

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Apprenticeships, Study and Training

Chapter 1: Apprenticeships

Completing an apprenticeship

Section 1: Meaning of “completing an English apprenticeship”

40. **Section 1** sets out the circumstances in which a person completes an English apprenticeship in relation to an apprenticeship framework (defined in section 12). The requirement is that the person meets the standard English completion conditions or the alternative English completion conditions. The standard completion conditions are set out in *subsection (3)*. They require the person concerned to have entered into an apprenticeship agreement (see sections 32 to 36) which, at the date on which it was entered into, related to a recognised English apprenticeship framework. The conditions also require the person, while working under the agreement, to have completed a course of training for the qualification identified by the framework in question as the “competencies qualification”, and to have met all the other requirements specified in the apprenticeship framework for the award of a certificate.
41. *Subsection (4)* modifies the effect of subsection (3) where a person has been party to a succession of apprenticeship agreements relating to the same framework while working towards the competencies qualification specified, or has taken two or more courses of training leading to the competencies qualification. The person can still be entitled to an apprenticeship certificate in these circumstances.
42. *Subsections (5) and (6)* enable regulations to be made which cater for circumstances where a person has not entered into an apprenticeship agreement but is working under alternative working arrangements. The power to make regulations might be exercised, for instance, give a self-employed person or someone working as an unwaged volunteer an entitlement to an apprenticeship certificate, provided they had met all the other requirements specified for the award of a certificate.

Section 2: Meaning of “completing a Welsh apprenticeship”

43. **Section 2** sets out the circumstances in which a person completes a Welsh apprenticeship in relation to an apprenticeship framework (defined in section 12). The requirement is that the person meets the standard Welsh completion conditions or the alternative Welsh completion conditions. The standard completion conditions are set out in *subsection (3)*. They require the person concerned to have entered into an apprenticeship agreement (see sections 32 to 36) which, at the date on which it was entered into, related to a recognised Welsh apprenticeship framework. The conditions

also require the person, while working under the agreement, to have completed a course of training for the qualification identified by the framework in question as the “competencies qualification”, and to have met all the other requirements specified in the apprenticeship framework for the award of a certificate.

44. The effect of *subsection (4)* is as described in paragraph 41.
45. *Subsections (5) and (6)* enable the Welsh Ministers to make regulations to provide for circumstances where a person has not entered into an apprenticeship agreement but is working under alternative working arrangements. This power might be exercised also in the instances described in paragraph 42.

Apprenticeship certificates: England

46. *Sections 3 to 6* make provision about apprenticeship certificates, and specify when an apprenticeship certificate must, or may, be issued to a person.

Section 3: Duty to issue: England

47. *Subsection (1)* places a duty on the “English certifying authority” to issue an apprenticeship certificate to a person who appears to the certifying authority to have completed an English apprenticeship in relation to the apprenticeship framework and meets the other requirements within the section. (The “English certifying authority” is defined in section 6 as being the Chief Executive of Skills Funding.)

Section 4: Power to issue: England

48. This section gives discretion to the English certifying authority to issue an apprenticeship certificate to a person who applies to it who is not within section 1. This may apply to a person who is not within section 1 but who has successfully completed all the requirements of an apprenticeship framework for England.

Section 5: Issue by the English certifying authority: supplementary

49. *Subsection (1)* makes provision for English certifying authority to charge a fee for issuing an apprenticeship certificate where authorised to do so by the Secretary of State in accordance with the regulations. *Subsection (2)* allows the Secretary of State to make regulations to enable the English certifying authority to supply duplicate certificates, and *subsection (3)* specifies that these regulations may also include provision for the English certifying authority to charge a fee for that service.

Section 6: The English certifying authority

50. This section provides that the “English certifying authority” is the Chief Executive of Skills Funding. The Government’s intention is that the Chief Executive of Skills Funding will delegate this responsibility to the Chief Executive of the National Apprenticeship Service (see Notes to section 82), who may sub-delegate it to sub-contractors.

Section 7: Duty to issue: Wales, Section 8: Power to issue: Wales, Section 9: Issue by the Welsh certifying authority: supplementary, Section 10: The Welsh certifying authority

51. *Sections 7 to 10* make provision about the issue of apprenticeship certificates in Wales. In particular, Section 10 provides that the certifying authority for apprenticeships in Wales will be persons designated for that purpose by the Welsh Ministers or the Welsh Ministers themselves.

Section 11: Contents of apprenticeship certificate

52. This section applies to England and Wales. It sets out the required contents of an apprenticeship certificate whether issued under sections 3, 4, 7 or 8.

Apprenticeship frameworks: England and Wales

53. **Sections 12 to 22** relate to apprenticeship frameworks. An apprenticeship framework is a high level curriculum for an apprenticeship in a specified career. The frameworks typically include an integrated programme which contains a competence element; a knowledge element; transferable or key skills; and employment rights and responsibilities. The frameworks require a person to obtain a qualification such as an NVQ at level 2, 3 or 4 in a particular subject to meet the competence and knowledge elements, as well as key skills in literacy and numeracy. These sections set out the procedures for the issue of apprenticeship frameworks, as developed by employers, Standard Setting Bodies and Sector Skills Councils according to the specification of apprenticeship standards in England and Wales. The separate provision for a specification of apprenticeship standards for England in sections 23-27 and for Wales in sections 28-31 enables variations between the specification of apprenticeship standards for England and the specification of apprenticeship standards for Wales and the related recognised frameworks.

Apprenticeship Frameworks: England

Section 13: English issuing authority

54. This section enables the Secretary of State to designate a person to issue recognised English apprenticeship frameworks relating to a particular sector. However, this would still allow Sector Skills Councils and other sector bodies to issue frameworks over more than one sector. A person designated under this section is referred to as “the English issuing authority”. *Subsection (2)* provides that there is to be only one person authorised to issue frameworks for a particular apprenticeship sector. The Government’s intention is that, in England, frameworks will be issued by Sector Skills Councils working in partnership with Standard Setting Bodies. *Subsection (3)* requires a person authorised to issue apprenticeship frameworks to comply with directions and guidance given by the Secretary of State in carrying out this function.

Section 14: Issue: England

55. This section allows the English issuing authority to issue apprenticeship frameworks only if the authority is satisfied that the framework meets the requirements of the specification of apprenticeship standards for England. Recognised English frameworks will remain current until withdrawn. *Subsection (2)* allows a recognised English framework to be withdrawn at any time by the English issuing authority or, if the issuing authority has ceased to exist, by the Secretary of State.

Section 15: Recognised English frameworks: notification and publication

56. This section requires the English issuing authority to publish recognised English frameworks which it issues and to notify the Chief Executive of Skills Funding of the issue of a framework and send him a copy of the framework. *Subsection (3)* requires a person withdrawing a framework to publish notice of this and to advise the Chief Executive of Skills Funding of the withdrawal. *Subsection (4)* permits the English certifying authority to publish a recognised English framework or a notice of withdrawal however it chooses; but the effect of section 13(3) is that in doing so the English certifying authority would still be required to have regard to guidance from the Secretary of State.

Section 16: Submission of draft framework for issue: England

57. This section sets out the procedure when individuals and organisations submit a draft apprenticeship framework to the English issuing authority, and request that it be published as a framework. If the authority decides not to issue the framework in the form of a draft, it must give the individual or organisation who has submitted the draft reasons for its decision. The authority can require the individual or organisation to provide information which it needs to assess the framework against the specification of apprenticeship standards for England. In practice, this section will be relevant when learning providers and employers submit new draft apprenticeship frameworks, for occupations or sectors which do not have a framework in place.

Section 17: Transitional provision: England

58. This section enables the Secretary of State to make an order providing that a framework already existing as at the date when section 14 comes into force is to be treated as if it were a framework issued under section 14 (a “deemed framework”). This would enable a person to enter into an apprenticeship agreement relating to a framework of this type. The effect of *subsection (4)*, though, is that an order under this section will not be able to permit a person to enter into a first apprenticeship agreement, in relation to an order of this type, after the date specified in that subsection, which is no later than the day after the day that is the school leaving date for 2013. This will provide a reasonable period for deemed frameworks to continue while arrangements are made to issue new frameworks under the specification of apprenticeship standards for England. If new frameworks are issued before that date that would replace deemed frameworks, the Government intends to withdraw the deemed framework. *Subsection (3)* sets out provision which an order under this section must include.

Apprenticeship frameworks: Wales

Section 18: Welsh issuing authority, Section 19: Issue: Wales, Section 20: Recognised Welsh frameworks: notification and publication, Section 21: Submission of draft apprenticeship framework for issue: Wales, Section 22: Transitional provision: Wales

59. These sections relate to apprenticeship frameworks in Wales. In particular, section 18 provides Welsh Ministers with the power to designate a person to issue apprenticeship frameworks in Wales, relating to a particular sector. The sections also make provision about the publication of apprenticeship frameworks in Wales. Broadly speaking, these provisions mirror those made by sections 13 to 17 in relation to England.

Specification of apprenticeship standards: England

60. *Sections 23 to 27* make provision about the preparation, modification and contents of the specification of apprenticeship standards for England. Apprenticeship frameworks must conform to the requirements of the specification of apprenticeship standards for England if they are to be issued by the English issuing authority as “recognised English frameworks”. The specification could contain, for example, requirements as to competence and knowledge based elements, transferable skills such as key skills in literacy and numeracy or functional skills in English and Maths, employment rights and responsibilities and clear progression routes. It must require each recognised English framework to identify a qualification that is the “competencies qualification” for the purposes of the framework.

Section 23: Duty to prepare and submit draft specification: England

61. This section empowers the Secretary of State to direct the Chief Executive of Skills Funding to produce a draft specification of apprenticeship standards for England and to consult on the draft with those designated under section 13; with representatives

of employers, FE institutions and training providers; with other persons specified in regulations; and with other persons the Chief Executive of Skills Funding thinks appropriate.

Section 24: Order bringing specification into effect

62. This section empowers the Secretary of State to give effect by order, which is subject to the negative resolution procedure, to the specification of apprenticeship standards for England, provided the contents comply with section 27. *Subsection (3)* requires that there may be only one specification of apprenticeship standards for England at any time.

Section 25: Modification: England

63. This section allows the Secretary of State to direct the Chief Executive of Skills Funding to modify the specification of apprenticeship standards for England provided the contents of the specification, as modified still complies with section 27.

Section 26: Replacement or modification: recognised English frameworks

64. If a new specification of apprenticeship standards for England is given effect to under section 24, or if an existing specification is modified under section 25, frameworks that have already been issued under section 14 may not comply with the requirements of the new or modified specification. *Subsection (1)* provides that a recognised English framework that fails to comply with a new or modified specification will not automatically cease to be recognised. But *subsection (2)* provides that an order under section 24, which would be subject to the negative resolution procedure, may provide for such a framework to cease to have effect as a recognised English framework.

Section 27: Contents of specification of apprenticeship standards for England

65. This section sets out what must be included in the specification of apprenticeship standards for England. *Subsection (1)* provides that the specification must specify requirements in relation to the content of recognised English frameworks at level 2 (known as Apprenticeships); and level 3 (known as Advanced Apprenticeships); and that it may specify requirements in relation to the content of recognised English frameworks at other levels. For instance, the specification might make provision about the content of recognised English frameworks for level 4 apprenticeships (known as Higher Apprenticeships). The effect of *subsection (2)* is that the specification must require English frameworks to specify requirements for the issue of apprenticeship certificates, including that a certificate may be issued only if the person has received both on-the-job and off-the-job training; that the qualification or qualifications taken together demonstrate the relevant occupational competencies and relevant technical knowledge; and levels of attainment required for the award of a certificate. It must also require each framework to identify the competencies qualification in respect of that framework.

Specification of apprenticeship standards: Wales

Section 28: Specification of apprenticeship standards for Wales, Section 29: Modification: Wales, Section 30: Replacement or modification: recognised Welsh frameworks, Section 31: Contents of specification of apprenticeship standards for Wales

66. These sections make provision in respect of the specification of apprenticeship standards for Wales, and are similar to sections 23 – 27 for England. The Welsh Ministers are given the power to prepare and consult on a draft specification of apprenticeship standards for Wales.

Apprenticeship agreements: England and Wales

Section 32: Meaning of “apprenticeship agreement”

67. This section applies to both England and Wales. The apprenticeship agreement will be a contract entered into between the employer and the apprentice. The Government expects that it should set out both the on-the-job training and the learning away from the workstation that will be delivered; make clear what job role an apprentice will be qualified to hold upon completion; and stipulate the supervision that an apprentice will receive throughout the period of the apprenticeship.
68. *Subsection (2)* sets out the conditions which must be satisfied by an apprenticeship agreement. The agreement must be in a form to be prescribed by the Secretary of State. *Subsection (3)* gives the Secretary of State the power to specify provisions which must and must not be included in an apprenticeship agreement. *Subsection (4)* enables an apprentice to enter into successive apprenticeship agreements relating to the same framework, even where that framework has ceased to be a recognised English or Welsh framework.

Section 33: Ineffective provisions

69. This section provides that if terms are included in an apprenticeship agreement which conflict with provisions that the Secretary of State has required to be included in the agreement, those terms have no effect.

Section 34: Variation

70. A variation to an agreement might be such that the agreement ceases to be an apprenticeship agreement. Section 34 provides that a variation of this type will not have effect unless, before it is made, the employer gives the apprentice written notice that it will have this effect.

Section 35: Status

71. This section provides that an apprenticeship agreement is not to be treated, for common law or statutory purposes, as being a contract of apprenticeship (as recognised at common law) but is instead to be treated as being a contract of service.

Section 36: Crown servants and Parliamentary staff

72. This section makes particular provision for Crown servants, members of the armed forces and Parliamentary staff. *Subsection (5)* empowers the Secretary of State to modify the application of the Act, or of provisions amended or inserted by the Act, in relation to Crown servants, members of the armed forces, and Parliamentary staff. This power is needed to make the Act work properly in relation to these classes of person, given their particular circumstances: for instance the fact that they may not have contracts of employment.

Section 37: Duty to participate in education or training: apprenticeship agreements.

73. This section amends section 2 of the Education and Skills Act 2008. The effect is that a person may satisfy the participation duty imposed by section 2 (duty to participate in education or training) by participating in training in accordance with an apprenticeship agreement.

General

Section 38: Apprenticeship sectors

74. This section requires the Secretary of State to specify apprenticeship sectors. The Government intends that these will be based upon the current sectoral coverage of Sector Skills Councils which are employer-led, independent organisations whose goals are to reduce skills gaps and shortages, improve productivity and increase opportunities to boost the skills and productivity of everyone in the sector's workforce.

Chapter 2: Study and Training

Section 40: Employer support for employee study and training

75. This section inserts a new Part 6A (sections 63D to 63K) and two new sections (47F and 104E) into the Employment Rights Act 1996.
76. New section 63D introduces a right for qualifying employees to make a statutory application to their employer in relation to study or training – essentially a request to their employer to allow them to undertake study or training, whether in the form of “on the job” training provided by the employer, or separately. The application is called a “section 63D application” in the legislation, but is likely to be known as a “time to train” application or request in practice. Later provisions provide that the request has to be considered by the employer and accepted unless one of the reasons for refusal allowed by the legislation applies.
77. Under section 63D the request must meet certain conditions in order to qualify for the scheme. For example, it must be for study or training that is intended to improve an employee's effectiveness at work and the performance of the employer's business.
78. The type of training which may be requested is further defined in new section 63E. Subsections (1) and (2) of that section allow a request to be for training of any sort. This means that an employee may request study or training that is undertaken outside the place of work with an external training provider or in-house training provided by the employer. The study or training might also include unsupervised learning, for example e-learning. Subsection (1) also allows for more than one course of training or study to be included in one request. For example a person may have identified that they have a need for basic skills training in numeracy and, following the completion of that training, would wish to undertake a full level 2 course related to their job. An employee would be able to include both courses of training in their request.
79. Subsection (3) of section 63E provides that it is not essential that the training lead to the award of a qualification of any sort. It will therefore be possible for an employee to request to undertake any study or training that they think will make them more effective in their current or future role in the employer's business and improve their employer's business performance, for example training to become more effective in the use of commercial software packages.
80. Section 63D defines which employees are eligible to make a request. The Secretary of State may specify in regulations the period employees must have been employed in order to qualify. The intention is that only employees who have been continuously employed by their current employer for 26 weeks or more will be eligible. However, the regulation making power will allow different employment durations to be set in the future after a period of operation of the policy if required.
81. Subsection (7) of section 63D lists employees who are not eligible to make a request for study or training under these provisions. The effect of this is to exclude employees whose learning needs are already catered for in other ways, for example employees who:
- are of compulsory school age (subject to restrictions, it is possible for people of compulsory school age to undertake employment) (paragraph (a)); or

- are young people who already have a statutory right to paid time off to undertake study or training (paragraph (d)); or
 - are 16 or 17 year olds who are already under a duty to participate in education or training as a result of Part 1 of the Education and Skills Act 2008 (paragraph (b)).
82. Agency workers are also excluded. In addition, the Secretary of State has the power to make regulations specifying other types of person to be excluded from the right. These regulations are subject to the affirmative resolution procedure. This will allow the Secretary of State flexibility to react to changes as needed and to exclude other employees from being qualifying employees if appropriate.
83. Subsection (8) of section 63D provides that an employee and employer can make other arrangements in relation to study or training if they so choose. Employees may choose to ask for training in ways other than those specified in the new Part 6A and may choose not to exercise their statutory right under this Part, for example if their employer is already undertaking annual performance reviews which result in their training needs being met.
84. To ensure the employee has considered and explained their study or training needs, how the proposed study or training would impact on the business and what the benefits to the employer are thought to be, section 63E(4) sets out precisely what an employee must include in their request. They must give details of the subject matter of the study or training, how long it would last, who would provide or supervise it and whether it would lead to a qualification, and state how they think it would make them more effective and improve the performance of the employer's business. *Subsection (5)* also includes a power for the Secretary of State to make regulations specifying the form of the application.
85. New section 63F specifies that employers must deal with requests under section 63D in line with regulations made by the Secretary of State. Subsection (1) of section 63F means that an employer has to deal with only one application from the employee in any 12 month period. However, in certain circumstances, an employer could be required to disregard an earlier application which has been submitted. These circumstances would be set out in regulations made under section 63F(3).
86. Subsection (4) of section 63F enables the Secretary of State to make regulations specifying how employers should deal with an application. The Government intends that regulations made in exercise of this power will set out the procedure for employers to follow. For example, they would include requirements concerning the holding of a meeting to discuss the application; for the employer to give the employee notice of the employer's decision on the application; about the procedure for exercising the right of appeal; for applications to be treated as withdrawn in certain circumstances; and in relation to companions which the employee may bring to meetings. The intention is to use the procedure set out in regulations made under the flexible working provisions (Part 8A of the Employment Rights Act 1996) as a model.
87. An employer may refuse a request for "time to train" only where they think that certain permissible business reasons apply. These are listed in subsection (7) of section 63F. An employer could refuse a request where they thought that the training would not improve the employee's effectiveness in the employer's business or improve the performance of the business; or that the study or training would impose a burden of additional costs on the business; or that it would mean that the business could not service its customers properly; that work could not be re-organised among existing staff; that there would be a negative impact on the quality of the output of the business; that there would be a negative impact on the performance of the business; that there would not be enough work for the employee during the periods during which the employee proposes to work; or that the business has planned structural changes. The Secretary of State has a power to make regulations to add reasons to this list.

88. An employer could also refuse part of a request for one of the reasons above. This could mean that an employee requesting to undertake two courses may have only one approved.
89. Where an employer agrees to a request for “time to train” an employee will be required under the new section 63H to inform their employer if they do not start the course or cease to attend the course. They will also need to let them know if they change the type of training they undertake from what they have agreed with the employer. Regulations made under this section may specify how employees should inform their employer of any changes in the training.
90. New section 63I makes provision for an employee to complain to an employment tribunal in two specific circumstances:
- where the employer has failed to comply with the duties concerning the consideration of a request (including procedural requirements); and
 - where the employer’s decision to refuse a request, or part of it, was based on incorrect facts
91. A complaint to an employment tribunal must (unless the tribunal exercises its discretion to grant an extension) be made within three months of either an employer notifying an employee following an appeal of the decision to refuse a request, or (in certain kinds of cases specified by the Secretary of State) from the point where the employer is alleged to have failed to comply with a duty.
92. Subsection (4) of section 63I excludes employees from complaining to employment tribunals under section 63I in relation to the right to be accompanied at meetings, if provision about complaints in such circumstances has instead been made in regulations under section 63F.
93. New section 63J provides that an employment tribunal, where they find the applicant’s complaint well-founded, must make a declaration to that effect and may require the employer to reconsider the request for “time to train”. They may also make an award of compensation. The limit on the number of weeks’ pay which a tribunal may award as compensation will be specified in regulations.
94. New section 63K provides that regulations made under these new provisions may make different provision for different cases.
95. New section 47F ensures that an employee has a right not to be subjected to any detriment by their employer as a result of making, or proposing to make, a request for “time to train”, or submitting a complaint to an employment tribunal under section 63I, or alleging circumstances that would justify such a claim.
96. New section 104E ensures that an employee would be able to claim that they were unfairly dismissed if the reason for their dismissal was that they made, or proposed to make, a request for “time to train” or submitted a claim to an employment tribunal under section 63I, or alleged circumstances that would justify such a claim.

Schedule 1: Employee study and training: minor and consequential amendments

97. **Schedule 1** makes minor and consequential amendments to the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Tribunals Act 1996 which are consequent upon the new statutory right for employees to request “time to train”. In particular, paragraph 12 will allow the Advisory, Conciliation and Arbitration Service to prepare a scheme to provide conciliation of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal under section 63I.

Part 2: Lea Functions

Education and training for persons over compulsory school age

Section 41: Education and training for persons over compulsory school age: general duty

98. This section inserts sections 15ZA and 15ZB into the Education Act 1996. These new sections set out the new core responsibilities being transferred to local education authorities from the Learning and Skills Council in respect of the provision of education and training for young people.
99. Section 15ZA requires local education authorities to secure enough suitable, full- and part-time, education and training opportunities to meet the reasonable needs of the following people in their area:
- young people who are over compulsory school age but under 19; and
 - learners aged 19 or over, but under 25, who have (or should have had) a learning difficulty assessment under section 139A or 140 of the Learning and Skills Act 2000,
- but the duty does not extend to persons subject to a detention order (defined in section 562(1A) inserted by section 49).
100. Responsibility for all other learners aged 19 or over will fall to the Chief Executive of Skills Funding as covered in Part 4 of the Act.
101. Local education authorities will have powers to secure this provision either within or outside their areas to enable them to secure the most appropriate provision for young people and reflect the normal means by which learners travel to their places of learning (“travel-to-learn patterns”). In securing education and training opportunities, local education authorities must take account of people’s ages, abilities and aptitudes; any learning difficulties they may have; the quality of education or training; and the locations and times at which those opportunities are provided. In performing these functions, local education authorities must also act with a view to encouraging diversity (in both type of provider and provision) and increasing opportunities for young people to exercise choice; and support those learners who are subject to the duty to participate in education or training until they reach the age of 18 (once that duty comes into force).
102. *Subsection (5)* requires a local education authority to co-operate with the Chief Executive of Skills Funding in determining and securing the provision of apprenticeship training under subsection (1).
103. Local education authorities will also have powers to fund provision for the duration of the course being undertaken by a young person, even if that course continues after they have reached the age of 19 (or 25 in the case of a learner with a learning difficulty assessment).
104. *Subsection (8)* provides definitions for education and training. “Learning difficulty assessment” is defined in section 13 of the Education Act 1996 (as amended by Schedule 2 to the Act).
105. Local education authorities will meet this duty by commissioning provision which meets the requirements set out in section 15ZA. Commissioning is a cycle of activity that ensures that the courses learners want to take — “learner demand” — is understood and the right provider is funded or contracted with to meet that demand. The Government envisages that local education authorities will work together in sub-regional groupings to plan and agree how to commission provision across an area. These groupings will reflect travel-to-learn patterns of young people. Local education authorities will develop commissioning plans (working with other local education authorities and regional partners such as the Government Offices and

Regional Development Agencies) which will be signed off by the YPLA (see Part 3 of this Act) who will ensure that all local education authority plans are coherent with the plans of other local education authorities and are in budget. The YPLA will then ensure provision is funded in accordance with the planned provision.

106. Section 15ZB requires local education authorities to co-operate with each other in the exercise of their new duties under section 15ZA(1). The Government intends that this duty will support sub-regional working and reflect the need of local education authorities to work with each other in securing education and training opportunities across an area. This duty will require co-operation by a local education authority with only those other local education authorities which may provide education or training for young people in the authority's area. In the vast majority of cases, the Government expects that this duty to co-operate will be fulfilled through sub-regional working (as described above), but it also caters for those instances where learners may need to travel to a local education authority outside the sub-regional grouping to receive their education or training.

Section 42: Encouragement of education and training for persons over compulsory school age

107. This section inserts section 15ZC into the Education Act 1996. The new section requires local education authorities to encourage young people for whom they are responsible to participate in education and training. This will enable local education authorities to encourage full participation in education and training before the provision in section 10 of the Education and Skills Act 2008 (to promote fulfilment of the provisions to raise the participation age) comes into force in 2013. Section 15ZC also requires local education authorities to encourage employers to participate in the provision and delivery of post-16 education and training as they will have a particular role in relation to the provision of diplomas and apprenticeships.

Section 43: LEA directions: children over compulsory school age

108. This section amends the definition of a “child” in section 84 of the School Standards and Framework Act 1998 so that it includes children over compulsory school age but under 19 for the purposes of sections 96 and 97 in England. This enables a local education authority in England to use its powers under section 96 and 97 of the 1998 Act to direct a maintained school for which it is not the admissions authority to admit a particular child to its sixth form. *Subsection (3)* amends section 96(3) of that Act to ensure that any permitted academic selection criteria adopted by a school (including the school sixth form) are satisfied by the child before the local education authority may use its powers to direct the school to admit that child.

Section 44: Power to require provision of education by further education institution

109. This section inserts new section 51A into the Further and Higher Education Act 1992 and applies to England only. It replicates, for local education authorities, the Learning and Skills Council's existing power to direct institutions within the further education sector in England which provide education suitable to the requirements of young people over compulsory school age but under 19, to provide specified young people of that age and within their authority's area with such education. Before exercising this power, the local education authority must consult with the governing body of the further education institution, and anyone else it thinks appropriate. The governing body of such an institution must comply with the direction. In exercising this power, a local education authority must have regard to any guidance provided by the Secretary of State.

The core and additional entitlements

Section 45: Duties in relation to the core and additional entitlements

110. This section inserts four new sections (sections 17A, 17B, 17C, 17D) into the Education Act 1996. It places responsibility for securing the core entitlement and the additional entitlement (defined in section 17A(7)) for all young people who are over compulsory school age but under 19, on local education authorities (rather than the Learning and Skills Council, where the responsibility currently lies).
111. The core entitlement is to a course of study in mathematics, English and information and communications technology.
112. The additional entitlement is to a course of study in a diploma entitlement area specified by the Secretary of State.
113. New section 17A(1) and (2) places a duty on the local education authority to exercise its functions with a view to securing that the core entitlement and courses of study within all the additional entitlement areas are made available in relation to young people in their area who are over compulsory school age but under 19. The intention is that the additional entitlement refers to the diploma entitlement. In securing the additional (diploma) entitlement, local education authorities are able to take into account whether providing a particular course would involve disproportionate expenditure, in which case the requirement to secure the course would not apply (subsection (3)). The entitlement does not entitle a young person to follow a course of study within a particular additional (diploma) entitlement area or to follow more than one course of study within different (diploma) entitlement areas (subsection (5)). A local education authority may satisfy the entitlement by securing that courses of study are available either within or outside their local education authority boundaries (subsection (4)).
114. Subsection (8) defines “course of study” for the purposes of the core and additional (diploma) entitlements. It does so by reference to the resulting qualification, and enables the Secretary of State to specify by order (subject to the negative resolution procedure) both the type and the level of the qualification. Local education authorities must have regard to statutory guidance issued by the Secretary of State in exercising their functions under this section (subsection (6)). Subsection (9) sets out that these entitlements do not apply to young people who are subject to a detention order. However, new section 18A(2)(e) of the Education Act 1996 (inserted by section 48) makes clear that as part of its responsibilities to secure suitable education and training for young people in juvenile custody, a local education authority must take into account the desirability of the core entitlement and the additional entitlement being satisfied in relation to persons over compulsory school age but under 19 who have elected for them.
115. New section 17B describes the entitlements. Young people who are over compulsory school age but under 19 may elect for either or both of the core entitlement and the additional (diploma) entitlement.
116. New section 17C defines the core entitlement, which is to follow courses of study in mathematics, English and information and communications technology. The entitlement is satisfied if a course of study in each of the subjects is made available to a young person. The entitlement will cease if a course of study is made available but not begun before a person’s 19th birthday.
117. New section 17D provides that the additional entitlement is to follow a course of study in an entitlement area. Additional entitlement areas refer to diploma lines which will be specified by the Secretary of State. The entitlement is satisfied if a course of study in one of the entitlement areas is made available to a young person. The entitlement will cease if a course of study is made available but not begun before a person’s 19th birthday.

Boarding accommodation: persons subject to learning difficulty assessment

Section 46: Boarding accommodation: persons subject to learning difficulty assessment

118. This section inserts a new section 514A into the Education Act 1996. It enables local education authorities, when securing suitable education and training provision for young people with learning difficulties who are over compulsory school age but under 25, also to secure boarding accommodation for these learners, either within or outside their local authority area, where they consider it appropriate.

Work experience

Section 47: Work experience for persons over compulsory school age

119. This section inserts a new section 560A into the Education Act 1996, providing local education authorities with a power to secure the provision of work experience for people within their area who are over compulsory school age but under 19, and those aged 19 but under 25 for whom a learning difficulty assessment has been (or should be) conducted. This also places local education authorities under a duty to encourage these learners to participate in work experience, and to encourage employers to provide opportunities for work experience.

Persons detained in youth accommodation

Section 48: Provision of education for persons subject to youth detention

120. This section inserts a new section 18A into the Education Act 1996.
121. New section 18A will have the effect that local education authorities in England and Wales (LEAs) with relevant youth accommodation in their area (“host authorities”) will be required to secure that enough suitable education and training is provided to meet the reasonable needs of the children and young people in the youth justice system who are held in those establishments.
122. “Relevant youth accommodation” is defined in section 562(1A) of the Education Act 1996 (as inserted by section 49) and covers most kinds of youth detention accommodation. (“Youth detention accommodation” is defined, in turn, in section 107 of the Powers of Criminal Courts (Sentencing) Act 2000 as a young offender institution, secure training centre and accommodation provided by or on behalf of a local education authority (or the Secretary of State under section 82(5) of the Children Act 1989) for the purpose of restricting the liberty of children and young persons, with power for the Secretary of State under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 to specify other accommodation by order.) However, “relevant youth accommodation” does not include Young Offender Institutions (YOIs) accommodating 18-20 year olds.
123. LEAs will not therefore be responsible for securing the provision of education in YOIs accommodating 18-20 year olds. In England this will be the responsibility of the Chief Executive of Skills Funding under section 86. In Wales this will remain the responsibility of the Welsh Ministers under section 32 of the Learning and Skills Act 2000.
124. Subsection (2) requires LEAs when securing the provision of education and training in relevant youth accommodation to have regard to any special educational needs or learning difficulties persons have, to the desirability of continuing with any courses started, to the core and additional entitlements being satisfied and to the relevant national curriculum.

125. Local education authorities will be required to have regard to guidance issued by the Secretary of State for England and the Welsh Ministers for Wales when exercising their functions under this provision.

Section 49: Persons detained in youth accommodation: application of provisions

126. Under section 562 of the Education Act 1996, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under the Education Act 1996 (and those Education Acts read as one with that Act) do not apply in relation to persons detained pursuant to a court order or an order of recall of the Secretary of State.
127. **Section 49** reverses the effect of section 562 for children and young people detained in relevant youth accommodation. Therefore, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under those Acts will generally apply towards such persons detained pursuant to a court order or an order of recall of the Secretary of State in relevant youth accommodation.
128. New section 562(3) clarifies that section 562 does not operate in relation to children and young people who are kept in secure accommodation under section 25 of the Children Act 1989 (which could be for welfare reasons or to protect themselves or others from injury.)
129. This section applies to England and Wales.

