

# APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9: Children's Services**

#### **Co-operation to improve well-being of children**

#### *Section 193: Arrangements to promote co-operation*

573. Section 10 of the Children Act 2004 ("the 2004 Act") requires each children's services authority to make arrangements to promote co-operation between the authority itself, its relevant partners and such other persons or bodies as it considers appropriate, to improve the well-being of children. These arrangements are commonly known as "Children's Trusts". This section amends section 10 to include new "relevant partners" who must co-operate with the local authority in the making of arrangements under that section. It also allows those bodies more flexibility over how they share resources and pool funds.
574. *Subsection (2)* amends section 10(4) of the 2004 Act to set out the additional "relevant partners". The effect is to provide for an authority's "relevant partners", for the purposes of section 10 arrangements, to include the governing bodies of maintained schools and further education institutions (including sixth form colleges), and proprietors of non-maintained special schools, city technology colleges, city colleges for the technology of arts and Academies. The Government intends, also, to provide for pupil referral units to be "relevant partners" for the purposes of section 10 arrangements, by way of regulations to this effect under Schedule 1 to the Education Act 1996. The inclusion of the Secretary of State's functions under section 2 of the Employment and Training Act 1973 refers to Jobcentre Plus. The objective behind the amendments is to give the new "relevant partners" a stronger voice within the arrangements made under section 10 to improve children's well-being, greater influence over the local strategic direction taken, and better support from other partners.
575. *Subsection (3)* amends section 10 of the 2004 Act to allow a children's services authority and its relevant partners to provide staff and other resources to each other, to another local authority or to the relevant partners of another local authority for the purposes of arrangements made under section 10 (new section 10(5A)(a)).
576. *Subsection (3)* also amends section 10 of the 2004 Act so as to permit children's services authorities and their relevant partners, for the purposes of arrangements under section 10, to pay money into a pooled fund. This fund may be used by any of the contributors in respect of their functions. This will permit multiple local authorities and/or their relevant partners to pool funds for the purposes of section 10 arrangements.
577. *Subsection (4)* repeals subsections (6) and (7) of section 10 of the 2004 Act as these are replaced with new subsection (5A).

578. *Subsection (5)* inserts new subsections (10) and (11) into section 10 of the 2004 Act. New subsection (10) will require a children's services authority and the governing body of a further education institution (FEI) which is spread over several sites to have regard to the Secretary of State's guidance when determining of which authority the FEI will be a "relevant partner".
579. New *subsection (11)* defines key terms used in the amendments to section 10 of the 2004 Act.

### ***Section 194: Children's Trust Boards***

580. This section requires children's services authorities, as part of the arrangements made under section 10 of the 2004 Act, to set up Children's Trusts Boards ("CTBs"). The section also transfers to CTBs the duty currently imposed on children's services authorities to prepare and review a Children and Young People's Plan ("CYPP").
581. *Subsection (2)* inserts new section 12A into the 2004 Act. This new section requires each children's services authority in England to establish a CTB for its area as part of the arrangements made under section 10 of the 2004 Act. The CTB must include representatives of the authority and of its "relevant partners", unless they are "relevant partners" of a type prescribed in regulations (subject to the negative resolution procedure) as not needing to be included on the CTB (subsection (4) of new section 12A). The Government's intention is that a description of relevant partner might be prescribed in regulations under subsection (4) if circumstances made it unlikely that they could easily take on the more strategic and involved role of member of a CTB. For example, a body that is more regional than local would not be well placed to be a member of all the CTBs its region covered. The CTB may also include other persons or bodies that the authority thinks appropriate following consultation with its relevant partners (subsection (3) of new section 12A). Subsection (5) of new section 12A allows one or more people to represent more than one CTB member or group of CTB members.
582. The effect of subsection (1)(a) of new section 12B of the 2004 Act (inserted by subsection (2)) is that a CTB's functions are those of preparing, publishing and reviewing the CYPP, and monitoring and reporting annually on the extent to which CTB members are acting in accordance with strategies for cooperation set out in the CYPP (see new sections 17 and 17A of the 2004 Act, as inserted by *subsection (3)*). New section 12B(1)(b) creates a power for the Secretary of State to confer further functions on CTBs by regulations subject to affirmative resolution.
583. Subsection (2) of new section 12B of the 2004 Act requires that any function conferred by the Secretary of State under subsection (1)(b) must relate to improving the well-being of children and relevant young persons in the local area. "Well-being" in this context is defined in subsection (3) as well-being relating to one or more of the five Every Child Matters outcomes listed in section 10(2)(a) to (e) of the 2004 Act. Subsection (4) of new section 12B requires CTBs to have regard to guidance issued by the Secretary of State relating to CTB procedures and the exercise of their functions.
584. Subsection (5) of new section 12B defines "relevant young persons", referring back to section 10 of the 2004 Act. The term "relevant young persons" includes people aged 18 and 19, care-leavers over the age of 19, and people over the age of 19 but under the age of 25 who have a learning difficulty within the meaning of section 13 of the Learning and Skills Act 2000 and who are receiving services under that Act.
585. New section 12C (inserted by *subsection (2)*) sets out the arrangements for the provision of funds and resources relating to the work of a CTB. It also allows two or more CTBs to pool funds for the purposes of their work.
586. New section 12D requires the members of a CTB to provide information to the CTB, if requested to do so for the purpose of enabling or assisting the CTB to perform its functions.

