

EDUCATION AND INSPECTIONS ACT 2006

EXPLANATORY NOTES

COMMENTARY

18. The following definitions occur in the notes in relation to the whole of the Act:
- *1996 Act* is the Education Act 1996
 - *1998 Act* is the School Standards and Framework Act 1998
 - *2002 Act* is the Education Act 2002
 - *2005 Act* is the Education Act 2005.
19. Throughout the notes the term "local education authority" is used to refer to those local authorities with education functions identified in section 12 of the 1996 Act. The term "local education authority" has been in use since 1944 to identify those authorities but it has given rise to some perceptions that a local education authority has an identity of its own separate from the local authority.
20. In line with government policy to improve outcomes for children by promoting greater cooperation between agencies delivering children's services, and the introduction of the post of director of children's services and lead member for children's services in the Children Act 2004, local authority children's services (mainly education and children's social services) are being integrated. To reflect this it is now government policy that the terms "local education authority" and "children's services authority" should no longer be used. To make this fully effective requires an equivalent change in the terminology used in legislation.
21. Education legislation, however, uses the term "local education authority" and, as the Act both amends and builds on a number of Education Acts, it has been necessary to continue to use the term local education authority in the Act. It is therefore used throughout these notes (and, where appropriate, is abbreviated to LEA). But in due course an order made under section 162 will convert references in legislation to "local education authority" (and references in legislation to "children's services authority") to references to "local authority".

Part 1: Education Functions of Local Authorities

Section 1: Duties in relation to high standards and the fulfilment of potential

22. This section re-enacts, with amendments, section 13A of the 1996 Act, which was inserted by the 1998 Act and which places a general duty on local education authorities to promote high standards. The substituted section 13A will now require local education authorities to exercise their functions with a view to promoting the fulfilment by every child of his educational potential, and, in the case of local education authorities in England, with a view to ensuring fair access to educational opportunity, as well as with a view to promoting high standards. The reference to every child in new section 13A(1)(c) is a reference to those children set out in *subsection (2)*. Section 13A(3) defines "child" for the purposes of this section.

Section 2: Duties in relation to diversity and choice

23. This section amends section 14 of the 1996 Act, inserting a new subsection (3A) to require local education authorities in England, when exercising their functions on the provision of schools in their area under that section, to do so with a view to securing diversity in the provision of schools and increasing opportunities for parental choice.

Section 3: Duty to consider parental representations

24. This section inserts a new section 14A into the 1996 Act to require local education authorities in England to respond to parental representations in relation to the exercise of their functions under section 14 of that Act (as amended by section 2). Local education authorities must consider what action to take in response to such representations and provide a statement to the parent setting out any action which the authority propose to take in response or, where relevant, their reasons for taking no action, in each case having regard to guidance from the Secretary of State. The guidance to authorities will set out how local education authorities might reasonably respond to parental representations on the opportunities for choice and the diversity of schools in their area.

Section 4: Duty to identify children not receiving education

25. This section amends Chapter 2 of Part 6 of the 1996 Act (school attendance), by inserting a new section before section 437. This new section requires all local education authorities to make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are not receiving a suitable education.
26. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than by being at school (for example, at home, privately, or in alternative provision).
27. This section moves the definition of “suitable education”, previously in section 437(8) of the 1996 Act, to the new inserted section 436A, and amends a cross-reference to that definition. The definition itself is unchanged.
28. The section also provides that local education authorities must have regard to statutory guidance issued by the Secretary of State in relation to England, and the National Assembly in relation to Wales, in making arrangements to enable them to identify children missing education.

Section 5: School improvement partners

29. This section requires local education authorities in England to appoint school improvement partners (SIP) to each of the maintained schools in their area in line with a commitment in the White Paper: *Higher Standards, Better Schools for All* (Cm.6677). Maintained nursery schools are not included within the scope of this duty. SIPs will act on behalf of the local education authority, providing challenge and support to a school in order to help improve the attainment and outcomes of pupils.
30. *Subsection (2)* provides that only persons who have been accredited by the Secretary of State or by persons appointed by the Secretary of State can be appointed as SIPs by the authority for the purposes of this section.
31. *Subsections (3) and (4)* enable the Secretary of State to prescribe other requirements relating to the appointment of SIPs and to confer functions on local education authorities and school governing bodies in relation to SIPs in line with Departmental policies. If authorities consistently appointed SIPs in a way that did not meet the non-statutory Departmental policies relating to SIPs, these regulation-making powers could be used to enforce them. However, it is not intended to exercise these regulation-making powers at the outset; they are provided by way of a reserve power.

32. *Subsection (5)* enables the Secretary of State by regulations to provide for persons employed or engaged by local education authorities before the commencement of this section to be taken to have been appointed as SIPs.

Section 6: Functions in respect of recreation etc

33. This section inserts new sections 507A and 507B in the 1996 Act, while also amending existing section 508 to apply only in respect of Wales. In England the duty under section 508(1) is re-enacted, in relation to children under 13, in new section 507A.
34. The new section 507B of the 1996 Act imposes a duty on local education authorities to promote the well-being of persons aged 13 – 19 (and of persons aged up to 25 with learning difficulties) by securing access for them to sufficient educational and recreational leisure-time activities and facilities, so far as is reasonably practicable. The section provides that an authority can fulfil this duty by providing activities and facilities, assisting others to do so, or by making other arrangements to facilitate access, which can include the provision of transport, financial assistance or information. Furthermore, local education authorities are required to supply and keep up to date information regarding those leisure-time activities and facilities that are available locally.
35. In performing its duty under new section 507B the authority is required to ascertain from young people in the authority's area their views on existing provision and the need for any additional provision, and to take those views into account.
36. Before taking any action the authority is also required to take steps to assess whether it is beneficial for other agencies and individuals to provide services in its place and, where appropriate, to secure that those services are provided by such agencies or individuals.
37. Section 507B also includes the power to levy charges and places a requirement on authorities to have regard to any guidance given by the Secretary of State when exercising their functions under the section.

Schedule 1: Amendments relating to section 6

38. *Paragraph 1* amends paragraph 1 of Schedule 4C to the Disability Discrimination Act 1995 by amending the definition of "recreational or training facilities" in the substituted section 28R to include facilities secured by local education authorities in England under the new provisions inserted by section 6 as well as facilities secured by an authority in Wales under section 508 of the 1996 Act.
39. The Schedule also makes amendments to four sections of the 1996 Act: sections 312, 508, 510 and 547.
40. *Paragraph 3* amends section 312(2) so that it excludes section 507B from the definition of 'special educational needs' provided in section 312. This is because section 507B applies part of the definition of "learning difficulty" in section 13 of the Learning and Skills Act 2000, rather than the definition in section 312 of the 1996 Act.
41. *Paragraph 4* amends section 508, *subsections (1)* and *(1A)* to ensure their application to Wales only.
42. *Paragraph 5* amends section 510 (provision of clothing) so that the local education authority has the power to provide articles of clothing to users of facilities for physical training secured under sections 507A or 507B.
43. *Paragraph 6* amends section 547 which addresses nuisance or disturbance on premises. *Subsection (2A)(a)* of the section is amended so as to include premises provided by the local education authority under section 507A or 507B, thereby ensuring that any person unlawfully present on the premises and causing or permitting nuisance or disturbance to the annoyance of persons who lawfully use the premises is guilty of an offence and is

liable to be fined. Section 547 also ensures that a police constable or person authorised by the local education authority may remove from the premises any person they have reasonable cause to suspect of committing or having committed an offence under the section.

Part 2: Establishment, Discontinuance Or Alteration of Schools in England

- 44. **Part 2** re-enacts much of the current law relating to school organisation for England, extends the requirement for a competition for new schools to special and primary schools, requires Secretary of State consent for new community schools, creates a new statutory procedure for schools to acquire a foundation and some minimum establishment and status requirements, and places school organisation decisions with local education authorities, abolishing the school organisation committee.
- 45. Annex B contains a table which compares the position of foundation schools and community schools.

Section 7: Invitation for proposals for establishment of new schools

- 46. This section provides that a local education authority in England may publish a notice inviting proposals (other than from local education authorities) for the establishment of a new foundation, voluntary, or foundation special school, or Academy.
- 47. Its provisions in part re-enact those of section 66 of the 2005 Act, which applied to secondary schools only, and now extends them to primary schools and special schools.
- 48. *Subsection (3)* specifies the basic information that the notice must contain, and provides that other information, and the manner in which the notice must be published, may be prescribed in regulations.
- 49. *Subsection (4)* provides that regulations shall prescribe the information that proposals brought forward in response to the notice must contain, and that they shall be submitted to the authority before the date specified in the notice.
- 50. *Subsection (5)* provides that after the date specified in the notice, a local education authority must publish any proposals received, and may publish proposals of its own for a foundation or foundation special school or, in cases where section 8 allows this, for a community or community special school.
- 51. *Subsection (6)* provides that regulations may prescribe the time within which proposals must be published, the manner in which they must be published, and the information which they must contain.
- 52. *Subsection (7)* provides for Schedule 2 to have effect in relation to the consideration, approval, and implementation of proposals.
- 53. **Schedule 2** provides for the proposals to be decided by the local education authority or adjudicator, in place of the school organisation committee and adjudicator. Amongst other things the Schedule includes provision for objections and comments to be made in respect of proposals; for related proposals to be decided together; for proposals under section 7, 10 or 11 to be decided by the adjudicator if they include proposals by local education authorities or relate to the establishment of certain foundation schools; for the Secretary of State to be able to direct that proposals under section 7 should be decided by the adjudicator; and for diocesan authorities, the Learning and Skills Council for England, proposers and governing bodies to be able to ensure that proposals are referred to the adjudicator in certain circumstances. It also makes provision for the implementation of proposals.

Section 8: *Proposals under section 7 relating to community or community special schools*

54. This section sets out the circumstances in which local education authorities are permitted to publish proposals for a community school or community special school. *Subsection (1)* provides that in general such proposals may be published only where prescribed conditions are met and only with the consent of the Secretary of State. The consent of the Secretary of State is however not required in cases where further prescribed conditions are also met. This is intended to prevent authorities who fail to meet certain minimum standards from applying for consent and to enable authorities who meet demanding standards to publish proposals for new community schools in competitions without obtaining consent. All other authorities would have to obtain the consent of the Secretary of State.
55. *Subsection (2)* provides that the conditions must include conditions relating to the standards achieved by the authority in relation to its functions in respect of education, children's social services and childcare. It is intended that this will be measured by the annual performance assessment (APA) score.
56. *Subsection (3)* provides that further conditions that may be prescribed are conditions relating to the standards of schools in the local authority area or the extent of diversity among of any such schools.
57. *Subsection (4)* provides that in considering whether to give consent, the factors to which the Secretary of State must have regard include prescribed matters.
58. *Subsection (5)* provides that regulations may prescribe standards by reference to the opinion of the Chief Inspector or any rating awarded by the Chief Inspector following an inspection or review.

Section 9: *Consultation and publicity in relation to notice and proposals under Section 7*

59. This section provides that before publishing a notice under section 7, local education authorities in England must consult such persons as they consider to be appropriate, and in discharging this duty they must have regard to any guidance given by the Secretary of State. *Subsection (2)* provides that regulations may require local education authorities to take further steps to promote public awareness of the proposals brought forward.

Section 10: *Publication of proposals with consent of Secretary of State*

60. *Subsection (1)* provides that local education authorities in England may, with the consent of the Secretary of State, publish proposals for a new community, foundation, community special or foundation special school otherwise than under section 7. The subsection does not cover maintained nursery schools or 16-19 foundation or foundation special schools. Proposals for these may be published under section 11 without any need for the Secretary of State's consent.
61. *Subsection (2)* provides that other persons (proposers) may, with the consent of the Secretary of State, publish proposals for a foundation school, a voluntary school or a foundation special school otherwise than under section 7. The subsection does not cover 16-19 schools, schools to replace independent schools or new foundation special schools to replace non-maintained special schools. Proposals for these may be published under section 11 without any need for the Secretary of State's consent.
62. *Subsection (3)* provides that regulations may prescribe the information the proposals must contain and how they must be published.
63. *Subsection (4)* provides that before publishing proposals the local education authority or proposers must consult such persons as appear to them to be appropriate, having regard to any guidance given by the Secretary of State.

- 64. *Subsection (5)* provides for proposals from proposers to be submitted to the local education authority who it is proposed should maintain the school, in accordance with regulations.
- 65. *Subsection (6)* provides for Schedule 2 to have effect in relation to the consideration, approval and implementation of proposals under this section.

Section 11: Publication of proposals to establish maintained schools: special cases

- 66. *Subsection (1)* provides for local education authorities to publish proposals to establish a new maintained nursery school or a new 16-19 foundation school or foundation special school.
- 67. *Subsection (2)* provides for other persons (proposers) to publish proposals to establish a new foundation school, voluntary school or foundation special school which is a 16-19 school or is to replace an independent school. Provision is also made for proposers to publish proposals for a new foundation special school to replace a non-maintained special school.
- 68. *Subsection (3)* provides that a foundation, voluntary or foundation special school is to be regarded as replacing an independent school if the independent school has been registered as such for two years and closes immediately before the proposals for the new school are implemented. *Subsection (4)* makes comparable provision for when a new foundation special school is to be regarded as replacing a non-maintained special school.
- 69. *Subsection (5)* provides that regulations may prescribe the information that proposals must contain and how they must be published.
- 70. *Subsection (6)* provides that before publishing proposals the local education authority or proposers must consult such persons as appear to them to be appropriate, having regard to any guidance given by the Secretary of State.
- 71. *Subsection (7)* provides for regulations to set out arrangements under which proposals from proposers must be submitted to the local education authority which is to maintain the school, and *subsection (8)* provides for Schedule 2 to have effect in relation to the consideration, approval and implementation of proposals.

Section 12: Establishment of a school as a federated school

- 72. This section re-enacts the provisions of section 68 of the 2005 Act in respect of England. It provides that a new maintained school may be a member of a federation from the outset.

Section 13: Schools established outside area of relevant LEA

- 73. This section provides that regulations may modify sections 7 to 12 and Schedule 2 where a school is proposed to be situated in an area different from that of the local education authority who published the notice under section 7, or, if the proposals are published outside a competition (that is, under sections 10 or 11), different from that of the local education authority who it is proposed should maintain the school.

Section 14: LEA in England not to establish a school in Wales

- 74. This section re-enacts section 69 of the 2005 Act in respect of England and has the effect that the power of a local education authority to establish and maintain a school within the area of another local education authority does not apply if the other local education authority is situated in Wales.

Section 15 and Schedule 2: Proposals for discontinuance of schools maintained by a local education authority

- 75. This section replaces existing provisions in the 1998 Act and provides for the publication of statutory proposals where a local education authority or school governing body wish to close a maintained school in England, including maintained mainstream schools, special schools and nursery schools.
- 76. *Subsection (1)* provides that a local education authority may publish proposals for the closure of any maintained school.
- 77. *Subsection (2)* provides that a governing body of a voluntary, foundation or foundation special school may publish proposals for the closure of their school.
- 78. *Subsection (3)* provides for regulations to prescribe the information to be contained within the proposals and the publication arrangements.
- 79. *Subsection (4)* requires the body formulating proposals to close a rural primary school to have regard to a number of factors. The factors are: the impact on the community of the closure, the availability and cost (to the local education authority) of transport for pupils to other schools; any increase in the use of motor vehicles and the likely effect of such and any alternatives to school closure. It also requires the body to have regard to guidance issued by the Secretary of State.
- 80. *Subsection (5)* provides for governing bodies to submit their published proposals to local education authorities in accordance with regulations.
- 81. *Subsection (6)* provides for Schedule 2 to have effect in relation to the consideration, approval and implementation of school closure proposals under this section.

Section 16: Consultation in relation to proposals under section 15

- 82. In relation to England this section replaces provisions of the 1998 Act which were inserted by the 2005 Act. It provides for consultation where the local education authority or the governing body propose to close a rural primary school or special school.
- 83. *Subsection (1)* requires the body proposing to close a rural primary school or special school, under section 15, to consult the following before publishing the proposals: registered parents of registered pupils at the school; in the case of a rural primary school, the local education authority and the district council or parish council for the area; in the case of a community or foundation special school, any local education authority that maintains a statement of special educational needs for any registered pupil at the school; and any other persons the body deem appropriate.
- 84. *Subsection (2)* requires the body proposing to close any other maintained school to consult persons they deem appropriate before publishing proposals.
- 85. *Subsection (3)* requires the body to have regard to guidance by the Secretary of State when consulting.

Section 17: Direction requiring discontinuance of community or foundation special school

- 86. This section re-enacts section 32 of the 1998 Act in its application to England.
- 87. *Subsection (1)* provides for the Secretary of State, if he considers it expedient to do so in the interests of the health, safety or welfare of pupils at a school, to direct a local education authority to discontinue a community or foundation special school on a date specified in the direction.
- 88. *Subsection (2)* provides that the direction may include a requirement that the local education authority notify people as specified in the direction.

89. *Subsection (3)* sets out the persons the Secretary of State must consult before giving a direction.
90. *Subsection (4)* requires the Secretary of State to give written notice of the direction to the head and governing body of the school.
91. *Subsection (5)* requires a local education authority to discontinue a school on the specific date given in a direction and provides that there is no requirement to publish statutory proposals for the school's closure.

Section 18: Alterations that may be made under section 19

92. This section provides that regulations may prescribe the alterations to maintained schools that require the publication of statutory proposals.
93. *Subsection (2)* provides that such alterations must include a change in the category of the school; the acquisition by a foundation or foundation special school of a foundation; and any change in a school's instrument of government which results in the majority of governors being foundation governors.
94. *Subsection (3)* provides that other alterations may be prescribed in regulations as requiring statutory proposals.
95. *Subsection (4)* provides that a maintained school may not change, acquire or lose a religious character; change category to a community or community special school; change category from a mainstream school to a special school or from a special school to a mainstream school; or change category from a maintained nursery school to any other kind of school or from any other kind of school to a maintained nursery school. The effect of *subsection (4)* is that any of these changes could be achieved only by discontinuing the existing school and establishing a new school in its place.

Section 19: Publication of proposals for alteration of school

96. *Subsections (1)* and *(3)* provide that where a local education authority or the governing body of a maintained school propose to make a prescribed alteration to a maintained school, and the proposals are ones that these bodies respectively may make, they must publish statutory proposals to do so.
97. *Subsection (2)* defines the alterations that may be proposed by a local education authority as -
- in the case of community schools, community special schools or maintained nursery schools, those that are prescribed in regulations;
 - in the case of foundation schools or voluntary schools, an enlargement of the premises, an increase in the number of pupils in any relevant age group, the establishment or discontinuance of special educational needs provision, or the establishment of provision suitable for pupils over compulsory school age; and
 - in the case of foundation special schools, an enlargement of the premises, an increase in the number of pupils for whom the school is organised to make provision, or a change in the type of special educational needs for which the school is organised to make provision.
98. *Subsection (3)* provides that where the governing body of a maintained school propose to make a prescribed alteration to a school, they must publish proposals under this section, and that in the case of a community school, a community special school or a maintained nursery school, the prescribed alteration must be designated by regulations under this subsection as capable of being proposed by the governing body.
99. *Subsection (4)* provides that if the governing body of a voluntary aided school are unable or unwilling to continue their capital contribution to the school, they must publish

proposals to become either a voluntary controlled school or a foundation school, as they shall determine. (This re-enacts the provisions of paragraph 3 of Schedule 8 to the 1998 Act.).

100. *Subsection (5)* provides for the section to have effect subject to section 20.

Section 20: Restriction on power of governing body to publish foundation proposals

101. This section provides that

- a) a foundation school which, immediately before the day Part 2 comes into force, was a foundation school with a foundation,
 - b) a voluntary school, or
 - c) a foundation school which having been a voluntary school immediately before the day Part 2 comes into force, changed category to foundation school on or after that date
- may only publish certain proposals under section 19 with the consent of the school's existing trustees, and of anyone by whom the foundation governors are appointed.

Section 21: Proposals under section 19: procedure

102. This section provides that regulations may make provision about the publication and determination of proposals under section 19. *Subsection (2)* gives examples of specific provision that may be made, and in particular provides that regulations may make provision about the referral of proposals to the adjudicator in prescribed cases. *Subsection (3)* provides that regulations may confer functions on local education authorities, governing bodies and the adjudicator.
103. *Subsection (4)* provides that regulations may enable the Secretary of State to require proposals to be referred to the adjudicator.
104. *Subsection (5)* enables the local education authority or the adjudicator to make a transitional exemption order allowing the full requirements of the Sex Discrimination Act 1975 in respect of co-educational schools to be phased in if a single-sex school becomes co-educational. (This re-enacts the provisions of paragraph 21 of Schedule 6 to the 1998 Act.)
105. *Subsection (6)* provides that regulations may require any persons exercising functions under the regulations to have regard to guidance issued by the Secretary of State.

Section 22: Right of governing body to determine own foundation proposals

106. *Subsections (1) to (3)* provide that regulations under section 21, in relation to proposals under section 19 by a governing body of a community or voluntary controlled school to change category to a foundation school, must provide for the proposals to be determined by the governing body, and not be referred to the adjudicator. This applies only if the proposals do not involve the acquisition of a foundation or a change to the instrument of government which results in the majority of governors being foundation governors. Similar provision is made in respect of proposals for a change of category from community special school to foundation special school.
107. *Subsections (4) and (5)* provide that, in relation to certain proposals published under section 19 by a governing body which involve the acquisition of a foundation, or result in the majority of the governors being foundation governors, regulations under section 19 must provide for the proposals to be determined by the governing body unless the local education authority wish them to be referred to the adjudicator.

Section 23: Rights of interested bodies in relation to proposals under section 21

108. This section provides that regulations made under section 21 must make provision in connection with the referral of certain proposals to the adjudicator in certain circumstances.
109. *Subsection (1)* provides that if regulations made under section 21 provide for the governing body of a school to determine proposals falling within *subsection (2)*, the regulations must provide for the local education authority to be able refer the proposals to the adjudicator for determination.
110. *Subsection (2)* specifies the proposals that may be referred to the adjudicator as envisaged in *subsection (1)*. These are proposals to acquire a foundation, and proposals for a foundation to appoint a majority of the governing body of a school.
111. *Subsection (3)* provides that regulations may restrict the matters to which the local education authority may have regard in deciding whether to require such proposals to be referred to the adjudicator.
112. *Subsection (4)* provides that if regulations made under section 21 provide for proposals to be determined by a person other than the adjudicator (for example by the governing body of the school concerned), the regulations must provide for specified bodies to be able to refer the proposals to the adjudicator after the initial determination. The specified bodies are Church of England and Roman Catholic diocesan authorities and, in the case of proposals relating to 14-19 provision, the Learning and Skills Council for England. This does not apply where section 22 restricts or excludes the possibility of a reference to the adjudicator.
113. *Subsection (5)* provides that, if regulations made under section 21 provide for a local education authority to determine proposals which they have published in relation to a foundation, voluntary or foundation special school, the regulations must provide for the governing body and trustees of the school to be able to refer the proposals to the adjudicator after the initial determination.

Section 24: Proposals under section 19: implementation

114. This section provides that regulations may make provision in connection with the implementation of approved proposals for the alteration of schools (including arrangements under which the duty to implement the proposals may be removed, or the proposals modified).
115. *Subsection (3)* provides that regulations in respect of proposals for a school to change its category or gain a foundation may include provision about changes to the constitution of the governing body and the transfer of property or staff. *Subsections (4) and (5)* give further detail of what regulations in relation to the transfer of property may cover.
116. *Subsection (6)* provides that regulations may require any prescribed persons, in exercising functions under the regulations, to have regard to guidance issued by the Secretary of State.
117. *Subsection (7)* provides that regulations may in particular make provision corresponding to the provisions of Schedule 2 governing the implementation of proposals for the establishment or discontinuance of schools.
118. *Subsection (8)* provides that a school's change of category is not to be taken as authorising any change in the religious character of the school.