Section 50: Persons detained in youth accommodation: further provision

130. This section inserts a new Chapter 5A into Part 10 of the Education Act 1996 after section 562 of that Act.
131. New section 562A of the Education Act 1996 (inserted by section 50 of this Act) provides a power to prescribe modifications to provisions of the Education Acts in their application to children and young people who are detained. Subsection (2)(a) ensures that this power cannot be used to modify the specific provisions made by this Act regarding the provision of education and training for detained persons. The power will be exercisable by the Secretary of State for England and the Welsh Ministers for Wales.
132. New section 562B of that Act imposes responsibilities on home LEAs in England and Wales to monitor the education or training of a child or young person subject to a detention order. The home LEA will have to take such steps as they consider appropriate to promote the person's fulfilment of his or her learning potential while they are in custody and on their release.
133. The home LEA is the local education authority where the young person is ordinarily resident (excluding any period when the person is subject to a detention order) or, in relation to a child who is or was looked after by an authority under the Children Act 1989, the local education authority that is or was most recently looking after the person.
134. However, section 562B does not apply to children who, while they are detained, are looked after by a local authority (which could happen where they are detained in local authority accommodation); in those cases, local authorities have duties under section 22(3) of the Children Act 1989 which are similar to those under section 562B.
135. Following the amendments made to section 13A of the Education Act 1996 by Schedule 2 to the Act, host LEAs will be required under that section to exercise their functions under section 18A of that Act (inserted by section 48) with a view to promoting the fulfilment by every child concerned of his or her learning potential.
136. The host LEA will be the local education authority for the area where the child or young person is detained.

137. Sections 562C, 562D and 562G confer functions on both the host and home LEAs in respect of those children and young persons where an LEA was maintaining a statement of special education needs immediately prior to their detention.
138. Under 562C the host LEA must use its best endeavours to ensure that appropriate special educational provision is made for the person. This must be either the special educational provision specified in the person's statement, provision corresponding as closely as practicable to that specified in the statement, or if it considers the provision specified is no longer appropriate, such provision as reasonably appears to the authority to be appropriate. The LEA which was maintaining the statement for the person prior to their detention must retain the statement while the person is detained.
139. Following the amendment made to section 207 of the Education Act 2002 by Schedule 2 to this Act, regulations can be made to enable host LEAs to recoup the cost of making appropriate special educational provision for a person under new section 562C from the authority in whose area the person belongs.
140. Section 562D allows an authority to supply goods and services to the host LEA or the actual person providing the special educational provision.
141. Section 562E of the Education Act 1996 makes provision for literacy and numeracy assessments to be conducted. Under section 562E(2) the host authority must arrange for the detained person's literacy and numeracy skills to be assessed as soon as reasonably practicable after the person arrives in that particular place of relevant youth accommodation, unless the authority are satisfied that they already have evidence of the current level of the person's literacy and numeracy skills.
142. New section 562F of the Education Act 1996 makes provision for the transfer of information relating to a detained person's education or training from their school or previous place of learning to the home and host LEA and to providers of education in custody. Such information might include the educational achievements of the person, their current programme of study and information relating to any special educational needs the person may have. Section 562F(1) allows any person who has provided education or training for a detained person (including while they are in custody) to provide information relating to the detained person to the home and host LEA for the purposes of or in connection with the provision of education or training for the person. This enables the person's school, or other place of learning and any provider of education in custody to share information with the home and host LEA for the purposes of securing the provision of education both during their period of detention and on their release.
143. New section 562F(2) requires LEAs to comply with any requests for such information made by a youth offending team established under section 39 of the Crime and Disorder Act 1998 (YOT), another LEA, the custodial operator of the place the person is or is expected to be detained and any provider (or proposed provider) of education to the detained person. This enables educational information to be transferred by the home or host LEA to those who will be providing education or involved in the person's education in custody and on their release.
144. Section 562F(5) requires the Welsh Ministers to provide a copy of any relevant report of an assessment of learning difficulties conducted under section 140 of the Learning and Skills Act 2000 on request to the home or host authority.
145. Section 562F(8) requires the host authority to provide the home authority with any information it holds which relates to the detained person and may be relevant to the provision of education or training for the person on their release. The information must be provided at such time as the host authority thinks reasonable for the purpose of enabling education and training to be provided to the person on their release.
146. New section 562G of the Education Act 1996 applies where a person detained in juvenile custody had a statement of special educational needs maintained for them prior

to their detention. It makes provision for the home LEA to notify the host LEA about the statement (and which authority was maintaining it) when the person is detained (unless the host LEA is already aware) and, on the person's release, for the host LEA to provide similar information to the home LEA (unless the home LEA is already aware) and to notify the authority that was maintaining the statement about the release. Subsection (5) requires any LEA which was maintaining a statement of special educational needs for a person immediately prior to their detention to provide this to the host LEA upon request.

147. New section 562H of the Education Act 1996 ensures that upon a child or young person's release the host LEA informs the home LEA (or, in the case of a young person over compulsory school age in Wales, the Welsh Ministers) if they believe the person has special educational needs or a learning difficulty which should be assessed.
148. New section 562I of the Education Act 1996 requires LEAs when they are exercising any of their functions under new Chapter 5A to have regard to any guidance issued by the Secretary of State for England and the Welsh Ministers for Wales.

Section 51: Detention of child or young person: local education authorities to be notified

149. **Section 51** inserts new section 39A into the Crime and Disorder Act 1998 and requires YOTs to notify the person's home and host LEA when they become aware that a child or young person has been detained in relevant youth accommodation, or has been transferred to a new place of detention. YOTs must also notify the home and host LEAs and, if different, the authority in whose area the YOT expects the person to live on their release, of the person's release from relevant youth accommodation.

Section 52: Release from detention of child or young person with special educational needs

150. **Section 52(2)** inserts a new section 312A into the Education Act 1996. New section 312A(1) suspends Part 4 of the Education Act 1996 while the person is detained in juvenile custody. Part 4 makes provision for children with special educational needs, and would otherwise apply while the person is detained in juvenile custody by virtue of the amendments of section 562 of that Act made by section 49. New Chapter 5A of Part 10 of that Act (inserted by section 50) makes provision for the education of children with special educational needs during the period of that detention. New section 312A(3) revives any statement that was maintained for a person prior to their detention in juvenile custody on their release and makes provision for the statement to transfer to the authority who will be responsible for maintaining it under Part 4 on the person's release.
151. **Section 52(3)** amends section 328(5) of the Education Act 1996 (reviews of educational needs) to require the local authority maintaining the statement to review the child's statement on their release from juvenile custody.

Transport in England

152. Local education authorities have a duty under section 509AA of the Education Act 1996 to publish an annual transport policy statement setting out the transport provision they will make to facilitate the attendance of young people of sixth form age at establishments of education and training. LEAs also have a duty to make the transport arrangements they deem necessary to support adults to attend institutions of education and training. Sections 53 to 57 amend the sixth form duty so that young people and their parents will be consulted in the drawing up of transport policy statements, so that the statements provide sufficient information to inform young people's and their parents' choice between establishments, and so that the statements may be revised in response to complaints. Section 57 also re-enacts the adult transport duty and place a new duty on LEAs to set out in a transport policy statement the arrangements they will make for learners aged 19 to 24 (inclusive) with learning difficulties or disabilities.

Section 53: Provision of transport etc for persons of sixth form age: duty to have regard to section 15ZA duty

153. Under section 41 (which inserts new section 15ZA into the Education Act 1996), LEAs will be responsible for commissioning education and training provision for young people aged 16-18. This section amends section 509AB (the sixth form transport duty) so that LEAs are required to consider what they are required to do under 15ZA(1) in relation to persons of sixth form age, when drawing up their transport policy statement for young people of sixth form age. This will ensure that transport arrangements are not made in isolation and that LEAs consider their commissioning duties, including particular relevant factors (for example, the location of the provision), when developing their local transport policy.

Section 54: Transport policy statements for persons of sixth form age: consultation

154. Section 509AB of the 1996 Act contains requirements about the preparation of transport policy statements for people of sixth form age. Section 54 amends section 509AB to add people who will be of sixth form age when the statement has effect and their parents to the list of persons or bodies LEAs must consult when preparing the statements.

Section 55: Transport policy statements for persons of sixth form age: content and publication

155. **Section 55(1)** amends section 509AB of the 1996 Act to insert a new subsection (7A). This requires LEAs to have regard to the need to include sufficient information in their transport policy statement, and the need to publish the statement in good time, so that young people and their parents are able to take account of those matters when choosing an establishment.
156. **Subsection (2)** amends section 509AA of the 1996 Act so that the Secretary of State has more freedom than before to amend the provision about when statements must be published. Previously the Secretary of State could choose a deadline only within the calendar year during which the academic year started; now he or she will be free to choose an earlier deadline.

Section 56: Complaints about transport arrangements etc for persons of sixth form age

157. This section inserts section 509AE into the Education Act 1996, which makes provision about sixth form transport complaints. A sixth form transport complaint is a complaint about how an LEA have carried out (or failed to carry out) their transport responsibilities in relation to people of sixth form age. It can be made by a person who is, or will, be of sixth form age at the relevant time, or the person's parent.
158. Section 509AE(1) allows LEAs to revise transport policy statements to amend transport provision or financial assistance arrangements as a result of a sixth form transport complaint, if they deem this to be necessary. Section 509AE(2) requires them to do so if the Secretary of State directs them to as a result of a sixth form transport complaint. Section 509AE(3) states that any LEA who amend their statement following a complaint must publish the revised statement as soon as practicable, along with a description of the changes. Under section 509AE(4) the Secretary of State need not consider whether to use direction making powers in response to a sixth form transport complaint unless it has already been brought to the attention of the LEA concerned and the LEA have had a reasonable opportunity to investigate and respond.
159. Section 509AE(7) provides that where an authority have published their sixth form statement and their transport policy statement for adult learners in the same document, the requirement in section 509AE(3) to publish a revised statement is to be read as a requirement to publish a version of the document that includes the revised statement.

160. Paragraphs 7 to 9 of Schedule 2 amend the Secretary of State's direction-giving powers to make clear that they are subject to section 509AE.

Section 57: Local education authorities in England: provision of transport etc for adult learners

161. This section inserts two new sections into the Education Act 1996.
162. New section 508F re-enacts section 509 of the 1996 Act (which is repealed) in respect of LEAs' travel duties towards adult learners. It continues to impose a duty on LEAs to make any transport or other arrangements that they consider necessary, or that the Secretary of State directs, for the purpose of facilitating the attendance of learners who are aged 19 and over at certain education institutions. Any transport provided must be free of charge. The authority may pay all or part of the reasonable travel expenses of a learner for whose transport no arrangements are made. The LEA must have regard to the age of the learner, and the nature of the route, when considering what arrangements to make.
163. Subsection (5) specifies that in considering what arrangements to make for relevant young adults (i.e. those aged 19-24 with learning difficulties or disabilities), the LEA must have regard to what they are required to do under section 15ZA(1). This is the duty introduced in this Act under which LEAs will be responsible for commissioning education and training provision for young people aged 16-18 as well as those aged 19-24 with learning difficulties and disabilities. This link (similar to the link made from the sixth form transport duty by section 53) will ensure that transport arrangements are not made in isolation and that LEAs consider their commissioning duties, including particular relevant factors (for example, the location of the provision), when developing their local transport policy.
164. New section 508G places a new duty on LEAs to make available in a transport policy statement information about the travel provision they have put in place for people aged 19 to 24 (inclusive) in respect of whom a learning difficulty assessment under section 139A or 140 of the Learning and Skills Act 2000 has been carried out or is required to be carried out. LEAs may publish this information in a joint statement with their sixth form transport policy statement under section 509AA of the 1996 Act, or as a separate statement if they prefer. This measure is designed to ensure that young people with learning difficulties aged 19 to 24 (inclusive) and their parents are able to access information about what transport is available, so that they are able to make informed choices between institutions.
165. When preparing the statement, the LEA are required to consult other LEAs, education institutions, affected learners and their parents. The authority must also have regard to guidance about the preparation of the statement (section 508H).
166. Under subsections (2) to (4) of section 508G, the statement must specify any transport or other arrangements, any payment of travel expenses, and any concessionary schemes which the LEA plans to make available to this group of learners in the following academic year. Subsection (5) of that section states that the statement must be published by the end of May before the start of the relevant academic year, in line with the sixth form transport policy statement duty. Subsection (6) of the section requires the LEA to have regard to the need to supply sufficient information and the need to publish the statement in good time, so that, as with the sixth form transport policy statement duty, young people and their parents are able to use this information to help them choose their institution. Section 508G(7) enables LEAs to make additional arrangements, payments or concessions which are not included in the statement during the course of the year. Section 508G(8) allows the Secretary of State to amend subsection (5) to change the deadline for publication of the statement.

167. New section 508H allows the Secretary of State to issue guidance to support LEAs to carry out their functions under 508F and 508G. LEAs must have regard to any guidance in carrying out their functions.
168. New section 508I replicates, for learners with learning difficulties aged 19-24, the transport complaints measures being introduced in respect of the sixth form duty in section 56.

Powers in respect of non-maintained schools

Section 58: Power of LEAs to arrange provision of education at non-maintained schools

169. This section repeals section 128 of the School Standards and Framework Act 1998. Section 128 amended section 16 of the Education Act 1996 and substituted a new section 18 in that Act. The new section 18 gave the Secretary of State the power to make regulations, under which a LEA could assist primary and secondary schools outside the maintained sector, or make arrangements for pupils to be educated at such schools: an assisted places scheme. The section has never been commenced, and the Government therefore now considers that it should be repealed. The effect of the repeal is that the original section 18 remains in force. LEAs will continue to retain powers under sections 16 and 18 of the Education Act 1996 to assist, and arrange provision of education at, non-maintained schools.

Section 59 and Schedule 2: Minor and consequential amendments

170. **Section 59** introduces Schedule 2, which contains minor and consequential amendments relating to the provision made by Part 2.
171. It amends section 13 of the Education Act 1996 so that local education authorities in England have a general responsibility for contributing to the spiritual, moral, mental and physical development of the community by securing further education (as well as primary and secondary education) for young people who are over compulsory school age but under 19, who are 19 or over but under 25 and may have a learning difficulty. It also substitutes an amended section 13A in the 1996 Act to ensure that local education authorities exercise new education and training functions in relation to those young people for whom they have assumed responsibility so as to promote high standards, fulfilment of potential and (in England) fair access to opportunity for education and training.

Part 3: the Young People's Learning Agency for England

172. Section 41 imposes a new duty on local education authorities to secure that all young people in their area who are over compulsory school age but under 19, and persons aged 19 and over but under 25 for whom a learning difficulty assessment has been (or is required to be) carried out, have access to enough suitable education and training provision to meet their reasonable needs. The Young People's Learning Agency for England is a small non-departmental public body, sponsored by DCSF and reporting to the Secretary of State, whose core purpose is to provide the funding to enable local education authorities to fulfil this duty.

Chapter 1: Establishment

Section 60: The Young People's Learning Agency for England

173. This section establishes the YPLA as a body corporate. The YPLA will perform its functions in relation to England only, except under the powers to provide services and assistance (see sections 68 to 70) where it may exercise functions in relation to, and within, the devolved administrations' areas.

174. Further detailed provisions about the body are contained in Schedule 3.

Schedule 3: The Young People's Learning Agency for England

175. [Schedule 3](#) sets out the detail on the constitution, governance and organisation of the YPLA as a non-departmental public body.
176. Under paragraph 1, the YPLA will not be a servant or agent of the Crown and its staff will not be civil servants. Paragraphs 2 to 4 make provision about the membership and remuneration of the YPLA, including:
- how the YPLA's chair and other ordinary members will be appointed;
 - provision for the Secretary of State to remove any ordinary member from office on the grounds of persistent non-attendance, inability or unfitness for office;
 - tenure of office; and
 - the YPLA's powers and duties in relation to remuneration of current and former members.
177. [Paragraphs 5](#) and [6](#) provide for the Secretary of State to appoint the first chief executive of the YPLA, and for the YPLA to appoint later chief executives, subject to the approval of the Secretary of State, and to appoint other staff, and make provision about employment terms.
178. Under paragraphs 7 and 8, the YPLA is permitted to set up committees and sub-committees. These may consist of or include persons who are not members or staff of the YPLA. The YPLA has the power to establish a committee jointly, and any joint committee is given power to regulate its own proceedings. This may be used, for example, to enable the YPLA to chair jointly with the Qualifications and Curriculum Development Agency (the new name for the Qualifications and Curriculum Authority: see Part 8 of the Act) the proposed Joint Advisory Committee for Qualifications Approval.
179. The YPLA may regulate its own proceedings, and the procedure of its committees (paragraph 9). Under paragraph 10, the Secretary of State or a representative of the Secretary of State is given the right to attend meetings of the YPLA and YPLA committees (including joint committees).
180. Under paragraphs 11 and 12, the YPLA and its committees may delegate functions.
181. The YPLA must:
- make a plan for each academic year, which must be published before the start of the academic year ([paragraph 13](#));
 - prepare an annual report, a copy of which must be sent to the Secretary of State ([paragraph 14](#)); and
 - keep proper accounts and proper records in relation to the accounts, and prepare annual accounts for each financial year, copies of which must be sent to the Secretary of State and the Comptroller and Auditor General ([paragraph 15](#)).
182. The Secretary of State must lay a copy of the annual accounts and a copy of the Comptroller and Auditor General's report on the accounts before Parliament.
183. [Paragraph 16](#) makes provisions about the application of the YPLA's seal: the reference to "member" in this context includes the chief executive.
184. [Paragraph 18](#) sets out that the YPLA will receive its funding from the Secretary of State, and that payments will be made at such times and subject to such conditions (if any) as the Secretary of State thinks appropriate. Conditions may require the YPLA to use

the grant for specified purposes, but may not impose conditions relating to the YPLA's securing of the provision of financial resources to a particular person or organisation.

185. Under paragraph 19 the YPLA is given supplementary powers to do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions (subject to any restrictions imposed by or under any provision of this or any other Act). However, the YPLA cannot borrow money, and must obtain the Secretary of State's permission to do certain things, including, for example, lending money.

Chapter 2: Main Functions

Funding

Section 61: Provision of financial resources

186. *Subsection (1)* places a duty on the YPLA to secure the provision of financial resources to persons who provide education and training to young persons within the remit of the new LEA duties imposed by sections 15ZA and 18A of the Education Act 1996 (see sections 41 and 48), and also to LEAs themselves.
187. Under *subsection (2)*, the YPLA must also secure the provision of financial resources as directed by the Secretary of State. This would, for example, allow the Secretary of State to require the YPLA to secure in future the provision of financial resources to a specific group of learners not covered in its duties or powers. However, this would not allow the Secretary of State to require the YPLA to secure the provision of financial resources to a particular person (for example, to provide a certain amount of money to a specific LEA) because of the prohibition in *subsection (9)*.
188. In addition, *subsection (3)* empowers the YPLA to secure financial resources in respect of provision to learners of and under compulsory school age, and learners aged 19 and over (who have not had a learning difficulty assessment) who started their courses before they were 19. These powers will enable provision to be secured, for example, for:
- young people under the age of 16 who are attending courses in a 16 to 19 institution, whether this is because they are starting a course early, or because the course is specifically designed for those under 16, for example, young apprenticeships; and
 - young people who start a course before they reach 19 which ends after their 19th birthday.
189. Under *subsection (4)* the YPLA will have power to pay grants and allowances to learners of all ages. These powers enable the YPLA to secure, for example Care to Learn grants (which are provided to young people who begin their course or learning programme before their 20th birthday), Education Maintenance Allowances (EMAs) (provided to 16 to 18 year olds) and the Adult Learning Grant (a means tested grant provided to adults of all ages). *Subsection (7)* gives the YPLA the power to take account of fees, charges, and other matters such as the cost of travel or childcare when securing these grants.
190. *Subsection (4)* also gives the YPLA the power to secure the provision of financial resources for other purposes. This covers:
- Persons providing goods or services in connection with the provision of education or training to persons up to the age of 19, over 19 where a course has been started before the young person reaches 19, or learners under 25 for whom a learning difficulty assessment has been made. This would allow the YPLA to fund, for example, accommodation on a field trip;
 - Persons undertaking research in relation to education or training;
 - Persons providing work experience for persons receiving education;

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

- Persons carrying out means tests, for example, in relation to learner support grants.
 - Persons providing information, advice or guidance about education or training, or connected matters.
191. *Subsection (6)* provides that the YPLA may secure financial resources not only by providing them directly, but also by:
- making arrangements for another person to provide the resources, for example delivering learner support funds through contracts; and
 - making arrangements for two or more persons (whether or not this includes the YPLA) to jointly provide the resources, for example, to deliver shared services with the Chief Executive of Skills Funding.

Section 62: Financial resources: conditions

192. This section enables the YPLA to set certain conditions on the financial resources it provides. The conditions may include information, operational and repayment conditions.
193. Under *subsection (3)* information conditions may require:
- the YPLA, or a person designated by the YPLA (such as an accountant or the National Audit Office) to have access to the accounts and records, including computer records of the person to whom financial resources are provided; and
 - that the person must give the YPLA such information as it requests for the purpose of exercising any of its duties and powers.
194. *Subsections (4) and (5)* provide that operational conditions may require providers of education and training to make arrangements:
- to charge fees, make awards and recover costs from other persons in accordance with criteria established by the YPLA; and
 - to make the provision specified in a report of a learning difficulty assessment (conducted under section 139A or 140 of the Learning and Skills Act 2000).
195. Under *subsection (6)* the YPLA may require repayment (which may be with interest) where the conditions subject to which the sums were paid were not complied with.

Section 63: Performance assessments

196. This section enables the YPLA to:
- adopt existing schemes, such as the Framework for Excellence, when assessing evaluating the performance of providers for whom it is proposed it provides funding in local education authority commissioning plans; and
 - develop performance assessment schemes, for example tools for scrutiny of local education authority commissioning plans or self-assessment tools for local education authorities to use when ensuring quality of provision in their commissioning plans.

Section 64: Means tests

197. This section enables the YPLA to carry out, or to arrange for others to carry out on its behalf, tests against eligibility criteria (financial or otherwise) which may be taken into account when the YPLA is securing financial resources for those receiving, or proposing to receive, education and training under its powers in section 61. This will enable the YPLA to administer grants or allowances to learners or prospective learners

according to clearly defined criteria. For example, it will enable the YPLA to administer the Education Maintenance Allowance scheme to 16 to 19 year olds.

Section 65: Prohibition on charging

198. This section requires the YPLA to ensure, so far as is practicable, that no charge is made for education or training funded by the YPLA that is provided for young people over compulsory school age.
199. The Secretary of State may specify through regulations the circumstances under which charges are to be treated as made for the purposes of this section. These regulations could ensure that tuition fees would be prohibited for these learners, but may allow providers of education to apply fees where appropriate, such as in relation to the conditions of attendance to free examination entry, charges for equipment, and charges for learners from overseas. The YPLA would then be able to enforce this through the conditions it imposed on its funding.
200. This section does not cover education provided at a school maintained by a local education authority, for example in a school sixth form, because these institutions are already required by law to provide free education.

Securing provision of education and training

Section 66: Securing provision of education or training

201. This section gives the YPLA the power to commission education or training for persons over compulsory school age but under 19, for learners aged 19 but under 25 for whom a learning difficulty assessment has been or is required to be made and for children subject to youth detention. This power will enable the YPLA to secure provision directly, for example:
 - from the small number of national providers from whom it may be appropriate to commission at national rather than local level;
 - where sub-regional groups of LEAs are not yet ready to take on this role; or
 - where a local education authority is failing or is likely to fail to fulfil its duty under the new sections 15ZA and 18A of the Education Act 1996 (as inserted by sections 41 and 48) to commission suitable education or training.
202. The circumstances under which the YPLA would be expected to exercise these powers will be set out by the Secretary of State in his remit letter to the YPLA. When exercising this power the YPLA must have regard to things done by local education authorities in the performance of their duties under sections 15ZA(1) and 18A(1) of the Education Act 1996.

Section 67: Intervention for purpose of securing provision of education and training

203. This section gives the YPLA the power to make directions where it is satisfied that a local education authority is failing, or likely to fail, in its new duty under *section 15ZA* of the Education Act 1996 (section 41) to secure enough suitable education and training for young people aged over compulsory school age but under 19, and those aged 19 or over but under 25 for whom a learning difficulty assessment has been or is required to be conducted. It also gives the YPLA the power to make directions where it is satisfied that a local education authority is failing, or likely to fail, in its new duty under *section 18A* of the Education Act 1996 (section 48).
204. The directions may be for the purpose of ensuring that the LEA secure suitable education and training, or may require the LEA to permit specified action to allow the YPLA itself, or another body, to take on the local education authority's functions on

its behalf. The YPLA may give a direction under this section only with the approval of the Secretary of State.

205. [Section 73](#) requires the YPLA to publish a statement that sets out the circumstances under which it will intervene under this section and the nature of that intervention.

Provision of services and assistance

Section 68: Provision of services

206. [Section 68](#) gives the YPLA the power to provide and receive payment for services to those persons or bodies listed in *subsection (4)* in connection with any of the recipient's functions relating to education and training. Those listed are the Secretary of State, the Welsh Ministers, the Scottish Ministers, a Northern Ireland department, the Chief Executive of Skills Funding, any person wholly or partly funded from public funds who has functions in relation to education or training, and any other person specified by order made by the appropriate national authority.
207. Examples of these services could include:
- providing accommodation and other facilities; and
 - support services such as software management systems, management information systems, payroll administration, human resources functions, finance services and procurement services.
208. For example, the YPLA would be able to use this power to provide shared services with the Chief Executive of Skills Funding, or the YPLA and Chief Executive could provide services on each other's behalf for reasons of efficiency.
209. In Wales, Scotland and Northern Ireland, arrangements for such services will be made only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service. The YPLA will also need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

Section 69: Assistance with respect to employment and training, Section 70: Assistance with respect to employment and training: Northern Ireland

210. Both of these sections allow the YPLA to take part in arrangements in relation to Wales, Scotland and Northern Ireland for assisting persons to select, train for, obtain and retain employment. Consent of the Welsh and Scottish administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland but this is not required in respect of Northern Ireland. The consent of the Secretary of State will be required for arrangements made by all the devolved administrations which involve the YPLA.

Miscellaneous

Section 71: Research, information and advice

211. [Section 71](#) gives the YPLA the power to carry out research relating to any matter relevant to any of its functions. This is likely to include, for example, collating and analysing regional research and intelligence to support local education authority 14 to 19 partnership plans and 16 to 18 commissioning plans.
212. It enables the Secretary of State to require the YPLA to provide information or advice, and gives the YPLA the power to provide information or advice to the Secretary of State, in relation to any of its functions.

213. The YPLA will have the power to provide information to any person designated by the Secretary of State. This will, for instance, enable the YPLA:
- To provide local education authorities with analysis of provider performance covering all types of provision they will be required to secure under their new powers conferred upon them under this Act (see Part 2 of this Act).
 - To inform local education authorities about the type and extent of the support their learners are receiving.
214. In order to carry out these functions, the YPLA must establish systems for collecting information designed to secure that YPLA decisions are made on a sound basis.
215. The YPLA may also secure facilities and services for providing information, advice or guidance about education, training or connected matters including employment.

Section 72: Guidance by YPLA

216. [Section 72](#) requires the YPLA to issue guidance to local education authorities about:
- the performance of their duties to secure that all young people in their area over compulsory school age but under 19, persons aged 19 and over but under 25 subject to learning difficulty assessment, and children subject to youth detention have access to enough suitable education and training provision to meet their reasonable needs,
 - the performance of their duty to co-operate in the performance of their duties under section 15ZA(1),
 - the performance of their duty to encourage employers to participate in the provision of education and training for young people over compulsory school age but under 19 and persons aged 19 and over but under 25 subject to learning difficulty assessment.
217. Before issuing this guidance, the YPLA must consult local education authorities in England and other persons as it thinks appropriate. Local education authorities must have regard to this guidance. The main guidance to be issued under this power will be the *National Commissioning Framework and Supporting Guidance*, which will cover how local education authorities should work independently and together in sub-regional groupings to develop commissioning plans that will set out how they intend to secure education and training provision for learners within their area. The YPLA also has the power to issue guidance about other matters in respect of which it has a function.

Section 73: Intervention powers: policy statement

218. The YPLA will be required to prepare and consult on a policy statement which sets out the detail of its policy on its powers of intervention. It will set out the triggers for, and the nature of, such interventions. Having considered representations made during consultation, the YPLA must send a copy of the final policy statement for approval by the Secretary of State, and then publish the approved statement. The YPLA must then have regard to the latest published statement when exercising its powers to intervene. *Subsection (6)* sets out the instances in which the YPLA has powers of intervention, which are under section 67 of this Act (YPLA powers to intervene for the purposes of securing appropriate education and training for young people); section 56H of the Further and Higher Education Act 1992 and section 56I of that Act (inserted by Schedule 8 to this Act) which concern powers to intervene in sixth form colleges.

Section 74: Power to confer supplementary functions on YPLA

219. The Secretary of State may by order (subject to the negative resolution procedure) give the YPLA supplementary functions that are both exercisable in relation to a function of the Secretary of State and relevant to the provision of education and training

within the YPLA's remit. Education and training within the YPLA's remit is defined in section 80. This could, for example, include conferring additional functions on the YPLA in relation to the provision of a new learner support grant for young people.

Chapter 3: YPLA's Functions: Supplementary

Section 75: Directions by Secretary of State

220. This section requires the YPLA to comply with directions from the Secretary of State. Directions under *subsection (1)* may set objectives that the YPLA should achieve in carrying out its functions and time limits within which they are to be achieved. They may also relate to the management of the YPLA.
221. *Subsection (2)* provides that if the Secretary of State considers that the YPLA has failed to carry out a statutory duty or has acted, or is proposing to act, unreasonably in carrying out its functions, a direction may be given which relates to the performance of the YPLA's functions, even where the YPLA has discretion in the exercise of its functions.
222. Under *subsection (4)* directions under this section may not relate to the funding of activities carried on by particular individuals or bodies. For example, the Secretary of State could not require the YPLA to fund a particular provider to deliver a particular course in respect of a young person. This is to ensure that the YPLA has sole responsibility for individual funding decisions without influence from the Secretary of State.

Section 76: Guidance by Secretary of State

223. This section requires the YPLA, in performing its functions, to have regard to any guidance provided to it by the Secretary of State. That guidance may include provision about who the YPLA must consult, and from whom it must take advice, in connection with particular decisions.

Chapter 4: Academy Arrangements

Section 77: Academy arrangements

224. This section will enable the Secretary of State to require the YPLA to enter into arrangements with the Secretary of State, under which the YPLA may be required to carry out specified functions of the Secretary of State relating to Academies, city technology colleges ("CTCs") and city colleges for the technology of the arts ("CCTAs"). Under the arrangements, the YPLA would carry out these functions on the Secretary of State's behalf.
225. Several of the Secretary of State's functions relating to these schools are functions arising under funding agreements entered into by the Secretary of State under section 482 of the Education Act 1996. This section makes provision for the setting up and running of schools known as Academies. Under a previous version of section 482 of the 1996 Act, provision was made for the setting up of CTCs and CCTAs.
226. Under this section the Government intends that, from April 2010, the YPLA may be required to provide, on the Secretary of State's behalf, support to and performance management of, Academies, CTCs and CCTAs. For example, the YPLA may be required to carry out the following of the Secretary of State's functions: calculating and paying grants; supervising budgets; managing specific cases concerning admissions, exclusions and special educational needs; monitoring and enforcing funding agreements; monitoring the standard of performance of pupils; managing school building work. *Subsection (4)* specifies functions of the Secretary of State which the YPLA is not permitted to carry out. These include signing Academy funding agreements. Under *subsection (5)* the arrangements must set out a complaints procedure

so that Academies and others may complain to the Secretary of State if they are concerned by the conduct of the YPLA under the arrangements.

