

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

# EDUCATION ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 1: School Inspections and Other Inspections by School Inspectors**

21. The following definitions are used in these notes in relation to Part 1:
- *SIA 1996* is the School Inspections Act 1996
  - *HMI* means Her Majesty's Inspectors of Schools
  - *The Assembly* means the National Assembly for Wales
  - *Estyn* is the office of Her Majesty's Chief Inspector of Education and Training in Wales

#### ***Chapter 1 – School Inspectors and School Inspections: England***

#### ***Section 1: Her Majesty's Inspectorate of Schools in England***

22. This section re-enacts section 1 of and Schedule 1 to SIA 1996 (which is repealed by section 60) without any changes. It establishes the office of Her Majesty's Chief Inspector of Schools (subsequently referred to as the Chief Inspector) as a Crown appointment, and provides for HMI to be members of the Chief Inspector's staff. It also sets out the terms of his appointment as being one of no more than five years in any one term, though a previous post-holder is not barred from reappointment.

#### ***Schedule 1: Her Majesty's Chief Inspector of Schools in England***

23. [Schedule 1](#) to SIA 1996 is re-enacted with changes, giving the Chief Inspector the authority to appoint staff in addition to HMI. The Chief Inspector may also arrange for additional inspectors to assist him in carrying out his functions. [Paragraph 5](#) of Schedule 1 to the Act provides that, subject to the following exceptions, any of the functions of the Chief Inspector under this Act or any other Act may be fulfilled by: any HMI; any other member of his staff; or any additional inspector. The exceptions are that a report concluding that special measures are required must be personally authorised by the Chief Inspector or an HMI specifically authorised to do so and that an additional inspector cannot take part in an inspection unsupervised by an HMI unless he has previously conducted an inspection to the satisfaction of an HMI.
24. The Schedule also provides that the Secretary of State will determine the remuneration and pension of the Chief Inspector, with the approval of the Minister for the Civil Service.
25. [Paragraph 2](#) provides for the appointment of additional inspectors to assist the Chief Inspector, as at present. Additional inspectors with specific skills or knowledge for a particular setting will continue to be used. In addition, the Chief Inspector will use additional inspectors to fulfil his duties under section 5. Where the Chief Inspector engages additional inspectors either directly or through an inspection service provider

he must ensure that they have the necessary qualifications, experience and skills. He will fulfil this duty by publishing a statement of the qualifications and experience, standards and skills which such additional inspectors are required to have and shall ensure that any arrangements he makes with inspection service providers require that they ensure that additional inspectors meet the published requirements. Where using an inspection service provider he must also publish a list of names given to him by the inspection service provider of persons who may be used in future as additional inspectors. This will lead to an increase in the use of additional inspectors.

## ***Section 2: Functions of Her Majesty's Chief Inspector of Schools in England***

26. This section re-enacts section 2(1) to (6) of SIA 1996, with the exception of the duty on the Chief Inspector to maintain a register of inspectors and the regulatory duties related to the system of inspection by registered inspectors.
27. *Subsection (1)* adds four further elements to the matters listed in SIA 1996 section 2(1) about which the Chief Inspector must keep the Secretary of State informed. These are:
- i) the extent to which the education provided by schools in England meets the needs of the range of pupils (*subsection (1)(b)*);
  - ii) the contribution made by schools in England to the well-being of their pupils (*subsection (1)(f)*). Well-being is defined in section 11 having regard to the matters mentioned in section 10(2) of the Children Act 2004, namely:
    - a) physical and mental health and emotional well-being;
    - b) protection from harm and neglect;
    - c) education, training and recreation;
    - d) the contribution made by them to society;
    - e) social and economic well-being;
  - iii) the extent to which schools in England are developing rigorous internal procedures of self-evaluation; and
  - iv) the behaviour and attendance of pupils at schools in England.

## ***Section 3: Annual and other reports to Secretary of State***

28. This section re-enacts section 2(7) of SIA 1996 without any changes. It requires the Chief Inspector to make an annual report to the Secretary of State, who in turn must lay this report before Parliament. It gives the Chief Inspector authority to publish any report made by him under this section in whatever manner he sees fit.

## ***Section 4: Powers of entry etc. for purposes of section 2***

29. This section re-enacts section 2(8) to (10) of SIA 1996, updating some of the terms used but without any changes to the effect of the provisions in that section. It gives the Chief Inspector rights of entry to any school in England, and to other premises related to the education of pupils, to undertake the duties placed on him under section 2. It includes the right to inspect and take copies of relevant documentation. Under *subsection (3)* it is an offence intentionally to obstruct the Chief Inspector in carrying out his duties. *Subsection (4)* specifies the penalty for this offence.

## ***Section 5: Duty to inspect certain schools at prescribed intervals***

30. This section requires all schools previously covered by section 10 of SIA 1996 to be inspected at intervals to be prescribed in regulations. Section 10 of that Act requires the inspection of those schools to be carried out by a registered inspector; however

section 60 repeals the SIA 1996, thereby removing the requirement for registered inspectors in England. This section transfers the responsibility for inspecting every school in England to the Chief Inspector. By virtue of paragraph 5 of Schedule 1 the inspections and the exercise of any functions required in administering and delivering them may be carried out by HMI, any additional inspector or any other member of the Chief Inspector's staff in the name of the Chief Inspector.

31. *Subsection (5)* requires inspection reports to cover the same four areas currently covered by reports under section 10 of SIA 1996, with the addition, in subsection (5)(b), of how far the education provided meets the needs of the range of pupils and in subsection (5)(f) of the contribution made by the school to the well-being of its pupils.

#### ***Section 6: Duty to notify parents of section 5 inspection***

32. This section re-enacts with modifications paragraph 6 of Schedule 3 to SIA 1996. The section carries forward the requirement for the governing body (or in certain circumstances the local education authority) or the proprietor of a school to take reasonable steps to notify all parents of all registered pupils at the school and such other persons as may be prescribed in regulations of the time of the inspection and to invite their views on matters relating to the school. It does not carry forward the further requirement that the school arrange a meeting between parents and the inspectors; this is likely to be impractical given the intention to reduce notice of inspections.

#### ***Section 7: Duty to have regard to views of certain persons***

33. This section provides that in conducting a section 5 inspection the Chief Inspector must, among other things, have regard to the views of the head teacher; the governing body or proprietor; staff; pupils; parents; and any persons notified of the inspection, where those views are expressed.

#### ***Section 8: Inspection at discretion of Chief Inspector***

34. This section replaces section 3(1) of SIA 1996 and gives the Chief Inspector the power to inspect any school at any time, even when not under a duty to do so under section 2(2)(b) or section 5. This allows the Chief Inspector to inspect any school where he may have cause for concern in respect of his general duty under section 2. It also enables the Chief Inspector to conduct inspections for a range of purposes, including monitoring visits by HMI to schools in special measures, visits to schools to aid him in keeping the Secretary of State informed under section 2, or to contribute to reports on, for example, the teaching in a single curriculum subject.

#### ***Section 9: Power of Chief Inspector to treat discretionary inspection as section 5 inspection***

35. This section enables the Chief Inspector to treat an inspection conducted under his own power (section 8) or at the request of the Secretary of State (section 2(2)(b)) as though it were a section 5 inspection. This will mainly be used so that a school which is inspected, for whatever reason, under one of these other arrangements, does not have to have another inspection within the interval prescribed under section 5(1).
36. Where an inspection is deemed a section 5 inspection using this power, the section requires a written report to be made and the school to make the report available to parents in the usual way (see notes on section 6 and section 14).