587. Subsection (3) replaces section 17 of the 2004 Act (which places responsibility for preparing and publishing a CYPP on a children's services authority) with a new section 17 (which places responsibility for preparing and publishing a CYPP on a CTB), and adds a new section 17A (which makes provision about the implementation and monitoring of a CYPP).
588. Subsection (1) of new section 17 provides a power for the Secretary of State, through regulations, to require a CTB to prepare and publish a CYPP. The CYPP must set out the CTB members' strategy for co-operating with each other in order to improve the well-being of local children and young people (subsection (2)). The Government intends that regulations made under new section 17 will broadly mirror the structure of the regulations made under the existing section 17, and that the CYPP will continue to be the single strategic overarching plan for all local services for children and young people. However, the new regulations will apply to the whole CTB and not, as is currently the case, only to the local authority. The regulations will be subject to the negative resolution procedure.
589. Subsection (3) of new section 17 defines "well-being" as relating to the five Every Child Matters outcomes as set out in section 10(2) of the 2004 Act:
- physical and mental health and emotional well-being;
  - protection from harm and neglect;
  - education, training and recreation;
  - the contribution made by them to society;
  - social and economic well-being.
590. Subsection (4) of new section 17 provides for regulations to cover the preparation, consultation, publication, review and revision of the CYPP. The regulations will cover matters to be dealt with in the plan and may additionally be used to require CTB members to set out their resourcing and budgetary commitments to meet the priorities of the plan. Under current CYPP regulations only the local authority must state how its budget will be used to contribute to improved outcomes.
591. Subsection (5) of new section 17 ensures that the CYPP also covers those young people who are included in arrangements made under section 10 of the 2004 Act. These are persons aged 18 and 19, persons over 19 receiving services as care leavers under the Children Act 1989 and persons over 19 but under 25 who have a learning difficulty within the meaning of section 13 of the Learning and Skills Act 2000 and who are receiving services under that Act.
592. New section 17A of the 2004 Act introduces a new statutory requirement for the members of a CTB to "have regard" to the CYPP prepared by the CTB when they exercise their functions (subsection (2)). Currently, "relevant partners" under section 10 of the 2004 Act, for example PCTs and police authorities, are not required to have regard to the CYPP. Extending the duty to have regard to the CYPP brings the "relevant partners" represented on the CTB in line with maintained schools which under section 38 of the Education and Inspections Act 2006 are already placed under a duty to "have regard" to the CYPP.
593. Monitoring the CYPP will form an integral part of the CYPP's development and implementation. Subsection (3) of new section 17A requires the CTB to monitor its members' progress in implementing the CYPP and to prepare and publish an annual report on the extent to which CTB members have acted in accordance with the strategies set out in the CYPP. The Government intends to issue statutory guidance under new section 12B(4) to outline what processes should be undertaken in monitoring the plan following implementation.

