. They do not receive any state funding from the LSC. They do provide education or training through which young people may meet their duty to participate under section 2. Section 132 will enable the Government, for example, to safeguard the health, safety and welfare of young people being educated in these establishments as part of that new duty.
158. *Section 133* stipulates that any regulations that are made must include rights of appeal against decisions of the Secretary of State as set out in this Chapter in sections 124 and 125. It also compels the Secretary of State to consult the Chief Inspector and other appropriate people before the laying of any regulations before Parliament. Such regulations will be subject to the affirmative resolution procedure.

***Sections 134 to 138: Supplementary***

159. *Section 134* requires proceedings for criminal offences to be commenced by, or with the consent of, the Secretary of State.
160. *Section 135* enables certain individuals to be prosecuted in limited circumstances where offences are committed by bodies corporate.
161. *Section 136* provides that where an offence has been committed by an unincorporated body, proceedings for offences should be brought in the name of the body and not its members. Any fine imposed should also be paid out of the funds of the body. In limited circumstances, proceedings for offences may also be brought against individuals associated with the body in question.
162. *Section 137* makes provision about how the Secretary of State may serve notices on the proprietor of an independent educational institution. Such notices may be served by delivering it to the registered address of the institution in question.

***Sections 139, 140 and 141: Transitional provisions***

163. These sections make transitional provisions in relation to independent educational institutions in Chapter 1 of Part 4. *Section 139* allows for the continuity of law between existing and new provisions, so that regulatory functions and enforcement action can be carried out without a break. *Section 140* provides for the existing register of independent schools for England (kept under section 158 of the 2002 Act) to become the new register of independent educational institutions. It creates a power to waive fees payable to the Chief Inspector in relation to inspections. Section 141 reproduces for England the transitional provisions enacted in section 171 of the 2006 Act, which cover the transition from barring directions in relation to the participation in the management of independent schools currently made under section 142 of the 2002 Act to the powers of direction which are now re-enacted in section 128 of the Act (see paragraph 155 above).

***Chapter 2: Schools providing for special educational needs***

***Section 142: Interpretation***

164. *Section 142* clarifies the definition of a special school in section 337 of the 1996 Act. See also the amendment to section 6 of that Act (which refers to this definition) in Part 1 of Schedule 1 (minor and consequential amendments). No substantive change is made.
165. The new section 337A defines the terms: a “non-maintained special school”; and “the appropriate national authority” for the purposes of Chapter 2 of Part 4 of the 1996 Act. The other provisions in this Chapter amend that Chapter and use these definitions.

***Section 143: Right of sixth-form pupils to opt out of religious worship***

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

***Section 144: Protection of pupils in an emergency***

167. *Section 144* inserts a new section 342A into the 1996 Act and provides a power through *subsection (1)* for the Secretary of State to make regulations to enable a justice of the peace, following an application from the Secretary of State, to make an order for the withdrawal of approval of a non-maintained special school.
168. The Secretary of State would only be able to make an application in an urgent case, for example, if it appears that a pupil at the school in question is suffering or is likely to suffer significant harm. *Subsection (2)* of the inserted section clarifies that regulations made under subsection (1) may in particular make provision similar to that made in sections 120 and 122 relating to independent educational institutions. This will ensure that a regulatory regime can be established which is consistent with that for independent educational institutions.

***Section 145: Appeals***

169. *Section 145* inserts new sections 342B and 342C into the 1996 Act. Section 342B(1) provides the Secretary of State with the power to make regulations which set out the framework for appealing against a decision of the Secretary of State to:
- a) withdraw approval for a non-maintained special school (*subsection (1)(a)*); or
  - b) not to approve, not to approve a change to, or to withdraw approval from the school's relevant arrangements (*subsection (1)(b)*).
170. The "relevant arrangements" are defined in *subsection (2)* of inserted section 342B as those arrangements that are specified as requiring approval by the relevant authority — in this case the Secretary of State — in regulations made under section 342(5)(a) of the 1996 Act. The Secretary of State, working within the regulatory framework for non-maintained special schools, is given the power by section 142 to approve or reject applications from schools for approval of some of their arrangements. For example, the following arrangements must be approved under current regulations: the number of pupils; the type(s) of special educational needs the school caters for; and the age range of pupils at the school. Currently there are no rights of appeal against decisions about approval of arrangements and the only recourse would be to seek a judicial review of a decision.
171. *Subsection (3)* of the new section 342B provides that the regulations must provide that an appeal lies to the First-tier Tribunal and must be made by the proprietor of the school.
172. In the case of an appeal brought against a decision of the Secretary of State to withdraw approval from the school, *subsection (4)* provides that regulations may make provision prohibiting the Secretary of State from acting on the decision:
- a) during the period in which an appeal could be brought; or,
  - b) in a situation where an appeal has been brought, but the appeal has not been determined, or disposed of.
173. Regulations made in this way would have an effect similar to that for appeals against decisions to withdraw registration of an independent educational institution. Section 342C(1) provides for regulations to be made setting out the rights of a proprietor of a non-maintained special school to appeal against an order granted in an emergency by the justice of the peace on the application of the Secretary of State. Section 342C(2)

