

LEARNING AND SKILLS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part V - Miscellaneous and General

Sections 89 to 91: dissolution of the FEFC for England and the FEFC for Wales

131. **Section 89** provides for the dissolution of the Further Education Funding Council for England (FEFCE). On the day of its dissolution, its assets, rights and liabilities will transfer to the LSC.
132. Some of the assets of the FEFCE are used for its inspection work and they may be required by ALI or OFSTED. **Section 90** therefore provides for transfer schemes by which the Secretary of State may transfer property, rights and liabilities from the FEFCE to himself or to OFSTED or ALI in advance of the dissolution date. All remaining property, rights and liabilities of the FEFCE which are not already transferred by such a scheme will then transfer on the date of dissolution to the LSC by virtue of the provisions of section 89.
133. **Section 91** provides for the dissolution of the Further Education Funding Council for Wales (FEFCW). On dissolution, the FEFCW's assets, rights and liabilities will transfer to the CETW.

Sections 92 and 93: other transfers

134. **Section 92(1)** allows the Secretary of State to make a scheme transferring his property, rights or liabilities to the LSC, OFSTED or ALI. He may transfer property and rights by means of such a scheme at any time, but there is a time limit on the transfer of his liabilities. Liabilities may only be transferred by this sort of scheme within three years of the date of the dissolution of the FEFCE. The Secretary of State may use schemes under **section 92(1)** to deal with property, rights and liabilities which have been returned to him by Training and Enterprise Councils (TECs), Chambers of Commerce, Training and Enterprise (CCTEs) and the Training Standards Council (TSC) under the contractual terms of their licence agreement with him. **Section 93(1)** enables the National Assembly for Wales to make similar transfer schemes to deal with the property, rights and liabilities which have been returned to it by the four TECs in Wales.
135. The Secretary of State may also make schemes under **section 92(2)** which transfer property rights and liabilities between any of the LSC, OFSTED and ALI. The Secretary of State can thus adjust their property, rights and liabilities in line with their new functions under this Act. The three year time limit applies to any transfer under section 92(2). There is no equivalent to section 92(2) in Wales.
136. **Section 92(3)** allows the Secretary of State to make schemes for the *direct* transfer of property, rights and liabilities from a TEC, a CCTE or the TSC to the LSC, OFSTED or ALI. In this way, it is not necessary for the TEC, CCTE or TSC property, rights or liabilities to be given first to the Secretary of State and then transferred using a

scheme under section 92(1). But a scheme under section 92(3) cannot be made unless the transferor (that is, the TEC or CCTE in question or the TSC) consents to it. Again the three year time limit applies to any transfer under section 92(3). **Section 93(2)** makes similar provision for Wales enabling direct transfers from the four TECs in Wales.

Sections 94 to 95: transfers: further provision

137. **Section 94** provides that the transfers made under sections 89 or 91 and the schemes made under sections 90, 92 or 93 do not give rise to liability to stamp duty. Therefore, no stamp duty will be chargeable on transfers arising from the dissolution of the FEFCs or on a transfer scheme made by the Secretary of State or the National Assembly.
138. The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) will preserve the terms and conditions of employment and associated rights of many of the individuals who will move to the new organisations. **Section 95** will provide similar protection to individuals, such as those in the FEFCE or in TECs, who transfer under the express provisions of the Act or schemes made under this Act to the LSC, ALI or OFSTED, even where TUPE does not strictly apply. This approach is in line with Cabinet Office guidance on transfers in the public sector, which was issued in January 2000. Where rights and liabilities under a contract of employment are transferred by the dissolution of the FEFCs, or by a transfer scheme made by the Secretary of State or the National Assembly, those rights and liabilities are protected.

Sections 96 to 103: external qualifications

139. **Sections 96 to 103** provide for the approval of external qualifications by the Secretary of State for public funding purposes. An external qualification is a qualification externally awarded or authenticated. (These provisions do not cover courses which lead to more informal certificates or provision which is not certificated in any way - the funding for which will be for the LSC and CETW to determine, together with the DfEE and the National Assembly.) The approvals mechanism and the criteria for approval will be secured administratively by the Secretary of State and the National Assembly or by a body designated by him or it for this purpose - such as the LSC and CETW. Approval can be granted for a particular qualification or particular classes of qualification.
140. **Section 96** provides for the approval of external qualifications for those under the age of 19. The effect will be that where a course leads to an external qualification, relevant institutions can only offer programmes of study relating to, and public funding can only be used for, approved qualifications. This will ensure, for example, that the requirements of the National Curriculum are met. Section 96 replaces sections 400 and 401 of the Education Act 1996 which deal respectively with compulsory school age pupils and those over compulsory school age but under 19. Section 96 also replaces their intended successor provision, section 37(1) of the Education Act 1997 as it would have related to these age groups. Neither section 401 nor section 37(1) have ever been brought into force. As under section 400 of the Education Act 1996, section 96, 101 and 102 allow LEAs and governing bodies to be required to comply.
141. **Section 97** provides for the approval of qualifications for those aged 19 or over. To ensure that the LSC, CETW and other providers can exercise their discretion and make the wider range of provision which is more appropriate to adult learning, this measure does not take the same approach as section 96. Instead, it places a requirement on the LSC, CETW and LEAs to ensure that public funding is only used to make payments for fees and charges in respect of external qualifications which are approved. The requirement for compliance can be enforced, under section 101(1)(c) and 102(2)(c), in respect of LEAs. Section 97 replaces paragraph (a) of Schedule 2 to the Further and Higher Education Act 1992 and its intended successor provision at section 37(1) of the Education Act 1997.
142. The provision for approval of qualifications, and sections 96(4) and 97(3) in particular allow for the development in due course of:

- for all age groups, group awards which recognise achievement in several qualifications or a combination of qualifications and other activity;
 - for those aged 19 or over, a unitised system of external qualifications (in which qualifications are broken down into small discrete blocks each of which is certificated).
143. **Section 103** gives the QCA power to develop tests, prescribed in regulations, aimed at those beyond compulsory school age and extends its powers to include both the setting and administering of tests for these students. The powers will apply whether these are tests in their own right or whether they form part of qualifications offered by awarding bodies. The equivalent body in Wales, ACCAC, will have its powers similarly extended. The section has been introduced to allow, for example, the possibility of the QCA or ACCAC developing and administering the new National Literacy and Numeracy Tests for adults (a recommendation in *Improving literacy and numeracy - a fresh start*, the report of the working group chaired by Sir Claus Moser, February 1999).

Sections 104 to 109: Individual Learning Accounts

144. **Sections 104 to 109** make enabling provision for new ways of giving financial support for education and training. Overall the scheme is known and promoted as “Individual Learning Accounts” (ILAs). The Act however makes separate provision for ‘qualifying accounts’ (section 104) and ‘qualifying arrangements’ (section 105), and thus an ILA may either take the form of qualifying arrangements under section 105 or the form of a qualifying account under section 104. Provision for qualifying arrangements allows for the setting out of the conditions which have to be met for people to qualify for financial assistance. This forms the basis for the initial national implementation of ILAs from September 2000. A dedicated account, similar to a bank account, formed the basis of the proposals for ILAs set out in the Green paper, *The Learning Age* and the White Paper *Learning to Succeed*. However, extensive market research conducted as the policy was developed concluded that an administrative model was preferable for most people to a dedicated bank account model. Nevertheless, provision for ‘qualifying accounts’ allows for the option of developing a dedicated bank account model in the future.
145. A related measure providing tax relief for employees who are holders of ILAs is contained in section 200E to 200J of the Income and Corporation Taxes Act 1988 inserted by section 58 of the Finance Act 2000. The Finance Act ensures that employees are to be exempt from tax on any employer contributions made to learning activity by employees which is eligible for ILA incentives either on the basis that the employee is a party to qualifying arrangements or on the basis that the employee is the holder of a qualifying account.
146. **Section 104** gives details of the conditions to be specified by the Secretary of State in regulations which will have to be met for an account to be a qualifying account. These conditions may relate to:
- the name by which qualifying accounts may be known;
 - the types of individuals who may hold an account;
 - the institutions with which an account may be held;
 - the type of account and how it is held (e.g. to exclude joint accounts);
 - an individual not being allowed simultaneously to hold more than one qualifying account.
147. Regulations as to institutions with which an account can be held may themselves set out the description of institutions or may allow the Secretary of State to specify the institutions. Regulations may also require that institutions with which an account may be held be approved by the Secretary of State.

148. **Section 104** extends to England, Wales, Scotland and Northern Ireland because it is concerned with financial services which are reserved matters under the devolution settlements (see section 155(1)). Section 104 also makes provision for its regulation-making powers to be exercised directly by the Scottish Ministers for learning accounts in respect of Scotland. The Government intends the Scottish Ministers to have these powers as they will be responsible for all other ILA legislation. Making provision directly in this Act accelerates a process which would in normal circumstances (via an executive devolution order under section 63 of the Scotland Act 1998) take at least six months. This will allow ILAs to be made available to the same timetable across the UK.
149. **Section 105** provides for qualifying arrangements which will allow individuals simply to register with a central provider in order to qualify for financial assistance. Under this model, ILAs will be similar to a membership scheme offering account holders access to discounts on learning and information on the different courses available. By registering with the central provider, an individual will be able to claim these benefits. In this way, it is up to individuals themselves how they pay for their element of the cost of learning.
150. The section gives details of the conditions to be specified by the Secretary of State (in regulations) which will have to be met for arrangements to qualify. These conditions may relate to:
- the types of individual who may enter into qualifying arrangements;
 - the bodies with which arrangements can be made;
 - the nature of the arrangements;
 - arrangements to ensure that people are not simultaneously party to qualifying arrangements in more than one part of the UK. This will help control the distribution of the incentives linked to ILAs.
151. The section also allows the regulations themselves to describe the bodies with which qualifying arrangements can be made, or for the Secretary of State to specify the bodies. Regulations may also require that bodies with which a person can be a party to qualifying arrangements are approved by the Secretary of State.
152. **Section 105** covers England and Wales only. Scottish Ministers have prepared their own legislation (the Education and Training (Scotland) Act 2000) for all elements of the ILA provisions, except section 104.
153. **Section 106** secures provision for qualifying arrangements in respect of ILAs for Northern Ireland. Under the devolution settlement, the Northern Ireland Assembly would normally prepare its own legislation for qualifying arrangements, just as the Scottish Ministers have done. Making provision for Northern Ireland directly in the Act ensures that ILAs can be made available to the same timetable across the UK. Subsections (5) and (6) of section 107 and section 109 make provision for Northern Ireland for the same reason.
154. **Section 107** gives the Secretary of State, or a person designated by him, the power to enter into arrangements with a body which itself is a party to qualifying arrangements under section 105. This body, the central provider, will supply the administrative support for the national system of ILAs. The section enables the Secretary of State to make payments to the central provider. It also allows the Secretary of State to make arrangements for other bodies, which — under the provisions of section 10 — could include the LSC, to manage the contract with the central provider on the Secretary of State's behalf. In Wales, such arrangements will be made by the National Assembly for Wales. In Northern Ireland, they will be made by the Department of Higher and Further Education, Training and Employment.
155. **Section 108** covers England and Wales only. The section sets out the regulation-making powers of the Secretary of State (or, in Wales, the National Assembly by virtue of

