

# EDUCATION ACT 2011

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Educational Institutions: Other Provisions**

#### **Repeal of duties of governing bodies, local authorities and others**

##### *Section 32: Duty to prepare and publish a school profile*

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

##### *Section 33: Duty to appoint school improvement partners*

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

##### *Section 34: Duties in relation to school admissions*

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

182. *Schedule 10* makes amendments that are consequential on the repeals and amendments made by this section.

### ***Section 35: Duties in relation to school meals etc***

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

## **Admissions**

### ***Section 36: Objections to admission arrangements***

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

## **New schools**

### ***Section 37: Establishment of new schools***

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

### ***Schedule 11***

189. *Paragraph 2* inserts new section 6A into EIA 2006, placing a duty on local authorities to seek proposals for the establishment of an Academy where they are of the view that there is a need for a new school in their area. The local authority must specify a date by which proposals must be submitted and after that date must notify the Secretary of State of the steps taken to satisfy this duty and the proposals that have been submitted (or that there have been no proposals). The notification to the Secretary of State must identify a site for the school and any other matters prescribed by regulations.
190. *Paragraph 3* amends section 7 of EIA 2006 so that before publishing proposals for a competition for the establishment of a new school the local authority must obtain the consent of the Secretary of State. In addition, section 7 is amended to remove the ability of the local authority to publish any of its own proposals for a new foundation or community school in a section 7 competition. In consequence, *paragraph 5* repeals section 8 of EIA 2006, which prescribed the circumstances in which the local authority could enter its own proposals for a new school in a competition.

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

191. *Paragraph 4* inserts new section 7A into EIA 2006 which provides for the local authority (with the consent of the Secretary of State) to withdraw, or for the Secretary of State to direct the withdrawal of, a section 7 notice at any time before the end of the period that proposals may be submitted. The effect of this new provision is that a competition can be halted at this early first stage.
192. *Paragraphs 6 and 7* make amendments to sections 10 and 11 of EIA 2006 which deal with publication of proposals outside a competition. The amendments to section 10 (publication of proposals that require the Secretary of State's consent) provide that the following proposals for a new school can be published with the consent of the Secretary of State:
- local authority proposals for a community or foundation school to replace one or more maintained schools (except infant and junior amalgamations, which do not now require consent), excluding those providing education suitable only for persons over compulsory school age;
  - proposals for foundation, and voluntary controlled schools by other proposers (except those within section 11(2) as amended).
193. The amendments to section 11 of EIA 2006 mean that the following proposals will be able to be made without the Secretary of State's consent:
- local authority proposals for a new community or foundation primary school to replace a maintained infant and a maintained junior school;
  - proposals for the establishment of a new voluntary aided school;
  - proposals for a new foundation or voluntary controlled school resulting from an existing religious school changing or losing its religious designation;
  - a new foundation or voluntary controlled school with a religious character replacing an existing religious school, resulting from the reorganisation of faith schools in an area; and
  - local authority proposals for a new community or foundation school where following publication of a section 7 notice no proposals are approved by the local authority, no Academy arrangements are entered into, or no proposals are received.
194. *Paragraphs 10 to 17* make amendments to Schedule 2 to EIA 2006 which deals with the consideration and approval of proposals under Part 2 of EIA 2006 by the local authority or the adjudicator (in respect of local authority proposals). These amendments are consequential on the amendments made by paragraphs 3 to 9.
195. In addition, these paragraphs have the effect that Academy proposals are no longer submitted to local authorities for approval. Instead, any Academy proposals entered into a section 7 competition will be referred to the Secretary of State, for him to decide if he wishes to enter into Academy arrangements with the proposer. Where there are both Academy and non-Academy proposals in a competition, the Secretary of State must first decide the Academy proposals and notify the local authority if he enters into Academy arrangements as a result of the proposals. If the Secretary of State decides against entering into Academy arrangements in such a case, the non-Academy proposals will be considered by the local authority. Even if the Secretary of State approves the Academy proposals, new paragraph 7A of Schedule 2 also enables him to direct that all or any of the non-Academy proposals be considered by the local authority. In such a case, it would be possible for a section 7 competition to result in the approval of both Academy proposals (by the Secretary of State) and non-Academy proposals (by the local authority). This might happen, for example, where Academy proposals are for a small school but the local authority has identified a need for a larger school in its area.