#### ***Section 10: Power of entry etc. for purposes of inspection under section 5 or 8***

37. This section replaces the powers of entry conferred by section 3(3) of, and paragraph 7 of Schedule 3 to, SIA 1996. It provides for rights of entry into schools and other premises for the Chief Inspector and those assisting him, such as HMI and additional inspectors. As in SIA 1996, the section provides that it is an offence, punishable by a

fine, intentionally to obstruct the Chief Inspector in the conduct of an inspection under section 5 or 8.

### ***Section 11: Publication of inspection reports***

38. This section allows the Chief Inspector to publish any inspection report, and to do so by electronic means.

## ***Chapter 2 – Procedure for Inspections under Chapter 1***

### ***Section 13: Duties of Chief Inspector where school causes or has caused concern***

39. This section covers circumstances where a school which has been inspected under section 5 is judged by the Chief Inspector to require either special measures or significant improvement (see notes on Chapter 5: schools causing concern); or cases where such a designation is already in place and the judgement is that it should be changed or removed. The section re-enacts section 14 of SIA 1996 as it applies to England, but reflecting the new significant improvement category, removing the requirement for inspectors to produce a summary of their inspection reports, and introducing a review procedure. The section also re-enacts section 16A of SIA 1996 as it applies to England, with changes to terminology as set out at section 44, and to the arrangements for notifying the local education authority when a maintained school receives a designation.
40. *Subsections (1), (2) and (3)* provide that where an inspection of a maintained school identifies that the school requires significant improvement or special measures, the Chief Inspector must send a draft of the report to the governing body in the case of a maintained school and to the proprietor in the case of any other school and to consider any comments made by them within a set period. If the Chief Inspector is still of the opinion that the school requires significant improvement or special measures he must inform the Secretary of State and the local education authority in the case of a maintained school or the proprietor in any other case of this immediately in writing. He must also state that opinion in a report of the inspection. Thus, in the case of maintained schools, the local education authority will in future receive such notification direct from the Chief Inspector, rather than as at present from the Secretary of State.
41. Under *subsection (4)*, where in the previous report of an inspection the school was designated as requiring special measures, but the Chief Inspector is now of the opinion that the school no longer requires special measures, he must state his opinion in a report. If he considers that a designation of significant improvement rather than special measures is appropriate, he must also state his opinion in the report, as required by subsection (3).
42. Under *subsection (5)*, in the case of a school already designated as requiring significant improvement, if the Chief Inspector is of the opinion that neither a significant improvement nor a special measures designation is required, he must state his opinion in the report.

### ***Section 14: Destination of reports: maintained schools***

43. This section re-enacts the elements of section 16 of SIA 1996 relating to the destination of reports for all maintained schools, as they apply to England, but removing the requirement for inspectors to send summary reports. It specifies the persons to whom the inspector must send a copy of an inspection report following either a section 5 inspection or following any inspection of a maintained school. The requirements in section 16 of SIA 1996 relating to special measures are now included as part of section 13 (see above).
44. *Subsection (4)* requires the appropriate authority (defined in section 18) to make a copy of all inspection reports it receives available for public inspection, to provide a copy to

anyone who asks for one, and to make arrangements for parents of pupils at the school to receive a copy of the report.

***Section 15: Measures to be taken by local education authority***

45. This section re-enacts section 17(1) to (3) of SIA 1996, modified to reflect the new arrangements for the revised categories of schools causing concern defined in sections 44 and 46 and Schedule 5.
46. *Subsections (2) and (3)* place a duty on local education authorities to prepare a written statement of the action they propose to take, and the timetable for this action, when a school is judged to require special measures or significant improvement. The deadline for local education authorities to produce their action statements will be prescribed in regulations; the intention is that this will be 10 working days from the publication of the inspection report, but the Secretary of State may require a shorter period in urgent cases. Where the local education authority propose to take no action in response to the inspection report, their statement must set out their reasons for not doing so. The local education authority are required to send their statement to the Secretary of State, the Chief Inspector and the appointing body of foundation governors in the case of a voluntary-aided school.

***Section 16: Destination of reports: non-maintained schools***

47. This section re-enacts the elements of section 20 of SIA 1996 relating to the destination of reports for all non-maintained schools, as they apply to England, with the changes to terminology set out in section 44. This covers the distribution of reports of section 5 inspections for Academies, city technology colleges, city colleges for the technology of the arts and non-maintained special schools. These reports must be sent to the proprietor of the school. The requirements in section 20 of SIA 1996 relating to schools requiring special measures are now included as part of section 13 (see above).
48. *Subsection (2)* places a duty on the proprietor of a non-maintained special school to send a copy of the report to any local education authority which is paying fees for pupils at that school.
49. *Subsection (3)* requires the proprietor to make a copy of all inspection reports it receives available for public inspection, to provide a copy to anyone who asks for one, and to make arrangements for parents of pupils at the school to receive a copy of the report. This mirrors the duty in section 14 on the local education authority or other appropriate authority in relation to reports on maintained schools.

***Section 17: Statement to be prepared by proprietor of school***

50. This section specifies the action to be taken by the proprietor of a non-maintained school which requires special measures or significant improvement. Current requirements are set out in section 21 of SIA 1996. The proprietor is required to prepare a statement of the action he proposes to take and the timescale for this action when he is sent an inspection report that states the school requires special measures or significant improvement.
51. *Subsection (2)* provides for this statement of action to be prepared within a prescribed period, intended to be 10 working days from the date of publication of the inspection report (as for local education authorities under section 15) or such shorter period as the Secretary of State may direct in urgent cases.
52. *Subsections (3) and (4)* provide for copies of this statement to be sent to the Chief Inspector, to any other prescribed persons and, in the case of a non-maintained special school, to any local education authority which are paying fees for a pupil at the school.



### ***Chapter 3 – School Inspectors and School Inspections: Wales***

#### ***Section 19 and Schedule 2: Her Majesty’s Inspectorate of Education and Training in Wales***

53. This section and Schedule re-enact section 4 of, and Schedule 1 to, SIA 1996 and make provision for the appointment of Her Majesty’s Chief Inspector for Education and Training in Wales (the Chief Inspector) and for the appointment of HMI in Wales. Section 19 also sets out that the Chief Inspector may not be appointed for a term of more than five years, though a previous post holder is not barred from reappointment.
54. New provision is made in *subsections (6) and (7)*. Subsection (6) provides that where it considers that powers under *subsections (1), (2) and (4)(c)* should be exercised, the Assembly has a duty to give advice to the Secretary of State on a recommendation to Her Majesty on the appointment of the Chief Inspector or of HMI, or on removal of the Chief Inspector from office on grounds of incapacity or misconduct. At present there is no statutory requirement on any person to provide such advice, but as a matter of constitutional convention any recommendation is made by the Secretary of State. In practice any such recommendation is made relying upon advice from the Assembly’s First Minister. This practice is now reflected in this section.
55. Subsection (7) provides that it is for the Chief Inspector to determine the terms and conditions of appointment of Her Majesty’s Inspectors, subject to the approval of the Assembly. This brings the position of the Assembly in relation to HMI in Wales into line with its position in relation to the Chief Inspector’s other staff.

#### ***Section 20: Functions of Chief Inspector***

56. This re-enacts section 5(1) to (6) and (11) of SIA 1996, as amended. It sets out the functions of the Chief Inspector and makes new provision extending the duty of the Chief Inspector to keep the Assembly informed about certain matters by adding the following:
- i) *subsection (1)(b)*: how far education provided by schools in Wales meets the needs of the range of pupils at those schools; and
  - ii) *subsection (1)(f)*: the contribution made by those schools to the well-being of those pupils.
57. The term “well-being” is defined in section 31 by reference to the matters mentioned in section 25(2) of the Children Act 2004.