227. The YPLA may be required to report to the Secretary of State in accordance with the arrangements.

Section 78: Grants for purposes of Academy arrangements functions

228. This section allows the Secretary of State to pay grants to the YPLA in order for the YPLA to carry out the functions specified in the arrangements. *Subsection (2)* allows the Secretary of State to make the payment of grant subject to conditions. For instance, the Secretary of State may require the YPLA to use the grant for a specific programme of improvement related to literacy and numeracy in Academies or to repay all or part of the grant if such a programme is not carried out.

Section 79: Academy arrangements: information sharing

229. This section enables the persons listed in *subsection (3)* to provide information to each other in order to carry out a relevant function. *Subsection (4)* defines “relevant function”.
230. This section does not affect other information sharing powers, or authorise disclosure of information that would have otherwise been prevented by legislation or any Act of Parliament. For instance, this means that any information sharing carried out under this section must still be carried out in accordance with the provisions of the Data Protection Act 1998.

Part 4: the Chief Executive of Skills Funding

Chapter 1: Establishment and main duties

The Chief Executive

231. The White Paper *Raising Expectations: enabling the system to deliver* set out proposals to create a new system that would fund education and skills training for persons aged 19 or over (referred to in these Notes as “post 19”). A widespread consultation was undertaken on these proposals.
232. Part 4 of the Apprenticeships, Skills, Children and Learning Act 2009 describes the powers and duties of the Chief Executive of Skills Funding, referred to in these Notes as “the Chief Executive”. The Chief Executive will be responsible for funding post-19 education and training, for exercising the apprenticeships functions, including securing provision of apprenticeship places for suitably qualified young people aged 16 to 18; and for the education and training of those in adult custody.
233. The Government intends that the Chief Executive will be supported by a new Skills Funding Agency, which will administer the funding system, and make payments to colleges, training providers and others based on the course selections of learners and employers and on a set of entitlements to learning, advice and financial support. The Skills Funding Agency will also manage the new Adult Advancement and Careers Service (AACS), the National Apprenticeship Service and the Train to Gain service. The Train to Gain service is the set of skills services provided to business including public sector employers. Together with its role in funding colleges and providers, these services will provide advice and support on jobs, skills and funding.
234. The Skills Funding Agency will also oversee the development of the Further Education Sector, working with the aim of ensuring that the supply of learning provision meets the needs of learners and employers, and the wider economy. It will also work with other agencies such as Jobcentre Plus to ensure those out of work or likely to be

made redundant, receive an integrated employment and skills service, taking account of labour market needs.

235. The Skills Funding Agency is not defined in this Act – instead the Government intends that it will operate through the powers and duties of the Chief Executive of Skills Funding, as described in Part 4 of the Act. The detailed role and functions of the Skills Funding Agency will be set out in a Framework Document which will be issued by the Secretary of State. The Secretary of State will also provide the agency with an annual letter setting out its budget and performance targets for each forthcoming financial year.
236. Both the Chief Executive and the staff of the Skills Funding Agency will work within the Department for Business, Innovation, and Skills (BIS). The Chief Executive will be a civil servant, and will be accountable to the Permanent Secretary and through him to Ministers.
237. The Act provides the Secretary of State with powers to direct the Chief Executive in certain circumstances, but the responsibility for making decisions relating to the funding of particular individuals or bodies lies with the Chief Executive, not the Secretary of State, who is prohibited from giving directions to the Chief Executive in relation to individual funding decisions.

Section 81: The Chief Executive of Skills Funding

238. This section provides for there to be a Chief Executive of Skills Funding who will be appointed by the Secretary of State and whose functions will be limited to England, except where the Chief Executive participates in arrangements with devolved administrations — see sections 107, 108 and 109 below.
239. Most provisions about the Chief Executive which could broadly be categorised as relating to the administration of the office are contained in Schedule 4 whereas the specific duties, powers and functions in relation to the provision of education and training are in the main body of the Act.

Schedule 4: The Chief Executive of Skills Funding

240. *Paragraph 1* provides that the holder of the office of Chief Executive will exercise the functions of the office on behalf of the Crown. It also provides that the office itself will be a corporation sole, so that any contracts entered into, or property owned by, the Chief Executive will pass automatically from one holder of the office to the next. *Paragraph 2* sets out how the Chief Executive will hold and vacate office, and provides that the holder of the office will be a civil servant. *Paragraphs 3 to 5* contain provision about the staff of the Chief Executive, who will form the Skills Funding Agency. These staff may either be staff appointed by the Chief Executive under *paragraph 3*, or staff provided by the Secretary of State to the Chief Executive under secondment arrangements under *paragraph 5* and will in either case be civil servants. *Paragraph 4* makes arrangements whereby the Chief Executive may delegate the functions of the office to members of the Chief Executive's staff and to staff provided by the Secretary of State under *paragraph 5*. *Paragraphs 6 to 8* make provision for operational matters such as funding, including the payment of grants to the Chief Executive and how these must be accounted for, and the preparation and publication of annual reports and accounts.
241. *Paragraph 9* sets out provision for supplementary powers and restrictions, and gives the Chief Executive additional general powers to enable him or her to perform the functions of the office. For example, these powers would allow the Chief Executive to acquire and dispose of land and other property, and enter into contracts. It also sets out those things that the Chief Executive may not do. So the Chief Executive may not borrow money and may not, without the prior consent of the Secretary of State, lend money; form, participate or invest in a company; or form, participate in forming, or become a member of a charitable incorporated organisation.

Apprenticeship Functions

Section 82: Apprenticeship functions

242. The Secretary of State may direct the Chief Executive of Skills Funding to designate a person to carry out apprenticeship functions on behalf of the Chief Executive. The Government expects that the person designated will be the Chief Executive of the National Apprenticeship Service (NAS). The NAS will be a discrete service within the Skills Funding Agency, and the Chief Executive of the NAS and his staff will undertake the apprenticeship functions, including the duty to secure places for young people under the apprenticeship scheme (section 91). *Subsection (5)* sets out the “apprenticeship functions” that may be carried out under this section.
243. This section, together with the administrative arrangements in place, allows the Secretary of State to define and regulate the relationship between the Chief Executive of Skills Funding and the person designated to carry out the apprenticeship functions, and contains a power for the Secretary of State to make directions to the Chief Executive of Skills Funding requiring him to ensure that the designated person reports to the Secretary of State on the performance of the apprenticeship functions. The “Secretary of State” in this instance should be taken as meaning both the Secretary of State for Business, Innovation, and Skills and the Secretary of State for Children, Schools and Families.
244. All apprenticeship functions will be conferred by the Act on the Chief Executive of Skills Funding. Where those functions are delegated to the Chief Executive of the NAS or another designated person, regulations under *subsection (7)* may make clear which statutory references should operate as references to the designated person, and may modify other statutory provisions.

Apprenticeship training for persons aged 16 to 18 and certain young adults

245. *Sections 83 and 84* set out the general powers relating to the provision of apprenticeship places for young people. The local education authorities will agree with the Chief Executive the amount and type of apprenticeship training required.
246. Within these general powers, the Chief Executive has a specific duty to secure sufficient suitable apprenticeship places for every suitably qualified young person aged 16 to 18 who wants one. This duty is set out as the apprenticeship offer in sections 91 to 99. A suitable place is in one of the two available chosen apprenticeship sectors, at the appropriate level, and within the reasonable travel area of the person concerned. The definitions and levels in these sections relate solely to the apprenticeship scheme. The sections do not define an apprenticeship, the characteristics of which will reflect the specification of apprenticeship standards provided for in Part 1.

Section 83: Apprenticeship training for persons aged 16 to 18 and certain young adults

247. This section enables the Chief Executive to secure the provision of facilities for apprenticeship training of young people, that is, people above compulsory school age but under 19 and those aged 19 or over but under 25 who are subject to a learning difficulty assessment. These include the people for whose training and education local education authorities will be responsible under section 15ZA of the Education Act 1996 (inserted by section 41 of the Act). Apprenticeship training for them will be provided in response to the need for such training agreed with the local education authorities. The Chief Executive also has a specific duty to secure suitable apprenticeship provision for young people aged 19 or over but under 25 and leaving care or are subject to a learning difficulty assessment.

248. Apprenticeship training is defined as training provided in connection with an apprenticeship agreement, any other contract of employment or other kinds of working which may lead to the award of apprenticeship certificates.

Section 84: Arrangements and co-operation with local education authorities

249. This section enables the Chief Executive to enter into arrangements with local education authorities when securing apprenticeship training for young people. It also requires the Chief Executive to co-operate with local education authorities when deciding on the number of places for apprenticeship training to be secured. The arrangements need to enable local education authorities to meet their responsibilities under section 41 of the Act and to enable the Chief Executive to meet demand for apprenticeship places under the apprenticeship scheme in accordance with section 91.

Section 85: Encouragement of training provision etc for persons within section 83

250. This sets out the general duty on the Chief Executive to promote apprenticeships for young people to employers, and encourage them to employ young people as apprentices.

Education and training for persons aged 19 or over etc.

Section 86: Education and training for persons aged 19 or over and others subject to adult detention

251. This section sets out the general duty of the Chief Executive to secure the provision of “reasonable” facilities for the education and training of people aged 19 or over, (other than those aged under 25 who are subject to learning difficulty assessment) and those who are detained in a prison or an adult young offender institution. Facilities are “reasonable” if they are of a quality and quantity which the Chief Executive can reasonably be expected to provide taking account of the resources available to him or her (*subsection (3)*).
252. The duties do not extend to higher education, which is the responsibility of the Higher Education Funding Council for England. This is because the Education Act 1996 applies for the interpretation of this Part, and section 1(4) of that Act excludes higher education from its ambit.
253. The duty includes funding and securing delivery of education and training for those detained in prisons and adult young offender institutions, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise. This includes 18 year olds held in adult custody (and, very rarely, those under 18), therefore aligning the category of detained people in relation to whom the Chief Executive has responsibilities with the category of people detained in the adult criminal justice system, thereby avoiding local education authorities and the Chief Executive each having responsibility for the provision of education or training in individual establishments. Local education authorities will be responsible for all those detained within the youth justice system (which includes nearly all those aged 17 and under, and those aged 18 who are close to the end of their sentence and who will therefore not transfer to adult prisons). Where a person in adult detention has already begun education or training, the Chief Executive must have regard to the desirability of those persons continuing such programmes whilst in custody. Guidance may be issued by the Secretary of State specifically concerning the provision of education and training for prisoners aged 18 or under who are held in adult detention. The Chief Executive will have to have regard to any such guidance. Feasibility of such provision as well as budgetary considerations may be taken into account.
254. *Subsection (4)* sets out the factors the Chief Executive must take into account in exercising his or her duty under *subsection (1)*, which include ensuring that the education and training required by different employment and industry sectors are met.

It also requires the Chief Executive to act with a view to encouraging diversity in education and training; and to increasing opportunities for individuals to exercise choice.

- 255. The Chief Executive should make the best use of resources. This might mean that for courses and skills where demand is more limited, the Chief Executive could decide to fund places concentrated in particular geographical areas which have links to a particular industry sector, rather than providing more widespread provision for smaller groups of learners. Learners (and employers) seeking to access these more unusual courses may need to travel (or permit employees to travel) to take up the offer of a course.
- 256. No distinction is drawn between full-time and part-time education in the provision that the Chief Executive must secure.
- 257. “Organised leisure time occupation” is defined in *subsection (7)*. The Chief Executive’s duties in this regard do not apply to those who are detained in prison or adult young offender institutions; as such facilities are provided by the prison or other institution.

Section 87: Learning aims for persons aged 19 or over: provision of facilities

- 258. *Sections 87, 88 and 89* re-enact provisions inserted into the Learning and Skills Act 2000 by section 86 of the Education and Skills Act 2008, but conferring functions on the Chief Executive rather than the LSC. Section 87 places a duty on the Chief Executive to secure the provision of proper facilities (in contrast to the reasonable facilities provided for in section 86) for education and training to enable adults who lack particular skills to obtain relevant qualifications. *Subsection (4)* of section 87 defines proper facilities as those which are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. This section effectively gives higher funding priority to those adults who lack certain particular skills to enable them to obtain relevant qualifications.
- 259. The broad standards of achievement (or “learning aims”) for this purpose are set out in Schedule 5. They are a specified qualification in literacy, a specified qualification in numeracy and a specified vocational qualification at level 2. The specification of the particular qualifications to which the duty applies will be in regulations.
- 260. The duty will apply only to a learner’s first qualification at the specified level. For example, the Chief Executive will not be under a duty to secure the provision of proper facilities for a learner with a level 2 National Vocational Qualification (NVQ) in Beauty Therapy who then applies for a level 2 course in Hairdressing. However, the Secretary of State may by regulations made under section 87 provide that despite having a specified qualification, a person is to be treated as not having that qualification. This could apply, for example, where an individual had achieved a school leaving qualification in English or maths but was later identified, as a result of diagnostic assessment, as having skills below the basic levels of literacy or numeracy.
- 261. The qualifications will be those at relatively low levels of learning, which are designed to equip people with basic and intermediate skills for work and everyday living.
- 262. In performing the duty, the Chief Executive must take account of a number of factors, such as the education and training needs in different sectors of employment. The Chief Executive must also act with a view to encouraging diversity of education and training and to increasing opportunities for individuals to exercise choice; and must make the best use of resources.

Section 88: Learning aims for persons aged 19 or over: payment of tuition fees

- 263. This section places a duty on the Chief Executive to ensure that learners will not be liable to pay fees for courses of study provided as a result of section 87. There are two categories of learners that the Government intends will not generally have to pay fees for their courses:

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

- *Subsection (2)* covers those that are at least 19 years of age and are following a course of study for their first specified qualification in literacy, numeracy, or a specified vocational qualification at level 2;
 - *Subsection (4)* covers those that are at least 19 but less than 25 who are following a course to get their first specified level 3 qualification (for example, two A-levels).
264. The intention is that these learners will not be liable to pay fees for these courses of study.
265. Fees include the course fees, but the Secretary of State may also specify in regulations, which will be subject to the affirmative resolution procedure, that other fees relating to the course; for example, examination fees and costs of diagnostic assessment, are included. Costs which are not fees (for example, the costs of buying books, equipment and materials) will not come within the scope of the duty.
266. *Subsection (5)* gives the Secretary of State the power to amend by order, which will be subject to the affirmative resolution procedure, the relevant provisions of this section so as to vary the ages at which learners qualify for financial help under this section. This provides the flexibility, for example, to be able to adapt to changing economic conditions.

Section 89: Sections 87 and 88: supplementary

267. This section sets out supplementary provisions relating to regulations relating to sections 87 and 88. Regulations may make provision about the circumstances in which a person is to be treated as having or not having a particular qualification for the purposes of meeting the entitlement. It also provides that sections 87 and 88 do not apply to people detained in prisons or adult young offender institutions. This is because all learning provided by the Chief Executive of Skills Funding will be free to learners in custody, and therefore these sections have no practical effect for those prisoners held in adult detention.

Schedule 5: Learning aims for persons aged 19 or over

268. The Schedule sets out the learning aims for people aged 19 or over, that is the broad categories from which qualifications may be specified as ones for which the Chief Executive must secure proper facilities (section 87) or pay for tuition fees (section 88).
269. These categories are:
- a specified qualification in literacy (at the level of attainment in literacy at which an adult's skills are the minimum required to operate in day-to-day life);
 - a specified qualification in numeracy (at the level of attainment in numeracy at which an adult's skills are the minimum required to operate in day-to-day life);
 - level 2 (as demonstrated by 5 GCSEs at Grade C or above);
 - level 3 (as demonstrated by 2 A-levels).
270. The Secretary of State may by regulations specify particular qualifications or descriptions of qualifications which are to fall within scope of the duties. The Government intends that the qualifications specified will be drawn from either the Qualifications and Credit Framework (QCF) or the National Qualifications Framework (NQF). However, not all qualifications in either framework will necessarily be specified.
271. Qualifications which might be specified in regulations include the following:
- Literacy

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

- level 1 certificate in Adult Literacy
 - Numeracy
 - entry level 3 certificate in Adult Numeracy
 - Level 2
 - level 2 National Vocational Qualifications (NVQs)
 - Vocationally Related Qualifications (VRQs) at level 2
 - Level 3
 - Two or more A-levels
 - One or more A-level double Award
 - level 3 NVQs
 - level 3 Diplomas
 - International Baccalaureate
 - Access to HE certificate/diploma
272. The Secretary of State may amend the Schedule by order to specify that a particular category of qualification is no longer within scope of the duties or to add a new category of qualification. Any such amendment will be subject to the affirmative resolution procedure.

Section 90: Encouragement of education and training for persons aged 19 or over and others subject to adult detention

273. This section sets out the Chief Executive's general duty to encourage participation in education and training amongst people aged 19 or over (other than persons aged under 25 who are subject to learning difficulty assessment) and others in adult detention, and to encourage employers to participate in providing education and training for their employees (who fall within the Chief Executive's remit), including by entering into apprenticeship agreements, and to contribute to the costs of such education and training.

The apprenticeship offer

Section 91: Duty to secure availability of apprenticeship places

274. The Chief Executive has a specific duty to secure sufficient apprenticeship places for every suitably qualified person within one of the categories of people eligible for the offer who wants one. This duty is one of the apprenticeship functions which is expected to be delegated to the Chief Executive of the National Apprenticeship Service. The arrangements for fulfilling this duty are set out in the following sections and are known as the apprenticeship offer. *Subsection (3)* allows the Secretary of State to prescribe when the duty has or has not been met.

Section 92: Election for apprenticeship offer

275. This specifies the eligibility criteria for persons who may elect for the apprenticeship offer, and provides that a person who elects for the offer should select two apprenticeship sectors for the purposes of the offer. Each sector will contain a number of different frameworks. The intention is that the sectors will follow those of the Sector Skills Councils.
276. To be eligible for the offer a person has to satisfy the apprenticeship offer requirements at level 2 or level 3, as set out in section 95. The person must also be aged between 16 to

- 18; be a person aged 21 towards whom a local authority owes duties under section 23C of the Children Act 1989, or a person towards whom a local authority owes duties under section 23CA of that Act; or be a person of a prescribed description up to the age of 25.
277. A person aged under 21 to whom a local authority owes duties under section 23C of the Children Act 1989 will be a “care leaver”: a person aged 18 or over, who has been looked after by the authority. A person to whom an authority owes duties under section 23CA of the Children Act 1989 will be a “care leaver” to whom the authority no longer owes duties under section 23C, but who wishes to pursue education or training: the duties provided for by section 23CA may continue to be owed until the person reaches the age of 25.
278. It is intended that the persons who will be described in regulations under section 92(4) will be persons who are subject to a learning difficulty.
279. The section also provides that persons who satisfy the apprenticeship requirements at both level 2 and 3 must choose one of those levels.

Section 93: Meaning of “apprenticeship place”

280. This defines an apprenticeship place for the purposes of the apprenticeship offer set out in section 91. A place consists of arrangements comprising both a place on a training course and a place for employment under an apprenticeship agreement, which together relate to an English framework (section 15).

Section 94: Suitability and availability of apprenticeship places: further provision

281. This makes provision about the suitability and availability of apprenticeship places and defines what is meant by the “appropriate level” of an apprenticeship place and “reasonable travel area”. Under *subsection (6)* the Secretary of State must specify areas; the Government intends that the starting point for establishing these ‘reasonable travel areas’ will be the “travel to work areas” (TTWAs) defined by the Office for National Statistics. TTWAs were introduced to provide self contained labour markets and indicate an area within which the population would generally commute for the purposes of employment. The Government expects that that the duty to secure places will usually enable young people to take places within the specified area in which a person lives; and only, where neither choice of sector cannot be met because there are very few or even no employers in those sectors in the specified area, the Chief Executive might reasonably conclude that travel outside the specified area is warranted to take up a place.

Section 95: Apprenticeship offer requirements,

Section 96: Apprenticeship offer requirements: interpretation

282. **Section 95** sets out the qualifications a person must have to elect for the apprenticeship offer at level 2 or level 3, and **Section 96** contains definitions for the purposes of section 95. These qualifications relate solely to the apprenticeship offer and do not affect anyone’s ability to work towards an apprenticeship certificate outside the apprenticeship offer. Under section 96(2) which qualifications count will be specified in regulations which will be subject to the negative resolution procedure. Section 95(5) enables regulations to be made which will set out the circumstances in which a person who appears to the Chief Executive to have a learning difficulty is to be treated as meeting the apprenticeship offer requirements. Persons with learning difficulties will be able to provide alternative evidence which will be taken into account by way of satisfying the apprenticeship offer requirements at Level 2 and Level 3. Section 95(3) provides that the Chief Executive of Skills Funding may determine that certain qualifications awarded outside England are comparable to a specified qualification for the purpose of entry to the apprenticeship offer. Section 95 also specifies that a person must be available for employment under an apprenticeship agreement and allows

regulations which will be subject to the negative resolution procedure, to set out what that means. In forming an opinion about the levels of attainment of qualifications that satisfy the apprenticeship offer requirements, the Secretary of State must consult Ofqual under section 96(7).

Section 97: Suspension of offer

283. The Secretary of State may suspend the apprenticeship offer in a specified geographical area in relation to particular apprenticeship sector or at a particular level for up to two years. This would allow the duty to secure suitable apprenticeship places to be suspended where the economic difficulties, or other circumstances, are so severe that it cannot be fulfilled.

Section 98: Power to amend apprenticeship offer

284. This section allows the Secretary of State to amend the age in section 92(2)(b) under which people other than care leavers are eligible for the apprenticeship offer, currently set at 19. The section also enables the Secretary of State to amend the level of qualification for the apprenticeship offer. The power is exercisable by order, which will be subject to the affirmative resolution procedure.

Chapter 2: Other functions

Funding

Section 100: Provision of financial resources

285. This section gives the Chief Executive powers to fund other persons for the purpose of fulfilling the duties and exercising the powers vested in the Chief Executive. It provides powers for the Chief Executive to pay persons who provide or are proposing to provide education or training within the Chief Executive's remit, and to pay persons who may not be providers themselves but who supply services which support the delivery of such education and training by providers, for example, delivery of transport and other support services. The powers also provide for the Chief Executive to pay persons providing or proposing to provide information, advice or guidance about education or training or connected matters.
286. A person may be any natural or legal person and includes FE colleges, private and voluntary sector training providers and individuals. *Subsection (1)(c)* allows the Chief Executive to make direct grants to students.
287. In exercising the powers under this section, the Chief Executive must make the best use of resources. The Chief Executive may use his own financial resources – namely the grant provided by the Secretary of State; assist in the transfer of financial resources from one person to another; and do either of these jointly with other persons or assist in the transfer of financial resources from other persons who are acting jointly, for example, to jointly commission with other Government Departments, for example the Department for Work and Pensions, skills provision for people who have, or are likely to be made, redundant.
288. In order to fulfil his or her powers to fund colleges and providers, the Chief Executive will receive an annual letter setting out the available budget and the Secretary of State's priorities. The Government anticipates that under this section, the Chief Executive will exercise his or her funding powers in order to fund FE colleges, training providers and others for learning provision which responds to the choices of individuals and employers, and the wider skills needs of the economy.

Section 101: Financial resources: conditions

289. This section permits the Chief Executive to attach conditions to the financial resources which he or she makes available. *Subsection (2)* provides that these conditions may in particular fall into three categories: information, operational or repayment. For example, information conditions may include a requirement to provide information to the Chief Executive or other persons so designated by the Chief Executive and could also enable the Chief Executive and designated persons to have access to the accounts and computers, for example, of funded persons (*subsection (3)*).
290. *Subsections (4) and (5)* define “operational conditions”; these include a requirement on the provider to charge fees by reference to specified criteria, the making of awards and recovery of costs from other persons in accordance with criteria established by the Chief Executive. Operational conditions may also place a requirement on a provider to make available provision which meets requirements identified in learning difficulty assessments conducted under section 139A or 140 of the Learning and Skills Act 2000.

Section 102: Performance assessments

291. This section re-enacts the performance assessment elements of section 9 of the Learning and Skills Act 2000, but conferring functions on the Chief Executive of Skills Funding rather than the LSC. It enables the Chief Executive to adopt or develop schemes for the assessment of the performance of individual providers of education and training. The Chief Executive may take this assessment into account when deciding which providers he or she will continue to fund under powers in section 100.

Section 103: Means tests

292. This section re-enacts the means testing elements of section 9 of the Learning and Skills Act 2000, but conferring functions on the Chief Executive of Skills Funding rather than the LSC. It enables the Chief Executive to carry out means tests or arrange for others to do so in order to establish how much financial support students may be eligible to receive in respect of the costs of education or training, which may include childcare or transport costs, or where living costs are a concern.

Section 104: Assistance and support in relation to apprenticeship places

293. This section places a duty on the Chief Executive to provide or secure provision of services to assist people to find apprenticeships. The section provides the statutory basis for the services provided by the National Apprenticeships Vacancy Matching Service launched in December 2008 which include a web based service for individuals, employers and providers which enables employers to advertise their apprenticeship vacancies through a national portal. The Government’s expectation is that the portal will provide information to assist people interested in apprenticeships to understand the opportunities that exist for them and where appropriate apply on-line for those opportunities that interest them.

Section 105: Promoting progression from level 2 to level 3 apprenticeships

294. This section places a duty on the Chief Executive of Skills Funding to promote the progression to a level 3 apprenticeship where a person has completed a level 2 apprenticeship.

Section 106: Advice and assistance in relation to apprenticeships

295. This section allows the Secretary of State to require the Chief Executive of Skills Funding to provide advice and assistance to enable the Secretary of State to discharge responsibilities for statutory apprenticeships set out in Chapter 1 of Part 1. These include responsibility for the specification of apprenticeship standards for England and giving directions and guidance in relation to the issue of English frameworks.

Provision of services and assistance

Section 107: Provision of services

296. This section re-enacts section 11 of the Further Education and Training Act 2007, but conferring functions on the Chief Executive of Skills Funding rather than the LSC. It provides the powers for the Chief Executive to provide services for individuals and to bodies exercising education and training functions in relation to those functions. It enables the Chief Executive to offer support services such as management information systems, software management systems, payroll administration, human resources functions, finance services and procurement services, including to people and to bodies outside England where that is appropriate, and required by the devolved administrations. Such services may include the provision of accommodation or facilities where that is appropriate to the delivery or provision of the service.
297. The Chief Executive may provide these services to: publicly-funded education and training providers (including schools and universities); publicly-funded institutions that have functions relating to the provision of education and training; and persons or bodies specified by order (who may or may not be publicly funded but have functions relating to education or training).
298. *Subsection (3)* provides that the terms and conditions of such arrangements may include provision for making payments to the Chief Executive in respect of costs incurred in performing any function under the arrangements. This might be used where the delivery of services requires the Chief Executive to incur costs that might not normally be incurred in the delivery of services in England alone. This might include costs associated with adapting systems, providing “additional” services, or simply providing the service to devolved administrations.
299. *Subsection (4)* defines “permitted recipients”, which are those persons with whom the Chief Executive may make arrangements under this section and *subsection (8)* defines “the appropriate national authority”.
300. The orders specifying additional persons or bodies as permitted recipients may be made by the Secretary of State or, where a person or body has education and training functions only in Wales, Scotland or Northern Ireland, by the relevant devolved administration.
301. In Wales, Scotland and Northern Ireland, these services will be supplied only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service.
302. The Chief Executive will need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.
303. An example of such a support service is the Further Education Data Service which the Government intends that the Chief Executive will operate as a shared service across the Further Education and skills sector. This service will collect information from colleges and providers and produce and disseminate reports on performance of the further education sector to all those with a direct interest in the performance of particular colleges and providers, for example the colleges and providers themselves; local education authorities and the Young People’s Learning Agency.
304. Another example of such a support service is the Managing Information Across Partners (MIAP) Learner Registration and Learner Record Service through which the Chief Executive will provide services, when requested to do so, which support the sharing of data with the aim of benefiting individual learners. The Chief Executive will manage these services on behalf of participating partners. The Welsh Assembly and Northern Ireland Government have already asked the LSC to provide such services and this section will enable the Chief Executive to carry out the same functions.

Section 108: Assistance with respect to employment and training, Section 109: Assistance with respect to employment and training: Northern Ireland

305. Sections 108 and 109 give the Chief Executive the same powers as the LSC currently has under section 12 and 13 of the Further Education and Training Act 2007, to allow him or her to take part in arrangements in relation to Wales, Scotland and Northern Ireland for assisting persons to select, train for, obtain and retain employment. Consent of the Welsh and Scottish administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland. The consent of the Secretary of State will be required for arrangements made by all the devolved administrations which involve the Chief Executive. Arrangements may include a loans scheme for learners such as Career Development Loans (CDLs) or its successor Professional and Career Development Loans (under which commercial lenders provide loans to help pay for learning) which operate throughout Great Britain and are currently administered by the LSC on behalf of the devolved administrations.

Miscellaneous

Section 110: Research, information and advice

306. This section sets out the role of the Chief Executive in relation to research and the provision of information and advice, and the establishment of systems for collecting information. The Chief Executive has a duty to report to the Secretary of State on such matters as the Secretary of State may require. In practice, this is likely to include information about progress towards the Government's targets and priorities in connection with post-19 learning; a description of the Chief Executive's learning and skills funding strategy; and information on the application of funding. This will also include information about apprentices aged 16 to 18.
307. Subsection (4) gives the Chief Executive the power to provide information to any person designated by the Secretary of State, in relation to a function of the Chief Executive. This will, for instance, enable the Chief Executive to provide the Office of Qualifications and Examinations Regulation (Ofqual) (if so designated) with information to assist with the establishment and maintenance of the framework of qualifications and monitoring of the standards of qualifications.
308. Subsection (6) allows the Chief Executive to secure the provision of facilities and services for providing information, advice or guidance about education or training or connected matters.

Section 111: Power to confer supplementary functions on Chief Executive

309. This section enables the Secretary of State to confer by order additional functions on the Chief Executive, which are connected to the functions of the Secretary of State and relevant to the provision of facilities for education or training within the remit of the Chief Executive.

Chapter 3: Chief Executive's functions: supplementary

Strategies

Section 112: Strategies for functions of Chief Executive

310. This section re-enacts with modifications, existing powers under section 24A of the Learning and Skills Act 2000. It allows the Secretary of State by order to specify an area of England as an area for which a specified body (which could either be a body that already exists or one which is specifically set up), to put in place and keep under review a strategy for how education and training for those persons that the Chief Executive is responsible for, will be delivered. This would typically be a city region, for which a specified body — for example, an Employment and Skills Board — is able to set out a

strategy for the actions of the Chief Executive in that particular area. The Secretary of State may not specify an area comprising Greater London or a part of it because specific powers in respect of Greater London apply and are set out in section 113.

- 311. *Subsection (4)* allows the Secretary of State to give directions and guidance to the specified body in relation to the formulation and review of its strategy, including such matters as form and content of the strategy, updating and reviewing the strategy and those bodies which need to be consulted on the formulation and review of the strategy. The specified body must comply with any directions and have regard to any guidance given by the Secretary of State.
- 312. *Subsection (6)* allows the Chief Executive to reimburse this body for costs and expenses it incurs in formulating and reviewing its strategy.

Section 113: Strategy for functions of Chief Executive: Greater London

- 313. This section re-enacts with modifications section 24B of the Learning and Skills 2000 (which was inserted by the Further Education and Training Act 2007) This section requires the Secretary of State to provide, by regulations, for the establishment of a London body to formulate a strategy setting out how certain functions of the Chief Executive are to be carried out in Greater London and keep it under review.
- 314. The body that is established must include the Mayor of London and other members appointed by the Mayor in accordance with the regulations and the Mayor must be the chairman of the body.
- 315. Under *subsection (4)*, the Secretary of State may give directions and guidance to the London body in relation to the formulation and review of the strategy, including such matters as the form and content of the strategy; updating it; procedures to be followed when formulating or reviewing the strategy; and the consultation procedures to be followed.
- 316. The London body must act in accordance with any such directions and have regard to guidance given by the Secretary of State (*subsection (5)*) and it must publish the strategy, or the revised strategy (*subsection (6)*).
- 317. The Chief Executive may contribute to costs and expenses incurred by the London body or the Greater London Authority (*subsections (8) and (9)*).