594. *Subsection (4)* amends subsection 18(2) of the 2004 Act to ensure that the new functions relating to CTBs and CYPPs are added to the list of functions of a Director of Children's Services.
595. *Subsection (5)* extends the meaning of the term "children's services" used in sections 20-22 of the 2004 Act to include the functions and procedures of CTBs (including all functions in relation to the preparation and review of the CYPP, and CTB members' compliance with the CYPP), the funding of CTBs and supply of information to CTBs. Sections 20-22 of the 2004 Act address the joint inspection of children's services. By expanding the meaning of the term "children's services", this subsection ensures that the CTB-related activities listed may be inspected under an inspection of children's services.
596. *Subsection (6)* extends the list of relevant functions of a children's services authority, for the purposes of section 50 of the 2004 Act, to include the funding of CTBs, the supply of information to CTBs and the need to have regard to the CYPP when exercising its functions. Section 50 addresses the powers of the Secretary of State to intervene in children's services authorities. By expanding the list of functions, this subsection allows the Secretary of State to intervene in children's services authorities in connection with their CTB and CYPP activities described above.
597. *Subsection (7)* amends subsection 66(3) of the 2004 Act with the effect that any regulations produced under new section 12B(1)(b) (conferring further functions on CTBs) must be subject to the affirmative resolution procedure.
598. *Subsection (8)* adds to section 47A of the School Standards and Framework Act 1998 to place a duty on schools forums to have regard to the CYPP produced by their local CTB.
599. *Subsection (9)* amends section 21 of the Education Act 2002, which states that the governing bodies of maintained schools must have regard to their local area's CYPP. This duty needs to be revised to reflect the fact that responsibility for preparing the CYPP is moving to the CTB. Governing bodies of maintained schools will be CTB partners and where they have set out their strategy for co-operating with other Board partners in the CYPP, they are under a duty to have regard to that CYPP. However, should a governing body of a maintained school ever not set out such a strategy in the CYPP, section 21 is amended so that the governing body must still have regard to the local CYPP. Subsection (9) also alters section 21 so that it does not provide for a scenario where there would be no CYPP for a local area in England.

## **Safeguarding and promoting the welfare of children**

### ***Section 195: Targets for safeguarding and promoting the welfare of children***

600. *Subsection (1)* of section 195 inserts a new section 9A into the 2004 Act, providing for the Secretary of State to set statutory targets for children's services authorities in England for safeguarding and promoting the welfare of children, in accordance with regulations. The first regulations issued will be subject to the affirmative resolution procedure. Thereafter the negative resolution procedure will apply. Subsection (3) of the new section 9A requires a children's services authority to exercise its functions in the manner best calculated to secure that any targets are met. The effect of the amendment at *subsection (3)* is that functions under the new section 9A are social services functions within the meaning of the Local Authorities Social Services Act 1970.

### ***Section 196: Local Safeguarding Children Boards: lay members***

601. *Section 196* amends sections 13 and 14 of the 2004 Act so as to require each Local Safeguarding Children Board in England to include two representatives of the local community. The amendments also permit an authority by which a Local Safeguarding

Children Board is established to pay remuneration, allowances and expenses to these community representatives.

### ***Section 197: Local Safeguarding Children Boards: annual reports***

602. **Section 197** inserts a new section 14A into the 2004 Act, requiring each Local Safeguarding Children Board in England to produce and publish a report at least once a year about safeguarding and promoting the welfare of children in its area. The Local Safeguarding Children Board must also send a copy of the report to the local Children's Trust Board.

### **Children's centres**

603. The "early childhood services" referred to in the amendments made by sections 198, 199 and 201 (and in these Notes) are defined in section 2 of the Childcare Act 2006 ("the 2006 Act"). They are:
- early years provision (which means childcare and early learning for young children);
  - local authority social services relating to young children and their parents, for example, supervised contact and early intervention for families identified as needing support;
  - health services relating to young children and their parents, for example, health visitors, ante-natal and post-natal care;
  - services provided under section 2 of the Employment and Training Act 1973, assisting or encouraging parents (and prospective parents) to obtain or retain employment. (In practice these services are currently delivered by Jobcentre Plus);
  - the information services for parents and prospective parents provided by local authorities under the duty in section 12 of the 2006 Act.