#### ***Section 21: Annual and other reports to the Assembly***

58. This section re-enacts section 5(7) of SIA 1996. It requires the Chief Inspector to make an annual report to the Assembly and provides for the report to be published by the Assembly. The Chief Inspector may also make other reports and may publish them.

#### ***Section 22: Power of Assembly to establish advisory panel***

59. This section provides the Assembly with a new regulation-making power enabling it to establish a panel to advise the Assembly on any matter relating to the functions of the Chief Inspector.
60. The section allows the Assembly to make provision as to the establishment of the panel and its functions, including provision as to the appointment of members, remuneration and allowances, the preparation of reports and a requirement for the Chief Inspector for Wales and the panel to co-operate, for example by allowing access to the Chief Inspector’s staff and papers.

***Section 23: Powers of entry etc. of Chief Inspector***

61. This section re-enacts and amends section 5(8) to (10) of SIA 1996. It sets out the Chief Inspector's rights of entry to schools and rights to inspect documents for the purposes of inspection and other functions under section 20. These rights extend to other premises used by any person in connection with making provision for pupils aged 15 or over (but who are still of compulsory school age) to receive part of their education. Paragraph 5 of Schedule 2 provides that these rights can be exercised by any HMI, any additional inspector or other member of the Chief Inspector's staff who is authorised by him. Under *subsection (3)* it is an offence intentionally to obstruct the Chief Inspector in carrying out his duties. *Subsection (4)* specifies the penalty for that offence.

***Section 24: Power of Chief Inspector to arrange for inspections***

62. This section re-enacts section 6 of SIA 1996. It enables the Chief Inspector to arrange for any school to be inspected by HMI, and for HMI to monitor an inspection being carried out by a registered inspector under section 28 (which re-enacts section 10 of SIA 1996).
63. The section also makes provision as to rights of entry and rights to inspect documents, and makes it an offence intentionally to obstruct the Chief Inspector in the exercise of any of his functions under this section.

***Section 25: Registration of inspectors in Wales***

64. This section re-enacts section 7 of SIA 1996 in its application to Wales. It requires any person inspecting a school under section 28 to be one of HMI or a registered inspector, and makes provision in relation to registration.
65. *Subsection (5)* makes new provision which allows the Chief Inspector to have regard, when deciding on an application for registration, to the extent to which he intends to use HMI or registered inspectors to carry out inspections under section 28 and to the extent to which there is a need for registered inspectors in any part of Wales. The Chief Inspector could therefore refuse to register an inspector if he considers there already exist sufficient registered inspectors in Wales to carry out school inspections, or because he intends to use HMI rather than registered inspectors for the purposes of carrying out school inspections under section 28.

***Section 26: Removal from register and imposition or variation of conditions***

66. This section re-enacts section 8(1) to (3) of SIA 1996 in its application to Wales. It sets out the conditions to be satisfied before the Chief Inspector can remove the name of an inspector from the register, and before he can impose or vary conditions to which the registration of an inspector is subject.

***Section 27 and Schedule 3: Appeals in relation to registration***

67. These re-enact section 9 of, and Schedule 2 to, SIA 1996 in their application to Wales. They provide for a right of appeal to a tribunal constituted under section 27 in relation to a registration decision taken by the Chief Inspector, and make other provision in relation to such appeals and to the constitution, staffing and procedures of such a tribunal. New provision is made in *subsection (2)* to the effect that the tribunal must confirm a decision to refuse to renew a person's registration made on the ground of a reduced need or no need for registered inspectors in Wales if the tribunal is satisfied that the refusal was in fact on that ground.

***Section 28 and Schedule 4: Duty to arrange regular inspections of certain schools***

68. These re-enact section 10 of, and Schedule 3 to, SIA 1996 in their application to Wales. Section 28 lists those schools which are required to be inspected under that section

at intervals to be prescribed in regulations made by the Assembly, and sets out those matters on which an inspector must report. Schedule 4 deals with arrangements for selection of inspectors; the composition of inspection teams; enrolment of persons who may act as inspection team members; training for inspections; meetings with parents of schools being inspected; rights of entry for the purposes of inspection; and replacement of an inspector during the course of an inspection.

69. New provision is made in *subsection (1)* of section 28 allowing inspections to be carried out by HMI or a registered inspector. This gives the Chief Inspector the discretion to choose whether to use a registered inspector or HMI.
70. *Subsection (5)* makes new provision extending the duty of any inspector conducting an inspection under this section to report on the following matters:
- i) *subsection (5)(b)*: how far the education provided in the school meets the needs of the range of pupils at the school; and
  - ii) *subsection (5)(f)*: the contribution made by the school to the well-being of those pupils.

### ***Section 29: Publication of inspection reports***

71. This section re-enacts section 42A of SIA 1996 in its application to Wales. It enables the Chief Inspector to determine the manner in which inspection reports are published.

### ***Section 30: Payment of fees into Consolidated Fund***

72. This section re-enacts section 43 of SIA 1996 in its application to Wales, requiring registration fees, enrolment fees and training fees to be paid into the Consolidated Fund unless a Treasury Receipts Direction under paragraph 4 of Schedule 6 to the Government of Wales Act 1998 requires otherwise.

## ***Chapter 4 – Procedure for Inspections under Chapter 3***

### ***Section 32: Inspections by members of the Inspectorate***

73. This section re-enacts section 12(3) and (4) of SIA 1996 in its application to Wales. It enables the Chief Inspector to treat an inspection by HMI under section 20(2)(b) or 24(1) as though it were an inspection under section 28.

### ***Section 33: Duty to report on section 28 inspections***

74. This section re-enacts section 13(1) of SIA 1996 in its application to Wales. It requires the making of a written report and summary report following completion of a school inspection under section 28.

### ***Sections 32-33: Section 28 inspections by registered inspectors and reports of inspections by members of the Inspectorate***

75. These sections re-enact with modifications section 13(2) to (8) and section 14 of SIA 1996 in their application to Wales, extending their application to schools requiring significant improvement in addition to schools requiring special measures. They set out the required procedure in relation to the report of an inspection carried out by a registered inspector or an HMI who is of the view that a school requires significant improvement or special measures.

### ***Section 36: Timing of section 28 inspections by registered inspectors***

76. This section re-enacts section 15 of SIA 1996 in its application to Wales. It requires a school inspection by a registered inspector to be carried out within a time specified in regulations made by the Assembly and for the period allowed for the making of an



inspection report to be specified in such regulations. It allows the Chief Inspector to extend those times and provides for the giving of notice of any extension.

***Section 37: Duty to notify where inspection shows maintained school causing concern***

77. This section re-enacts with modifications section 16A of SIA 1996 as it applies to Wales, with changes to terminology as set out at section 44, and to the arrangements for notifying the local education authority when a maintained school receives a designation. Where an inspection of a maintained school identifies that the school requires significant improvement or special measures, the Chief Inspector is required to inform the Assembly and the local education authority of this immediately in writing. Thus, the local education authority will in future receive such notification direct from the Chief Inspector, rather than as at present from the Assembly.

***Section 38: Destination of reports: maintained schools***

78. This section re-enacts with modifications section 16 of SIA 1996 in its application to Wales. It requires school inspection reports and summaries to be made widely available to specified persons, and sets out who must receive a copy of a report and summary and in what circumstances. In addition to all reports following an inspection under section 28 and to other reports by HMI identifying a school as requiring special measures, this section applies to other reports by HMI identifying a school as requiring significant improvement.