## **Governing bodies: constitution and dissolution**

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

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

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

198. **Section 39** amends paragraph 5 of Schedule 1 to EA 2002, which provides for the dissolution of the governing body of a maintained school on its discontinuance. Currently paragraph 5 of Schedule 1 dissolves a federated governing body on the occasion of one of the schools in the federation being discontinued. Section 38 prevents dissolution from happening in circumstances where two or more schools will remain in the federation after the school concerned has discontinued.
199. This will enable a school to close or convert to an Academy, without having to first undertake a statutory procedure to leave the federation in order to avoid dissolving the federated governing body.
200. A federated governing body is a single governing body for two or more maintained schools, as provided for in sections 24 and 25 of EA 2002.

## **Standards**

### ***Section 40: School inspections: exempt schools***

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

under section 5, and to require the Chief Inspector to do so where requested by the Secretary of State.

205. *Subsection (9)* provides that, with the exception of the first set of regulations made under section 5 of EA 2005, regulations under section 5 are subject to the affirmative procedure.

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

206. **Section 41** changes the areas that the Chief Inspector is under a general duty to report on as part of an inspection conducted under section 5 of EA 2005.

207. The section replaces subsections (5) and (5A) of section 5 and inserts a new subsection (5B). New subsection (5) sets out the general duty of the Chief Inspector to report on the quality of education provided in the school, and new subsection (5A) sets out details of what the report must in particular cover. These areas are:

- the achievement of pupils at the school;
- the quality of teaching in the school;
- the quality of leadership in and management of the school; and
- the behaviour and safety of pupils at the school.

208. In reporting on the quality of education provided in a school, including in relation to the four specified areas above, the Chief Inspector must consider the areas set out in new subsection (5B). This includes consideration of how well a school provides for different groups of pupils. Such groups include but are not limited to gender and minority ethnic groups, those eligible for free school meals and the pupil premium, looked after children and gifted and talented pupils. The Chief Inspector must in particular consider how well the school meets the needs of pupils with a disability and those with special educational needs. In addition, the Chief Inspector must consider the school's provision for the spiritual, moral, social and cultural development of pupils.

***Section 42: Inspection of further education institutions: exempt institutions***

209. **Section 42** amends the current requirement in section 125 of EIA 2006 for the Chief Inspector to inspect and report on all institutions within the further education sector. *Subsection (2)* of this section provides for regulations to stipulate that certain types of sixth form and general further education colleges are to be exempt from inspection under section 125 of EIA 2006 in certain circumstances ("exempt institutions").

210. The Chief Inspector will retain the power to inspect exempt institutions under section 126 of EIA 2006 which will allow for inspections in circumstances where the Chief Inspector has concerns about the performance of an exempt institution, and will also allow for inspections as part of a programme of surveys or curriculum subjects and thematic review. *Subsection (4)* inserts a new provision into section 126 that requires the Chief Inspector to inspect an exempt institution under that section where requested to do so by the Secretary of State.

211. *Subsection (8)* allows the Chief Inspector to charge for inspections under section 126(1) where they are conducted as a result of a request from a provider of education or training. Such an inspection must be treated as if it were an inspection under section 125. The provision is likely to be particularly relevant in cases where an exempt institution is seeking an updated independent assessment of its performance, or where the institution believes its performance has improved and wishes an early assessment of this.

212. *Subsection (11)* provides that, with the exception of the first set of regulations made under section 125 of EIA 2006, regulations under section 125 would be subject to the affirmative procedure.

**Section 43: Inspection of boarding accommodation**

213. *Subsection (2)(a)* clarifies what is meant by a school or college providing accommodation for a child for the purposes of sections 87 to 87D of CA 1989. The new section 87(1A) extends the meaning of “providing accommodation” to include circumstances in which a school or college arranges boarding accommodation for a child otherwise than on its own premises, for example with host families.
214. *Subsection (2)(c)* inserts a new subsection (3A) into section 87 which will allow the Secretary of State to direct the Chief Inspector to take steps to determine whether a child’s welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in England. This power can be exercised even where the Chief Inspector’s duty to take such steps has been suspended by virtue of section 87A and an appointed inspectorate has entered into an agreement with the school or college concerned. A new subsection (3B) is also inserted to enable the Welsh Ministers to take steps in respect of a school or college in Wales in circumstances where their duty has been suspended by virtue of section 87A.
215. *Subsection (3)(b)* allows for regulations to be made specifying the matters to be taken into account in appointing, or terminating the appointment of, independent inspectorates in England.
216. *Subsection (4)* provides for Ofsted to monitor the work of independent inspectorates appointed to conduct welfare inspections of boarding schools under section 87A, and for the Chief Inspector to report annually to the Secretary of State on those inspectorates. Both of these provisions mirror existing provisions in sections 106 and 107 of ESA 2008 for independent inspectorates conducting inspections of education provision in independent schools in England.