Section 25: Proposals for removal of foundation or reduction in foundation governors

119. This section provides for the governing bodies of certain foundation schools with foundations to publish proposals to remove the foundation or to reduce the proportion of governors appointed by the foundation.
120. *Subsection (1)* provides for this section to apply to foundation and foundation special schools where either or both of two conditions is met.
121. *Subsection (2)* sets out the first condition, which is that the school was established pursuant to proposals implemented under the Act.
122. *Subsection (3)* sets out the second condition, which is that the school acquired its foundation pursuant to proposals implemented under the Act.
123. *Subsection (4)* enables the governing body of a school meeting either of these conditions at any time to publish proposals to remove a foundation or to alter the school's instrument of government so as to reduce the proportion of governors appointed by the foundation so that they no longer constitute a majority.
124. *Subsection (5)* provides for a prescribed proportion of governors to be able to require the governing body to publish proposals for either of the changes mentioned in *subsection (4)*, in accordance with procedures set out in regulations.
125. *Subsection (6)* provides that the governing body is not required to publish proposals under *subsection (5)* (proposals required to be published by the prescribed proportion of governors) at any time within a prescribed period beginning with the date on which (a) proposals for either the establishment of the school, the acquisition of the foundation, a relevant change in instrument of government or a change of category to foundation or foundation special school were implemented under the Act (and regulations made under the Act) or (b) proposals published under *subsection (5)* were rejected.
126. *Subsection (7)* defines the term "relevant change" for the purposes of *subsection (6)*, that is a change to the instrument of government which results in the majority of governors being foundation governors.
127. *Subsection (8)* defines the term "foundation" for the purposes of the section.

Section 26: Proposals under section 25: procedure

128. This section provides for regulations to make provision about the publication and determination of proposals under section 25.
129. *Subsection (2)* lists the provision that may be made in regulations. In particular, it includes provision enabling proposals to be treated as being approved if a specified proportion of the governing body other than a majority approves them, in prescribed circumstances.
130. *Subsection (3)* provides for regulations to require the governing body to ensure that any matters related to the transfer of land or compensation which might be payable under *subsections (3) or (4)* of section 27, if proposals published under section 25 were approved, are resolved before proposals are published. It also provides for regulations to enable or require such matters to be referred to the adjudicator for determination.
131. *Subsection (4)* provides that regulations may require any prescribed person to have regard to guidance by the Secretary of State when exercising functions under this section.

Section 27: Proposals under section 25: implementation

- 132. This section provides for regulations to make provision about the implementation of proposals published under section 25.
- 133. *Subsection (2)* provides that regulations may make provision about changes to the school's instrument of government and the reconstitution of its governing body; for the transfer of property, rights and liabilities; and about the manner and time within which things must be done.
- 134. *Subsection (3)* provides that regulations made under *subsection (2)(b)* may make provision relating to the matters mentioned in section 24(5)(a) to (i). Section 24(5)(a) to (i) set out a detailed list of matters relating to the transfer of property, rights and liabilities.
- 135. *Subsection (4)* provides that regulations may authorise or require a foundation to pay compensation to the governing body, local authority or a prescribed person where they have incurred capital expenditure in relation to land which forms part of the school premises (or previously formed part of the school premises) and which is not transferred to the governing body.
- 136. *Subsection (5)* provides that regulations may authorise or require a governing body to pay compensation to the foundation where the foundation has incurred capital expenditure in relation to land which forms part of the school premises (or previously formed part of the school premises) and which is transferred to the governing body.
- 137. *Subsection (6)* provides that regulations may require any prescribed person to have regard to guidance from the Secretary of State when exercising functions under this section.
- 138. *Subsection (7)* makes clear that the implementation of proposals under section 25 does not authorise any change to, or loss of, the religious character of a school.
- 139. *Subsection (8)* defines the term "foundation" for the purposes of the section.

Section 28: Restriction on establishment, alteration or discontinuance of schools

- 140. This section replaces existing provisions in the 1998 Act (in their application to England). It prohibits the opening or closing of maintained schools, or the making of prescribed alterations to them, without the publication and determination of statutory proposals.
- 141. *Subsection (3)* provides that the prohibition does not apply where the Secretary of State has issued a direction to the local education authority to close a community or foundation special school (e.g. in the interests of health and safety) or to close a school in special measures, or where the governing body of a foundation or voluntary school give notice that they intend to close the school.
- 142. *Subsection (4)* prohibits the making, without the publication and determination of statutory proposals, of an alteration which involves the removal of a foundation or the reduction in the proportion of governors appointed by the foundation so that they no longer constitute a majority.

Section 29: Abolition of school organisation committees

- 143. This section has the effect of abolishing school organisation committees.

Section 30: Amendments relating to school organisation

- 144. This section provides for Schedule 3 to have effect. Schedule 3 amends existing legislation relating to school organisation. It makes changes to reflect the new changes in the Act in respect of England but the continuation of existing legislation in respect

of Wales. It also makes changes to reflect the replacement of the school organisation committee as decision-maker by the local education authority (in England).

Section 31: Transitional provisions

145. This section provides that the Secretary of State may make such transitional provisions as he considers appropriate in connection with the commencement of this Part.

Section 32: Interpretation of Part 2

146. This section defines terms used in Part 2 of the Act.

Part 3: Further Provisions about Maintained Schools

Section 33: Requirements as to foundations

147. *Subsection (1)* of this section inserts new sections 23A and 23B into the 1998 Act. These new sections provide for the foundations of certain foundation and foundation special schools, and the charity trustees of those foundations, to have specified characteristics and gives the Secretary of State power in certain circumstances (to be specified in regulations) to remove and appoint charity trustees.
148. New section 23A(1) provides for section 23A to apply to foundation and foundation special schools where one or more of three conditions is met.
149. The first condition, set out in *subsection (2)* of the new section 23A, is that the school was established as a foundation or foundation special school pursuant to proposals implemented under the Act.
150. The second condition, set out in *subsection (3)* of the new section 23A, is that the school acquired its foundation, or became a school whose instrument of government provides for the majority of governors to be foundation governors pursuant to proposals implemented under the Act.
151. The third condition, set out in *subsection (4)*, is that the school has changed category from voluntary aided to foundation school pursuant to proposals implemented under the Act. References in this explanatory note to “foundations” and “charity trustees” are to the foundations and charity trustees of the schools to which the new section 23A applies only.
152. Section 23A(5) provides that a foundation must be incorporated and must also be a charity (as defined in the Charities Act 1993). It also provides that a foundation must have as its purposes, or as one of its purposes, the charitable purpose of the advancement of education. Section 23A(6) requires the foundation to promote community cohesion in carrying out its functions in relation to the school.
153. Section 23A(7) provides that where local authorities are members of, or are to appoint persons to be members of, foundations, the voting rights exercisable by those members must not exceed 20% of the total voting rights. Section 23A(8) similarly provides that where local authorities are to appoint charity trustees, the number of trustees appointed by them, and the voting rights exercisable by such trustees, must not exceed 20% (of the total number of trustees or the voting rights respectively).
154. Section 23A(9) enables regulations to prescribe people who are to be disqualified from acting as trustees. Section 23A(10) defines the terms used in sections 23A and 23B.
155. New section 23B(1) provides for regulations enabling the Secretary of State to make directions, in prescribed cases, to remove any charity trustee of a foundation or foundation special school to which section 23A applies, even if the person is not otherwise disqualified; and to appoint a charity trustee to such a school.

156. Section 23B(2) enables regulations to make provision about the effect of a direction under *subsection (1)*, and, in particular, enables the regulations to provide for such a direction to have the same effect as an order of the Charity Commission for the removal or appointment of a trustee made under section 18 of the Charities Act 1993. Section 23B(3) goes on to provide that nothing in this section affects any powers of the Charity Commission.
157. *Subsection (2)* of the section is a transitional provision which provides that any reference in section 23B to the Charity Commission for England and Wales should be read as a reference to the Charity Commissioners for England and Wales until section 1A(1) of the Charities Act 1993 comes into force. The Charities Act 2006 provides for the establishment of the Charity Commission as a body corporate, and inserts into the 1993 Act the new section 1A that is referred to.

Section 34: Parents councils for certain foundation or foundation special schools

158. This section inserts a new section 23A after section 23 of the 2002 Act.
159. The new section requires the governing body of foundation schools in England with a foundation which appoint the majority of governors to the school's governing body to establish a parent council. The majority of members of the Council must be parents of registered pupils at the school (parent members). Persons other than parent members may only be members of a parent council where the parent members consent to them being members and appoint them as such in accordance with the regulations. The purpose of the parent council is to advise the governing body on matters relating to the conduct of the school, and the governing body's exercise of their powers to provide community facilities etc (under section 27 of the 2002 Act).
160. Regulations may set out more detail about the membership (including election/appointment arrangements; eligibility and duration of membership and the meetings and proceedings of parent councils), and may confer functions on the governing bodies of the schools to which the section applies. The governing body in exercising their functions under the section must have regard to any guidance issued by the Secretary of State.

Section 35: Funding of voluntary aided schools: meaning of 'capital expenditure'

161. Paragraph 3 of Schedule 3 to the 1998 Act imposes a duty on the governing body of a voluntary aided school to meet all capital expenditure in relation to the school premises.
162. [Section 35](#) amends the definition of capital expenditure in respect of a voluntary aided school that applies for the purposes of Schedule 3 to the 1998 Act as it applies to England.
163. The current definition of "capital expenditure" is set out in Article 13 of the [Regulatory Reform \(Voluntary Aided Schools Liabilities and Funding\) \(England\) Order 2002 \(SI 2002/906\)](#). The Order contains a list of expenditure that is to be treated as capital expenditure.
164. [Section 35](#) provides that "capital expenditure" in respect of voluntary aided schools shall be expenditure which is capitalised in accordance with proper accounting practices. This approach will as far as possible take standard accounting practices and concepts as its starting point, thereby avoiding the need for an exhaustive list in the legislation. This reflects the approach taken in section 16 of the Local Government Act 2003, which defines capital expenditure in relation to a local education authority.
165. There is power to provide that specified kinds of expenditure are (or are not) to be treated as capital expenditure for individual schools (by direction) or more generally (by regulations).

166. This section is intended to ensure that the definition of capital expenditure reflects modern accounting practice and that optimal procurement arrangements are available to voluntary aided schools.

Section 36: Disposal and changes of use of land

167. This section introduces Schedule 4 which inserts a new Part A1 into Schedule 22 to the 1998 Act and amends section 77 of that Act. These provisions are both concerned with the disposal, and change of use, of land by maintained schools. The modifications to Schedule 22, which relates to foundation, voluntary and foundation special schools, separate the procedures in England for the disposal of playing field land and non-playing field land.

Schedule 4: Disposals and changes of use of land

168. **Part 1** of Schedule 4 introduces changes in respect of the procedure for the disposal of non-playing field land which has been provided at public expense in England.
169. Schedule 22 to the 1998 Act outlines the procedure to be followed by the governing body, trustees or foundation body of a foundation, voluntary or foundation special school when disposing of certain land that had been acquired or enhanced using certain public funds. The Schedule currently requires the Secretary of State's consent to the disposal of any such land by a governing body of a foundation, voluntary or foundation special school, by a foundation body, or (in some cases) by the trustees of a foundation or foundation special school. Paragraph 3 of Schedule 22 also requires the trustees of a foundation, voluntary or foundation special school, in cases not requiring the Secretary of State's consent, to inform the local education authority that maintains the school in question of the disposal and, depending on the status of the land, to agree a payment to the authority out of the proceeds of disposal or to undertake to use the proceeds of disposal for the purposes of that or another school.
170. The new provisions inserted by Schedule 4 now provide that when the governing body or the trustees of a foundation, voluntary or foundation special school, or a foundation body, intend to dispose of publicly funded non-playing field land they must notify the local education authority of their intention to do so and of the use to which they intend to put the publicly funded proceeds of disposal. The authority may object to such a disposal, or to the intended use of the publicly funded proceeds of disposal. It may also claim some or all of the publicly funded proceeds of disposal. Any objection to the disposal, or to the use of the publicly funded proceeds of disposal, or any claim to some or all of such proceeds by the authority which is not agreed with the school, is to be determined by the adjudicator.
171. It will no longer be necessary for governing bodies, foundation bodies or trustees in England to apply to the Secretary of State for consent to dispose of such non-playing field land.
172. For the first time, Schedule 22 will include land that has been acquired or enhanced by grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 to the 1998 Act, where notice has been given that such land is to fall within the disposal provisions. The rights of trustees over land which they have provided are protected.
173. The Secretary of State currently has power under paragraph 4 of Schedule 22 to the 1998 Act to require certain land that had been provided using public funds and that is no longer required for the purposes of a foundation, voluntary or foundation special school to be used for a new school or as the site to which an existing school is to be transferred. This power is extended, in relation to England, by paragraphs A23 to A26 of Schedule 22. The categories of land which may be subject to the power are widened; as are the purposes for which the land is required. A local education authority may apply for land to be transferred to it for the purposes of any school or institution which

is (or is to be) maintained by the authority or which they have the power to assist; for the purposes of the exercise of any of the authority's functions; or for the provision of children's services by or on behalf of the local authority which is that authority in the exercise of certain of their functions as described in section 135(1)(a), (c), (d) or (e). The power to determine whether or not to agree to such a transfer is transferred from the Secretary of State to the adjudicator.

174. [Paragraph 5](#) of Schedule 22 requires the trustees of a foundation or foundation special school to apply to the Secretary of State on discontinuance for a determination as to what should happen to certain land acquired at public expense. At present, this process does not apply to the trustees of voluntary schools which means that, on discontinuance, the land may not be immediately available for use by another school. Schedule 4 brings voluntary schools within the scope of this provision. It also extends the type of land captured. Such land now includes, for example, land acquired, but not enhanced by, grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 to the 1998 Act.
175. [Part 2](#) of Schedule 4 amends section 77 of the 1998 Act.
176. Section 77 of the 1998 Act requires a local authority in England, and in certain circumstances, the governing body of a maintained school or a foundation body, to obtain the Secretary of State's consent before disposing of school playing fields. Schedule 22 to the 1998 Act currently requires the governing body of a foundation, voluntary or foundation special school, or a foundation body, to obtain the Secretary of State's consent before disposing of any land, including playing fields.
177. The requirement to obtain the Secretary of State's consent before disposing of any non-playing field land is being removed by Part 1 of Schedule 4. In order to ensure that protection is afforded to all school playing fields provided at public expense, Part 2 of Schedule 4 amends section 77 to include all disposals of school playing fields by the governing body, foundation body or trustees of a foundation, voluntary or foundation special school. In the case of trustees the land must have been provided at public expense and the rights of trustees over their own land are protected. The restrictions in section 77(3) on changes of use of playing field land are also extended so that, in addition to local authorities, they also apply to governing bodies of maintained schools and foundation bodies and, where the land was provided at public expense, the trustees of foundation, voluntary or foundation special schools.
178. [Part 3](#) of Schedule 4 details a number of consequential amendments to other provisions of the 1998 Act.

Section 37: Staff at foundation or voluntary schools with religious character

179. *Subsection (1)* amends section 58 of the 1998 Act to enable head teachers at foundation and voluntary controlled schools with religious character to be 'reserved teachers', that is teachers who are appointed specifically to teach religious education in accordance with the tenets of the school's designated religion.
180. *Subsection (2)* amends section 60 of the 1998 Act. Paragraph (a) makes amendments consequential on the amendment to section 58 made by subsection (1). Paragraph (b) excludes the application to England of section 60(6) of that Act, which prevents a voluntary aided school with a religious character from applying religious criteria in connection with the employment of members of staff other than teachers. The appointment of these members of staff will however be subject to the provisions of the [Employment Equality \(Religion or Belief\) Regulations 2003 \(S.I. 2003/1660\)](#). Those regulations will have the effect of preventing the governing body from discriminating on religious grounds in the appointment of non-teaching staff, except in a case where being of a particular religion or religious denomination is a genuine occupational requirement.

Section 38: General duties of governing body of maintained school

181. *Subsection (1)* of this section amends section 21 of the 2002 Act (general responsibility for conduct of school) to impose four new duties on the governing body of maintained schools.
182. The first of these duties, provided by the new *subsection (5)(a)* of section 21, requires the governing body of a maintained school in England and Wales to promote the well-being of pupils at the school when discharging their functions relating to the conduct of the school.
183. Well-being is defined (in the new *subsection (8)(a)* of section 21) in relation to pupils at a school in England, as relating to the matters mentioned in section 10(2) of the Children Act 2004. For pupils at a schools in Wales, well-being is defined (in the new *subsection (8)(b)* of section 21) as relating to the matters mentioned in section 25(2) of the Children Act 2004. In both sections 10(2) and 25(2) of the Children Act 2004 the matters are:
- (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
184. The second of these duties, provided by the new *subsection (5)(b)* of section 21, requires the governing body of a maintained school in England to promote community cohesion when discharging their functions relating to the conduct of the school.
185. The third duty, provided by the new *subsection (6)* of section 21, requires the governing body of a maintained school in England and Wales to have regard to any relevant Children and Young People's Plan ("CYPP") in exercising their functions in relation to the conduct of the school.
186. A relevant CYPP is defined (in the new *subsection (9)(a)* of section 21) in relation to a school in England, as a plan published by the local education authority under section 17 of the Children Act 2004 or, in relation to a local education authority that is exempt from the requirements in that section, a similar plan setting out the authority's strategic plan for their delivery of children's services. The Children and Young People's Plan Regulations (England) 2005 exempt local authorities that are classified as 'excellent' under Comprehensive Performance Assessment from the requirement to produce a statutory plan. A relevant CYPP is defined (in *subsection (9)(b)*) in relation to a school in Wales, as a plan published by the local education authority under section 26 of the Children Act 2004 or, in relation to a local education authority that is exempt from the requirements in that section, a similar plan setting out the authority's strategic plan for their delivery of children's services. This subsection will apply the duty to schools in authorities that choose to produce a CYPP even though they are not required to do so.
187. The new *subsection (7)* of section 21 of the 2002 Act requires governing bodies of maintained schools in England, in the discharge of their functions, to have regard to any views expressed by parents of registered pupils. It will be for individual schools to determine how and when to seek the views of parents. Under the new inspection framework introduced in September 2005 all schools will have to demonstrate that they have listened to and taken into account parental views. This subsection does not apply to governing bodies of maintained schools in Wales.
188. *Subsection (2)* of this section amends section 28 of the 2002 Act (limit on power to provide community facilities etc.) to require governing bodies to take into account the

CYPP (new subsections (4A) and (4B) of section 28) and the views of parents (new subsection (4C)), in each case in providing extended services for the wider community.

Section 39: General restriction on selection by ability

- 189. This section, which applies to both England and Wales, re-enacts the prohibition on selection on the basis of a pupil's ability in any maintained school, subject to the exceptions referred to in section 99(2) of the 1998 Act.
- 190. *Subsection (4)* repeals section 99(1) of the 1998 Act (which is re-enacted by *subsection (1)* of the section) and amends section 99(2) of the 1998 Act so that the permitted forms of selection under that section become permitted forms of selection for the purposes of *subsection (1)* of the section.

Section 40: Code for school admissions

- 191. This section makes provision for both England and Wales.
- 192. It modifies sections 84 and 85 of the 1998 Act to strengthen the status of the school admissions code of practice. At present this is referred to in section 84(1) as a code of practice containing practical guidance and section 84(2) provides that it may contain guidelines. Relevant bodies, such as governing bodies of maintained schools, are required 'to have regard to' the code.
- 193. *Subsections (2) to (4)* amend section 84(1) to (3) to strengthen the force of the code by requiring relevant bodies to act in accordance with it, and to provide that it may impose requirements and may include guidelines
- 194. *Subsection (2)* also amends section 84(1) so that admission forums are included within the list of bodies to whose functions the code applies.
- 195. *Subsection (6)* inserts a definition of 'admission forum' into section 84(6).
- 196. *Subsection (9)* enables the requirement to consult on a draft of the code, imposed by section 85(2) of the 1998 Act, to be satisfied by consultation undertaken before the Act receives Royal Assent.

Section 41: Role of admission forums

- 197. This section relates to the functions of admission forums in England. It amends Chapter 1 of Part 3 of the 1998 Act to extend the role of admission forums.
- 198. *Subsection (3)* amends section 85A to give admission forums the power to prepare and publish reports on matters connected with admissions to maintained schools in their area. It also enables them to request from the local education authority, neighbouring authorities, and governing bodies, any information they require to fulfil this function and places a duty on those bodies to comply with such a request.
- 199. *Subsection (4)* enables regulations to be made in relation to the preparation and publication of reports.
- 200. *Subsection (5)* enables regulations to be made modifying any provision of Chapter 1 of Part 3 of the 1998 Act in its application to a joint admission forum.
- 201. *Subsection (6)* enables regulations to be made with respect to the expenses of an admission forum. These expenses will usually be defrayed by the local education authority. The regulations may set out any exceptions to this.
- 202. *Subsection (7)* substitutes a new *subsection (10)* in section 89 of the 1998 Act. The effect of the amendment is to broaden the existing definition of 'appropriate body' to include admission forums in England. In consequence of this amendment, admission forums must be:

- a) notified by admission authorities of their admission arrangements following determination;
 - b) notified by an admission authority of any referral it has made to the adjudicator for a variation of its admission arrangements; and
 - c) notified by the relevant admission authority of the effect of any adjudicator's determination following such a referral.
203. *Subsection (8)* amends section 90(1) and inserts a new *subsection (11)* in section 90. The effect of the amendment is to allow an admission forum in England to refer an objection about the admission arrangements of any maintained school in its area to the adjudicator.

Section 42: Support for parental preferences

204. This section applies only to England. It amends section 86 of the 1998 Act to insert a new *subsection (1A)* to require local education authorities to provide advice and assistance to parents of children living in the area of the authority to help them in the formulation of their preference on a school for their child.
205. Advice and assistance includes providing parents with good, easy to understand information and advice about the schools in their area, and neighbouring areas where applicable, in a form that fits the needs of the parent. This might include how the admission arrangements work and the level of priority their child will have for a place, whether their child will be entitled to school transport and how that will work if the child does not live within walking distance of the school, and whether the school has any special features that may of interest to the parent.
206. Advice and assistance may also include the development of a cadre of Choice Advisers to provide practical support to parents most likely to need extra help to make a fully informed choice of secondary school for their child. The Government is investing £12m to support local authorities to do this by 2008.

Section 43: Duty of governing body to implement decisions relating to admissions

207. *Subsection (1)* inserts *subsection (1A)* in section 88 of the 1998 Act which requires community and voluntary controlled schools in England to comply with any decision to admit a child made by their local authority (if it is the school's admission authority as provided for by section 88 of the 1998 Act).
208. It also inserts *subsection (1B)* in section 88 of the 1998 Act, which provides that the duty to comply with a local education authority's decision to admit does not affect the governing body's right to appeal to an independent appeal panel against the admission of any child who has been twice permanently excluded, nor the requirement for the local education authority to seek governing body consent to the introduction of pupil banding to the school's admission arrangements.
209. *Subsection (3)* inserts in section 89C of the 1998 Act a new subsection (3A) which requires the governing body of any maintained school to comply with a determination by the local education authority that a child should be admitted in accordance with application of the area's co-ordinated admissions scheme.

Section 44: Prohibition on interviews

210. This section applies to both England and Wales and inserts section 88A after section 88 of the 1998 Act to prohibit interviewing as part of the admission process in any maintained school.
211. *Subsection (2)* disapplies subsection (1) in relation to interviews which are intended to assess suitability for a boarding place at a school with boarding accommodation.