***Section 39: Statement to be prepared by appropriate authority***

79. This section re-enacts with modifications section 17 of SIA 1996 in its application to Wales. It sets out the requirement on a school's governing body or, where the school does not have a delegated budget, on the local education authority, to prepare a written statement of action setting out the steps they propose to take in the light of a report of any inspection under section 28, or any other inspection by HMI stating that special measures are required. New provision is made requiring a statement of action to be prepared also after other HMI inspections where the report states that the school requires significant improvement. Regulations made by the Assembly will set out the periods for preparing a written statement and the periods for sending them to specified persons, including the Assembly.

***Section 40: Statement to be prepared by local education authority***

80. This section re-enacts with modifications section 18 of SIA 1996 in its application to Wales. It places a requirement on local education authorities to prepare a written statement of action they intend to take in the light of an inspection report for schools requiring special measures. New provision is made requiring a statement to be prepared where an inspection report states that a school requires significant improvement. Regulations made by the Assembly will set out the periods for preparing these written statements.

***Section 41: Destination of reports: non-maintained schools***

81. This section re-enacts with modifications section 20 of SIA 1996 in its application to Wales. It requires school inspection reports and summaries to be made widely available to specified persons, and sets out who must receive a copy of a report and summary and in what circumstances. In addition to all reports following an inspection under section 28 and to other reports by HMI identifying a school as requiring special measures, this section now applies to other reports by HMI identifying a school as requiring significant improvement.

***Section 42: Statement to be prepared by proprietor of school***

82. This section re-enacts with modifications section 21 of SIA 1996 in its application to Wales. It sets out the requirement on the proprietor to prepare a written statement of action setting out the steps he proposes to take in light of a report of any inspection under section 28, or any other inspection by HMI stating that a school requires special measures. New provision is made requiring a statement of action to be prepared after other HMI inspections where the report states that a school requires significant improvement. Regulations made by the Assembly will set out the periods for preparing these written statements and the periods for sending them to specified persons, including the Assembly.

***Chapter 5 – Schools Causing Concern***

***Section 44: Categories of schools causing concern***

83. This section defines the two statutory categories of schools causing concern: those which require special measures and those which require significant improvement.
84. *Subsection (1)* provides a revised definition of the existing special measures category, with a school's capacity to improve now to be taken into account in inspectors' judgements. The definition in section 13(9) of SIA 1996 is that 'special measures are required to be taken in relation to a school if the school is failing, or likely to fail, to give its pupils an acceptable standard of education'. Schools will no longer be regarded as requiring special measures merely because they are 'likely to fail'. Special measures will be required only if the school is failing to provide an acceptable standard of education and the capacity to secure the necessary improvement is not demonstrated.
85. *Subsection (2)* introduces a new category of a school requiring significant improvement. Schools which would previously have been judged to have serious weaknesses, as defined in section 15 of the School Standards and Framework Act 1998, inadequate sixth forms, as defined in paragraph 1(2) of Schedule 7 of the Learning and Skills Act 2000, or to be underachieving, as defined in Ofsted guidance, are expected to fall into this new category.

***Section 45: Cases where Secretary of State or Assembly may direct closure of school***

86. This section amends section 19 of the School Standards and Framework Act 1998, as amended by section 56 of the Education Act 2002; the amendment curtails the power of the Secretary of State or the Assembly to direct a local education authority to close a school which is causing concern. At present the Secretary of State or the Assembly has such power in relation to schools which require special measures or have serious weaknesses. In future, this power will apply only in relation to a school which is placed in special measures.

***Section 46: Sixth forms requiring significant improvement***

87. This section introduces Schedule 5, which sets out amendments to the Learning and Skills Act 2000 arising from the new category of significant improvement.

***Schedule 5: Sixth forms requiring significant improvement***

88. This Schedule amends section 113 of and Schedule 7 to the Learning and Skills Act 2000. It replaces the current categorisation of 'inadequate sixth form' with a 'sixth form requiring significant improvement'. This reflects the new significant improvement category introduced by section 44. *Paragraph 3(3)* defines the circumstances in which a school requires significant improvement in relation to its sixth form: if it is failing to give pupils over 16 an acceptable standard of education; or if its performance in relation to provision for such pupils is less than might reasonably be expected. Other provisions

in the Schedule continue existing arrangements in relation to sixth forms which give cause for concern, including the power of the Learning and Skills Council for England or the National Council for Education and Training for Wales to propose closure.

89. *Sub-paragraphs (11) to (14) of paragraph 3* provide for schools for 16-19 year old students in England and Wales to be judged to be causing concern following an inspection under section 5 and reflect the revised definition of special measures and the new category of significant improvement in section 44.

## ***Chapter 6 – Other Inspections: England and Wales***

### ***Section 48: Inspection of religious education: England***

90. This section re-enacts without modification section 23 of SIA 1996 in its application to England, providing for the separate inspection of denominational education and collective worship in schools designated under section 69(3) of the School Standards and Framework Act 1998 by the Secretary of State as having a religious character. It sets out that it is the responsibility of the governing body of a school, or in the case of a voluntary controlled school, the responsibility of the foundation governors, to arrange an inspection under this section. *Subsection (2)* provides that, in choosing the inspector, the governing body or foundation governors must consult any person prescribed in regulations in relation to the religion or religious denomination of that school. The section allows the Secretary of State to prescribe in regulations the intervals between such inspections.

### ***Section 49: Procedure for inspections under section 48***

91. This section re-enacts procedures currently covered by Schedule 4 to SIA 1996. It allows the Secretary of State to prescribe in regulations the period within which an inspection under section 48 may be conducted. It also requires the person conducting the inspection to prepare a report in writing before the end of a period which is prescribed in regulations. *Subsection (4)* places a duty on the governing body to make the report available to members of the public and to ensure that all parents of registered pupils receive a copy of the report.

### ***Section 50 and Schedule 6: Inspection of religious education: Wales***

92. This section makes similar provision in relation to Wales to that made by section 48 in relation to England. New provision is made requiring governing bodies or foundation governors, before they choose an inspector to conduct an inspection of denominational education and collective worship, to have regard to guidance provided by the relevant body for the faith group to which the school belongs. These bodies will be set out in regulations made by the Assembly. The Schedule makes provision in relation to the procedure for, and conduct of, such inspections, and in relation to the preparation of inspection reports and action plans.

### ***Section 51: Power of LEA to inspect maintained school for specific purpose***

93. This section re-enacts without any changes section 25 of SIA 1996 giving local education authorities, for the specific purposes set out in *subsection (1)*, the power to conduct visits to inspect provision in schools which they maintain.

### ***Section 52: Provision of inspection services by LEAs in Wales***

94. This section re-enacts section 24 of SIA 1996 in its application to Wales. It enables a local education authority to provide a school inspection service for schools within their area. It allows the service to be provided for both maintained and non-maintained schools and requires local authorities to recover costs through charges on those using the service. It provides that the Assembly may by regulations make provision as to the making of tenders and keeping of accounts by local education authorities.

***Section 53: Inspection of child minding, day care and nursery education***

95. This section introduces Schedule 7, which sets out amendments relating to the inspection of child minding, day care for children, and nursery education.