section 150) to authorise grants for the training and education of individuals who are: party to qualifying arrangements, hold qualifying accounts or who are both party to qualifying arrangements and hold qualifying accounts. Regulations can provide that grants can be paid to persons providing education and training, and it is envisaged that, relying on this power, grants will be paid to the provider who will then deliver discounts on the cost of eligible learning activities. Regulations may provide for conditions to be satisfied for discounts to be paid. These conditions may relate to:

- the types of learning activity;
 - the individual's employment status or whether the individual is in receipt of certain types of benefits;
 - the way in which qualifying arrangements are carried out.
156. The conditions relating to the types of learning activity which may qualify for grants may include a condition that it be of a type specified or offered by providers approved by either the Secretary of State or the National Assembly, or a body designated by him or by the National Assembly.
157. Regulations may also provide:
- that the amount of grant to be available for particular types of learning activity and that the conditions attached to the grant may be determined by the Secretary of State or the National Assembly;
 - that another body may pay these grants on behalf of the Secretary of State or the National Assembly.
158. **Section 109** makes equivalent provision (to that in section 108 for England and Wales) for regulations to set out grant-making powers in respect of learning accounts for Northern Ireland.

Sections 110 to 113: sixth-form education

159. **Section 110** makes two changes to the definition of secondary education in section 2 of the Education Act 1996. The first change (in new subsection (2A)) extends the definition of "secondary education" so as to include full-time education provided at an LEA-maintained institution where the institution is principally concerned with the provision of full-time education suitable to the requirement of persons over compulsory school age and under the age of 19. The second change (in new subsection (2B)) clarifies the position where a person in full-time education is receiving his education partly at the school and partly at another institution under arrangements made by the school.
160. As a result of the first change, a secondary school may be either:
- an institution for providing the type of education currently set out in section 2(2) of the Education Act 1996, as before; or
 - an institution providing full-time education suitable for 16 to 18 year olds, without pupils of compulsory school age.
161. Consequently, LEAs may establish and maintain secondary schools that provide full-time education for 16 to 19 year olds without providing education for children of compulsory school age - as they could prior to April 1993. With the coming into force of provisions in the Further and Higher Education Act 1992, those schools were moved into the further education sector through incorporation or designation and the powers of LEAs amended to remove their ability to establish and maintain such schools.
162. **Section 110(3)** provides, however, that any existing institutions providing only full-time education for 16 to 19 year olds which would become schools when subsection (1) comes into force are not to be treated as schools unless they are properly established

as schools under section 28 or 31 of the School Standards and Framework Act 1998 (which involves the publication of statutory proposals. From the coming into force of subsections (4) and (5), which will be at a later date than the commencement of the remainder of this section, the LEA will not have the power to continue to maintain any existing institutions for 16 to 19 year olds which are not properly established maintained schools in the categories defined by the Schools Standards and Framework Act 1998.

163. With the second change, this section also provides for the definition of secondary education in the Education Act 1996 to be extended to include provision made under collaborative arrangements between schools and FE or HE institutions. The current definition may prevent the development of such collaboration by stipulating that secondary education for those over compulsory school age is necessarily made “at a” school. **Section 142** provides for FE and HE corporations to be able to provide secondary education under such collaborative arrangements and requires them to consult relevant LEAs before doing so.
164. Section 16 of the Further and Higher Education Act 1992 allows the Secretary of State or the National Assembly to incorporate into the FE sector LEA-maintained 16 to 19 institutions. Section 51 of that Act provides for publication of proposals for incorporation and drafts of orders incorporating institutions. **Section 111** simplifies the powers in section 16, removes obsolete material and amends section 51 of the 1992 Act so that the LSC or the CETW cannot publish proposals to incorporate an institution maintained by an LEA nor can the Secretary of State or the National Assembly publish a draft order incorporating such an institution without the consent of the LEA and the governing body. However by virtue of section 110(5) this restriction does not apply if the institution has not been properly established as a school.
165. Section 28 of the Further and Higher Education Act 1992 allows the Secretary of State or the National Assembly to designate voluntary-aided schools so that they become institutions in the FE sector. **Section 112** amends section 28 of the 1992 Act so that the Secretary of State or the National Assembly may only designate voluntary-aided schools for 16 to 19 year olds with the consent of the governing body and the LEA.
166. **Section 113** introduces **Schedule 7** which is about inadequate sixth forms. (The Schedule is discussed at paragraphs 219 to 232 below.) Section 113 also provides for the Secretary of State’s and the National Assembly’s powers of intervention (in sections 496 and 497 of the Education Act 1996) to apply in respect of the powers and duties which Schedule 7 secures for local education authorities, school organisation committees and schools’ governing bodies.