provides that the right of appeal will be to the First-tier Tribunal and must be made by the proprietor.

174. Section 342C does not enable an order made by a justice of the peace to withdraw approval from the school to be suspended when an appeal is made. This is because an order granted by a justice of the peace will only have been granted where the justice of the peace is satisfied in an urgent case that approval should be removed immediately, for example where pupils are at risk.
175. Part 1 of Schedule 1 includes consequential amendments arising from these sections.

***Section 146: Abolition of requirement of approval for independent schools: England***

176. This section amends section 347 of the 1996 Act and abolishes the requirement for independent schools in England to be approved for the placement of a child with a statement of special educational needs. The section ensures that the requirement for approval remains for schools in Wales.
177. It also amends section 347 to remove the requirement for local education authorities in England to seek consent from the Secretary of State to place pupils with statements of special educational needs in non-approved independent schools (whether in England or Wales). The requirement to seek consent (from the Welsh Ministers) remains for Welsh local education authorities.

***Section 147: Approval of independent schools: consequential amendments***

178. This section brings together consequential amendments arising from the changes to section 347.
179. Section 349 of the 1996 Act is amended to clarify that the power to vary trust deeds to secure compliance with the requirements of being an independent school in Wales under section 347 remains relevant to Wales and lies with the Welsh Ministers. The power to vary trust deeds to secure compliance with the requirements of being a non-maintained special school under section 342 is transferred to the Welsh Ministers for schools in Wales.
180. Section 483A of the 1996 Act provides for local education authorities to make payments to independent schools for pupils with statements of special educational needs. It is amended in light of the changes to section 347. It will ensure local education authorities in England can continue to make payments. Welsh local education authorities will continue to be able to make payments to Welsh and English independent schools for pupils where Welsh Ministers have granted consent for the pupil to be placed there.
181. Section 59 of the Safeguarding Vulnerable Groups Act 2006 defines the term “vulnerable adult”. Subsection (3) has been amended to reflect the changes to section 347 in respect of England and Wales.

***Section 148: Approval of independent schools: transitional provision***

182. This section provides for transitional arrangements for relevant children who are already placed in English independent schools at the time the Act becomes law. It provides that Welsh local education authorities will not have to seek consent from the Welsh Ministers for:
- a) relevant children to be placed in English independent schools which, prior to the abolition of the requirement for approval for independent schools in England, were approved under section 347; or

- b) where a child attended an unapproved independent school with the consent of the Secretary of State prior to the abolition of the category of approved independent school in England.
183. Without this provision once the Act comes into force Welsh local education authorities would have to seek consent from Welsh Ministers for these pupils to continue their placements.

## **Part 5: Miscellaneous and general**

### ***Chapter 1: Powers of National Assembly for Wales***

184. *Section 149* amends field 5 of Part 1 of Schedule 5 to the Government of Wales Act 2006 (legislative competence of National Assembly for Wales in the area of education and training). The changes include conferring power on the Assembly to regulate, and make provision about the inspection of, non-maintained schools and part-time independent educational institutions; and conferring power on the Assembly to make provision about the inspection of other education and training for those aged 16 and under.