212. *Subsection (3)* makes it clear that this section does not prevent schools with permissible selective admission arrangements from conducting assessments to ascertain an applicant's aptitude.

Section 45: Admission arrangements for schools with religious character: consultation and objections

213. This section requires foundation and voluntary aided schools, designated by order as having a religious character, to consult a named body or person to be prescribed by regulations, about their proposed admission arrangements.

Section 46: Restriction on alteration of admission arrangements

214. This section, which relates only to admission arrangements for maintained schools in England, modifies sections 89 and 90 of the 1998 Act. It adds a *subsection (1ZA)* to section 89, cross-referencing it to two sections that have been added: sections 89D and 90A.
215. *Subsection (1)* provides that section 89 of the 1998 Act (which requires the admission authority to decide the admission arrangements for each school year) has effect subject to the new provisions in sections 89D and 90A.
216. *Subsection (2)* inserts section 89D. This provision relates to approval of proposals to establish new schools or to expand existing schools. Although the admission arrangements are one of the factors considered by decision-makers in determining whether to approve a proposal, the present system would enable schools to change the arrangements the year after approval of a proposal. The section enables regulations to be made which have the effect of 'freezing' approved admission arrangements for a prescribed period, so that those considered and approved by decision-makers remain in place for a reasonable period.
217. Regulations will set out in more detail the period for which admission arrangements must remain unchanged, and the circumstances in which admission authorities may apply to the adjudicator for variations of those arrangements within the prescribed period.
218. *Subsection (3)* inserts section 90A. At present, section 90(8) of the 1998 Act makes an adjudicator's determination of an objection binding on parties to the objection for the school year to which the admission arrangements relate. This can result in admission criteria, which the adjudicator has determined are unfair, being reinstated the following year. This, in turn, can lead to repeats of earlier objections to the adjudicator. The new section 90A has the effect that determinations by the adjudicator will generally remain effective for a prescribed number of school years or lesser period as determined by the adjudicator. The new section also includes a regulation-making power in *subsection (6)*. This will enable regulations to prescribe circumstances in which admission authorities may apply to the adjudicator to vary arrangements which they would otherwise be prevented from altering by the new section.

Section 47: Objections to admission arrangements

219. This section, which relates to admission arrangements for maintained schools in England and Wales, modifies section 90 of the 1998 Act. Section 90 makes provision for objections to such admission arrangements to be referred to the adjudicator (in relation to England) and the National Assembly (in relation to Wales). (The functions of the Secretary of State in relation to Wales were transferred to the [National Assembly by the Transfer of Functions Order \(SI 1999/672\)](#)).
220. In relation to England, section 90(3) allows regulations to be made prescribing cases in which the adjudicator must refer objections to the Secretary of State. The Department

has no current intention to provide for any objections to be referred to the Secretary of State.

- 221. *Subsection (2)* inserts new *subsections (5A), (5B) and (5C)* into section 90.
- 222. *Subsection (5A)* gives the adjudicator or the Secretary of State (in relation to England) or the National Assembly (in relation to Wales) powers to consider any aspect of a school's admission arrangements, on referral of an objection to a school's admission arrangements.
- 223. *Subsections (5B) and (5C)* set out the requirement for the adjudicator or Secretary of State (in relation to England) or the National Assembly (in relation to Wales) to publish a report in relation to any decision on referred admission arrangements. The report must include the decision on the objection, any decision on whether any changes should be made to the admission arrangements and the reason(s) for the decisions. The report may specify the modifications to be made to the admission arrangements.
- 224. *Subsection (4)* substitutes a new section 90(8). It provides that the decisions of the adjudicator or Secretary of State (in relation to England) or the National Assembly (in relation to Wales) mentioned in new *subsection (5B)(a) and (b)* are binding on the admission authority and on persons by whom an objection may be made under section 90(1) or 90(2). It also requires any changes required by the adjudicator or Secretary of State (in relation to England) or the National Assembly (in relation to Wales) to be implemented by the admission authority.
- 225. *Subsection (5)(a)* inserts a new paragraph (ba) after section 90(9)(b). It enables regulations to be made requiring the admission authority of a maintained school in England to provide prescribed information requested by the adjudicator to assist in consideration of an objection referred to him about the school's admission arrangements.
- 226. *Subsection (5)(b)* makes minor amendments to section 90(9) of the 1998 Act to refer to the 'report' required by *subsection (5B)* rather than the 'decision' under the repealed section 90(7).
- 227. *Subsection (6)* repeals *subsection (10)* of section 90 of the 1998 Act. The effect of this is that the adjudicator is no longer required to refer to the Secretary of State objections concerned with admissions criteria relating to a person's religion or religious denomination.

Section 48: Looked after children to whom section 87(2) of SSFA 1998 applies

- 228. This section amends section 95 of the 1998 Act and inserts a new section 95A in that Act.
- 229. *Section 95(2)* currently requires a local education authority to make arrangements allowing the governing body of a community or voluntary controlled school for whom the local education authority are the admission authority to appeal against a decision by the authority to admit to the school a child who has been permanently excluded from two or more schools. *Subsection (1)* amends section 95 so that this requirement will no longer apply in relation to a decision by a local education authority in England to admit a child who is looked after by a local authority in England. The reason for this amendment is that new section 95A makes provision for references in such cases to be made to the adjudicator.
- 230. *Subsection (2)* inserts new section 95A. This section requires local education authorities to notify the governing body of a community or voluntary controlled school that a decision has been made to admit a looked after child who has been permanently excluded from two or more schools. On receipt of the notification, the governing body has seven days to refer the matter to the adjudicator. Such a reference can only be made where the admission of the child would cause serious prejudice to the provision of

efficient education or the efficient use of resources. If the adjudicator agrees that serious prejudice would be caused, the decision to admit the child to the school ceases to have effect but the adjudicator may, with the agreement of the local authority that looks after the child, determine that another school should admit the child. The adjudicator cannot name another school if the child has been permanently excluded from the school or if the admission of the child to the school would cause serious prejudice. The new section also confers power to make regulations as to the consultation which must be carried out by the adjudicator and the information which must be provided by the admission authority.

Section 49: Procedure for giving direction under section 96 of SSFA 1998

231. This section amends section 97 of the 1998 Act.
232. Section 96 of that Act enables local authorities to direct the governing bodies of schools for which they are not the admission authority to admit a child where the child has been refused admission to or excluded from every school within a reasonable travelling distance. Section 97 provides that, on receipt of a notice of a decision to direct, the governing body may refer the matter to the Secretary of State or, in relation to Wales, the National Assembly. The Secretary of State (or the National Assembly) is then able to determine which school should admit the child. This section amends section 97 so that, in relation to England, such references will in future be made to the adjudicator rather than the Secretary of State.

Section 50: Direction to admit looked after child to specified school

233. This section inserts new sections 97A and 97B into the 1998 Act and amends sections 84, 89 and 143 of that Act.
234. *Subsection (1)* inserts new sections 97A and 97B. Section 97A enables local authorities in England, in relation to a child looked after by them, to direct an admission authority to admit the child to a school in England. (This does not apply where the local authority are the admission authority for the school as it is unnecessary to provide a power for a local authority to direct admission in such a case.) A local authority cannot direct admission to a school from which the child has been permanently excluded.
235. Section 97B requires the local authority to consult the admission authority they are proposing to direct and gives the admission authority seven days to respond. If the admission authority does not agree to admit the child but the local authority decide to give a direction, the local authority must serve a notice of their decision to direct on the admission authority, the head teacher and, in certain circumstances, on the local authority who maintain the school and the governing body (where it is not the admission authority). On receipt of such a notice the admission authority and, in certain circumstances, the governing body (where it is not the admission authority) have the power to refer the matter to the adjudicator within seven days. Such a referral may only be made on the grounds that the admission of the child would cause serious prejudice to the provision of efficient education or the efficient use of resources.
236. If the adjudicator is satisfied that the child's admission would have this effect then the local authority may not give the direction but the adjudicator may determine that another school in England should admit the child. Before determining another school, the adjudicator must have the agreement of the local authority that looks after the child. The adjudicator cannot determine a school if the child has been permanently excluded from the school or if the admission of the child to the school would cause serious prejudice. If the local authority who look after the child are the admission authority for the school determined by the adjudicator, they must admit the child. Otherwise, the local authority must specify that school in their direction under section 97A (which must be in writing).

237. *Subsections (2), (3) and (4)* make minor amendments relating to the provision made by *subsection (1)*.

Section 51: Directions to admit child to specified school: supplementary provisions

238. This section amends sections 94, 96, and 97B of the 1998 Act.
239. *Subsection (1)* amends section 94 of the Act so that parents do not have a right to appeal to an appeal tribunal where a local education authority make a direction under new section 97A (inserted by section 50).
240. *Subsection (2)* makes minor amendments to section 96 which are consequential on the amendments made by section 49 and *subsection (3)* of section 50.
241. *Subsection (3)* inserts a new section 97C into the 1998 Act. This is a regulation-making power. It allows for regulations to be made on the consultation that the schools adjudicator must carry out when making a determination under section 97 or the new 97B inserted by section 50. It also allows for regulations setting out the information that an admission authority must provide to the adjudicator for the purposes of making such a determination.

Section 52: Power of Assembly to make regulations about looked after children

242. This section inserts a new section 97D into the 1998 Act and amends section 89 of that Act.
243. *Subsection (1)* inserts section 97D. This provides the National Assembly for Wales with a power to make regulations about the admission of children looked after by local authorities in Wales to maintained schools in Wales. Those regulations may require admission authorities to include provisions relating to looked after children in their admission arrangements with a view to securing that these children are to be offered admission in preference to other children. The regulations can also prescribe the circumstances in which an admission authority must admit a looked after child and can disapply or modify any of the provisions of Chapter 1 of Part 3 of the 1998 Act insofar as they relate to looked after children.
244. *Subsection (2)* makes a consequential amendment to section 89(1A) of the 1998 Act so that its provisions will in future apply only in relation to maintained schools in England and children looked after by local authorities in England.

Section 53: Schools with pre-1998 arrangements for selection by ability or aptitude

245. This section amends section 100 of the SSFA 1998 so that, once a school with partially selective admission arrangements which it would not now be lawful to introduce, has reduced the proportion of intake selected (e.g. to comply with the adjudicator's determination of an objection) it may not subsequently increase that proportion.

Section 54: Pupil banding

246. This section modifies sections 101 to 103 of the 1998 Act, in order to allow for additional forms of banding. All children applying for a place at a school using banding are assessed or tested and placed into a number of ability bands, as decided by the admissions authority. Under the current law, places may then be allocated to ensure that the intake is representative of all levels of ability among applicants to the school for admission in that age group. If there are more applicants within a particular band of ability than there are places, the places within that band are then allocated on the basis of the other published oversubscription criteria, not on the ranking of test results.
247. *Subsection (1)* adds to section 101 a new *subsection (1A)* which applies only to England. It allows admission authorities of maintained schools to introduce three additional forms of banding: the first across the full ability range of children applying to any of

two or more schools in a local education authority area, the second across the full ability range of the relevant age group within the local education authority area, the third across the full ability range of the relevant age group within England. It also requires that, where (in England) the admission authority is the local education authority, it must secure the consent of the governing body before introducing such arrangements as set out in either the original *subsection (1)* of section 101 or the new *subsection (1A)*.

- 248. *Subsection (1)* also amends *subsections (3) and (4)* of section 101 so as to remove (for England) the requirement that the adoption of banding arrangements must be a “prescribed alteration” that can only be made after publication of statutory proposals.
- 249. *Subsection (1)* also amends *subsection (5)* of section 101. The amendments ensure that, where schools select up to 10% of their intake by reference to their aptitude in a prescribed subject under section 102(1) of the 1998 Act, such schools are able to admit up to 10% by aptitude irrespective of any banding arrangements adopted.
- 250. *Subsection (2)* modifies section 102(3) of the 1998 Act to ensure that its provisions (i.e. that aptitude selection is permissible when banding arrangements take place but not when any other form of selection by ability takes place) apply to all permissible forms of banding, including the new forms introduced by *subsection (1A)*.
- 251. *Subsection (3)* makes amendments of section 103 of the 1998 Act which are consequential on Part 2 of the Act and on the amendments of section 101.

Section 55: Right of sixth-form pupils to be excused from attendance at religious worship

- 252. *Section 55* amends section 71 of the 1998 Act.
- 253. *Subsection (2)* substitutes a new *subsection (1)* of section 71 to provide for a sixth-form pupil attending a maintained school to be able to withdraw himself from collective worship. In the case of a non sixth form pupil, a parent may request that the pupil be excused. The subsection re-enacts the right of a parent to request that a pupil be excused from receiving religious education.
- 254. *Subsection (6)* inserts a new *subsection (5A)* of section 71 to place a duty on governing bodies of maintained boarding schools to make arrangements for giving pupils a reasonable opportunity to attend religious education or worship in accordance with the tenets of a particular religion. In the case of a sixth form pupil, the duty arises where the pupil makes such a request. In the case of a non sixth form pupil, the duty arises where a parent makes a request.
- 255. *Subsection (8)* substitutes a new *subsection (7)* of section 71 to provide for arrangements to be made in regulations allowing a sixth form pupil attending a maintained special school to withdraw from collective worship.
- 256. *Subsection (9)* inserts a definition of “sixth form pupil”, at new section 71(8).

Section 56: Charges for music tuition

- 257. *Section 56* amends sections 451 and 456 of the 1996 Act, which set out the circumstances in which charges can be made for tuition in playing a musical instrument. Under section 451 of the 1996 Act no charge may be made where the tuition is required as part of a syllabus for a prescribed public examination, or is provided as part of the implementation of the National Curriculum. However, where neither of these two circumstances applies, a charge may be made for tuition in playing a musical instrument given either to individuals or to groups of not more than four pupils. At present, no charges can be made for vocal tuition provided during school hours under any circumstances.

258. Section 456 of the 1996 Act states that, where charges are made for instrumental tuition, that charge can include the cost of teaching staff employed to provide that tuition.
259. *Subsection (1)* substitutes section 451(3) to introduce a regulation making power which enables regulations to be made to prescribe the circumstances under which charges can be made for singing and musical instrument tuition.

Section 57: School funding

260. This section introduces *Schedule 5* which contains provisions relating to the duties and powers of local education authorities in relation to the financing of maintained schools and the role of schools forums.
261. Section 47A of the 1998 Act as amended by the 2005 Act imposes an obligation on local education authorities to establish schools forums and provides for the constitution and function of schools forums to be set out in regulations. *Paragraph 2* amends section 47A of the 1998 Act to enable schools forums to exercise any function imposed on them by the Act (as amended here and elsewhere), and to omit the power to enable the Secretary of State or Assembly to remove a non-schools member of the forum.
262. *Section 48* of, and *Schedule 14* to, the 1998 Act place a duty on a local education authority to establish a scheme which deals with matters connected to the financing of maintained schools. All local education authorities have existing schemes. *Paragraphs 3 and 5* amend the duty to establish to one that requires a local education authority to maintain such a scheme and enables regulations to be made governing the approval of revisions to such schemes. This includes arrangements under which schools forums may approve revisions with or without modifications and the circumstances under which such revisions may be submitted to the Secretary of State or National Assembly for Wales for approval. It also removes the power of the Secretary of State or Assembly to impose a scheme on a local education authority.
263. Section 49 of the 1998 Act places a duty on local education authorities to provide the schools they maintain with a delegated budget share. *Paragraph 4* amends section 49 to enable regulations to be made that require local education authorities to give all new schools budget shares from a date determined in accordance with regulations by the schools forum or the Secretary of State or Assembly.
264. *Paragraph 6* amends *Schedule 15* to the 1998 Act which currently makes provision for the circumstances under which a local education authority may withdraw delegated budget responsibility from a maintained school and the process it must follow in doing so. The amendments remove the right of a governing body to appeal to the Secretary of State or Assembly against the withdrawal of their right to a delegated budget.

Section 58: Removal of requirement to issue code of practice as to relationships between LEAs and maintained schools in England etc

265. This section amends section 127 of the 1998 Act to remove the requirement for the Secretary of State to issue a Code of Practice on relationships between local education authorities and schools maintained by them. The Code currently provides statutory guidance for local education authorities and schools on how to work together effectively to raise standards.
266. *Section 127* will continue to apply in Wales with some amendments. *Subsection (2)(d)* of this section substitutes a new paragraph (b) in section 127(1), the effect of which (taken with the removal of section 127(6) by *subsection (6)* of this section) is that the Code of Practice in Wales may relate to the discharge of such functions exercisable by or behalf of the local education authority that the National Assembly for Wales may determine, rather than to a specified list of functions as at present.

Part 4: Schools Causing Concern

Section 59: Meaning of "maintained school" and "eligible for intervention"

267. This section defines the expressions “maintained school” and “eligible for intervention” for the purposes of this Part of the Act. *Subsection (1)* defines “maintained school” as any school in England which is a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school.
268. *Subsection (2)* provides that the expression “eligible for intervention” must be read in accordance with sections 60, 61 and 62.

Section 60: Warning notice by local education authority

269. This section amends the legal procedure whereby local education authorities may issue formal warning notices to schools, as currently set out in section 15 of the 1998 Act.
270. Under *subsection (1)*, a school becomes eligible for intervention if the governing body have received a formal warning (which must be copied simultaneously to the persons listed in *subsection (6)*), and have failed satisfactorily to comply with the warning notice within “the compliance period” (defined in *subsection (10)*). The local education authority must also have provided reasonable notice to the governing body that they propose to exercise their powers of intervention. The school is not eligible for intervention if the governing body of the school has made a representation to the Chief Inspector under *subsection (7)* and the warning notice has not been confirmed by him under *subsection (8)*.
271. *Subsection (2)* sets out the circumstances in which a local education authority may give a warning notice to a maintained school, and is essentially a re-enactment of section 15(2)(a) of the 1998 Act. It provides a local education authority with the power to issue a warning when standards of pupil performance are unacceptably low; or when there is a serious breakdown in management or governance such as to impair standards; or when safety of pupils or staff is threatened.
272. *Subsection (3)* provides clarification in relation to the standards of pupil performance referred to in *subsection (2)(a)*. This provision, which is new, partly reflects the recommendations of the Education Select Committee (7th Report, paragraphs 50-52, December 2003). This report recommended that Ministers and educationalists should distinguish clearly between low performance and underperformance. The new provision is designed to catch schools that are underperforming in relation to the nature of their pupil intake, or the schools’ general context, as well as those at which absolute standards (attainment rates) are generally low.
273. *Subsection (4)* specifies what information a warning notice must contain in order to be valid. Pursuant to this provision, the notice must set out the reasons for the warning, the action to be taken by the governing body, the compliance period referred to in *subsection (1)* and the action that the local education authority is minded to take should the governing body fail to take the necessary action set out in the warning notice.
274. *Subsection (5)* places a duty on local education authorities to inform the governing body of the school that they are able to make representations to the Chief Inspector within the compliance period against the issuing of the warning notice.
275. *Subsection (6)* sets out the persons to whom the local education authority must give copies of the formal warning notice at the same time as issuing it to the governing body of the school. These are: the Chief Inspector, the head teacher, in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority and, in the case of a foundation or voluntary school, the person who appoints the foundation governors.

276. *Subsection (7)* provides for the governing body of a school that has received a warning notice from the LEA to submit a written representation to the Chief Inspector within the compliance period against the issuing of the warning notice. This written representation should also be copied to the local education authority.
277. *Subsection (8)* places a duty on the Chief Inspector to consider any representations made by a governing body regarding the issuing of a warning notice. The Chief Inspector may confirm or reject the representations on the basis of the written information submitted. If that written evidence is inconclusive, the Chief Inspector may visit the school to determine whether the warning notice has been issued correctly under the criteria set out in guidance.
278. *Subsection (9)* requires the Chief Inspector to give written notice to the governing body of his decision whether or not the warning notice is justified. This notice should also be copied to the local education authority and other individuals specified by the Secretary of State in guidance.
279. *Subsection (10)* provides a definition of “compliance period” in relation to a warning notice, and a definition of “working day” for the purposes of the compliance period. If the governing body has made a representation to the Chief Inspector under *subsection (7)* and the warning notice has been confirmed, the period in which the governing body has to comply with the warning notice (“the compliance period”) begins on the day that the governing body receives the Chief Inspector’s written notice confirming the warning notice and lasts for 15 working days from this date. If the governing body has not made a representation to the Chief Inspector under *subsection (7)*, the compliance period begins on the day that the governing body receives the warning notice from the local education authority and lasts for 15 working days from this date.

Section 61: School requiring significant improvement

280. This section provides that a maintained school is eligible for intervention if, following an inspection under Chapter 1 of Part 1 of the 2005 Act, the Chief Inspector has given a notice under *subsection (3)(a)* of section 13 of the 2005 Act that the school requires significant improvement, as defined by section 44 of the 2005 Act.
281. *Paragraph (b)* has the effect that, where there is a further inspection, a school is only eligible for intervention under this section if, following the inspection, the notice to the Secretary of State has not been superseded by either a report that the school no longer requires significant improvement or an additional notice to the Secretary of State that the school requires special measures.

Section 62: School requiring special measures

282. This section provides that a maintained school is eligible for intervention if, following an inspection under Chapter 1 of Part 1 of the 2005 Act, the Chief Inspector has given a notice under *subsection (3)(a)* of section 13 of the 2005 Act that the school requires special measures, as defined by section 44 of the 2005 Act.
283. *Paragraph (b)* has the effect that, where there is a further inspection, a school is only eligible for intervention under this section if, following the inspection, the notice to the Secretary of State has not been superseded by a report stating that the school no longer requires special measures.

Section 63: Power of LEA to require governing body to enter into arrangements

284. This section provides local education authorities with a new power of intervention, allowing them to direct the governing body of a maintained school to take certain steps if the school is eligible for intervention.

285. *Subsection (1)* sets out what sort of arrangements a governing body might be instructed to enter into under this section: contracting with another party for the provision of advisory services to the governing body; collaborating with the governing body of another school; collaborating with a further education college or creating or joining a federation.
286. Before using the power the local education authority must consult the governing body of the school; in the case of a church school, foundation or voluntary, the appropriate diocesan authority and in the case of other foundation or voluntary schools, the body that appoints the foundation governors (*subsection (2)*).
287. If a school has not complied with a warning notice issued by the local education authority and therefore becomes eligible for intervention, *subsection (3)* provides that the power of the local education authority to require a governing body to enter into arrangements can only be exercised within two months of the end of the compliance period.

Section 64: Power of LEA etc. to appoint additional governors

288. This section re-enacts with modifications section 16 of the 1998 Act (in its application to England), giving local education authorities the power to appoint additional governors at a maintained school which is subject to special measures, in need of significant improvement or at which the governing body have not complied with a formal warning.
289. There is no longer a requirement for the local education authority to have received a notice of receipt of the inspection report from the Secretary of State, or for a 10 day period to have elapsed once that notice has been received, before the LEA can appoint additional governors.
290. *Subsections (4) to (9)* re-enact subsections (6) to (12) of section 16 of the 1998 Act.

Section 65: Power of LEA to provide for governing body to consist of interim executive members

291. This section re-enacts with amendments section 16A of the 1998 Act (as inserted by the 2002 Act), in its application to England. It gives local education authorities the power to appoint a specially constituted governing body in place of the existing governors at a school that is eligible for intervention under any of sections 53 to 55 of the Act. The specially constituted governing body is known as an “Interim Executive Board”. The power may only be exercised with the consent of the Secretary of State and the governing body must be given written notice of the exercise of the power. Before using the power the local education authority must consult the governing body of the school; in the case of a church school, foundation or voluntary, the appropriate diocesan authority and in the case of other foundation or voluntary schools, the body that appoints the foundation governors.
292. There is no longer a requirement for the local education authority to have received a notice of receipt of the inspection report from the Secretary of State, or for a 10 day period to have elapsed once that notice has been received, before the LEA can appoint a governing body to consist of interim executive members.