### ***Section 198: Arrangements for children's centres***

604. This section inserts new provisions into Part 1 of the 2006 Act imposing duties on English local authorities and others in relation to children's centres.
605. New section 5A builds on the existing requirement under section 3 of the 2006 Act for English local authorities to make arrangements to secure that early childhood services in their area are provided in an integrated way that facilitates access to services and maximises the benefits to children, parents and prospective parents. Currently, a local authority is free to determine how best to do this. Children's centres are just one example of how this can be done but local authorities are currently under no legal obligation to have any.
606. Subsection (1) of the new section 5A imposes a new requirement on local authorities that arrangements made under section 3(2) of the 2006 Act must include arrangements for sufficient provision of children's centres to meet local need. This will involve a local authority assessing the need for children's centres in their area, and then deciding what provision is required to meet that need. In making this decision about what is sufficient to meet local need, subsection (3) provides that the local authority is able to take into account other children's centres which are being provided (or which they expect to be provided) outside the area (for example, where people in the area make use of a children's centre in a neighbouring local authority area).
607. Subsection (4) contains a definition of a "children's centre" for the purposes of these provisions and also those inserted by sections 194 and 195. For these purposes, a children's centre is a place, or a group of places (to cover centres which operate on more than one site), which meets each of the three elements of the definition.

608. Paragraph (a) of the definition requires management of the centre by or on behalf of the local authority, and also captures arrangements where the local authority commissions a third party, such as a school governing body or a voluntary sector provider, to manage a children's centre on its behalf.
609. Paragraph (b) of the definition requires that all the early childhood services are made available through the children's centre. Subsection (5) provides that, for this purpose, "made available" means either that early childhood services are provided directly at a children's centre, or that advice and assistance are provided to parents and prospective parents on accessing early childhood services elsewhere.
610. Paragraph (c) of the definition says that the children's centre must provide activities on site for young children. This is to ensure that all centres captured by the definition in subsection (4) directly provide some activities for young children, rather than just advice and assistance for parents on gaining access to services provided elsewhere. This could be childcare, but if this is not provided at a children's centre, other activities for young children such as "stay and play" sessions, where parents and children have opportunities to join in play activities together, must be provided.
611. Subsection (6) makes explicit that statutory guidance issued under section 3(6) of the 2006 Act may be used to provide guidance to local authorities on whether a children's centre which they are responsible for should provide early childhood services at the centre, or whether it should simply provide advice and assistance to parents and prospective parents to help them access early childhood services provided elsewhere.
612. Subsection (7) provides that a children's centre provided as a result of arrangements under section 3(2) of the 2006 Act and which meets the definition in subsection (4) is to be known as a "Sure Start Children's Centre".
613. New section 5B creates a power for the Secretary of State to make regulations about the staffing, organisation and operation of children's centres. The regulations might be used to require that children's centres each have a centre leader, or to impose requirements about the qualifications which staff members must have. Subsection (2) provides that such regulations may impose a requirement for governing bodies to be established for each children's centre, and for such regulations to impose obligations and confer powers on governing bodies. The regulations will be subject to the negative resolution procedure.
614. New section 5C places on local authorities a duty to ensure each children's centre (or group of children's centres) for which it is responsible has an advisory board. The advisory board will provide advice and assistance, for example, to the centre manager, the local authority and its "relevant partners" (defined in section 4 of the 2006 Act as the Primary Care Trust or Strategic Health Authority for an area, and Jobcentre Plus), with a view to ensuring that each children's centre provides relevant and high quality services.
615. The local authority will specify which children's centres a particular advisory board relates to. Each advisory board must include representation from parents of young children or prospective parents in the local authority's area, the local authority itself, and each children's centre covered by that advisory board. The advisory board may also include representatives of other persons or bodies that the local authority considers appropriate to be represented, for example providers of other services for children, and representatives of the local community.
616. Subsection (7) requires local authorities to have regard to any statutory guidance issued by the Secretary of State when exercising their function of securing that advisory boards are established. Under subsection (8) this may include guidance about the membership of the board (including which other people or bodies it may be appropriate to have represented on the board), and the organisation and operation of the board (including

the appropriate number of children's centres for a single advisory board to advise in relation to).