### ***Chapter 2: Miscellaneous***

#### ***Sections 150 to 153: School Admissions***

185. *Sections 150 to 153* apply to both England and Wales. Section 150 adds new sections 86A and 86B to Part 3 of the 1998 Act. New section 86A places a duty on local education authorities to make arrangements to enable a young person to apply for a place at a school, independently of his or her parents, either to study in the sixth form or, if they are above compulsory school age, to study at any level of education (for example to re-sit their GCSEs). Parents retain the right to apply to schools on behalf of their children.
186. New section 86B requires the admission authority for any maintained school (which is either the school's local education authority or its governing body) to comply with the preferences and admit the young person to the school he or she states as a first preference, unless the school is full, the child has not met the standard of academic ability the school requires for entry to its sixth form, or the child has been permanently excluded from at least two schools (and the latest of those exclusions was within the last two years). Consequential amendments have also been made to section 86 so that it no longer applies to sixth forms.
187. *Section 151* inserts new sections into the 1998 Act, to make improvements to the admissions system in England to ensure fair and lawful admission arrangements are set and applied to applications made by parents and young people. The effect of new sections 88B to 88G is to replace the requirement in primary legislation (section 89(2) and (3) of the 1998 Act) that admission authorities in England consult various bodies about their admission arrangements before determining them, with a power to make regulations about the consultation process. Currently, primary legislation requires admission authorities to consult annually with the bodies set out in section 89(2) of the 1998 Act. Removing this requirement from primary legislation and instead taking a power to make regulations to prescribe the consultation process in England will mean that a more flexible and adaptable consultation process can be designed that better engages with parents and communities. A school's admission arrangements in England set out the school's admissions policy, including the criteria it will use to decide how to allocate places if it receives more applications than it has places available, and the school's admission number. The provisions in this section enable regulations to prescribe who must be consulted, how often consultation must take place and circumstances in which no, or partial, consultation will be required.
188. New sections 88O and 88P place a new duty on local education authorities in England to produce an annual report to the Schools Adjudicator on the admission arrangements

of maintained schools, Academies, city technology colleges and city colleges for the technology of the arts in their area. The purpose of the report is to inform the Schools Adjudicator (who will in turn report annually to the Secretary of State) of the extent to which admission arrangements comply with admissions legislation and the School Admissions Code, so that the Adjudicator can take appropriate action to ensure fair access. Section 88Q requires any person that the local education authority asks for information which it needs to complete the report, to supply that information to the local education authority. The content, form and timing of the reports will be prescribed in regulations.

189. New sections 88H to 88L place a new duty on the Schools Adjudicator to consider admission arrangements referred to him by the Secretary of State or mentioned in a local education authority report, and to decide whether they are lawful or not. He also has a new power to consider arrangements which he thinks may be unlawful and which have come to his attention by other means.
190. *Section 152* amends section 94 of the 1998 Act to provide those young people given the new right to apply to a school under section 150, the right to appeal to an independent appeal panel against any decision refusing him or her admission to the school, whether in response to an application made by the young person or his or her parents. The child, the parent, or the child and parent acting jointly can appeal against a refusal to admit the child, where an application has been made under section 86A. The section amends section 94(5) to enable the Secretary of State to make regulations setting out how appeals should be dealt with if both the parent and young person appeal against the same decision. Section 152 also allows a young person who is already at a school and is refused entry to the sixth form to appeal against the decision.
191. *Section 153* inserts section 98A into the 1998 Act, to define sixth form education for the purposes of Chapter 1 of Part 3 to the 1998 Act as “secondary education suitable to the requirements of pupils who are over compulsory school age.” *Subsection (2)* removes any doubt about whether consultation on a draft School Admissions Code, or School Admissions Appeals Code, which depends on amendments made by this Act is valid if it takes place before the Act is enacted. This makes it possible for a new Code to come into force for admissions from September 2010 rather than September 2011.
192. *Paragraphs 53 to 73* of Schedule 1 make amendments to Chapter 1 of Part 3 of the 1998 Act. Section 86 is amended so that it no longer applies to sixth form admissions, now they are covered by the new sections 86A and 86B. Certain provisions which currently apply to England and Wales are restricted to Wales, and certain provisions are repealed which currently apply to England only and which are being re-enacted by section 151. Finally, there are amendments in Schedule 1 which otherwise preserve the legal position in relation to Wales, or are consequential upon provisions in sections 150 to 153.

### ***Sections 154 and 155: Maintained schools in England: behaviour and attendance etc***

193. A school governing body already has the power under section 29(3) of the 2002 Act (as amended by the 2005 Act) to “require registered pupils to attend at any place outside the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school”.
194. *Section 154* introduces a new section 29A which allows a governing body of a maintained school in England to require a registered pupil to attend at any place outside the school premises, but for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil. In exercising this power, it is intended the governing body will be obliged under regulations (made using the power in subsection 29A(4)(a)) to have regard to guidance issued by the Secretary of State.
195. The inserted section 29A compels the Secretary of State to make regulations requiring persons (it is intended this will normally be parents) to be given information about the



imposition of the requirement to attend a place off the school premises and to require the governing body to review their exercise of the power. The Secretary of State may make regulations requiring the governing body to request that persons (it is intended this will normally be parents) take part in a review of the exercise of the power; stipulating the timings of the initial and subsequent reviews; specifying the maximum number of days for which the requirement may be imposed in any school year; and in connection with other matters relating to the exercise of the power. It is intended that regulations will impose a requirement to review an off-site direction every 30 days during the time that the pupil is attending off-site provision, and will prohibit governing bodies from requiring a pupil to attend off-site provision for a greater number of days in a school year than is specified in the regulations. The Government's intention is that the requirement for an individual pupil to attend off-site provision must be for a limited period and subject to regular review.