***Schedule 7: Inspection of child minding, day care and nursery education***

96. This Schedule makes amendments to Part 10A of the Children Act 1989 which was inserted by the Care Standards Act 2000 (child minding and day care); and section 122 of, and Schedule 26 to, the School Standards and Framework Act 1998 (nursery education).
97. *Paragraph 1* expands the general duty of the Chief Inspector for England to keep the Secretary of State informed about child minding and day care provided in England. In addition to the quality and standards of child minding and day care, the Chief Inspector must also keep the Secretary of State informed about how far child minding and day care meet the needs of the range of children cared for, about the quality of the leadership and management of day care, and about the contribution made by child minding and day care to the well-being of the children for whom they are provided. Well-being is to be interpreted in accordance with section 10(2) of the Children Act 2004.
98. *Paragraph 2* removes the requirement on the Chief Inspector to maintain a register of early years child care inspectors in England.
99. *Paragraph 3* makes amendments as a consequence of the removal of the requirement to maintain a register of early years child care inspectors under paragraph 3. It places duties, formerly placed on registered inspectors, on the Chief Inspector in England to report as set out at paragraph 2. *Sub-paragraph (6)* inserts a new regulation-making power to require child minders and providers of day care to notify prescribed persons of an inspection.
100. *Paragraph 4* amends the provisions in section 79R of the Children Act 1989 placing the responsibility for the production and distribution of child minding and day care inspection reports on the Chief Inspector of schools in England. It removes the requirement for a report to be prepared within a prescribed period. Paragraph 4(4) makes provision for regulations to require child minders and providers of day care, to whom the Chief Inspector is already required to send a report, to make a copy of the report available to other persons as may be prescribed (this will cover parents); to provide a copy of the report to other persons as may be prescribed; and allows them to charge a fee for providing copies of the report in prescribed cases. Paragraph 4(5) removes a reference to SIA 1996 and substitutes it with a reference to this Act, enabling inspection reports to be published by electronic means.
101. *Paragraphs 5 and 6* amend sections 79T and 79U of the Children Act 1989, replacing references in those provisions to SIA 1996 with references to this Act for Wales and England respectively. In Wales, paragraph 5 enables the Chief Inspector for Wales to determine the manner in which inspection reports are published (see note to section 28). In England, paragraph 6 ensures that the rights of entry under the Children Act 1989 permit access to allow the inspection of computer records (see note to section 58).
102. *Paragraph 7* amends section 122 of the School Standards and Framework Act 1998, to reflect the retention of the requirement to keep a register of nursery inspectors in Wales but the removal of this requirement in England.
103. *Paragraph 9* amends the definition of ‘relevant nursery education’ (and associated expressions) for the purposes of Schedule 26 (Inspection of nursery education) of the School Standards and Framework Act 1998. The definition now includes nursery education provided under arrangements made in pursuance of the duty to secure sufficient provision of nursery education for their area under section 118 of the 1998 Act. This is in consequence of the removal of the duty on the local authority to prepare an early years and childcare development plan.

104. *Paragraph 10* makes changes which reflect the different approaches in England and Wales outlined below (see notes to paragraphs 13 to 19). This paragraph also defines the term “well-being” in accordance with sections 10(2) (England) and 25(2) (Wales) of the Children Act 2004.
105. *Paragraph 11* expands the general duty, as set out in paragraph 3 of Schedule 26 to the School Standards and Framework Act 1998, of the Chief Inspector for England and the Chief Inspector for Wales to keep the Secretary of State and the Assembly respectively informed about relevant nursery education. In addition to the quality and standards of nursery education, and the spiritual, moral, social and cultural development of the children for whom nursery education is provided, both Chief Inspectors must also provide information about how far relevant nursery education meets the needs of the range of children for whom it is provided, about the quality of the leadership and management of nursery education, and about the contribution made by relevant nursery education to the well-being of the children for whom it is provided.
106. *Paragraph 12* makes changes to the nursery education inspection provisions in paragraphs 6 and 7 of Schedule 26 to the School Standards and Framework Act 1998. These changes are a consequence of the removal of the requirement on the Chief Inspector for England to establish and maintain a register of nursery education inspectors (see notes to paragraphs 13 to 19 below). It re-enacts paragraph 6 of Schedule 26 in relation to Wales, making provision for the Chief Inspector for Wales to secure the inspection of nursery education by HMI or registered nursery education inspectors. It also inserts a new regulation-making power to require the responsible person (to be prescribed) to notify prescribed persons of an inspection.
107. In relation to both England and Wales, this paragraph removes the references to inspections being carried out at any premises on which relevant nursery education is provided. The Chief Inspector will be able to inspect relevant nursery education without having to arrange an inspection visit to every set of premises.
108. *Paragraphs 13 to 19* remove the requirement on the Chief Inspector for England to establish and maintain a register of nursery education inspectors, but provide for the retention of this requirement in Wales. They make a number of consequential amendments to paragraphs 8, 9, 10, 11 and 12 of Schedule 26 to the School Standards and Framework Act 1998 to reflect this difference.
109. *Paragraph 20* amends the provisions in Schedule 26 of the School Standards and Framework Act 1998 in respect of nursery education inspection reports in England. These make the Chief Inspector responsible for the production and distribution of all reports and remove the requirement for a report to be prepared within a prescribed period. It makes provision requiring the Chief Inspector to send a copy of the report to the responsible person (which will be prescribed in regulations to cover those persons in receipt of funding from the local education authority for the provision of nursery education) and to other persons as may be prescribed. It also makes provision for regulations to require the responsible person (to whom the Chief Inspector is already required to send a report) to make a copy of the report available to other persons as may be prescribed (it is intended that this will cover parents); to provide a copy of the report to other persons as may be prescribed; and to allow them to charge a fee for providing copies of the report in prescribed cases.
110. *Paragraph 20* also re-enacts, in relation to Wales, the provisions of paragraph 13 of Schedule 26 to the School Standards and Framework Act 1998 which makes provision in relation to the reports of inspections. There is new provision (as in England) allowing regulations made by the Assembly to require prescribed persons, to whom the Chief Inspector for Wales is already required to send a report, to send a copy of the report to other specified persons.
111. Finally, paragraph 20 removes the reference to SIA 1996 and substitutes it with a reference to this Act, enabling inspection reports to be published by electronic means.



- 112. *Paragraph 21* amends paragraph 14 of Schedule 26 to the School Standards and Framework Act in respect of the provisions for the annual reports of Chief Inspectors in both England and Wales to include an account of the exercise of their functions in respect of nursery education inspection, consequent upon the new legal basis for such reports in this Act.
- 113. *Paragraphs 22 and 23* make consequential amendments to reflect the different provisions for nursery education in England and Wales, as outlined in the notes to paragraphs 13-19.
- 114. *Paragraph 24* makes further consequential amendments to paragraphs 16, 17 and 18 of the School Standards and Framework Act 1998 reflecting the different provisions for nursery education in England and Wales, as set out at paragraphs 13 to 19, and replaces a reference to section 42 of SIA 1996 which relates to the inspection of computer records with an equivalent reference in this Act.

#### ***Section 54: Inspection of independent schools***

- 115. This section introduces Schedule 8, which contains consequential amendments of the Education Act 2002 relating to the inspection of independent schools.

#### ***Schedule 8: Amendments relating to inspection of independent schools***

- 116. This Schedule contains a number of amendments to existing legislation, resulting from the removal of the category and responsibilities of 'registered inspectors' in England, which has a consequential impact on sections 163 and 164 of the Education Act 2002. This Schedule preserves the powers to inspect registered schools as currently set out in section 163 and rights of entry and related supplementary responsibilities in section 164. However, in amending these provisions, it also substitutes separate provisions for England and for Wales, to allow for the fact that in Wales, the role of registered inspector will continue, whereas in England it will cease.

