

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Early Years Provision

Section 1: Free of charge early years provision

58. *Section 1* inserts three new sections into Part 1 of CA 2006.
59. *Subsection (2)* replaces the existing section 7 in CA 2006. As with the old section 7, the new section places a duty on English local authorities to secure that certain early years provision is available free of charge for certain young children in their area. Early years provision is defined in section 20 of CA 2006 as being childcare for a young child (a child from birth up to the 1st September after the child turns five).
60. Currently, the regulations made under section 7 require local authorities to secure 15 hours per week of free early years provision for all three and four year olds. The new section 7 will enable the regulations to retain this universal entitlement for children of those age-groups whilst also extending the requirement on local authorities to secure free early years provision for a targeted group of two year olds.
61. The regulations under the new section 7 will be able to define an entitlement for children based on criteria other than age, such as criteria related to the family's economic circumstances as the Government intends for two year olds. Under the current section 7 it is only possible to require local authorities to secure free early years provision for all children of a prescribed age.
62. The new section 7 enables the Secretary of State to set out in regulations the nature of the early education, the description of children for whom it must be made available, and to make other provision about how the local authority must make it available. This can include the amount of early education to be made available and the timing of it (for example, whether there is a minimum number of weeks in a year over which it should be available, or certain times of the day at which it must be made available).
63. *Subsection (3)* inserts new sections 13A and 13B into CA 2006. New section 13A allows tax credits information held by Her Majesty's Revenue and Customs (HMRC) and social security information held by the Department for Work and Pensions (DWP) to be supplied to the Secretary of State, and ultimately to local authorities in England (new section 13A(5)), for use in determining eligibility of children for free early years education under section 7 of CA 2006. The information received by the Secretary of State can only be passed to local authorities and only for the purpose of determining eligibility. *Subsection (4)* allows for information held by HMRC to be supplied directly to local authorities. *Subsection (6)* allows information also to be supplied to a contractor exercising the function of determining eligibility on behalf of the local authority. The sharing of data allowed under this section will enable easier checking of eligibility by local authorities, for example through an electronic database containing the relevant information. This new section mirrors that in section 110 of EA 2005 which allows

data to be shared for the purposes of determining eligibility for free school meals and free school milk.

64. New section 13B makes unlawful disclosure of information received under section 13A and relating to an individual a criminal offence. New section 13B(2) sets out the circumstances in which disclosure is authorised, including where the individual consents to its disclosure. This provision is similar to section 182 of the Finance Act 1989 and section 123 of the Social Security Administration Act 1992, which impose criminal sanctions for the unauthorised disclosure of information held by HMRC and DWP.
65. *Subsection (4)* repeals a transitional provision in CA 2006 which is no longer needed.

Part 2: Discipline

Section 2: power of members of staff to search pupils

66. A head teacher or an authorised member of school staff has a statutory power, under section 550ZA of EA 1996, to search a pupil or his possessions without consent if there are reasonable grounds for suspecting that the pupil is in possession of a weapon, alcohol, illegal drugs, stolen property and other items specified in regulations (“prohibited items”). Section 2 extends the list of prohibited items.
67. *Subsection (2)(a)* inserts into section 550ZA(3) a new paragraph (ea) which adds to the list of prohibited items any article which the member of staff reasonably suspects has been, or is likely to be, used to commit an offence or to cause personal injury to, or damage to the property of, any person, including the pupil being searched.
68. *Subsection (2)(b)* inserts into section 550ZA(3) a new paragraph (g) which adds to the list of prohibited items any other item which the school rules identify as an item for which a search can be undertaken.
69. *Subsection (2)(c)* inserts new subsections (4A) to (4C) into section 550ZA. The new subsection (4A) specifies that “offence” in section 550ZA(3)(ea) includes behaviour by younger pupils that would be an offence if they had attained the age of criminal responsibility. New subsection (4B)(a) defines the school rules for maintained schools and non-maintained special schools as rules made and publicised by the head teacher in accordance with section 89 of EIA 2006. New subsection (4B)(b) provides that in the case of other schools, measures relating to behaviour must be made and publicised in accordance with regulations. Regulations made under this paragraph will be made using the negative resolution procedure by virtue of the new subsection (6). New subsection (4C) specifies the types of school to which subsection (4B)(a) applies.
70. *Subsection (3)(a)* amends section 550ZB(5) of EA 1996 so that reasonable force may only be used in executing a search for items within section 550ZA(3)(a) to (f), and so not for items which the school rules identify as an item for which a search may be made.
71. *Subsection (3)(b)* amends section 550ZB(6) of EA 1996 and enables searches to be carried out by a member of staff who is of the opposite sex to the pupil being searched, and searches to be carried out without another member of staff being present, but only where the condition in new subsection (6A) is met. The new subsection (6A) is inserted by *subsection (3)(c)*. The condition in new subsection (6A) is that the member of staff carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search urgently and that it is not reasonably practicable for the search to be carried out by a member of staff of the same sex as the pupil, or for the search to be witnessed by another member of staff.
72. *Subsection (3)(d)* amends section 550ZB(7) and enables searches of a pupil or his or her possessions to be carried out in the absence of another member of staff where the condition in new subsection (7A) is met. The new subsection (7A) is inserted by *subsection (3)(e)*. The condition is that the member of staff carrying out the search

reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search urgently and that it is not reasonably practicable for the search to be witnessed by another member of staff.

73. *Subsection (4)(a)* amends section 550ZC(2), which is about the power of teachers to use reasonable force to seize items found during a search. The effect of the amendment is that force may be used to seize items that are prohibited by virtue of section 550ZA(3)(a) to (f), but not items prohibited by virtue of section 550ZA(3)(g).
74. *Subsection (4)(b)* inserts new subsections (6A) to (6G) into section 550ZC of EA 1996. Section 550ZC provides a power to seize items found as a result of a search under section 550ZA. New subsection (6A) provides that where a person carrying out the search seizes an item listed as prohibited under new section 550ZA(3)(ea) the item must be delivered to the police, returned to its owner, retained, or disposed of.
75. New subsection (6B) provides that where an item is prohibited by virtue of section 550ZA(3)(g) it must be returned to its owner, retained or disposed of.
76. New subsections (6D) to (6G) provide specific powers regarding electronic devices seized under these provisions. New subsection (6E) provides that the person who has seized the item may examine any data or files if they believe there is a good reason to do so. New subsection (6F) allows data or files from the device to be erased if the person has decided to return it to its owner, retain it or dispose of it and thinks there is a good reason to do so. New subsection (6G) requires regard to be had to guidance issued by the Secretary of State when determining whether there is a good reason to examine any data or files, or erase data or files.
77. *Subsection (5)(a)* provides that the Police (Property) Act 1897 applies in relation to articles that are delivered to the police under section 550ZC(6A)(a). The Act enables an application to be made to a magistrate's court for an order that property in possession of the police be returned to its owner.
78. *Subsection (5)(b) to (e)* amends section 550ZD to provide that, where a person conducting a search, lawfully seizes, retains, disposes or erases an article seized under any of the new provisions in section 550ZC, they shall not be liable for the seizure, loss or disposal, or any damage arising.

Section 3: Power of members of staff at further education institutions to search students

79. This section provides similar powers of search in relation to further institutions as section 2 provides in relation to schools. The only substantive difference between the two search powers is that the power to search for items identified in the school rules is not replicated for further education institutions.

Section 4: Exclusion of pupils from schools in England: review

80. *Subsection (2)* of section 4 inserts a new section 51A into EA 2002, which applies to schools in England only, providing for the exclusion of pupils from maintained schools and pupil referral units (PRUs). *Subsection (3)* of this section makes amendments to section 52 (exclusion of pupils) of the EA 2002 so that it will only apply now to schools in Wales. The following therefore applies only to England; the current appeal procedure will continue to exist in relation to Wales.
81. Subsections (1) and (2) of new section 51A keep the power in section 52 for head teachers of maintained schools and teachers in charge of PRUs in England to exclude any pupil from school on disciplinary grounds for a fixed period or permanently.
82. Subsection (3) of new section 51A requires the Secretary of State to make regulations regarding the procedure relating to the exclusion of pupils and subsections (3) and (5) to (12) set out what these regulations must cover and what they may also cover. These

regulation-making powers broadly mirror those in the current section 52, though the powers of the new review panel are significantly different from those of the current appeal panel.

83. Subsection (4) sets out the powers of a review panel to make a decision when a prescribed person (who it is intended will be, for example, a parent or a pupil if aged over 18) applies to it for a review of a decision, made by a responsible body, not to reinstate a pupil. The responsible body in the case of a maintained school will be its governing body; in the case of a PRU, it will be a person prescribed in regulations. A review panel may uphold the decision of the responsible body or recommend that the responsible body reconsiders the case. If it considers that the decision of the responsible body was flawed when viewed in the light of the principles of judicial review it can direct the responsible body to reconsider the matter, but the review panel does not have the power to order reinstatement. Subsection (5) allows the Secretary of State to make regulations to give the review panel additional powers when it has recommended reconsideration or quashed a decision of the responsible body. This might be used, for example, to allow the panel to make recommendations about what should go on the pupil's record.
84. Subsections (6) and (7) provide that where a panel has quashed a decision of the responsible body and directed that the responsible body considers the decision again, then, in prescribed circumstances, an adjustment of a school's budget may be made. Regulations must make provisions setting out how the amount of such a payment is to be determined and what effect such adjustments will have on the budget shares of other maintained schools.
85. Subsection (8) provides a regulation-making power to deal with the following matters: the payment of allowances to members of the review panel; requiring the person or body making the exclusion to have regard to guidance from the Secretary of State; requiring local authorities to provide prescribed information to the Secretary of State; and a general power to cover any other matters associated with an exclusion decision.
86. Subsection (10) defines the terms used in this section and provides that regulations may prescribe who is the "responsible body" in relation to a PRU.
87. Subsection (11) provides that when regulations have not prescribed who the "responsible body" is in relation to a permanent exclusion from a PRU, the procedure in subsection (3) has effect with the change that the review panel will review the decision of the teacher in charge not to reinstate the pupil.
88. Subsection (12) provides a regulation-making power to allow the Secretary of State to apply new section 51A and regulations made under it, to Academies, or a description of Academy, with or without modifications.
89. *Subsection (3)* of this section makes amendments necessary to section 52 of EA 2002 because it will only apply now to Wales.
90. *Subsection (4)* gives effect to *Schedule 1* which makes amendments to other legislation consequential on the changes made by *subsections (2) and (3)*.

Schedule 1

91. *Paragraph 1* makes consequential amendments to the Local Government Act 1972 to allow the payment of members of review panels for travel expenses and attendance at meetings. It provides that this does not affect existing provisions in Wales.
92. *Paragraphs 2 to 7* amend legislation to replace references to "appeals panels" with references to "review panels", and replace references to section 52 with references to the new section 51A.

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

93. *Paragraph 9* inserts a new subsection (3A) into section 87 of SSFA 1998 which established that there is no requirement to admit children permanently excluded from two or more schools. The new subsection (3A) sets out the circumstances in which a child should not be treated as excluded for the purposes of that section, for example, when the child has been reinstated in line with new section 51A.
94. *Paragraph 10* amends section 87(4) of SSFA 1998 so that it applies to Wales only. Section 87(4) covers the impact of decisions made by an independent appeal panel on provisions relating to pupils who have been permanently excluded from two or more schools. As the new section will abolish independent appeal panels in England, section 87(4) is no longer relevant.
95. *Paragraphs 11 to 13* amend paragraph 14 of Schedule 17 to the Equality Act 2010 so that it applies to exclusions from schools in Wales only.

Section 5: Repeal of requirement to give notice of detention to parent: England

96. *Section 5* amends section 92 of EIA 2006 by removing the requirement on members of staff in schools in England to give to a parent, guardian or carer a minimum of 24 hours' written notice that their child is required to attend detention outside of normal school hours. The requirement remains in place for schools in Wales.

Section 6: Repeal of duty to enter into behaviour and attendance partnership

97. *Section 6* removes the requirement in section 248 of ASCLA 2009 that the governing body of a maintained secondary school, or the proprietor of an Academy, city technology college or city college for the technology of the arts (referred to in the section as "relevant partners") must co-operate with at least one other relevant partner in their area for the purpose of promoting good behaviour, discipline and attendance amongst pupils. The co-operative arrangements that result are known as "a behaviour and attendance partnership".

Part 3: School Workforce

Abolition of the General Teaching Council for England

Section 7: Abolition of the General Teaching Council for England

98. *Section 7* amends section 1 of THEA 1998 to remove references to the General Teaching Council for England (the "GTCE"). The amendment has the effect of abolishing the GTCE, but the General Teaching Council for Wales (the "GTCW") continues unaffected.

Section 8: Functions of Secretary of State in relation to teachers

99. *Subsection (1)* inserts new sections 141A to 141E into EA 2002, providing for the Secretary of State to exercise regulatory functions for the teaching profession in England.
100. New section 141B allows the Secretary of State to consider allegations of unacceptable professional conduct, conduct that may bring the profession into disrepute or convictions of a relevant offence and to decide whether to prohibit the person from teaching by making a prohibition order. (Teachers covered by these arrangements are set out in the new section 141A.)
101. New section 141C provides that the Secretary of State must keep a list (available for the public to view) of teachers who are subject to a prohibition order (barred from teaching) or teachers who have failed the teacher induction period in circumstances that may be prescribed. The Secretary of State can include a person on the list who has been banned from teaching in Wales, Scotland or Northern Ireland.