617. New section 5D gives local authorities a duty to ensure that appropriate consultation is carried out when they are considering the establishment or closure of a children's centre, or making any "significant change" in the services provided through a children's centre (including a change to the location of those services). The consultation may be carried out by the local authority or by someone else such as a third party who is managing a children's centre. Such consultation may be relevant to a local authority's determination of what arrangements it should make to provide children's centres to meet local need, including their number and location and which services a centre should provide directly.
618. Subsection (2) requires local authorities to have regard to guidance issued by the Secretary of State when exercising their function of ensuring that consultation is carried out. This may include guidance on what would constitute a "significant change" for the purposes of subsection (1)(b).
619. New section 5E gives local authorities and their "relevant partners" (the Primary Care Trust or Strategic Health Authority for an area, and Jobcentre Plus) a duty to consider, when deciding whether and how to provide a particular early childhood service, whether it should be provided through one of the children's centres in the area. In considering this, subsection (4) provides that the local authority or relevant partner must take into account whether providing the early childhood service through a children's centre would facilitate access to it or maximise its benefit to parents, prospective parents and young children.
620. The effect of subsection (6) is that the duty also applies where the local authority or relevant partner commissions a third party to provide an early childhood service, rather than doing so itself.
621. Subsection (7) clarifies that, despite the duty in this section, a local authority or its relevant partners are still free to decide that an early childhood service is better located somewhere other than a children's centre, as long as they have in fact considered a children's centre as one option for the location of the service.
622. New section 5F contains a transitional provision which ensures that, where a local authority has made arrangements before the commencement of section 198 for a children's centre, but those arrangements were not made under section 3(2) of the 2006 Act, those children's centres will count as being made under section 3(2) so that new sections 5A to 5E will apply to them. These transitional provisions are necessary for children's centres which may have been set up before section 3(2) came into force, and therefore would not have been set up as part of arrangements under section 3(2).

### ***Section 199: Inspection of children's centres***

623. This section inserts a new Part 3A after Part 3 of the 2006 Act which makes provision about inspections of children's centres by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") also known as Ofsted.
624. New section 98A places new duties on the Chief Inspector to inspect children's centres. These inspections must be carried out at intervals prescribed in regulations, or at any time when the Secretary of State requests an inspection. Subsections (4) and (5) of the new section 98A give more detail about the sort of request the Secretary of State may make.
625. Subsection (2) gives the Chief Inspector a power to inspect a children's centre at any other time the Chief Inspector considers is appropriate, for instance if a complaint or particular concern has been reported.
626. Subsection (3) creates a power for the Secretary of State to set out in regulations the circumstances in which the Chief Inspector is not required to inspect a children's

centre at a prescribed interval, for instance to enable a children's centre inspection to take place at the same time as the inspection of a school which is co-located with a children's centre, where this would otherwise not be possible. The regulations made under subsections (1) and (3) will be subject to the negative resolution procedure.