Sections 114 to 122: support for 13 to 19 year olds

167. These sections create a framework which will allow the establishment in England of the Connexions Service, a comprehensive new service to support and encourage young people to continue in, return to and participate effectively in education and training. The Connexions Service will be established by bringing together a range of providers of existing services for young people at the local level to create an integrated and coherent service to provide information, advice and guidance. It is intended that the Service will be delivered through Connexions Partnerships, based on the same areas as those covered by local Learning and Skills Councils, who will be responsible for strategic planning and funding, and Local Management Committees, who will be responsible for local delivery.
168. The Connexions Service is intended to be a universal service for all young people aged 13 to 19, but it will give particular attention to young people who are disengaged or at risk of becoming disengaged from education or training. The Connexions Service will also perform for this age group the duty of the Secretary of State to provide careers services to school and college students set out in section 8 and 9 of the Employment and Training Act 1973.

169. These sections give effect to proposals set out in the *Learning to Succeed* White Paper (Cm 4392) (June 1999) and the Social Exclusion Unit's *Bridging the Gap* report (Cm 4405) (July 1999).
170. **Section 114** gives the Secretary of State a new power to secure the provision of support for all 13 to 19 year olds for the purpose of encouraging and enabling young people to stay on and participate effectively in education or training. He may do this by directing LEAs to provide services, or by making arrangements with a range of statutory or non-statutory bodies (including local authorities). The section gives the Secretary of State a broad power to fund any of those bodies. The new service provided under these arrangements will be the Connexions Service. It is intended that the Connexions Service will develop a network of professional personal advisers to help young people gain the greatest personal benefit from education and training. The section is broad enough to provide for the service to address both the direct and indirect factors which affect young people's effective participation in learning. The Secretary of State intends to use these new powers to integrate and build on the existing range of services currently provided at the local level by careers service companies, youth service and other statutory and voluntary services for young people.
171. **Section 115** places the Secretary of State under a duty to consult the persons and bodies listed in subsection (1) and any voluntary sector and other bodies as he thinks appropriate (e.g. non-maintained special schools) before he makes arrangements for the provision of services for young people in a local area. The statutory persons and bodies consulted will be under a duty to collaborate with the Secretary of State and with Connexions Service providers to support and assist the provision of services in their area. They must also co-ordinate their own activities with the provision of the Connexions Service. Such duties will not require those persons or bodies to take action which would significantly interfere with the efficient or effective exercise of their own functions.
172. LEAs will play a major role in the provision of the Connexions Service. **Section 116** gives them the necessary powers to do so. They must comply with directions to provide or secure services and have a power to make more extensive provision or provision other than that agreed in arrangements made or directions given under section 114 and to make provision outside their area.
173. **Section 117**, together with **sections 119 and 120**, will give effect to a specific proposal in the *Learning to Succeed* White Paper and the Social Exclusion Unit's *Bridging the Gap* Report. The Report recommended (at paragraph 10.5):
- “the development of a comprehensive record system, which ensures that no young person becomes ‘missing’ and prompt action is taken if they cease to be involved in education or training.
- Section 117** sets out the duties on maintained schools and LSC funded providers to provide relevant information. Information, other than the name and address of any pupil or student and a parent of any pupil or student, cannot be provided if the young person (or in the case of an under-16 year old, their parent) has instructed the institution not to disclose that information. These institutions must also give youth service providers reasonable access to pupils and students. The records compiled from the information provided under this section, together with that obtained under sections 119 and 120, will help ensure continuity of service for young people who move to another area. Access to personal data held in the national register would be strictly controlled, in compliance with the data protection regime.
174. **Section 118** and **section 122** introduce provision for the inspection of the Connexions Service. These sections place a duty on OFSTED to inspect and provide advice on the Connexions Service, as requested by the Secretary of State. In addition, OFSTED has an independent power to inspect service providers and to advise the Secretary of State on the Connexions Service. Inspections may be general or in relation to specific

matters; they may relate to a single provider or type of provider working within the Connexions Service; they may relate to a specific geographic area; and they may cover the management of resources.

175. These sections also give OFSTED, when carrying out inspections, the necessary right of access to the premises and records of Connexions Service providers and make it a criminal offence for anyone wilfully to obstruct an inspection. The sections also provide OFSTED with the power to report on and publish their findings.
176. **Section 119** enables the Secretary of State to supply information to any person for the purposes of the provision of the Connexions Service. Specifically, it also enables disclosure of social security information. In order to identify 13-19 year olds, it may be necessary to use information held by the Secretary of State for Social Security (for example, the Child Benefit database). In this way the Connexions Service can have accurate and comprehensive records. Only a child's name, date of birth and address and the name (and address, if different) of his or her parent or guardian will be disclosed - and only to civil servants or persons working for the Connexions Service. Anyone who misuses this information is liable to prosecution and if found guilty, would be subject to a fine up to a maximum of level 4 on the standard scale, which is currently £2,500.
177. **Section 120** will empower those persons and bodies listed in subsection (2) to supply relevant information about young people to the Secretary of State or to persons providing the new service under **section 114**, for the purposes of that service.