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

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

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

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

**Finance**

***Section 46: Local authorities' financial schemes***

224. **Section 48** of SSFA 1998 requires each local authority to prepare and maintain a scheme which sets out the financial relationship between it and the schools it maintains. Regulations prescribe the matters which must be dealt with in local authority schemes, but do not prescribe their detailed content. Schedule 14 to SSFA 1998 allows a local authority to revise their scheme provided that they take into account any guidance given by the Secretary of State about the provisions the Secretary of State regards as appropriate for inclusion in the scheme; they consult the governing body and head teacher of every school maintained by them; and the revisions are approved by their schools forum.
225. **Section 46** amends Schedule 14 to SSFA 1998, enabling the Secretary of State to revise the whole or any part of a local authority scheme by giving a direction. It also requires the Secretary of State to consult the relevant local authority and such other persons as the Secretary of State thinks fit before a direction is given.

***Section 47: Payments in respect of dismissal, etc***

226. **Section 47** amends section 37 of EA 2002 which sets out how the costs of premature retirement, dismissal or securing the resignation of school staff in maintained schools are funded. Under current legislation, where a local authority incurs these costs in relation to school staff employed for community purposes, such as an adult education tutor, the costs must be recovered from the governing body of the school, unless the local authority agrees otherwise, but the costs cannot be met out of the school's budget share. This means that these costs must be met by the governing body out of grants which can be used for community purposes or other external income.
227. The amendment to section 37 provides that a local authority must still recover these costs from the governing body of a maintained school in England, but that they may be met by the governing body out of the school's budget share. This is subject to the governing body being satisfied that this will not interfere to a significant extent with the performance of any duties imposed on them by the Education Acts, including the requirement to conduct the school with a view to promoting high standards of educational achievement.

228. Section 4 of CSFA 2010 amended section 50 of SSFA 1998 to enable governing bodies of maintained schools to use their budget shares to finance the provision of community facilities or services under section 27 of EA 2002; this amendment came into force on 1 April 2011. Section 47 provides consistency in relation to the funding of the costs of premature retirement, dismissal and securing the resignation of staff employed for community purposes.

#### ***Section 48: Determination of permitted charges***

229. **Section 48** amends section 456 of EA 1996 dealing with charges which maintained schools are permitted to make for “optional extras” provided by a school. Optional extras include education outside of school hours, entry for certain public examinations, some school transport, and board and lodging provided on residential trips.
230. Section 451 of EA 1996 prohibits charges for education for registered pupils during school hours, but regulations can be made under section 451(2A) to lift this prohibition on charging for early years provision where this is for a pupil who is below compulsory school age and is additional to the hours which must be made available free of charge pursuant to the duty on local authorities to secure a certain amount of early years provision free of charge (under section 7 of CA 2006). The Government intends to make these regulations and a school governing body will then be able to charge for early years provision as an optional extra.
231. *Subsection (2)* inserts a new provision into section 456 of EA 1996 clarifying that the charges for all optional extras can also include an amount attributable to the costs relating to the buildings and accommodation used, for example, heating and lighting costs, and maintenance. Currently, under section 456(4), the charges for all optional extras can include the costs of any materials, books, instruments or other equipment used for the purposes of or in connection with the provision of the optional extra, and the use of non-teaching staff or teaching staff engaged under contracts for services for the purposes of providing the optional extra.
232. *Subsection (4)* inserts a new subsection (6A) into section 456 of EA 1996. The new subsection (6A) is only relevant where the optional extra is education which is early years provision. It provides that the charges for early years provision imposed by the school may include costs attributable to teaching staff who are employees of the school and who provide the early years provision. Currently this would be prohibited by section 456(5) and only the costs attributable to any self-employed staff with whom the school has contracted could be included. This will ensure that the key costs of providing early years provision over and above that delivered free of charge under section 7 of CA 2006 for children under compulsory school age can be reflected in the charges.