196. *Section 155* makes amendments to section 444ZA of the 1996 Act. That section extends the circumstances in which a parent or a carer can be prosecuted for failing to ensure that a child for whom he or she is responsible regularly attends the alternative provision that has been made for the child.
197. *Section 155* extends the ambit of section 444ZA to cover pupils who have been directed off-site for receiving educational provision which is intended to improve the behaviour of the pupil to take account of requirements imposed by governing bodies under the new power introduced by section 154. There is also a change to section 444ZA to clarify that failure of the parent to secure regular attendance at a school where provision is made by the governing body of a school under section 100 of the 2006 Act (duty of governing body or proprietor to provide education where pupil is excluded for fixed period) is within the ambit of the section 444 offence, where the governing body has not expressly exercised its power under section 29(3) of the 2002 Act to require the attendance of the pupil there.

#### ***Section 156: Assessment arrangements***

198. This section amends section 88 of the 2002 Act to remove the obligation on schools and local education authorities to implement the assessment arrangements for the National Curriculum as they stand at the start of the school year. Instead, schools and local education authorities are required through new subsection (1A) to implement assessment arrangements as they exist at a given point in time.

#### ***Sections 157 and 158: Pupils' views***

199. *Section 157* inserts a new section 29B into the 2002 Act, the effect of which is to place duties on governing bodies of maintained schools in England and Wales to invite the views of registered pupils about prescribed matters, and consider any views on those matters expressed by pupils (whether or not in response to an invitation) in light of their age and understanding. The matters on which governing bodies must consult pupils are to be prescribed by regulations made by the Secretary of State for England and the Welsh Ministers for Wales (and paragraph 79 of Schedule 1 prescribes the procedure in the National Assembly for Wales for the latter). *Subsection (3)* of new section 29B allows governing bodies to invite the views of all registered pupils at the school, or to consult only those pupils who it considers are affected by the matter or are representative of those groups of pupils.
200. *Section 158* amends section 176 of the 2002 Act (which requires local education authorities and governing bodies of maintained schools to have regard to guidance about consultation with pupils) so that it only applies to local education authorities in Wales. In England, section 3A of the Local Government Act 1999 (which was inserted by section 138(1) of the Local Government and Public Involvement in Health Act 2007) requires certain local authorities in England, including local education authorities, to involve representatives of local persons in the exercise of their functions, where they

consider it is appropriate to do so. Section 29B of the 2002 Act (inserted by section 157 of this Act) will replace the duty currently imposed on governing bodies of maintained schools in England and Wales by section 176 of the 2002 Act.