Section 66: Power of LEA to suspend right to delegated budget

293. This section re-enacts section 17 of the 1998 Act (in its application to England). It confers power on local education authorities to suspend a school’s right to a delegated budget (as defined by Part 2 of that Act) if a school is eligible for intervention under any of sections 53 to 55 of the Act.
294. There is no longer a requirement for the local education authority to have received a notice of receipt of the inspection report from the Secretary of State, or for a 10 day

period to have elapsed once that notice has been received, before the local education authority can suspend the right to a delegated budget.

Section 67: Power of Secretary of State to appoint additional governors

295. This section re-enacts with amendments section 18 of the 1998 Act in its application to England. The section confers power on the Secretary of State to appoint additional governors to the governing body of a school that is eligible for intervention.
296. *Subsection (1)* provides for this power to be applicable in cases where the school is eligible for intervention under section 61 or 62 of the Act. It does not apply if the school has not complied with a formal warning issued by the local education authority under section 60.
297. *Subsection (2)* requires the Secretary of State, before using this power, to consult the local authority; the governing body of the school; in the case of a foundation or voluntary school which is a Church of England or Roman Catholic school, the appropriate diocesan authority; and in the case of other foundation or voluntary schools, the person or persons who appoint the foundation governors.
298. *Subsections (3) to (7)* re-enact *subsections (3) to (7)* of section 18 of the 1998 Act.

Section 68: Power of Secretary of State to direct closure of school

299. This section re-enacts section 19 of the 1998 Act in its application to England. The section gives the Secretary of State the power to direct the closure of a school if that school requires special measures (see section 62 of the Act).

Section 69: Power of Secretary of State to provide for governing body to consist of interim executive members

300. This section re-enacts section 18A of the 1998 Act in its application to England. The section enables the Secretary of State to appoint a specially constituted governing body (called an “Interim Executive Board”) to conduct the school in place of the normal governing body. It is only applicable if a school requires significant improvement (section 61) or special measures (section 62). The power is not available merely because the school has not complied with a formal warning issued by the local education authority under section 60.

Section 70: Governing bodies consisting of interim executive members

301. This section introduces *Schedule 6* and re-enacts section 19A of the 1998 Act, as amended by the 2002 Act, providing for various matters relating to Interim Executive Boards appointed by the local education authority or the Secretary of State.

Schedule 6: Governing bodies consisting of interim executive members

302. *Schedule 6* re-enacts Schedule 1A to the 1998 Act, as inserted by the 2002 Act, providing for various matters relating to Interim Executive Boards appointed by the local education authority or the Secretary of State, including the setting up of the Interim Executive Board, the duties of the Interim Executive Board and the transition from the Interim Executive Board to a normally constituted governing body.
303. As provided for by Schedule 1A to the 1998 Act, as inserted by the 2002 Act, *paragraph 19* of Schedule 6 provides a regulation making power with respect to Interim Executive Boards. There is no intention to make substantive changes to the regulations originally made in 2002.

Section 71: Amendments relating to schools causing concern

304. This section introduces *Schedule 7*, Part 1 of which makes amendments to sections 15 and 17 of the 2005 Act, dealing with measures that need to be taken by a local education authority following the receipt of an inspection report stating that a school requires special measures or significant improvement. Part 2 of the same Schedule makes minor and consequential amendments to existing legislation, including amendments that arise from re-enacting certain existing provisions for England only.

Schedule 7, Part 1: Amendments relating to schools causing concern

305. *Paragraph 1* amends section 15 of the 2005 Act, dealing with measures that a local education authority needs to take following receipt of an inspection report on a maintained school stating that the school requires special measures or significant improvement.
306. The new arrangements set out in *paragraph 1(3)*, which inserts a replacement for *subsection (2)* of section 15 of the 2005 Act and new subsections (2A), (2B) and (2C), are broadly similar to the existing ones, but with some modifications described below.
307. The revised *subsection (2)(b)* requires the local education authority to consider consulting the registered parents of registered children at a school on the action being considered to secure the school's improvement. Local education authorities may consider the appointment of an individual "parents' champion" under *subsection (2)(c)* to secure the views of parents and to represent their voices in meetings. Where they have consulted registered parents, local education authorities should also take account of these views in finalising the written statement.
308. Revised *subsection (2)(d)* requires the local education authority to prepare a written statement setting out what action they intend to take to secure improvement at the school and, where action is not taken, the reasons for not doing so. *Subsection (2) (d) (ii)* requires the local education authority to include a section on the arrangements they propose to make (or have made) for consulting registered parents as they are required to do under *subsection (2)(b)*.
309. Revised *subsection (2)(e)* requires the local education authority to send the written statement to the Chief Inspector, the appointing body of foundation governors in the case of a voluntary aided school and other persons as specified by the Secretary of State in guidance.
310. New *subsections (2A), (2B) and (2C)* provide a new power for the Secretary of State to give a notice to a local education authority that, in the light of evidence presented by the Chief Inspector through an interim inspection, the case of a particular school has become urgent. In such cases, local education authorities have a duty to consider the action they propose to take to secure improvements at the school in the light of the evidence from an interim inspection and prepare a written statement to this effect.
311. New *subsection (2A)* defines the cases where the new *subsection (2B)* applies. *Subsection (2A)(b)* refers to cases where, in the light of evidence presented by the Chief Inspector through an interim inspection, it appears to the Secretary of State that a case has become urgent.
312. New *subsection (2B)* then provides for the Secretary of State to issue a notice requiring the local education authority to produce a written statement explicitly considering the action to be taken in the light of the recent interim inspection (as defined by new *subsection (2C)*). The written statement should include details of how the local education authority will make arrangements for consulting with registered parents. It should also set out the action the local education authority will take, including the use of its intervention powers if appropriate, the period in which they propose to take that action, or if no action is proposed to be taken, the reasons why action is not to be taken.

313. *Sub-paragraph (5)* of paragraph 1 inserts a new *subsection (4)* into section 15 of the 2005 Act and places a duty on local education authorities to have regard to guidance issued by the Secretary of State in performing their functions under new *subsections (2) and (2B)*.
314. *Paragraph 2* of Schedule 6 amends section 17 of the 2005 Act, referring to the statement required to be prepared by a proprietor following an adverse report on a non-maintained school. This provision for non-maintained schools mirrors the provision for maintained schools discussed above.
315. The new arrangements are set out in *paragraph 2(3)* which inserts a replacement for *subsection (1)* of section 17 of the 2005 Act and new *subsections (1A) to (1D)*.
316. New *subsection (1A)* sets out the statement that needs to be prepared by the proprietor of a non-maintained school if that school is judged by the Chief Inspector to require special measures or significant improvement. This mirrors the requirement for the statement required to be produced by the local education authority for maintained schools in similar circumstances. The statement should set out what action will be taken to secure improvement at the school.
317. As required by *subsection (1A)(b)*, the proprietor should consider making arrangements for consulting the registered parents of registered children at a school on the action being considered to secure the school's improvement. The proprietor may consider the appointment of an individual "parents' champion" as provided by *subsection (1A)(c)* to secure the views of parents and to represent their voices in meetings. Where the proprietor has consulted registered parents, the proprietor should also take account of these views in finalising the written statement.
318. As set out in *subsection (1A)(d)* the written statement should also set out what action the proprietor intends to take to secure improvement at the school, and the period in which he proposes to take that action. If the proprietor does not propose to take any action, he must note this in the written statement and explain the reasons for not taking any action. *Subsection (1A)(d)(ii)* then requires the proprietor to set out the arrangements made under *subsection (1A)(b)* in the written statement.
319. New *subsection (1B)* defines the cases where the new *subsection (1C)* applies. *Subsection (1B)(b)* refers to cases where, in the light of evidence presented by the Chief Inspector through an interim inspection, it appears to the Secretary of State that a case has become urgent.
320. New *subsection (1C)* then provides for the Secretary of State to issue a notice requiring the proprietor to produce a written statement explicitly considering the action to be taken in the light of the recent interim inspection (as defined by new *subsection (1D)*). The written statement should include details of how the proprietor will make arrangements for consulting with registered parents as required by *subsection (1C)(b)(ii)*. It should also set out the action the proprietor will take, the period in which he proposes to take that action or, if no action is proposed to be taken, the reasons why action is not to be taken.
321. *Sub-paragraph (5)* of paragraph 2 inserts a new *subsection (5)* into section 17 which places a duty on proprietors of non-maintained schools to have regard to guidance issued by the Secretary of State in performing their functions under new *subsections (1A) and (1C)*.

Schedule 7, Part 2: Minor and consequential amendments

322. Part 2 of this Schedule makes minor and consequential amendments to the 1998 Act, the Learning and Skills Act 2000, the 2002 Act and the 2005 Act.
323. The effect of the changes made by *paragraphs 3 to 17* is that Chapter 4 of Part 1 of the 1998 Act (Intervention in schools causing concern) will no longer apply in England but

will continue to apply in Wales. Part 4 of the Act re-enacts this Chapter in relation to England, with some modifications.

324. *Paragraphs 18 to 22* make amendments which are related to the other provisions of this Part of the Act.

Section 72: Duty of LEA to have regard to guidance

325. This Part of the Act confers discretionary powers on local education authorities. This section requires them to have regard to guidance issued by the Secretary of State.

Part 5: Curriculum and Entitlements

Section 74: Curriculum requirements for the fourth key stage

326. This section substitutes two sections for section 85 of the 2002 Act, and introduces two new entitlements to the key stage 4 curriculum for pupils aged between 14 and 16 (“the fourth key stage” is defined at section 82(1)(d) of that Act). It does not change the present key stage 4 entitlement to the arts, design & technology, the humanities and modern foreign languages.
327. It is intended that all key stage 4 students will have a new entitlement to study science programmes leading to at least two GCSEs. The Department propose to make an order under new section 85(5)(b) specifying the combinations of GCSEs that would meet the entitlement and that will adequately prepare students for physics, chemistry and biology ‘AS’ and ‘A’ levels.
328. Under section 85A(1)(b), all key stage 4 students will be entitled to choose (as an alternative to the current key stage 4 entitlement) to follow a course of study (which will lead to a specialised diploma) in an entitlement area specified by the Secretary of State (referred to in the following notes as a ‘Diploma entitlement area’).
329. *Subsection (3)* of the section amends section 88 of the 2002 Act. Section 88(2) places new duties on local education authorities, governing bodies and head teachers to exercise their functions with a view to securing that courses of study within the Diploma entitlement areas are made available. This duty does not apply in relation to a particular Diploma entitlement area if the local education authority have determined that its provision would lead to disproportionate expenditure
330. *Section 88(3)* provides that section 88(2) does not entitle a pupil to follow a course within a particular Diploma entitlement area or to follow more than one course within different Diploma entitlement areas.
331. A school, in satisfying its duties in relation to courses of study within the Diploma entitlement areas, can do so by itself or in collaboration with another school or FE institution. Section 88(4) requires the governing body of a maintained school in particular to consider whether it would be appropriate to make “collaboration arrangements” with another school or a further education institution in order to secure provision of courses of study within the Diploma entitlement areas. Section 88(5) defines what is meant by “collaboration arrangements”.
332. *Section 88(6)* gives local education authorities new powers to make arrangements to secure provision of courses in Diploma entitlement areas from further education institutions.
333. *Section 88(7)* requires the Learning and Skills Council for England to co-operate with local education authorities in making arrangements to secure the provision of courses of study in the Diploma entitlement areas.

Section 75: Education and training to satisfy entitlements

334. This section inserts four new sections (3A, 3B, 3C and 3D) into the Learning and Skills Act 2000. These sections give young people who are over compulsory school age, but have not yet had their 19th birthday, two new entitlements. Young people may exercise either or both of the entitlements. The core entitlement is to a course of study in maths, English and information and communications technology, and the additional entitlement is to a course of study in a Diploma entitlement area specified by the Secretary of State.
335. Section 3D(2) places a duty on the Learning and Skills Council for England to exercise its functions with a view to securing that courses of study within all the specified Diploma entitlement areas are made available in each local learning and skills area unless the provision of a course within a particular Diploma entitlement area would lead to disproportionate expenditure.
336. Both entitlements will cease if a course of study is not begun before a person's 19th birthday.
337. *Subsection (2)* amends section 13 of the Learning and Skills Act 2000 to ensure that the Council must have regard to the needs of persons with learning difficulties in discharging their functions (by virtue of the new section 3D) in relation to the new entitlements.

Part 6: School Travel and School Meals

Section 76: LEAs in England: duty to promote sustainable modes of travel etc

338. This section inserts a new section 508A in the 1996 Act. Section 508A places a general duty on LEAs in England to assess the school travel needs of their area, and to promote the use of sustainable modes of travel.
339. *Subsection (1)* requires LEAs to prepare and publish a sustainable modes of travel strategy, and to promote the use of sustainable modes of travel. The school travel strategy refers to journeys undertaken to and from school, and to journeys between schools and to and from other educational institutions.
340. *Subsection (2)* requires LEAs to prepare an assessment of the school travel needs of their area, and conduct an audit of the sustainable travel and transport infrastructure within their area. This infrastructure may serve the needs of children resident and receiving education in the same authority; resident in, but receiving education in another authority; or not resident in the authority, but travelling through the authority to receive education in another authority.
341. 'Sustainable modes of travel' are defined in *subsection (3)* as modes of travel which the authority consider may improve the physical well-being of those who use them and/or the environmental well-being of the whole or a part of their area. Physical well-being relates mainly to health benefits – for example, benefits derived from walking or cycling to school. Environmental well-being could be improved by, for example, the reduced use of cars to take children to schools.
342. The assessment is of the needs of children below the age of 16 (including those below compulsory school age) and persons of sixth form age (broadly, 16 to 19) travelling to, from, or between any school (including a nursery school or independent school), institution (including a further education institution) or other place at which children or persons of sixth form age receive education by virtue of arrangements under section 19(1) of the 1996 Act. The assessment must be carried out annually. Details of how the assessment is to be carried out will be included in guidance to be issued by the Secretary of State.

343. Subsections (4), (5) and (6) define the ‘school travel needs’ of a local education authority’s area.
344. Subsections (4)(a) and (5) provide that, for children and persons of sixth form age in the authority’s area, these needs are their needs as regards travel to and from: schools at which they receive or are to receive education or training; institutions within the further education sector at which they receive or are to receive education or training; or any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1) of the 1996 Act.
345. Subsections (4)(b) and (6) provide that, for children and persons of sixth form age resident in another authority’s area, these needs are their needs as regards travel to and from: schools at which they receive or are to receive education or training; institutions within the further education sector at which they receive or are to receive education or training; or any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1) of the 1996 Act, in so far as that travel relates to travel within the area of the authority carrying out the assessment under subsection (2).

Section 77: LEAs in England: provision of travel arrangements etc for children

346. Subsection (1) inserts new sections 508B, 508C and 508D in the 1996 Act.
347. Section 508B places a duty on local education authorities in England relating to home to school travel arrangements for ‘eligible children’. ‘Eligible children’ are defined in Schedule 35B (see below).
348. Section 508B requires local education authorities to ensure that suitable travel arrangements for ‘eligible children’ in their area are made to facilitate their attendance at relevant educational establishments (which are defined in *subsection (10)*). Under *subsection (1)*, an authority must make, in the case of an eligible child to whom *subsection (2)* applies, such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements, for the purpose of facilitating the child’s attendance at the relevant educational establishment in relation to him, are made and provided free of charge.
349. An eligible child to whom *subsection (2)* applies is an eligible child in relation to whom (a) no travel arrangements are provided free of charge by persons other than the authority (such as a local transport body, or a school), or (b) such travel arrangements are so provided but taken together they do not provide suitable home to school travel arrangements. For example, in London, Transport for London provides free bus passes for all children under the age of 16, and in most circumstances, London local education authorities may therefore consider that they do not need to make any additional arrangements for the majority of the children living in their area. Alternatively, a school might reach an agreement with a local education authority to make transport arrangements, or a parent might consent to use of his or her car in return for a mileage allowance. Such arrangements might mean that the local education authority had ensured that suitable arrangements had been made.
350. The type of arrangements that might not be considered to provide suitable travel arrangements might be arrangements where an eligible child is expected to make several changes of public service bus to get to school, resulting in an unreasonably long journey time; or where he is expected to walk an unreasonably long distance to catch a public service bus to school. The suitability of arrangements will depend on a number of factors, and the Secretary of State will include in guidance under section 508D a range of factors for local education authorities to take into account when considering the suitability of travel arrangements.
351. Section 508B(3) means that the duty applies to ‘home to school to home’ travel arrangements, and not travel between educational institutions.

352. Section 508B(4) sets out a non-exhaustive definition of ‘travel arrangements’. These may include the provision of a seat on a bus provided by the local education authority; the provision of a bus pass on a public service bus; provision of an escort; mileage allowances for travel by car; cycling allowances; and so on. Further details will be provided in guidance issued by the Secretary of State. This subsection also explains that certain arrangements will only count if they are made with parental consent, for example, the payment of a cycling allowance or mileage allowance.
353. Section 508B(5) means that a local education authority cannot conclude that, merely because a parent has a car and could drive his or her child to school, the local education authority will not be under a duty to make arrangements. If a parent wishes to drive his or her child to school in lieu of the local education authority making travel arrangements, the parent can do so, but such arrangements can only be entered into voluntarily.
354. Section 508B(6) to (8) means that, for example, travel arrangements cannot be considered to have been provided free of charge if the parent of a child has to pay for a smart card (such as an Oyster card) that facilitates free travel.
355. Section 508B(10) defines “relevant educational establishment” in relation to “eligible children”. The “relevant educational establishments” are either ‘qualifying schools’ which are listed at paragraph 15 of Schedule 35B, or places (other than schools) where a child is receiving education by virtue of arrangements made under section 19(1) of the 1996 Act.
356. Section 508B(11) allows for regulations to be made to modify the application of section 508B(1) and (2) in relation to the small number of eligible children receiving education at more than one relevant educational establishment. For example, children of no fixed abode might be registered at more than one school, and other children may be registered at a hospital school and another school, etc.
357. Section 508C provides local education authorities with discretionary powers to make arrangements for children who are not ‘eligible children’ under section 508B.
358. Section 508C(1) to (3) provides a power for local education authorities to make travel arrangements to facilitate attendance for children not meeting the definition of ‘eligible children’ in Schedule 35B. For example, local education authorities may wish to make travel arrangements for children attending schools preferred on strong religious or philosophical grounds, or for children below compulsory school age or living within statutory walking distance. Statutory walking distance is defined in section 444(5) of the 1996 Act as meaning (a) in relation to a child who is under the age of eight, two miles and (b) in relation to a child who has attained the age of eight, three miles, in each case measured by the nearest available route. Many local education authorities have made such arrangements for many years and this power will enable them to continue to make such arrangements.
359. By contrast with section 508B, there is no requirement for these discretionary arrangements under section 508C to be provided free of charge.
360. Section 508C(5) provides a power for local education authorities to pay all or part of the reasonable travel expenses of children who have not had travel arrangements made under *subsection (1)*. This is similar to the existing power under section 509(3) of the 1996 Act.
361. Section 508D requires the Secretary of State to issue guidance to local education authorities relating to the discharge of their duties and powers contained in sections 508B and 508C, and requires local education authorities to have regard to such guidance. This section also provides that regulations may require local education authorities to publish information relating to the discharge of their functions under section 508B or 508C.
362. *Subsection (2)* of section 77 introduces Schedule 8.

Schedule 8: Travel to schools etc: meaning of eligible child

363. **Schedule 8** inserts Schedule 35B after Schedule 35A to the 1996 Act.
364. Schedule 35B defines ‘eligible children’ for the purposes of section 508B, being those categories of children in the area of a local education authority for whom the authority is required to ensure that suitable home to school travel arrangements are made under that section. A condition of each category is that an eligible child is of compulsory school age.
365. **Paragraphs 2 and 3** provide that one category of ‘eligible children’ is children with special educational needs, a disability, a temporary medical condition restricting their mobility, or any combination of these. Where such children cannot reasonably be expected to walk to the ‘qualifying school’ at which they are registered, or any other place at which they are receiving education by virtue of arrangements under section 19(1) of the 1996 Act, and where those children meet the other requirements set out in paragraph 2 and 3 (as the case may be), the local education authority will be under a duty to secure that suitable home to school travel arrangements are made for them.
366. Two of the requirements in paragraph 2 are that the qualifying school at which the child is registered must be within walking distance of his or her home; and that the local education authority has not made suitable arrangements for him or her to become a registered pupil at a qualifying school nearer to his or her home. Those requirements do not, however, apply in the case of a child who is receiving education at a place other than a school.
367. **Paragraphs 4 and 5** provide for another category of ‘eligible children’. Where children, who meet the other requirements of paragraphs 4 and 5, could not reasonably be expected to walk to a qualifying school at which they are registered pupils or any other place at which they receive education by virtue of arrangements under section 19(1) of the 1996 Act, having regard to the nature of the routes which they could reasonably be expected to take, the local education authority will be under a duty to secure that suitable home to school travel arrangements are made for them.
368. Two of the requirements in paragraph 4 are that the qualifying school at which the child is registered must be within walking distance of his or her home; and that the local education authority has not made suitable arrangements for him or her to become a registered pupil at a qualifying school nearer to his or her home. Those requirements do not, however, apply in the case of a child who is receiving education at a place other than a school.
369. **Paragraphs 6 and 7** provide that a further category of ‘eligible children’ is children living outside walking distance of the qualifying school or other place which they attend for whom the local education authority has made no suitable alternative arrangements for them to have boarding accommodation at or near the school or for enabling them to become registered pupils at a qualifying school nearer to their home.
370. In the case of such children, the local education authority will be under a duty to secure that suitable home to school travel arrangements are made for them.
371. **Paragraph 8** relates to pupils registered at a school, but attending a place other than the school, following their exclusion from the school. In such circumstances, the duty to make travel arrangements will apply to the other place rather than the school.
372. **Paragraphs 9 to 13** provide that certain children who meet the requirements of those paragraphs and the ‘appropriate condition’ contained in **paragraph 14** are also ‘eligible children’.
373. **Paragraphs 9 and 10** relate to children who have attained the age of 8 but not the age of 11.