### **Further education institutions**

#### ***Section 49: Further education institutions: amendments***

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



## **Schedule 12**

236. *Paragraph 2* inserts a new section 16A into FHEA 1992. The new section requires the Secretary of State to publish draft proposals in the prescribed form, before he makes an order to establish a further education (FE) corporation. This retains the current legislative provision in relation to the establishment of FE corporations as set out in section 51 of FHEA 1992, which is repealed by paragraph 23.
237. *Paragraphs 3, 13 and 14* amend sections 19, 33F and 33G of FHEA 1992. They remove the requirement for FE corporations in England and sixth form college corporations to gain the consent of the relevant body – the relevant local authority or in some cases the Young People’s Learning Agency for England (the YPLA) in the case of sixth form college corporations, and the Chief Executive of Skills Funding for FE corporations – before they exercise their supplementary powers to borrow money, and form or invest in a company or a charitable incorporated organisation for the purposes of conducting an educational institution.
238. The Schedule also provides for the repeal of the duty on colleges to promote the economic and social wellbeing of the local area. *Paragraph 4* repeals section 19A of FHEA 1992 that places this duty on FE corporations in exercising their function under sections 18 and 19 of FHEA 1992; *paragraph 10* repeals section 33H of FHEA 1992 that places a corresponding duty on sixth form college corporations in exercising their functions under sections 33E and 33F. *Paragraph 46(2)* makes a consequential amendment to section 256 of ASCLA 2009.
239. The Schedule also makes provision relating to sixth form college corporation and FE corporation instrument and articles of government. *Paragraph 5* amends section 20 of FHEA 1992 to make new provision about the content of instruments and articles of government of FE corporations in England. *Paragraph 6* substitutes a new section 22 of FHEA 1992 which removes the Secretary of State’s power to modify, revoke or replace the instrument and articles of FE colleges in England and gives FE colleges in England the power to modify or replace their instrument and articles; *paragraph 19* makes similar changes in relation to sixth form colleges by repealing the Young People’s Learning Agency power to modify, revoke or replace the instrument and articles of sixth form colleges, and giving such colleges the power to modify or replace their instrument and articles through new section 33L. *Paragraph 5* also makes provision to maintain the current position for FE college corporations in Wales.
240. The Schedule also makes provision relating to the dissolution of sixth form college corporations and FE corporations. *Paragraph 7* replaces section 27 of FHEA 1992 with new sections 27, 27A and 27B. These new sections remove the Secretary of State’s power to dissolve a FE college corporation and to transfer their property, rights and liabilities to another educational provider. Instead, FE college corporations will have the power to dissolve themselves, provided they have conducted a full consultation and taken account of the views of those consulted, in accordance with regulations. *Paragraph 7* also gives colleges the ability to transfer their property, rights or liabilities to a body or institution with their consent. The body or institution will be specified in regulations. In addition, new section 27C will retain the current position for FE colleges in Wales. *Paragraph 20* makes similar changes in relation to sixth form colleges by replacing 33N of FHEA 1992 with new sections 33N, 33O and 33P.
241. *Paragraph 8* replaces section 29 of FHEA 1992 with new sections 29, 29A, 29B and 29C, to give designated institutions in England the power to modify or replace their instrument and articles.
242. *Paragraph 11* amends section 33C of FHEA 1992 which provides for the establishment of new sixth form college corporations by order of the Secretary of State. At present, an order may only be made where the responsible local authority makes a proposal which meets specified requirements. The effect of the amendment is to enable any person or

body to make a direct application to the Secretary of State, to establish a sixth form college corporation.