102. New section 141D provides that where a teacher has been dismissed for serious misconduct (or where they would have been dismissed had they not resigned) the employer must consider whether to refer the case to the Secretary of State. Section 141E ensures that the same applies in respect of teachers employed through supply agencies or contractors.
103. *Subsection (2)* inserts new Schedule 11A into EA 2002 which makes provision about the regulations to be made by the Secretary of State under new section 141B. Paragraph 2 of the new schedule provides that the regulations must make provision about the procedures to be followed by the Secretary of State in making decisions about prohibiting a person from teaching. Paragraph 3 provides that regulations may allow the Secretary of State to make an interim prohibition order but only where he or she considers it necessary in the public interest to do so. Regulations must require the Secretary of State to review the order every six months if the teacher concerned applies for such a review. Paragraph 4 provides that the regulations may specify the effect of a prohibition order, including what teaching work the teacher may nevertheless carry out and may make provision about the publication of information relating to cases. Paragraph 5 provides that the regulations must allow for the right to appeal against a prohibition order, within 28 days, to the High Court, from where there will be no further right to appeal (this replicates current regulatory arrangements under the GTCE). They may also provide for a teacher who is subject to a prohibition order to apply to have the order set aside and the procedures for this. Paragraph 6 allows regulations to provide that notice of a prohibition order be served on the teacher's employer and to require the employer to take action, such as dismissal. They may also make provisions about the effect in England of teachers being banned from teaching in Wales, Scotland or Northern Ireland.

Section 9: Requirement for teachers in England to serve induction period

104. **Section 9** inserts new sections 135A to 135C into EA 2002. The new sections largely reproduce section 19 of THEA 1998 regarding teachers' induction periods, and transfer existing provisions regarding induction from the GTCE to the Secretary of State as far as these relate to England. Arrangements for Wales are unaffected and remain covered by section 19 of THEA 1998.
105. New section 135A allows regulations to make provision for teachers to have completed an induction period of not less than three school terms and provides for a range of detail to be set out in regulations regarding the induction process. This includes the determination by the Secretary of State of the standards against which a person is to be assessed for the purpose of deciding whether the person has satisfactorily completed an induction period.
106. New section 135B provides that the regulations must include a right of appeal to the Secretary of State by a person aggrieved by an induction decision. There is to be no further right of appeal.
107. In addition, the new sections provide that regulations may allow teachers to complete their induction period within an independent nursery school where the school meets the conditions for induction. The regulations can also allow a teacher to serve more than one induction period. Other than the transfer of functions to the Secretary of State, these are the only substantive changes from section 19 of THEA 1998.

Section 10: Abolition of the GTCE: transitional provision

108. **Section 10** makes transitional provisions in respect of certain functions currently undertaken by the GTCE. It provides that any prohibition orders made by the GTCE will continue as if they had been made by the Secretary of State under new section 141B. Any conditional orders made by the GTCE will continue for the specified period or until revoked. The investigation of any teachers in England by the GTCE immediately prior to commencement may be continued by the Secretary of State.

Section 11: Abolition of the GTCE: consequential amendments

109. **Section 11** gives effect to Schedule 2 which makes consequential amendments to other enactments to reflect the changes made by provisions of this Act. Most of the changes are to remove references to the GTCE or to replace them with references to the Secretary of State.

Section 12: Abolition of the GTCE: transfer schemes

110. **Section 12** gives effect to Schedule 3 which enables the Secretary of State to create a scheme whereby members of GTCE staff can have their contracts of employment transferred to the Secretary of State, with appropriate civil service terms and conditions, unless they give notice of objection.
111. The Secretary of State may also create a property transfer scheme, through which the GTCE's assets and liabilities may transfer to the Secretary of State.

Reporting restrictions

Section 13: Restrictions on reporting alleged teacher misconduct

112. *Subsection (1)* inserts three new sections into EA 2002 to restrict the reporting of allegations of offences by teachers in England and Wales. New section 141F restricts the publication of any information that would identify a teacher who is the subject of an allegation of misconduct that would constitute a criminal offence where the alleged victim of the offence is a registered pupil at the school. Such restrictions would remain in place unless or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation, or proceedings for the offence have been instituted. This expression is defined in section 141F(15) and includes where the teacher in question is charged with the offence to which the allegation relates. Restrictions would also be lifted if the individual to whom the restrictions apply publicly put forward their side of the story or gave their written consent for another to do so. In addition, they may be dispensed with on the application to court by any person. Restrictions will apply to allegations made against any teacher who works at a school, including supply and peripatetic teachers.
113. New section 141G makes it an offence to publish any information in breach of section 141F. It sets out who is guilty of an offence in the case of different forms of publication. Publication is defined in the provision and includes any communication which is addressed to the public at large or any section of the public. This will include communication via the internet. The definition of publication does not include documents prepared in connection with legal proceedings, or documents published by a professional regulatory body in the course of disciplinary proceedings against the individual. New section 141H sets out the defences available to a person charged with an offence under section 141G.
114. *Subsection (2)* gives effect to Schedule 4 which inserts a new Schedule 11B into EA 2002. This ensures that the provisions comply with the European Directive commonly referred to as the "E-Commerce Directive" (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market).

Abolition of the Training and Development Agency for Schools

Section 14: Abolition of the Training and Development Agency for Schools

115. **Section 14** repeals sections 74 to 84 of, and Schedule 13 to, EA 2005 which established the Training and Development Agency for Schools ("the TDA") and conferred functions on it. Repealing these sections will abolish the TDA.

Section 15: Training the school workforce: functions of Secretary of State and Welsh Ministers

116. **Section 15** amends Part 2 of EA 2002 and Part 3 of EA 2005 to ensure that, after the abolition of the TDA, the Secretary of State has the power to exercise the functions that the TDA currently exercises and to confer functions on the Welsh Ministers in relation to teacher training.
117. **Subsection (2)** amends section 14 of EA 2002. Section 14 gives the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales) the power to give, or make arrangements for the giving of, financial assistance to any person for or in connection with any of the purposes mentioned in section 14(2). This amendment enables the Secretary of State and the Welsh Ministers to provide financial support to any person to receive training to become a teacher or a member of the school workforce. It also allows financial support to be given for training for people who are already teachers or members of the school workforce. The amendment to section 14(2ZA) enables financial support under section 14 to be given to those receiving training in higher education institutions.
118. **Subsection (3)** amends section 16 of EA 2002 which sets out the terms on which financial assistance under section 14 may be given. It provides that, when financial assistance is given for the purposes of teacher training, the Secretary of State or the Welsh Ministers will not be able to impose terms and conditions on higher education institutions relating to the admission of students or the selection of staff as a condition of funding. This is to ensure that the autonomy of higher education institutions is not compromised.
119. **Subsection (5)** amends Part 3 of EA 2005 to ensure that Welsh Ministers have the power to exercise the functions that the TDA currently exercises in relation to Wales. It imposes a general duty on the Welsh Ministers to ensure sufficient facilities are available for the training of teachers to serve in Wales and confers a power to promote careers in the school workforce in Wales.
120. **Subsection (6)** is concerned with the joint exercise of functions relating to the training of the school workforce by the Secretary of State and the Higher Education Funding Council for Wales (HEFCW). **Subsection (7)** enables the Secretary of State to request efficiency studies of institutions that are receiving financial support in the same way that HEFCW can and **subsection (8)** enables HEFCW and the Secretary of State to share information about training the school workforce and to require such information from others.

Section 16: Abolition of the TDA: consequential amendments

121. **Section 16** gives effect to Schedule 5 which makes consequential amendments to other legislation to reflect the changes made by provisions in this Act relating to the training of the school workforce. Most of the changes are to remove references to the TDA or to replace them with references to the Secretary of State.

Section 17: Abolition of the TDA: transfer schemes

122. **Section 17** gives effect to Schedule 6 which allows the Secretary of State to set up a transfer scheme providing for the transfer of staff and property from the TDA to the Secretary of State.

Abolition of the School Support Staff Negotiating Body

Section 18: Abolition of the School Support Staff Negotiating Body

123. **Section 18** abolishes the School Support Staff Negotiating Body, which was established to consider matters relating to the remuneration and conditions of school support staff, with a view to reaching agreement on them.

Staff: minor amendments

Section 19: Staffing of maintained schools: suspension of delegated budget

124. **Section 19** amends sections 35(7) and 36(7) of EA 2002 which make provision for the effect on staffing of any suspension of a school's delegated budget under section 17 of, or Schedule 15 to, SSFA 1998.
125. Section 66 of the EIA 2006 replaced section 17 of the SSFA 1998 in relation to England, with section 17 continuing to apply in relation to Wales only. These amendments are necessary to give effect to the intention that the effect on staffing of the suspension of a school's delegated budget should be the same for schools in England and Wales.

Part 4: Qualifications and the Curriculum

International comparison surveys

Section 20: Requirement for schools to participate in international surveys

126. **Section 20** inserts new section 538A into Chapter 4 of Part 9 of EA 1996. It enables the Secretary of State to secure the participation of community, voluntary and foundation schools, in England, in international education surveys.
127. England takes part in a number of international comparison surveys which generate comparative data on pupil performance, attitudes to learning and the education environment, such as the Programme for International Student Assessment (PISA). This section is intended to ensure that sampled schools participate in specified surveys.

Ofqual

Section 21: The Chief Regulator of Qualifications and Examinations

128. **Section 21** gives effect to Schedule 7.

Schedule 7

129. **Paragraph 2(2)** amends Schedule 9 to ASCLA 2009 to provide that the chief executive of Ofqual will be appointed by Her Majesty by Order in Council and will be known as the Chief Regulator of Qualifications and Examinations ("the Chief Regulator"). Provision is made so that the person appointed as chair of Ofqual will be appointed by the Secretary of State rather than (as ASCLA 2009 provides at present) Her Majesty, and for the chair of Ofqual no longer to be known as the Chief Regulator.
130. The amendments made by **paragraph 3** of the Schedule have the effect that the provisions set out in paragraph 3 of Schedule 9 to ASCLA 2009, relating to the arrangements for appointing the Chief Regulator (who is currently the chair), will apply under the new arrangements in relation to the Chief Regulator who is also the chief executive.
131. **Paragraph 4** inserts a new paragraph into Schedule 9, setting out the arrangements for appointing the chair of Ofqual and for setting the terms of his or her appointment.

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

132. *Paragraphs 7 and 10* provide that the Chief Regulator may benefit from a scheme for pensions, allowances or gratuities under the Superannuation Act 1972.
133. *Paragraph 7* also amends paragraph 5 of Schedule 9 to include provision for the Secretary of State to have responsibility for determining the remuneration, allowances and expenses of the Chief Regulator who is also the chief executive.

Section 22: The qualifications standards objective

134. *Section 22* replaces section 128(2) of ASCLA 2009 with a new subsection, which sets out Ofqual's qualifications standards objective. The new objective is for Ofqual to secure that regulated qualifications: (a) give a reliable indication of knowledge, skills and understanding; and (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications, and, in addition, (c) indicate a consistent level of attainment (but not over time) between regulated qualifications and comparable qualifications which Ofqual does not regulate, including qualifications awarded outside the UK.
135. The effect is to add to Ofqual's qualifications standards objective to require that Ofqual should also perform its functions with the aim of ensuring that regulated qualifications indicate a consistent level of attainment with comparable qualifications that Ofqual does not regulate whether from outside the UK or from other parts of the UK. It is for Ofqual to decide which qualifications are comparable, and to decide the action that they have to take in the context of the totality of their objectives, to ensure that comparable qualifications indicate a consistent level of attainment.

Section 23: Enforcement powers

136. *Section 23* amends Part 7 of ASCLA 2009.
137. *Subsection (2)* amends section 151 of ASCLA 2009 (under which Ofqual can give a direction to a recognised body to secure compliance with a condition of recognition) by removing the prejudice test that Ofqual has to apply in determining whether to give a direction. Under section 151(1) as substituted, Ofqual is able to give a direction if it appears to Ofqual that the body has failed, or is likely to fail, to comply with a condition.
138. *Subsection (3)* inserts into ASCLA 2009 new sections 151A to 151D to confer on Ofqual the power to impose a monetary penalty on an awarding body recognised by it if it appears to Ofqual that the body has failed to comply with a condition to which the recognition is subject. Ofqual must give notice of its intention to impose a penalty and have regard to any representations received in response. If Ofqual decides to impose a penalty then it must send a notice to the body setting out the information listed in new section 151A(8).
139. By new section 151B the amount of the penalty may be whatever Ofqual decides would be appropriate subject to a limit of 10% of the body's turnover, to be determined in accordance with an order made by the Secretary of State. Such an order is subject to affirmative resolution procedure.
140. New section 151C provides for appeals to the First-tier Tribunal against a decision to impose a penalty or a decision as to the amount of the penalty. When an appeal is made the requirement to pay the penalty is suspended. Section 151C(4) sets out the powers the Tribunal has on an appeal. The procedure for the conduct of appeals will be set out in the relevant procedure rules of the Tribunal.
141. New section 151D provides for interest to accrue on the unpaid balance of the penalty once the time for appealing has passed, or once an appeal has been withdrawn or determined. The total amount of interest must not be more than the amount of the penalty. Ofqual is able to recover the money owed as a civil debt owed to it.