627. The effect of subsection (6) is that an inspection carried out under subsection (1)(b) or (2) may count for the purposes of the Chief Inspector's duty under subsection (1)(a) to inspect children's centres within a prescribed interval, so that an inspection would not have to be repeated in order to meet that duty.
628. New section 98B of the 2004 Act requires the Chief Inspector to produce a report after inspecting a children's centre under new section 98A. New section 98B(2) requires the report to address the contribution made by the centre to facilitating access to early childhood services by parents, prospective parents and young children, maximising the benefit of those services, and to improving well-being of young children. "Well-being" in this section has the same meaning as in section 1(2) of the 2006 Act, which is also the same as that set out at paragraph 588 of these Notes.
629. Subsection (3) of the new section 98B creates a power for the Secretary of State to specify in regulations matters that must be dealt with in a report, or matters which need not be dealt with in a report. Subsection (4) specifies some of the matters that the regulations may require a report to include. The regulations will be subject to the negative resolution procedure.
630. New section 98C sets out what a local authority must do after receiving a report by the Chief Inspector of an inspection of one of its children's centres. It also gives the local authority powers to send copies of the report to other persons (for example, any third party managing the centre on behalf of the local authority), and to publish the report or parts of it.
631. Subsections (3) to (5) require a local authority to produce a written statement setting out the action that the local authority and the person or body managing the children's centre (where not the local authority) propose to take in response to the report, and when.
632. Subsection (6) requires local authorities to have regard to any statutory guidance issued by the Secretary of State when exercising their function of producing a written statement.
633. New section 98D gives the Chief Inspector powers of entry and other related powers for the purpose of enabling the inspection of a children's centre. The power of entry may be exercised only at a reasonable time and does not apply to premises used wholly or mainly as a private dwelling (subsection (3)).
634. Under paragraph 9(1) of Schedule 12 to the Education and Inspections Act 2006, the Chief Inspector is allowed to authorise other persons to carry out the Chief Inspector's functions, including powers of entry. Subsection (4) enables the Chief Inspector to place limitations on an authorisation to exercise powers of entry under section 98D, such as authorising a person to do this only for a certain occasion or period, or by placing conditions on the authorisation.
635. Subsections (6) and (7) give further powers which may be exercised once an inspector has entered the children's centre premises, to assist with the inspection. These powers include the power to inspect the premises, inspect documents and records (and take copies of them), inspect children and interview staff in private.
636. Subsection (9) provides that section 58 of the Education Act 2005, which entitles the inspector to access and inspect computers and require persons to assist the inspector in doing so, applies for the purposes of the powers to inspect documents and records under section 98D.



637. New section 98E provides that an offence is committed if a person intentionally obstructs a person who is attempting to exercise the power of entry, or one of the other powers in section 98D.
638. New section 98F sets out what procedure must be followed before the police may assist the Chief Inspector with the exercise of the powers in section 98D. The Chief Inspector must first apply to a court for a warrant authorising a police constable to assist the Chief Inspector to exercise a power of entry or other power, including by using reasonable force if necessary. A warrant may be granted only where the exercise of the power of entry or other powers conferred by section 98D has been prevented, or is likely to be prevented.
639. Subsections (5) and (6) make provision about the type of court in which an application by the Chief Inspector for a warrant may be made.

### ***Section 200: Children's centres: safeguarding children***

640. The Safeguarding Vulnerable Groups Act 2006 ("the SVG Act") provides for the Independent Barring Board established under section 1 (but in practice now called the Independent Safeguarding Authority ("ISA")) to maintain lists of persons barred in relation to work with children or vulnerable adults, and to monitor persons who have applied to be subject to monitoring. The SVG Act also sets out the type of work in relation to which monitoring is required, and which persons on the barred lists may not undertake. It also provides for a range of offences to enforce the monitoring requirement and the effect of barring.
641. This section amends paragraph 3(1) of Schedule 4 to the SVG Act to add children's centres to the list of establishments used for determining whether an activity is capable of being "regulated activity" for the purposes of the SVG Act. As a result of this amendment, a person who carries out an activity in a children's centre will be engaging in regulated activity if the activity also meets the other criteria set out in paragraph 1(2) of Schedule 4 (which deal with matters such as the frequency of the activity, and whether it affords the person opportunity for contact with children).
642. Whilst many of the roles being carried out by people working at a children's centre (such as the provision of childcare) would already be regulated activity by virtue of other types of activity covered by paragraph 2 of Schedule 4, for example, the effect of this amendment is that everyone involved in working or volunteering at a children's centre (and who meets the other criteria in paragraph 1(2) of Schedule 4) will be engaged in regulated activity. The SVG Act prevents people who are barred from working with children from engaging in regulated activity, and requires people engaged in regulated activity to be subject to monitoring by the ISA.
643. The requirements of the SVG Act relating to people engaged in regulated activity will be phased in over time and be subject to certain transitional provisions. The Government will publish clear and timely information to notify those affected when requirements will begin to apply to them.