#### ***Section 55: Inspection of careers services in Wales***

- 117. This section makes new provision extending the remit of the Chief Inspector for Education and Training in Wales in relation to the inspection of careers services in Wales. Under section 8 of the Employment and Training Act 1973 the Assembly is under a duty to secure the provision of a careers service to certain persons receiving education, and under section 9 of that Act it has the power to provide careers services for others. The Assembly has made arrangements under section 10 of that Act to provide careers services in Wales. These are provided by a number of careers companies, limited by guarantee, which together make up Careers Wales. Although it is an all-age service its work is primarily directed towards provision of careers advice and guidance for young people and, in particular, young people aged 14-19 in education and making choices about learning and career options.
- 118. Careers services provided by the companies which form Careers Wales are currently inspected by the Chief Inspector for Education and Training in Wales under section 35 of the Teaching and Higher Education Act 1998. However these inspection arrangements are out of step with all other areas of inspection in Wales, particularly since the introduction of a new Common Inspection Framework from September 2004 by Estyn, and the existing legislation provides the Chief Inspector with only limited powers. In particular inspections of careers services can only be carried out at the Assembly's request.
- 119. The provisions in this section will ensure that careers services in Wales are subject to a similar system of inspection as other education and training within the Chief Inspector's remit.

- 120. *Section 55* requires the Chief Inspector to inspect persons providing or arranging the provision of careers services in Wales at intervals which will be prescribed by regulations to be made by the Assembly.
- 121. *Subsection (2)* places a general duty on the Chief Inspector to keep the Assembly informed about the quality of the careers and related services provided in Wales.
- 122. *Subsection (4)* provides a power for the Assembly to make regulations governing the interval between the inspections of careers service providers.
- 123. *Subsection (5)* requires the Chief Inspector to provide the Assembly with such advice as requested on careers services in Wales, and, when asked to do so by the Assembly, to inspect any careers service provider.
- 124. *Subsection (6)* provides that the Chief Inspector may, of her own accord, give advice to the Assembly on matters relating to the provision of careers services or arrange for a careers services provider to be inspected at any time.

***Section 56: Inspection of services related to careers services in Wales***

- 125. This section makes new provision replacing that made under section 35A of the Teaching and Higher Education Act 1998 in relation to the inspection of education, training or advisory services provided by persons providing careers services, i.e. “related services” provided by careers companies in Wales. These related services are provided under arrangements made by the Assembly under section 2 of the Employment and Training Act 1973, or with the funding made available under section 12 (1) of the Industrial Development Act 1982.
- 126. *Subsection (2)* places a new general duty on the Chief Inspector for Education and Training for Wales to keep the Assembly informed about the quality of any such related services provided by persons providing careers services in Wales.
- 127. *Subsection (3)* requires the Chief Inspector to inspect these related services at intervals to be prescribed by regulations to be made by the Assembly.
- 128. *Subsection (4)* requires the Chief Inspector, when asked by the Assembly, to provide advice on the provision of these related services in Wales and to inspect any provider of these related services.
- 129. *Subsection (5)* provides that the Chief Inspector may, of his own accord, give advice to the Assembly on matters relating to the provision of these related services or arrange for the provider of any such services to be inspected at any time.

***Section 57: Inspections under sections 55 and 56***

- 130. This section makes new provision, setting out the procedures for inspections in Wales under sections 55 and 56. Such inspections have to be carried out by HMI or an additional inspector, in accordance with Assembly instructions or guidelines. Provision is made for rights of entry for inspectors, including rights to inspect records and documents and to take copies as required for the purposes of an inspection. *Subsection (5)* provides that it is an offence to obstruct an inspector or a person assisting him. *Subsections (7) and (8)* detail arrangements for the preparation of inspection reports.
- 131. *Subsections (9) and (10)* provide a new regulation-making power for the Assembly. In these regulations the Assembly will be able to require a person inspected under sections 55 or 56 to prepare a written statement in response to an inspection report, and to set out matters to be covered in the statement, the timescale for its preparation and publication arrangements.

## **Chapter 7 - Supplementary**

### **Section 58: Inspection of computer records**

132. This section re-enacts section 42 of SIA 1996 without change. It allows any person engaged in the activities within Part 1 of the Act reasonable access to computer records and associated materials and to inspect such records and materials.

### **Section 59: Combined reports**

133. This section applies to inspections carried out under:
- i) this Part of the Act;
  - ii) Part 10A of the Children Act 1989 (child minding and day care for children);
  - iii) section 122 of, and Schedule 26 to, the School Standards and Framework Act 1998 (inspection of nursery education); and
  - iv) Chapter 1 of Part 10 of the Education Act 2002 (regulation of independent schools).
134. *Subsection (2)* allows for the reports of inspections carried out under two or more of the above mentioned provisions to be produced as a combined report. This provision gives the Chief Inspectors for England and Wales and others responsible for making inspection reports the flexibility to merge two or more reports into a single report.
135. *Subsection (3)* ensures that, where combined reports of different types of inspection are made, any legal requirements as to the publication or distribution of a report that apply to the different inspections apply equally to combined reports. *Subsection (4)* makes provision for the Chief Inspector for England (or for Wales) to publish combined reports in any manner he considers appropriate, but makes clear that this does not override any duties as to publication in other legislation.

### **Section 61: Further amendments relating to school inspection**

136. This section introduces Schedule 9, setting out amendments to existing legislation as a consequence of the changes to categorisation of schools causing concern set out in section 44.

### **Schedule 9: Amendments relating to school inspections**

137. This Schedule contains a number of amendments to existing legislation which are consequential on the new inspection provisions and the removal of the current categorisation of a school with serious weaknesses and the introduction of the new significant improvement category. At present the Secretary of State, the Assembly and local education authorities have intervention powers in relation to a school with serious weaknesses, enabling them to add additional governors, take back a school's delegated budget or to provide for a governing body to be replaced with an interim executive board; in addition, the Secretary of State or the Assembly has power to direct a local education authority to obtain advisory services. The Schedule enables these powers to be exercised in relation to the new significant improvement category.

### **Section 62: Power of Assembly to change inspection framework for Wales**

138. This section provides a new order-making power giving the Assembly flexibility to make changes to primary legislation to adjust elements of the inspection system in Wales. This will enable the Assembly, should it so wish, to mirror the approach being taken forward in England, either in part or in full.
139. Provisions in relation to school inspection in Wales in this Act mainly re-enact existing provisions in SIA 1996, with minor amendments. In Wales, a new inspection system

was introduced under a Common Inspection Framework by Estyn, in September 2004. The Framework is underpinned by secondary legislation made by the Assembly. In addition, Estyn has issued guidance on notice of inspection, the role of self-evaluation and matching the scale of inspection to need.

## **Part 2: School Organisation**

140. The following definition occurs in the notes in relation to Part 2:
- *SSFA 1998* is the School Standards and Framework Act 1998
141. Under existing legislation, local education authorities are required to invite proposals for new schools in circumstances where there is a need for an additional secondary school. The provisions in this Part extend this requirement to all circumstances where statutory proposals are needed to establish a new secondary school, whether as an additional school or as a replacement for one or more existing schools.

### ***Section 64: Proposals not requiring consent of Secretary of State***

142. This section amends existing legislation to exclude from section 28 of SSFA 1998 proposals for maintained secondary schools (and middle schools catering for pupils up to at least the age of 16) from those that may be published by local education authorities and promoters.

### ***Section 65: Publication of proposals with consent of Secretary of State***

143. This section inserts new section 28A into SSFA 1998 to provide for the publication of statutory proposals for new secondary schools (including middle schools catering for pupils up to at least the age of 16) by local education authorities and other persons (“promoters”) with the consent of the Secretary of State. The principal provisions of the new section are as follows:
- i) *subsections (4) and (5)* provide for regulations to prescribe the information the proposals must contain and how they must be published, and that local education authorities and promoters must consult before publishing proposals, having regard to any guidance the Secretary of State may give;
  - ii) *subsection (6)* provides that those bringing forward proposals shall send to the local school organisation committee a copy of the proposals and any other information that may be prescribed in regulations;
  - iii) *subsection (7)* provides that Schedule 6 to SSFA 1998 has effect in relation to the procedures for dealing with the proposals and the provision of premises or other assistance in connection with their implementation (as for other proposals); and
  - iv) *subsection (8)* provides for regulations to make any necessary modifications to the arrangements for dealing with proposals where the school is to be situated in an area other than that of the local education authority who are to maintain the school.