Sections 123 to 129: youth provision in Wales

178. **Section 123** will give the National Assembly new powers to direct a local authority in Wales to provide youth support services for all 11 to 25 year olds; to secure the provision of youth support services from others; and to participate in the provision of youth support services with others. This section defines "youth support services" as services which, in the opinion of the National Assembly, encourage, enable or assist young people to stay on and participate in education or training; to take advantage of employment opportunities; or to participate effectively and responsibly in the life of their communities. A direction to a local authority may include provision for financial assistance, whether or not on conditions, and a local authority may be required to take account of any guidance issued by the National Assembly. A direction may also require a local authority to take account of any guidelines issued by the National Assembly. A direction may relate to a particular class of young people; may make different provision for particular groups within the age range 11 to 25 years and can be revoked or changed by a later direction from the National Assembly. The section is broad enough to provide for the services to address both the direct or indirect factors which affect young people's effective participation in learning, their take-up of opportunities for work, and their positive contribution to the life of the communities. The National Assembly intends to use these new powers to add impetus to its Strategy for Children and Young People, and other targeted youth strategies, while building on the existing range of services for young people currently provided by local authorities, other statutory bodies and voluntary sector bodies.
179. Local authorities will have a major role in the provision of youth support services in Wales. **Section 124** gives them the necessary duties and powers to do so. They must comply with directions to provide, secure or participate in youth support services and have a power to make more extensive provision, or provision other than that made in response to directions under section 123, and to make provision outside of their area. Local authorities will be expected to co-operate with voluntary organisations.
180. **Section 125** provides that, before complying with a direction, a local authority must consult the persons or bodies listed in subsection (1). These persons or bodies must collaborate with the local authority so as to support and assist the services provided, secured or proposed, and co-ordinate their activities with other providers of youth support services. Such duties will not require these bodies to take action which would

significantly interfere with the efficient or effective exercise of their own functions. Section 125 also places a local authority under a duty to consult any voluntary body, the CETW, careers services companies, organisations established for the purpose of enabling voluntary bodies to co-operate and co-ordinate their activities, anyone the local authority thinks appropriate and young people themselves.

181. **Section 126** sets out the duties on maintained schools, institutions in receipt of CETW funding and other educational institutions to provide information to youth support service providers. Information, other than the name and address of any pupil or student and a parent of any pupil or student, cannot be provided if the young person (or in the case of an under-16 year old, his or her parent) has instructed the institution not to disclose that information. These institutions must also give youth support services providers reasonable access to pupils and students.
182. **Sections 127 and 128** set out the inspection arrangements for the youth support services. **Section 127** provides for Her Majesty's Chief Inspector of Schools in Wales to advise the National Assembly on youth support services and, when requested by the National Assembly, to inspect and report on the provision of such services. **Section 128** provides that the Chief Inspector will have a reasonable right of access to the premises of the providers being inspected, including access to information held on computers. Where the Chief Inspector publishes an inspection report, the service provider is required to prepare and publish an action plan setting out what is to be done and by when. The National Assembly has powers governing the publication and dissemination of such plans. Where a local authority is involved in the provision of an inspected service which has led to an adverse report by the Chief Inspector, it has a duty to ensure that the action proposed in the plan is sufficient to remedy the weaknesses identified and is taken within the time specified. Should the National Assembly consider that a local authority is failing to perform this duty, it may give directions to a local authority which must comply with them.
183. **Section 129** defines the meaning of various terms used in sections 123 to 128 and clarifies that the powers set out in section 123 apply to Wales only.

Sections 130 to 133: city colleges and academies

184. Section 482 of the Education Act 1996 enables the Secretary of State to fund city technology colleges (CTCs) and city colleges for the technology of the arts (CCTAs) in consideration of certain undertakings on the part of the promoters. These are independent schools situated in urban areas which provide secondary education for pupils of different abilities and have a broad curriculum with an emphasis on science or technology (CTCs) or technology in its application to the performing and creative arts (CCTAs). CTCs and CCTAs do not charge fees and are funded by central Government.
185. **Section 130** amends section 482 of the Education Act 1996 to enable the Secretary of State to fund a new type of independent school - city academies. Like CTCs and CCTAs, city academies will be independent schools in urban areas providing secondary education for pupils of different abilities, will not be fee paying and will be funded by central Government. City academies will have a wider range of curriculum specialisms than CTCs and CCTAs. The additional specialisms are:
- modern foreign languages;
 - visual arts, performing arts or media arts (or any combination of them);
 - sport;
 - further specialisms which may be added by means of a statutory instrument subject to negative resolution.