243. *Paragraphs 12, 17 and 18* provide statutory safeguards relating to the specific governance and constitutional arrangements of voluntary sixth form colleges, which were afforded by previous legislation relating to FE colleges or Secretary of State directions. *Paragraphs 12 and 17* give voluntary sixth form colleges the express power to conduct their institution in accordance with their trust deeds and established character. *Paragraph 18* requires the Secretary of State to gain the consent of the trustees of voluntary sixth form colleges when providing the initial instrument and articles of government.
244. *Paragraph 18* amends section 33K of FHEA 1992. It transfers responsibility from the YPLA to the Secretary of State for the drawing up of the initial instruments and articles of government of a new sixth form college corporation established under section 33C.
245. *Paragraph 21* makes consequential amendments to section 38 of FHEA 1992 in light of the dissolution of the YPLA. It transfers to the Secretary of State the YPLA's power to make payments, on such terms and conditions as the YPLA may determine, to a local authority in respect of the principal of, and any interest on, any excepted loan liability of that authority.
246. *Paragraph 22* repeals section 49A of FHEA 1992, as it has effect in England. The effect is to remove the requirement for governing bodies of sixth form and FE colleges to have regard, when exercising their functions, to the content of any guidance that has been issued by the Secretary of State about consulting certain groups in connection with decisions which affect them. The groups concerned are people who are, or are likely to become, students and employers.
247. *Paragraph 25* amends section 56A of FHEA 1992, which relates to the power to intervene in FE institutions. Currently, under section 56A, if the Chief Executive of Skills Funding considers that a further education institution is being mismanaged or is otherwise failing, he can, after serving a notice on the institution's governing body, intervene by making changes to the governing body or making another direction. Paragraph 25 transfers the functions of the Chief Executive under this section to the Secretary of State (and *paragraphs 27 to 29* make consequential repeals of sections 56B to 56D of FHEA 1992). *Paragraph 25(6)* amends sections 56A FHEA 1992 to enable the Secretary of State, when using the intervention powers provided under these sections, to direct the college's governing body to use its new powers to pass a resolution to dissolve itself. If this happens, colleges will be treated as if they had followed the consultation procedures set out in sections 27. *Paragraph 30(7)* makes similar provision for sixth form colleges in relation to section 56E of FHEA 1992.
248. *Paragraph 26* repeals section 56AA of FHEA 1992 so that the power of the Chief Executive of Skills Funding to appoint up to two additional members of the governing body of a FE corporation is removed. *Paragraphs 31 and 34* repeal sections 56F and 56I of FHEA 1992. They remove the corresponding powers of the relevant local authority and the YPLA in respect of sixth form college corporations. *Paragraph 10* makes a consequential amendment to section 31 of FHEA 1992. *Paragraph 46(3)* makes consequential amendments to Schedule 6 to ASCLA 2009. The consequential amendments remove references to the two additional members of the governing body appointed by the Chief Executive of Skills Funding or the relevant local authority and the YPLA.
249. *Paragraph 30* makes equivalent changes to section 56E of FHEA 1992 which currently gives the power of intervention in sixth form colleges to local authorities. This power of intervention is transferred to the Secretary of State. *Paragraphs 32 and 35* make consequential repeals of sections 56G and 56J. Paragraph 30(4) requires the Secretary of State to consult the trustees and each person or body with power to appoint or nominate

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

the foundation governors prior to exercising his power of intervention in respect of voluntary sixth form colleges.

250. *Paragraph 33* repeals section 56H, thereby removing the power that the YPLA has to intervene in certain sixth form colleges (the YPLA is abolished by Part 7 of the Act).
251. *Paragraph 43* replaces Schedule 4 to FHEA 1992 with a new Schedule 4 that sets out the essential elements that all colleges are required to include in their instrument and articles. These essential elements will require colleges to set out, for example, the composition of the corporation or governing body, the roles and responsibilities of key personnel, and procedures for the conduct of the corporation or governing body, and how a college will change its instrument and articles. Governing bodies will have to include staff, student, and, in the case of sixth form colleges, parent governors.
252. Other paragraphs of this Schedule make consequential amendments in light of the dissolution of the YPLA and the amendments to FHEA 1992 contained within this Schedule.

## **Pupil referral units**

### ***Section 50: financing of pupil referral units***

253. *Section 50* amends section 45 of SSFA 1998.
254. *Section 45* provides for every maintained school in England and Wales to have a budget share allocated to it by the local authority that maintains it. This section adds a new paragraph (d) to section 45(1A) to include pupil referral units in the definition of “maintained school”. The effect is that every pupil referral unit in England will receive a budget share from the local authority that maintains it.
255. The section also modifies paragraph (a) of section 45(3) so that the reference to pupil referral units refers only to Wales, as the change introduced by this section applies to England only.
256. New paragraph (aa), is inserted after section 45(3)(a) and means that all references in Chapter 4 of Part 2 of SSFA 1998 to the governing body of a maintained school should, with respect to pupil referral units in England, be read as references to the management committee of a unit. This overrides paragraph 1 of Schedule 1 to EA 1996, which provides that references to a governing body, in relation to pupil referral units, are to be read as references to the local authority. New paragraph (ab) provides that in Chapter 4 references to governors in relation to pupil referral units are to be read as references to members of the management committee.

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

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