374. Under [paragraph 9](#), where such a child is a registered pupil at a qualifying school which is more than two miles from his home and no suitable arrangements have been made by the local education authority for enabling him to become a registered pupil at a qualifying school nearer to his home, if the ‘appropriate condition’ (set out in paragraph 14) is met, the local education authority will be under a duty to secure that suitable home to school travel arrangements are made for him or her.
375. Under [paragraph 10](#), where such a child is receiving education at a place (other than a school) by virtue of arrangements under section 19(1) of the 1996 Act, which is more than two miles from his home, if the ‘appropriate condition’ (set out in paragraph 14) is met, the local education authority will be under a duty to secure that suitable home to school travel arrangements are made for him or her.
376. [Paragraphs 11, 12 and 13](#) relate to children who have attained the age of 11.
377. [Paragraph 11](#) has the effect that a local education authority will be under a duty to secure that suitable home to school travel arrangements are made for such a child where he or she is a registered pupil at a qualifying school which is more than two miles, but not more than six miles, from his or her home, there are not three or more suitable qualifying schools which are nearer to his or her home and the ‘appropriate condition’ (set out in paragraph 14) is met.
378. [Paragraph 12](#) has the effect that a local education authority will be under a duty to secure that suitable home to school travel arrangements are made for such a child where: he or she is a registered pupil at a qualifying school which is more than two miles, but not more than 15 miles from his or her home; the child’s parent has expressed a wish, based on the parent’s religion or belief, for him or her to be provided with education at that school; having regard to the religion or belief on which the parent’s wish is based, there is no suitable qualifying school which is nearer to the child’s home; and the ‘appropriate condition’ (set out in paragraph 14) is met. “Religion” and “belief” are to be read in accordance with the definition of “religion or belief” included in section 509AD(3) of the 1996 Act.
379. [Paragraph 13](#) has the effect that where such a child is receiving education at a place (other than a school), by virtue of arrangements under section 19(1) of the 1996 Act, which is more than two miles, but not more than six miles, from his or her home, and the ‘appropriate condition’ (set out in paragraph 14) is met, the local education authority will be under a duty to secure that suitable home to school travel arrangements are made.
380. [Paragraph 14](#) provides that the ‘appropriate condition’ for the purposes of paragraphs 9 to 13 is met if either (a) the child is within section 512ZB(4) of the 1996 Act (provision of free school meals) or (b) a parent of the child, with whom the child is ordinarily resident, is a person to whom working tax credit is awarded and the award is at the rate which is the maximum rate for his case or, in the case of an award to him jointly with another, at the rate which is the maximum rate for their case.

[Section 78: LEAs in England: school travel schemes](#)

381. [Subsection \(1\)](#) inserts a new section 508E into the 1996 Act.
382. Section 508E gives effect to new Schedule 35C to the 1996 Act, which allows local education authorities in England to make school travel schemes covering home to school travel arrangements for pupils of compulsory school age or below. Where such a scheme is in force the local education authority must give effect to it and has no functions under new sections 508B and 508C of the 1996 Act (as inserted by Section 77) in respect of children covered by the scheme.
383. In putting their schemes into effect, local education authorities must have regard to guidance issued by the Secretary of State.
384. [Subsection \(2\)](#) of section 78 introduces Schedule 9.

Schedule 9: School Travel Schemes

385. This inserts a new Schedule 35C into the 1996 Act.
386. *Paragraph 1* allows individual local education authorities in England to make school travel schemes for their area. If two or more local education authorities want to work together, they must each make a scheme for their own area, operating in a coordinated way. Schemes made by local education authorities will only come into effect if approved by the Secretary of State under paragraph 10. Before a local education authority submits a scheme application, it must consult as necessary on the proposals included in the scheme (details of the consultation process will be included in guidance).
387. *Paragraph 2(1)* requires school travel schemes to set out in general terms the type of travel arrangements the ‘scheme authority’ (that is, the local education authority making the scheme) considers appropriate for children attending schools (including pupil referral units), further education institutions, or any other place where exceptional arrangements for education are made.
388. *Paragraph 2(2)* provides that the type of travel arrangements to be set out under paragraph 2(1) are either arrangements to be made by the scheme authority or arrangements to be made by any other person or both.
389. *Paragraph 2(3)* explains that school travel schemes may cover not only the provision of transport, but also other arrangements such as measures to make walking and cycling all or part of a route to school more attractive. A school travel scheme may include provisions for complete or partial reimbursement of travelling expenses, for example providing a travel card on public transport, mileage allowances for parents conveying pupils to school in remote rural areas, or a contribution towards the cost of cycle equipment. This mirrors the arrangements set out in section 508B.
390. *Paragraph 2(5)* provides that where arrangements contained in the scheme are to be made by any person other than the scheme authority, but are not made or are so made but do not comply with the requirements of the scheme, the scheme authority must make suitable alternative arrangements.
391. *Paragraphs 3 and 4* deal with arrangements that must be made for ‘eligible children’ (such children being of compulsory school age) and draws on Schedule 35B to the 1996 Act (see the notes above relating to Schedule 35B). The duty in relation to such eligible children mirrors the duty under section 508B(1) (save for the requirement in that provision that the travel arrangements are provided free of charge).
392. *Paragraphs 5 and 6* require the scheme to set out a charging policy. No charge may be made under the scheme for travel arrangements for ‘protected children’.
393. *Paragraph 6* defines ‘protected children’ as children of compulsory school age who: have special educational needs and/or a disability and/or mobility problem which prevent them from walking even short distances; or who are from low income families; or who cannot reasonably be expected to walk to school because of the nature of the route(s) to their school.
394. *Paragraph 7* means that charging policies must not discriminate against children with special educational needs and/or a disability and/or mobility problem: where charges are permitted, these must be no more than those applied to their counterparts who do not have special educational needs, a disability, or a mobility problem.
395. *Paragraph 8* allows for unpaid charges in respect of anything provided by the scheme authority in pursuance of arrangements made by them to be recovered as a civil debt.
396. *Paragraph 9* specifies that where a parent or child incurs expenditure as a consequence of a school travel scheme, the expenditure must be reimbursed by the scheme authority in the case of a protected child.

397. *Paragraph 10* requires schemes to be approved by the Secretary of State before they come into force.
398. *Paragraph 11* allows scheme authorities to amend or revoke school travel schemes. Whilst they may revoke schemes unilaterally, permission must be sought from the Secretary of State before schemes are amended. Once approved, amendments must be put into effect by the scheme authority.
399. *Paragraph 12* requires local authorities to provide such information as is required by the Secretary of State to facilitate the monitoring and evaluation of schemes.
400. *Paragraph 13* makes provision for the Secretary of State to issue and revise guidance relating to school travel schemes, and for the Secretary of State to consult as necessary before issuing or revising such guidance.

Section 79: Piloting of school travel scheme provisions

401. This section provides that the new provisions inserted by section 78 of and Schedule 9 to the Act must be piloted in accordance with regulations made by the Secretary of State. *Subsection (2)* provides that such regulations may impose a limit on the number of school travel schemes that can be in force while the new provisions are being piloted. It is currently anticipated that regulations will impose a limit of 20 school travel schemes in England. The number of pilots can be expanded, through secondary legislation, if demand from local education authorities proves high.

Section 80: Power to repeal school travel scheme provisions etc

402. This section requires the Secretary of State to prepare and publish an evaluation of schemes. Such an evaluation must be undertaken and published before 1 January 2012. The section also gives power to the Secretary of State to provide by order that the new provisions will cease to have effect. Such an order may contain transitional provisions and is subject to the requirement of the approval of both Houses of Parliament.
403. *Subsections (3) and (4)* provide that the earliest and latest dates on which the new provisions could cease to have effect are 1 August 2012 and 1 August 2015 respectively.
404. It is envisaged that an order under this section would be made if, as a result of the piloting of the new provisions under section 79, those provisions are not considered to be a success. If an order is not made, the new provisions will continue after the pilot is completed and there would then be no limit on the number of participating local education authorities.

Section 81: Local education authorities in England: provision of transport etc for certain adult learners

405. This section inserts a new section 508F into the 1996 Act. That section deals with a small number of adults who currently benefit from transport arrangements made by local education authorities under section 509 of the 1996 Act.
406. This section ensures that local education authorities can continue to make such arrangements, as section 509 of the Act will no longer apply in England.

Section 82: Amendments of section 444 EA 1996 relating to school travel

407. Section 444 of the 1996 Act outlines the situations in which a parent may have a defence in law against a prosecution by a local education authority for their child's non-attendance at school. Section 444(4) provides a parent with a defence if he proves that the school at which the child is a registered pupil is not within statutory walking distance and, where the child is not a boarder, no suitable arrangements have been made by the local education authority for his transport to and from the school or for enabling the child to become a registered pupil at a school nearer to his home.

408. This section amends section 444 by inserting new *subsections (3A) to (3F)*, which are intended to make it clear that in England:
- (a) parents have a defence to a criminal charge of failing to secure their child's attendance where they prove that a local education authority has failed in its duty to make travel arrangements under section 508B(1) or, where a school travel scheme is in place, section 508E(2)(c);
 - (b) local education authorities are not under a duty to make travel arrangements to schools in the private sector; and
 - (c) in authorities operating school travel schemes, the fact that the authority may levy charges for travel arrangements does not provide a defence to the charge of not securing a child's attendance.

Section 83: Learning and Skills Council for England: transport etc for persons of sixth form age

409. The amendments made by this section aim to transfer greater responsibility from the Secretary of State for Education and Skills to the Learning and Skills Council for England (the LSC) in relation to the provision of transport by local education authorities and their partners for 16 – 19 year olds. This provision enables young learners to get from home to their place of learning e.g. school or college.
410. The changes will make the LSC responsible for managing operational arrangements including issuing guidance to local education authorities on how they should develop transport policy statements under section 509AA of the 1996 Act; dealing with case work and queries from students and parents; and liaising with local education authorities where their local policies are challenged. The LSC will also offer advice to the Secretary of State where there may be a case for him to consider directing local education authorities to improve the arrangements set out in their transport policy statements.
411. These functions are currently provided under sections 509AA to 509AC of the 1996 Act. The measures provided for in this section are intended to ensure that transport services continue to be available but that they are managed more efficiently in the learner support unit at the LSC. This will allow the Department to continue the transfer of the management of learner support to the LSC as recommended in the Department's efficiency scrutiny.

Section 84: LEAs in England: duty to have regard to religion or belief in exercise of travel functions

412. This section inserts a new section 509AD in the 1996 Act.
413. Section 509AD requires local education authorities in England to have regard to the religion or belief of parents in exercising their travel functions.
414. *Subsection (1)* provides that in exercising their travel functions (which are defined in *subsection (2)*), a local education authority must have regard to any wish of a parent of a child, student of sixth form age or adult learner, for that person to be provided with education or training at a particular school, institution or other place, where that wish is based on the parent's religion or belief.
415. *Subsection (2)* provides that the travel functions to which this duty applies are those set out in sections 508A, 508B, 508C, 508E, 508F and 509AA of, and Schedule 35C to, the 1996 Act.
416. *Subsection (3)* provides that "religion" means any religion; "belief" means any belief; and that references to religion or belief include references to a lack of religion or belief.

Section 85: Further amendments relating to travel to schools etc.

417. This section refers to a number of mainly consequential amendments contained in Schedule 10. The only substantive amendment relates to section 6 of the Transport Act 1985, which provides an exemption from a general requirement for bus services to be registered with the Traffic Commissioner. The amendment means that school bus services operated under sections 508B(1), 508C(1) 508F(1), 509(1) or (1A), or 509AA(7)(b) or 9(a) of, or Schedule 35C to, the 1996 Act, are exempted from the requirement imposed by the Transport Act 1985 to be registered with the Traffic Commissioner, as is currently the case with closed school bus services not levying fares.
418. The Schedule also details the changes made to section 509 of the 1996 Act so that it becomes a 'Wales only' provision.

Section 86: Provision of food and drink on school premises etc.

419. *Subsection (1)* of this section replaces section 114 of the 1998 Act with a new section 114A. It extends the existing power to make regulations in connection with nutritional standards for school lunches to cover all food and drink provided on the premises of maintained schools. It also permits the regulations to apply to food or drink provided by a local education authority or governing body of a school to registered pupils at any place other than the school. The regulations may contain exceptions to the requirements prescribed. It is intended that the regulations will introduce new standards (food based and nutrient based) to increase pupils' access to healthier food/drink options and essential nutrients, and reduce the amount of sugar, salt and fats contained in foods/drinks provided to pupils by local education authorities and school governing bodies.
420. *Subsection (2)* of the new section 114A provides that the regulations may require certain standards to be complied with; that drinking water must be freely available on school premises; and that specific types of food and drink may not be provided.
421. *Subsection (3)* of the new section 114A exempts food and drink brought on to school premises for personal consumption.
422. *Subsections (4), (5) and (6)* of the new section 114A place on local education authorities and governing bodies a duty to ensure that the standards and other requirements set out in the regulations are complied with when food or drink is provided on school premises; and when those bodies provide it to registered pupils at other places.
423. In the case of food or drink provided by local education authorities or governing bodies, the requirement to secure compliance applies whether or not the food/drink is provided under a statutory duty (e.g the duty to provide free school lunches under section 512(3) of the 1996 Act).
424. *Subsection (8)* of the new section 114A allows regulations to specify:
- a) different requirements for particular classes or descriptions of schools or persons;
 - b) periods of the day during which certain requirements apply.
425. This is intended to give the necessary flexibility to ensure that the standards that are set are suitable for differing age groups or types of schools. It is also intended to allow appropriate standards to be applied to food and drink provided at after school clubs and at breakfast service.
426. *Subsection (10)* of the new section 114A ensures that references in the new section 114A to food or drink provided by local education authorities or governing bodies include references to food or drink provided by contractors under arrangements made with local education authorities or governing bodies.
427. *Subsection (3)* is a transitional provision preserving existing regulations made under section 114 of the 1998 Act. To avoid any transitional dilution of current lunch

standards, this allows existing standards to remain in force and to operate in tandem with new food based standards, until such time as the nutrient based standards are commenced.

Section 87: Power to charge for provision of meals etc

- 428. This section removes the current duty of local education authorities (under section 512ZA of the 1996 Act) and governing bodies (under section 533 of that Act) to charge for food and drink provided by them, and replaces it in each case with a power to charge for such provision.
- 429. This relaxation is intended to help those local education authorities and governing bodies who would like to provide pupils with some or all meals/drinks/refreshments, free of charge, to do so. This flexibility means that local education authorities will no longer need to apply for an order under section 2 of the 2002 Act (powers to facilitate innovation) in order to offer some free food/drink to their pupils.

Part 7: Discipline, Behaviour and Exclusion

- 430. Following the *Learning Behaviour* report of the Practitioners' Group on School Behaviour and Discipline, (October 2005, http://www.dfes.gov.uk/behaviourandattendance/about/learning_behaviour.cfm) the White Paper *Higher Standards, Better Education for All* (Cm 6677) set out a number of commitments by the Government for further improving standards of school discipline. This part of the Act carries forward those commitments in the White Paper on school discipline requiring primary legislation. That includes the establishment of a statutory power to enforce school discipline and more specific measures relating to excluded pupils and parental responsibility for the behaviour of children.
- 431. The provisions on enforcement of school discipline have been considerably developed since the White Paper was published, through a consultation paper and discussion with key stakeholders. As a result, the Act includes specific new provisions on detentions (replacing section 550B of the 1996 Act) and on items confiscated from pupils. In line with the consultation paper, the Act also re-enacts other existing legal provisions on the responsibilities of governing bodies for discipline and determination by the head teacher of a behaviour policy (section 61 of the 1998 Act) and on physical restraint of pupils (section 550A of the 1996 Act).

Section 88: Responsibility of governing body for discipline

- 432. This section defines the responsibilities of the governing body for establishing the principles shaping a school's behaviour policy.
- 433. It re-enacts *subsections (1) to (3)* of section 61 of the 1998 Act with minor changes.
- 434. *Subsection (1)* requires the governing body to ensure that the school pursues policies to promote good behaviour.
- 435. *Subsection (2)* requires the governing body to make and review a written statement of general principles to guide the head teacher in determining measures to promote good behaviour. Where the governing body wants the behaviour policy to include particular measures or address particular issues, the section requires the governing body to notify the head teacher. It also enables the governing body to give the head teacher further guidance.
- 436. Before making or revising the statement of principles, *subsection (3)* requires the governing body to consult the head teacher; parents of pupils registered at the school; registered pupils; and any persons who work at the school that are considered appropriate to consult (this would include, for instance, the kitchen staff and caretaker, if the governing body felt that their input would be valuable).

437. *Subsection (4)* requires the governing body to have regard to national guidance when carrying out its functions under *subsection (2)*. For schools in England that would be provided by the Secretary of State. For schools in Wales it would be the National Assembly for Wales.
438. *Subsection (5)* specifies the types of school to which sections 88 and 89 apply. These are all maintained schools (community; foundation; voluntary; community special; foundation special; maintained nursery), pupil referral units and non-maintained special schools. Pupil referral units are not explicitly mentioned in the legislation which this replaces though are within its ambit by virtue of regulations made in relation to them under primary legislation. Non-maintained special schools are an addition to the schools to which the existing legislation applies. This subsection also explains that “governing body” for a non-maintained special school means the proprietor of the school, the person or body of persons that manages the school.

Section 89: Determination by head teacher of behaviour policy

439. **Section 89** defines the responsibilities of the head teacher for establishing and maintaining a behaviour policy for the school that promotes self-discipline, respect for others and proper regard for authority.
440. This section re-enacts with amendments *subsections (4) to (7)* of section 61 of the 1998 Act. The section includes provision that the head teacher, when determining the behaviour policy, must do so with a view to “securing that pupils complete any tasks reasonably assigned to them in connection with their education” in addition to the other considerations laid out in subsection (4) of 61 of the 1998 Act. The section also enables the head teacher to include in the behaviour policy reasonable measures to regulate the behaviour of pupils when they are off the school site or when they are not under the control or charge of a member of the school staff.
441. *Subsection (1)* requires the head teacher to determine measures that promote self-discipline and a proper regard for authority, encourage good behaviour and respect for others, prevent bullying, secure that tasks are completed, and generally secure an acceptable standard of behaviour by pupils. These measures constitute the school’s behaviour policy.
442. *Subsection (2)* requires the head teacher to follow the governing body’s statement of principles and have regard to any notification or guidance given by the governing body (see the note on section 88(2)).
443. *Subsection (3)* requires the head teacher to determine what standard of behaviour should be regarded as acceptable in so far as it is not determined by the governing body. *Subsection (4)* provides that the measures determined by the head teacher must include the making of rules and provision for disciplinary penalties.
444. *Subsection (5)* enables the head teacher to determine (to such an extent as is reasonable) measures to regulate the behaviour of pupils when they are not on school premises or under the control or charge of a member of the school staff. This would, for example, allow rules governing behaviour on the journey to and from school and during work experience placements.
445. *Subsection (6)* requires the head teacher to set out the behaviour policy in a written document and publicise it by making it generally known to staff, pupils and parents, in particular, by bringing it to their attention at least once a year.

Section 90: Meaning of “disciplinary penalty”

446. *Subsection (1)* defines “disciplinary penalty” for the purposes of this Chapter of the Act as a penalty imposed on a pupil by any school at which education is provided for him, where his conduct falls below the standard which could reasonably be expected of him because (for example) he fails to follow a school rule or an instruction given by a

member of staff. The reference to any school at which education is provided for a pupil is intended to cover both the school a pupil normally attends and any other school he attends, for example for a particular course.

447. *Subsection (2)* makes it clear that “conduct” includes conduct off school premises and where the pupil is not under the control or charge of staff (so far as that is reasonable) and includes conduct which consists of a failure to comply with a disciplinary penalty previously imposed.

Section 91: Enforcement of disciplinary penalties: general

448. This section specifies the conditions that make lawful the imposition of a disciplinary penalty on a pupil at any school at which education is provided for him.
449. *Subsection (1)* explains that this section applies to any disciplinary penalty imposed on a pupil other than exclusion.
450. *Subsections (2), (3), (4) and (5)* specify the conditions that must be met for the imposition of a disciplinary penalty to be lawful. They are summarised below.
- a) The penalty does not breach any statutory requirement or prohibition. This would, for example, prevent the imposition of a disciplinary penalty which would involve a breach of race or sex discrimination legislation.
 - b) The penalty is reasonable in all the circumstances (*subsection (6)* specifies issues that must be taken into account in deciding whether the imposition of a penalty is reasonable).
 - c) The decision to impose the penalty is made by a member of the staff of the school. Paid members of staff may impose a penalty unless the head teacher has decided they may not impose it. Unpaid members of staff (parent volunteers, for example) may not impose a penalty unless authorised by the head teacher to impose the penalty and where that authorisation is reasonable.
 - d) The decision to impose the penalty was made and any action taken on behalf of the school to implement the decision was taken on the school premises or elsewhere at a time when the pupil was under the lawful control or charge of a member of staff of the school (for example on an educational visit).
451. *Subsection (6)* specifies the considerations to be taken into account in deciding whether the imposition of a penalty is reasonable. They are:
- a) whether the imposition of the punishment is proportionate in the circumstances of the case; and
 - b) any relevant personal characteristics of the pupil of which the person imposing the penalty is (or ought reasonably to be) aware, including the pupil’s age, any special educational needs and/or disability he may have and any religious requirements (for example dress) affecting him.
452. *Subsection (7)* states that, for the purposes of *subsection (6)* a pupil has a disability if he has a disability for the purposes of the Disability Discrimination Act 1995.
453. *Subsection (8)* states that a head teacher’s decisions on whether staff should be able to impose penalties on pupils may be made in relation to individual staff or groups of staff; in relation to an individual pupil or pupils; or in relation to an individual penalty or types of penalty. So a head teacher could, for example, decide that only teachers who are heads of year or heads of department could put pupils in detention or that a volunteer helping to supervise an educational visit should be able to withdraw privileges from pupils who misbehave on the visit.

454. *Subsection (9)* makes detention outside school sessions subject to the additional provisions in section 92.
455. *Subsection (10)* makes it clear that nothing in this section legitimises corporal punishment.
456. *Subsection (11)* has the effect that this section does not remove powers that heads and school staff have in addition to the powers conferred by this section. These may include powers conferred on them by the pupil's parent.
457. *Subsection (12)* defines a "paid member of staff" as a member of staff who works at the school for pay under a contract of employment or a contract for services. The latter would include supply teachers provided by agencies. The section makes clear that the contract of employment or contract for services need not be made with the governing body or proprietor of the school (so that it includes local education authority employed staff that may be working at the school).

Section 92: Enforcement of disciplinary penalties: detention outside normal school sessions

458. This section specifies the conditions that make the detention of a pupil outside school sessions lawful. These are in addition to the conditions specified in section 91. It (together with section 91) replaces section 550B of the 1996 Act.
459. *Subsection (1)* provides that the section applies to a disciplinary penalty that consists of detention outside school sessions.
460. *Subsections (2), (3) and (4)* provide that, in relation to such a disciplinary penalty, further conditions must be met in addition to the conditions specified in section 91. In the case of a detention during a break between school sessions on the same day (for example, a detention at lunchtime), the head teacher must have made the school's policy on detention outside of school sessions known within school and to parents. In other cases, for example evening or weekend detention, three further conditions apply in addition to this, namely that the pupil is below the age of 18, that the detention is on a "permitted day of detention" and that the pupil's parent has been given at least 24 hours' notice.
461. *Subsection (5)* has the effect that in considering whether the imposition of a detention is reasonable regard must be had (in addition to the factors specified in section 91(6)) to whether suitable travelling arrangements can reasonably be made by the pupil's parent.
462. *Subsection (6)* enables the school to give a parent the required 24 hours' notice by any effective method. (This requirement would not apply to detentions in breaks between sessions, such as lunch times.)
463. *Subsection (7)* has the effect that this section does not remove powers that heads and school staff have in addition to the powers conferred by this section. These may include powers conferred on them by the pupil's parent.
464. *Subsection (8)* defines a "permitted day of detention" as:
- (a) a school day (other than one on which the school has given the pupil leave of absence);
 - (b) a Saturday or Sunday during the school term (other than weekends preceding or following half-term breaks); and
 - (c) a non-teaching work day (more commonly known as a "training day" or "INSET day") that may fall in or out of the school term (other than those excluded in regulations).