Section 114: Strategies: duty of Chief Executive

- 318. This section puts the Chief Executive under a duty to implement any strategy formulated by a body set up under the powers contained in sections 112 and 113.
- 319. The section sets out circumstances in which the Chief Executive may refuse to comply with the strategy. This might be for example where the strategy has been formulated without compliance with any directions or regard to guidance concerning its formulation or review. If provision in a strategy conflicts with provisions of strategies of different specified bodies, the Chief Executive may disregard relevant provision in one or both of the strategies (*subsection (4)*).
- 320. The Chief Executive is not required to carry out his or her functions in accordance with a strategy in a manner that he or she is satisfied might involve disproportionate cost or in a manner which he or she considers to be unreasonable (*subsection (6)*).
- 321. The Chief Executive may not carry out a function in accordance with a strategy if to do so would mean failing to comply with a duty imposed on him or her by or under any enactment (*subsection (3)*). Where the Chief Executive proposes not to, or does not, carry out a function in compliance with a strategy, the Chief Executive must refer the matter to the Secretary of State (and the strategy setting body may also refer the matter to the Secretary of State) (*subsection (7)*). In such circumstances, the Secretary

of State may give such direction to the Chief Executive as he or she thinks fit regarding the carrying out of that function (*subsection (8)*).

Section 115: Persons with learning difficulties

322. This section provides that in performing the functions of the office, the Chief Executive must have regard to the needs of persons who are aged 19 or over who have learning difficulties (other than person aged under 25 who are subject to a learning difficulty assessment (under section 139A of the Learning and Skills Act 2000)) and persons with learning difficulties who are subject to adult detention. “A learning difficulty” is defined in *subsections (2) and (3)*.

Section 116: Persons subject to adult detention

323. This section provides that the Chief Executive must have regard to the needs of persons in prisons and adult young offender institutions in the performance of the functions of the office.

Section 117: Use of information by Chief Executive

324. This section provides that the Chief Executive must have regard to any information which has been provided by a person designated by the Secretary of State for the purposes of this section.

Section 118: Guidance

325. This section sets out a requirement similar to that imposed on the Learning and Skills Council in section 14A of the Learning and Skills Act 2000 (inserted by section 7 of the Further Education and Training Act 2007). It places a duty on the Chief Executive to have regard to any guidance given by the Secretary of State. In particular, guidance may relate to consultation with learners, potential learners (who fall within the Chief Executive’s remit) and employers; and taking advice from such persons or descriptions of persons as may be specified in the guidance. In relation to consultation with learners and potential learners, the guidance must provide for the views of such persons to be considered in the light of their age and understanding.

Section 119: Directions: funding of qualifications

326. This section provides for the Secretary of State to direct the Chief Executive to secure (by way of imposing a condition) that funding he provides is not used to make payments in respect of certain specified qualifications. The direction from the Secretary of State would be expected to specify the qualification or qualifications which he considers to be inappropriate for public funding and should therefore be excluded, and may set out the details under which financial resources should not be provided, such as a course leading to a qualification, or exam fees for a qualification.
327. *Subsection (2)* defines the terms “an excluded payment” and “relevant institution or employer” for the purposes of this section.
328. The overall purpose of the section is to ensure that the funding provided by the Secretary of State to the Chief Executive is used to fund qualifications which the Secretary of State thinks are appropriate to receive public funding, and provides a mechanism for the Secretary of State to prevent the public funding of qualifications where he deems it inappropriate to provide such funding.

Section 120: Other directions relating to the functions of the office

329. This section allows the Secretary of State to give directions to the Chief Executive about what overarching objectives he or she should be seeking to achieve in performing the functions of the office, and by when. This section also allows the Secretary of State

to intervene if he or she considers that the Chief Executive has failed to discharge a statutory duty or has acted or is proposing to act unreasonably in the exercise of his or her functions.

330. Directions under the section may not relate to the funding of specific individuals or individual bodies. This is to ensure that the Chief Executive has responsibility for funding decisions, without influence from the Secretary of State.

Part 5: Parts 2 to 4: Supplementary

Section 122: Sharing of information for education and training purposes

331. This section allows information sharing between bodies and persons replacing the Learning and Skills Council to enable or facilitate the exercise of their functions. It does not, however, extend local education authorities' existing statutory powers to share information with each other.
332. The section does not allow information to be passed on if doing so would be an offence, nor where there are other statutory restrictions which prohibit its disclosure.

The Learning and Skills Council for England

Section 123: Dissolution of the Learning and Skills Council for England, Section 124: Dissolution of the Learning and Skills Council: transfer schemes

333. These sections provide for the dissolution of the LSC and give effect to Schedules 6 and 7.

Schedule 6: Dissolution of the Learning and Skills Council for England: Minor and consequential amendments

334. **Schedule 6** contains minor and consequential amendments relating to the dissolution of the LSC.
335. These include an amendment to the Education Act 2002 which permits the Secretary of State and Welsh Ministers to make regulations allowing the YPLA to recover costs from a local education authority where it secures education for a person under section 64 of the Act, or allowing a local education authority to recover costs from the YPLA where it secures education under section 64 in place of another local education authority.

Schedule 7: Learning and Skills Council for England: transfer schemes

336. This Schedule gives power to the Secretary of State to make one or more schemes to enable the transfer of staff and property from the LSC to various bodies.
337. In relation to staff, the Secretary of State may make a staff transfer scheme providing for designated employees of the LSC to become employees of "a permitted transferee" or to become members of the civil service. A staff transfer scheme must provide for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to apply to the transfer of employees of the LSC, with modifications where necessary. Modifications will be required in the case of transfers into the civil service on terms which do not constitute a contract of employment (because TUPE assumes that the persons to which the regulations apply will have a contract of employment once transferred). Those LSC staff who transfer to BIS and become members of staff of the Chief Executive of Skills Funding will become civil servants. In relation to property, a property transfer scheme may provide for the transfer from the LSC of designated property, rights or liabilities to the Secretary of State, the Chief Executive of Skills Funding, or to a permitted transferee.
338. "Permitted transferee" is defined in [paragraph 8](#) as an English LEA, the YPLA or any other person specified by the Secretary of State by order.

Part 6: the Sixth Form College Sector

Section 125: Sixth form college sector

339. This Part introduces Schedule 8, which contains provisions for a new sixth form college sector.

Section 126: Removal of power to establish sixth form schools

340. This section prevents LEAs from establishing additional sixth form schools, but does not affect existing sixth form schools, which will continue to operate in exactly the same way as other schools maintained by the LEA.

Schedule 8: Sixth form college sector

341. Paragraph 3 of Schedule 8 inserts new provisions for sixth form college corporations in England into the Further and Higher Education Act 1992 (“the FHEA 1992”).

Section 33A: Initial designation of existing bodies corporate as sixth form college corporations

342. This new section gives the Secretary of State a power to designate, by order, specified existing further education (“FE”) corporations as “sixth form college corporations”. This initial designation power will take the form of a list of institutions. Designation will take effect from a date that is specified in the order. The designation order may provide for the continuity of governance between the former FE corporation and the new sixth form college corporation and may specify the initial name of the new corporation.
343. The sixth form college corporations designated under this section will include both FE corporations established under section 16 of the FHEA 1992 and “designated institutions”. Some colleges that were sixth form colleges before 1992 entered the further education sector by being designated under section 28 of the FHEA 1992, and were later incorporated as FE corporations under section 143 of the Learning and Skills Act 2000.
344. This power is exercisable only once and not after a date specified by order.

Section 33B: Subsequent designation of existing bodies corporate as sixth form college corporations

345. This new section gives the Secretary of State further power to designate, by order, FE corporations as sixth form college corporations once the power in section 33A is no longer exercisable. A designation order may be considered only after the governing body of a FE college has applied to the Secretary of State and if, on the date of application, at least 80% of the total enrolment number at the institution is aged 16 or over but under 19. The “total enrolment number” is defined as the full-time equivalence number (as calculated under Schedule 3 to the FHEA 1992). The designation order may provide for the continuity of governance between the former FE corporation and the new sixth form college corporation and may specify the initial name of the new corporation.

Section 33C: Establishment of new bodies corporate as sixth form college corporations

346. This section gives the Secretary of State the power to establish, by order, a sixth form college corporation. The local education authority must first publish proposals in line with the requirements set out in subsection (3). On establishment, at least 80% of the total enrolment number at the institution must be aged 16 to 18. The order will specify the date of establishment and may provide for the name of the new corporation.

Section 33D: Conversion of sixth form college corporations into further education corporations

347. Under this new section, the Secretary of State may, by order, convert a sixth form college corporation into a FE corporation. This is the opposite of the process under section 33B for the designation of a sixth form college. The governing body of the sixth form college must apply to the Secretary of State and he must be satisfied that it is no longer appropriate for the college to remain a sixth form college. So that change does not destabilise colleges, subsection (3) prevents a sixth form college from seeking to convert for two years from the date that it is designated or established as a sixth form college. The order may, as with designation or establishment orders, ensure the continuity of governance from sixth form college status to FE college status.

Section 33E: Principal powers of a sixth form college corporation, Section 33F: Supplementary powers of a sixth form college corporation, Section 33G: Further provision about supplementary powers

348. These sections set out the principal and supplementary powers of sixth form college corporations, reflecting powers of FE corporations in sections 18 and 19 of the FHEA 1992.

Section 33H: Duty in relation to promotion of well-being of local area

349. This new section will place a duty on sixth form college corporations, when providing education and training for young people and adults, to take account of the way in which they contribute to the economic and social well-being of people who live and work in the area. This mirrors section 256 which places a similar duty on FE corporations.

Section 33I: Constitution of sixth form college corporation and conduct of sixth form college, Section 33J: Special provision for certain institutions, Section 33K: Instrument and articles of new sixth form college corporations, Section 33L: Changes to instruments and articles

350. These new sections contain provisions relating to the instruments and articles of government of sixth form colleges. Under section 33I, all sixth form colleges must have instruments and articles of government. Section 33J makes provision requiring sixth form colleges of a particular character — mainly faith-based institutions and those established by foundations — to reflect those characteristics in their trust deeds and the membership of their governing bodies. The initial instruments and articles of government of a new sixth form college established under section 33C will be drawn up by the YPLA (section 33K). Section 33L sets out procedures by which the YPLA may modify instruments and articles of government in consultation with sixth form college corporations.

Section 33M: Charitable status of a sixth form college corporation

351. This new section provides that sixth form college corporations are to be charities within the meaning of the Charities Act 1993.

Section 33N: Dissolution of sixth form college corporations

352. Section 33N gives power to the Secretary of State to dissolve a sixth form college corporation and transfer the property, rights and liabilities of the corporation to another person or corporation, which may include the responsible LEA. Orders may make provision for the transfer of staff (subsection (8)). Before making an order to dissolve a sixth form college corporation and transfer assets and liabilities, the Secretary of State must consult the corporation and the responsible LEA.
353. *Paragraphs 4 to 7 of Schedule 8 make amendments to the FHEA 1992 to distinguish sixth form colleges and sixth form college corporations from FE colleges and FE college*

corporations. Paragraph 8 of the Schedule amends the provisions of the FHEA 1992 relating to intervention in colleges to add new sections 56E to 56J.

354. Section 56D (inserted by paragraph 11 of Schedule 6) requires a LEA or the YPLA to notify the Chief Executive of Skills Funding about concerns that they have about FE colleges other than sixth form colleges. The Chief Executive must have regard to those views when considering whether to intervene.

Sections 56E and 56F: Intervention by LEAs: sixth form colleges

355. Section 56E replicates for local education authorities the powers previously held by the LSC for intervention in sixth form colleges. This section sets out the matters that would trigger consideration of intervention in a college (subsection (2)) and the arrangements by which the LEA must notify the Secretary of State and the YPLA, and the college, of their intention to intervene and the reasons for doing so. The powers of the LEA are explained in subsection (6). The LEA may give directions to the governing body to make arrangements for collaboration (subsection (7)) and to dismiss a member of staff, if the governing body have power under their institution's instruments and articles of government (subsection (10)). The governing body must comply with any directions made under this section. In addition section 56F allows a local education authority to appoint no more than two additional members of a governing body of a sixth form college. The local education authority must consult the governing body before exercising its power to appoint a member of the governing body.

Section 56G: Intervention policy: sixth form colleges

356. This section requires the YPLA to prepare a statement of the intervention policy, to which LEAs are required to have regard (subsection (7)) when using their powers under section 56E. The YPLA must consult on the statement and send a copy to the Secretary of State, which he is required to lay before each House of Parliament. The YPLA must then publish that policy, as approved by the Secretary of State.

Sections 56H & 56I: Intervention by YPLA

357. Section 56H allows the YPLA to intervene in the running of a sixth form college in the circumstances set out in subsection (1). These are that the YPLA proposes to commission the provision of education or training at the college and is satisfied that the grounds in section 56E for intervention by a LEA are satisfied (and that it would be appropriate for a LEA to exercise its powers under that section). The YPLA's intervention powers correspond to those of a LEA (section 56H(5)). Section 56I gives the YPLA power to appoint additional governors, mirroring LEAs' powers under section 56F. The YPLA must consult the governing body before exercising its power to appoint a member of the governing body

Section 56J: Notification by Chief Executive of Skills Funding of possible grounds for intervention

358. This new section requires the Chief Executive of Skills Funding to notify the responsible local education authority and YPLA if he has concerns about post-19 provision at sixth form colleges. The local education authority, or the YPLA where it is involved under its powers in section 56H, must have regard to the Chief Executive's views when considering whether to intervene. This is the mirror provision of section 56D.
359. Paragraphs 9 to 15 make further consequential amendments including to definitions of terms used in the new sections.

Part 7: Office of Qualifications and Examinations Regulation

360. This Part provides for the establishment of a new Non-Ministerial Department, Ofqual. In relation to England, the new body will regulate academic and vocational qualifications (excluding foundation, first or higher degrees) and National Curriculum (NC) and Early Years Foundation Stage (EYFS) assessment arrangements. Ofqual will also regulate vocational qualifications in Northern Ireland.
361. Ofqual will take over the regulatory functions of the Qualifications and Curriculum Authority (QCA), although with differences in the ways the functions are exercised, and with a different set of powers, principles and objectives governing their exercise. Part 8 of the Act re-names the QCA the Qualifications and Curriculum Development Agency (QCDA), with that body retaining its non-regulatory functions.
362. Regulation of qualifications is, and will remain, voluntary: there is no prohibition on any person offering a qualification without having been recognised by Ofqual. There are two key reasons why bodies will choose to seek recognition by Ofqual and so to have the qualifications they award regulated: first, because being regulated shows that the body has been checked as being fit to award trustworthy qualifications; and second, because, as a matter of policy, the Government will normally only approve qualifications for funding by maintained schools or in colleges if they are regulated.
363. In April 2008, as a first step towards the establishment of Ofqual as a statutory regulator, the Secretary of State for Children, Schools and Families directed the QCA to set up a committee for the purpose of “exercising on behalf of QCA functions and powers in relation to the regulation of qualifications and National Curriculum assessments”. In this way “Interim Ofqual” was established, operating within the parameters of the current legislation. The provisions of the Act complete the transition to having a separate regulator for qualifications and assessment arrangements by establishing Ofqual.

Chapter 1: Establishment, objectives and general duties

Section 127: The Office of Qualifications and Examinations Regulation

364. This section establishes the Office of Qualifications and Examinations Regulation as a body corporate, specifies that the body will be referred to as “Ofqual” in this Act, and gives effect to Schedule 9, which contains further detailed provisions about matters such as Ofqual’s constitution and proceedings.

Schedule 9: The Office of Qualifications and Examinations Regulation

365. This Schedule makes provision about the constitution and governance of Ofqual.

Status

366. Ofqual is to perform its functions on behalf of the Crown (paragraph 1). This provision makes Ofqual a Non-Ministerial Department.

Membership

367. The Chair of Ofqual is appointed by the Crown. The Chair will be known as the Chief Regulator of Qualifications and Examinations. The Government does not intend this title to imply that the Chair has any statutory functions in his or her own right – all the functions in Part 7 are functions of Ofqual itself – but in practice the Chief Regulator is likely to be the public face of Ofqual.
368. The “ordinary members” are appointed by the Secretary of State following consultation (in all usual circumstances) with the Chief Regulator. Paragraphs 2(5) and (6) set out the procedures to be followed if it is not practicable for the Secretary of State to consult the Chief Regulator (because, for example, there is a vacancy) and it is necessary to

make the appointment before it would be practicable to do so. Ofqual may appoint one of its ordinary members as the deputy chair. One of the ordinary members must be appointed following consultation with the Department for Employment and Learning in Northern Ireland, reflecting Ofqual's responsibilities there. The procedures relating to the removal of members or the removal of the deputy from that office are set out in paragraph 4.

369. Paragraphs 2 to 5 set out the arrangements for appointing the Chief Regulator and ordinary members, the terms of appointments, and the responsibility of the Secretary of State for determining their remuneration, allowances and expenses.

Chief executive and other staff

370. The chief executive of Ofqual is an ex-officio member of Ofqual. Paragraph 6 provides that the first chief executive will be appointed by the Secretary of State (because Ofqual will not exist at that stage, it may not appoint); thereafter the appointment will be for Ofqual. Ofqual may appoint staff; the numbers of staff and their conditions of service are to be agreed with the Secretary of State.

Committees

371. Paragraphs 7 to 11 set out the arrangements for Ofqual establishing and delegating to committees and sub-committees, and give Ofqual the power to establish a committee jointly with another body. (The latter power would, for example, allow Ofqual to set up a joint committee with other qualifications regulators in the United Kingdom.) Joint committees are allowed to regulate their own procedure. Paragraph 10 also allows Ofqual to delegate functions to a member of Ofqual or of its staff.

Supplementary powers

372. Under paragraph 14, Ofqual may do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions, but may not lend money.

Objectives and general duties

Section 128: Objectives

373. This section sets out five objectives for Ofqual in discharging its functions:
- the qualifications standards objective,
 - the assessments standards objective,
 - the public confidence objective,
 - the awareness objective, and
 - the efficiency objective.
374. The statutory objectives in the current legislation, which apply to both QCA's regulatory and non-regulatory functions, are much broader.
375. Ofqual's objectives relate to "regulated qualifications", which is a term defined in section 130 or to "regulated assessment arrangements", as defined in section 131.
376. The qualifications standards objective – set out in [section 128\(2\)](#) – is for Ofqual to secure that regulated qualifications: (a) give a reliable indication of knowledge, skills and understanding; and (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications. "Reliability" here is used not in the sense used by qualifications experts, which means consistency of assessments, but rather in the broader general sense, which includes ensuring that the qualifications and

the way in which they are assessed offer a valid way of measuring knowledge, skills and understanding.

377. Similarly, the assessment standards objective – set out in *subsection (3)* – is for Ofqual to promote the development and implementation of regulated assessment arrangements which: (a) give a reliable indication of achievement, and (b) indicate a consistent level of attainment (including over time) between comparable assessments. The ultimate responsibility for regulated assessment arrangements, which are statutory assessments, lies with the Secretary of State, so Ofqual’s role is to monitor and report on those arrangements, and in doing so to promote the maintenance of standards.
378. Ofqual must perform its functions with the aim of ensuring that comparable qualifications– whether they are contemporaneous or delivered at different times – indicate a consistent level of attainment. If the requirements of a qualification have changed over time, perhaps because the requirements of the industry to which they relate have evolved (this will be a particular issue in the IT industry, for example), it may be that a modern qualification is not comparable with its predecessor and therefore that Ofqual does not have to secure that the two qualifications indicate a consistent level of attainment. But if two qualifications are comparable, Ofqual must act to ensure that they do indicate a consistent level of attainment.
379. A similar set of requirements applies to the promotion of regulated assessments standards.
380. The standards of qualifications and assessments – the benchmarks against which learners are measured, or “assessment standards” – are not the same thing as the standards of education more broadly (“performance standards”). “Standards” in this first sense are like the height of a hurdle, and Ofqual’s objective is to keep that height consistent between comparable qualifications and assessments, including over time. Whilst it is generally a policy objective of the Government to improve the quality of teaching and learning so that the number of people able to jump the hurdle increases (which is how the term “standards” is more commonly used), that is not a concern of Ofqual’s under its standards objectives.
381. The public confidence objective is set out in *subsection (4)* and requires Ofqual to promote public confidence in regulated qualifications and regulated assessment arrangements. This is to ensure not only that qualifications are reliable but that they are trusted.
382. The awareness objective is set out in *subsection (5)* and, unlike the standards and public confidence objectives, it applies only in relation to regulated qualifications. The Secretary of State has statutory responsibility for regulated assessment arrangements, so it is for him to determine how to ensure that there is sufficient awareness of them.
383. This objective is concerned with promoting awareness of the range of regulated qualifications on offer, the benefits of regulated qualifications to learners, employers and institutions within the higher education sector and the benefits to awarding bodies (including, for example, employers awarding their own qualifications) of regulation.
384. The efficiency objective is set out in *subsection (6)* and requires Ofqual to ensure that regulated qualifications are provided efficiently and that any relevant sums payable for the award or authentication of a regulated qualification represent value for money. This objective reflects the fact that Ofqual will have a role as an economic regulator, including a power to cap examination fees. Ofqual does not have a specific efficiency objective in relation to regulated assessments, because these are statutory assessments delivered on behalf of the Secretary of State, rather than – as with qualifications – by independent organisations operating in a regulated market.

Section 129: General duties

385. Subsection (1) requires Ofqual in carrying out its functions so far as is reasonably practicable to act in a way that is compatible with its objectives under section 128 and which it considers most appropriate for the purposes of meeting those objectives.
386. Subsection (2) sets out the matters to which Ofqual must have regard in performing its functions.
387. Subsection (2)(a) requires Ofqual to have regard to the need to ensure that the number of regulated qualifications is appropriate. Subsection (3) provides that an “appropriate” number of qualifications is based on ensuring a reasonable level of choice for learners in terms of both the number of different regulated qualifications on offer, and the number of different forms of each regulated qualification; but that the number of different qualifications in similar subject areas or serving similar functions should not be excessive. For example, it would be appropriate for there to be a choice of versions (or forms) of a qualification called “retail management”, offered by a range of different awarding bodies. However, Ofqual should seek to avoid an excessive number of qualifications that are similar to “retail management”, but with slightly different titles, which risks causing confusion.
388. Subsections (2)(b) and (c) require Ofqual to have regard to the reasonable requirements of:
- those who are seeking to obtain or who might reasonably be expected to seek to obtain regulated qualifications, and
 - in relation to regulated assessment arrangements, pupils and children, including in each case those with learning difficulties.
389. The terms used in these subsections are defined in subsections (9) to (11).
390. Under subsections (2)(d) and (e), Ofqual must have regard to the reasonable requirements of employers and institutions within the higher education sector (as defined in section 172(1)).
391. Under subsection (2)(f), Ofqual must have regard to information provided to it by the QCDA and Ofsted, and any bodies specified by the Secretary of State which have knowledge of or expertise in the requirements of industry, commerce, finance, the professions or other employers regarding education and training. This provision will allow the current arrangements to continue, by which the regulator must take into account the views of Sector Skills Councils in relation to qualifications in their sectors. Under a similar provision in the current legislation (section 26 of the Education Act 1997), Sector Skills Councils in England have been designated by the Secretary of State as bodies to which the regulator must have regard in regulating vocational qualifications. This is in support of the Government’s policy for improving the relevance to employers of vocational qualifications as part of its skills strategy.
392. Under subsection (2)(g), Ofqual must have regard to the desirability of facilitating innovation in connection with the provision of regulated qualifications.
393. Subsection (2)(h) requires Ofqual to have regard to the specified purposes of regulated assessment arrangements, as defined in section 131(6). The definition operates by reference to definitions in section 76(1) of the Education Act 2002 and section 41(2) (c) of the Childcare Act 2006. These make provision about the purposes respectively of National Curriculum assessment arrangements (NC assessment arrangements) and of assessment arrangements in connection with the learning and development requirements of the Early Years Foundation Stage (EYFS assessment arrangements). The purpose of NC assessment arrangements is “ascertaining what [pupils] have achieved in relation to the attainment targets for that stage”, and for the EYFS assessment arrangements “ascertaining what [children] have achieved in relation to

the early learning goals”. Those provisions are amended by paragraphs 32 and 39 of Schedule 12 respectively to allow the Secretary of State to specify additional purposes of assessment arrangements to which Ofqual would then need to have regard.

394. *Subsection (6)* requires Ofqual to have regard to such aspects of Government policy as the Secretary of State directs. This provision is modelled on a similar provision in the legislation setting up Ofsted. The Government expects this provision to be used, for example, to specify that the Government wished to ensure that assessment were not unduly burdensome for schools. Any such direction is not intended to impinge on Ofqual’s independence – it would not require Ofqual to act in a particular way, simply to take into account the policy in question in deciding how it would be appropriate for it to act. *Subsection (7)* requires the Secretary of State to publish any such direction.

Regulated qualifications and regulated assessment arrangements

Section 130: Meaning of “regulated qualifications” etc.

395. This section describes the types of qualifications that Ofqual has the power to regulate.
396. For a qualification to be a “regulated qualification”, three criteria must be met:
- it must not be a foundation, first or higher degree;
 - it must either (a) be awarded or authenticated in England, or (b) be a vocational qualification awarded or authenticated in Northern Ireland;
 - it must be awarded or authenticated by a body which is recognised by Ofqual under section 132 in relation to that qualification.
397. The meaning of awarding or authenticating a qualification “in England” and “in Northern Ireland” is explained in *subsection (4)*: there must be, or may reasonably be expected to be, persons seeking to obtain the qualification who are, will be or may reasonably be expected to be assessed wholly or mainly in England or Northern Ireland.
398. Ofqual’s role in regulating relevant vocational qualifications in Northern Ireland may be removed by order of the Secretary of State. Before making such an order he would have first to consult the Department for Employment and Learning in Northern Ireland and the order would be subject to the affirmative procedure. This is to allow for the possibility that the Northern Ireland authorities may in future wish to change the arrangements for the regulation of qualifications in Northern Ireland.
399. In the Education Act 1997, the QCA’s regulatory responsibilities relate to external qualifications, defined as:
- “any academic or vocational qualification authenticated or awarded by an outside person... (section 24(6)(a)).
400. The restriction to external qualifications has been removed in the Act, which means that Ofqual may recognise bodies which both teach and award qualifications – for example, employers or colleges which have the capability to do so. This change has implications for other legislation, for example for section 96 of the Learning and Skills Act 2000, which is amended by paragraph 27 of Schedule 12.

Section 131: Meaning of “regulated assessment arrangements” etc.

401. This section describes the types of assessment that Ofqual has the duty to keep under review. “Regulated assessment arrangements” means the arrangements made for assessing pupils in England in respect of each key stage of the NC; and the arrangements for assessing children in England. (This equates currently to NC tests at Key Stages 1 and 2, teacher assessment as part of Key Stages 1-3 and the EYFS Profile.) As noted above the purpose of NC assessment arrangements is “ascertaining what [pupils] have achieved in relation to the attainment targets for that stage”, and for the EYFS

assessment arrangements “ascertaining what [children] have achieved in relation to the early learning goals”; and there is a new provision in the Act for the Secretary of State to specify additional purposes by order. These defined specified purposes provide Ofqual with a policy framework within which it is to monitor and report upon regulated assessment arrangements, and it is required to “have regard to” these purposes.

402. The NC assessment arrangements are made under the Education Act 2002, setting out the arrangements for assessing pupils at each key stage of the NC. The EYFS assessment arrangements are made under the Childcare Act 2006.

Chapter 2: Functions in relation to qualifications

403. Under the Education Act 1997, which established the QCA as the regulator of qualifications, the QCA regulates at qualification level – in other words, it accredits individual qualifications. The Education and Skills Act 2008 amended the 1997 Act to give the QCA the additional function of recognising awarding bodies. Under the 1997 Act as so amended, only qualifications offered by recognised bodies are eligible to be accredited. Under the provisions in this Act, the general requirement to accredit individual forms of qualifications will be removed, so that the focus of Ofqual’s regulation will be at organisational level. Provided that a body has been recognised in respect of a specific qualification or description of qualification, it will not necessarily have to obtain accreditation for a form of the qualification which it awards or authenticates. But Ofqual will still be able to require accreditation of forms of qualifications, either where it judges that this is required in relation to a particular type of qualification, or where it is concerned about the performance of a specific awarding body.
404. The following table sets out the possible combinations of recognition and accreditation.

	<i>Awarding Body Recognised</i>	<i>Awarding Body Not Recognised</i>
Qualifications not Accredited	The default position for a qualification subject to regulation.	The awarding body may offer qualifications provided it does not claim they are regulated by Ofqual. It is unlikely that the Secretary of State would approve such qualifications for public funding.
Qualifications Accredited	Ofqual may decide to introduce an accreditation requirement for a qualification or a description of qualification (section 138). This could be because Ofqual: <ul style="list-style-type: none"> — had decided that a particular type of qualification needed particular scrutiny, if for example it was widely used, was new or was judged to be particularly high risk; or — was concerned about a specific awarding body and wished to check particularly closely that any new qualifications the 	Not possible

	<i>Awarding Body Recognised</i>	<i>Awarding Body Not Recognised</i>
	body developed would comply with the terms of its recognition.	

Recognition of awarding bodies

Section 132: Recognition

405. This section requires Ofqual to “recognise” awarding bodies in respect of specific qualifications or descriptions of qualification (or in respect of credits for components of qualifications). Ofqual could use a “description of qualification” in two ways. The first is to make more general provision (for example, to catch a class of qualifications, covering a number of different subject or sector areas. Examples would include ‘A-level’ or ‘National Vocational Qualification (NVQ)’). The second is to make more specific provision, for example, to limit what is caught to a particular form of a type of qualification. For example, ‘history GCSEs assessed 100% by course work’ is a description of a qualification.
406. By recognising a body Ofqual confirms that the body is fit to award or authenticate the qualifications or qualifications of a description for which it is recognised, in other words that it has the appropriate systems, expertise and organisational robustness to allow it to do so effectively. Ofqual must recognise a body to award or authenticate particular qualifications or categories of qualification (or credits in respect of components of qualifications) only where a body applies for recognition and meets Ofqual’s criteria for recognition. The terms “awarding body”, “recognised body” and “recognition” are defined at section 132(9).
407. Ofqual may not charge for recognition of an awarding body.
408. Recognition may be subject to three types of condition: general conditions, an accreditation condition, and other conditions imposed by Ofqual on individual recognitions. General conditions are dealt with in section 134 (see paragraphs 412 to 415 below). Accreditation conditions apply to recognition in respect of qualifications, or descriptions of qualifications, subject to the accreditation requirement – that is a requirement imposed by Ofqual that any form of the qualification or of qualifications of the relevant description is, or are, required to be accredited. An accreditation condition prohibits the recognised body from awarding a particular form of that qualification or of a qualification of that description, until accreditation for that form of qualification has been obtained. A recognition in respect of the award or authentication of a credit in respect of a component of a qualification cannot be subject to an accreditation condition.
409. Conditions may be imposed either when recognition is granted or at a later time. In the case of general conditions, these may be disapplied in individual cases, either at the time of recognition or later.

Section 133: Criteria for recognition

410. Ofqual will have discretion to set the criteria it will use to decide whether to recognise an awarding body. It must consult with such persons as it considers appropriate before setting or revising the criteria and must publish those criteria.
411. In exercising this function, Ofqual is to be able to set different criteria for recognition of different descriptions of awarding bodies, for recognition in respect of different qualifications (or credits in respect of different components of qualifications) or different descriptions of qualifications (or credits in respect of different descriptions of components of qualifications). Examples of criteria may include requirements as to the evidence to be provided to give adequate assurance of organisational stability; the existence of adequate processes for quality assurance; financial soundness of the

organisation concerned; and the appropriateness of the processes of the awarding body for developing the qualifications for which recognition has been sought. Criteria may also cover factors such as the previous history of an awarding body prior to any application.