186. The Section also requires the Secretary of State, before he enters into an agreement to fund a city academy, to consult affected LEAs about the establishment of the city academy.
187. **Section 131** introduces Schedule 8. The Schedule makes provision about land in relation to city academies. The Schedule, among other things:
- provides that the Secretary of State may make a scheme to transfer land and buildings formerly used for a community school to the promoters of a city academy at no cost;
 - requires LEAs to obtain the consent of the Secretary of State before disposing of land formerly used for a community school (but no such consent is required if the land is transferred to the promoters of a city academy at no cost);
 - provides that where such land is disposed of without the Secretary of State's consent, the Secretary of State may compulsorily purchase the land and transfer it to the promoters of the city academy;
 - provides that the Secretary of State may make a scheme to transfer land back to the LEA from a city academy at no cost should the school cease to be a city academy or cease to occupy the land as a city academy;
 - specifies that certain existing legislation which will not apply to disposals for the purpose of a city academy and provides for the Secretary of State to make regulations to address technical and practical matters arising out of such land transfers.
188. **Section 132** confers a power on the Secretary of State to make an order which applies section 483(3) of the Education Act 1996 to city academies with any modifications specified in the order. Section 483(3) is concerned with the method of determining the sum relating to capital expenditure repayable by a CTC or CCTA under its funding agreement where the school discontinues or ceases to have the characteristics which made it a CTC or CCTA. The special provisions in Schedule 8 make section 483(3) potentially inappropriate for determining what a city academy should repay in respect of capital assets.
189. **Section 133** makes provision in relation to children with statements of special educational needs (SEN) and their education at CTCs, CCTAs and city academies. It ensures that LEAs have the necessary powers to provide for the needs of pupils with SEN statements where those pupils attend CTCs, CCTAs and city academies. There has been concern that the provisions of the 1996 Education Act did not allow LEAs to make payments to those categories of schools in respect of pupils with SEN statements. This is important since the cost of making the provision detailed in pupils' statements can be considerable.
190. **Section 133** therefore allows the Secretary of State to make regulations to provide for the securing of arrangements for the educational and non-educational needs of children with statements. The regulations may, in particular, require or authorise LEAs to make payments or provide other assistance to CTCs, CCTAs and city academies in respect of such children.

Sections 134 to 136: pensions

191. **Sections 134 and 135** allow arrangements to be made to deal with pensioners and deferred pensioners of the TEC National Pension Scheme and other TEC salary related occupational pension schemes. They will enable the rights and obligations of pensioners and deferred pensioners under TEC schemes to be transferred, with the consent of the trustees of those schemes, to a new scheme or schemes within the Principal Civil Service Pension Scheme made under Section 1 of the Superannuation Act 1972.

192. **Section 136** permits the Minister for the Civil Service to contract out the administration of pensions of the LSC and any scheme set up under these new provisions.

Section 137: powers of LEAs in connection with FE provision

193. **Section 137** amends section 508 of the Education Act 1996 in line with the changes (at paragraphs 52 to 55 of Schedule 9 to this Act) to the duties of LEAs in respect of FE provision. LEAs will no longer be under a duty to provide FE but will have a power to do so in connection with local LSC plans. As a consequence, the corresponding duty on LEAs to provide services ancillary to their FE provision is amended to become a power.

Subsection 138: provision of information in Wales

194. **Section 138** enables the public bodies listed to provide information about a young person to a local authority or any other person or body involved in the provision of youth support services in Wales under sections 123 to 129.

Section 139: extension of statutory induction for school teachers to FE institutions

195. Section 19 of the Teaching and Higher Education Act 1998 enables the Secretary of State and National Assembly to make regulations requiring persons employed as newly qualified teachers at a maintained school or a special school (whether or not maintained) to complete satisfactorily an induction period of not less than three school terms at such a or, in such circumstances as may be prescribed, an independent school. This provision does not allow induction at FE institutions, including sixth form colleges. Section 19, as amended, gives the Secretary of State and the National Assembly power to make regulations setting out the circumstances in which FE institutions to offer induction if they can give teachers experience comparable to that in maintained schools. The National Assembly has not yet made any regulations in respect of induction for newly qualified teachers. Section 139 of this Act also applies sections 496 and 497 of the Education Act 1996 (power of the Secretary of State to prevent unreasonable exercise of functions etc.) to institutions offering induction (other than independent schools) and to the “appropriate bodies” which decide whether teachers have successfully completed induction.

Section 140: transition from school to post-16 learning of young people with special educational needs

196. **Section 140** places a duty on the Secretary of State (and the National Assembly) to make arrangements for an assessment of people under the age of 19 who have SEN statements drawn up by the LEA and where he believes that they are likely to leave school to continue with post-16 education or training or enter higher education. This assessment must be made during the final year of compulsory education and will set out a person’s learning needs and the provision required to meet them. The Education (Special Educational Needs) Regulations 1994 ([SI 1994/1047](#)) which set out the procedures for carrying out transitional reviews of pupils with SEN statements will be amended to enable the Secretary of State’s representative to participate in these reviews and to assist in the identification of these young people.
197. This section also gives a power to the Secretary of State (and the National Assembly) to conduct an assessment of any young person who is under the age of 25 where it appears that they may have learning difficulties and where they are undertaking, or the Secretary of State is satisfied that they are likely to undertake, post-16 education or training, or to enter higher education. (A “person with learning difficulties” is defined at section 13 of this Act.) This is to enable assessments to be made where young people continuing in post-16 education or training develop learning difficulties shortly before or after leaving school and thus do not have an SEN statement. The power applies in respect of people up to age 25, to enable assessments to apply for the duration of a

course. This also reflects the fact that some young people with learning difficulties may require longer to complete a course or may begin a course later than their peers.