Section 93: Power of members of staff to use force

465. This section enables a member of staff to use reasonable force to prevent a pupil from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at the school.
466. The section re-enacts section 550A of the 1996 Act with minor changes.
467. *Subsection (1)* enables a member of staff to use reasonable force in certain defined circumstances: to prevent an offence or the continuation of one; to prevent personal injury or damage to property; and to prevent anything which prejudices the maintenance of good order and discipline at the school. Thus, for example, reasonable force (such as leading by the arm) might be used to enforce an instruction for a pupil to leave a class room (in circumstances where any of paragraphs (a) to (c) of *subsection (1)* apply).
468. *Subsection (2)* specifies that the power to use force extends to members of staff at any school at which the pupil is receiving education (this allows for situations where, for example, a pupil is receiving education at a school other than the school which he normally attends).
469. *Subsection (3)* restricts the use of this power to when both the member of staff and the pupil are on school premises or in other situations where the member of staff has lawful control or charge of the pupil involved (for example on an educational visit).
470. *Subsection (4)* makes it clear that *subsection (1)* does not legitimise corporal punishment.
471. *Subsection (5)* has the effect that the power provided by *subsection (1)* does not remove any powers that heads and school staff may have in addition to the powers conferred by the section. These include common law rights of self-defence.
472. *Subsection (6)* specifies that an “offence” covers behaviour by younger pupils that would be an offence if they had attained the age of criminal responsibility.

Section 94: Defence where confiscation lawful

473. This section protects staff against civil or criminal liability where a lawfully confiscated item is retained or disposed of.
474. *Subsection (1)* specifies that this section applies where something a pupil has with him or in his possessions is seized and retained or disposed of.
475. *Subsection (2)* protects any person who seizes, retains or disposes of such an item from liability in any proceedings if he proves that the seizure, retention or disposal was lawful.
476. *Subsection (3)* provides that nothing in this section applies where an item is seized under section 550AA of the 1996 Act. The Violent Crime Reduction Act 2006 contains provision to insert a new section 550AA into the 1996 Act dealing with the seizure of knives, blades or offensive weapons or any other thing which there are reasonable grounds for suspecting is evidence in relation to an offence, found in the course of a search of pupils. The new section 550AA makes provision for what is to be done with an item seized under that section.
477. *Subsection (4)* has the effect that this section does not prevent anyone using any other defence (for example under common law) that they would be entitled to use in any civil or criminal action.

Section 95: Interpretation of Chapter 1

478. This section directs the reader to section 90 for a definition of “disciplinary penalty”. It defines “member of staff” for the purposes of this Chapter as any teacher who works at

the school and any other person who, with the authority of the head teacher, has lawful control or charge of pupils at the school. This may include members of the support staff of a school. It would also include unpaid volunteers who are put in charge of pupils (for example on an educational visit). The section also specifies that “possessions”, in relation to a pupil, include any goods over which he appears to have control.

Section 96: Repeals consequential on provisions of Chapter 1

479. This section repeals the legislation that sections in this Chapter replace. That includes existing legislation on governing bodies’ responsibilities for discipline, behaviour policies, detention and physical intervention.

Section 97: Parenting contracts

480. Section 19 of the Anti-social Behaviour Act 2003 makes provision for schools and local education authorities to enter into voluntary “parenting contracts” (as defined in the section) with parents in cases of exclusion from school or truancy. This section amends section 19 to enable contracts to be used in cases of misbehaviour where the pupil has not been excluded.
481. *Subsection (2)* inserts *subsection (1A)* which provides an alternative trigger to enable schools and local education authorities to enter, in certain circumstances, into parenting contracts with parents where the pupil has not been excluded. These circumstances are where the school or local education authority have reason to believe that a pupil has engaged in behaviour which:
- (a) has caused or is likely to cause significant disruption to the education of other pupils or significant detriment to the welfare of that pupil or other pupils or to the health or safety of any staff; or
 - (b) forms part of a pattern of behaviour which (if continued) could lead to the pupil being excluded.
482. *Subsection (2)* also inserts *subsection (1B)* which makes clear that such behaviour can take place at school, or elsewhere if reasonable for the school to regulate it.

Section 98: Parenting orders in cases of exclusion or misbehaviour

483. Section 20 of the Anti-social Behaviour Act 2003 makes provision for local education authorities to apply to magistrates’ courts for parenting orders in cases of exclusion from school. This section amends section 20 to also enable orders to be applied for where a pupil has seriously misbehaved but not been excluded and to allow schools to apply for orders.
484. *Subsection (3)* enables a ‘relevant body’ to apply for an order. A relevant body is defined in *subsection (9)* of section 20, inserted by *subsection (6)* of this section, as a local education authority and the governing body of a maintained school, or the proprietor of an Academy, a city technology college, or a city college for the technology of the arts, at which the person concerned is a pupil or from which he has been excluded.
485. *Subsection (4)* of this section inserts *subsections (2A) and (2B)* into section 20, which add a further ground on which an application for a parenting order can be made. This is where the pupil has behaved in such a way that he could have been excluded permanently or for a fixed period and any other conditions specified in regulations are met. The new *subsection (2A)* makes clear that any policy that the school might have to restrict exclusions or to restrict exclusions in certain circumstances is not relevant in this context; the relevant factor is the seriousness of the misbehaviour.
486. *Subsection (5)* of this section inserts *subsection (3)* into section 20. It says that the court can make a parenting order under section 20 if it is satisfied that the type of behaviour

described in *subsection (4)* has occurred and that making the order would be desirable in the interests of improving the pupil's behaviour.

Section 99: Parenting contracts and parenting orders: further provisions

487. *Subsection (2)* amends section 21 of the Anti-social Behaviour Act 2003. This means that when a court is considering whether to grant a parenting order for misbehaviour it must take into account any previous failure by the parent to attend a reintegration interview (see section 102).
488. *Subsection (3)* inserts section 22A into the Anti-social Behaviour Act. It enables regulations to be made by the Secretary of State to make provision for which local education authority should have the power to enter into a parenting contract or apply for an order when the child lives in one authority but attends school in another; which school should have the power to apply for an order where the pupil has been permanently excluded; requirements to consult and share information; and how the costs associated with a parenting order should be met.

Section 100: Duty of governing body or proprietor where pupil excluded for fixed period

489. This section introduces a duty for schools to provide suitable full-time education to temporarily excluded pupils.
490. In *subsection (1)* the section imposes a duty to that effect. Currently there is no obligation for schools to provide any education to excluded pupils. They are expected to send work home for the pupil to complete. This subsection also gives power to the Secretary of State to prescribe exceptions to this duty.
491. *Subsection (2)* states that regulations will prescribe the day from which such full-time education must be provided.
492. *Subsection (3)* prescribes that such education may be provided on the premises of the excluding school only if it is provided in pursuance of arrangements with at least one other school for the education of excluded pupils from both that and that other or those other schools.
493. *Subsection (4)* provides that the governing body of the school must have regard to the Secretary of State's guidance in making arrangements for educating excluded pupils.
494. *Subsection (5)* defines governing body to include the proprietor of an Academy, city technology college (CTC) and a city college for the technology of the arts (CCTA).

Section 101: Duty of local education authority in relation to excluded pupils

495. This section amends section 19 of the 1996 Act to require local education authorities to provide permanently excluded pupils with suitable full-time education. Currently, section 19 requires local education authorities to make suitable education available to children who are out of school for any reason. However, section 19 does not specify that such education should be full-time in the case of excluded pupils and this section requires this. It provides power for the Secretary of State to prescribe exceptions to this duty.
496. The section also requires local education authorities to make suitable full-time education available to pupils excluded for fixed periods from a pupil referral unit.

Section 102: Reintegration interviews

497. *Subsection (1)* introduces a new power which enables regulations to be made by the Secretary of State, and the National Assembly for Wales:

- (a) specifying the circumstances in which maintained schools, Academies, city technology colleges and city colleges for the technology of the arts must arrange reintegration interviews with the parents of temporarily excluded pupils; and
 - (b) specifying the procedures and time limits connected with such an interview.
498. The purpose of such an interview is to engage with the parent and so to assist the reintegration of a pupil excluded for a fixed period and to promote an improvement in his behaviour. Section 99 amends section 21 of the Anti-social Behaviour Act 2003 to say that a court must take into account the unreasonable failure by a parent to attend a reintegration interview when deciding whether to make a parenting order.

Section 103: Duty of parent in relation to excluded pupil

499. This section applies where a pupil is excluded from a relevant school in England for a fixed period or permanently and notice under section 104 has been given to a parent of the pupil.
500. *Subsection (2)* imposes a duty on the parent to ensure that the excluded pupil is not present in a public place during normal school hours on a day which is one of the first five school days to which the exclusion relates and is specified in the notice under section 104 (or, in the case of an exclusion for a fixed period of 5 days or less, on any of the days to which the exclusion relates which is specified in the notice).
501. *Subsection (3)* provides that the parent commits an offence if the parent fails in this duty.
502. Under *subsection (4)* the parent has a defence if he shows that he had a reasonable justification for the failure.
503. *Subsection (5)* sets out the sanction if found guilty of the offence. This will be a fine not exceeding level 3 on the standard scale.
504. *Subsection (6)* provides that only a local education authority can institute proceedings against the parent.
505. *Subsection (7)* provides that if the child is excluded before the start of the afternoon session, that day will count as the first day of the exclusion
506. *Subsection (8)* defines “parent”, “public place” and “school hours” for the purposes of the section.

Section 104: Notice to parent relating to excluded pupil

507. This section relates to the notice the parent will receive from the school when their child is excluded. *Subsection (1)* requires the head teacher to give the parent of an excluded pupil a notice containing prescribed information.
508. *Subsection (2)* requires the notice to include information about the exclusion, specifying the day on which full-time education will be provided. *Subsection (3)* says that the notice must set out the days on which the parent is subject to the duty set out in section 103 to ensure that the pupil is not in a public place during school hours. That responsibility will not exceed five days.
509. *Subsection (6)* ensures that the notice can be served by any effective method (for example, by sending it home with the child) and does not have to be served by one of the methods set out in section 572 of the 1996 Act.
510. *Subsection (7)* allows regulations to be made enabling the notice issued to the parent under this section to be combined with the notice the parent receives under section 52(3) of the 2002 Act when their child is excluded.

Section 105: Penalty notice in respect of presence of excluded pupil in public place

- 511. This allows for a penalty notice to be given to a parent who appears to be guilty of an offence under section 103. The penalty notice will allow a parent to pay a penalty as a way of discharging any liability for the section 103(3) offence of failing to ensure that their child is not present in a public place.
- 512. *Subsection (6)* allows for regulations to permit the local education authority to retain the revenue they receive from penalty notices to cover the costs of enforcement; and requires it to remit any surplus to the Secretary of State.
- 513. Only authorised persons may issue a penalty notice. These are defined in *subsection (7)*. The definition of “authorised staff member” is the same as that in section 444B of the 1996 Act.

Section 106: Penalty notices: supplemental

- 514. This section provides for the Secretary of State to make regulations about the administration of penalty notices. The section enables regulations to specify the form and content of penalty notices; the amount of the penalty, time limits for its payment and to whom it should be paid; how it may be paid and which persons may issue it.

Section 107: Penalty notices: amendments of Police Reform Act 2002

- 515. *Section 107* provides that Police Community Support Officers will be able to issue fixed penalty notices to parents of excluded pupils found in a public place during the first five days of exclusion in the same way that they can issue fixed penalty notices to truants’ parents.

Section 108: Removal of excluded pupils to designated premises

- 516. This section amends section 16 of the Crime and Disorder Act 1998 to allow police to remove excluded pupils from a public place to a designated place. At the moment police have the power to remove pupils who should be at school (“truants”) from a public place to either their school or premises designated by the local education authority and notified to the police. The effect of this amendment would be to allow police to remove an excluded pupil from a public place to premises designated by the local education authority and notified to the police (for example the offices of the local education authority).
- 517. The section also amends Schedule 4 to the Police Reform Act 2002 so as to enable community support officers to exercise the new power. The Police and Justice Act 2006 adds to Schedule 4 to the Police Reform Act 2002 the paragraph 4C being amended.

Section 109: Failure to secure school attendance

- 518. *Section 109* makes various amendments of section 444 of the 1996 Act, which sets out offences that may be committed by a parent whose child fails to attend regularly at a school at which he is a registered pupil. Section 444 as it stands provides for two offences: the offence in *subsection (1)* of section 444 does not require proof that the parent is aware that the child is not attending regularly, while the more serious offence in *subsection (1A)* of the section does require such proof.
- 519. *Subsections (1) and (2)* of section 109 make amendments of section 444 of the 1996 Act to ensure that where a parent is charged with an offence under *subsection (1A)* of that section, the defence of reasonable justification is subject to a reverse legal burden of proof. In other words, it is for the parent to prove, on a balance of probabilities, that the parent has a reasonable justification for failing to ensure the child’s attendance.
- 520. These amendments are intended, for future cases, to reverse the effect of the decision of the High Court on 15th March 2006 in *R (on the application of P) v Liverpool City*

Magistrates [2006] EWHC 887 (Admin) in which it was held that the words “without reasonable justification” in *subsection (1A)* of section 444 of the 1996 Act created an evidential burden, that is to say, the parent had to produce credible evidence of reasonable justification. It would then be for the prosecution to prove that the parent did not have a reasonable justification. Before this decision it had been generally understood that the words concerned created a reverse legal burden of proof. The amendments made by this section reverse, for future cases, the effect of the High Court decision.

- 521. *Subsections (3) to (5) and (7)* of section 109 make similar amendments in relation to the defence relating to the child’s sickness or any other unavoidable cause. These amendments relate to the offence in *subsection (1)* of section 444 as well as the offence in *subsection (1A)*.
- 522. In addition, *subsection (6)* of section 109 alters the wording of the defence in section 444(6) (where the child is of no fixed abode and the parent's trade or business requires travel from place to place) to bring it into line with the wording in the new *subsections (1B) and (2A)* (which is more consistent with the wording generally used in new legislation). There is no change of substance here, since section 444(6) already provides for a reverse legal burden.
- 523. The section also inserts a new subsection (7A) into section 444 of the 1996 Act so that it is an offence against subsection (1) or (1A) for a parent to fail to secure the attendance of a pupil excluded for a fixed period where alternative provision has been arranged for him by the appropriate authority at the same school. The schools covered are a local authority maintained school, a pupil referral unit, an Academy, city technology college or city college for the technology of the arts. New subsection (7B) defines the appropriate authority in relation to each such type of school. For a maintained school it is the governing body, for a pupil referral unit the local education authority, and for the other schools the proprietor.
- 524. By *subsections (9) and (10)* the section also amends section 444ZA of the 1996 Act and section 16 of the Crime and Disorder Act 1998 respectively to bring the language used for reverse legal burdens of proof in those sections into line with the language used in section 444 as amended by this section.
- 525. *Subsection (11)* provides that the amendments made by section 109 do not apply to any failure to attend at a school occurring before the commencement of the amendment in question.

Section 110: Sums received under section 444A of 1996 Act

- 526. This section substitutes *subsection (6)* of section 444A of the 1996 Act allowing local education authorities to use receipts from penalty notices for any of their functions specified in regulations. Any sums not so used must be paid to the Secretary of State.

Section 111: Meaning of “maintained school” and “relevant school” in Chapter 2

- 527. This section defines “maintained schools” and “relevant school” for the purposes of Chapter 2 of Part 7.

Part 8 – Inspections

- 528. This Part of the Act provides for the establishment of the Office for Standards in Education, Children’s Services and Skills and a new office of Chief Inspector of Education, Children Services and Skills. The new arrangements bring together the existing remit of HM Chief Inspector of Schools in England, the children’s social care remit of the Commission for Social Care Inspection, the Children and Family Court Advisory and Support Service inspection remit of Her Majesty’s Inspectorate of Court Administration and the inspection remit of the Adult Learning Inspectorate.

529. The Government announced in March 2005 the intention to reduce the number of public service inspectorates from eleven to four, with the aim of enabling better co-ordination and reduced duplication, better and wider identification and promulgation of best practice, a greater ability to track the experience of users across service and institutional boundaries and the ability to prioritise work within larger bodies to focus on emerging concerns.
530. The following definitions are used in these notes in relation to Part 8:
- *The Office* means the Office for Standards in Education, Children’s Services and Skills
 - *Chief Inspector* means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills
 - *HMI* means Her Majesty’s Inspectors of Education, Children’s Services and Skills
 - *CSCI* means the Commission for Social Care Inspection
 - *CAFCASS* means the Children and Family Court Advisory and Support Service
 - *ALI* means the Adult Learning Inspectorate
 - *HMICA* means Her Majesty’s Inspectorate of Court Administration.

Chapter 1 – The Office and the Chief Inspector

Section 112: Office for Standards in Education, Children’s Services and Skills

531. This section establishes the Office for Standards in Education, Children’s Services and Skills, and provides that its functions are to be carried out on behalf of the Crown. The section also gives effect to Schedule 11.

Schedule 11: The Office for Standards in Education, Children’s Services and Skills

532. [Schedule 11](#) sets out in detail how the Office will be constituted: that it will comprise a chairman and between 5 and 10 members (all to be appointed by the Secretary of State) and the Chief Inspector. The Schedule contains further detail about the terms of appointment of the chairman and members other than the Chief Inspector, including provision for their remuneration and the payment of pensions, allowances and gratuities – all to be determined by the Secretary of State. See [Schedule 12](#) for further provision about the Chief Inspector.
533. [Paragraph 6](#) enables the Office to employ staff, with this power to be exercisable only by the Chief Inspector on behalf of the Office. The Chief Inspector will be responsible for the management of staff, and will set conditions of service subject to approval of the Minister for the Civil Service. [Paragraph 12](#) enables the Office to enter into contracts and acquire property but again these powers are to be exercisable only by the Chief Inspector on behalf of the Office, and he will be responsible for the management of any property and accommodation.
534. The Schedule also contains provisions for the procedural operation of the Office and the exercise of its functions. These include powers to establish committees and sub-committees and to regulate its proceedings.

Section 113: Her Majesty’s Chief Inspector of Education, Children’s Services and Skills

535. This section establishes the office of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills ([subsection \(1\)](#)) and abolishes the office of Her Majesty’s Chief Inspector of Schools in England ([subsection \(8\)](#)). The Chief Inspector is appointed to office by Her Majesty by Order in Council, though the person in post as Her

Majesty's Chief Inspector of Schools in England at the time the section comes into force will be the first Chief Inspector (*subsection (9)*). The Chief Inspector's terms of appointment are determined by the Secretary of State (*subsection (5)*). A term of office may be no more than five years, though a previous post-holder is not barred from reappointment (*subsections (6) and (7)*). *Subsection (6)(c)* sets out grounds on which the Chief Inspector may be removed from office.

Section 114: Her Majesty's Inspectors of Education, Children's Services and Skills

536. This section provides for the appointment of Her Majesty's Inspectors of Education, Children's Services and Skills ("HMIs") by Her Majesty by Order in Council (*subsection (1)*). HMIs will be staff of the Office (*subsection (3)*) and will cease to be HMIs on ceasing to be a member of staff (*subsection (5)*). It also allows for existing HM Inspectors of Schools in England to become HMIs (*subsections (6) and (7)*).

Section 115: Further provision about Chief Inspector and other inspectors etc.

537. This section gives effect to Schedule 12.

Schedule 12: The Chief Inspector and other inspectors

538. *Schedule 12* draws on current arrangements for Her Majesty's Chief Inspector of Schools in England in Schedule 1 to the 2005 Act (which is repealed by the Act), as well as setting out other arrangements for the Chief Inspector.

Schedule 12, Part 1 – The Chief Inspector

539. *Paragraph 1* provides that the Secretary of State will determine the remuneration and pension that the Office is to pay to the Chief Inspector.
540. *Paragraphs 2 and 3* set out provisions covering the performance of the Chief Inspector's functions during any vacancy or any incapacity of the Chief Inspector. *Paragraphs 4, 5 and 6* contain technical provisions about the Chief Inspector.
541. The Chief Inspector is to be both a member of the Office and an office-holder on whom functions are conferred by Part 8 and other enactments. *Paragraph 7(1)* sets out the general rule that functions conferred on the Chief Inspector by virtue of Part 8 or any other enactment are conferred on him in his capacity as holder of the office of Chief Inspector. *Paragraph 7(2)* sets out the exceptions to this rule. As a result of *paragraph 8*, the Chief Inspector is to be regarded as part of the non-Ministerial Government Department constituted by the Office for all purposes relating to that department. Any necessary details of particular responsibilities flowing from this arrangement will be set out in an order under the paragraph.

Schedule 12, Part 2 – Inspectors etc. acting on behalf of Chief Inspector

542. *Paragraph 9* re-enacts paragraph 5 of Schedule 1 to the 2005 Act. It has the effect 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 the staff of the Office; or any additional inspector (see paragraphs 11 and 12 in relation to additional inspectors). 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 (sub-paragraph (3)) and that an additional inspector cannot conduct an inspection under section 5 of the 2005 Act unsupervised by an HMI unless he has previously conducted such an inspection to the satisfaction of an HMI (*paragraph 11(4)*).
543. *Paragraph 10* requires the Chief Inspector to ensure that any HMI, member of staff of the office or an additional inspector carrying out any of the activities within the Chief Inspector's remit has the necessary qualifications, experience and skills

544. *Paragraph 11* gives the Chief Inspector the ability to arrange for inspectors to assist the Chief Inspector to fulfil his functions. Such inspectors will be engaged either directly or through an inspection service provider, and will be known as additional inspectors.
545. *Paragraph 12* sets out provisions relating to the use of inspection service providers. When engaging additional inspectors through an inspection service provider, the Chief Inspector must publish a statement of the qualifications and/or experience, standards and skills which additional inspectors are required to have. 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. The Chief Inspector must ensure that any arrangements he makes with inspection service providers require them to ensure that additional inspectors meet the published requirements.

Section 116: Functions of the Office

546. This section provides for the Office to have the function of determining the strategic priorities, objectives and targets for the Chief Inspector in connection with the performance of his functions, and to secure that the Chief Inspector's functions are performed efficiently and effectively. The Office will set the strategic direction of the Office and hold the Chief Inspector to account for his performance of the functions relating to inspection and as a registration authority that are conferred on him.

Section 117: Performance of Office's functions

547. This section provides that the general purpose of the Office is to perform its functions to encourage: the improvement of activities within the Chief Inspector's remit, the carrying on of those activities as user-focused activities, and the efficient and effective use of resources in the carrying out of those activities. In addition, in performing its functions, the Office is to have regard to the matters in *subsection (2)*. These are intended, as far as is possible, to reflect the Government's ten principles of public sector inspection. *Subsections (4) to (6)* contain definitions, including in *subsection (6)* an explanation of the activities that are within the Chief Inspector's remit and in *subsection (4)* a definition of "relevant persons" interested in the activities within the Chief Inspector's remit – namely persons who have an interest in those activities as persons for whom they are carried out, parents or employers.

Section 118: Functions of the Chief Inspector

548. This section sets out the Chief Inspector's general duty to keep the Secretary of State informed about the quality and standards, improvement, user-focus and efficiency and effectiveness of the activities within his remit. It also requires the Chief Inspector to provide information or advice on matters relating to those activities at the Secretary of State's request (*subsection (2)*) and enables the Chief Inspector to give advice to the Secretary of State of his own volition (*subsection (3)*). Further functions may be assigned to the Chief Inspector by the Secretary of State (*subsection (4)*).

Section 119: Performance of Chief Inspector's functions

549. This section requires the Chief Inspector to perform his functions in such a way as to encourage improvement in the performance of the activities within his remit. It also requires the Chief Inspector to discharge his functions efficiently and effectively and with regard to the needs of users of services within his remit. These duties reflect those placed upon the Office in section 117. In performing his functions the Chief Inspector must have regard to the same matters as the Office does in performing its functions (*subsection (3)*).

Section 120: Children's Rights Director

550. This section establishes the post of the Children's Rights Director which is to be held by an employee of the Office. The post replaces that of Children's Rights Director in the

Commission for Social Care Inspection (as to which, see paragraph 5(2) of Schedule 7 to the Health and Social Care (Community Health and Standards) Act 2003). *Subsection (2)* enables the Secretary of State to make regulations setting out the functions of the Children's Rights Director; his functions will relate only to the functions of the Chief Inspector described in *subsection (3)*.