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142. *Subsection (4)* removes the prejudice test from section 152 of ASCLA 2009 (power to withdraw recognition).
143. *Subsection (5)* inserts into ASCLA 2009 new sections 152A to 152C which confer on Ofqual the power to require a recognised body on which a sanction has been imposed to pay the costs incurred by Ofqual in relation to imposing the sanction. The costs concerned include the costs of carrying out an investigation, relevant administration costs, and the costs of obtaining expert advice.
144. New section 152B makes provision for appeals against decisions to require a body to pay costs. The provision is similar to provisions in new section 151C for appeals against a penalty; and provisions in new section 152C on interest and recovery for costs are similar to those in section 151D in relation to monetary penalties. Ofqual is required to pay money it received under these new powers into the Consolidated Fund.
145. *Subsection (6)* amends section 153 of ASCLA 2009 so that Ofqual is required to consult and set out in its published qualifications regulatory framework how it intends to exercise its new powers to impose a monetary penalty and recover costs.

Qualifications: Wales

Section 24: Enforcement powers of Welsh Ministers

146. *Section 24* amends Chapter 2 of Part 5 of EA 1997 which is concerned with functions of the Welsh Ministers in relation to qualifications. The amendments to sections in that Chapter, and the new sections inserted there, would make the same alteration of and addition to the powers of the Welsh Ministers (as the regulator of qualifications in Wales) as are made to the powers of Ofqual by section 23 of this Act.

Abolition of the Qualifications and Curriculum Development Agency

Section 25: Abolition of the Qualifications and Curriculum Development Agency

147. *Section 25* repeals sections 175 to 191 of, and Schedule 11 to, ASCLA 2009. This will abolish the body established as the Qualifications and Curriculum Authority (“QCA”), and continued in existence as the Qualifications and Curriculum Development Agency (“QCDA”) under that Act.

Section 26: Abolition of the QCDA: consequential amendments

148. *Section 26* gives effect to Schedule 8, which removes references to the QCDA from other legislation, and enables the Secretary of State to make changes to subordinate legislation by order in consequence of section 24.

Schedule 8

149. *Paragraphs 1, 2, 3, 4, 9 and 10* all remove references to the QCDA from other legislation.
150. *Paragraph 6* amends EA 1996 to remove the requirement for Standing Advisory Councils on Religious Education (“SACREs”) for an area in England to send the QCDA a copy of their annual report.
151. The amendment to EA 1996 made by *paragraph 7* removes the power of the Secretary of State to make regulations requiring a local authority or head teacher to provide information relevant for the purposes of provisions in ASCLA 2009 relating to the QCDA.
152. *Paragraphs 12 and 20(a)* amend section 85 of EA 2002, in its current form and as substituted by section 74 of EIA 2006, which is not yet in force. Section 85 makes provision about curriculum requirements for the fourth key stage (in other words,

for pupils aged 14 to 16) and subsection (9) imposes a duty on local authorities, governing bodies and head teachers to have regard to guidance issued by the QCDA. The amendments make provision for such guidance to be issued by the Secretary of State rather than the QCDA. *Paragraph 20(b)* amends section 85A of EA 2002, as it is inserted by section 74 of EIA 2006, which makes provision about entitlement areas for the fourth key stage and imposes a duty on local authorities, governing bodies and head teachers to have regard to guidance issued by the QCDA or the Secretary of State. The reference to the QCDA is omitted.

153. *Paragraphs 13 and 17* respectively amend provisions in EA 2002 relating to National Curriculum assessment arrangements and CA 2006 relating to Early Years Foundation Stage assessment arrangements. In each case, the amendment removes the QCDA from the bodies subject to the powers of the Secretary of State to confer or impose functions in an order specifying assessment arrangements.
154. *Paragraph 14* amends section 90 of EA 2002, which gives the Secretary of State the power to direct in respect of a particular maintained school that, for a specified period, the National Curriculum does not apply or applies with modifications. The amendments have the effect that the QCDA is no longer able to make, or agree to make, an application for a direction from the Secretary of State, and is no longer able to act as a reviewing body where such a direction has been given.
155. *Paragraph 15* replaces section 96 of EA 2002 so as to change the way in which persons must be consulted before the Secretary of State makes certain orders or regulations relating to the National Curriculum. Under section 96 as substituted, the Secretary of State must give notice of the proposal to specified persons and other persons whom the Secretary of State thinks it is desirable to consult. The Secretary of State must give the bodies and persons consulted an opportunity to submit evidence and representations which the Secretary of State must consider before publishing a summary of the views expressed in the consultation and a draft of the proposed order or regulations. The Secretary of State must allow at least one month for further evidence and representations and may then make the order or regulations with or without modifications.
156. Section 46 of CA 2006 provides for regulations to be made allowing the Secretary of State to direct in respect of one or more early years providers that, for a specified period, the Early Years Foundation Stage does not apply or applies with modifications. The amendments in *paragraph 18* will mean that the QCDA is no longer a reviewing body where such a direction has been given.
157. *Paragraph 21* amends the Safeguarding Vulnerable Groups Act 2006 so that work carried out for or on behalf of the QCDA will no longer be a controlled activity relating to children for the purposes of that Act.
158. *Paragraph 23* amends ASCLA 2009 to remove reference to the QCDA as a person who may provide information to which Ofqual is required to have regard.
159. *Paragraph 25* amends Schedule 5 to ASCLA 2009 (learning aims for persons aged 19 or over) to remove the reference to the QCDA providing advice or information relating to qualifications to which the Secretary of State may have regard in forming an opinion for the purposes of that Schedule.

Section 27: Abolition of the QCDA: transfer schemes

160. *Section 27* gives effect to Schedule 9, giving power to the Secretary of State to make a scheme to enable the transfer of staff, property, rights and liabilities from the QCDA to Ofqual and the Secretary of State (to provide, for example, for any transfers to the Department for Education).

Careers education and guidance

Section 28: Education and training support services in England

161. *Subsection (2)* removes the Secretary of State's power under section 69 of ESA 2008 to give local authorities directions relating to the exercise of their functions under section 68 of that Act.
162. The duty in section 68 (which remains in force) requires local 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 "young person" means a person who has attained the age of 13 but not the age of 20. A "relevant young adult" is a person aged 20 to 24 years who has a learning difficulty within the meaning of subsections (6) and (7) of section 15ZA of EA 1996.
163. *Subsection (3)*, as a consequence of omitting section 69, removes all references to section 69 and the Secretary of State's direction making powers in sections 68, 70(2) and 71(8) of ESA 2008. This section retains the provision for local authorities to have regard to any guidance issued by the Secretary of State (section 68(4)(b) of ESA 2008).
164. *Subsection (4)* repeals the duty in section 73 of ESA 2008 which requires schools and other educational institutions to allow persons involved in providing education and training support services (for example, Connexions personal advisers) access to pupils or students, and facilities on their premises.
165. *Subsection (5)* repeals section 76A(5) of ESA 2008. Section 76A(1) of ESA 2008 enables the Secretary of State to make arrangements with another person for the holding and supply of certain information in connection with education and training support services provided in pursuance of section 68 or 70(1)(b) of ESA 2008. This power has been used to make arrangements with a contractor to hold information on the participation of young people in education and training in a database known as the National Client Caseload Information System (NCCIS). Subsection (3) of section 76A allows anyone holding "relevant information" as referred to in 76A(2) to supply it to either the Secretary of State or the NCCIS contractor. Section 76A(5) prevents information obtained by either the Secretary of State or the NCCIS contractor under 76A(3) from then being disclosed to each other in a way that reveals, or could reveal, the identity of an individual. The repeal of this subsection removes this prohibition.
166. The Government intends to use this power to generate data about the kinds of activities that pupils from a school or college go on to do after they leave. This will be done by "matching" information from the NCCIS (which contains information about where individuals go on to work or study) with information the Secretary of State holds on individuals' education outcomes in the National Pupil Database. Published information will not identify individuals. Both the NCCIS contractor and the Secretary of State will continue to be required to comply with the Data Protection Act 1998 which protects the use of individuals' personal data.

Section 29: Careers guidance in schools in England

167. *Subsection (2)* inserts a new section 42A into EA 1997 to require maintained schools and pupil referral units in England to secure independent careers guidance for pupils in the school year in which they reach the age of 14 until they have ceased to be of compulsory school age.
168. New section 42A(4) provides that the guidance must be impartial, and as is currently set out in section 43(2ZB) (which has not been brought into force), it must also include information on all 16 to 18 education or training options, including apprenticeships.
169. New section 42A(5) sets out what constitutes independent guidance: a school cannot fulfil the duty by asking a teacher or another person employed by the school to provide

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

guidance to all pupils. However, this would not prohibit a teacher from offering some careers advice.

170. *Subsections (3) to (9)* make consequential amendments to sections 43 to 46 of EA 1997, principally to confine their application to schools in Wales. However, the duty in section 45 to provide careers information continues to apply to further education institutions in England.

Repeal of the diploma entitlement

Section 30: repeal of diploma entitlement for 16 to 18 year olds

171. **Section 30** amends sections 45, 48 and 86 of ASCLA 2009 by removing references to the “additional entitlement”.
172. Section 45 of ASCLA 2009, which has not yet been brought into force, provides for EA 1996 to be amended by inserting into it new sections 17A to 17D. These currently place a duty on local authorities in England to secure for 16 to 18 year olds the “core” and “additional” entitlements. The additional entitlement is defined by section 17D(1) of EA 1996 as an entitlement to follow a course of study in an area specified by order by the Secretary of State and no order has been made. *Subsections (2) to (6)* amend new sections 17A to 17D by removing from them all references to “additional entitlements” so that when section 45 is commenced the duties under sections 17A to 17D of EA 1996 will only relate to the “core” entitlement.
173. Reference to the “additional entitlements” are also removed from section 48 (which requires the local authority to have regard to the desirability of the additional element in considering whether education for persons subject to youth detention is suitable) and 86 of ASCLA 2009 (which requires the Chief Executive of Skills Funding to have regard to the desirability of the additional entitlement in exercising certain functions relating to education for over 19s and people subject to adult detention).

Section 31: repeal of diploma entitlement for fourth key stage

174. **Section 31** amends section 74 of EIA 2006, which replaces section 85 of EA 2002 with new sections 85 and 85A. Under section 85A(1)(b), all Key Stage 4 pupils (that is, those aged from 14 to 16) are entitled to follow a course of study in an entitlement area specified by the Secretary of State by order. No order has been made, and the legislation is not yet in force. It was the public intention of the previous Government that the additional entitlement was to be to the new 14 to 19 diplomas. This would have placed duties on local education authorities, governing bodies and head teachers of maintained secondary schools to secure this entitlement. The section will remove this duty so that section 85A will simply entitle key stage 4 pupils to study the subjects listed at subsection (2). *Subsection (3)* of the section makes amendments which are consequential on the amendments to section 85A of EA 2002.

Part 5: Educational Institutions: Other Provisions

Repeal of duties of governing bodies, local authorities and others

Section 32: Duty to prepare and publish a school profile

175. **Section 32** repeals the duty in section 30A of EA 2002 for maintained schools in England to prepare and publish a school profile which is required to contain information provided by the Secretary of State for inclusion, information about matters specified by the Secretary of State, and other prescribed information.

Section 33: Duty to appoint school improvement partners

176. **Section 33** repeals section 5 of EIA 2006, removing the duty on a local authority to appoint a school improvement partner (known as a “SIP”) for each school they maintain. The SIP provides advice to the school and governing body in order to help improve the attainment and outcomes of pupils.

Section 34: Duties in relation to school admissions

177. **Section 34** amends Part 3 of SSFA 1998 which is concerned with school admissions.
178. **Subsection (2)(a)** removes the requirement under section 85A of SSFA 1998 on English local authorities to establish an admission forum for their area.
179. **Subsection (3)** removes the duty on the adjudicator to decide, on receiving an annual report from a local authority, whether the admission arrangements described conform to the relevant legal requirements. The adjudicator’s discretionary power under section 88I(5) of SSFA 1998 to consider arrangements that appear not to conform to legal requirements, regardless of how they come to the adjudicator’s attention, is not affected by this change and the adjudicator can investigate matters in these reports under that power.
180. **Subsection (4)** changes the powers of the adjudicator. It repeals section 88J of SSFA 1998 which requires the adjudicator, upon referral of a specific matter concerning a maintained school’s admission arrangements, to consider whether it would be appropriate for changes to be made to any aspect of those admission arrangements in consequence of the matter referred, and gives them the power to require such changes to be made.
181. **Subsection (5)** amends section 88P of SSFA 1998 which requires local authorities to provide reports to the adjudicator about admissions arrangements in their area. Currently regulations prescribe the form, content and timing of such reports but the amendment means that the School Admissions Code will instead contain the requirements for such reports (and the regulation-making power is removed)..
182. **Schedule 10** makes amendments that are consequential on the repeals and amendments made by this section.