### ***Section 66 and Schedule 10: Proposals for new secondary schools in England and proposals under section 66 for establishment of secondary schools: supplementary***

144. This section provides that a local education authority in England may publish a notice inviting proposals for the establishment of a secondary foundation or voluntary school or an Academy. *Subsection (3)* specifies the basic information that the notice must contain and provides that other information may be prescribed in regulations.
145. *Subsections (4) to (6)* provide for mandatory consultation by a local education authority before publishing the notice inviting proposals. Regulations can prescribe the persons who must be consulted and the matters which must be the subject of the consultation.

They may also prescribe other requirements relating to consultation to be met by the local education authority, such as timing.

146. *Subsection (7)* provides that proposals brought forward in response to the notice must contain the information prescribed in regulations and be submitted to the local education authority before the date specified in the notice.
147. *Subsections (8) to (10)* provide that the local education authority must publish the proposals they receive, and that regulations may prescribe the time and manner in which this must be done. They also provide that the local education authority may publish their own proposals for a secondary community or foundation school, and that regulations may prescribe the information which they must contain. Regulations may require the authority to take steps to promote public awareness of any proposals.
148. *Subsection (11)* defines “secondary school” as including middle schools with an upper age of at least 16, but not including schools catering only for 16-19 year olds.
149. *Subsection (12)* introduces Schedule 10, which contains detailed provisions in relation to the consideration, approval and implementation of proposals under this section. The Schedule replaces Schedule 8 to the Education Act 2002, which dealt only with additional secondary schools.
150. *Subsection (13)* makes provision for a situation where proposals relate to a school to be situated in a different local education authority area. The subsection provides that Schedule 10 is to have effect with modifications prescribed in regulations.
151. *Subsection (14)* repeals the provisions of the Education Act 2002 with respect to proposals for additional secondary schools.

### ***Section 67 and Schedule 11: Rationalisation of school places in England***

152. *Section 67* introduces Schedule 11, which contains provision enabling the Secretary of State to direct local education authorities in England, or the governing bodies of maintained schools, to bring forward proposals for the rationalisation of school places, and for such proposals to be made by him. These arrangements replace those in Schedule 7 to SSFA 1998 and section 71 of the Education Act 2002 in relation to the addition of places where they are needed and the removal of surplus places.

### ***Section 68: Proposals for establishment of federated schools***

153. *Section 68* provides that proposals for the establishment of new schools may relate to the establishment of schools as federated schools. (“Federated school” in this section refers to a school which is federated under one governing body with one or more other schools.)

### ***Section 69: LEA not to establish school on opposite side of Welsh border***

154. *Section 69* provides that the power of local education authorities to establish and maintain schools within the area of other local education authorities does not apply when that other authority are situated on the opposite side of the Welsh border.

### ***Section 70: Proposals for discontinuance of rural primary school***

155. This section amends section 29 of the SSFA 1998 to provide that in formulating proposals for the discontinuance of a rural primary school, the relevant body shall have regard to certain matters including the effect on the local community, transport implications and alternatives to discontinuance. The relevant body may be either a local education authority in England or Wales or the governing body of a voluntary or foundation school. Section 29 is further amended to provide that prior to publication of such proposals, the relevant body shall consult registered parents and any district, parish



and community councils for the area in which the school is situated. If the relevant body is the governing body of a school, it must also consult the local education authority.

### ***Section 71: Proposals relating to maintained special school***

156. This section amends section 31 of the SSFA 1998 to provide that where a local education authority or governing body are proposing to make an alteration to, or to close, a community or foundation special school they must consult parents and any local education authority who maintain a statement of special educational needs in respect of a pupil at that school.

### ***Section 72 and Schedule 12: School organisation: further amendments***

157. **Section 72** introduces Schedule 12, which contains further amendments relating to the organisation of schools. The Schedule updates various provisions to correspond to provisions of this Act, especially in relation to proposals published under section 66.

### **Part 3: Training the School Workforce**

158. The following definitions occur in the notes in relation to Part 3:
- *The Agency* means the Training and Development Agency for Schools
  - *HEFCW* means the Higher Education Funding Council for Wales
  - *The Assembly* means the National Assembly for Wales
  - *The 1994 Act* is the Education Act 1994

### ***Section 74: The Training and Development Agency for Schools***

159. This section renames the Teacher Training Agency as the Training and Development Agency for Schools to reflect their new role in relation to training and development for the whole school workforce.

### ***Section 75: Functions of the Agency***

160. The Agency's objectives provide the framework within which they may exercise their functions. *Subsection (2)* extends the objectives of the Agency listed in section 1(2) of the 1994 Act to include matters in relation to all members of the school workforce. The Agency's objectives include encouraging suitable adults to take up careers in teaching and in other parts of the school workforce, improving the means by which they may do so, and generally contributing to raising the standards of teaching and of other activities carried out by the school workforce. *Subsection (3)* also provides context for the exercise of the Agency's functions. The Agency are required to have regard to the desirability of securing that the school workforce is well fitted and trained to pursue a number of outcomes. In addition to the outcomes that feature within the Agency's objectives in the 1994 Act, these outcomes include the contribution of the school workforce to the well-being of children and young people, having regard to the matters mentioned in section 10(2) of the Children Act 2004, and their promotion of the behavioural development of children and young people. *Subsection (5)* defines what is meant by the school workforce.

### ***Section 76: Powers of the Agency in Wales***

161. This section allows the Agency to act in Wales as well as in England. However, the Agency must not do anything in Wales (except where the functions have been given to them by section 94 or by regulations made under the Education Act 2002) unless they have been requested to do so by the Assembly and the Agency have given notice that they have agreed to such a request.

***Section 77: Membership etc. of Agency***

162. *Subsection (1)* allows the Secretary of State to appoint members of the Agency, one of whom must be appointed chairman. There is no longer a restriction, either minimum or maximum, on the number of members. Provision in relation to the conditions of appointment, tenure and remuneration of members is made in Schedule 13.

***Schedule 13: The Training and Development Agency for Schools***

163. In the main, Schedule 13 reproduces Schedule 1 to the 1994 Act. The changes made within *paragraph 1* are described in the context of section 83. *Paragraph 11* allows the Assembly to send a representative to meetings of the Agency and their committees. The terms of this representation mirror those which already apply to the Secretary of State and Her Majesty's Chief Inspector of Schools in England under the 1994 Act and which are reproduced in *paragraphs 10 and 12*. Minor amendments have also been made to reflect current Government accounting practice.

***Sections 78 to 80: Powers of the Agency to provide financial support***

164. These sections describe the Agency's powers to provide financial support. They replace the Agency's existing funding powers under section 5 of the 1994 Act, orders made under section 16 of that Act and regulations made under section 50 of the Education (No. 2) Act 1986. The Agency will be able to provide to any person such financial support as they think fit in furtherance of their objectives. This power includes power to provide financial support to, for example, persons undertaking training as well as institutions or other bodies providing training as defined in *subsection (3)* of section 78. References to training in this Part are to be read in accordance with section 96(1).
165. *Section 79* allows the Agency to attach terms and conditions in relation to financial support they provide. This includes, in *subsections (4) and (5)*, a new power for the Agency to control the charging of fees by training providers. It will remain the case, however, that the Agency will have to impose on a training provider any condition of grant governing the charging of fees that the Secretary of State or the Assembly require them to impose under Part 3 of the Higher Education Act 2004 (to which consequential amendments are made by Schedule 14).
166. In addition to the current requirement that the Agency must have regard to teacher training targets when reaching decisions on the provision of financial support, *subsection (7)* requires the Agency to have regard to any other forecast of demand for members of the school workforce that may be notified to them by the Secretary of State. There continues to be provision that the Agency must have regard to whether their funding practices may discourage institutions from obtaining revenue from other sources such as research and development activity (*subsection (1)* of section 80), and that they must take into account the need to keep an appropriate balance between the support given to training providers of a denominational character and other training providers (*subsection (2)* of section 80).