Section 121: Annual report and other reports to Secretary of State

551. This section 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 power to make such other reports as he considers appropriate. He may publish any report he makes under the section in whatever manner he considers appropriate.

Chapter 2 – General transfer of functions

Section 122: General transfer of functions to the Chief Inspector

552. This section transfers to the Chief Inspector all functions of the existing HM Chief Inspector of Schools in England (subject to any changes made by Part 8). The functions include inspections of schools, the inspection and regulation of child minding, day care and nursery education, inspection of independent schools and inspection of teacher training provision.

Chapter 3 – Inspection of Further Education and Training etc

553. This Chapter covers the inspection of further education colleges and other education and training providers. It also covers area inspections, which are concerned with the provision of education or training, in a specified area in England, for persons who are aged 15 or over but under 19.

Section 123: Education and training to which this Chapter applies

554. This section sets out the education and training to which the Chapter applies.
555. *Subsection (1)* sets out the kinds of education and training which will be within the Chief Inspector's remit, of which some are currently within the remit of ALI and some are already within the remit of the Chief Inspector of Schools. These will include further education and work-based training. There is also provision for such other education or training as may be prescribed by regulations made by the Secretary of State to be brought into the Chief Inspector's remit.
556. *Subsection (2)* provides that the training which may be prescribed under *subsection (1) (h)* can include the training of teachers and trainers.
557. *Subsection (3)* allows the provision of information and adult guidance, or the provision of any description of such information, advice and guidance to be treated as training for the purposes the Chapter, if regulations so provide.

Section 124: Inspection of education and training to which this Chapter applies

558. This section creates a duty for the Chief Inspector to inspect the education and training that is within his remit and is specified by the Secretary of State.
559. When the Chief Inspector has completed the inspection, he has a duty to make a written report on it. The report of an inspection must state whether the education and training inspected is of a quality adequate to meet the reasonable needs of those receiving it. The Chief Inspector must arrange for the report to be published. He must send copies to specified recipients. He may also send copies to anyone else he considers appropriate.

Section 125: Inspection of further education institutions

560. This section requires the Chief Inspector to inspect all further education institutions. When the Chief Inspector has completed the inspection, he has a duty to report on it. The Chief Inspector's responsibilities with regard to a report of an inspection are as in section 116.

Section 126: Other inspections

561. This section gives the Chief Inspector additional powers in relation to the education and training within his remit.
562. *Subsection (1)* gives the Chief Inspector power to inspect education and training in cases when he is not required to do so by virtue of any other provision, for example when he identifies a particular issue of concern. He may make a report of such an inspection and if he does so he may publish it. The Chief Inspector's responsibilities with regard to distribution of a report of such an inspection are as in section 124.
563. *Subsection (2)* gives the Chief Inspector the power to carry out inspections of further education and training that are commissioned and paid for by providers of education and training. It gives the Chief Inspector the power to inspect any education and training that is not in his remit if it is further education or training within the subsection and he is requested to do so by the provider of the education or training. He can charge for such an inspection. This section gives the Chief Inspector the power to make a report of such an inspection and the power to publish it. *Subsection (7)* enables the Chief Inspector to conduct inspections under subsection (2) outside the United Kingdom.

Section 127: Action plans

564. This section covers the action to be taken after all inspections other than inspections commissioned under section 126(2). It requires the provider of the education and training inspected to provide a written action plan together with a timetable setting out when the action will be taken. The person must publish the plan within a period prescribed by regulations made by the Secretary of State and send copies to a list of persons so prescribed. .
565. *Subsection (4)* allows the Chief Inspector to waive the requirement for an action plan. He might do so where, for example, the standard of provision was particularly high and appropriate action was already underway and incorporated into existing plans.

Section 128: Area inspections

566. *Subsection (1)* requires the Chief Inspector, if requested by the Secretary of State to do so, to carry out an inspection covering the whole of a specified area (which would normally reflect the way in which local education authorities and/or local Learning and Skills Councils are organised territorially). He will be under a duty to inspect the quality and availability of provision in that area for persons aged 15 or over but under 19 as well as the standards they achieve. Included in the scope of the inspections are those who will reach the age of 15 in the current school year.
567. *Subsection (2)* allows the Chief Inspector to carry out such inspections without being requested to do so.
568. *Subsections (3) and (4)* extend the powers of the Chief Inspector so that he can investigate value for money issues.
569. *Subsection (5)* defines what education or training may be made the subject of an area inspection. Broadly this includes all 14-19 provision within the national curriculum, further education and work-based training.

570. Subsections (6) and (7) set out the duties and responsibilities of education and training providers as well as local education authorities in respect of supplying any information required for an area inspection.
571. Subsection (8) explains what is meant by the reference in subsection (1)(a) to persons who are aged 15.

Section 129: Reports of area inspections

572. This section makes it a requirement for the Chief Inspector to make a written report on completing an area inspection.
573. The Chief Inspector must also make arrangements for the report to be published. The report must be sent to the Secretary of State, the Learning and Skills Council for England and each local education authority whose area is wholly or partly within the area subject to the inspection. Copies may be sent to anyone else the Chief Inspector considers appropriate.

Section 130: Action plans following area inspections

574. This section covers the action to be taken following the publication of an area inspection report. It allows the Secretary of State to require either the Learning and Skills Council or a local education authority to prepare a written action plan, together with a timetable setting out when the action will be taken by them. The Learning and Skills Council or local education authority must publish the plan within a specified period (which it is expected will not normally exceed three months from the date of publishing the inspection report) and send copies to a list of persons – both the timeframe and list of persons to be prescribed by regulations.

Section 131: Power of entry

575. This section gives a power of entry to the Chief Inspector when conducting any inspections under Chapter 3 except those commissioned by providers. It gives him the power to enter premises where the education or training to be inspected is provided or which are used in connection with the provision of the education or training.
576. Subsection (3) provides that any right to access an employer's premises can only be exercised if reasonable notice has been given in writing.

Section 132: Power to inspect documents, etc.

577. This section provides that, where the Chief Inspector exercises his power of entry under section 131 (power of entry) for the purpose of carrying out an inspection, he may require the production of documents, including computer records and inspect and take copies of documents and remove them from the premises under inspection. He may also inspect computers and he may require assistance from a person operating a computer.
578. The section provides that obstructing the exercise of the powers under this section or section 131, or failing to comply with a requirement under this section, without reasonable excuse is an offence for which a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).

Section 133: Framework for inspections

579. This section requires a framework or frameworks to be devised and published by the Chief Inspector. The framework or frameworks will lay out a common set or sets of principles which cover all inspections conducted under this Chapter. It allows the Chief Inspector to revise the framework and he must publish any revised framework.

Section 134: Abolition of Adult Learning Inspectorate

580. This section abolishes the Adult Learning Inspectorate on the appointed day as all of its inspection functions will in future be performed by the Chief Inspector

Chapter 4 – Inspection and review of Local Authorities in England

Section 135: Functions to which this Chapter applies and related activities

581. **Chapter 4** makes provision for the Chief Inspector to undertake inspections and annual reviews of the performance of local authorities' functions, and sets out which of those functions are within the Chief Inspector's remit for these purposes. The functions within the Chief Inspector's remit are those listed in paragraphs (a) to (e) of *subsection (1)*, and such other functions as may be prescribed by regulations by the Secretary of State under *subsection (1)(f)*. The functions under the Children Act 2004 mentioned in *subsection (1)(c)* include the appointment of a director and lead member for children's services. The Chief Inspector's powers of inspection and review include powers in relation to the exercise by local authorities of their general powers to promote the economic and social well-being of their areas under the Local Government Act 2000 (see the definition of "related activity" in *subsections (2) to (4)*).

Section 136: Inspection of local authorities in England

582. This section sets out the general inspection duties of the Chief Inspector in respect of the performance of local authorities' functions to which the Chapter applies. The functions to be inspected are as set out in the note on section 135 (local authority functions to which this Chapter applies).
583. The Chief Inspector may carry out an inspection of the performance of the functions, including anything done in pursuance of those functions under arrangements made by the local authority (see section 142). This will enable the Chief Inspector to inspect (for example) any of a local authority's children's social services functions that are discharged through arrangements with private or charitable providers of children's homes. In carrying out his inspection the Chief Inspector must also inspect any related activities.
584. The section also requires the Chief Inspector to carry out an inspection of a specified local authority where the Secretary of State requests him to do so (*subsection (3)*). The inspection may cover all of the local authority functions to which Chapter 4 applies, or such functions as are specified in the Secretary of State's request.

Section 137: Reports of inspections under section 136

585. This section provides for the Chief Inspector to make a written report of any inspection of a local authority conducted under section 136 (inspection of local authorities in England). The Chief Inspector must send a copy of the report to the local authority and the Secretary of State. The local authority must prepare a written statement setting out the action it proposes to take in the light of the report and the timetable for doing so. The authority must publish the report, and action plan, in accordance with regulations to be made by the Secretary of State.
586. The Chief Inspector may publish the report in such manner as he considers appropriate.

Section 138: Annual reviews of local authorities in England

587. This section sets out the requirement for the Chief Inspector to undertake an annual review of local authorities' performance of functions to which the Chapter applies and of related activities (see section 135: functions to which this Chapter applies and related activities). Having carried out such a review the Chief Inspector is required to award a performance rating for each authority. The intention is that these performance

ratings will feed, alongside ratings for other services, into the annual comprehensive performance assessment for local authorities which is led by the Audit Commission.

Section 99 of the Local Government Act 2003 provides that the Audit Commission must from time to time produce a report on its findings in relation to the performance of English local authorities in exercising their functions, and that the report must categorise each local authority according to how the authority has performed in exercising its functions.

Section 139: Power of entry

- 588. This section provides the Chief Inspector with a power of entry for the purpose of carrying out inspections of local authorities under section 136 (inspection of local authorities in England), or annual reviews of local authorities under section 138.
- 589. The inspector may at any reasonable time enter any premises for the purposes of the inspection or review, though his power does not extend to domestic premises within the meaning in this Part (see section 159) unless those premises are a school.

Section 140: Power to inspect documents etc.

- 590. This section provides that, where the Chief Inspector exercises his power of entry for the purpose of carrying out inspections of local authorities under section 136 (inspection of local authorities in England), or annual reviews of local authorities under section 138, he may require the production of documents, including computer records; inspect, take copies or remove them from the premises; inspect computers; and inspect the state and management of the premises.
- 591. The section provides that a person who, without reasonable excuse, obstructs the exercise of powers under this section or section 139, or fails to comply with a requirement under this section, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500) (*subsection (9)*).

Section 141: Power to require information etc.

- 592. This section provides that the Chief Inspector may at any time ask for information relating to the functions he inspects under this Chapter or related activities (see section 135: functions to which this Chapter applies and related activities), from a local authority in England (as defined in section 159: interpretation), or anyone delivering those functions under arrangements made by the local authority.
- 593. A person who, without reasonable excuse, fails to comply with requirements of the section is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

Section 142: Interpretation etc.

- 594. This section sets out various definitions required for the purposes of Chapter 4.

Chapter 5 – Inspection of CAFCASS functions

Section 143: Inspection of CAFCASS functions

- 595. This section makes it a duty for the Chief Inspector to inspect the performance of the Children and Family Court Advisory and Support Service, which is at present a function of HMICA). The Chief Inspector is required to produce a written report of any inspection and send copies to the Secretary of State and CAFCASS. The Chief Inspector must publish the report in such a manner as he considers appropriate.

Section 144: Power of entry

596. This section gives the Chief Inspector the power to enter any premises occupied by CAFCASS and any organisations or individuals contracted to carry out functions on behalf of CAFCASS. The Chief Inspector does not have the right to enter private dwellings. The power of entry may be exercised at reasonable times only.

Section 145: Power to inspect documents etc.

597. This section gives the Chief Inspector the power to inspect, take copies of or take away documents held by CAFCASS or relating to the performance of CAFCASS functions which he considers relevant for the purposes of the inspection.
598. *Subsection (3)(b)* ensures that documents kept by means of a computer are produced in a legible form in which they can be taken away (for example, by means of a printout).
599. *Subsection (4)* entitles the Chief Inspector to have access to, inspect or check the operation of any computers (or other apparatus) used to produce the documents which he has the power to inspect, and he may require a person with responsibility for a computer to assist him.
600. Where a computer is kept on domestic premises (for example by an officer of the Service, as defined in section 144(4)), *subsections (5) to (7)* give the Chief Inspector the power to take possession of the computer and retain it for as long as he considers necessary, but then require him to return it.
601. *Subsection (8)* provides that the powers under this section can be exercised at reasonable times only.

Chapter 6 – Further provisions relating to functions of Chief Inspector

Section 146: Inspection of secure training centres

602. This section reproduces provisions in section 112 of the Health and Social Services (Community Health and Standards) Act 2003 (which is repealed by the Act) for the Secretary of State (in practice the Home Secretary) and the Chief Inspector to make arrangements for the inspection of secure training centres. These are centres for offenders under the age of 18 who have been sentenced by a Court to a detention and training order within the meaning of section 100 of the Powers of Criminal Courts (Sentencing) Act 2000. Inspections of secure training centres are currently conducted jointly by CSCI and HM Chief Inspector of Schools in England by agreement with the Youth Justice Board on behalf of the Home Secretary. By virtue of this section, the functions of inspecting secure training centres will become exercisable solely by the Chief Inspector.

Section 147: Inspection of premises in connection with adoption and fostering functions

603. This section re-enacts provision that was formerly in section 45 of the Care Standards Act 2000 and provides a power for the Secretary of State to make regulations requiring the Chief Inspector to inspect relevant functions of a local authority on such occasions or at such intervals as the regulations specify. “Relevant functions” are defined, by reference to Part 3 of the Care Standards Act 2000, as adoption and fostering functions.

Section 148: Transfer of certain CSCI functions to the Chief Inspector

604. This section provides for functions of CSCI under Part 2 of the Care Standards Act 2000 as to the registration of children’s homes, residential family centres, fostering agencies, voluntary adoption agencies, and adoption support agencies, to transfer to the Chief Inspector. The section also provides for the transfer to the Chief Inspector of functions of CSCI under section 65 of the Children Act 1989 (in respect of disqualification from

carrying on a children's home), and sections 87 to 87D of the Act (in respect of the welfare of children in boarding schools, and colleges).

Section 149: Interaction with other authorities

605. This section gives effect to Schedule 13.

Schedule 13: Interaction with other authorities

606. *Paragraph 1* defines the inspection authorities to which this Schedule applies: the five existing criminal justice inspectorates, the Commission for Healthcare Audit and Inspection, CSCI and the Audit Commission. The cooperation arrangements, under paragraph 6, apply to the inspectorates as a whole, whereas the reciprocal arrangements for notification of inspection programmes, under paragraph 4 or 5, apply to the relevant chief inspectors. It is expected that the list will be amended in due course as the Government's policy on public services inspection is implemented and the number of public sector inspectorates reduced. (In due course, similar provisions will appear in legislation establishing the other inspectorates.)
607. *Paragraph 3* gives the Chief Inspector power to delegate any of his inspection functions to a public authority ("public authority" is defined in *paragraph 2*). For example, the Chief Inspector may need to delegate functions to another inspection authority to enable efficient management of a joint inspection.
608. *Paragraph 4 and 5* are designed to ensure that the inspection authorities co-operate, work efficiently together and do not duplicate inspections so as to place unnecessary burdens on those being inspected. Under paragraph 4 the Chief Inspector must prepare from time to time a document setting out his "inspection programme" and his "inspection framework", the latter being a document setting out the manner in which he proposes to carry out his inspection and reporting functions. In preparing his inspection programmes and framework, the Chief Inspector must consult the Secretary of State and the other inspection authorities.
609. Under paragraph 5, if an inspectorate proposes an inspection that the Chief Inspector considers would impose an unreasonable burden on a "specified institution", he must give notice that it should not proceed or should not proceed in the manner proposed. "Specified institutions" will be listed by order but must be services the Chief Inspector inspects or regulates as registration authority. Where such notice has been given, the proposed inspection activity is prevented from taking place or from taking place in the planned manner. However, should the Secretary of State subsequently be satisfied that the proposed inspection would not impose an unreasonable burden or would not do so if carried out in another way, it can proceed. In this way the Chief Inspector will be able to minimise the burdens on institutions for which he has responsibility. The other public service inspectorates will be under similar duties for organisations or institutions they inspect or regulate.
610. *Paragraph 6* requires the Chief Inspector to co-operate with the inspection authorities or another public authority. *Paragraph 7* enables the Chief Inspector to act jointly with another public authority, and *paragraph 8* enables him to provide advice or assistance to other public authorities. *Paragraph 9* allows the Chief Inspector to make arrangements with a public authority to carry out inspections in England, Wales or Northern Ireland.
611. *Paragraph 10* enables the Chief Inspector, with the consent of the Secretary of State, to make charges for acting under paragraph 8 or 9.

Section 150: Evidence of authority

612. Any person who is authorised to exercise a power of entry or inspection on behalf of the Chief Inspector (in accordance with paragraph 9 of Schedule 12: the Chief Inspector

and other inspectors etc.) must, if required to do so, produce evidence of his authority to exercise the power.

Section 151: Publication of inspection reports

613. This section provides that, for the purposes of the law of defamation, a report made by the Chief Inspector is privileged unless shown to have been made with malice. *Subsection (2)* allows a report of the Chief Inspector to be published only by electronic means.

Section 152: Combined reports

614. This section allows the Chief Inspector (to the extent he considers it appropriate) to combine the reports of inspections carried out under two or more of his inspection functions, and to produce them as a combined report. This provision gives the Chief Inspectors and others responsible for making inspection reports the flexibility to merge two or more reports into a single report. For example, when acting under the Childcare Act 2006) he may combine reports of inspections of compulsorily registered early years provision and of compulsorily registered later years provision, or where he carries out education and welfare inspections of an independent school. He can also make a combined report which includes a report made by another person.

Section 153 – Use of information

615. This section enables information obtained in connection with one of the Chief Inspector's functions to be used in connection with any other of his functions. The section will assist the Chief Inspector in reducing bureaucracy through not making duplicate requests for information; for example, not asking both schools and local authorities for the same information when undertaking his inspection functions.

Chapter 7 – Miscellaneous and supplementary

Section 154: Duty to report on contribution of certain schools to community cohesion

616. This section adds to the six areas currently covered by inspection reports under section 5 of the 2005 Act an additional element covering community cohesion. Inspection reports under that section will now need to cover:
- (a) the quality of the education provided in the school,
 - (b) how far the education provided in the school meets the needs of the range of pupils,
 - (c) the educational standards achieved in the school,
 - (d) the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed effectively,
 - (e) the spiritual, moral, social and cultural development of the pupils at the school,
 - (f) the contribution made by the school to the well-being of those pupils, and
 - (g) the contribution made by the school to community cohesion.

Section 155: Payment of annual fee to the Chief Inspector by local authorities

617. This section re-enacts provision that was formerly contained in section 51 of the Care Standards Act 2000. The Secretary of State may make regulations requiring a local authority in England to pay a fee to the Office in respect of its "relevant functions". The Chief Inspector may make a scheme setting the fee level for periods when no regulations made by the Secretary of State are in force. The section is intended to place local authorities on the same footing as independent providers of such services.

“Relevant functions” are defined in Part 3 of the Care Standards Act 2000 as adoption and fostering functions. “Local authority in England” is defined in Section 159.

Section 156: Removal of HMICA’s duty to inspect performance of Assembly’s functions relating to family proceedings

618. This section repeals section 38 of the Children Act 2004. Accordingly it removes the duty on HMCI to inspect and report on the carrying out of the functions of the National Assembly for Wales in respect of family proceedings (pursuant to section 35 of the Children Act 2004) when requested to do so by the National Assembly for Wales. It is expected that, in practice, the Social Services Inspectorate Wales (a part of the National Assembly for Wales) will undertake inspection of those functions.

Section 157: Minor and consequential amendments

619. This section gives effect to Schedule 14.

Schedule 14: Minor and consequential amendments relating to Part 8

620. This Schedule makes consequential amendments, chiefly to provide for the Chief Inspector to take over functions of CSCI (in relation to children’s social care), ALI and HMICA (in relation to the inspection of CAFCASS).
621. For example, the Care Standards Act 2000 is amended with the effect that CSCI remains the registration authority under Part 2 of that Act in respect of care homes, domiciliary care agencies, and nurse agencies and the Chief Inspector becomes the registration authority in respect of children’s homes, residential family centres, fostering agencies, voluntary adoption agencies, and adoption support agencies.
622. The Health and Social Care (Community Health and Standards) Act 2003 is amended with the effect that CSCI is to be responsible for reviews and investigations of English local authority social services so far they are not inspected by the Chief Inspector under Chapter 4 of this Part of this Act.

Section 158: Transitional provisions

623. This section gives effect to Schedule 15.

Schedule 15: Transitional provisions relating to Part 8

624. *Paragraph 1* contains a power for the Secretary of State to make a scheme for staff of the ALI and the CSCI (who are not currently civil servants) to become staff of the Office. The Schedule provides that the scheme may contain provisions as to continuity of employment.
625. *Paragraph 2* contains a power for the Secretary of State to make a property transfer scheme, transferring to the Office or the Chief Inspector any property, rights and liabilities of the existing HM Chief Inspector of Schools, the Secretary of State, the Lord Chancellor, ALI or CSCI. Sub-paragraph (2) allows for the possibility of property, rights and liabilities of the ALI being transferred to a person other than the Office or the Chief Inspector.
626. *Paragraph 5* allows a scheme to contain supplementary, incidental, transitional or consequential provision.
627. *Paragraph 7* allows for the Office and HM Chief Inspector of Schools to prepare for the exercise of the Chief Inspector’s functions of the Office under this Part. The Office may be established before the Chief Inspector acquires his functions under this Part and other enactments. The Secretary of State may make regulations which confer functions on the Office and HM Chief Inspector of Schools in England in respect of the period

from the establishment of the Office to the day on which the Chief Inspector acquires his functions.

Section 159: Interpretation of Part 8

628. This section defines various expressions for the purposes of Part 8. In particular, it defines the local authorities in England to which the Part applies. They are county councils, and those “unitary” authorities in England which have education and children’s services functions and certain functions under the Children Act 2004.

Part 9: Miscellaneous

Section 160: Power of Chief Inspector to investigate complaints by parents about schools

629. This section inserts three new sections into the 2005 Act in relation to the powers of the Chief Inspector.
630. Section 11A enables the Chief Inspector to investigate certain written complaints (“qualifying complaints”) about matters of a prescribed description relating to schools, for the purpose of deciding whether to take further action, and in particular whether to use his existing inspection functions. The schools which are covered are: community, foundation and voluntary schools; community and foundation special schools; maintained nursery schools; Academies; city technology colleges; city colleges for the technology of the arts; and special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the 1996 Act.
631. Section 11B applies to qualifying complaints made by registered parents of registered pupils at a school. It requires the governing body of a school (which, for a non-maintained school, is the proprietor of the school for the purposes of this section) and/or local education authority, in the case of a maintained school, to make specified information and other information relevant to the investigation available to the Chief Inspector on request.
632. *Subsections (4) and (5)* require the Chief Inspector, where he decides to hold a meeting with parents, to notify the governing body of the school (as defined), or, where the school is a maintained school which does not have a delegated budget, the local education authority. The governing body or local education authority (as appropriate) is required to co-operate in arranging the meeting, including fixing a date for the meeting, allowing for the meeting to take place on the school’s premises and notifying parents of the meeting.
633. *Subsection (6)* enables a representative of the governing body (as defined), and in the case of a maintained school, a representative from the local education authority, to attend the meeting.
634. Section 11C makes provisions relating to the preparation and distribution of any report made by the Chief Inspector as a result of an investigation of a qualifying complaint under section 11B.