Section 35: Duties in relation to school meals etc

183. **Section 35** amends sections 512ZA (power to charge for meals etc) and 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc) of EA 1996.
184. **Subsections (2)(a) and (3)(a)** will prohibit local authorities and governing bodies of maintained schools in England from charging more than the cost of providing milk, meals or other refreshments to pupils. Currently there is no cap on how much a pupil can be charged. This change will not affect the provision of free school meals (and free milk) to eligible pupils.
185. **Subsections (2)(b) and (3)(b)** repeal the requirement that any charge made for the provision of “milk, meals and other refreshments” in a school must be the same for every person for the same quantity of the same item. The repeal of this requirement will, in effect, allow different prices to be charged for the same quantity of the same item.
186. This will, for example, enable local authorities and governing bodies in England to charge less for school meals provided to children in reception classes at the start of term or children of families on low incomes not eligible for free school meals, in order to encourage them to take school meals. Use of flexible charging will be optional and subject to local circumstances. This change will not affect the provision of free school meals (and free milk) to eligible pupils.

Admissions

Section 36: Objections to admission arrangements

187. **Section 36** amends sections 88H and 88K of SSFA 1998 to allow any body or person to refer to the adjudicator an objection concerning the admission arrangements of any state-funded school.

New schools

Section 37: Establishment of new schools

188. **Section 37** gives effect to Schedule 11 which makes amendments to Part 2 of EIA 2006, which deals with the establishment of new schools.

Schedule 11

189. **Paragraph 2** inserts new section 6A into EIA 2006, placing a duty on local authorities to seek proposals for the establishment of an Academy where they are of the view that there is a need for a new school in their area. The local authority must specify a date by which proposals must be submitted and after that date must notify the Secretary of State of the steps taken to satisfy this duty and the proposals that have been submitted (or that there have been no proposals). The notification to the Secretary of State must identify a site for the school and any other matters prescribed by regulations.
190. **Paragraph 3** amends section 7 of EIA 2006 so that before publishing proposals for a competition for the establishment of a new school the local authority must obtain the consent of the Secretary of State. In addition, section 7 is amended to remove the ability of the local authority to publish any of its own proposals for a new foundation or community school in a section 7 competition. In consequence, **paragraph 5** repeals section 8 of EIA 2006, which prescribed the circumstances in which the local authority could enter its own proposals for a new school in a competition.
191. **Paragraph 4** inserts new section 7A into EIA 2006 which provides for the local authority (with the consent of the Secretary of State) to withdraw, or for the Secretary of State to direct the withdrawal of, a section 7 notice at any time before the end of the period that proposals may be submitted. The effect of this new provision is that a competition can be halted at this early first stage.
192. **Paragraphs 6 and 7** make amendments to sections 10 and 11 of EIA 2006 which deal with publication of proposals outside a competition. The amendments to section 10 (publication of proposals that require the Secretary of State's consent) provide that the following proposals for a new school can be published with the consent of the Secretary of State:
- local authority proposals for a community or foundation school to replace one or more maintained schools (except infant and junior amalgamations, which do not now require consent), excluding those providing education suitable only for persons over compulsory school age;
 - proposals for foundation, and voluntary controlled schools by other proposers (except those within section 11(2) as amended).
193. The amendments to section 11 of EIA 2006 mean that the following proposals will be able to be made without the Secretary of State's consent:
- local authority proposals for a new community or foundation primary school to replace a maintained infant and a maintained junior school;
 - proposals for the establishment of a new voluntary aided school;

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- proposals for a new foundation or voluntary controlled school resulting from an existing religious school changing or losing its religious designation;
 - a new foundation or voluntary controlled school with a religious character replacing an existing religious school, resulting from the reorganisation of faith schools in an area; and
 - local authority proposals for a new community or foundation school where following publication of a section 7 notice no proposals are approved by the local authority, no Academy arrangements are entered into, or no proposals are received.
194. *Paragraphs 10 to 17* make amendments to Schedule 2 to EIA 2006 which deals with the consideration and approval of proposals under Part 2 of EIA 2006 by the local authority or the adjudicator (in respect of local authority proposals). These amendments are consequential on the amendments made by paragraphs 3 to 9.
195. In addition, these paragraphs have the effect that Academy proposals are no longer submitted to local authorities for approval. Instead, any Academy proposals entered into a section 7 competition will be referred to the Secretary of State, for him to decide if he wishes to enter into Academy arrangements with the proposer. Where there are both Academy and non-Academy proposals in a competition, the Secretary of State must first decide the Academy proposals and notify the local authority if he enters into Academy arrangements as a result of the proposals. If the Secretary of State decides against entering into Academy arrangements in such a case, the non-Academy proposals will be considered by the local authority. Even if the Secretary of State approves the Academy proposals, new paragraph 7A of Schedule 2 also enables him to direct that all or any of the non-Academy proposals be considered by the local authority. In such a case, it would be possible for a section 7 competition to result in the approval of both Academy proposals (by the Secretary of State) and non-Academy proposals (by the local authority). This might happen, for example, where Academy proposals are for a small school but the local authority has identified a need for a larger school in its area.

Governing bodies: constitution and dissolution

Section 38: Constitution of governing bodies: maintained schools in England

196. *Section 38* amends section 19 of EA 2002 by reducing the number of categories of governor that regulations must require the governing body of a maintained school in England to have. The requirements in relation to Wales remain unchanged.
197. *Section 19(1)* will continue to require each maintained school to have a governing body constituted in accordance with regulations, but *subsection (2)* amends section 19 by inserting a new subsection (1A) that provides that for such schools in England, the regulations have to provide for the governing body to consist of parent governors, the head teacher, a staff governor, a local authority governor, such other persons as are prescribed and, in the case of foundation schools, voluntary aided schools and voluntary controlled schools, of foundation governors or partnership governors. The regulations may provide that the head teacher can resign as a governor and for the governing body to specify eligibility criteria for the local authority governor.

Section 39: Discontinuance of federated school: governing body not to be dissolved

198. *Section 39* amends paragraph 5 of Schedule 1 to EA 2002, which provides for the dissolution of the governing body of a maintained school on its discontinuance. Currently paragraph 5 of Schedule 1 dissolves a federated governing body on the occasion of one of the schools in the federation being discontinued. Section 38 prevents dissolution from happening in circumstances where two or more schools will remain in the federation after the school concerned has discontinued.

199. This will enable a school to close or convert to an Academy, without having to first undertake a statutory procedure to leave the federation in order to avoid dissolving the federated governing body.
200. A federated governing body is a single governing body for two or more maintained schools, as provided for in sections 24 and 25 of EA 2002.

Standards

Section 40: School inspections: exempt schools

201. **Section 40** amends the current requirement under section 5 of EA 2005 for the Chief Inspector to inspect and report on every school in England at intervals prescribed in regulations. **Subsection (2)** provides for regulations to stipulate that certain schools (to be known as “exempt schools”) are to be exempt from inspection under section 5.
202. Exempt schools remain eligible for inspection under section 8 of EA 2005 and so may be subject to inspection as part of the Chief Inspector’s programme of surveys of curriculum subjects and thematic reviews, including those focused on best practice provision in schools. Exempt schools may also be inspected under this section in circumstances where the Chief Inspector or the Secretary of State has concerns about the performance of the school.
203. **Subsection (4)** allows the Chief Inspector to be able to charge for the cost of an inspection where the Chief Inspector inspects a school in response to a request from that school and the Chief Inspector is not required to inspect the school. Such an inspection must be treated as if it were an inspection under section 5. The provision is likely to be particularly relevant in cases where an exempt school is seeking an updated independent assessment of its performance, or where a school believes its performance has improved and wishes an early assessment of this.
204. **Subsection (5)** amends section 9 of EA 2005 to enable the Chief Inspector to treat an inspection of an exempt school conducted under section 8 as if it were an inspection under section 5, and to require the Chief Inspector to do so where requested by the Secretary of State.
205. **Subsection (9)** provides that, with the exception of the first set of regulations made under section 5 of EA 2005, regulations under section 5 are subject to the affirmative procedure.

Section 41: School inspections: matters to be covered in Chief Inspector’s report

206. **Section 41** changes the areas that the Chief Inspector is under a general duty to report on as part of an inspection conducted under section 5 of EA 2005.
207. The section replaces subsections (5) and (5A) of section 5 and inserts a new subsection (5B). New subsection (5) sets out the general duty of the Chief Inspector to report on the quality of education provided in the school, and new subsection (5A) sets out details of what the report must in particular cover. These areas are:
- the achievement of pupils at the school;
 - the quality of teaching in the school;
 - the quality of leadership in and management of the school; and
 - the behaviour and safety of pupils at the school.
208. In reporting on the quality of education provided in a school, including in relation to the four specified areas above, the Chief Inspector must consider the areas set out in new subsection (5B). This includes consideration of how well a school provides for different groups of pupils. Such groups include but are not limited to gender and minority ethnic

groups, those eligible for free school meals and the pupil premium, looked after children and gifted and talented pupils. The Chief Inspector must in particular consider how well the school meets the needs of pupils with a disability and those with special educational needs. In addition, the Chief Inspector must consider the school's provision for the spiritual, moral, social and cultural development of pupils.

Section 42: Inspection of further education institutions: exempt institutions

209. **Section 42** amends the current requirement in section 125 of EIA 2006 for the Chief Inspector to inspect and report on all institutions within the further education sector. *Subsection (2)* of this section provides for regulations to stipulate that certain types of sixth form and general further education colleges are to be exempt from inspection under section 125 of EIA 2006 in certain circumstances (“exempt institutions”).
210. The Chief Inspector will retain the power to inspect exempt institutions under section 126 of EIA 2006 which will allow for inspections in circumstances where the Chief Inspector has concerns about the performance of an exempt institution, and will also allow for inspections as part of a programme of surveys or curriculum subjects and thematic review. *Subsection (4)* inserts a new provision into section 126 that requires the Chief Inspector to inspect an exempt institution under that section where requested to do so by the Secretary of State.
211. *Subsection (8)* allows the Chief Inspector to charge for inspections under section 126(1) where they are conducted as a result of a request from a provider of education or training. Such an inspection must be treated as if it were an inspection under section 125. The provision is likely to be particularly relevant in cases where an exempt institution is seeking an updated independent assessment of its performance, or where the institution believes its performance has improved and wishes an early assessment of this.
212. *Subsection (11)* provides that, with the exception of the first set of regulations made under section 125 of EIA 2006, regulations under section 125 would be subject to the affirmative procedure.

Section 43: Inspection of boarding accommodation

213. *Subsection (2)(a)* clarifies what is meant by a school or college providing accommodation for a child for the purposes of sections 87 to 87D of CA 1989. The new section 87(1A) extends the meaning of “providing accommodation” to include circumstances in which a school or college arranges boarding accommodation for a child otherwise than on its own premises, for example with host families.
214. *Subsection (2)(c)* inserts a new subsection (3A) into section 87 which will allow the Secretary of State to direct the Chief Inspector to take steps to determine whether a child's welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in England. This power can be exercised even where the Chief Inspector's duty to take such steps has been suspended by virtue of section 87A and an appointed inspectorate has entered into an agreement with the school or college concerned. A new subsection (3B) is also inserted to enable the Welsh Ministers to take steps in respect of a school or college in Wales in circumstances where their duty has been suspended by virtue of section 87A.
215. *Subsection (3)(b)* allows for regulations to be made specifying the matters to be taken into account in appointing, or terminating the appointment of, independent inspectorates in England.
216. *Subsection (4)* provides for Ofsted to monitor the work of independent inspectorates appointed to conduct welfare inspections of boarding schools under section 87A, and for the Chief Inspector to report annually to the Secretary of State on those inspectorates. Both of these provisions mirror existing provisions in sections 106 and 107 of ESA

2008 for independent inspectorates conducting inspections of education provision in independent schools in England.

Section 44: Schools causing concern: powers of Secretary of State

217. **Section 44** amends Part 4 of EIA 2006 which sets out the legal framework for maintained schools causing concern in England.
218. Under section 68 of EIA 2006 the Secretary of State can currently direct the closure of a school because the school “requires special measures” (section 62 of EIA 2006). *Subsection (2)* of this section amends section 68 of EIA 2006 to extend the situations in which the Secretary of State can direct the closure of a school.
219. The effect of this amendment is therefore that the Secretary of State will also be able to direct the closure of a school when a school has failed to comply with a performance standards or safety warning notice (as defined in section 60 of EIA 2006) and when a school has been identified as requiring significant improvement by the Chief Inspector and has been issued with a notice to improve (as defined in section 61 of that Act).
220. *Subsection (3)* of this section amends section 69A of EIA 2006. Section 69A currently gives the Secretary of State the power to direct a local authority to “consider” giving performance standards and safety warning notices in terms specified by him.
221. This amendment strengthens the Secretary of State’s power set out in section 69A so that where a local authority has been directed to consider giving a performance standards and safety warning notice and has decided not to do so, the Secretary of State may direct the authority to give a warning notice in specified terms. Where any warning notice has been given, whether following a direction or not, failure to comply with it would result in the school becoming eligible for intervention. The warning notice will inform the governing body of their right to make representations to the Chief Inspector against the giving of the warning notice. The Chief Inspector, as an independent body, may confirm the warning notice or otherwise.