### ***Section 201: Arrangements in respect of early childhood services***

644. This section amends section 3 of the Childcare Act 2006. New subsection (4A) which it inserts makes explicit that, in determining what arrangements for integrated services to make under section 3(2), a local authority must have regard to the early childhood services which are provided, or are expected to be provided, in the local authority's area, and the location of those services. Both the quantity and quality of the early childhood services is relevant. So where a local authority decides that it needs to establish a new children's centre, it may determine that the children's centre does not need to provide an early childhood service such as childcare, given the availability, quality and location of existing early childhood services. However, in such a case the children's centre would

still be required to provide advice and assistance on gaining access to local childcare provision, and directly provide other activities on site for young children.

## **Early years provision: budgetary framework**

### ***Section 202: Free of charge early years provision: budgetary framework: England***

645. This section amends the school funding provisions in the School Standards and Framework Act 1998 (“the 1998 Act”). It enables an authority’s “individual schools budget” (its “ISB”), from which schools are funded, to include funding for early years providers (EYPs) who will receive funding in order to provide free early years provision (childcare for a child up to the 31 August following their fifth birthday, as defined by section 20 of the Childcare Act 2006). It also makes provision for regulations similar to the Schools Finance Regulations to apply to allocations to EYPs.
646. *Subsection (2)* amends section 45A of the 1998 Act (determination of specified budgets of LEA), by inserting a new subsection (4B) into that section, so as to provide that the duty imposed on a local education authority by section 7(1) of the Childcare Act 2006 (to secure prescribed early years provision free of charge) is to be treated as imposed on the authority acting in their education capacity. Childcare (as defined in section 18(2)) of the Childcare Act 2006 includes not only education for a child but also any other supervised activity for a child, whereas section 45A of the 1998 Act and other provisions in Part 2 of that Act, apply only in relation to a local authority in their capacity as an LEA and will continue to do so, even when the concept of a “local education authority” is removed from legislation. In order to enable local authorities to fund EYPs out of their ISBs under section 45A, the duty imposed by section 7 of the Childcare Act 2006 — which goes beyond securing education for a young child — must be “treated” as though it were an education duty.
647. *Subsection (3)* inserts a new section 47ZA into the 1998 Act (free of charge early years provision outside a maintained school: budgetary framework), which:
- applies where a local education authority propose to allocate money to a childcare provider (other than a maintained school), for the purpose of discharging the authority’s duty under section 7 of the Childcare Act 2006, out of their ISB (subsections (1) and (3) of the new section). This duty is to secure sufficient childcare free of charge in accordance with regulations which set out the type of childcare and the age of the children to which it is to be provided.
  - requires the amount allocated to be determined in accordance with regulations (subsection (2)), which will be subject to the negative resolution procedure;
  - specifies particular matters to which the regulations may relate (subsection (4)). These matters mirror, where appropriate, those referred to in section 47(2) of the 1998 Act (which enables regulations relating to the amount to be allocated by the authority to maintained schools out of their individual schools budget to make provision for specific matters).
648. *Subsection (4)(a) and (b)* provides that the regulations may set out factors that authorities must, or must not, take into account in determining the amount of money to be provided to a childcare provider.
649. *Subsection (4)(c)* specifies that the regulations may set out other requirements that the authority has to comply with in determining the amount of money to be provided to a childcare provider.
650. *Subsection (4)(d)* specifies that the regulations may make provision about consultation in connection with determining the amount of money to be provided to a childcare provider.

*These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009*

651. *Subsection (4)(e)* specifies that the regulations may allow a local education authority to determine the amount of money to be provided to a childcare provider in accordance with arrangements that the Secretary of State has approved, rather than in accordance with regulations made under section 47ZA. In this case the regulations must set out the circumstances and extent to which this is permitted.
652. *Subsection (4)(f)* specifies that the regulations may require local authorities to give certain information to providers about how the amount was calculated.
653. *Subsection (4)(g)* specifies that the regulations may make provision about when a local education authority must recalculate such an amount.
654. *Subsection (4)(h)* specifies that the regulations may set out a time by which a local education authority must determine an amount. Subsection (5) defines certain terms for the purposes of the new section.