198. This section also places a duty on LEAs to provide a copy of a young person's SEN statement, together with any supporting material, to the Secretary of State or the National Assembly. This will enable the persons he appoints to carry out his functions to conduct the assessment.
199. Under section 13, the LSC has a particular duty to have regard to the contents of these assessments and the needs of the young person assessed when discharging its functions for those under 25 years of age who have learning difficulties. Section 6(3) makes express provision for the LSC to be able to use its powers to fund an institution or provider to impose a condition requiring it to provide for students the learning and support set out in the assessment. There is a corresponding duty and a power for the CETW in sections 41 and 35(3) respectively.

Section 141: training programmes: cessation of funding

200. **Section 141** has three elements. The first element prevents TECs or CCTEs from taking any of the actions to be set out in regulations unless that action has the Secretary of State's written authority. It will also prevent TECs or CCTEs taking such action indirectly through other bodies acting on their behalf. The regulations will cover making payments, incurring expenditure or entering into transactions. The second element allows the Secretary of State, after consultation, to direct a TEC or a CCTE to transfer an asset to him or to a specified body. The third element gives the High Court express authority to make orders either to declare any contract to be void or to vary any contract or to require compensation where the TEC or the CCTE has acted without the consent of the Secretary of State. The National Assembly for Wales will exercise in respect of TECs in Wales those functions which are exercised by the Secretary of State in respect of TECs in England.

Section 142: powers of FE and HE corporations to provide secondary education

201. **Section 142** enables FE corporations to provide secondary "fourth key stage" education and secondary education for 16 to 19 year olds (without, as now, such education having to be in pursuance of arrangements with an LEA or the governing body of a school). HE corporations, which are sometimes significant providers of further education in a particular area, are given the same powers by this section. Before providing such education, an FE or HE corporation must consult such LEAs as it considers appropriate. Although FE corporations already have some powers to provide secondary education, the FEFCs may not fund this provision. The LSC and CETW, however, will be able to fund this sort of provision (see sections 5(1)(e) and 34(1)(e)) whether by FE or HE corporations.
202. It is envisaged that young people in the following three categories may receive secondary education from an FE or HE corporation. The first, and probably the largest category is of children who are registered at a school and who will undertake some studies at a local FE or HE institution. Usually these pupils will have part of the National Curriculum disapplied, under section 363 of the Education Act 1996, to enable them to spend more time on work-related learning. The second category is young people who are not registered as pupils at a school, perhaps because the child is being educated at home, has been excluded from school or is being educated at the FE or HE institution under arrangements made by the LEA under section 19 of the Education Act 1996. The third category is young people not registered as pupils at a school and who are educated at an FE or HE institution, but not under arrangements made by the LEA. Section 18(1)(aa) of the Further and Higher Education Act 1992 would allow an FE corporation to provide education for pupils in the first two categories, but not the third. That is because it refers to education "to pupils in the fourth key stage". This expression only

has meaning in the context of a school, and pupils in the second and third categories above will not be at school.

203. **Section 142** of this Act states that the such secondary education provision is for “persons who would, if they were pupils at a school, be in the fourth key stage”. A similar and associated amendment is made at paragraph 30 of Schedule 9 to the Act. As a result section 142, together with the second change of the definition of secondary education in section 110, will allow for greater collaboration between schools and colleges in providing secondary education for 16 to 19 year olds.

Sections 143 and 144: designated institutions

204. Under the statutory regime established by the Further and Higher Education Act 1992 most institutions within the FE sector are governed by an FE corporation. In addition, other institutions may form part of the FE sector if they are designated under section 28 of that Act (as amended by this Act to allow new institutions to be designated). The categories of institution that may be designated include voluntary aided schools. The governing bodies of voluntary aided schools were unincorporated when the institutions were designated and entered the FE sector in 1993, and remained unincorporated after entering. Their position became anomalous after all governing bodies of schools in the maintained sector were incorporated as a result of section 238 of the Education Act 1993.
205. Subsections (4) to (7) of **section 143** provide for the incorporation of the governing bodies of former voluntary aided schools which are in the FE sector and any new ones that may enter the FE sector in future, removing the anomaly. Subsection (2) amends section 30 of the 1992 Act to extend to new designated institutions that may enter the FE sector in future the current provisions which preserve the established character of the institution and provide for the institution’s trustees to form a majority of the governing body.
206. **Section 144** requires the trustees of such an institution to inform the LSC or the CETW if they dispose of land held by them which was acquired or enhanced in value wholly or partly by money paid by way of grant under the Education Act 1996 or the School Standards and Framework Act 1998. If the trustees dispose of the land, they must pay to the LSC or the CETW so much of the proceeds as is just. The amount may be determined by agreement with the LSC or the CETW or be determined by the Secretary of State. This provision applies only to institutions designated under section 28 of the 1992 Act after this provision comes into force.

Section 145: FE governors’ liability

207. **Section 145** allows a member of a governing body of an FE corporation to apply to the courts to be relieved fully or partially from an actual or potential personal liability if the court finds that the governor has acted honestly and reasonably. The courts will have discretion according to the merits of the individual case. Liability arising from criminal acts cannot be avoided by using this section.