Section 45: Complaints: repeal of power to complain to Local Commissioner

222. **Section 45** repeals sections 206 to 224 of ASCLA 2009. These sections give the Local Commissioner for England (more commonly known as the Local Government Ombudsman) responsibility for considering complaints received from parents and pupils about maintained schools. They also amend the Secretary of State’s powers of intervention (where he is satisfied that the school’s governing body has acted, or is intending to act, unreasonably, or in breach of a duty) under section 496 or 497 of EA 1996 to provide that those powers may not be exercised in respect of a matter that has, or in his opinion could be, complained about to the Local Commissioner. The effect of the repeal is that the Secretary of State’s powers of intervention are no longer so restricted.
223. *Subsection (2)* makes a number of consequential amendments, including:
- *paragraphs (a) and (d)* - the amendment of section 409 of, and paragraph 6 (3) and (4) of Schedule 1 to, EA 1996, to remove the duty on local authorities in England to consider complaints relating to the curriculum. Local authorities in Wales retain this duty; and
 - *paragraphs (b) and (c)* – the amendments of sections 496 and 497 of EA 1996 to remove the restrictions on the Secretary of State’s intervention powers.

Finance

Section 46: Local authorities’ financial schemes

224. Section 48 of SSFA 1998 requires each local authority to prepare and maintain a scheme which sets out the financial relationship between it and the schools it maintains.

Regulations prescribe the matters which must be dealt with in local authority schemes, but do not prescribe their detailed content. Schedule 14 to SSFA 1998 allows a local authority to revise their scheme provided that they take into account any guidance given by the Secretary of State about the provisions the Secretary of State regards as appropriate for inclusion in the scheme; they consult the governing body and head teacher of every school maintained by them; and the revisions are approved by their schools forum.

225. **Section 46** amends Schedule 14 to SSFA 1998, enabling the Secretary of State to revise the whole or any part of a local authority scheme by giving a direction. It also requires the Secretary of State to consult the relevant local authority and such other persons as the Secretary of State thinks fit before a direction is given.

Section 47: Payments in respect of dismissal, etc

226. **Section 47** amends section 37 of EA 2002 which sets out how the costs of premature retirement, dismissal or securing the resignation of school staff in maintained schools are funded. Under current legislation, where a local authority incurs these costs in relation to school staff employed for community purposes, such as an adult education tutor, the costs must be recovered from the governing body of the school, unless the local authority agrees otherwise, but the costs cannot be met out of the school's budget share. This means that these costs must be met by the governing body out of grants which can be used for community purposes or other external income.
227. The amendment to section 37 provides that a local authority must still recover these costs from the governing body of a maintained school in England, but that they may be met by the governing body out of the school's budget share. This is subject to the governing body being satisfied that this will not interfere to a significant extent with the performance of any duties imposed on them by the Education Acts, including the requirement to conduct the school with a view to promoting high standards of educational achievement.
228. Section 4 of CSFA 2010 amended section 50 of SSFA 1998 to enable governing bodies of maintained schools to use their budget shares to finance the provision of community facilities or services under section 27 of EA 2002; this amendment came into force on 1 April 2011. Section 47 provides consistency in relation to the funding of the costs of premature retirement, dismissal and securing the resignation of staff employed for community purposes.

Section 48: Determination of permitted charges

229. **Section 48** amends section 456 of EA 1996 dealing with charges which maintained schools are permitted to make for "optional extras" provided by a school. Optional extras include education outside of school hours, entry for certain public examinations, some school transport, and board and lodging provided on residential trips.
230. Section 451 of EA 1996 prohibits charges for education for registered pupils during school hours, but regulations can be made under section 451(2A) to lift this prohibition on charging for early years provision where this is for a pupil who is below compulsory school age and is additional to the hours which must be made available free of charge pursuant to the duty on local authorities to secure a certain amount of early years provision free of charge (under section 7 of CA 2006). The Government intends to make these regulations and a school governing body will then be able to charge for early years provision as an optional extra.
231. **Subsection (2)** inserts a new provision into section 456 of EA 1996 clarifying that the charges for all optional extras can also include an amount attributable to the costs relating to the buildings and accommodation used, for example, heating and lighting costs, and maintenance. Currently, under section 456(4), the charges for all optional extras can include the costs of any materials, books, instruments or other equipment

used for the purposes of or in connection with the provision of the optional extra, and the use of non-teaching staff or teaching staff engaged under contracts for services for the purposes of providing the optional extra.

232. *Subsection (4)* inserts a new subsection (6A) into section 456 of EA 1996. The new subsection (6A) is only relevant where the optional extra is education which is early years provision. It provides that the charges for early years provision imposed by the school may include costs attributable to teaching staff who are employees of the school and who provide the early years provision. Currently this would be prohibited by section 456(5) and only the costs attributable to any self-employed staff with whom the school has contracted could be included. This will ensure that the key costs of providing early years provision over and above that delivered free of charge under section 7 of CA 2006 for children under compulsory school age can be reflected in the charges.

Further education institutions

Section 49: Further education institutions: amendments

233. *Section 48* gives effect to Schedule 12 which makes amendments to the duties on further education corporations and sixth form college corporations.
234. A further education corporation is a body corporate established under section 15 or 16 of FHEA 1992, or which has become a further education corporation by virtue of section 33D or 47 of that Act.
235. A sixth form college corporation is a body corporate that is designated as a sixth form college corporation under section 33A or 33B of FHEA 1992, or established under section 33C, of that Act. References to sixth form colleges are to institutions conducted by sixth form college corporations.

Schedule 12

236. *Paragraph 2* inserts a new section 16A into FHEA 1992. The new section requires the Secretary of State to publish draft proposals in the prescribed form, before he makes an order to establish a further education (FE) corporation. This retains the current legislative provision in relation to the establishment of FE corporations as set out in section 51 of FHEA 1992, which is repealed by paragraph 23.
237. *Paragraphs 3, 13 and 14* amend sections 19, 33F and 33G of FHEA 1992. They remove the requirement for FE corporations in England and sixth form college corporations to gain the consent of the relevant body – the relevant local authority or in some cases the Young People’s Learning Agency for England (the YPLA) in the case of sixth form college corporations, and the Chief Executive of Skills Funding for FE corporations – before they exercise their supplementary powers to borrow money, and form or invest in a company or a charitable incorporated organisation for the purposes of conducting an educational institution.
238. The Schedule also provides for the repeal of the duty on colleges to promote the economic and social wellbeing of the local area. *Paragraph 4* repeals section 19A of FHEA 1992 that places this duty on FE corporations in exercising their function under sections 18 and 19 of FHEA 1992; *paragraph 10* repeals section 33H of FHEA 1992 that places a corresponding duty on sixth form college corporations in exercising their functions under sections 33E and 33F. *Paragraph 46(2)* makes a consequential amendment to section 256 of ASCLA 2009.
239. The Schedule also makes provision relating to sixth form college corporation and FE corporation instrument and articles of government. *Paragraph 5* amends section 20 of FHEA 1992 to make new provision about the content of instruments and articles of government of FE corporations in England. *Paragraph 6* substitutes a new section 22 of FHEA 1992 which removes the Secretary of State’s power to modify, revoke or replace

the instrument and articles of FE colleges in England and gives FE colleges in England the power to modify or replace their instrument and articles; *paragraph 19* makes similar changes in relation to sixth form colleges by repealing the Young People's Learning Agency power to modify, revoke or replace the instrument and articles of sixth form colleges, and giving such colleges the power to modify or replace their instrument and articles through new section 33L. *Paragraph 5* also makes provision to maintain the current position for FE college corporations in Wales.

240. The Schedule also makes provision relating to the dissolution of sixth form college corporations and FE corporations. *Paragraph 7* replaces section 27 of FHEA 1992 with new sections 27, 27A and 27B. These new sections remove the Secretary of State's power to dissolve a FE college corporation and to transfer their property, rights and liabilities to another educational provider. Instead, FE college corporations will have the power to dissolve themselves, provided they have conducted a full consultation and taken account of the views of those consulted, in accordance with regulations. *Paragraph 7* also gives colleges the ability to transfer their property, rights or liabilities to a body or institution with their consent. The body or institution will be specified in regulations. In addition, new section 27C will retain the current position for FE colleges in Wales. *Paragraph 20* makes similar changes in relation to sixth form colleges by replacing 33N of FHEA 1992 with new sections 33N, 33O and 33P.
241. *Paragraph 8* replaces section 29 of FHEA 1992 with new sections 29, 29A, 29B and 29C, to give designated institutions in England the power to modify or replace their instrument and articles.
242. *Paragraph 11* amends section 33C of FHEA 1992 which provides for the establishment of new sixth form college corporations by order of the Secretary of State. At present, an order may only be made where the responsible local authority makes a proposal which meets specified requirements. The effect of the amendment is to enable any person or body to make a direct application to the Secretary of State, to establish a sixth form college corporation.
243. *Paragraphs 12, 17 and 18* provide statutory safeguards relating to the specific governance and constitutional arrangements of voluntary sixth form colleges, which were afforded by previous legislation relating to FE colleges or Secretary of State directions. *Paragraphs 12 and 17* give voluntary sixth form colleges the express power to conduct their institution in accordance with their trust deeds and established character. *Paragraph 18* requires the Secretary of State to gain the consent of the trustees of voluntary sixth form colleges when providing the initial instrument and articles of government.
244. *Paragraph 18* amends section 33K of FHEA 1992. It transfers responsibility from the YPLA to the Secretary of State for the drawing up of the initial instruments and articles of government of a new sixth form college corporation established under section 33C.
245. *Paragraph 21* makes consequential amendments to section 38 of FHEA 1992 in light of the dissolution of the YPLA. It transfers to the Secretary of State the YPLA's power to make payments, on such terms and conditions as the YPLA may determine, to a local authority in respect of the principal of, and any interest on, any excepted loan liability of that authority.
246. *Paragraph 22* repeals section 49A of FHEA 1992, as it has effect in England. The effect is to remove the requirement for governing bodies of sixth form and FE colleges to have regard, when exercising their functions, to the content of any guidance that has been issued by the Secretary of State about consulting certain groups in connection with decisions which affect them. The groups concerned are people who are, or are likely to become, students and employers.
247. *Paragraph 25* amends section 56A of FHEA 1992, which relates to the power to intervene in FE institutions. Currently, under section 56A, if the Chief Executive of

Skills Funding considers that a further education institution is being mismanaged or is otherwise failing, he can, after serving a notice on the institution's governing body, intervene by making changes to the governing body or making another direction. Paragraph 25 transfers the functions of the Chief Executive under this section to the Secretary of State (and *paragraphs 27 to 29* make consequential repeals of sections 56B to 56D of FHEA 1992). *Paragraph 25(6)* amends sections 56A FHEA 1992 to enable the Secretary of State, when using the intervention powers provided under these sections, to direct the college's governing body to use its new powers to pass a resolution to dissolve itself. If this happens, colleges will be treated as if they had followed the consultation procedures set out in sections 27. *Paragraph 30(7)* makes similar provision for sixth form colleges in relation to section 56E of FHEA 1992.

248. *Paragraph 26* repeals section 56AA of FHEA 1992 so that the power of the Chief Executive of Skills Funding to appoint up to two additional members of the governing body of a FE corporation is removed. *Paragraphs 31 and 34* repeal sections 56F and 56I of FHEA 1992. They remove the corresponding powers of the relevant local authority and the YPLA in respect of sixth form college corporations. *Paragraph 10* makes a consequential amendment to section 31 of FHEA 1992. *Paragraph 46(3)* makes consequential amendments to Schedule 6 to ASCLA 2009. The consequential amendments remove references to the two additional members of the governing body appointed by the Chief Executive of Skills Funding or the relevant local authority and the YPLA.
249. *Paragraph 30* makes equivalent changes to section 56E of FHEA 1992 which currently gives the power of intervention in sixth form colleges to local authorities. This power of intervention is transferred to the Secretary of State. *Paragraphs 32 and 35* make consequential repeals of sections 56G and 56J. Paragraph 30(4) requires the Secretary of State to consult the trustees and each person or body with power to appoint or nominate the foundation governors prior to exercising his power of intervention in respect of voluntary sixth form colleges.
250. *Paragraph 33* repeals section 56H, thereby removing the power that the YPLA has to intervene in certain sixth form colleges (the YPLA is abolished by Part 7 of the Act).
251. *Paragraph 43* replaces Schedule 4 to FHEA 1992 with a new Schedule 4 that sets out the essential elements that all colleges are required to include in their instrument and articles. These essential elements will require colleges to set out, for example, the composition of the corporation or governing body, the roles and responsibilities of key personnel, and procedures for the conduct of the corporation or governing body, and how a college will change its instrument and articles. Governing bodies will have to include staff, student, and, in the case of sixth form colleges, parent governors.
252. Other paragraphs of this Schedule make consequential amendments in light of the dissolution of the YPLA and the amendments to FHEA 1992 contained within this Schedule.

Pupil referral units

Section 50: financing of pupil referral units

253. *Section 50* amends section 45 of SSFA 1998.
254. *Section 45* provides for every maintained school in England and Wales to have a budget share allocated to it by the local authority that maintains it. This section adds a new paragraph (d) to section 45(1A) to include pupil referral units in the definition of "maintained school". The effect is that every pupil referral unit in England will receive a budget share from the local authority that maintains it.