Section 134: General conditions of recognition

412. This section allows Ofqual to impose general conditions on recognition. Conditions are general in the sense that they are able to apply to all recognised bodies or particular descriptions of recognised body. Under *subsections (3), (4) and (5)*, these conditions may be changed at any time, provided Ofqual publishes them following consultation with such persons that it considers appropriate.
413. The conditions in section 134 will be central to Ofqual's regulatory role – it is through the setting of conditions (and where necessary enforcing compliance with those conditions) that Ofqual will be able to achieve its objectives in relation to qualifications.
414. Under the current regime, the QCA can impose conditions on accreditation and recognition. Under the provisions of the Act conditions will be imposed only on recognition, but in doing so Ofqual will be able to impose conditions which relate to particular qualifications or even to specific versions of a particular qualification, including conditions that flow from the accreditation process where it applies.
415. Examples of the general conditions Ofqual might impose under this power include:
- conditions requiring those awarding bodies offering GCSEs and A-levels to work together to ensure consistency of standards, to notify Ofqual by a specified date where there are problems with agreeing the standard and to accept Ofqual's judgment about that standard in that event;
 - broad regulatory principles, such as a condition that awarding bodies must deal with Ofqual in an open and cooperative way, including for example an obligation to disclose any information about changes to the awarding body of which Ofqual could reasonably expect notice; or
 - the specific requirements that apply in relation to the award of a particular qualification or class of qualifications – for example that vocational qualifications must meet the requirements of the relevant Sector Skills Council.

Section 135: Other conditions of recognition

416. Ofqual has a broad power to impose other conditions in relation to a recognition (see section 132(3)(d)). This section makes provision about two such types of condition:
- conditions limiting the amount a recognised body may charge for the award or authentication of a qualification in respect of which the body is recognised or for a service provided in connection with such a qualification (a “fee capping condition”). This is one of the main mechanisms by which Ofqual may pursue its efficiency objective. A fee capping condition may in the circumstances described in section 136, be applied to any charge levied in relation to the award or authentication of a qualification or any other service provided in relation to such a qualification. It might include, for example, fees charged by the recognised body to recognise a school or college wishing to offer the qualification;
 - conditions requiring a recognised body to permit Ofqual to enter the body's premises so far as is necessary for the purposes of inspecting and copying documents (an “entry and inspection condition”). However such a condition may be imposed only to enable Ofqual to investigate the maintenance of standards in relation to the award by a recognised body of a qualification in respect of which the body is recognised or the need for a fee capping condition.

417. Further provisions about these conditions are in sections 136 and 137.

Section 136: Fee capping conditions: supplementary

418. This section sets out the test that must be met before Ofqual can impose a fee capping condition, and the process that must be used where Ofqual proposes to do so. Ofqual can only impose such a condition limiting the amount of a particular fee if this is necessary for securing value for money. Before doing so Ofqual must give notice of its intention to impose a fee capping condition, and it must take account of any representations made by the recognised body in question before reaching a decision. Where Ofqual decides to impose a fee capping condition it must establish arrangements for an independent review of the decision if requested to do so by the relevant recognised body. In performing its functions in relation to fee capping conditions, Ofqual must have regard to any guidance from the Secretary of State, guidance that has to have been published. This provision over guidance reflects the fact that a significant proportion of the bodies which will be paying fees for many qualifications will be publicly funded. The current legislation gives the QCA a power to impose a fee capping condition, but the exercise of the power is subject to the consent of the Secretary of State.

Section 137: Entry and inspection conditions: supplementary

419. This section limits what Ofqual may require under an entry and inspection condition. Under the current legislation the QCA has a power to set a similar condition, but in the context of this legislation the safeguards in *subsection (1)* have been added. *Subsection (3)* refers to Ofqual having the power to do anything mentioned in section 58 of the Education Act 2005 in relation to the inspection of documents by an authorised person. In summary, this provision enables such a person to inspect records or other documents to which they are entitled at any reasonable time to have access, including checking the operation of any computer and associated apparatus or material relating to these records or documents. Subsection (3) will also enable an entry and inspection condition to require the user or person in charge of the computer, apparatus or material to give Ofqual any assistance that it may reasonably require.

Accreditation of certain qualifications

Section 138: Qualifications subject to the accreditation requirement

420. Under this section Ofqual may decide that a certain qualification, or qualifications falling within a certain description, is or are subject to the accreditation requirement. The effect of this is that a recognised body cannot award or authenticate any form of such a qualification unless the particular form is individually accredited. This requirement may be applied to a qualification in relation to all recognised bodies or only in relation to a specific recognised body. The requirement cannot be applied to a component of a qualification.
421. Before deciding to apply the accreditation requirement to a qualification in relation to all recognised bodies, Ofqual must consult such persons as it considers appropriate. Where the requirement it is to be applied to a qualification in relation to an individual recognised body it is that body alone that Ofqual must consult. Any decision reached by Ofqual to impose the requirement in respect of a qualification in relation to all recognised bodies must be published. Ofqual is able to revise any determination made under this section.

Section 139: Accreditation

422. This section provides for the process of accrediting particular forms of qualifications. Where a form of a qualification is submitted to Ofqual for accreditation it must be accredited if it meets the criteria for accreditation. An awarding body may award or authenticate a particular type of qualification, such as an English GCSE, in different

forms. For example a version with material suitable for pre-16 students and one suitable for older students. Each form must be accredited if the qualification as a whole is subject to the accreditation requirement.

423. Ofqual may not charge for accreditation. (In contrast, the QCA currently has a power to charge for accreditation.)

Section 140: Criteria for accreditation

424. This section requires Ofqual to publish the criteria for accreditation or any subsequent revisions of those criteria. Ofqual must consult before setting or changing these criteria.
425. The criteria for accreditation are a threshold requirement – a recognised body must meet these criteria before it may award or authenticate a qualification that is subject to the accreditation requirement. Once that threshold requirement is met, satisfying the criteria is not as such an ongoing requirement of the recognised body. However, Ofqual will be able to mirror all relevant criteria in general or specific conditions in order to ensure continued compliance by the recognised body with the criteria. For example, if the initial criteria relating to a particular qualification specified that the awarding body would have to have certain quality assurance processes in place, Ofqual could make it an ongoing requirement that those processes were maintained and used through the imposition of conditions to that effect.
426. If Ofqual revises accreditation criteria relating to a particular qualification, the accreditation under the old criteria of any forms of that qualification will cease to have effect on a date specified by Ofqual. This will allow Ofqual to ensure that all qualifications that are awarded are kept up to date with changes to curriculum and other requirements, and that there is no confusion created by old versions of a qualification being available. Ofqual may determine that accreditation need not cease in these circumstances (for example if a change was relatively minor, Ofqual may decide to require that qualifications already accredited be amended through imposing conditions rather than requiring the awarding bodies to seek reaccreditation). Ofqual may make saving or transitional provision about a form of a qualification ceasing to be accredited: for example, where students are already studying for qualifications under the old criteria. Ofqual may allow the accreditation temporarily to continue for those purposes only.

Minimum requirements

Section 141: Power to determine minimum requirements

427. This section allows the Secretary of State to make an order specifying the minimum requirements in respect of knowledge, skills or understanding that someone must be able to demonstrate to gain a particular qualification or a qualification of a particular description (a term explained in paragraph 405 above). This reflects the fact that, in relation to young people's learning, the Secretary of State is accountable for the curriculum, or knowledge, skills and understanding, assessed through qualifications; but it is specified at least in part through Ofqual's qualifications criteria. These provisions therefore establish that Ofqual is not accountable for any parts of its criteria which, in effect, specify curriculum. An order could be used, for example, to ensure that the content of GCSEs properly reflects the NC Key Stage 4 Programmes of Study, which they are intended to assess. The Secretary of State cannot specify features of the qualification other than minimum knowledge, skills or understanding, such as grading or assessment. And an order cannot remove a requirement over knowledge, skills or understanding from a qualification.
428. The Government intends that the power to specify minimum requirements will be used only in exceptional circumstances. Normally any policy requirements relating to the content of a qualification would be reflected in the recognition or accreditation criteria, without any need for an order: we would expect the criteria to be drafted by the QCDA,

reflecting the Secretary of State's policy, and adopted by Ofqual provided that it was content that the criteria were appropriate and enabled standards to be maintained. An order would only be needed where that process had failed to reach agreement about some aspects of the criteria.

429. Reflecting this, the Secretary of State may only specify minimum requirements in relation to qualifications which are, or are likely to be, approved for public funding for people under 19, under section 98 of the Learning and Skills Act 2000 (*subsection (4)*).
430. Additionally, the Secretary of State may make an order only if satisfied that it is necessary to do so in order to ensure that the curriculum is appropriate for the ages of the people likely to be studying for the qualification (*subsection 141(2)*). For qualifications likely to be taken by people under 16 (for example, GCSEs), the curriculum leading to a qualification is likely to be "appropriate" if it is consistent with the National Curriculum. If, for example, Ofqual was proposing not to adopt draft GCSE criteria that reflected a particular aspect of the National Curriculum, then that may mean that young people studying for that GCSE will not study the full National Curriculum. In that case, an order may be appropriate.
431. For qualifications likely to be studied by people between the ages of 16 and 19, where there is no National Curriculum, the curriculum leading to a qualification is likely to be appropriate if it is consistent with the Secretary of State's policies for learning in that age group. For example, the Secretary of State may have decided that all people of that age should seek to attain functional skills (core skills in English, maths and ICT), and an order could be made were it necessary to do so to secure that.
432. The Secretary of State intends to put in place and consult on a Memorandum of Understanding with Ofqual about the use of this power, setting out a clear process to ensure that the regulator's independence and ability to maintain standards are not compromised.

Section 142: Consultation before making determination of minimum requirements

433. Before making an order, under this section the Secretary of State must consult with Ofqual and with others as appropriate (*subsection (1)*). We might expect him or her to consult, for example, with awarding bodies and with subject associations and professional bodies with an interest in the subject of the qualification. The requirement to consult with Ofqual reflects the expectation that an order will only be made where it has previously been discussed with Ofqual, usually following the development of draft criteria by QCDA.
434. For the purposes of the consultation, the Secretary of State must publish a document (*subsection (2)*) setting out:
- a) why he or she believes that making an order is necessary to ensure that the curriculum is appropriate;
 - b) the minimum requirements he or she proposes to specify; and
 - c) the reasons for proposing these minimum requirements.
435. An order is subject to affirmative resolution. This means that, once the consultation has been completed, the Secretary of State must seek approval from both Houses of Parliament for the order before making it. There is no opportunity for Parliament to amend the order: it can only either approve or reject the order as proposed by the Secretary of State.

Section 143: Effect of determination of minimum requirements

436. Where an order is made specifying minimum requirements, Ofqual must then (*subsection (2)*) set recognition criteria, recognition conditions, and/or accreditation

criteria for the qualification or description of qualification so that the minimum requirements set out in the order are met. It would then be for awarding bodies recognised to award the qualification or description of qualification to develop qualifications that met the criteria or conditions.

437. Where such an order has been made, there is an expectation that the QCDA would support the development of the criteria associated with the qualification (see section 180), which is why there is a duty on the QCDA to assist Ofqual in these circumstances where requested to do so.
438. Ofqual does not have to comply with the order if it would mean (section 143(3)) that doing so would result in the depth, or level, of knowledge, skills or understanding of the qualification or description of qualification not being consistent with comparable qualifications – i.e. those qualifications which were supposed to be at the same level. So if, in seeking to set criteria, Ofqual discovered that the content specified in the order was at a level that was inappropriate for the qualification, and therefore Ofqual could not maintain standards, it would not be required to implement the order.

Section 144: Revocation and amendment of orders specifying minimum requirements

439. The Secretary of State may by order revoke an order specifying minimum requirements, including where the qualification is no longer approved under section 98 of the Learning and Skills Act 2000 for use in a publicly funded setting. An order revoking an order containing a determination, or an order removing a qualification from the scope of such an order, is not subject to affirmative resolution and needs only to be laid before Parliament.

Guided Learning

Section 145: Assignment of numbers of hours of guided learning

440. This section is for the purposes of the Education and Skills Act 2008, which imposes a duty on people under 18 to participate in education or training, unless they have attained a level 3 qualification (the level of attainment demonstrated by obtaining A-levels in two subjects). The Government's intention is to commence the duty in 2013.
441. Where people are in full time employment, the 2008 Act duty means they need to be undertaking sufficient relevant education or training, which is defined as the equivalent of 280 hours in a year. This section requires a recognised body which is offering a form of a relevant qualification to assign to it a number of hours of guided learning, for the purposes of determining whether a person studying for the qualification (whether or not in combination with other qualifications) is able to meet this requirement. The duty on a recognised body applies in relation to a qualification if the body considers that there are, or may reasonably be expected to be, persons seeking to obtain it for the purposes of discharging their duty under section 2(1)(c) of the 2008 Act to participate in sufficient relevant education and training (see *subsection (9)*). Ofqual may review any determination made by an awarding body as to whether a qualification needs to have guided learning hours assigned to it and, if necessary, require it to revise the determination. Ofqual may also review, and require a recognised body to revise, any determination of the number of hours of guided learning to be assigned to a particular form of qualification. This will allow Ofqual to ensure, for example, that there is consistency between awarding bodies in how they assign guided learning hours to comparable forms of qualifications.
442. The duty on awarding bodies to assign guided learning hours does not extend to qualifications that are "Northern Ireland-only qualifications", as defined in section 158(1).

Section 146: Criteria for assignment of number of hours of guided learning

443. This section requires Ofqual to publish the criteria which recognised bodies must apply in order to determine whether they need to assign guided learning hours to a qualification, and if so the number of hours they should assign to a form of the qualification. The section allows Ofqual to revise its criteria and so to take account of changing circumstances. The duty of recognised bodies under section 145 is to apply the criteria then in force in deciding whether a qualification is relevant for the purposes of the duty under section 2(1)(c) of the 2008 Act and, if so, the number of hours of guided learning to be assigned to a particular form of the qualification. Recognised bodies are obliged to review their determinations under section 145 when Ofqual revises the criteria set under this section.

Surrender

Section 147: Surrender of recognition

444. This section allows a recognised body to surrender recognition by giving notice to Ofqual. There are no explicit arrangements for such surrender in the current legislation. Ofqual has the power to decide the date on which surrender takes effect (acting in accordance with the requirements of *subsections (2) and (3)*) and may make saving or transitional provision (such as allowing a qualification to continue to be treated as regulated where students are taking resits of exams beyond the date on which recognition has otherwise expired). In determining the surrender date, Ofqual must aim to ensure that those learners seeking or who might reasonably be expected to be seeking the qualification are not prejudiced.

Register

Section 148: Register

445. This section sets out Ofqual's obligation to maintain a register of recognised bodies, the details of the qualifications in respect of which they are recognised and forms of those qualifications that they offer, including the number of guided learning hours assigned to the forms of qualification where appropriate. The register may include other information that Ofqual considers appropriate, so it could for example choose to include details of qualifications that are regulated in other parts of the UK should the authorities there decide to work alongside Ofqual in this way.

Recognised bodies: monitoring and enforcement

Section 149: Review of activities of recognised bodies

446. This section allows Ofqual to keep under review any "connected" activities of a recognised awarding body as defined in *subsection (2)* of the section. This will allow it to keep under review any activities which may, for example, impact on the credibility of the qualifications offered or the effective or fair operation of the qualifications system. This may include, for example, any awarding activities overseas in relation to qualifications that are similar to those that Ofqual is regulating, or any arrangements made for the publication of textbooks relating to an Ofqual-regulated qualification. Ofqual must exercise this function in a way that is compatible with, and most appropriate for achieving, its objectives. It would also need to have regard to its general duties in performing this function. This will necessarily affect the scope of what Ofqual can do in reviewing the activities of recognised bodies.

Section 150: Investigation of complaints

447. Ofqual may investigate complaints in respect of the award or authentication of a regulated qualification, or arrange for an independent party to do so.

- 448. Ofqual's complaint mechanisms will replace those that are currently in place through the Examinations Appeals Board (in relation to GCSEs and A-levels for example) and the QCA (in relation to vocational qualifications).
- 449. Ofqual will be free to work jointly with its counterparts in other parts of the UK in relation to the investigation of complaints should it and they so wish.
- 450. Ofqual's powers of redress in the event of its upholding a complaint are those that it has generally. Where the complaint led to a finding that the recognised body had acted in breach of a condition of recognition it would be for Ofqual to consider what action to take to ensure compliance with the condition. As under the existing arrangements of the Examinations Appeals Board, the Government would expect any complaints that are upheld about, for example, the marking of an exam, to be referred in the first instance back to the awarding body concerned for review.

Ofqual's enforcement powers

- 451. Ofqual has the ability to safeguard standards through the imposition of recognition and accreditation criteria (the "hurdle" that awarding bodies must initially clear). It may then impose general and specific conditions to ensure continued compliance with these requirements. Underpinning the conditions are the enforcement powers conferred by the Act: the power to direct compliance with a condition and ultimately a power to withdraw recognition for breach of a condition.

Section 151: Power to give directions

- 452. This section confers power on Ofqual to direct a recognised body in order to secure compliance with a condition imposed on its recognition. There are however limits on the circumstances in which this power may be exercised. *Subsection (1)* specifies the circumstances in which a direction may be made. These are that the recognised body has not complied (or is likely to fail to comply) with a condition, and that this would or would be likely to prejudice either the proper award or authentication of a qualification or someone who might reasonably be expected to seek to obtain such a qualification. In these circumstances, Ofqual may give a formal direction to the awarding body. The direction may specify steps the body must or must not take.
- 453. An example of when a direction might be given is where an awarding body had failed to comply with a condition requiring those awarding bodies offering a specified type of qualification to take a particular approach to setting and maintaining standards, and to seek to work together with other such awarding bodies to ensure consistency of standards between them. In such cases, Ofqual would be able to direct the awarding body to comply with the condition, if it considered the failure would compromise the comparability of standards between similar qualifications offered by different awarding bodies and in this way prejudice the proper award of the qualification or someone seeking to obtain the qualification.
- 454. *Subsections (3) to (5)* set out the steps that Ofqual must take before giving or revising a direction, including giving notice of its intention to do so and taking account of representations from the recognised body. The length of the notice period is not specified, and could vary depending on the urgency of the need to address the non-compliance. An awarding body is required to comply with the direction. *Subsection (7)* sets out the means by which Ofqual may enforce its directions through the courts.
- 455. The QCA currently has a similar power, but without the explicit requirements over process set out in subsections (3) to (5).

Section 152: Power to withdraw recognition

- 456. This section confers a power on Ofqual to withdraw recognition in respect of some or all of the qualifications in respect of which a body is recognised, if the body has breached

a condition of recognition. The power may be exercised only if the recognised body has actually failed to comply with a condition and if this failure prejudices or would be likely to prejudice either the proper award or authentication of a qualification or someone who might reasonably be expected to seek to obtain such a qualification.

457. *Subsections (3) to (9)* set out the steps that Ofqual must take before withdrawing recognition, including giving notice of its intentions, taking account of representations from the awarding body, and arranging for the decision to be reviewed.
458. If it withdraws a recognition, Ofqual may make saving or transitional provision to deal with the impact of the withdrawal. For example, it may be appropriate to provide for the qualification not to be recognised other than to the extent that it is taken by those who began studying for the qualification before the decision to withdraw recognition was made. In deciding whether to make such provision, Ofqual will need to comply with its general duties, including the need to have regard to the reasonable requirements of relevant learners.
459. The power for the QCA to withdraw accreditation or recognition is currently implicit in the Education Act 1997 as amended by the Education and Skills Act 2008.

Section 153: Qualifications regulatory framework

460. This section requires Ofqual to publish:
- a statement on how it will perform its monitoring and enforcement functions (including its functions in relation to the setting of conditions), and
 - guidance to recognised bodies in relation to the award and authentication of qualifications.
461. Together these are known as the qualifications regulatory framework. Ofqual must consult on, and may revise, the framework.
462. *Subsections (3) and (4)* set out in more detail what the guidance must include. In particular, it must include guidance which helps determine whether or not particular behaviour complies with the general conditions of recognition. Recognised bodies are obliged to have regard to the guidance given by Ofqual when they award or authenticate qualifications in respect of which they are recognised.

Other

Section 154: Review of qualifications to which Part applies

463. A “regulated qualification” is a qualification awarded or authenticated by a body which is recognised in respect of that qualification. This section gives Ofqual the power to keep under review all aspects of qualifications to which Part 7 applies irrespective of whether or not they are regulated qualifications. This would allow Ofqual, for example, to review why some awarding bodies were choosing not to seek recognition for their qualifications and whether that was detrimental to the interests of learners.

Section 155: Review of system for allocating values to qualifications

464. This section requires Ofqual to keep under review any system used by the Secretary of State which is:
- a) for allocating values to qualifications to which this Part applies by reference to the level of attainment indicated by the qualifications; and
 - b) for the purposes of a qualifications-based performance management system.
465. For example, the Secretary of State’s Achievement and Attainment Tables currently measure the performance of schools with reference to qualifications obtained by pupils

at the schools. In future, the School Report Card will provide similar information. The preparation of these reporting mechanisms requires the allocation of values to the qualifications to which they refer, so that the qualifications can be compared fairly and accurately. Ofqual will need to keep under review whether these values accurately reflect the level of attainment indicated by the qualifications – which includes both the depth of the knowledge etc. that needs to be demonstrated to attain each qualification, and how much study would typically be required to attain it. Ofqual is also given powers to collect from the Secretary of State the information it needs to discharge this duty. It will be able to use its powers under section 171(7) to publish a report on its findings (and if it wishes lay this before Parliament), notably whether it thinks that the allocation of values is appropriate.

Section 156: Co-operation and joint working

466. This section allows Ofqual to co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of any of its functions in connection with qualifications. This would allow it, for example, to work with other UK regulators of qualifications or with the UK Commission for Employment and Skills on the arrangements for overseeing Sector Skills Councils' work on vocational qualifications, or with the competition authorities if it had concerns about the effective operation of the qualifications market.

Section 157: Power to provide information to qualifications regulators

467. This section allows Ofqual to provide information to qualifications regulators elsewhere in the UK to support the qualifications functions of the other regulator. This will enable the continued operation of the three-country framework, whereby the qualifications regulators in England, Wales and Northern Ireland work together on the regulation of qualifications across the three countries. Such co-operation will remain subject to restrictions in other legislation relating to the sharing of information, such as the Data Protection Act 1998.

Chapter 3: Functions in relation to assessment arrangements

468. The Secretary of State is responsible for specifying the arrangements for pupil assessments in relation to each of the key stages of the NC (see section 87 of the Education Act 2002). The Secretary of State is also responsible for specifying the arrangements which are required for assessing the achievements of children in relation to the learning and development requirements of the EYFS (see sections 39 to 42 of the Childcare Act 2006). In this context, the Secretary of State may impose functions on other bodies in relation to developing, implementing or monitoring assessment arrangements. Ofqual's role, under the new arrangements delivered through this Act, is to keep these assessment arrangements under review and to report to Parliament on the assessment arrangements and how well they are achieving their purposes. The arrangements are intended to strengthen the assessment system, and to help improve public confidence following the problems with delivery of NC tests in 2008. The Government asked Lord Sutherland to investigate what went wrong with NC test delivery in 2008, the reasons for the problems experienced and what should be done to avoid a recurrence in future years. The Government accepted all the recommendations in his report¹, and the provisions in this Act reflect those recommendations.

¹ Lord Sutherland (2008), *The Sutherland Inquiry: An independent report into the delivery of National Curriculum tests in 2008*, London: The Stationery Office

Development etc. of regulated assessment arrangements

Section 159: NC assessment arrangements: duty to consult Ofqual etc., Section 160: EYFS assessment arrangements: duty to consult Ofqual etc.

469. These sections require the Secretary of State to consult Ofqual before making an order specifying assessment arrangements. They also require any person acting on the Secretary of State's behalf under such an order in connection with the making of assessment arrangements to consult Ofqual before doing so. The relevant order making powers are in section 87(3)(c) of the Education Act 2002 (in relation to the NC) and section 39(1)(a) of the Childcare Act 2006 (in relation to the learning and development requirements of the EYFS). The new obligations reflect Ofqual's status as independent regulator and particularly its interest in ensuring that the proposed assessment approaches are appropriate given the specified purposes, and can be effectively monitored.

Review etc. of regulated assessment arrangements

Section 161: Review of regulated assessment arrangements

470. This section requires Ofqual to keep all aspects of these NC and EYFS assessments arrangements under review. This constitutes the principal regulatory role of Ofqual in relation to the regulated assessment arrangements (as defined in section 131).
471. Ofqual's powers of review will enable it to consider all aspects of the implementation of the regulated assessment arrangements, such as looking at the way in which specified bodies exercise monitoring and review functions, including functions concerned with investigating complaints about the way in which tests and other assessments have been conducted.

Section 162: Powers to require information

472. To enable Ofqual to carry out its review role effectively, this section grants it powers to require certain persons to provide it with the information it considers it needs to perform this role. Those persons are the Secretary of State, NC responsible bodies and EYFS responsible bodies (as defined in the section) and Ofsted. *Subsection (2) (d)* includes a power for the Secretary of State to specify in regulations (subject to the negative procedure) other persons who are to be subject to this requirement. This power is required to allow for flexibility for further organisations to be added in case, for example, assessment arrangements change in the future and different bodies become involved in the process.

Section 163: Duty to notify significant failings

473. One of the recommendations in Lord Sutherland's inquiry report was that Ofqual should have a duty to inform the Secretary of State and the QCA if it had concerns about the delivery and quality of NC tests. Reflecting this recommendation, these provisions impose a duty on Ofqual covering both NC and EYFS assessment arrangements. Ofqual must notify the Secretary of State and any responsible body whose act or omission appears to Ofqual to have contributed to a significant failing if it considers that there is or is likely to be a significant failing in the assessment arrangements. Such a failure is defined as a failure in a significant way to achieve one or more of the specified purposes of the assessment arrangements.
474. Examples of circumstances in which Ofqual should notify the Secretary of State might include the following:
- if it became evident to Ofqual that there was a significant risk that significant numbers of test results would be delayed, and that the results would not therefore provide pupils, schools or the Government with timely information about the

attainment and progress of pupils, assuming that the provision of this information was one of the specified purposes of the assessment; or

- if a new type of NC test was being developed which Ofqual judged would not provide a reliable assessment of a pupil's level of attainment.

Regulatory frameworks

Section 164: NC assessments regulatory framework, Section 165: EYFS assessments regulatory framework

475. These sections require Ofqual to publish and keep under regular review two documents: the “NC assessments regulatory framework” and the “EYFS assessments regulatory framework” in relation to NC and EYFS assessment arrangements respectively.
476. The regulatory frameworks will give guidance to bodies with responsibilities for the development, implementation and monitoring of NC and EYFS assessment arrangements on how to perform their functions. This may include the measures of success which Ofqual considers will demonstrate evidence of effective development and delivery of assessments. The regulatory frameworks will also set out how Ofqual will carry out its review function at all stages of the assessment process.
477. Those bodies with responsibility for developing, implementing and monitoring NC and EYFS assessment arrangements (the NC and EYFS responsible bodies) must have regard to the relevant regulatory framework document in doing so. Ofqual must consult on a regulatory framework document before publishing it or revising it. The persons Ofqual must consult are the Secretary of State, such of the NC responsible bodies or, as the case may be, EYFS responsible bodies and any other persons as Ofqual considers appropriate. Ofqual may revise a regulatory framework document at any time.

Chapter 4: Other functions

Section 167: Provision of services

478. This section gives Ofqual the power to provide services to other persons in connection with any of its functions. Ofqual may charge for its services. Ofqual would be able, for example, to provide services to qualifications regulators in other countries.

Section 168: Provision of information or advice

479. This section requires Ofqual to provide the Secretary of State with information or advice relating to its functions where the Secretary of State requests it. This is a similar relationship to that between the Secretary of State and Ofsted. Where requested, Ofqual must also provide information or advice on its functions (so far as they relate to Northern Ireland) to the Department for Employment and Learning in Northern Ireland.

Section 169: Research and development

480. This section provides Ofqual with the power to carry out research in relation to qualifications that would be eligible for regulation or in relation to regulated assessment arrangements; and to commission, co-ordinate or facilitate such research.

Section 170: Duty not to impose or maintain unnecessary burdens

481. This section imposes a duty on Ofqual not to impose or maintain unnecessary regulatory burdens. The section is similar in effect to section 72 of the Regulatory Enforcement and Sanctions Act 2008, which imposes almost identical duties on a range of other regulators. Ofqual must monitor its regulatory functions (in relation to recognised bodies or accredited qualifications for example); and must also publish an annual

statement explaining how it plans to review its regulatory functions and to secure that they do not impose or maintain unnecessary burdens.

Section 171: Annual and other reports

482. This section requires Ofqual to publish an annual report. Ofqual has flexibility to determine when during its first year of life its reporting period should end, which will set the annual reporting period thereafter: it may be, for example, that Ofqual would decide that the reporting period in the first year should end in the autumn, in order that it can report on the previous summer's exams and tests. Each subsequent reporting period would then end in the autumn. Ofqual may also prepare and publish other reports.
483. Ofqual must lay its annual reports before Parliament and (so far as the report relates to Northern Ireland, where Ofqual regulates vocational qualifications) the Northern Ireland Assembly. It may choose to publish a single document or separate documents in relation to England and Northern Ireland.
484. There are four things that Ofqual must include in its annual report:
- a) A statement of what Ofqual has done in performing its functions in the reporting period.
 - b) An assessment of the extent to which it has met its objectives in the period. In relation to the qualifications standards objective, this assessment must take account of any information detailed in section 171(2)(c) about the attainment of relevant pupils in England.
 - c) Details of information on the levels of attainment in regulated qualifications which are wholly or mainly taken in schools – for example GCSEs. Ofqual may fulfil this by describing the information it has obtained, or actually publishing the information: for example, if it had the information available, it might publish information about the proportions of GCSE candidates in particular subjects getting particular grades.
 - d) If Ofqual has established arrangements for the referral of complaints about regulated qualifications to an independent party (under section 150(2)), the annual report must describe the activities of the independent party during the reporting period.

Chapter 5: General

Section 172: Interpretation of Part

485. This section sets out the definitions of various terms used in Part 7. It also provides that a reference to the award or authentication of a qualification throughout the Part includes a reference to the award or authentication of credits in respect of components of a qualification. This reflects the launch of the Qualifications and Credit Framework, through which students are able to build up composite qualifications through the obtaining of components.

Section 173: Transfer schemes

486. The section gives effect to Schedule 10.

Schedule 10: transfer schemes

487. This Schedule gives power to the Secretary of State to make a scheme to enable the transfer of staff and property from the QCA to Ofqual.

Section 174: Minor and consequential amendments

488. This section, with section 192, gives effect to Schedule 12. That Schedule makes minor and consequential amendments in connection with the provisions about Ofqual and the QCDA. It is discussed below in the commentary on Part 8 of the Act.

Part 8: the Qualifications and Curriculum Development Agency

Chapter 1: The QCDA, objective and general duties

The QCDA

Section 175: The Qualifications and Curriculum Development Agency

489. This section provides for the renaming of the QCA, which was established under the Education Act 1997 and will now be known as the Qualifications and Curriculum Development Agency. The section also gives effect to Schedule 11, which contains detailed provisions with respect to the constitution and proceedings of the QCDA. The QCDA will remain a Non-Departmental Public Body (NDPB), accountable to Ministers.
490. The QCDA will retain the QCA's non-regulatory functions, including supporting Ministers on developing the curriculum and related qualifications and delivering National Curriculum assessments. Regulatory functions will instead be exercised by Ofqual, established under Part 7.

Schedule 11: The Qualifications and Curriculum Development Agency

491. This Schedule makes detailed provisions relating to the QCDA, particularly in relation to its constitution and proceedings.

(1)

Status

492. [Paragraph 1](#) provides that the QCDA is not to be regarded as a servant or agent of the Crown, and that its property is not to be regarded as property of the Crown. There is no change in this regard to the status of the QCA.

(2)

Membership

493. [Paragraph 2](#) sets out the membership of the QCDA. Members are appointed by the Secretary of State, who must appoint one as the chair and may appoint another as the deputy chair. [Paragraph 5](#) makes provision for the tenure of office of the members, and how they may be removed from membership. [Paragraph 6](#) allows the Secretary to require that members be remunerated and that expenses and allowances be paid, with the amounts to be determined by the Secretary of State.

494. [Paragraph 3](#) provides for a chief officer who is appointed by the QCDA subject to the approval of the Secretary of State. The chief officer is an ex-officio member of the QCDA. Under [paragraph 4](#), the Secretary of State may confer functions on the chair, but any such functions must not duplicate functions conferred on the chief officer.