### ***Sections 159 to 163: External qualifications***

201. *Section 159* amends section 98 of the 2000 Act which describes how qualifications may be approved for the purposes of sections 96 and 97 as they apply to England. *Subsection (2)* provides for the Secretary of State, or a body designated by him, to approve an external qualification. An "external qualification" is one which has either been awarded or authenticated by an outside body. Without this approval an external qualification is not eligible to receive public funding. Section 159 removes the current requirement in subsection (4) for the Secretary of State to give his consent to all approval decisions made by a body which he has designated under subsection (2). This enables designated bodies to approve such qualifications without further recourse to the Secretary of State.
202. *Section 159* further amends section 98 by the insertion of new *subsection (2A)* which enables the Secretary of State to designate a body to approve external qualifications for people under 19 (for the purposes of section 96), for people over 19 (for the purposes of section 97) or for both.
203. The changes to the Secretary of State's functions made in section 159 apply equally to the Welsh Ministers' functions in relation to Wales by virtue of *section 160*. This section removes the requirement in section 99(4) of the 2000 Act for the Welsh Ministers to consent to all approval decisions made by a body which they have designated under subsection (2).
204. *Section 161* amends section 24 of the 1997 Act to provide the QCA with a new function to develop and publish criteria for the recognition of bodies which wish to award or authenticate qualifications or credits in respect of components of these qualifications; and, where they meet those criteria, to recognise them. Under these provisions, the QCA would first recognise a body wishing to award or authenticate a qualification and then accredit its individual qualifications. Provision is also made for the QCA to make rules and procedures where a recognised body ceases to be recognised. The reference to "credits" refers to the introduction by the LSC, working with other stakeholders, of the new national framework, the "Qualifications and Credit Framework", which divides all relevant qualifications into units which, when completed, confer "credits" which may be accumulated towards achievement of the full qualification. Consequential amendments are made to sections 26 and 26A of the 1997 Act to reflect these changes. These apply broadly the same powers which the QCA currently holds in respect of placing conditions on accreditation and making directions to the accredited bodies. This section applies to both England and Northern Ireland.
205. *Section 162* aligns the Welsh Ministers' remit, in relation to the recognition of persons wishing to award or authenticate qualifications in relation to Wales, with the functions of the QCA in relation to England and Northern Ireland. The section amends section 30 of the 1997 Act to provide the Welsh Ministers with a new function to develop and publish criteria for the recognition of bodies which wish to award or authenticate qualifications, or credits in respect of components of these qualifications; and, where they meet those criteria, to recognise them. The reference to "credits" refers to the introduction by the Welsh Ministers of the new national framework, the "Qualifications and Credit Framework", which divides all relevant qualifications into units (see previous paragraph). Consequential amendments are made to sections 32 and 32A of the 1997 Act to reflect these changes. These give the Welsh Ministers power to place conditions on recognitions and make directions to the recognised bodies. Such powers are equivalent to the powers the Welsh Ministers currently hold in respect of placing conditions on accreditation and making directions to the accredited bodies.
206. *Section 163* extends the powers of the QCA in Northern Ireland to cover the regulation of vocational qualifications currently excluded from the scope of that

authority. In Northern Ireland most qualifications are regulated by the Council for the Curriculum, Examinations and Assessment (CCEA). They are those which are general and vocational and are provided for school pupils or persons in full-time attendance at an institution of further education. The only exception is National Vocational Qualifications which are regulated by the QCA. This section adds other vocational qualifications to the regulatory remit of the QCA. It is intended that at some future date legislation will be brought before the Northern Ireland Assembly to abolish the CCEA.

***Section 164: Inspections of teacher training in England: removal of duty to notify***

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

***Section 165: Constitution of schools forums***

208. The requirement on local education authorities to establish Schools Forums was imposed by the 2002 Act, through the insertion of Section 47A into the 1998 Act. Schools Forums are local bodies, representing schools and (if the local education authority so decides) other interests, which advise authorities on matters relating to the authority's schools budget.
209. Section 47A was amended by the 2005 Act and the 2006 Act to allow regulations to give Forums some decision-making powers in relation to the schools budget.
210. *Section 165* amends the arrangements for constituting a Schools Forum, so that regulations may make it compulsory for a Forum to include non-schools members. Section 165 applies to England and Wales.

***Chapter 3: General***

***Section 167: Functions exercisable by Welsh Ministers***

211. This section ensures that the functions conferred on the Secretary of State by sections 150, 152 or 165, so far as exercisable in relation to Wales, are taken to have been transferred to the Welsh Ministers by Order in Council under section 58 of the Government of Wales Act 2006. Section 167 also makes provision so that amendments to sections 89 to 90 of the 1998 Act in Schedules 1 and 2 are not to be taken to affect the application of those sections, or anything done under them, in relation to Wales. For the avoidance of any doubt, this section also ensures that the substitution of the references to the Secretary of State in sections 89 to 90 of the 1998 Act with references to the Welsh Ministers do not change the application of those sections in relation to Wales.

***Section 168: General interpretation***

212. *Section 168* provides that the sections in Part 1, Chapter 1 of Part 4, and sections 148 and 173(10) are to be construed as if they were contained in the 1996 Act unless a different meaning is given in the sections in the Act in which case that meaning prevails. This means, in particular, that the general interpretation in section 579 of the 1996 Act, provision about guidance and notices in sections 571 and 572, and the Secretary of State's intervention powers in sections 496 and 497 apply to those sections. *Subsection (5)* provides that sections 561 and 562 of the 1996 Act — which provide that the Act does not apply to a person in the service of the Crown or persons detained under order of a court — do not apply for the purposes of Part 1 of the Act. Section 62 makes special provision about Crown employment in relation to Part 1 of this Act.

*These notes refer to the Education and Skills Act 2008  
(c.25) which received Royal Assent on 26 November 2008*

***Section 170: Power to make consequential and transitional provision etc***

213. *Section 170* enables the Secretary of State to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. Where such regulations amend or repeal primary legislation they are subject to the affirmative resolution procedure.