Sections 146 and 147: financial support for students

208. **Sections 146 and 147** amend sections 22, 23, 26 and 28 of the Teaching and Higher Education Act 1998, removing references to FE and HE students “attending” an institution in order to qualify for financial support. This allows the Secretary of State to make provision in regulations for students on open learning courses that do not have attendance requirements to receive financial support. The Secretary of State proposes to make loans and disabled students’ allowances available to part-time students on open learning courses in the coming academic year 2000-01.

Section 148: sex education

209. Provisions for the general duties for the delivery of the curriculum are contained in section 351 of the Education Act 1996. Subsection (2) of **section 148** inserts new provisions into section 351 to provide that in exercising any function which may affect the provision of sex education in maintained schools (such as providing training, information or advice to teachers) every local education authority must have regard to the guidance issued by the Secretary of State under section 403(1A) of the Education Act 1996 as amended by this Act but otherwise have no duties in respect of the provision of sex education.
210. Provisions for the delivery of sex education are contained in section 403 of the Education Act 1996 which requires the LEA, the governing body and the head teacher to take such steps as are reasonably practicable to secure that, where sex education is given to pupils in a maintained school, it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life. In accordance with the changes to section 351 of the 1996 Act, section 148 removes from section 403(1) the words “the local education authority”.
211. **Section 148** also inserts four new subsections into section 403 of the 1996 Act. The new section 403(1A) places a statutory duty on the Secretary of State (and in Wales, the National Assembly) to issue guidance designed to secure that when sex education is given to registered pupils at maintained schools they
- (a) learn the nature of marriage and its importance for family life and the bringing up of children,
 - (b) are protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned.
- The new section 403(1B) requires governing bodies and head teachers to have regard to the guidance in the discharge of their duties under subsection 403(1) of the Education Act 1996. The new section 403(1C) requires that the guidance must include guidance about any materials NHS bodies, defined in section 22 of the National Health Service Act 1977, produce for the purpose of sex education in schools. The new section 403(1D) states that the Secretary of State may at any time revise the guidance. Finally, the section amends section 404 of the Education Act 1996 so that a school’s education policy must include a statement of the right of parents to withdraw their children from sex education.
212. The Secretary of State issued guidance to head teachers, teachers and school governors in England on 7 July 2000 (Ref: DfEE 0116/2000). That guidance is intended to fulfil the requirements of the new subsection 403(1A).

Section 150: Wales

213. Part V of this Act both confers new functions on the Secretary of State and amends existing functions for the provision of education and training and connected purposes. The majority of such provisions so far as they relate to Wales are the responsibility of the National Assembly under the terms of the devolution settlement. **Section 150** accordingly secures that where a function conferred on the Secretary of State by Part V the reference to the Secretary of State should be interpreted as a reference to the National Assembly enabling it to exercise that function in relation to Wales. Where a function is conferred by amendment to another Act and that Act has already been subject to a transfer of functions order devolving the functions of that Act to the National Assembly under the provisions of section 22 of the Government of Wales Act 1998, the earlier transfer of functions shall be regarded as having transferred the new function conferred by the amendment in this Act
214. Subsection (4) sets out exceptions to these arrangements. The references to the Secretary of State in the sections and amendments listed in subsection (4) should not be interpreted also as a reference to the National Assembly because in each case the

responsibility for those provisions is not the responsibility of the National Assembly under the terms of the devolution settlement.

Section 151 and Schedule 10: transitional provisions

215. **Section 151** introduces **Schedule 10** which makes transitional provisions. Parts I and II of the Schedule contain provision relating to the period of transition before the LSC and the CETW assume their full functions from April 2001. In that period, the LSC and CETW may be established and operate without the full complement of council members. The intention is that they will be established once the Chairman and Chief Executive are appointed.
216. Parts I and II also provide the framework to facilitate the transition from the FEFCs to the LSC and the CETW. That framework includes a power for the Secretary of State and National Assembly to make an order conferring functions on the LSC or CETW which will support preparations to take on their full functions; and a power to impose a duty on the old Councils to give assistance to the LSC and CETW to carry out their full functions when they acquire them. The old Councils are specifically required do their best to secure that any functions remaining to be discharged are discharged before the LSC and the CETW take on their full functions in 2001 on the dissolution of the old Councils. The LSC and the CETW will take the place of the old Councils in any legal proceedings or any legal agreement. The LSC and CETW must also discharge duties of the old Councils after their dissolution to report on their provision for disabled students and to submit accounts.
217. Part III of Schedule 10 contains a transitional provision relating to the ALI. As with the LSC and CETW, it may become a legal entity once the first two Inspectorate members - namely, the Chairman and Chief Inspector are appointed.
218. Part IV maintain savings provision for student loans made under the Education (Student Loans) Act 1990 which was repealed by the Teaching and Higher Education Act 1998. Some students may still be receiving loans under the terms of the 1990 Act or may be eligible to receive them, perhaps because of earlier delays in their starting their courses or because of breaks in the courses. The eligibility for loans was defined by reference to courses, including in some instances courses at institutions funded by an FEFC. To maintain the savings provisions it is necessary to alter the definition of the institutions since with the dissolution of the FEFCs the institutions will receive funding from the LSC or CETW.

Explanatory Notes in relation to Schedules 1 to 6, 8 and 10 have been incorporated into the commentary on related sections. Commentary on Schedules 7 and 9 is below. There is no commentary on Schedule 11.