(3)

Staff

495. [Paragraphs 7 and 8](#) provide for the QCDA to have staff, and for their continued membership of the relevant pension scheme.

(4)

Committees and proceedings

496. Paragraph 9 allows the QCDA to establish committees, and for the committees to establish sub-committees. It also allows the Secretary of State to direct the QCDA to set up a committee for a specified purpose. The committee structure must be reviewed by the QCDA at least once every five years. A committee must include at least one member of the QCDA or its staff. Paragraph 10 allows the QCDA to establish joint committees with other bodies.
497. Paragraphs 11 and 12 provide for the QCDA to regulate its own proceedings and for the Secretary of State or his representative, Ofsted and any other body directed by the Secretary of State to attend meetings of the QCDA.
498. Under paragraph 13, the QCDA may delegate any of its functions to a committee or a member of the QCDA or its staff.
499. Paragraphs 14 and 15 provide respectively for a committee to delegate its functions to a sub-committee, and for the Secretary of State to authorise a committee established under a direction to perform functions of the QCDA.

(5)

Reports and accounts

500. Paragraph 16 requires the QCDA to prepare an annual report for each financial year, setting out how it has performed its functions in that year. The QCDA must publish the report and the Secretary of State must lay a copy before Parliament. There is no equivalent requirement currently for the QCA.
501. Paragraph 17 requires the QCDA to keep and prepare accounts in line with any directions of the Secretary of State.

(6)

Documents

502. Paragraph 18 makes provision about the application of the QCDA's seal.

(7)

Funding

503. Paragraph 20 allows the Secretary of State to make grants to the QCDA and to attach conditions to those grants. This will be central to the relationship between the QCDA and the Secretary of State — it is the way in which the Secretary of State will give a remit to the QCDA over particular pieces of work he requires it do.

(8)

Supplementary powers

504. Paragraph 21 of the Schedule confers on the QCDA wide supplementary powers to do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions. But the QCDA may not form companies or other bodies or enter into joint ventures without the Secretary of State's consent. The powers are also subject to restrictions provided for elsewhere in the sections (for example, the QCDA may not lend money).

Objective and general duties

Section 176: Objective

505. This section sets out the QCDA's objective: to promote quality and coherence in education and training in England. For the purposes of the QCDA's functions, education

includes learning by, and development of, young children pursuant to the Early Years Foundation Stage, which was established under the Childcare Act 2006.

506. The QCA has somewhat broader objectives and has roles in Wales and Northern Ireland. The QCDA will have no responsibilities outside England.

Section 177: General duties

507. This section sets out the matters to which the QCDA must have regard in exercising its functions and pursuing its overall objective. There is some equivalent material in section 26 of the Education Act 1997 setting out requirements to which the QCA must have regard. The duties under section 177 differ in some respects to those under the 1997 Act as described below.
508. The QCDA must have regard to the reasonable requirements of all learners, as defined in *subsection (6)* (this includes young children). The 1997 Act specified a duty to have regard to learners with special learning needs, but there was no equivalent statutory requirement in relation to other learners.
509. The section adopts a new definition of “persons with learning difficulties” (as defined in section 129) to replace the concept of “learners with special learning needs” in the 1997 Act. The only difference of substance is that the new definition provides that a person is not to be taken to have a learning difficulty solely because of a difference in the language in which he or she is to be taught and the language which he or she speaks at home.
510. The QCDA must have regard to the reasonable requirements of all employers (rather than just to those of various sectors thereof, as is the case with the QCA) and of higher education institutions.
511. The QCDA must have regard to the desirability of facilitating innovation.
512. There is an explicit requirement for the QCDA to perform its functions efficiently and effectively.
513. The QCDA must also have regard to such aspects of Government policy as the Secretary of State may direct.
514. As is the case with the QCA at present, the QCDA will also have to have regard to information provided by Ofsted and any other bodies specified by the Secretary of State. The QCDA must also have regard to information provided by Ofqual.
515. The QCDA must also (like the QCA) have regard to the requirements of section 78 of the Education Act 2002. That section provides–
- “The curriculum for a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which–
- (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and
 - (b) prepares pupils at the school for the opportunities, responsibilities and experiences of later life.”

Chapter 2: Functions in relation to qualifications

Section 178: Qualifications within the QCDA’s remit

516. This section defines which qualifications fall within the QCDA’s remit. This remit is broadly similar to that of Ofqual. It covers all qualifications awarded or authenticated in England other than those which are both (a) at foundation degree level or equivalent or first degree level or above, and (b) awarded or authenticated by a higher education

institution. As with Ofqual, the QCDA's remit is no longer restricted to qualifications awarded by an external body (so, for example, a qualification awarded by an employer following completion of its own training would fall within the QCDA's remit).

517. The Secretary of State is given the power by order to exclude qualifications from the QCDA's remit. The order-making power is subject to the negative procedure. This provision is designed to allow for any future narrowing of the QCDA's qualifications role. The intention is that this power could be used in particular to remove the QCDA's functions in relation to post-19 qualifications, if the Department for Business, Innovation and Skills were (following the review that it currently has under way) to conclude that it did not wish the QCDA to have advice and review functions with respect to these qualifications. Any such decision would not affect Ofqual's role in regulating these qualifications.

Section 179: Qualifications: general functions

518. This section sets out the QCDA's duties and powers in relation to qualifications within its remit (see above). These include its duty to keep all aspects of such qualifications under review; its duty to provide advice or carry out research relating to such qualifications at the request of the Secretary of State; and its general power to offer advice to the Secretary of State and to conduct research. It may also publish information relating to qualifications within its remit.

Section 180: Assistance etc. in relation to qualifications functions of Ofqual

519. This section requires the QCDA, where requested by Ofqual, to assist in setting criteria for recognition or accreditation which relate to a qualification or description of qualification where an order specifying minimum requirements under section 141(1) has effect. It also enables the QCDA generally to assist Ofqual in connection with its qualifications functions, including assistance with setting 'qualifications criteria' in other cases. 'Qualifications criteria' are the criteria for recognition of awarding bodies, for accreditation of individual qualifications and for the assignment of a number of guided learning hours to a qualification.
520. The Government intends that this provision will be used to enable the QCDA to develop draft criteria for qualifications whose high level content is determined as a matter of policy by Ministers, for example, GCSEs, A-levels or Diplomas. The criteria would then be considered for adoption by Ofqual, and provided it was content to adopt them. This process will allow Ofqual to avoid the conflict of interest inherent in the QCA's functions, whereby it both develops the criteria and is responsible for providing assurance that the qualifications developed against those criteria are of a high standard. This process is supported by section 141, which allows the Secretary of State – where certain pre-conditions are met – to specify by order the minimum requirements for a specified qualification or description of qualification. Where such an order has been made, there would be an expectation that the QCDA would support the development of qualifications criteria, which is why section 180 imposes a duty on the QCDA to assist Ofqual where requested to do so.

Chapter 3: Functions in relation to curriculum, Early Years Foundation Stage and assessment

521. The functions of the QCA in relation to curriculum and assessment were established under section 23 of the Education Act 1997. The functions included: keeping under review all aspects of the curriculum, school examinations and assessment; advising the Secretary of State on these matters, and on research and development connected with them, and helping him to carry out research and development if requested to do so; and publishing and disseminating information about them. The QCA also has a range of functions relating to National Curriculum assessments as a result of orders made under section 87 of the Education Act 2002.

522. Similar functions have been conferred on the QCA in relation to the EYFS learning and development requirements by the [Qualifications and Curriculum Authority \(Additional Functions\) Order 2008 \(S.I. 2008/1744\)](#).
523. Under the provisions of this Chapter, the QCDA will continue much of the QCA's role in relation to these functions, such as advising and supporting Ministers in the monitoring and development of curriculum and assessments.

Section 181: Curriculum

524. This section sets out the QCDA's duties and powers with respect to the curriculum in maintained schools in England for pupils who are of compulsory school age, and pupils in maintained nursery schools. The requirements for the curriculum in such schools are set out in section 78 of the Education Act 2002. It must be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and which prepares pupils at the school for the opportunities, responsibilities and experiences of later life. The role of the QCDA in relation to the curriculum is similar to its general role in relation to qualifications within its remit and includes a duty to keep all aspects of the curriculum under review, a duty to provide advice or carry out research at the request of the Secretary of State and the power to offer advice to the Secretary of State and to conduct research when it considers it appropriate to do so. The QCDA may also publish information relating to the curriculum.

Section 182: Early learning goals and educational programmes

525. This section sets out the QCDA's duties and powers with respect to early learning goals and educational programmes, which mirror those in section 181 relating to the curriculum. These functions include its duty to keep all aspects of these matters under review, its duty to provide advice or carry out research at the request of the Secretary of State and the power to offer advice to the Secretary of State and to conduct research when it considers it appropriate to do so. The QCDA may also publish information relating to the early learning goals and educational programmes.
526. The early learning goals establish learning and development expectations for most children to reach by the end of the Early Years Foundation Stage. They are established by order made under section 39(1)(a) of the Childcare Act 2006 and are defined in section 41(2) of that Act as "the knowledge, skills and understanding which young children of different abilities and maturities are expected to have before the 1st September next following the day on which they attain the age of five". Educational programmes are also established by such an order and are defined in section 41(2) of the 2006 Act as "the matters, skills and processes which are required to be taught to young children of different abilities and maturities".

Section 183: Assessment arrangements

527. This section sets out the QCDA's duties and powers with respect to assessment arrangements within its remit. These arrangements include National Curriculum assessment arrangements for each key stage and assessment arrangements under the EYFS learning and development requirements (together referred to as "the regulated assessment arrangements"). The arrangements within the QCDA's remit also include any other testing and assessment arrangements for pupils of compulsory school age at maintained schools and for pupils at maintained nursery schools. The QCDA's remit is therefore broader than Ofqual's, which is restricted to regulated assessment arrangements. The QCDA's duties and powers broadly mirror those relating to curriculum. They include a duty to keep all aspects of assessment arrangements under review, a duty to provide advice and to carry out research at the request of the Secretary of State, and a discretion to offer advice to the Secretary of State and to conduct research when the QCDA considers it appropriate to do so. The QCDA may also publish

information relating to assessment. The QCDA's duty to keep under review assessment arrangements is a distinct role from the regulatory one for which Ofqual will be conducting reviews of regulated assessments under section 161. The expectation is that the QCDA will use information obtained through reviewing assessment arrangements to assist it in providing the Secretary of State with advice on assessment arrangements.

528. The amendments made to the Education Act 2002 and the Childcare Act 2006 by paragraphs 35(3) and 40(2) of Schedule 12 allow the QCDA (and any other body designated by the Secretary of State) to be given specific functions in relation to National Curriculum and EYFS assessment arrangements respectively.

Chapter 4: Other functions and supplementary provision

Other functions

Section 184: Provision of services or other assistance

529. This section enables the QCDA to provide services or other assistance in relation to the matters listed in *subsection (1)*. The consent of the Secretary of State is not required for the provision of services or other assistance, unless it is outside the scope of the list in subsection (1), or involves providing financial assistance or charging for services. The section prohibits the QCDA from lending money. The QCDA may use the powers under this section to provide services such as support and advice to schools on implementing the curriculum, or to awarding bodies in relation to the development of qualifications. In particular, this section will enable the QCDA to operate systems and support services such as the Diploma Aggregation Service (a web-based IT system that supports the administration and award of Diplomas). The QCDA's powers to assist Ofqual in relation to its qualifications functions derive from section 180 – under this section it cannot assist Ofqual in relation to such matters.

Section 185: Provision of information or advice

530. This section provides a duty for the QCDA to advise the Secretary of State on any matters relating to education or training in England which the Secretary of State refers to it. This duty supplements the specific duties to give advice on certain matters set out in Chapters 2 and 3 of this Part. Section 185 also imposes a duty on the QCDA to give information to the Secretary of State on such matters relating to its functions as the Secretary of State may request.

Section 186: Ancillary activities

531. This replicates the existing duty for the QCA to comply with a direction of the Secretary of State to carry out ancillary activities relating to its functions (under section 25(2) and (3) of the Education Act 1997).

Section 187: Co-operation and joint working

532. This section allows the QCDA to co-operate or work jointly with other public bodies, where it is appropriate for the efficient and effective performance of any of the QCDA's functions. This would enable it, for example, to seek the advice of the Welsh qualifications regulator on qualifications that are regulated in Wales but offered in England, or to work with a Sector Skills Council to advise on the qualifications needed in a particular employment sector.

Section 188: Power to confer supplementary functions on the QCDA

533. This section provides a power for the Secretary of State to confer supplementary functions on the QCDA by order, where such new functions are exercisable in connection with the matters listed in *subsection (2)*. This measure is designed to

enable the functions of the QCDA to develop over time to meet changing needs and circumstances. An order under this section is subject to the negative procedure.

Supplementary provision

Section 189: Directions etc. by the Secretary of State

534. The Secretary of State may issue directions to the QCDA as to the performance of any of its functions. This power sits alongside those of the Secretary of State to direct the QCDA in relation to “ancillary activities” – see section 186, and to set up a committee for a specified purpose – see paragraph 9(2) of Schedule 11. The QCDA must also, in performing its functions, act in accordance with any plans approved by the Secretary of State.
535. The provisions in this section reflect the QCDA’s role as an NDPB, accountable to Ministers

Section 190: Guidance by the Secretary of State

536. The QCDA must, in performing its functions, have regard to any guidance given by the Secretary of State.

Chapter 5: General

Section 192: Minor and consequential amendments

537. This section introduces Schedule 12, which contains minor and consequential amendments resulting from the establishment of Ofqual and the revised regime for the QCDA. The changes to section 87 of the Education Act 2002 and to section 41 of the Childcare Act 2006 are particularly relevant to the QCDA’s role, in that these Acts (and regulations made under them) along with the Education Act 1997 contain the full range of the QCA’s current statutory functions. In other words, a significant amount of the QCA’s work relates to functions conferred under the 2002 and 2006 Acts, and potentially this will also be the case for the QCDA.

Schedule 12: Ofqual and the QCDA: minor and consequential amendments

538. The amendments in this Schedule fall into eight categories:
(1)

Those that relate to the establishment of Ofqual as a new Non-Ministerial Department and to the change of name and charitable status of the Qualifications and Curriculum Authority (paragraphs 1-10, 20, 25, 30 and 43).

539. In this category there are amendments to the following Acts: the Public Records Act 1958; the Parliamentary Commissioner Act 1967; the Local Authorities (Goods and Services) Act 1970; the Superannuation Act 1972; the House of Commons Disqualification Act 1975; the Northern Ireland Assembly Disqualification Act 1975; the Race Relations Act 1976; the Charities Act 1993; the Education Act 1996 (see also below); the Education Act 1997 (see also below); the Freedom of Information Act 2000; and the Safeguarding Vulnerable Groups Act 2006.
540. Ofqual does not need to be named explicitly as falling under some of these Acts, because its status as a Non-Ministerial Department means that no explicit provision is needed for these Acts to apply to it.
541. Additionally, the QCDA, unlike the QCA, will not be a charity, so there needs to be an amendment to the Charities Act 1993 to remove the reference to the QCA being an exempt charity.
542. [Paragraph 20](#) updates the reference to the QCA in section 35 of the 1997 Act.

(2)

Amendments to the Education Act 1996 (paragraphs 9 to 11)

543. These amendments make changes to the Education Act 1996 in consequence of the provisions in the Act about the set-up of the QCDA and the amendments to the Learning and Skills Act 2000 (see below). Paragraph 11 also limits the duty under section 408 of the 1996 Act (which concerns the provision of information about the education provided in maintained schools) to those qualifications that have been approved for public funding.

(3)

The repeal of sections 21 to 26A, section 36 and Schedule 4 to the Education Act 1997 (paragraphs 13 and 21-24)

544. Sections 21 to 26A and Schedule 4 to the Education Act 1997 establish the QCA, make provision for its constitution, governance and proceedings, and confer functions on it. These provisions are repealed in consequence of the provisions of the Act in relation to Ofqual and the QCDA.
545. Section 36 provided a power for the Secretary of State to provide by regulations for the QCA and the Welsh Ministers to receive payment from persons who award vocational qualifications accredited by these authorities. The statutory levy on an awarding body for National Vocational Qualifications accredited by the QCA was replaced by direct grants to Sector Skills Councils from autumn 2008, and the relevant regulations have been revoked. The power has therefore become redundant.

(4)

Amendments to the provisions in the Education Act 1997 governing the regulation of qualifications in Wales, keeping the regulatory powers of Welsh Ministers broadly in step with those of Ofqual (paragraphs 14-19)

Paragraph 15

546. Paragraph 15(2) amends section 30 of the Education Act 1997 to provide revised functions for the Welsh Ministers in relation to vocational and academic qualifications. The new subsection (1) for section 30 reflects the Welsh Ministers' existing functions, except in the following cases: the Welsh Ministers now have a function of determining whether a relevant qualification, or a description of qualification, is to be subject to a requirement that it be accredited. The Welsh Ministers also have an additional function of publishing and disseminating (or assisting in the publication or dissemination of) information relating to recognised bodies. The qualifications falling within the Welsh Ministers' remit have also changed. As a result of the amendments, the provisions will refer to "relevant qualifications", replacing the reference to "external qualifications". A definition for relevant qualifications is provided in paragraph 15(6), as outlined below.
547. Paragraph 15(3) makes consequential amendments to update references to subsections in section 30 of the 1997 Act. This reflects the insertion of new functions and the re-numbering of the paragraphs in section 30(1).
548. Paragraph 15(4) replaces section 30(1B) and paragraph 15(5) repeals section 30(1C), (1D) and (2) as a consequence of the Welsh Ministers having made an order under the existing section 30(2) transferring all remaining functions under section 30 to their sole exercise. In other words, the QCA's role in Wales has ceased by virtue of the order (and so the QCDA will have no functions in relation to Wales).
549. Paragraph 15(6) provides a description of the qualifications (the "relevant qualifications") that fall within the Welsh Ministers' remit. Qualifications that are foundation, first or higher degrees are excluded from that remit. A qualification is to be considered as awarded or authenticated in Wales where there are (or may reasonably

be expected to be) people in Wales seeking to obtain that qualification who will be assessed wholly or mainly in Wales. References to “externality” are removed which means that the Welsh Ministers will be able to recognise bodies which both teach and award qualifications, for example, employers or colleges.

550. Paragraph 15(7) repeals section 30(6) of the 1997 Act which has the effect of disapplying the definition of external qualifications contained in section 24(7), which will be repealed, see comment on paragraph 15(2) above.

Paragraph 16

551. Paragraph 16(2) and (5) substitutes “persons with learning difficulties” for “persons with special learning needs”, mirroring the change made in relation to the QCDA. The word “reasonable” is also added, so section 32 of the 1997 Act will provide that the Welsh Ministers must have regard to the reasonable requirements of persons with learning difficulties in carrying out their functions. Paragraph 16(2)(a) also qualifies the duty to have regard to the requirements of industry, commerce, finance and the professions by reference to reasonableness.
552. Paragraph 16(3) amends the power for the Welsh Ministers to place a limit on fees charged by a recognised body for the award or authentication of a qualification. A fee capping condition may be applied to any charge levied in relation to the award or authentication of a qualification or any other service provided in relation to such a qualification. It might include, for example, any fees charged by the recognised body to recognise a school or college wishing to offer the qualification.
553. Paragraph 16(4) removes the power for the Welsh Ministers to act as agents for the QCA. It is not intended that the QCDA will exercise any functions in relation to Wales and this provision therefore becomes redundant.

Paragraph 17

554. Paragraph 17 inserts into the 1997 Act a new section 32ZA containing power for the Welsh Ministers to co-operate or work jointly with a relevant authority in connection with carrying out their qualifications functions. A “relevant authority” is a person (whether or not in the UK) carrying out functions which are similar to the functions of the Welsh Ministers in relation to qualifications. The Welsh Ministers may provide information to such an authority, subject to any such disclosure not being in contravention of any other Act. The Welsh Ministers may establish joint committees where appropriate to do so for the carrying out of any of their qualifications functions and may delegate any of their qualifications functions to such a committee on such terms as they determine. The Welsh Ministers with any other person with whom they established the committee, may direct the committee as to what it may do.
555. These powers taken together will enable the continued operation of the three-country framework, whereby the qualifications regulators in Wales, England and Northern Ireland work together on the regulation of qualifications across all three countries.

Paragraph 18

556. Paragraph 18(2) makes a consequential amendment to section 32A of the 1997 Act to reflect the QCA’s regulatory functions being transferred to Ofqual. Paragraph 18(3) makes a consequential amendment to reflect the insertion of new sections by paragraph 19. Paragraph 18(4) removes subsection 32A(6) from the 1997 Act, which becomes superfluous.

Paragraph 19

557. Paragraph 19 inserts new sections 32B and 32C into the 1997 Act. The new section 32B (which reflects the provision made for Ofqual by section 152) provides that if an

awarding body has not complied with a condition of recognition or accreditation, the Welsh Ministers may withdraw recognition in relation to some or all of the qualifications for which it is recognised. However, the Welsh Ministers may only do this if the awarding body's breach of the condition seems likely to prejudice either the proper award of a qualification or a person expecting to be awarded with a qualification.

558. Subsections (5) to (11) of the new section 32B set out the steps that the Welsh Ministers must take before withdrawing recognition or accreditation, including giving notice of their intention, taking account of representations from the awarding body, and putting in place arrangements for the review of decisions.
559. The power for the Welsh Ministers to withdraw accreditation or recognition is currently implicit in the Education Act 1997 as amended by the Education and Skills Act 2008. The insertion of an express power in relation to recognition clarifies the scope and operation of what otherwise would have been implied powers and thereby provides greater transparency.
560. New section 32C provides for a recognised awarding body to be able to surrender its recognition, in whole or in part. A recognised awarding body may give notice to the Welsh Ministers, who then determine the date the recognition is to cease. In setting that date the Welsh Ministers must have regard to the need to avoid prejudice to those seeking to obtain the qualification in question.

(5)

Amendments to the provisions of the Learning and Skills Act 2000 governing eligibility for public funding for qualifications in maintained schools etc (paragraphs 26-29)

561. Under sections 96 and 98 of the Learning and Skills Act 2000, the Secretary of State has the power to approve qualifications for which a course may be taught to persons aged under 19 in a maintained school or in a provider funded by the Learning and Skills Council. The amendments to that Act in paragraph 28 allow the Secretary of State to approve a qualification only if either the qualification is a "regulated qualification" in accordance with Part 7 of this Act (and where the accreditation requirement applies, it is accredited), or if the Secretary of State consults Ofqual before approval. This ensures that, if the Secretary of State is considering granting approval for funding for a qualification which Ofqual does not regulate, he is aware of any views Ofqual has about the qualification. The change is part of implementing the Government's new qualifications strategy for 14 to 19s². The amendments to section 96 in paragraph 27 bring the qualifications to which this approval regime applies into line with the qualifications in respect of which an awarding body may apply to be recognised by Ofqual.
562. Paragraph 29 amends section 99 of the Learning and Skills Act 2000, which is the Welsh equivalent of section 98. The amendment provides that a qualification is automatically approved for the purposes of section 96 if it is awarded by a body which is recognised by the Welsh Ministers (and, if required, the qualification is accredited).

(6)

Amendments to the provisions of the Education Act 2002 and the Childcare Act 2006 governing NC and Early Years Foundation Stage assessments (paragraphs 31 to 35 and 38 to 41)

Education Act 2002 and Childcare Act 2006

563. Paragraphs 31 to 35 and 38 to 41 amend the provisions of the Education Act 2002 and the Childcare Act 2006 respectively relating to the NC, and in particular the NC assessment arrangements, and the EYFS learning and development requirements and

² Promoting achievement, valuing success: a strategy for 14-19 qualifications, DCSF, Cm 7354, 31 March 2008, <http://www.dfes.gov.uk/publications/14-19qualifications/pdfs/14-19Qualifications.pdf>

the EYFS assessment arrangements. The changes primarily reflect the provisions of the Act which establish Ofqual and provide for the QCA to become the QCDA.

564. Section 87 of the 2002 Act makes provision for the NC to be set out in orders made by the Secretary of State. Paragraph 35 amends section 87 and in particular the provisions of that section relating to the Secretary of State's powers to make orders specifying assessment arrangements. The amendments relate to the powers of the Secretary of State to confer functions on specified bodies, including the QCDA, and to delegate the making of supplementary provision to the QCDA and other persons.
565. Section 87(9) of the 2002 Act currently states that provisions will be made to determine the extent to which the assessment arrangements achieve their purpose. Given that Ofqual is established to regulate assessments, section 87(9) is no longer required. Paragraph 35(4) therefore repeals this subsection.
566. Similar changes are made to the provisions of the Childcare Act 2006 relating to the learning and development requirements of the EYFS. Paragraph 40 amends section 42(2) of the 2006 Act to include the QCDA and any other person with whom the Secretary of State has made arrangements in connection with assessment arrangements, as persons on whom functions may be conferred in an order specifying assessment arrangements for the learning and development requirements of the EYFS. That paragraph also enables the Secretary of State to delegate the making of supplementary provisions in relation to assessment arrangements.
567. Section 42(4) of the 2006 Act states that provision will be made to determine the extent to which the assessment arrangements achieve their purpose. Given that Ofqual is established to regulate assessments, section 42(4) is no longer required. Paragraph 40(3) therefore repeals this subsection.

(7)

Changes to procedures for exemptions from the National Curriculum and Early Years Foundation Stage: Education Act 2002 and Childcare Act 2006 (paragraphs 36 and 42)

568. Section 90 of the 2002 Act gives the Secretary of State the power to direct in respect of a particular maintained school or maintained nursery school that, for a specified period, the NC does not apply or applies with modifications. This is designed to support development work or experiments that will support learning. The amendment made by paragraph 36 establishes a reviewing body for these cases, which will be the QCDA or another person assigned by the Secretary of State. The amendments give the Secretary of State the power to require any such school or nursery to report to the reviewing body, or to require the reviewing body to keep the development or experiment work of any such school or nursery under review.
569. Section 46 of the 2006 Act provides for regulations to be made allowing the Secretary of State to direct in respect of a particular early years provider or description of early years providers that, for a specified period, the EYFS does not apply or applies with modifications. Paragraph 42 of this Schedule amends section 46 to allow the regulations to include provision establishing a reviewing body for these cases, which will be the QCDA or another person assigned by the Secretary of State. The amendment will also allow the regulations to give the Secretary of State the power to impose conditions when making such a direction, or to require the reviewing body to keep the effects of the direction under review.

(8)

Changes to streamline consultation relating to the National Curriculum: section 96 of the Education Act 2002 ([paragraph 37](#))

570. [Paragraph 37](#) amends section 96 of the Education Act 2002 which makes provision about the procedure for making orders relating to the NC. The amendments make

changes to the way in which persons must be notified of the proposed order or regulations.

571. Under section 96(3), the QCA is required to give notice of the proposal. Notice must be given to any person with whom consultation appears desirable to the QCA. Paragraph 37(3) amends this provision so instead the QCDA is under a duty to publish notice of the proposal in a way that it considers likely to bring to the attention to those concerned with it.
572. Under section 96(6) the Secretary of State is required to publish drafts of a proposed order or regulations and a statement explaining any failure to give effect to the recommendations of the QCA. Paragraph 37(6) and (7) removes the requirement for the Secretary of State to send copies of the above statement and proposed order or regulations to every person consulted by the QCDA. Instead, the Secretary of State is required to take steps to bring the documents to the attention of those consulted. This will enable documents to be published, for example on the internet, rather than being provided to each of the persons consulted by the QCDA.

Part 9: Children's Services

Co-operation to improve well-being of children

Section 193: Arrangements to promote co-operation

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

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

Section 194: Children's Trust Boards

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

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

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

Safeguarding and promoting the welfare of children

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

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

Section 196: Local Safeguarding Children Boards: lay members

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

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

Section 197: Local Safeguarding Children Boards: annual reports

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

Children's centres

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

Section 198: Arrangements for children's centres

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

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

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

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

Section 199: Inspection of children's centres

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

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

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

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

Section 200: Children's centres: safeguarding children

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

Section 201: Arrangements in respect of early childhood services

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

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

Early years provision: budgetary framework

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

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

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

Part 10: Schools

Chapter 1: Schools causing concern: England

- 655. By way of background, Part 4 of the Education and Inspections Act 2006 gives local education authorities and the Secretary of State intervention powers to tackle underperforming schools. The LEA powers consist of appointing new members to the school's governing body, establishing an interim executive board (IEB), directing the school to federate or collaborate with or seek advice from another school or other person, and suspending the school's right to a delegated budget. Before any of these powers may be exercised the school must either be in one of the Ofsted categories of requiring "special measures" or "significant improvement", or be given a warning notice by the LEA and allowed time to respond.
- 656. Also the Secretary of State currently has reserve powers in relation to schools requiring special measures or significant improvement. Three of these are set out alongside the LEA intervention powers, and are to appoint additional governors, to impose an IEB, and to close a school (although this last power applies to schools in special measures only). Another of the reserve powers, under section 62A of the Education Act 2002, is to require the LEA to obtain advisory services if they have a poor record or appear unlikely to be effective in eliminating the deficiencies.

Section 203: Powers in relation to schools causing concern: England

- 657. [Section 196](#) introduces Schedule 13 which contains amendments to Part 4 of the Education and Inspections Act 2006.

Schedule 13: Powers in relation to schools causing concern: England

- 658. The Education Act 2002 gives the Secretary of State power to issue orders about teachers' pay and conditions in England and Wales - - - see section 122 of that Act. The School Teachers' Pay and Conditions Document has been included in an order under that section.
- 659. Paragraph 4 of Schedule 13 to the Act inserts a new section 60A in the Education and Inspections Act 2006. The new section introduces a system of teachers' pay and conditions warning notices which allows LEAs to issue a notice to the governing body of a maintained school where the LEA are satisfied that the governing body has failed to comply, or failed to secure compliance by the head teacher, with the provisions of an order under section 122 of the 2002 Act relating to teachers' pay and conditions (including the School Teachers' Pay and Conditions Document).
- 660. Section 60A also provides that if a teachers' pay and conditions warning notice is given and, after a compliance period, the governing body has not complied with it or successfully made representations to the LEA against it, the school will become eligible

for intervention. Some of the LEA's and the Secretary of State's current powers under Part 4 of the 2006 Act will then be available. These are:

- section 64 (power of the LEA to appoint additional governors)
- section 65 (power of LEA to provide for governing body to consist of interim executive members)
- section 66 (power of LEA to suspend right to delegated budget)
- section 67 (power of Secretary of State to appoint additional governors)
- section 69 (power of Secretary of State to provide for the governing body to consist of interim executive members).

661. Paragraph 6 of Schedule 13 to the Act amends section 64 of the Education and Inspections Act 2006 so that where a school is eligible for intervention under Part 4 of the 2006 Act an LEA's power to appoint additional governors will not be available if the Secretary of State has already appointed additional governors under section 67.
662. Paragraphs 8 and 9 of Schedule 13 amend sections 67 (power of Secretary of State to appoint additional governors) and 69 (power of Secretary of State to provide for governing body to consist of interim executive members) so that the Secretary of State's powers will also be available in a case where a school is eligible for intervention by virtue of a warning notice under section 60 (performance standards and safety) or 60A (teachers' pay and conditions). Formerly these reserve powers were available only when the school was eligible for intervention because it required significant improvement or special measures.
663. Paragraph 10 of Schedule 13 makes further provision about warning notices by inserting new sections 69A and 69B in the Education and Inspections Act 2006. Section 69A gives the Secretary of State power to direct an LEA to consider giving a performance standards and safety warning notice to a governing body school if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of State's direction must be in writing and the LEA must provide a written response, copied to Her Majesty's Chief Inspector of Schools within 10 working days. If the LEA agree to issue a warning notice they must do so – copied to the Secretary of State – within five working days of their response to the Secretary of State and withdraw any previous warning notice given to the governing body under section 60. If the LEA decides not to issue a warning notice they must set out the reasons for the decision in their response to the Secretary of State.
664. New section 69B gives the Secretary of State a power to direct an LEA to consider giving a teachers' pay and conditions warning notice to a governing body if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of State's direction must be in writing and the LEA must give a copy to the school's governing body, and then provide a written response (including any response from the governing body) to the Secretary of State within 10 working days. If the LEA agree to issue a warning notice they must do so — copied to the Secretary of State — within five working days of their response to the Secretary of State and withdraw any previous warning notice they had issued to the governing body under section 60A.
665. If the LEA decide not to issue a teachers' pay and conditions warning notice they must set out the reasons for the decision in their response to the Secretary of State. The Secretary of State may then direct the LEA to give a warning notice in the terms specified in the direction and to withdraw any previous warning notice they had issued to the governing body under section 60A.