255. The section also modifies paragraph (a) of section 45(3) so that the reference to pupil referral units refers only to Wales, as the change introduced by this section applies to England only.
256. New paragraph (aa), is inserted after section 45(3)(a) and means that all references in Chapter 4 of Part 2 of SSFA 1998 to the governing body of a maintained school should, with respect to pupil referral units in England, be read as references to the management committee of a unit. This overrides paragraph 1 of Schedule 1 to EA 1996, which provides that references to a governing body, in relation to pupil referral units, are to be read as references to the local authority. New paragraph (ab) provides that in Chapter 4 references to governors in relation to pupil referral units are to be read as references to members of the management committee.

Section 51: repeal of provision changing name of pupil referral units

257. **Section 51** repeals section 249(1) and (2) of ASCLA 2009, which have not been brought into force.
258. **Section 249(1)** provides that “pupil referral units” established in England under section 19(2B) of EA 1996 would, from the date when the section came into force, be known as “short stay schools”. **Subsection (2)** of this section repeals section 249(1), meaning that they will continue to be known as pupil referral units.
259. **Section 249(2)** empowers the Secretary of State to make orders to amend primary or secondary legislation so that legislation applying to pupil referral units would continue to apply notwithstanding the change of name effected by section 249(1). With the repeal of section 249(1), 249(2) is no longer needed.

Part 6: Academies

Academy arrangements

Section 52: Academies: removal of requirement to have specialism

260. **Section 52** removes section 1(6)(b) from AA 2010, which requires Academies providing secondary education to have an emphasis on a particular subject area or areas. Section 1(6)(b) replaced similar provisions in section 482 of EA 1996.
261. The removal of section 1(6)(b) means that new schools which are set up as Academies and existing schools which convert to become Academies will no longer be required, where they provide secondary education, to have an emphasis on one or more subject areas. However, an Academy can, if it so chooses, have or continue to have a secondary curriculum which retains such an emphasis and it will still be required to provide a balanced and broadly based curriculum, in accordance with the requirements of section 78 of EA 2002.

Section 53: Academy arrangements: post-16 education and alternative provision

262. **Section 53** amends section 1 of AA 2010. These amendments provide that a person entering into Academy arrangements with the Secretary of State may undertake to establish and maintain one of three different types of Academy. Prior to this there was only one type of Academy. The new types are Academy schools (which broadly have the same characteristics as existing Academies), 16 to 19 Academies and alternative provision Academies. All three different types of educational establishment are to be known by the generic term “Academy”, but no institution can be considered as more than one type of Academy.
263. **Subsection (2)** inserts a new subsection (5) into section 1 of AA 2010. Section 1(5) currently sets out the undertakings that are to be given by those entering into Academy arrangements with the Secretary of State in order to be able to establish an Academy.

The new subsection (5)(a) also sets out the undertakings that are to be given but now provides for different undertakings reflecting the type of Academy being established. In addition to undertaking that the educational establishment will have the characteristics relevant to the particular type of Academy, subsection (5)(b) also provides that a person entering into Academy arrangements with the Secretary of State must undertake to run or provide for the running of the institution.

264. *Subsection (3)* removes the current section 1(6) of AA 2010. Section 1(6) is replaced by the new sections 1A, 1B and 1C of AA 2010, inserted by *subsection (7)* of this section.
265. *Subsections (4), (5) and (6)* make consequential amendments to section 1 of AA 2010 to reflect the fact that Academies will no longer necessarily be “schools”. In particular, 16 to 19 Academies will not be “schools” for the purposes of section 4 of EA 1996.
266. *Subsection (7)* inserts new sections 1A, 1B, 1C and 1D into AA 2010. New section 1A sets out the characteristics required of an educational establishment for it to be an Academy school. With one exception these characteristics are the same as those which applied to Academies in AA 2010. The one exception is the requirement that if the Academy is providing secondary education its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Academy arrangements. This characteristic will no longer apply (reflecting the repeal made by section 52). New section 1A(2) provides that an educational institution may also meet the requirements for an Academy school if it is an independent school and it is specially organised to make special educational provision for pupils with special educational needs.
267. New section 1B(1) sets out the requirements to be met by 16 to 19 Academies. They must be educational institutions that are principally concerned with providing full-time or part-time education suitable to the requirements of those over compulsory school age but under 19 years old. Education is defined at section 1B(2) as including vocational, social, physical and recreational training. Section 1B(3) provides that an educational institution meeting these requirements will be known as a 16 to 19 Academy. The government intends to use this legislation to allow providers to set up free schools for those aged 16 to 19.
268. New section 1C(1) sets out the requirements to be met by alternative provision Academies. They must be principally concerned with the provision of full-time or part-time education for children of compulsory school age who, because of illness, exclusion or other reason would not otherwise receive suitable education. They must also provide education for children of different abilities, and provide education for children who are wholly or mainly drawn from the area in which the alternative provision Academy is situated. “Suitable education” means efficient education that is suitable to the child’s age, ability and aptitude and to any special educational needs that the child may have.
269. New section 1D gives the Secretary of State powers to make regulations to apply statutory provisions to, or to disapply statutory provisions from, alternative provision Academies. This follows the way in which legislation is currently applied to pupil referral units. In the main, legislation applying to mainstream maintained schools is applied to pupil referral units through regulations. This is because of the need to modify/disapply it because of the different nature of alternative provision. These regulation-making powers allow the Secretary of State to follow this model for alternative provision Academies and to ensure, where appropriate, that legislation is consistent across alternative provision.
270. New section 1D(1) can be used to apply provisions that relate to maintained schools or pupil referral units to alternative provision Academies or to a description of alternative provision Academy. A “description of alternative provision Academy” is intended to provide for the likelihood that there may be different types of alternative provision Academy, for example an alternative provision Academy which only provides part-time provision, and legislation is likely to be applied to them differently. It is the

Government's intention to make regulations under paragraph 3 of Schedule 1 to EA 1996 (power to apply provisions which apply to maintained schools to pupil referral units by regulation) so that pupil referral units will be able to convert to alternative provision Academies in the same way as maintained schools can convert to Academy schools. The powers taken in new section 1D to apply legislation to alternative provision Academies in this way are intended to be used to ensure that a consistent legislative approach is taken in relation to alternative provision, which will include pupil referral units and alternative provision Academies.

271. New section 1D(2) is a power to apply, with or without modifications, provisions that relate to Academies, Academy schools or 16 to 19 Academies to alternative provision Academies or a description of alternative provision Academy (or to disapply such provisions from alternative provision Academies or a description of alternative provision Academy). Again, this reflects the different educational environment of an alternative provision Academy.
272. New section 1D(3) is a power to apply with modifications provisions that relate to alternative provision Academies generally to a description of an alternative provision Academy (or to disapply such provisions from a description of alternative provision Academy). This is to reflect the fact that legislation may need to be applied differently to different types of alternative provision Academy, for example in relation to part-time alternative provision Academies or for alternative provision Academies which only provide education to children under 11.

Section 54: Consequential amendments: 16 to 19 Academies and alternative provision Academies

273. **Section 54** gives effect to Schedule 13.

Schedule 13

274. **Schedule 13** makes amendments to other legislation consequential on the fact that there are now three different types of Academies. Many of these changes reflect the fact that Academies are no longer necessarily schools and amend references to "school" to "educational institution". Others specify the type of Academy to which the provision applies.

Academy orders

Section 55: Academy orders: involvement of religious bodies etc

275. **Section 55** amends section 4 of AA 2010.
276. Under section 4(1)(b) of AA 2010, the Secretary of State can make an Academy order in respect of a school if the school is eligible for intervention (within the meaning of section 59(2) of EIA 2006).
277. **Subsection (2)**, which inserts a new subsection (1A) into section 4 of the AA 2010, provides that before making an Academy order under section 4(1)(b) in respect of a foundation or voluntary school that has a foundation, the Secretary of State must first consult the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.
278. **Subsection (3)** amends section 4(4) so that if an Academy order is made by the Secretary of State in respect of a foundation or voluntary school with a foundation, either on an application from the governing body or in respect of a school that is eligible for intervention, then he must give a copy of the order to the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body.

279. *Subsection (4)* amends section 4(5) so that if the Secretary of State decides not to make an Academy order in respect of a foundation or voluntary school with a foundation following an application from the governing body, then he must inform the trustees of the school, the person or persons by whom the foundation governors are appointed, and in the case of a school which has a religious character, the appropriate religious body, of his decision and the reasons for it.

Section 56: Academies: consultation on conversion

280. **Section 56** replaces section 5 of AA 2010 with a new section 5. The original section 5 provides that before a maintained school can convert into an Academy, its governing body must consult those they think appropriate on the question of whether the school should convert into an Academy. The consultation may take place before or after the application, or before or after an Academy order is made, but must take place before the Academy arrangements are entered into.
281. The new section 5 inserted by **section 56** provides that, in the case of a school eligible for intervention (within the meaning in Part 4 of EIA 2006) either the school's governing body or the person with whom the Secretary of State proposes to enter into Academy arrangements can carry out the consultation. In the case of a federated school the consultation can be carried out by any one or more members of the governing body.

Section 57: Academy conversions: federated schools

282. **Section 57** makes amendments to AA 2010 to enable a federated school to apply for an Academy order without requiring the agreement of the whole federated governing body.
283. *Subsection (2)* inserts a new subsection (6) into section 3 of AA 2010 to allow regulations to make provision about the proportion of the total number of members of a federated governing body, and members of a particular description, that can apply for an Academy order on behalf of a particular school in the federation.
284. *Subsection (4)* amends section 7 of AA 2010, which deals with the transfer of school surpluses after a maintained school converts to Academy status. *Subsection (4)(d)* provides for the amount of any school surplus held by a federated governing body that should be attributed to a school in the federation converting to Academy status to be determined in accordance with regulations.

Section 58: Academy orders: local authority powers

285. **Section 58** inserts a new subsection (2A) into section 6 of AA 2010. This makes clear that section 6(2) of AA 2010, which prohibits a local authority from maintaining a school once it has converted into an Academy, does not prohibit a local authority from doing any of the things set out in paragraphs (a) to (c) (which do not amount to "maintaining" a school). This puts beyond doubt, for example, that a local authority has the power to assist Academies by making payments to a private finance initiative (PFI) contractor in respect of Academies.

Section 59: Transfer of property, rights and liabilities to Academies

286. **Section 59** amends section 8 of AA 2010. Section 8 applies when an Academy order has effect and a school is converting into an Academy. In those circumstances, the Secretary of State has a power to make a property transfer scheme for the transfer of property (other than land), rights and liabilities held by local authorities in relation to a school or a school's governing body to the proprietor of the new Academy. *Subsections (2)* and *(3)* provide that a property transfer scheme is now to be called a transfer scheme and that such a scheme includes, in addition to other property, rights and liabilities of local authorities or governing bodies, the rights and liabilities in relation to staff.

287. *Subsection (4)* changes the description of the recipient of property, rights and liabilities under a transfer scheme from “the proprietor of the Academy” to “a person concerned with the running of the Academy”. This ensures consistency with the terms of the new Schedule 1 to AA 2010 (inserted by *Schedule 14*) concerning the transfer of land.
288. The new Schedule 1 to AA 2010 also contains a power (at paragraph 13(3)(b)) for the Secretary of State to make a direction for the transfer of land, other property, rights and liabilities to vest in a person concerned with the running of an Academy where the governing body of a school are to be dissolved following an Academy order.

Academies: other provisions

Section 60: Academies: new and expanded educational institutions

289. *Subsection (1)* substitutes a new section 9 into AA 2010. Under the current section 9 the Secretary of State, when considering whether to enter into Academy arrangements in relation to an additional school, must take into account the impact on maintained schools, Academies and institutions within the further education sector in the area in which the additional school is, or is proposed, to be. An additional school is a school which does not replace a maintained school and is not subject to an Academy order under subsection 4 of AA 2010.
290. The new section 9 is similar, but removes the term “additional school”. The new section will apply when the Secretary of State is deciding whether to enter into Academy arrangements in relation to a new educational institution or an existing educational institution that, if arrangements are entered into, will provide education for pupils of a wider range of ages. An educational institution that replaces a discontinued maintained school, Academy or sixth form and caters for the same age range as the institution or institutions it replaces is not a new school for the purposes of this section.
291. The Secretary of State must consider the impact on alternative provision such as pupil referral units of entering into Academy arrangements in addition to considering the impact on the educational institutions previously listed in section 9.
292. *Subsection (2)* substitutes a new section 10 into AA 2010. The existing section 10 provides that before entering Academy arrangements with the Secretary of State in relation to an additional school the person entering into those arrangements must consult those they think appropriate as to whether the arrangements should be entered into. As with new section 9 above, new section 10 no longer uses the term “additional school”. The duty to consult will apply to the person entering into arrangements in relation to a new educational institution or an existing educational institution that caters for a wider age range than the institution it replaces.
293. The duty to consult does not apply to persons entering into Academy arrangements for a new educational institution following an invitation from a local authority under section 7 of EIA 2006. A local authority has a duty to consult those they think appropriate under section 9 of that Act before issuing a notice inviting proposals for a new school under section 7.