***Section 81: Grants to Agency by Secretary of State***

167. This section largely re-enacts the Secretary of State's funding power under section 7 of the 1994 Act. The Secretary of State continues to be prohibited from imposing terms and conditions relating to the admission of students or the selection of staff as a condition of funding (*subsection (4)*).

***Section 82: Grants to the Agency by the Assembly***

168. This section gives the Assembly power to pay grants to the Agency in respect of any activities undertaken at the Assembly's request in relation to Wales. The Assembly may set terms and conditions on grants to the Agency, and may require the Agency

to impose a condition on a training provider in relation to the charging of fees under section 79 (*subsection (3)(b)*).

***Section 83: Non-funding functions of the Agency***

169. This section provides the Agency with a new broad power to do anything they think fit in furtherance of their objectives. This will allow the Agency to undertake functions such as setting standards for the award of qualifications and the administration of schemes. This power includes power to do anything currently done by the Agency by virtue of orders made under section 16 of the 1994 Act. *Subsection (2)* provides that the Agency will be able to provide information, advice and other services to persons outside England and Wales. *Subsection (3)* enables the Agency to levy a charge for providing information, advice and other services under this section.
170. *Paragraph 1* of Schedule 13 makes more detailed provision as to the nature of the Agency's power under section 83. The Agency will no longer be prohibited from borrowing money but paragraph 1(2) of Schedule 13 prohibits the Agency from borrowing money without the consent of the Secretary of State. This power will allow the Agency, for example, to make use of the Government Procurement Card where this would offer value for money benefits.

***Section 84: Directions by the Secretary of State and Assembly***

171. This section replaces the existing power of the Secretary of State in section 8 of the 1994 Act to issue general directions by order about the exercise of the Agency's functions.

***Sections 85 to 91: Provisions relating to HEFCW***

172. These provisions re-enact existing provisions in sections 3(3), 4 to 8 and 16(2) to (4) of the 1994 Act in their application to the HEFCW. They make some minor adjustments and include new powers on fee regulation in section 86, in particular, *subsections (3) and (4)*, which correspond to the Agency's powers in *subsections (4) and (5)* of section 79.

***Section 92: Joint exercise of functions***

173. This section largely re-enacts the powers of the Agency, HEFCW and certain specified bodies under section 9 of the 1994 Act to exercise their functions jointly. In addition, *subsection (3)* enables the Secretary of State to permit the Agency to exercise their functions jointly with other bodies by order. *Subsection (4)* similarly enables the Assembly to permit HEFCW and any other body specified by order to exercise their functions jointly.

***Section 94: Duty to provide information***

174. This section re-enacts section 15 of the 1994 Act. It also makes clear that the Agency have functions in relation to the provision of information to the Assembly as well as to the Secretary of State.

***Section 95: Power of maintained schools to provide training for the school workforce***

175. This section replaces section 12 of the 1994 Act. It allows the governing bodies of maintained schools to provide training for members of the school workforce in addition to the power they already have to provide training for teachers. This provision enables schools to provide training in the nature of, for example, school-centred initial teacher training, which they provide either on their own or in partnership with other schools and training providers.

***Section 99 and Schedule 14: Amendments relating to the training of the school workforce***

176. **Schedule 14** makes consequential amendments to other enactments to reflect the changes made by provisions of this Act relating to the training of the school workforce. Many of the changes are to reflect either the change in name of the Agency or the change in the funding power of the Agency from one of funding “eligible institutions” to one of funding “training providers”. In addition, **paragraph 23** amends section 14 of the Education Act 2002 to provide that “training”, in the context of the powers of the Secretary of State and the Assembly to give financial assistance in connection with training for teachers or for non-teaching staff, has a meaning corresponding to that used for the purposes of Part 3 of this Act. **Paragraph 27** ensures that, should the Agency carry out funding functions in relation to Wales, the Assembly would have the same power to impose conditions in relation to the charging of fees over the Agency as they do over HEFCW.

**Part 4: Miscellaneous**

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

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

**Maintained schools**

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

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

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

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



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

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

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

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

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

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

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

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

### ***Section 104: School profiles***

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

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

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

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

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

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

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

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

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

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

## **Information**

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

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

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

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



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

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

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

223. This section allows information held by the Inland Revenue and the Department for Work and Pensions to be passed to the Department for Education and Skills and the Assembly, and ultimately to local education authorities in England and Wales, for use in determining eligibility of claimants for free school lunches and milk.
224. Under sections 512, 512ZA, 512ZB and 512A of the Education Act 1996 (as amended by SSFA 1998 and the Education Act 2002), a pupil is entitled to free school lunches or milk if he or she, or his or her parent, is in receipt of:
- i) income support;
  - ii) income-based jobseekers allowance;
  - iii) support provided under Part 6 of the Immigration and Asylum Act 1999; or
  - iv) Child Tax Credit, provided that they do not also receive Working Tax Credit and that their annual income (as assessed by the Inland Revenue) does not exceed £13,480 (this is the figure for 2004/05, and is re-assessed annually by Inland Revenue).
225. Before receiving free school lunches or free milk, a pupil/parent must apply and have eligibility verified. The sharing of data allowed under this section will allow easier checking of eligibility for free school lunches or milk.
226. *Subsection (3)* will allow data to be passed from the Inland Revenue and the Department for Work and Pensions to the Department for Education and Skills and the Assembly. *Subsection (4)* will also allow data to be passed directly from the Department for Work and Pensions to local education authorities.
227. *Subsection (5)* restricts the onward disclosure of data once it has been supplied by Department for Work and Pensions or Inland Revenue, so that data can only be passed on to local education authorities, or by the Secretary of State to the Assembly (and vice versa), for use in determining eligibility for free school lunches or milk. *Subsection (6)* allows the data to be passed to a contractor carrying out this function on behalf of a local education authority.
228. *Subsection (7)* defines eligibility for free school lunches or milk, including in relation to pupils at non-maintained special schools and Academies. Non-maintained special schools and Academies are required to give free school lunches to those eligible, in accordance with the same eligibility criteria as set out above, as a condition of approval (for a non-maintained special school) or of the funding agreement (for Academies).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Section 117: Further amendments***

249. This section introduces Schedule 18.

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

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

### ***Part 5: General***

254. This Part contains general provisions including those relating to the functions of the Assembly, subordinate legislation, general interpretation, repeals, commencement and extent.

### ***Section 124: Power to make further supplementary, consequential provision etc.***

255. This provision enables the Secretary of State by regulations to make such supplementary, incidental, consequential, transitional, transitory or saving provision as

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

he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of Parts 1 to 4 of the Act.

- 256. Where such regulations made by the Secretary of State amend or repeal primary legislation, they must be approved by resolution of each House of Parliament.
- 257. The Assembly has concurrent powers to make such regulations in relation to Wales.
- 258. This power is necessary because in relation to some of the areas in the Act it is likely that consequential amendments will be required that cannot reasonably be anticipated. Provisions in the Act such as school funding and school organisation affect complex areas of education legislation. In addition the Assembly may, where a provision of this Act comes into force in relation to Wales, need to modify existing enactments where not all of the relevant previous legislation has been commenced in relation to Wales.