Section 204: Power to require LEAs in England to obtain advisory services

666. This section amends section 62A of the Education Act 2002. Section 62A currently gives the Secretary of State the power to require LEAs in England to obtain advisory services where:
- the LEA have schools in either of the categories “requiring special measures” or “requiring significant improvement”, and
 - the LEA do not appear to be effective or likely to be effective in improving those schools or other schools in their area which may be placed in these categories.
667. The advisory services can be supplied by an organisation, school or named person, who would provide advice to the LEA for the purposes of school improvement.
668. *Subsection (2)* inserts an additional trigger for the Secretary of State’s power to require the LEA to obtain advisory services. The new trigger allows intervention when there are a disproportionate number of low-performing schools within the LEA’s remit and it appears to the Secretary of State that the LEA are unlikely to improve standards in those schools or in other schools in their area which may in the future become low-performing.
669. Standards of performance of pupils at a school are assessed by reference to the matters set out in new section 62A(1C), which provides that the standards of pupils when they joined the school and the standards achieved by pupils at similar schools may be taken into account.

Section 205 and Schedule 14: Powers in relation to schools causing concern: Wales

670. *Section 205* gives effect to Schedule 14 which contains the Welsh provisions corresponding to those in Schedule 13 for England. The amendments are to the School Standards and Framework Act 1998, and have broadly the same effect as those made in relation to teachers’ pay and conditions in England by Schedule 13, except that the Welsh Ministers rather than the Secretary of State have reserve intervention powers.

Chapter 2: Complaints: England

671. Under the current processes, when a parent or pupil is concerned about an issue arising from their individual experience at school, they can contact the teacher or head teacher of a school. If the issue remains unresolved they can contact the governing body of the school or management committee in the case of a short stay school (pupil referral unit).
672. If the complainant remains unhappy, once the governing body has looked into their complaint, they may approach the Secretary of State under section 496 or 497 of the Education Act 1996 and ask him to consider their complaint. The Secretary of State must consider that the governing body has been acting unreasonably and that it is expedient to intervene. In practice there are few occasions when a direction may be made.
673. These sections create a new scheme for complaints and amend section 496/7 in respect of complaints heard by school governing bodies which have been brought to the attention of the Secretary of State and repeal section 409 and *paragraph 6(3) and (4)* of Schedule 1 to the Education Act 1996. The Government intends that the Secretary of State’s role will be replaced by a new parents’ and young person’s independent complaints service (involving a Local Commissioner)
674. A Local Commissioner will be able to consider complaints about school issues affecting a particular pupil where they may not appeal by another independent route.
675. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not fall within the scope of the new scheme as they have

their own independent appeals processes. Special educational needs cases which are currently within the remit of the First-Tier Tribunal (Special Educational Needs and Disability) (previously known as SENDIST) will also be outside the scope of Local Commissioners.

Section 206: Complaints to which this Chapter applies

- 676. The section specifies who may approach a Local Commissioner under the new independent service. “The Commission for Local Administration” and “The Local Commissioner” are statutory names for the body generally known as the Local Government Ombudsman.
- 677. A “qualifying school” is a community, foundation, or voluntary aided school, community special or foundation special school, maintained nursery school or a short stay school. The Secretary of State may add to or amend this definition by order (made under section 222) which would be subject to the affirmative resolution procedure.
- 678. The section provides that a complaint against a school may be made where a pupil or parent claims to have suffered injustice because of the actions, or omissions, of the governing body or by the head teacher exercising, or failing to exercise, functions of a kind specified in regulations under this section. Where the head teacher delegates authority to another member of staff, the head teacher remains legally accountable for the member of staff complying with that action.
- 679. Where a governing body makes arrangements for another individual or body to carry out functions on its behalf, this will also be capable of referral to a Local Commissioner. For example, where a school contracts out services for an “after school club”, a parent or pupil could make a complaint about an act that occurred whilst a pupil was attending this provision, despite the fact that it was not run directly by the governing body.
- 680. Where a pupil is educated off the site of the school this will also be included within the remit of Local Commissioners. For example, a pupil might be on the roll at one school but may attend some lessons at another school. This can happen in cases where a pupil is on roll at a short stay school but attends a mainstream school as part of their education.
- 681. People acting on the governing body’s behalf can also be complained about. This includes a person employed by a local education authority or outside agency as they will be carrying out actions with the governing body’s permission.
- 682. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not be capable of referral to a Local Commissioner as they have their own independent appeals processes. This also applies to cases that are currently within the remit of the First-Tier Tribunal (Special Educational Needs and Disability) (previously known as the Special Educational Needs and Disability Tribunal (SENDIST)).
- 683. A parent or pupil may approach a Local Commissioner asking them to investigate their complaint. “Parent” includes anyone who has parental responsibility for a child or who has care of him or her. A Local Commissioner will be able to consider complaints from carers as well as parents and young people.

Section 207: Power of Local Commissioner to investigate complaint

- 684. The section enables a Local Commissioner to investigate the complaint made by the complainant. Where head teachers or governing bodies have considered the complaint and feel the complaint should be referred to a Local Commissioner, they may do so with the complainant’s consent. For example, a head teacher or governing body may feel they have done all they can to assist the complainant and a Local Commissioner may be able to resolve the issue.

685. Before proceeding to investigate a matter a Local Commissioner must be satisfied that the governing body had notice of the matter complained about and an opportunity to investigate and respond, or that it is not reasonable in the circumstances to expect the matter to be brought to the attention of the governing body (*subsection (3)(b)*). A Local Commissioner is able to use discretion to take a flexible approach and proceed with an investigation if satisfied that it is not reasonable to expect the matter to have first been brought to the attention of the governing body.
686. A Local Commissioner is able to investigate or discontinue complaints as it feels appropriate. If a Local Commissioner is satisfied with the steps the school is taking or is going to take, or that the complaint is vexatious, he or she may decide not to investigate the complaint.

Section 208: Time-limit etc for making complaint

687. This section requires complaints to be made in writing within 12 months of the incident occurring. A Local Commissioner may disapply these requirements. For example, where a pupil's particular circumstances or level of education made it difficult for them to put the complaint in writing it may be given orally, or a complainant may raise complaints with a Local Commissioner after the 12 month period if the complainant can show a good reason for the delay.

Section 209: Procedure in respect of investigations

688. This section sets out the processes involved in a Local Commissioner considering a complaint. It ensures that the governing body or head teacher about whom the complaint was made and any other person involved are allowed the opportunity to comment. Investigations must be carried out in private. But otherwise it is for a Local Commissioner to decide how to conduct the investigation. A Local Commissioner may obtain information and make enquiries from any person as they see fit.
689. If a Local Commissioner sees fit it may choose to pay any persons a sum in respect of expenses incurred by them or an allowance for loss of their time for the purposes of carrying out the investigation.

Section 210: Investigations: further provisions

690. The section gives a Local Commissioner various powers in order to facilitate their investigations. A Local Commissioner may require a governing body, head teacher, or any other person who in the Local Commissioner's opinion is able to provide information or documents relevant to the investigation, to provide such information or documents.
691. A Local Commissioner has the same powers as the High Court to compel the attendance and examination of witnesses and the production of documents. This means that anyone not complying with a Local Commissioner's requests may be in contempt of court and subject to the penalties associated with that. If any person obstructs an investigation, or is guilty of an act or omission in relation to an investigation which would constitute contempt of court in proceedings in the High Court, a Local Commissioner may certify this as an offence to the High Court. The High Court may then deal with the person charged as though they had committed the same offence in relation to the High Court.

Section 211: Statements about investigations

692. This section provides for statements to be issued by a Local Commissioner when he or she decides not to investigate or to discontinue an investigation, and when an investigation is completed. If the Local Commissioner decides not to investigate or to discontinue an investigation, the statement must set out the Local Commissioner's reasons for that decision.

693. When a Local Commissioner has completed an investigation, the statement must set out the Local Commissioner's conclusions and any recommendations. The Local Commissioner may make recommendations for action which, in the Commissioner's opinion, the governing body needs to take to remedy any injustice sustained by the person affected. Recommendations may also be aimed at preventing injustice being caused in the future as a result of similar action of the governing body or head teacher. For example, the Local Commissioner might recommend an apology to the pupil, or changes to the school's discipline policy.
694. The Local Commissioner must send a copy of the statement to the complainant, or, if the complainant is the pupil and the Local Commissioner thinks it appropriate, the parent) the governing body and head teacher. The statement must identify the school concerned. It will then be for the Local Commissioner to decide whether it is appropriate for the individual to be identified. The statement must not identify the complainant or any other person unless the Local Commissioner considers it necessary to identify that person.

Section 212: Adverse findings notices

695. This section requires a governing body to consider any statement containing recommendations by a Local Commissioner and notify the Local Commissioner within the "required period" as set by the Local Commissioner of the action which the governing body has taken or proposes to take. If by the end of that period, the Local Commissioner has not received this notification, or is satisfied before the period expires that the governing body has decided to take no action, the Local Commissioner may require a governing body to publish an adverse findings notice. The Local Commissioner may also do this in two other circumstances: first, if not satisfied with the action which the governing body has taken or proposes to take; or second, if, after a further month following the end of the "notification period" (or any longer period agreed in writing by the Local Commissioner), the Local Commissioner has not received satisfactory confirmation that the governing body has taken the proposed action.
696. An adverse findings notice, in a form agreed between the governing body and a Local Commissioner, should include details of any action recommended in the Local Commissioner's statement which the governing body has not taken, any supporting material required by the Local Commissioner, and an explanation of the governing body's reasons for not having taken the recommended action (if the governing body wishes). The adverse findings notice must be published by the governing body in a manner directed by the Local Commissioner. The Local Commissioner might, for example, require publication in a local newspaper or, if the school has one, on its internet site.
697. A Local Commissioner must publish an adverse findings notice if the governing body fails to do so in accordance with *subsections (4) and (5)*, or cannot agree the form of the notice with the Local Commissioner within one month of the date the notice was received (or longer if agreed in writing by the Local Commissioner). *Subsection (7)* requires the provider to reimburse the LGO on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under *subsection (6)*.

Section 213: Publication of statements etc. by Local Commissioner

698. A Local Commissioner may publish all or part of a statement under section 211, or publish a summary of a statement. In deciding whether to publish a statement the Commissioner must take into account the public interest as well as the interests of the complainant and of other persons. The Local Commissioner may also supply a copy of all or part of a statement to anyone who requests it, and charge a fee for this. This fee must be reasonable and any fees charged are unlikely to be significant. *Subsections (8) to (10)* of section 211 apply to a Local Commissioner's publication of a statement or supply of any copy under this section. That means that, for example, the summary

must not identify the complainant or any other person (other than the school) unless the Local Commissioner considers it necessary to identify that person.

Section 214: Disclosure of information, Section 215: Permitted disclosures of information by Local Commissioner

699. These sections restrict the disclosure by a Local Commissioner of information obtained during the course of an investigation. Information obtained must not be disclosed except for the purposes specified. Particular exemptions allowing disclosure of information include, for example, disclosure for the purposes of a complaint being investigated by Her Majesty's Chief Inspector of Education, Children's Services and Skills, a local education authority under section 12 of the Education Act 1996 and the Secretary of State.

Section 216: Law of defamation

700. This section confers absolute privilege for the purposes of the law of defamation on certain communications between a Local Commissioner and other parties and certain publications by a Local Commissioner. This means that these communications and publications are not actionable for slander or libel.
701. The publication of any matter by a Local Commissioner in communications with a complainant, the Parliamentary Commissioner, Her Majesty's Chief Inspector of Education, Children's Services and Skills or a local authority will also be privileged. Privilege will also apply to the publication of statements, adverse finding notices, summaries and reports by a Local Commissioner.

Section 217: Consultation with Parliamentary Commissioner for Administration

702. Under this section if a Local Commissioner thinks that any matters which are the subject of the investigation include a matter that could be the subject of an investigation by the Parliamentary Commissioner (these being the actions of the Secretary of State and its impact on the complainant) the Local Commissioner is required to consult the Parliamentary Commissioner and inform the complainant of how to initiate such a complaint. It also imposes a similar obligation on the Parliamentary Commissioner in respect of complaints made to them which contain matters which could be the subject of an investigation under this chapter. In such circumstances the Parliamentary Commissioner must consult the Local Commissioner and inform the complainant how to initiate such a complaint.

Section 218: Arrangements etc. to be made by Commission

703. This section provides that the Commission must divide matters which may be investigated into appropriate categories and allocate responsibility for each category between the Local Commissioners. The Commission must also publish information about the procedures for making complaints under this Chapter.
704. *Subsection (3)(b)* makes clear that any information published under *subsection (2)(b)* must include details of the assistance available to pupils who are, or have been in care, disabled children and parents, and children with special educational needs.

Section 219: Annual reports

705. This section provides that every Local Commissioner must prepare a report on the discharge of their functions for each financial year to the Commission for Local Administration in England (the Commission). The Commission must then prepare an annual report which must be laid before Parliament.

Section 220: Secretary of State's power of direction

706. This section enables the Secretary of State to make a direction to a governing body that has not complied with a recommendation from a Local Commissioner. The Secretary of State may direct a governing body to comply within a specified period. That direction is enforceable by a mandatory order.

Section 221: Disapplication of certain powers of Secretary of State

707. This section amends sections 496 and 497 of the Education Act 1996. Currently, complainants may approach the Secretary of State asking him to consider the complaint. But for the Secretary of State to intervene the governing body has to be acting unreasonably or unlawfully and it must be expedient to intervene. In practice there are few occasions where the Secretary of State may issue a direction where the head teacher or school has failed in its statutory duty.
708. The effect of the amendments is that the Secretary of State can no longer make a direction in relation to complaints against governing bodies of schools that have or could have been made to a Local Commissioner. Instead, the complainant may approach a Local Commissioner if they are not satisfied with the governing body's response. After investigation into the complaint, a Local Commissioner will be able to recommend that the school undertake a course of action to remedy an injustice suffered by a particular individual.
709. A Local Commissioner will offer a scrutiny that is independent of central Government and will be able not only to consider if a school has been acting unreasonably or unlawfully (which is the scope of the Secretary of State's current practice) but also to recommend that a governing body provide a remedy.
710. Regulations may prescribe that the Secretary of State may make a direction in relation to a matter that could have been referred to the new scheme where the complaint is from a "prescribed person". The Government envisages that such prescribed persons might include the local education authority or governing bodies of other schools.

Section 222: Power to amend meaning of "qualifying school"

711. This section enables the types of schools that are covered by the scheme ("qualifying schools") to be added to, or amended by order at a later date. This order would be subject to the affirmative resolution procedure.

Section 223: Amendments consequential on Chapter 2

712. A Local Commissioner will be able to consider complaints relating to the National Curriculum where it affects an individual pupil. Previously, local education authorities had a role in the complaints process under section 409 of the Education Act 1996 and paragraphs 6(3) and (4) of Schedule 1 of the Education Act 1996. These sections have been repealed so that complainants are able to approach a Local Commissioner under the new scheme.

Chapter 3: Inspections

Section 225: Interim statements

713. This section inserts three new sections into the Education Act 2005 in relation to the powers of the Chief Inspector and associated duties of schools.
714. Section 10A enables the Chief Inspector to publish an interim statement (which it is expected will be commonly known as a "health check") where the Chief Inspector considers that a school's performance is such that it is appropriate to defer a routine inspection of the school for at least a year. The statement must set out the Chief Inspector's opinion that inspection can be deferred and the reasons for that opinion. It

is made on the basis of information available at the time and does not prevent the Chief Inspector from inspecting the school at any time if this is deemed necessary in light of changed circumstances. As its name indicates, the statement is only an interim measure. It cannot be used to defer an inspection beyond the end of the maximum period allowed between scheduled inspections.

715. Section 14A applies in cases where the Chief Inspector makes an interim statement about a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school. Subsections (1) to (3) of 14A require the Chief Inspector to send a copy of the interim statement to the appropriate authority of the school (either the governing body or the local education authority) and to other specified people. Subsection (4) of section 14A requires the appropriate authority of the school to make the statement available to members of the public and to take steps to ensure a copy of the statement is received by parents within a prescribed period.
716. Section 16A broadly mirrors the provisions in section 14A but applies to Academies; city technology colleges; city colleges for the technology of the arts; and special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the Education Act 1996. Under section 16A, the Chief Inspector must send a copy of the interim statement to the school's proprietor and others.

Section 226: Powers of persons providing administrative support in connection with inspections

717. This section amends Part 2 of Schedule 12 to the Education and Inspections Act 2006 to entitle administrators supplied by inspection service providers to enter an institution being inspected and assist inspectors by performing administrative tasks during the course of that inspection. The amendment prohibits inspection administrators from conducting inspections.

Chapter 4: School Support Staff Pay and Conditions: England

718. This Chapter establishes the School Support Staff Negotiating Body ("SSSNB"). The SSSNB will be responsible for negotiating matters referred to it that are related to the remuneration, duties or working time of school support staff, with a view to reaching and submitting agreements to the Secretary of State for his consideration.
719. The provisions enable the Secretary of State to make orders relating to those agreements submitted to him where he believes they properly address any matters referred to the SSSNB; are practicable for schools and local education authorities (as employers of school support staff) to implement; and have taken into account any factors that the Secretary of State has asked the SSSNB to have regard to during its considerations.

The SSSNB

Section 227: The School Support Staff Negotiating Body

720. This section establishes the SSSNB and introduces Schedule 15 which makes further provision about the SSSNB.

Schedule 15: The School Support Staff Negotiating Body

721. This Schedule makes provision for the constitutional arrangements, membership and proceedings of the SSSNB and certain administrative matters relating to the SSSNB.
722. It provides that the SSSNB is to be constituted in accordance with arrangements made by the Secretary of State.
723. The constitutional arrangements must:

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

- provide for the members to include representatives of the prescribed organisations, the Secretary of State and an independent chair;
- not provide for a member of the SSSNB to have voting rights, unless the member represents the interests of one of the prescribed organisations;
- provide for the SSSNB to issue an annual report about the performance of its functions in each 12 month period.

724. The constitutional arrangements may:

- provide for the SSSNB to include other members;
- make arrangements for the provision of administrative support for the SSSNB;
- require the annual report to be sent to particular persons or published in a particular manner;
- provide for the payment of fees to the independent chair and the payment of expenses incurred by the SSSNB.

Section 228: Matters within SSSNB's remit

725. This section describes the matters that fall within the remit of the SSSNB, these matters being the pay and conditions of employment relating to the duties and working time of school support staff in England, and allows the Secretary of State to include or exclude matters by order.

Section 229: Referral of matter to SSSNB for consideration

726. This section enables the Secretary of State to refer a matter to the SSSNB for consideration where that matter falls within the remit of the SSSNB; specify factors which the SSSNB must have regard to in considering the matter; and specify a date by which the SSSNB must submit any agreement it reaches about the matter or notify him that it has been unable to reach agreement.

727. It requires the SSSNB to consider the matter referred, taking into account any factors specified by the Secretary of State, and to submit any agreement reached by it to the Secretary of State, or to notify him that it has been unable to reach agreement, by any date specified by the Secretary of State.

Section 230: Consideration of other matters by SSSNB

This section allows the SSSNB to consider and reach agreement on a matter within the remit of the Body where the matter has not been referred to it by the Secretary of State, and to submit that agreement to the Secretary of State.

Section 231: Agreement submitted by SSSNB under section 229 or 230

728. This section applies where the SSSNB submits an agreement to the Secretary of State (except where the agreement is submitted as a result of the SSSNB's reconsideration of a matter).

729. Upon receipt of the agreement, the Secretary of State may either ratify the agreement or refer the agreement back to the SSSNB for further consideration.

Section 232: Reconsideration of agreement by SSSNB

730. Where the Secretary of State refers an agreement back to the SSSNB for reconsideration, this section provides that he may specify factors that the SSSNB must take into account, and a date by which the SSSNB must submit its revised agreement or, if it has not agreed any revisions, resubmit the existing agreement.

731. Following reconsideration of the agreement, the SSSNB must submit any revised agreement back to the Secretary of State or, if it has not agreed any revisions, resubmit the existing agreement.
732. This section also enables the Secretary of State to withdraw the reference of the agreement, withdraw or vary any factor which must be taken into account, specify additional factors to be taken into account or postpone any deadline set to a later date, at any time before the SSSNB submits the revised agreement or resubmits the existing agreement.

Section 233: SSSNB's submission of agreement following reconsideration: powers of Secretary of State

733. This section applies where the SSSNB has resubmitted an agreement following reconsideration. The Secretary of State may:
- make an order ratifying the agreement;
 - refer the agreement back to the SSSNB for further consideration;
 - make an order requiring particular persons to have regard to the agreement;
 - make an order which makes provision otherwise than in the terms of the agreement.
734. The Secretary of State may refer an agreement back to the SSSNB for further reconsideration only if it appears to the Secretary of State that:
- the agreement does not properly address the matter that was referred to the SSSNB; or
 - it is not practicable to implement the agreement; or
 - the SSSNB has failed to take into account factors specified by the Secretary of State on referral of the matter to the SSSNB for reconsideration.
735. The Secretary of State may make an order otherwise than in the terms of the agreement only if it appears to him that one or more of the above conditions applies, and that there is an urgent need to make such an order.

Section 234: Powers of Secretary of State in absence of SSSNB agreement

736. The effect of *subsections (1) and (2)* of this section is that where the SSSNB notifies the Secretary of State that it has been unable to reach agreement or fails to submit an agreement to the Secretary of State by any deadline imposed, the Secretary of State may extend any such deadline or, if he considers there is an urgent need to do so, may make provision by order in relation to the matter referred to the SSSNB.
737. The effect of *subsections (3) and (4)* is that where, following reconsideration, the SSSNB fails by any deadlines imposed either to submit a revised agreement, or, where it has not agreed any revisions, to resubmit the existing agreement to the Secretary of State, the Secretary of State may extend any such deadline or, if he considers there is an urgent need to do so, by order make provision in relation to a matter to which the agreement relates.
738. *Subsection (5)* requires the Secretary of State to consult the SSSNB before making an order under this section relating to a matter referred to the SSSNB, or to a matter to which an agreement referred to the SSSNB relates.

Section 235: Effect of order ratifying SSSNB agreement

739. Where the Secretary of State by order ratifies an agreement this section provides that:

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- if the agreement relates to a person's remuneration, that remuneration is to be determined and paid in accordance with it;
 - if the agreement relates to any other condition of a person's employment that condition becomes a term of the person's contract of employment.
740. It also provides that any term of the person's contract of employment which conflicts with the agreement has no effect.

Section 236: Effect of order making provision otherwise than in terms of SSSNB agreement

741. Where the Secretary of State makes an order otherwise than in terms of a SSSNB agreement, or in the absence of a SSSNB agreement, this section provides that the order must either:
- require particular persons to have regard to the order when exercising particular functions; or
 - provide that the order has effect for the purpose of determining the conditions of employment of the persons to whom it applies.

Section 237: Orders: supplementary

742. This section provides that orders made under this Chapter may apply retrospectively but may not reduce a person's pay or alter their conditions of employment to their detriment retrospectively.
743. It also provides that where an order makes provision by reference to an agreement or other document it must make provision about the publication of that agreement or document.

Section 238: Guidance

744. This section provides that, with the Secretary of State's approval, the SSSNB may issue guidance relating to-
- an agreement that has been ratified by an order under this Chapter
 - an agreement to which persons are by an order under this Chapter required to have regard.
745. It also allows the Secretary of State to issue guidance relating to an order which makes provision in the absence of, or otherwise than in terms of the agreement.
746. *Subsection (3)* provides that local education authorities and governing bodies of schools maintained by local education authorities must have regard to guidance issued under this section.

Section 239: Non-statutory School Support Staff Negotiating Body

747. This section provides for the establishment of the non-statutory School Support Staff Negotiating Body to be treated as the establishment of the SSSNB.
748. It also provides for:
- the non-statutory body's constitutional arrangements; and
 - any matters referred to the non-statutory body by the Secretary of State; to be treated as if they were:
 - arrangements made in respect of; and

- matters referred to;
the SSSNB under this Chapter.

Section 240: “School support staff”

749. This section defines “school support staff” for the purposes of this Chapter. The definition excludes school teachers and persons of descriptions described in regulations. The Government envisages that the power to make regulations will be exercised so as to exclude from the definition of “school support staff” persons whose terms and conditions of employment are determined in accordance with agreements of other bodies which are as follows: the Soulbury Committee, the Joint Negotiating Committee for Youth and Community Workers and the Joint Negotiating Committee for Local Authority and Associated Employees.

Section 241: General interpretation

750. This section defines other terms used in the Chapter.

Part 11: Learners

Power to search for prohibited items

Section 242: Power of members of staff to search pupils for prohibited items: England

751. A head teacher or an authorised member of the school staff has a statutory power, under section 550AA of the Education Act 1996 to search a pupil or his possessions without consent if there are reasonable grounds for suspecting that the pupil is in possession of a weapon. This section extends this power to cover controlled drugs, alcohol and stolen property. There is a power to make regulations to add to the list of ‘prohibited items’.
752. It creates new sections 550ZA, 550ZB, 550ZC and 550ZD of the Education Act 1996 for England. These new sections re-enact the existing power in section 550AA of the Education Act and extend the power to enable searches to be made for controlled drugs, stolen items, alcohol, and other items specified in regulations where the member of staff has reasonable ground to suspect possession of a prohibited item. They give authorised members of staff a power to search where a pupil refuses a reasonable request to, for example, turn out their pockets, but do not impose any duty upon members of staff to carry out a search.
753. The new powers will be supported by guidance. The guidance will explain how the powers should be exercised by providing advice to schools on what they must and must not do if and when choosing to search a pupil or pupil’s possessions for a prohibited item; as well as good practice that can help those exercising search powers to ensure they comply with the law and make an effective search.

Section 550ZA: Power of members of staff to search for prohibited items: England

754. *Subsection (1)* specifies that the power may be used only where a member of staff has reasonable grounds to suspect that a pupil has with him or her, or in his or her possession, a prohibited item. It also provides that a person may carry out a search only if he or she is the head teacher of the school, or he or she has been authorised by the head teacher to carry out the search.
755. *Subsection (3)* sets out which items are prohibited and hence may be searched for. There is already a power in 550AA to search for the items in paragraphs (a) and (b). The items in paragraphs (c) to (e) are the additional items, and paragraph (f) provides a regulation

making power to prescribe additional items. Regulations made under this paragraph will be made using the affirmative resolution procedure.

756. *Subsections (4) and (5)* define what is meant by “stolen”, “member of staff” and “possessions”.
757. *Subsection (6)* provides that the powers in 550ZA, 550ZB and 550ZC do not restrict any common law, or other statutory, powers members of staff have to search pupils and their possessions.

Section 550ZB: Power of search under section 550ZA: supplementary

758. Section 550ZB sets out who may carry out searches and how searches must be conducted.
759. *Subsections (1), (2) and (3)* provide that only head teachers and authorised members of staff may conduct searches, and that a member of staff may have (a) a general authorisation to search, for example a member of staff may be authorised to search for any prohibited item at any time; (b) be authorised to conduct a particular search, for example given authorisation to search a particular individual in a particular circumstance; or (c) be authorised to conduct particular types of searches, for example given authorisation to conduct searches for some prohibited items (but not others), or where a particular set of circumstances arise. Subsection (3) provides that a headteacher may not require anybody other than security staff to conduct a search. This means teachers can never be placed under any obligation to search a pupil.
760. *Subsection (4)* stipulates that a search may be carried only out on school premises or where the member of staff has lawful control or charge of the pupil. These powers apply only in England; they therefore do not apply on school trips to other countries.
761. *Subsection (5)* provides that reasonable force may be used in executing a search.
762. *Subsection (6)* states that a search of a pupil may only be made by a person of the same gender as the pupil and in the presence of another member of staff. Where reasonably practicable, the member of staff witnessing the search must also be of the same gender as the pupil. It also provides that the person carrying out the search may not require the pupil to remove any clothing other than outer clothing (as defined in *subsection (8)*). *Subsection (7)* states that a pupil’s possessions may be searched only in the presence of the pupil and another member of staff.
763. *Subsection (8)* defines “member of the security staff” and “outer clothing”.

Section 550ZC: Power to seize items found during search under section 550ZA

764. Section 550ZC sets out the powers members of staff will have to seize and dispose of any prohibited items.
765. *Subsections (1) and (2)* provide for the person carrying out the search to seize any prohibited items and any other items suspected to be evidence of an offence found during the search, and to use reasonable force when exercising this power. This would allow the person conducting the search to not only seize prohibited items such as weapons, drugs, alcohol and stolen items but could for example allow them to seize any non-prohibited items they find whilst conducting the search which might be evidence in relation to any other unconnected offence.
766. *Subsections (3) to (9)* state what may or must be done with items that are seized.
- Where a person conducting a search finds alcohol, they may retain or dispose of it.
 - Where they find controlled drugs, these must be delivered to the police as soon as possible, unless there is a good reason not to do so — in which case the drugs must be disposed of.

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

- Where they find stolen articles, these must be delivered to the police unless there is a good reason not to do so — in which case they must be returned to the owner. These articles may be retained or disposed of where returning them to their owner is not practicable.
 - Where they find an item which has been added to the list by regulations made under section 550ZA (3)(f) there is a further regulation making power to prescribe what must or may be done with it.
767. In determining what is a “good reason” for not delivering items to the police, regard must be had to guidance issued by the Secretary of State.
768. Any weapons or items which are evidence of an offence must be passed to the police as soon as possible. Except that, where a person searching for a specific prohibited item, or a prohibited item specified in regulations, finds evidence of an offence in the form of another prohibited item, the item found will be dealt with in accordance with any specific provision made for that item or any provision specified in regulations. So, for example, in a case where a person searching for alcohol finds controlled drugs, the drugs must be delivered to the police as soon as possible, but there will also be a discretion to dispose of them.
769. *Subsection (10)* provides that the powers and duties relating to what must be done with any alcohol, controlled drugs, stolen articles and weapons seized apply to items reasonably suspected to be alcohol, controlled drugs, stolen articles and weapons.

Section 550ZD: Section 550ZC: supplementary

770. *Subsection (1)* provides that the Police Property Act 1987 applies in relation to items seized. The Act enables an application to be made to a magistrates court for an order that property in possession of the police be returned to its owner.
771. *Subsections (2) and (3)* provide that, where a person conducting a search, lawfully seizes, retains or disposes of an item seized under section 550ZC, they shall not be liable for the seizure, loss or disposal, or any damage arising. These provisions replicate provisions in section 94(2) of the Education and Inspections Act 2006. *Subsection (3)* of section 242 therefore disapplies the provisions in that section in relation to items seized under section 550ZC.
772. *Subsection (4)* provides that subsections (2) and (3) do not prevent a person who has seized items under section 550ZC from relying on any other available defence in proceedings.
773. *Subsection (5)* provides that the provisions in section 550ZD(1)- (4) may be made to apply in relation to any other items added to the list of ‘prohibited items’ by regulations.
774. *Subsection (2)* of section 242 amends section 569 of the Education Act 1996 to provide that regulations made under section 550ZA or 550ZC are subject to the affirmative resolution procedure.

Section 243: Power of members of staff to search pupils for weapons: Wales

775. This section makes amendments consequential on section 235, to retain the status quo in Wales. Members of staff in schools in Wales will continue to have powers to search for weapons only as set out in Section 550AA of the 1996 Act on weapons searching (which was inserted by section 45 of the Violent Crime Reduction Act 2006).