Section 61: charges at boarding Academies

294. *Section 61* inserts a new section 10A into AA 2010. Section 10A is based closely on section 458 of EA 1996. Subsections (2) to (5) of section 458 provide that, in certain circumstances, registered pupils boarding at maintained schools have the right to have their boarding fees remitted by the local authority for the area in which they would ordinarily reside were they not at boarding school.
295. New section 10A is intended to give the same right to registered pupils boarding at Academies. However, this section does not replicate section 458(1) of EA 1996, which allows local authorities to charge boarding fees, as proprietors of boarding Academies

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

would already be allowed to charge boarding fees under the terms of their funding agreement with the Secretary of State made under section 1 of AA 2010.

296. The fee remission works on the same basis as in section 458 of EA 1996. The section requires a pupil's home local authority to pay the pupil's boarding fees where either one of the conditions set out at subsections (2) or (3) applies. These conditions are not connected or dependent on each other. The conditions are:
- Condition A - where the only suitable place for the pupil to receive education is at the boarding school, taking into account the pupil's age, ability, aptitude and any special educational needs;
 - Condition B - where payment of the full boarding fee would cause financial hardship to the pupil's parent.
297. Where Condition A applies, the local authority must pay to the Academy proprietor the whole of the boarding fee. Where Condition B applies, the local authority is required to pay to the Academy proprietor such part of the boarding fee as is necessary to prevent the financial hardship.
298. Subsection (6) prevents the proprietor of an Academy from charging a parent for boarding fees that have been paid to the proprietor by the local authority under this section.

Section 62: staff at Academies with religious character

299. **Section 62** amends Part 5A of SSFA 1998 (employment of teachers at independent schools having a religious character). In the maintained sector, a foundation or voluntary controlled school with a religious character must include "reserved" teachers, the number of which must not exceed one-fifth of the total number of teachers including the principal. Reserved teachers are those who have been selected for their fitness and competence to give religious education in accordance with the tenets of the religion or religious denomination of the school, and who are appointed on such grounds. In contrast, a voluntary aided school may apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school.
300. Section 124A of SSFA 1998 provides that independent schools which have a religious character may also apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school.
301. **Subsection (3)** inserts a new section 124AA into SSFA 1998 which will apply to all voluntary controlled and foundation schools with a religious character which have converted into Academies. It will provide that teachers at these Academies must include reserved teachers, the number of which must not exceed one-fifth of the total number of teachers including the principal, thereby preserving the distinction between such schools in the maintained sector.
302. In addition, subsection (2) of new section 124AA provides that the Secretary of State may make an order for a specific school which will disapply section 124AA for that individual school. In these cases, section 124A will apply. The Secretary of State intends to use this power if he has agreed changes to an Academy's governance arrangements such that the religious body has majority control over the Academy in the same way that it does over a voluntary aided school governing body.

Section 63: Academies: land

303. **Section 63** gives effect to Schedule 14 which makes provision about land in relation to Academies. Schedule 14 replaces Schedule 1 to AA 2010 with a new Schedule 1 to that Act. Schedule 14 also amends section 77 of, and Schedule 22 to, SSFA 1998

to give the Secretary of State additional powers to transfer the publicly funded land of maintained schools to Academies, whilst ensuring that the public interest in land at Academies continues to be protected.

Schedule 14

304. *Paragraph 1* of Schedule 14 replaces Schedule 1 to AA 2010 with a new Schedule which re-enacts and extends existing legislation and contains some new provisions. In particular, the new Schedule 1 incorporates and amends the remaining provisions of Schedule 35A to EA 1996 and provisions in the original Schedule 1 to AA 2010. Schedule 35A to the EA 1996 is repealed by *paragraph 16* of Schedule 14.
305. *Schedule 1* is divided into four parts, the first three parts reflecting the fact that land at a particular school or Academy may be held by any of the following: a local authority, a governing body, a foundation body or the trustees of a maintained school, or by any person holding land for an Academy.
306. Other than paragraph 16, Schedule 1 relates to land that is publicly owned or publicly funded as defined in paragraph 22(3) of the Schedule, but does not apply to land that is wholly privately owned.
307. *Part 1* of Schedule 1 concerns local authority land. It re-enacts and extends provisions in Schedule 35A to EA 1996 and in Schedule 1 to AA 2010, which this Schedule is replacing. It enables the Secretary of State to make a scheme to transfer an existing or former school's land (now including an Academy) from a local authority to a person concerned with the running of an Academy where the land is no longer needed for the school (paragraphs 1 and 3). It also enables the Secretary of State to make a scheme to transfer any local authority land that has been identified by the local authority as a possible site for a new school to a person concerned with the running of an Academy (paragraphs 2 and 3). Part 1 also requires a local authority to seek the Secretary of State's consent to any proposed disposal or appropriation of existing or former school land and enables the Secretary of State to compulsorily purchase land back from a third party and transfer it to a person concerned with the running of an Academy if the land is sold in contravention of any requirement to seek his consent (paragraphs 4, 5, 6 and 7).
308. *Part 2* of Schedule 1 concerns publicly funded land held by governing bodies, foundation bodies or trustees of foundation or voluntary schools. It incorporates and amends some provisions from Schedule 1 to AA 2010, which this Schedule is replacing, and includes new provisions. Part 2 enables the Secretary of State to make directions to transfer publicly funded land at foundation and voluntary schools to persons concerned with the running of Academies in the situations where such a school: converts to Academy status pursuant to an Academy order, is discontinued, or wishes to dispose of surplus land (paragraphs 10, 11 and 12). Provision is made for the payment of compensation in respect of any private share in the land. Paragraph 13 enables land and other property held by a governing body to transfer automatically to either the local authority or, if the Secretary of State directs, to a person concerned with the running of an Academy on dissolution of the governing body pursuant to an Academy order.
309. *Part 3* of Schedule 1 concerns publicly funded land held for the purposes of an Academy. Paragraph 14 enables the Secretary of State to protect public investment in private land held for Academies. Paragraph 15 enables the Secretary of State to make a direction in respect of publicly funded land on the closure of an Academy, subject to the payment of compensation for any private share in the land. Paragraph 16 requires that where trustees of a maintained school retain land for the purposes of the successor Academy on conversion of any such school to Academy status, they are required to give a minimum period of two years' notice to the Academy proprietor if they wish to terminate the Academy's occupation of the land. If the land is publicly funded, the Secretary of State can make a direction in relation to the land, subject to the payment of compensation for any private share. Paragraph 17 requires a person who holds land for the purposes of an Academy to notify the Secretary of State if they wish to dispose of publicly funded

land, and provides a power for the Secretary of State to make a direction in respect of the land, subject to the payment of compensation for any private share.

310. *Part 4* contains miscellaneous provisions designed to give full effect to the Schedule. In particular, paragraph 21 provides a regulation-making power which enables secondary legislation to give full effect to the provisions in the Schedule, and in particular the power to make schemes. Paragraph 22 contains a definition of publicly funded land for the purposes of the Schedule.
311. *Paragraphs 2 to 15* of Schedule 14 amend Schedule 22 to SSFA 1998 to ensure that surplus publicly funded land held by the governing body or trustees of a foundation or voluntary school may be made available for Academies.
312. Part A1 of Schedule 22 to SSFA 1998, which was inserted by Schedule 4 to EIA 2006, sets out a statutory procedure for the disposal of surplus publicly funded non-playing field land held by governing bodies, foundation bodies and trustees of foundations and voluntary schools.
313. *Paragraphs 2 to 11* of Schedule 14 amend part A1 of Schedule 22 to SSFA 1998 and provide that where a governing body, foundation body or trustees wish to dispose of publicly funded land they must first notify the Secretary of State, and must not take any further steps to dispose of the land without his consent. The Secretary of State then has the option of making a direction transferring the land to an Academy, under paragraph 12 of Schedule 1 to AA 2010 (as substituted by the Act). If he chooses not to make a direction then the governing body, foundation body or trustees of the school in question can proceed to dispose of the land under the provisions in Part A1 of Schedule 22 to SSFA 1998. *Paragraph 9* also amends paragraph A13(7) of Schedule 22 to SSFA 1998 so that a change of use of land by trustees is not to be treated as a disposal where the land will be used for an Academy (this provision previously provided that changes of use were not to be treated as disposals only where the land would continue to be used by a maintained school, and did not include a reference to Academies).
314. *Paragraph 13* amends paragraph A23 of Schedule 22 and provides that where a local authority wishes to apply to the adjudicator for the transfer to them of publicly funded land they think is no longer needed by a foundation or voluntary school, they must notify the Secretary of State of their intention, and take no further action until they have received a response. The Secretary of State may then decide to make a direction to transfer the land to an Academy under paragraph 12 of Schedule 1 to AA 2010 (as substituted by the Act), failing which the local authority can proceed with the application under the statutory procedure in Part A1 of Schedule 22 to SSFA 1998.
315. *Paragraph 14* amends paragraph 5 of Schedule 22 to SSFA 1998 (discontinuance of foundation, voluntary and foundation special schools) to add an additional power for the Secretary of State to make a direction under paragraph 11 of Schedule 1 to AA 2010, transferring the land to an Academy.
316. *Paragraph 15* amends paragraph 7 of Schedule 22 to SSFA 1998 to enable the Secretary of State to direct that land or other property held by a governing body that is dissolving on discontinuance for reasons other than an Academy conversion is transferred to an Academy instead of a local authority.
317. *Paragraph 18* amends section 77 of SSFA 1998. Section 77 requires the Secretary of State's consent to be sought by local authorities, governing bodies or foundation bodies of maintained schools or trustees of foundation and voluntary schools (in the case of publicly funded land) where they propose to dispose or change the use of playing field land. The amendment in *paragraph 18* enables the Secretary of State to direct, on such an application for consent to dispose of or change the use of playing fields, that the land is transferred to a person concerned with the running of an Academy, subject to the payment of compensation for any private share in the land. *Paragraph 18* also

now requires the Secretary of State's consent to be sought where the playing fields are proposed to be used for other educational purposes or recreational facilities.

Section 64: Academy admissions arrangements: references to adjudicator

318. **Section 64** amends Chapter 1 of Part 3 of SSFA 1998 to allow the adjudicator to consider and to determine eligible objections or referrals relating to the admissions arrangements of Academies, as they do for those of maintained schools. Under section 88H of SSFA 1998, as amended by the Act, any person or body will be able to make objections to the adjudicator about an Academy's admission arrangements (*subsection (3)*). Under section 88I, as amended, the Secretary of State will be able to make referrals to the adjudicator where it appears to the Secretary of State that an Academy's admission arrangements do not or may not conform with the requirements relating to admission arrangements. The adjudicator also has a discretion to consider admission arrangements other than those referred by the Secretary of State (*subsection (4)*).
319. The requirements relating to an Academy's admission arrangements, including the application of the School Admissions Code, are set out in the Academy agreement between the Secretary of State and an Academy (see new subsection (5)(b) of section 88K, as inserted by *subsection 5(b)*).
320. Where the adjudicator decides on any objection or referral, the decision is binding on the admission authority (and in the case of an objection, the person making the objection). The adjudicator must publish a report containing that decision and the reasons behind it. The power to make regulations under sections 88H, 88I and 88K is amended so that the regulations will also apply to Academies.

Section 65: Academies: minor amendments

321. This section gives effect to *Schedule 15* which contains consequential amendments that reflect amendments made to the AA 2010.

Schedule 15

322. **Schedule 15** amends Schedule 4 to the Finance Act 2003 and Schedule 17 to the Equality Act 2010, replacing references to section 482 of EA 1996 with references to section 1 of AA 2010. These amendments simply reproduce in textual amendments the effect of section 15 of AA 2010.

Part 7: Post-16 Education and Training

Abolition of the Young People's Learning Agency for England

Section 66: Abolition of the Young People's Learning Agency for England

323. **Section 66** repeals the provisions in ASCLA 2009 that established the Young People's Learning Agency for England (the YPLA), an arm's length body. The section therefore abolishes the YPLA and its functions will be discharged by the Secretary of State. The Government intends that the functions will be carried out by a non-statutory agency within the Department for Education, as proposed in *The Importance of Teaching: the Schools White Paper* (2010).

Section 67: abolition of the YPLA: consequential amendments

324. **Section 67** gives effect to Schedule 16 which removes references to the YPLA from some legislation and amends other legislation to replace references to the YPLA with references to the Secretary of State, where applicable. Section 67 also enables the Secretary of State to make changes to subordinate legislation by order in consequence of section 66.

Schedule 16

325. **Schedule 16** makes amendments to primary legislation consequential on the abolition of the YPLA. Many of the amendments simply remove references to the YPLA from other Acts, but some substitute references to the YPLA with references to the Secretary of State. This approach is necessary, for example, in provisions that refer to funding received by the YPLA which will in the future be provided by the Secretary of State (see, for example, the amendment made to the Education (Fees and Awards) Act 1983 by *paragraph 5*, the amendment made to the Employment Act 1988 by *paragraph 7*, the amendment made to section 123 of EIA 2006 by *paragraph 30* and the amendments made to sections 13, 72 and 132 of ESA 2008 by *paragraphs 41, 42 and 44*).
326. Some of the functions of the YPLA are to be continued by the Secretary of State. So, for example, *paragraph 11* inserts a new section 15ZD into EA 1996 providing that local authorities must have regard to guidance issued by the Secretary of State in performing their duties in relation to education and training for persons over compulsory school age. This replaces section 72 of ASCLA 2009, which made similar provision about guidance to be issued by the YPLA.
327. Other functions of the YPLA that are transferred to the Secretary of State include consultation by a governing body proposing to discontinue a school providing full-time education to pupils over compulsory school age (see the amendment to section 30 of SSFA 1998 made by *paragraph 12*) and the function of receiving any proceeds received by trustees from the sale of land when a sixth form college is discontinued (see the amendments made to section 144 of LSA 2000 by *paragraph 15*). Some of the information-sharing powers of the YPLA are also transferred to the Secretary of State, such as the power under section 77 of ESA 2008 (see *paragraph 43*) and the power under section 122 of ASCLA 2009 (see *paragraph 48*).