Section 161 and Schedule 16: Powers to facilitate innovation

635. This section introduces *Schedule 16*.
636. Part 1 of Chapter 1 of the 2002 Act introduced a new power for the Secretary of State, or the National Assembly for Wales, to respond to an application by a qualifying body by making an order conferring an exemption or relaxing requirements, or modifying education legislation, for a period of up to three years. The order enables innovative projects which in the opinion of the Secretary of State or National Assembly for Wales may contribute to raising educational standards achieved in England and Wales.

637. *Paragraph 1* of Part 1 of Schedule 16 has the effect of extending those eligible to apply for an order to include a governing body of a further education institution, a foundation (as defined by section 21(3)(a) of the 1998 Act), including foundations acquired in accordance with the provisions of Part 2 of the Act, and, with the agreement of the relevant school governing body, a headteacher. Paragraph 1(4)(b) adds a technical amendment to describe the qualifying body of an Academy, a city technological college or a city college for the technology of the arts as the proprietor. All other amendments in paragraph 1 are consequent upon these changes.
638. *Paragraph 2(2)* amends section 2 in respect of applications by foundations to allow the order to change law which relates to the governing bodies of the relevant schools.
639. The duration of the power is currently limited to 4 years from commencement (and was commenced in relation to England on October 1st 2002). *Paragraph 2(3)* removes this restriction.
640. *Paragraph 3(3)* requires that a headteacher of a maintained school obtains the consent of the governing body of the school to his application.
641. *Paragraph 3(4)* has the effect of ensuring that a qualifying foundation cannot make an application unless the governing body of each school to which the application relates and the local education authority who maintain the school have been consulted and that, where an application is to be made by the governing body of a maintained school that is a foundation or foundation special school with a foundation, the qualifying foundation has been consulted.

Section 162: Power to repeal references to "local education authority" and "children's services authority" etc.

642. This section gives the Secretary of State and the National Assembly for Wales, subject to the procedural requirements and limitations set out in the section, a power by order to repeal references in primary and secondary legislation to the terms "local education authority" and "children's services authority". The power will enable the Secretary of State or the Assembly to replace such references with references to a local authority, or to make other appropriate modifications to the references.
643. Such modifications might include modifications to legislation requiring local authorities to consult or cooperate with local education authorities, depending, for example, on whether or not the local authorities and local education authorities concerned were intended to be one and the same authority, or different authorities within two-tier areas, or neighbouring authorities; or the repeal of provisions that are spent or have ceased to be of any practical utility.
644. The Secretary of State's power can, with the consent of the Assembly, cover references to local education authorities and children's services authorities so far as those references relate to Wales. The Assembly's concurrent power can only cover references to local education authorities and children's services authorities so far as those references relate to Wales.
645. County level and unitary authorities provide children's services, and are subject to the provisions of the Children Act 2004 in relation to the designation of a lead member for children's services and the appointment of a Director of Children's Services. Such authorities are referred to in the Children Act 1989 as "local authorities" and in the Children Act 2004 as "children's services authorities". The same authorities have responsibilities relating to education and, in the context of education, are "local education authorities". This section is therefore intended to enable the completion of the statutory measures to facilitate the integration of children's services in local authorities.

Section 163: Provision of advice by adjudicator

646. This section amends section 25 of the 1998 Act. New *subsection (3A)* requires an adjudicator to provide, on request by the Secretary of State, advice on such matters relating to the admission of pupils to relevant schools as may be specified by the Secretary of State. New *subsection (3B)* allows the adjudicator to request information from the admission authorities of community, foundation or voluntary schools and the proprietors of other relevant schools so as to enable the adjudicator to comply with the Secretary of State's request under *subsection (3A)*. New *subsection (3C)* requires those from whom the adjudicator requests information under *subsection (3B)* to provide that information.
647. New *subsection (3D)* defines relevant schools for the purpose of *subsections (3A) and 3(B)* as schools falling within section 5(2)(a) to (f) of EA 2005 (that is, community, foundation and voluntary schools, community and foundation special schools, maintained nursery schools, Academies, city technology colleges and city colleges for the technology of the arts).

Section 164: Provision of information about children receiving funded education outside school

648. This section will enable the Department for Education and Skills to collect individual information about children receiving education funded by the local education authority otherwise than at a school (which includes children in hospital and those taught by voluntary providers).
649. The section inserts a new section 537B in the 1996 Act. This mirrors section 537A of the 1996 Act which provides for the same data to be collected for children educated in schools.
650. *Subsections (1) and (2)* of the inserted section allow regulations to be made requiring prescribed information relating to children for whom such education is provided to be provided by the education provider to the Secretary of State, or another prescribed person as defined in regulations. Provision is also made for the disclosure by the Secretary of State and certain other persons of information relating to children for whom such education is provided. *Subsection (7)* prohibits the publication of information received as a result of the section in a form including the name of the child to which it relates.
651. The main purpose of collecting the information provided for by this section is to enable the Department for Education and Skills to allocate funding to local education authorities more accurately following the introduction of the ring-fenced Dedicated Schools Grant from April 2006: information for these groups has previously been collected only on an aggregate basis, which is less reliable than using individual level data.

Section 165: Power of members of staff of further education institutions to use force

652. This section inserts new section 85C into the Further and Higher Education Act 1992 and extends the power to use reasonable force to members of staff at institutions within the further education sector, in order to prevent a student at the institution from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at the institution.
653. *Subsection (1)* of the inserted section 85C enables a member of staff to use reasonable force in certain defined circumstances: to prevent an offence or the continuation of one; to prevent personal injury or damage to the property of any person (including the student himself); and to prevent anything which prejudices the maintenance of good order and discipline at the institution. Thus, for example, reasonable force (such as leading by

the arm) might be used to enforce an instruction for a student to leave a class room (in circumstances where any of paragraphs (a) to (c) of *subsection (1)* apply).

- 654. *Subsection (2)* provides that the power may be exercised only when both the member of staff and the student are on the premises of the institution or in other situations where the member of staff has lawful control or charge over the student involved (for example on a field trip).
- 655. *Subsection (3)* makes it clear that *subsection (1)* does not legitimise corporal punishment.
- 656. *Subsection (4)* has the effect that the power provided by *subsection (1)* does not remove any power that members of staff may have in addition to the powers conferred by the section. These include the common law rights of self-defence.
- 657. *Subsection (5)* contains a definition of “member of staff” for the purposes of the section.

Section 166: Collaboration arrangements: maintained schools and further education bodies

- 658. This section provides that regulations may enable the governing bodies of maintained schools to make collaboration arrangements with further education bodies, and further education bodies to make collaboration arrangements with schools and with other further education bodies. It will sit alongside the provisions of section 26 of the 2002 Act governing collaboration amongst maintained schools only.
- 659. *Subsection (2)* defines “collaboration arrangements” as arrangements for any of the functions of any of the bodies concerned to be discharged jointly or by a joint committee of the bodies.
- 660. *Subsections (3) and (4)* provide that regulations may make particular provision about the constitution and procedure of joint committees of the collaborating bodies, and the functions of collaborating bodies that may be discharged jointly or by joint committees.
- 661. *Subsection (5)* provides that regulations may modify any legislation relating to the functions of the collaborating bodies, or relating to the bodies by whom those functions are to be discharged, in its application to those functions or bodies.
- 662. *Subsection (6)* contains definitions of “further education body” and “maintained school” for the purposes of the section.

Section 167: Consultation with young pupils

- 663. *Section 167* amends section 176 of the 2002 Act which requires local authorities and governing bodies of maintained schools to have regard to any guidance issued by the Secretary of State about consultation with pupils on decisions affecting them. The amendment to section 176 adds maintained nursery schools to the schools to which the section applies, and deletes the definition of pupil which excluded a child being provided with nursery education.

Section 168: Maintained nursery schools: amendment of sections 496 and 497 of EA 1996

- 664. The 2002 Act required maintained nursery schools to have governing bodies from 1 September 2003 for the first time. Prior to that, the governance of such schools was covered by the functions of local education authorities. However, sections 496 and 497 of the 1996 Act were not amended by the 2002 Act to apply to these new governing bodies. This section therefore puts the governing bodies of maintained nursery schools on a similar footing to the governing bodies of other maintained schools by making it possible for the Secretary of State or the National Assembly for Wales to issue a direction under section 496, or make an order under section 497, if the governing bodies

of maintained nursery schools are unreasonably exercising, or are in default with regard to, their functions.

Section 169: Prohibition on participation in management of independent school

665. **Section 169** inserts new sections 167A to 167D into Part 10 of the 2002 Act (Independent Schools). These sections prohibit or restrict unsuitable persons from taking part in the management of independent schools.
666. Section 167A provides for an appropriate authority to direct that a person be prohibited from taking part in the management of an independent school. The appropriate authority may also direct that a person may take part in the management of an independent school only in specified circumstances or if certain specified conditions are met. *Subsection (2)* of section 167A provides that a direction may only be made on a ground or grounds, which will be prescribed, connected with the suitability of the person to take part in the management of such a school. *Subsection (3)* provides that regulations may prescribe the procedure for making such a direction.
667. *Subsection (6)* of section 167A defines the appropriate authority in respect of both England and Wales. In both cases the appropriate authority will be the registration authority for the purposes of the register of Independent Schools (the Secretary of State in the case of England, or the National Assembly for Wales) or such other public authority as may be prescribed.
668. *Subsections (4) and (5)* of section 167A provide a power for the appropriate authority to vary or revoke a direction on grounds which may be prescribed.
669. Section 167B provides a right of appeal to the tribunal established under section 9 of the Protection of Children Act 1999, the Care Standards Tribunal. A person may appeal against a direction and a refusal to vary or revoke the direction in question. *Subsection (2)* allows regulations to prescribe the circumstances in which the Tribunal must allow an appeal and the powers available to the Tribunal on allowing such an appeal. Regulations may also provide that the Tribunal cannot entertain an appeal in circumstances where the appellant's case would be inconsistent with his previous conviction of an offence.
670. Section 167C provides powers for the exchange of information between relevant bodies in connection with the direction making power contained in section 167A. *Subsection (1)* allows the Secretary of State to provide to the appropriate authority information which he holds in connection with certain of his functions relating to the protection of vulnerable persons under the Protection of Children Act 1999, the Care Standards Act 2000 and the 2002 Act. The Secretary of State may also pass to the appropriate authority information held in connection with his function as the registration authority for Independent Schools in England. *Subsection (2)* similarly allows the National Assembly for Wales to provide to the appropriate authority information it holds in connection with its functions as the registration authority for Independent Schools in Wales.
671. *Subsection (3)* of section 167C permits the Independent Barring Board (created by the Safeguarding Vulnerable Groups Act 2006) to provide information to the appropriate authority. *Subsection (4)* permits the appropriate authority to share information it holds in connection with its functions with the Independent Barring Board, the General Teaching Council for England, the General Teaching Council for Wales, the Secretary of State and the National Assembly for Wales.
672. Section 167D sets out the notification requirements on the appropriate authority where a direction is made, varied or revoked. *Subsection (1)* provides that where the appropriate authority for England makes a relevant decision, it must notify the registration authority for England (unless the appropriate authority is the registration authority by virtue of section 167A(6)) and ensure that the appropriate and registration authorities for Wales

are notified of the decision. *Subsection (2)* imposes similar notification requirements on the appropriate authority for Wales where it makes a relevant decision. The authority must ensure that the registration authority for Wales and the appropriate and registration authorities for England are notified of the decision.

Section 170: Prohibition on participation in management: supplementary

673. *Section 170* makes supplementary provisions in connection with the direction making powers conferred by section 168.
674. *Subsection (1)* amends Section 169 of the 2002 Act, which makes provision for the circumstances in which the employment or use in an independent school of unsuitable persons might lead to an independent school being removed from the register maintained under section 158 of the 2002 Act. The amendment made by *subsection (1)* provides a power to prescribe the type of work carried out by staff which would engage the de-registration power. *Subsection (1)* also provides a power to prescribe, in respect of such persons, the orders, directions and decisions (and the enactments from which they derive) to which the person must be subject in order for him to be considered unsuitable for the purposes of the de-registration power contained in section 169 of the 2002 Act.
675. *Subsection (2)* amends section 113BA of the Police Act 1997, which sets out the suitability information relating to children which will be provided, in prescribed cases, to applicants for an enhanced Criminal Records Certificate. *Subsection (2)* provides that an enhanced CRB disclosure will include information about whether the applicant is subject to a direction prohibiting or restricting his participation in the management of an Independent School.
676. *Subsection (3)* amends section 9 of the Protection of Children Act 1999. The amendment inserts the new right of appeal (created by section 167B) against a decision to make, vary or revoke a direction into the list of appeals in respect of which provision can be made in Regulations about the proceedings of the Care Standards Tribunal.

Section 171: Prohibition on participation in management; transitional provisions.

677. *Section 171* contains transitional provisions connected with the powers to prohibit unsuitable persons participating in the management of an independent school. *Subsections (1) and (2)* provide for a direction given under section 142 of the 2002 Act (Prohibition from teaching etc), which is repealed by the Safeguarding Vulnerable Groups Act 2006, to be treated for certain purposes as if it were a direction made by the appropriate authority under section 167A. These transitional arrangements will apply to any person who, on a relevant day (the date on which section 167A comes into force), was subject to a direction under section 142 of the 2002 Act and meets conditions which will be prescribed in regulations.
678. *Subsections (3) and (4)* provide a power for regulations to make provision concerning any outstanding appeals or applications for reviews made by a person subject to the transitional arrangements set out above. In particular, regulations may provide that an outstanding appeal or application for review may be treated as an appeal to the Care Standards Tribunal under the appeal provisions contained in section 167B.

Section 172: Offences relating to independent schools.

679. *Section 172* amends Part 10 of the 2002 Act (Independent Schools). *Subsection (2)* inserts new sections dealing with offences committed in connection with independent schools.
680. Section 168A provides for the consent of the registration authority for independent schools (the Secretary of State in the case of England, or the National Assembly for Wales) to be obtained before any proceedings for offences committed under Part 10

of the 2002 Act are brought. Alternatively, the registration authority may institute such proceedings. *Subsection (3)* of section 172 repeals the requirement contained in section 159(3) of the 2002 Act to obtain the registration authority's consent before proceedings are brought.

681. Section 168B provides that proceedings may be brought against senior officers of a body corporate where an offence has been committed by the body under Part 10 of the 2002 Act and certain other requirements are met. In particular, *subsection (1)* provides that where it can be shown that any director, manager, secretary, or person holding a similar position (or person purporting to act in such a capacity) consented or connived in the commission of the offence, or where the offence can be attributed to an act of negligence on the part of such a person, the person in question is also guilty of the offence and may be prosecuted accordingly. *Subsection (2)* provides that subsection (1) applies in relation to the acts and omissions of a body corporate's members where the body corporate is managed by its members.
682. Section 168C provides for the prosecution of offences committed by an unincorporated body. *Subsection (1)* provides that any proceedings against such a body are to be brought in the name of the body (and not its individual members) and, for the purposes of the proceedings, the court rules are to apply as if the body were a corporation. Accordingly, members are not to be served individually. *Subsection (3)* also provides that certain statutory provisions which may apply in connection with such proceedings are to apply as if the body were a corporation. *Subsection (2)* provides that any fine imposed as a result of such proceedings are to be paid out of the funds of the unincorporated body.
683. *Subsection (4)* makes similar provisions to those contained in section 168B in connection with the officers or members of an unincorporated body where an offence is committed by that body. Therefore, where it can be shown the offence was committed with the consent or connivance of the person, or where the offence is attributable to an act of negligence by that person, he may also be guilty of the offence. *Subsection (4)* makes similar provisions in respect of partners where an offence is committed by a partnership.
684. *Subsection (4)* of section 172 provides that sections 168B and 168C do not apply in relation to offences committed before section 172 comes into force.

Section 173: Special educational needs co-ordinators

685. This section amends section 317 of the 1996 Act, which imposes duties on the governing bodies of community, foundation or voluntary schools, as well as maintained nursery schools, in relation to pupils with special educational needs. The new subsection (3A) places a duty on those governing bodies to designate a member of the school staff as the person responsible for co-ordinating provision for children with special educational needs at the school (the special educational needs co-ordinator or SENCO). It also gives the Secretary of State power at new *subsection (3B)* to make regulations requiring governing bodies to ensure the special educational needs co-ordinators have certain experience or qualifications or both, and to confer other functions on these governing bodies relating to special educational needs co-ordinators.

Section 174: Time limits relating to statements of special educational needs

686. This section amends Schedules 26 and 27 of the 1996 Act to make further provision about the circumstances in which regulations may prescribe time-limits within which local education authorities must take certain steps in connection with assessments and statements of special educational needs.

Section 175: Miscellaneous amendments relating to schools in Wales

687. This section introduces Schedule 17 which contains minor amendments relating to schools in Wales.

Section 176: Support schemes relating to education and training for persons aged 10 to 15

688. This section confers on the Learning and Skills Council for England (LSC) a power to manage and fund particular types of support for learners aged between 10 and 15, for the purpose of encouraging them to undergo education and training. This will allow the DfES to continue the transfer of the management of learner support to the LSC as recommended in the Department's efficiency scrutiny.
689. Examples of provision that may be made by the LSC include support for childcare under the Care to Learn scheme. The Care to Learn scheme is a Departmental scheme to give financial support to teenage parents who want to continue their education or training and need help with the cost of their childcare. Responsibility for managing this scheme has already transferred to the LSC for young parents aged 16 to 18 and it is considered important for the scheme to be managed as a single and efficient scheme to offer support to return to learning to all young parents under 19. Provision in respect of learners aged under 16 is currently made by the Secretary of State under sections 14 to 17 of the 2002 Act.
690. It is also expected that the LSC will be involved in arranging other types of learner support including transport for students under 16 who are following a mixture of academic education and vocational training in further education institutions.

Section 177: University bodies: amendments of section 29 of Leasehold Reform Act 1967

691. The Leasehold Reform Act 1967 enables tenants of houses held on long leases at low rents to acquire the freehold or an extended lease of those houses. Section 29 of the 1967 Act enables university bodies who are landlords, on the acquisition of the freehold by, or the granting of an extended lease to, a tenant, to impose with the consent of the Secretary of State or the National Assembly for Wales (as the case may be) restrictive covenants on tenants for the purpose of reserving the relevant land for possible development by that body or a related university body.
692. "University body" and "related university body" are defined in section 28 of the 1967 Act and include bodies such as universities and colleges of a university.
693. This section amends section 29 of the Leasehold Reform Act 1967 so that university bodies will be able to impose covenants without needing first to obtain the consent of the Secretary of State or the National Assembly for Wales. The amendments also make clear that such covenants can only be imposed for the purposes of the university body concerned or any related university body.
694. The Secretary of State or National Assembly for Wales' consent will still need to be obtained in respect of applications not determined at the date on which this section comes into force: see *subsection (4)*.

Part 10: General

695. This Part contains general provision including those relating to the functions of the National Assembly for Wales, subordinate legislation, general interpretation, repeals, commencement and extent.

Section 178: Framework power relating to Wales

696. The purpose of this section has its foundation in the principles set out in the Wales Office's White Paper: *Better Governance for Wales* (Cm 6582), which was presented to Parliament on 15th June 2005. The White Paper contains the Government's proposals for developing the devolution settlement in Wales. It confirms that the Government intends immediately in drafting primary legislation relating to Wales "...to delegate

to the Assembly maximum discretion in making its own provisions using secondary legislative powers" (see paragraph 1.24).

697. This section permits the National Assembly for Wales to make regulations applying to Wales in respect of: categories of maintained school; establishment, discontinuance and alteration of maintained schools; school admissions; the curriculum in maintained schools; attendance, discipline and exclusion; entitlement to education and training, and services to encourage, support or assist young people with regards to education and training; travel of persons receiving education and training; and food and drink provided for children.
698. *Subsection (1) (a) to (j)* permits the National Assembly for Wales to make regulations for a range of matters which are relevant to education and training in Wales. The scope of the powers is broad to allow the Assembly to determine arrangements that are most relevant to its policies and plans for education and training in Wales.
699. *Subsection (1)(a) and (b)* permits the Assembly to make provision about the organisation of maintained schools and *subsection (1)(c)* permits the Assembly to make provision about the admission of pupils to maintained schools.
700. *Subsection (1)(d)* permits the Assembly to make provision about the curriculum in maintained schools.
701. *Subsection (1)(e) and (f)* permits the Assembly to make provision about a range of matters relating to school attendance, discipline and behaviour and putting in place educational provision for excluded pupils.
702. *Subsection (1)(g)* permits the Assembly to make provision about entitlement to education and training and *subsection (1)(h)* permits provision to be made for services to encourage people to participate effectively in education and training, take advantage of employment opportunities and participate effectively in their communities.
703. *Subsection (1)(i)* permits the Assembly to make provision about travel for persons receiving primary, secondary, or further education or training, to and from schools or other places where they receive education or training.
704. *Subsection (1)(j)* permits the Assembly to make provision about food and drink consumed by children in schools and day care.
705. *Subsection (4)* establishes that regulations made by the National Assembly for Wales under this Section may include any provision that could be made by an Act of Parliament. *Subsection (5)* ensures that the provision made by the regulations could include the amendment or repeal of provisions of the Act relating to Wales.

Section 179: Restrictions on framework power conferred by section 178

706. This section places restrictions on section 178.
707. *Subsection (1)* places a number of restrictions on the National Assembly for Wales in exercising its power under section 178. The Assembly cannot:
- make any provision imposing or increasing taxation;
 - give any of the provisions in the regulations retrospective effect;
 - sub-delegate the power to legislate;
 - create any new criminal offence, other than summary offences in relation to the matters mentioned in section 178(1)(e);
 - make provision extending otherwise than to England and Wales; or

- make any provision which applies to England, without the consent of the Secretary of State.
708. *Subsection (2)* authorises the modification of existing delegated powers to legislate despite the restriction on the sub-delegation of power in *subsection (1)(c)*. *Subsection (3)* provides that a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of *subsection (1)(c)*. *Subsection (4)* authorises the modification of existing offences despite the restriction on the creation of new offences in paragraphs (d) and (e) of *subsection (1)*. *Subsections (5) and (6)* place restrictions on the powers in *subsections (1)(e) and (1)(h)* of section 178 so that the consent of the Secretary of State is required before the Assembly can make regulations about the specified matters (which are the general responsibility of the Home Office in relation to Wales). *Subsection (7)* places a restriction on the power conferred on the National Assembly by *subsection (1)(i)* the effect of which is that it cannot make regulations about matters for which the Department for Transport is currently responsible in relation to Wales.

Section 180: Functions to be exercisable by National Assembly for Wales

709. Most of the functions of the Secretary of State under education legislation have, so far as they relate to Wales, been transferred to the National Assembly for Wales by Order in Council under section 22 of the [Government of Wales Act 1998 \(c. 38\)](#). Textual amendments to reflect this have not always been made to the legislation. Some legislation therefore continues to refer to the Secretary of State only, but references to the Secretary of State have to be read, in relation to Wales, as references to the National Assembly for Wales.
710. This section ensures that any functions conferred on the Secretary of State under the sections listed in *subsection (2)* so far as exercisable in relation to Wales are taken to have been transferred to the Assembly by such an Order.

Section 183: Power to make consequential and transitional provision etc.

711. This provision enables the Secretary of State by regulations to make such supplementary, incidental, consequential, transitional or saving provision as he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of the Act.
712. Where such regulations made by the Secretary of State amend or repeal primary legislation, they require approval by resolution of each House of Parliament (see section 182(3)(c)).