Section 68: Abolition of the YPLA: transfer schemes

328. **Section 66** gives effect to Schedule 17, giving power to the Secretary of State to make a scheme to enable the transfer of staff, property, rights and liabilities from the YPLA to the Secretary of State (to provide, for example, for transfers to the Department for Education).

Apprenticeships

Section 69: The apprenticeship offer

329. **Section 69** places a new duty on the Chief Executive of Skills Funding (“the Chief Executive”) to prioritise funding for apprenticeship training for specified groups of young people. It also gives effect to **Schedule 18** which repeals sections 91 to 99 of ASCLA 2009 (which have not been commenced), which placed a duty on the Chief Executive to secure an apprenticeship place for all suitably qualified young people in these groups.
330. **Section 69** inserts sections 83A and 83B into ASCLA 2009.
331. New section 83A places a duty on the Chief Executive of Skills Funding (the “Chief Executive”) to fund apprenticeship training by securing the provision of proper facilities for every young person in certain specified groups who has secured an apprenticeship opportunity. The effect of this section is to give higher funding priority for apprenticeship training for these young persons. This duty is known as “the apprenticeship offer”. The apprenticeship offer applies in England only.
332. An apprenticeship opportunity is defined in section 83A(3) as being an opportunity to enter an apprenticeship agreement; a contract of employment in connection with which training in accordance with an apprenticeship framework will be provided; or an

opportunity to undertake other kinds of working in relation to which the apprenticeship alternative completion conditions in section 1(5) of ASCLA 2009 apply.

333. Proper facilities are defined in section 83A(8) as being those which are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. The training must be suitable to the apprentices' needs, and in determining this, the Chief Executive must have regard to the factors in section 83(2) and (3) of ASCLA 2009. The Chief Executive must make best use of resources.
334. The persons who are eligible for the new apprenticeship offer are the same as those who are eligible for the current apprenticeship offer in ASCLA 2009, and are:
- all young people aged 16 to 18;
 - people aged 19 to 24 who are care leavers (explained below); and
 - people aged 19 to 24 with a disability or learning difficulty who are of a prescribed description (as set out below).
335. For the purposes of the apprenticeship offer, a "care leaver" is a person aged under 21 who was looked after by the local authority before and after turning 18 and to whom a local authority owes duties under section 23C of CA 1989, or a person to whom an authority owes duties under section 23CA of that Act (that is, a person to whom the authority no longer owes duties under section 23C, but who wishes to pursue education or training). The duties provided for by section 23CA may continue to be owed until the person reaches the age of 25.
336. Section 83A(6)(b) provides a regulation-making power to specify descriptions of persons who will be eligible for the apprenticeship offer. It is intended that these will be people with disabilities or learning difficulties, and that the definition of the people to be included in the prescribed description will be based on the advice of external disability experts. These regulations will be subject to the negative resolution procedure.
337. Section 83A(12) gives the Secretary of State powers to amend the description of the persons covered by the apprenticeship offer by order subject to the affirmative resolution procedure.
338. New section 83B limits the scope of the apprenticeship offer by specifying that the duty to fund apprenticeship training under the offer applies to one completed apprenticeship at each apprenticeship level. This would mean that a person who has already completed an apprenticeship or holds an apprenticeship certificate at that level has no right to be funded under the apprenticeship offer to train for a second apprenticeship in a different skill, trade or occupation at the same level. Other evidence of experience and attainment at a similar or higher level could also be taken as equivalent to an apprenticeship certificate.

Schedule 18

339. This Schedule repeals sections 91 to 99 of ASCLA 2009, which have not been commenced. These sections place a duty on the Chief Executive to secure an apprenticeship place for every suitably qualified person within specified categories of people, set out the terms of this offer and criteria for its fulfilment, specified eligibility criteria and gave the Secretary of State powers to suspend the offer. This Schedule also repeals section 104 of ASCLA 2009, in consequence of the repeal of sections 91 to 99. The Chief Executive retains a power to provide assistance and support under section 110(6) of ASCLA 2009.
340. This Schedule also makes consequential amendments related to the repeal of sections 91 to 99 and 104 of ASCLA 2009, and to the new sections inserted by section 69.

Section 70: Securing the provision of apprenticeship training

341. **Section 70** amends the duty on the Chief Executive in section 85 of ASCLA 2009 so that the Chief Executive is under a duty to make reasonable efforts to secure employers' participation in apprenticeship training for all young people within the specified groups which are covered by the redefined apprenticeship offer set out in **section 69**. These groups are young people aged 16 to 18; young people aged 19 to 24 with a disability and/or learning difficulty assessment; and young care leavers. (Other persons may be prescribed through regulations). This replaces the existing duty on the Chief Executive in section 85(1)(a) of ASCLA 2009 to promote apprenticeships for young people to employers and encourage them to employ young people as apprentices.
342. It also amends section 118 of ASCLA 2009 to specify that any guidance issued by the Secretary of State to the Chief Executive under this section must include guidance about this duty.

Section 71: apprenticeship certificates

343. **Section 71** replaces section 6 of ASCLA 2009. The new section provides that the certifying authority for apprenticeships in England will be the person designated for that purpose by the Secretary of State. Where a person has not been designated, the Secretary of State will be the English certifying authority. Subsection (2) provides that only one person at any one time may be designated to issue apprenticeship certificates for a particular sector and subsection (3) provides that the designated person must comply with directions and have regard to guidance given by the Secretary of State. Subsection (4) allows the Secretary of State to amend or revoke the designation.
344. The effect of the amendments made by section 71 is that the Chief Executive of Skills Funding is no longer the English certifying authority. Section 6 of ASCLA 2009 is now largely similar to the arrangements for Wales in section 10 of the same Act.
345. The section also makes minor and consequential amendments to ASCLA 2009 relating to the new section 6.

The Chief Executive of Skills Funding

Section 72: Consultation by Chief Executive of Skills Funding

346. **Section 72** inserts new section 118A into ASCLA 2009. The new section provides a power for the Secretary of State to direct the Chief Executive of Skills Funding to consult with specified people or descriptions of persons on matters associated with the performance of the Chief Executive's functions. A direction issued under this section can also set out the way in which the consultation is to be carried out. For example, the direction could specify that the consultation must take place through the establishment of a formal advisory group consisting of specified individuals or representatives of specific named bodies. The new section does not prevent the Chief Executive from carrying out other forms of consultation, including with individuals and representative bodies who are not named in any direction.

Section 73: Functions of the Chief Executive of Skills Funding

347. **Section 73(2)** amends section 88 of ASCLA 2009 so that the entitlements to fee remission on the first full vocational qualification at level 2 and specified qualification at level 3 are restricted to those aged over 19 and under 24.
348. **Section 88** places a duty on the Chief Executive of Skills Funding to ensure that students will not be liable to pay fees for courses of study provided as a result of section 87, which places a duty on the Chief Executive to secure the provision of proper facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications. This section amends the section 88 duty on the Chief Executive to restrict

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which received Royal Assent on 15 November 2011*

it to the first full specified vocational qualification at level 2 and specified level 3 qualifications for those over the age of 19 and under 24.

349. The definitions of level 2 and level 3 qualifications are set out in Schedule 5 to ASCLA 2009:
- level 2 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Secondary Education in five subjects, each at Grade C or above;
 - level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects.
350. *Subsection (3)* repeals sections 112 to 114 of ASCLA 2009 and so removes the power of the Secretary of State to specify a body to set out a strategy for the delivery of education and training in a specified area in England and keep it under review; and the requirement for him to provide, by regulations, for the establishment of such a body in relation to Greater London. This repeal also removes the requirement for the Chief Executive of Skills Funding to carry out any function to which any such strategy relates, in accordance with that strategy.
351. Subordinate legislation made under these provisions currently provides for three such bodies – in London, Manchester and Birmingham. While the repeal of this legislation removes the statutory basis for these bodies, it does not prevent them from agreeing strategies and priorities with their local training organisations and colleges. Those relationships may proceed on the basis of a shared concern to meet the skills needs of the local economy rather than a requirement for one body to exert control over the others.

Raising the participation age: commencement

Section 74: Duty to participate in education or training: commencement

352. Part 1 of ESA 2008 places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier) and is commonly known as “Raising the Participation Age”. Section 74 amends section 173(9) and (10) (the commencement provisions) of ESA 2008 to give the Secretary of State more flexibility as to the timing of the commencement of elements of Part 1 of that Act.
353. This amendment will not affect the commencement of sections 1 to 10 of ESA 2008, including the duty on young people to participate in education and training and the duty on local authorities to promote fulfilment of that duty. These sections must still be brought into force in part by 2013, and fully by 2015.
354. However, the amendment enables the remainder of Part 1 to be commenced at a point decided by the Secretary of State. In particular, the Secretary of State will keep under review the appropriateness of commencing Chapter 5 of Part 1, which provides for an enforcement mechanism involving local authority enforcement notices, panels, penalty notices, and ultimately a criminal offence for failure to comply with an attendance notice. The commencement of other duties may be affected, including those on employers, parents, and the requirement on local authorities to identify those young people not meeting the central duty.

Part 8: Direct Payments

Section 75: Direct payments: persons with special educational needs or subject to learning difficulty assessment

355. *Section 75* concerns direct payments for persons with special educational needs (SEN) or subject to learning difficulty assessment. *Subsection (1)* inserts new sections 532A to 532C into Chapter 2 of Part 9 (ancillary functions of local authorities) of EA 1996.

356. New section 532A creates a power for a local authority in England to make a direct payment for the purposes of securing goods and services in respect of a person for whom they maintain a statement of SEN; or a young person who is subject to a learning difficulty assessment by the authority. New section 532A(3) provides that direct payments can only be made in accordance with a pilot scheme made under section 532B.
357. New section 532B gives the Secretary of State the power to make pilot schemes by order, and stipulates certain matters that must be included in any pilot scheme.. Subsections (3) to (6) set out what the pilot scheme must make provision about, including who direct payments can be made to, how the amounts are to be calculated, and arrangements for monitoring the scheme. A pilot scheme may also include such other provision as the Secretary of State thinks appropriate. Subsections (7) to (10) provide that a pilot scheme may stipulate that goods and services purchased by a direct payment can be treated as provided or arranged by a local authority in pursuance of their relevant statutory duties, which are listed in subsection (9).
358. New section 532C requires that an order creating a pilot scheme must set out the local authorities that will take part in the scheme and how long it will last. The duration of an initial scheme is limited to a maximum of two years, but a scheme can be extended by order so long as it is not extended to continue past the date which is four years from the date this Act received Royal Assent..
359. *Subsection (2)* amends EA 1996 to provide that an order to create or amend a pilot scheme is subject to approval by each House of Parliament under the affirmative resolution procedure.
360. *Subsection (3)* provides that the new provisions inserted into EA 1996 by section 75 will be automatically repealed four years after Royal Assent of this Act.

Part 9: Student Finance

Section 76: Student loans: interest rates

361. **Section 76** amends the power given to the Secretary of State in section 22(4) of THEA 1998 to make regulations setting interest rates for student loans. Section 22(4)(a) provides that the rates set must be no higher than the rates required to maintain the value of the loan in real terms or the amount specified for low interest rate loans, whichever is the lower.
362. For students who start their courses on or after 1 September 2012, the Secretary of State will have a wider power to set interest rates in regulations, provided that the rates set do not exceed those commercially available: the new restriction in *subsection (1)* reflects the terminology of the exemption in Article 2.2(1) of Directive [2008/48/EC](#) on Credit Agreements for Consumers, and the Consumer Credit (EU Directive) Regulations 2010 which implement it. This new cap will ensure that section 8 of the Sale of Student Loans Act 2008, which exempts student loans from the regime in the Consumer Credit Act 1974, continues to be compliant with EU law.
363. *Subsection (3)* sets out the general rule that the new limits on interest rates will only apply to borrowers starting courses on or after 1 September 2012, except in prescribed circumstances.

Section 77: Limit on student fees: part-time courses

364. **Section 77** amends the definition of “course” in section 41(1) of HEA 2004 to remove the exclusion of part-time courses from that definition. The effect of this amendment is that references to “course” in Part 3 of HEA 2004 will include part-time courses. This will enable the Secretary of State to apply a regime of capping the amounts which institutions providing higher education courses can charge part-time students, as can

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currently be done in relation to full-time students. In particular, the Secretary of State will be able to specify in regulations under section 24 of HFEA 2004 the amounts which can be charged for part-time courses, and to prescribe the type of part-time courses which are subject to these amounts. This will ensure that part-time undergraduate students can be treated in a way which is commensurate with the treatment of full-time undergraduate students.

365. *Subsection (2)* provides that this amendment applies in relation to a part-time course which begins on or after 1 September 2012, unless the case is within a prescribed exception.