Section 244: Power of members of staff to search students for prohibited items: England

776. A principal or an authorised member of the college staff has a statutory power, under section 85B of the Further and Higher Education Act 1992 (“the 1992 Act”), to search a

student or his possessions without consent if there are reasonable grounds for suspecting that the student is in possession of a weapon. This section extends this power to cover controlled drugs, alcohol and stolen property. There is a power to make regulations to add to the list of 'prohibited items'.

777. This section inserts new sections 85AA, 85AB and 85AC for England, into the 1992 Act. These new sections re-enact the existing powers to search a student and his or her possessions without the student's consent for weapons, and extend the powers to enable searches to be made for, controlled drugs, stolen items or alcohol (for students under 18) where the member of staff has reasonable ground to suspect possession of a prohibited item. The section gives members of staff a power to search but does not impose any duty on them to carry out any searches.
778. The new powers will be supported by guidance. The guidance will explain how the powers should be exercised by providing advice to institutions on what they must and must not do if and when choosing to search a student or student's possessions for a prohibited item; as well as good practice that can help those exercising search powers to ensure they comply with the law and make an effective search.

Section 85AA: Power of members of staff to search for prohibited items: England

779. *Subsection (1)* specifies that the power may only be used where a member of staff has reasonable grounds to suspect that a student has with him or her, or in his or her possession a prohibited item. It also provides that a person may carry out a search only if he or she is the principal of the institution, or he or she has been authorised by the principal to carry out the search.
780. *Subsection (3)* sets out which items are "prohibited items" and hence may be searched for. There is already a power in 85B to search for the items in paragraphs (a) and (b). The items in paragraphs (c) to (e) are additional items, and paragraph (f) provides a regulation making power to prescribe additional items. Regulations made under this power will be made using the affirmative resolution procedure.
781. *Subsection (4)* defines what is meant by "stolen".
782. *Subsection (5)* states that a student may not be searched for alcohol under this power if he or she is aged 18 or over.
783. *Subsection (6)* defines what is meant by "member of staff" and "possessions".
784. *Subsection (7)* provides that the powers in 85AA, 85AB and 85AC do not restrict any common law, or other statutory, powers members of staff have to search pupils and their possessions.

Section 85AB: Power of search under section 85AA: supplementary

785. Section 85AB sets out who may carry out the searches and how those searches must be conducted.
786. *Subsections (1), (2) and (3)* provide that only principals and authorised members of staff may conduct searches, and that a member of staff may have (a) a general authorisation to search, for example a member of staff may be authorised to search for any prohibited item at any time; (b) be authorised to conduct a particular search, for example given authorisation to search a particular individual in a particular circumstance; or (c) be authorised to conduct particular types of searches, for example given authorisation to conduct searches for some prohibited items (but not others), or where a particular set of circumstances arise. Subsection (3) sets out that a principal may not require anybody other than security staff to conduct a search. This means lecturers can never be placed under any obligation to search a student.

787. *Subsection (4)* stipulates that a search may be carried out only on the premises of the FE institution or where the member of staff has lawful control or charge of the student, such as on a field trip. These powers apply only in England; they therefore do not apply on trips to other countries.
788. *Subsection (5)* provides that reasonable force may be used in executing a search.
789. *Subsection (6)* states that a search of a student may be made only by a person of the same gender as the student and in the presence of another member of staff. Where reasonably practicable, the member of staff witnessing the search must also be of the same gender as the student. It also provides that the person carrying out the search may not require the student to remove any clothing other than outer clothing (as defined in *subsection (8)*).
790. *Subsection (7)* states that a student's possessions may be searched only in the presence of the student and another member of staff.
791. *Subsection (8)* defines "member of the security staff" and "outer clothing".

Section 85AC: Power to seize items found during search under section 85AA

792. Section 85AC sets out the powers members of staff will have to seize and dispose of any prohibited items.
793. *Subsections (1) and (2)* provide for the person carrying out the search to seize any prohibited items and any other items suspected to be evidence of an offence found during the search, and to use reasonable force when exercising this power. However, alcohol may not be seized from a student aged 18 or over under this power.
794. *Subsection (3)* provides that where a searcher finds alcohol they may retain or dispose of it, at their discretion.
795. *Subsection (4)* provides that controlled drugs must be delivered to the police as soon as possible but may be disposed of if the person who has seized them considers that there is a good reason to do so.
796. *Subsection (5)* provides that stolen items must be delivered to the police as soon as possible but may be returned to the rightful owner, retained or disposed of if in the view of the person who has seized them, there is good reason to do so.
797. *Subsection (6)* provides that in relation to subsections (4) and (5), the person who has seized the controlled drug or stolen article must have regard to any guidance issued by the Secretary of State, in determining whether there is good reason not to deliver it to the police.
798. *Subsection (7)* provides that where an item is found which has been added to the list of prohibited items by regulations made under section 85AA(3)(f) there is a further regulation making power to prescribe what must or may be done with it.
799. *Subsection (8)* requires any person seizing a knife, offensive weapon or evidence in relation to an offence to deliver the item to the police as soon as reasonably practicable.
800. *Subsection (9)* provides that if an item is seized because it is suspected to be evidence of an offence, it is subject to the provisions on what must or may be done with it in subsections (3), (4), (5) and regulations made under subsection (7).
801. *Subsection (10)* provides that the powers and duties relating to what must be done with any alcohol, controlled drugs, stolen articles and weapons seized also apply to items reasonably suspected to be alcohol, controlled drugs, stolen articles and weapons.

Section 85AD: Section 85AC: supplementary

802. *Subsection (1)* provides that the Police (Property) Act 1897 applies in relation to items seized. The Act enables an application to be made to a Magistrates Court for an Order that property in possession of the police be returned to its owner.
803. *Subsections (2) and (3)* provide that, where a person conducting a search, lawfully seizes, retains or disposes of an item seized under section 85AC, they shall not be liable for the seizure, loss or disposal, or any damage arising.
804. *Subsection (4)* provides that subsections (2) and (3) do not prevent a person who has seized items under section 85AC from relying on any other available defence in proceedings.
805. *Subsection (5)* provides that the provisions in section 85AD(1)-(4) may be made to apply in relation to any other items added to the list of 'prohibited items' by regulations.
806. *Subsection (2)* of section 244 amends section 89 of the Further and Higher Education Act 1992 to provide that regulations made under section 85AA or 85AC are subject to affirmative resolution procedure.

Section 245: Power of members of staff to search students for weapons: Wales

807. This section makes consequential amendments to retain the status quo in Wales. Members of staff in colleges in Wales will continue to have powers to search for weapons only as set out in 85B of the 1992 Act on weapons searching.

Recording and reporting use of force

808. Staff at schools and FE institutions who supervise learners have powers to use force to prevent the commission of any criminal offence, injury, damage to property or serious breaches of discipline. The legislation that provides this power for schools has existed in its current form since 1998 and was re-enacted by section 93 of the Education and Inspections Act 2006. The analogous legislation for colleges is section 85C of the Further and Higher Education Act 1992 (inserted by the Education and Inspections Act 2006).
809. The Department for Children, Schools and Families issued revised guidance, entitled *The Use of Force to Control or Restrain Pupils* in November 2007.
810. This guidance is supplemented by two specialist guidance documents which provide additional information for staff working with pupils with special educational needs and/or disabilities, namely:
- *Guidance on the Use of Restrictive Physical Interventions for Staff Working with Children and Adults who display Extreme Behaviour in Association with Learning Disability and/or Autistic Spectrum Disorders (Circ LEA/0242/2002)*; and
 - *Guidance on the Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties (Circ LEA/0264/2003)*.
811. The Association of Colleges in partnership with the then Department for Education and Skills issued revised guidance, entitled *The Use of Force to Control or Restrain in Further Education* in April 2007. This document refers to the specialist guidance documents prepared for schools which may help FE Institutions in working with similar client groups. With the re-designation of sixth form colleges, this guidance will cover both general FE and sixth form colleges.

Section 246: Recording and reporting the use of force in schools: England

812. This section inserts a new subsection 93A into the Education and Inspections Act 2006. Subsections (1), (2) and (3) of 93A require the governing body of a school in England to

ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a pupil and to take reasonable steps to ensure that the procedure is followed by staff at the school. The procedure must provide that such incidents are both recorded in writing, and reported to the pupil's parents (except where the pupil is aged 20 or over, or the exception in *subsection (5)* applies) as soon as possible after the incident.

813. Subsection (1)(b) specifies that the report must be made to each of the pupil's parents. *Subsection (7)* states that "parent" has the meaning given by section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a pupil has a mother and father who both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the child's mother, father and the relevant local education authority must be told about the incident.
814. *Subsection (4)* specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force. A considerable amount of good practice guidance has been issued about the use of force upon pupils. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording. This guidance (paragraphs 44 and 45) sets out some questions that schools may find helpful in deciding whether an incident is significant and requires a written record.
815. *Subsection (5)* provides an exception to the duty to report each use of force incident to the parent of the pupil. Subsection (5)(a) provides that the procedure must include provision that an incident must not be reported to the parent if it appears that it is likely to result in significant harm to the pupil. Subsection (5)(b) provides that if there is no parent of the pupil that the incident can be reported to without it resulting in significant harm to the pupil, the incident should be reported to the local authority within whose area the pupil is ordinarily resident.
816. *Subsection (6)* provides that the Secretary of State will issue guidance on the meaning of significant harm and whether reporting an incident to a parent is likely to result in significant harm to the pupil.

Section 247: Recording and reporting the use of force in FE institutions: England

817. This section creates a new section 85D of the Further and Higher Education Act 1992 ("the 1992 Act"), to be inserted after section 85C. Subsections (1), (2) and (3) of this section require the governing bodies of institutions within the FE sector in England (including sixth form colleges) to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a student and to take reasonable steps to ensure that the procedure is followed by staff at the institution. The procedure must provide that such incidents are both recorded in writing, and reported to the student's parents (except where the student is aged 20 or over, or the exception in subsection (5) applies) as soon as possible after the incident.
818. Subsection (1)(b) specifies that the report must be made to each of the student's parents. *Subsection (7)* states that "parent" has the meaning given by section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a student has a mother and father whom both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the student's mother, father and the relevant local education authority must be told about the incident.
819. *Subsection (4)* specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents

of the use of force. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording.

820. *Subsection (5)* provides an exception to the duty to report each use of force incident to the parent of the student. *Subsection (5)(a)* provides that an incident must not be reported to the parent if it appears that it is likely to result in significant harm to the student. *Subsection (5)(b)* provides that if there is no parent of the student that the incident can be reported to without it resulting in significant harm to the student, the incident should be reported to the local authority within whose area the student is ordinarily resident.
821. *Subsection (6)* provides that the Secretary of State will issue guidance on the meaning of significant harm and whether reporting an incident to a parent is likely to result in significant harm to the student.

School behaviour and attendance partnerships

822. Since September 2007, the Government has expected that all secondary schools be members of partnerships to improve behaviour and tackle persistent absence. Currently 98% of maintained secondary schools and 94% of Academies are members voluntarily, but the extent to which existing partnerships are aligned to DCSF design principles and outcomes, as outlined in (currently non-statutory) guidance is variable.
823. Partnerships typically comprise approximately 3 to 6 members, but this varies due to local circumstance. Some partnerships have links to primary schools, special schools, pupil referral units and/or other forms of alternative provision.

Section 248: Co-operation with a view to promoting good behaviour, etc.: England

824. This section places a duty on the governing body of a maintained secondary school in England (defined in *subsection (7)*), and the proprietor of an Academy, city technology college or city college for the technology of the arts in England ("relevant partners"), to make arrangements to co-operate with at least one other relevant partner with a view to achieving the objectives referred to in *subsection (2)*. 98% of maintained secondary schools and 94% of existing Academies are already in partnerships voluntarily.
825. *Subsection (1)* defines the bodies to which this section applies. The Government intends to apply the duty in the section to pupil referral units through regulations made under Schedule 1 to the Education Act 1996.
826. *Subsection (2)* provides that a relevant partner is required to make arrangements with at least one other such body. The Government intends to publish statutory guidance that will set out an expectation that behaviour and attendance partnerships consist of more than two members. This has not been specified in the section as in some cases bigger partnerships may prove impractical – such as in the case of rural schools.
827. To comply with the duty relevant partners must make arrangements with other such bodies within the same "area" as them (see further *subsection (4)*). In practice, partnerships will not generally cross local education authority boundaries.
828. *Subsection (2)* describes the issues schools must make arrangements to co-operate on. The arrangements are to co-operate with a view to promoting good discipline and behaviour generally on the part of pupils and reducing persistent absence on the part of pupils. DCSF considers that a pupil missing 20% or more of the sessions in a school year is persistently absent (whether the absence is authorised or unauthorised).
829. *Subsection (3)* requires a report to be prepared and submitted to the local Children's Trust Board once in each 12 month period. *Subsection (3)* does not require every relevant partner to produce a report, but rather requires each relevant partner to secure that a report is prepared and submitted, with the intention that the report will

be submitted on behalf of all relevant partners that are part of arrangements under subsection (2). Advice on how this can be organised practically will be given in guidance issued under *subsection (5)*. Subsection (3) does not place any requirements around when in the year this report should be submitted. Again, this will be covered in statutory guidance.

830. *Subsection (4)* gives details of what the report is required to cover. These are: details of the arrangements and what has been done under them (this would encompass how the partnership is composed and organised, and details of what activities it has engaged in), an assessment of the effectiveness of the arrangements (i.e. details of the impact the work of the partnership has had on promoting good behaviour and reducing persistent absence) and details of what is proposed to be done under arrangements in the future (i.e. details of what the partnership has planned for the next year).
831. *Subsection (5)* requires relevant partners to have regard to the Secretary of State's guidance in the exercise of the duty placed on the partners by subsection (2).

Short stay schools

832. Section 19 of the Education Act 1996 imposes a duty on LEAs to make arrangements for securing suitable education for children who, because of exclusion from school or for any other reason, may not receive such education if the arrangements are not made for them. Thus the LEA has a duty to provide education for every child of school age, if for some reason they cannot attend a mainstream or special school.
833. Section 19(2B) recognises that LEAs may fulfil the duty under section 19 by establishing and maintaining schools which are specifically organised to make educational provision for children falling within that section. Section 19(2B) says that such schools will be known as pupil referral units (PRU). A PRU is therefore a school set up and run directly by the LEA to provide education for children who cannot, for whatever reason, attend a mainstream or special school.
834. LEAs are given the power to establish and maintain schools by section 16 of the Education Act 1996. There is no express power to close a school included here, but it is taken as implicit that where a LEA is free to maintain schools, it is also free to cease to maintain them.
835. The Education and Inspections Act 2006 limits the powers of an LEA to close schools maintained by it (sections 15 and 16 and Schedule 2). However, PRUs are not covered by these limitations as they are not mentioned in the list of schools covered by the act. Therefore there are no restrictions on the ability of a LEA to close a PRU maintained by it.
836. The Secretary of State has the power to direct the closure of a school that is causing concern (section 68, Part 4 of the Education and Inspections Act 2006). This power may be exercised in cases where Ofsted have described the school as requiring special measures. Section 68 is applied to PRUs by paragraph 23 of Schedule 1 to [SI 2007/2979](#).

Section 249: Short stay schools: miscellaneous

837. *Subsection (1)* changes the name of pupil referral units to "short stay schools". This change applies only to pupil referral units in England; those in Wales will continue to be called "pupil referral units". The name change will apply in law only. Individual pupil referral units will be free to use any name they wish for their own purposes (as they do currently).
838. *Subsection (2)* gives the Secretary of State powers by order, to make amendments to legislation consequential on the change of name from "pupil referral unit" to "short stay school". This power applies to all primary legislation enacted before the end of the Session in which the Apprenticeships, Skills, Children, and Learning Act 2009 passed, and to all statutory instruments made before the passing of this Act.

839. Subsection (3) inserts a new paragraph 3A into Schedule 1 of the Education Act 1996. This extends the Secretary of State's regulation-making powers in this area.
840. New paragraph 3A(a) gives the Secretary of State the power to make regulations which would require the LEA to obtain the consent of the Secretary of State before closing a "short stay school". The Government intends to use this power to make the closure of a short stay school subject to the Secretary of State's consent where:
- The short stay school has been described by Ofsted as requiring special measures; or
 - Ofsted have given notice to the LEA that an inspection is due.
841. The Government expects that the LEA will be required to provide information about the provision they are intending to replace the closing short stay school with, and the Secretary of State will give his consent dependent on an assessment of the adequacy of these plans.
842. Paragraph 3A(b) gives the Secretary of State the power to make regulations enabling the Secretary of State to give directions to a LEA about the exercise of its functions under section 19 of the Education Act 1996. The Government envisages that the powers will be used to enable the Secretary of State to give directions to a LEA about the provision to be made under section 19 to replace the provision lost where a short stay school is closed at the direction of the Secretary of State.
843. Under paragraph 3A(c) any regulations the Secretary of State makes in relation to short stay schools may include provisions requiring LEAs to comply with directions made under the regulations. If a LEA failed to comply it would be open to the Secretary of State to enforce the directions using powers under section 497 of the Education Act 1996.
844. The Government envisages that these regulation-making powers will be used to allow the Secretary of State to give a direction to a LEA about the alternative provision that will replace a short stay school he decides should close. The Secretary of State already has the power to direct the closure of a short stay school that has been described by Ofsted as requiring special measures. This power is conferred by section 68 of Part 4 of the Education and Inspections Act 2006. "Special measures" is defined in section 44(1) of the Education Act 2005. The local education authority is under a duty (under section 19 of the Education Act 1996) to provide other suitable education for those pupils who are displaced by the closure of the short stay school, but how they do this is their decision. They could find places in independent schools, open a replacement short stay school, or use another provider of alternative provision.
845. The Secretary of State does not envisage using this direction-giving power to specify exactly who or what will replace the closing unit, but rather to specify the features it should exhibit. This might include directions in areas such as:
- The nature of the educational provision to be provided, such as the specific courses and subjects to be provided, and the ages and numbers of pupils to be catered for.
 - The manner in which the educational provision is to be provided, such as through a replacement short stay school, a third sector partner or another institution such as an FE college (NB specific institutions or providers would not be named, only types).
 - The management of the educational provision, such as specifying the internal management and review structures of provision, or specifying certain provisions which must be included in any contract with external providers.
846. The Secretary of State intends to use the powers to give directions to require the LEA to invite bids from external providers for the delivery of the alternative provision. The Secretary of State might specify the way in which the LEA should invite bids; for example by advertising in local newspapers or on the LEA website. He might

also specify the date by which an invitation should be issued, and the length of time respondents are given to reply.

847. The Secretary of State does not intend to give directions as to the way that the LEA assesses the bids, but to require the LEA to report back to the Secretary of State once the process of inviting and assessing the bids has been completed. In its report the LEA would be expected to set out:
- The actual steps taken by the LEA in inviting bids,
 - Details of any bids received,
 - A description of the arrangements (if any) the LEA has entered into, or is proposing to enter into with any of the bidders,
 - Reasons why the LEA has reached the decision it has (including details of why they have decided not to enter into arrangements with any bidders, if this situation arises).

Part 12: Miscellaneous

Careers education

Section 250: Careers education in schools: England

848. This section amends section 43 of the Education Act 1997, which requires a state secondary school in England to provide pupils with a programme of careers education. The effect of the new *subsections (2ZA) and (2ZB)* inserted into section 43 by this section is to require the school to ensure that the programme of careers education includes information on options available in respect of 16-18 education or training and, specifically, information on apprenticeships. This is the responsibility of the governing body of the school and its head teacher or, in the case of a pupil referral unit, the local education authority maintaining the unit and the teacher in charge of it. In support of this provision, the Government has issued statutory guidance under section 45A of the Education Act 1997 (as inserted by section 81 of the Education and Skills Act 2008).

Information about local authority expenditure

849. The Secretary of State for Children, Schools and Families currently uses two separate powers (one specific and one general) to collect information about a local education authority's planned and actual expenditure on its education functions and its children's social services functions. These are section 52 of the School Standards and Framework Act 1998 ("the 1998 Act") and section 230 of the Local Government Act 1972 ("the 1972 Act") respectively. Section 52 of the 1998 Act imposes a duty on local education authorities to prepare and publish financial statements containing information about their planned and actual expenditure on their education functions and accountable resources held, received or expended, in accordance with regulations made by the Secretary of State. Section 230 of the 1972 Act allows the Secretary of State to collect such information as he may require from local education authorities with respect to their functions and is used to collect financial information about their planned and actual expenditure on their children's social services functions. Section 251 will provide the Secretary of State with one specific power to collect both types of information but only in relation to local education authorities in England and to do so by means of a direction. This enables the Secretary of State to collect the information he needs without having to make or amend regulations. The section does not impose additional burdens on local education authorities.

Section 251: Information about planned and actual expenditure

850. Subsections (1) and (2) enable the Secretary of State to direct a local authority to provide information about its planned and actual expenditure on its education and its children's social services functions and about "accountable resources" held, received or expended by any person in relation to a school maintained by the authority. "Accountable resources" are defined in section 252(4).
851. Subsections (3) to (5) respectively provide that the information must be provided in accordance with the direction, the direction may specify the period to which the information relates; the form and manner in which the information is to be provided; the persons to whom the information is to be provided; and requirements for the publication of this information; and, where a direction requires information to be provided to a person other than the Secretary of State, it may also require that person to make that information available for inspection in accordance with the direction.
852. The purpose of the financial statements is to provide schools, parents and other interested bodies such as the Local Government Association and CIPFA, for example, with details about local authority funding and expenditure on schools and children's social services. The Government sees it as important that finance data is available to help inform debate and planning about differing levels of expenditure between local authorities. The information informs policy making in the Department for Children, Schools and Families as well as providing information to Parliament in its role of monitoring that Department's accountability for public funds.

Section 252: Information about expenditure: supplementary

853. Subsections (2) to (4) define the education and children's social services functions of a local authority and accountable resources in relation to a school maintained by a local authority. Local authority education functions include the determination of individual school budgets, and what is spent by the local authority centrally to support those responsibilities, including provision for pupils with special educational needs, and learner support. Local authority functions for children's social services include expenditure on the children's services strategy and services to young people, including youth justice.
854. Subsection (5) enables the Secretary of State to amend the section by order for the purposes of adding, removing or changing the description of education functions or children's social services functions. Orders made under this subsection are to be subject to the affirmative resolution procedure.
855. Subsection (6) defines certain other terms used in this section.

Section 253: Information about expenditure: consequential amendments

856. Subsection (2) amends section 52 of the School Standards and Framework Act 1998 in order to restrict its application to local education authorities in Wales.
857. Subsection (3) repeals section 53 of the School Standards and Framework Act 1998 (certification of expenditure statements by the Audit Commission). The Secretary of State no longer requires local education authorities to make arrangements for the Audit Commission to examine their expenditure statements. This power has not been used during the past three years.

Support for participation in education and training

858. Part 1 of the Education and Skills Act 2008 places a duty on young people to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier) and requires local education authorities to promote the effective participation of young people in their areas who are subject to the duty to participate. That Act also provides for local education authorities in England to establish support services for

people aged 14 to 19, and those aged up to 24 who have learning difficulties. These services are known as Connexions services provided by local education authorities themselves or contractors.

- 859. Sections 15 and 76 of the Education and Skills Act 2008 provide for limited social security information to be provided to local education authorities, and Connexions service providers, respectively for the purposes of functions under Part 1 of that Act or Connexions services.
- 860. Section 17 of that Act enables information held by LEAs and by Connexions service providers to be supplied and used either for purposes under Part 1 of that Act or for Connexions services purposes.
- 861. [Sections 254](#) and [255](#) amend provisions of that Act about the holding and supply of information for the purposes of Part 1 of that Act or for Connexions services purposes.

Section 254: Provision of social security information for purposes of functions under Education and Skills Act 2008

- 862. *Subsection (2)* of section 254 omits section 15 of the Education and Skills Act 2008 so that social security information may no be longer supplied directly to an LEA for Part 1 purposes. Social security could still be provided by a Connexions service provider to a local education authority where that is permitted under section 76 of that Act.
- 863. The Government intends that information that can be shared by a LEA and its Connexions service provider under section 17 of the Education and Skills Act 2008 will be held on a database operated by the authority or service provider. *Subsection (4)* amends section 17(1) to make clear that this is permitted. The database for each area will be known as “the Client Caseload Information System” (CCIS).
- 864. *Subsection (5)* excludes, from the category of information that can be shared under section 17, information that was supplied to a Connexions service provider under section 72 of the Welfare Reform and Pensions Act 1999 (which relates to 16/17 year old benefit claimants).
- 865. *Subsection (6)* amends section 17 to make it clear that the ability to share information under that section does not displace any statutory prohibition on disclosing the information.
- 866. At present, section 76 of the Education and Skills Act 2008 allows the Secretary of State (here the Department for Work and Pensions) or a contractor of that department, to provide limited social security information to a Connexions service provider for use for Connexions purposes. *Subsection (9)* amends section 76 to allow the information to be provided instead to the Secretary of State (here the Department for Children, Schools and Families) or a contractor of that department (inserted subsection (3B) of section 76) for onward transmission to Connexions service providers. Inserted subsection (3A) confers the necessary power on the Secretary of State (here the Department for Children, Schools and Families) to make arrangements for the transmission of information in this way.
- 867. Inserted subsections (3B) to (3E) set out the circumstances in which information that originated with the Department for Work and Pensions or a contractor of that department and is supplied under section 76 may be disclosed. These include enabling or assisting the exercise of any function of a LEA under Part 1. Subsections (4) and (4A) also create an offence which prevents this information being provided for any other purpose, and replaces the offence for which section 76 already provides.

Section 255: Provision of other information in connection with support services

- 868. The Department for Children, Schools and Families will make arrangements with a contractor to collect and hold relevant Connexions service information and supply it

to those involved in the provision of Connexions services to assist in the provision of those services. This will involve a database known as the National Client Caseload Information System (NCCIS). The NCCIS will enable a Connexions service provider to find out whether a person for whom the service provider has been providing support has moved to a different area.

869. *Subsection (3)* of section 255 inserts a new 76A into the Education and Skills Act 2008, subsection (1) of which enables the Secretary of State to make these arrangements. Subsection (3) of the new section allows local Connexions service providers to provide information to the contractor operating the NCCIS. This information is information obtained by a Connexions service provider about a person for whom services are provided but excludes information provided under section 72 of the Welfare Reform and Pension Act 1999. Subsections (4) to (6) of the new section contain restrictions on the disclosure of information held on the NCCIS.
870. *Subsection (1)* allows the Secretary of State to ensure that information is provided by local Connexions service providers to the NCCIS. It does this by amending section 69 of the Education and Skills Act 2008 to allow the Secretary of State to give directions to a LEA about the terms of the arrangements that it makes for the provision of local Connexions services.

Further education corporations

Section 256: Further education corporations in England: co-operation and promotion of well-being

871. *Subsection (2)* of this section amends section 19 of the Further and Higher Education Act 1992 (the “1992 Act”) to enable a further education corporation in England to provide advice or assistance to other persons, where it appears appropriate to do so, either for the purposes of or in connection with the provision of education by those persons. *Subsection (3)* inserts a new section 19A into the 1992 Act. The new section provides that, in carrying out their functions under sections 18 and 19 of the 1992 Act, further education corporations in England must have regard to the objective of promoting the economic and social well-being of the local area, including the people who live in that area. In doing so, the corporations must have regard to any guidance which the Secretary of State may issue about cooperating, or working jointly, with other educational institutions, employers or other people.

Student loans

Section 257: Student loans under the 1998 Act: IVAs, and Section 258: Student loans under the 1990 Act: IVAs and bankruptcy

872. These two sections amend the Teaching and Higher Education Act 1998 (“the 1998 Act”) and the Education (Student Loans) Act 1990 (“the 1990 Act”) so that a student loan made to a borrower who enters an individual voluntary arrangement (IVA) will be treated in a similar way as it is currently treated under a bankruptcy in England and Wales. Section 258 also amends the 1990 Act by inserting bankruptcy provisions for Northern Ireland that correspond to those in England and Wales in regard to student loans.
873. IVAs were created by the Insolvency Act 1986. An IVA enables a debtor to avoid bankruptcy by coming to an agreement with creditors to pay off a percentage of his or her debts over a given period.
874. At present, the treatment of student loans under an IVA differs from their treatment under a bankruptcy in England and Wales. There are two types of student loan. The newer type of loan, known as an income contingent loan, is repayable by a borrower under the 1998 Act, and the older type of loan, known as a mortgage style loan, is repayable under the 1990 Act.

875. The 1998 Act excludes loans from a borrower's bankruptcy debts, so that during and upon discharge from bankruptcy, the borrower remains liable to repay his student loan. Repayments are linked directly to a borrower's income so the student debt will not need to be repaid until the borrower's income is above the income threshold. Section 257 amends the 1998 Act to provide that similar arrangements will apply to student loans under an IVA as currently apply under a bankruptcy. This means that the liability of a borrower to repay a student loan will not be reduced when the borrower enters into an IVA.
876. **Section 258** makes similar provision in respect of the 1990 Act, so that a mortgage style loan is not to be included in the voluntary agreement. This means that the liability to repay the mortgage style loan will not be reduced when someone enters into an IVA. In respect of Northern Ireland, section 258 inserts similar provision about IVAs and also makes provision about bankruptcy corresponding to the existing provision under that Act for bankruptcy in England and Wales.
877. These provisions apply to England, Wales and Northern Ireland.
878. **Subsection (4)** of section 258 amends Schedule 2 to the 1990 Act in respect of Northern Ireland. The 1990 Act provides that, in respect of England and Wales, a mortgage style loan is prevented from forming part of the estate of a person who becomes bankrupt and also from forming part of the bankruptcy debts where the loan was taken out in England and Wales. Subsection (4) makes similar provision in respect of Northern Ireland.

Section 259: Power to award foundation degrees: Wales

879. The Privy Council has power, under section 76 of the Further and Higher Education Act 1992 ("FHEA 1992"), to make orders that enable institutions providing higher education to grant one or both of two groups of awards. Institutions providing higher education can be given a power to grant awards to students who complete a course of study, or a power to grant awards to students who complete a programme of research, or both. These are commonly referred to as taught and research degree awarding powers respectively.
880. A number of further education institutions provide courses leading to foundation degrees. Originally, only institutions with full taught degree awarding powers could award foundation degrees in their own right. Section 19 of the Further Education and Training Act 2007 amended section 76 of the Further and Higher Education Act 1992 so as to enable the Privy Council to make orders granting further education institutions in England the power to award foundation degrees.
881. Currently foundation degrees provided by further education institutions in Wales are awarded by other higher education institutions with full, taught degree-awarding powers through franchise arrangements. This section amends section 76 of the FHEA 1992 so as to enable the Privy Council to make orders granting further education institutions in Wales the power to award foundation degrees.
882. As a result of this provision, further education institutions in Wales providing courses leading to foundation degrees will be able to apply for powers to award foundation degrees themselves. In order to be granted this power, institutions will have to meet certain non-statutory criteria, which will be published once the provision comes into force. As with taught and research degree awarding powers, the Quality Assurance Agency for Higher Education will advise on whether an institution meets the criteria.
883. **Subsection (2)** requires Welsh Ministers to lay before the National Assembly for Wales a report about the effect of the provision within four years of it coming into force.
884. The provision applies to further education institutions in Wales as defined under section 91 of the FHEA 1992, which only includes institutions conducted by further education corporations and institutions designated under section 28 of that Act. The

new legal category of sixth form college corporation created by the Act does not apply in Wales.

Section 260: Complaints: Wales

885. This section amends section 29 of the Education Act 2002. Section 29(1) places a duty on the governing bodies of maintained schools to establish procedures for dealing with complaints. Governing bodies must publicise procedures under section 29(1)(b) and, in establishing and publicising them, governing bodies in Wales must have regard to guidance from the Welsh Ministers (section 29(2)). Currently, governing bodies have discretion to put in place whatever procedure they judge fit for handling complaints. This amendment gives a power for the Welsh Ministers to make regulations which would set out a complaints procedure that will become compulsory for all governing bodies of maintained schools in Wales. Such regulations are able to specify how and where this procedure should be published.

Section 261: Local Government Act 1974: minor amendment

886. This section makes a minor amendment to paragraph 5 of Schedule 5 to the Local Government Act 1974. The Local Commissioner may currently investigate complaints about maladministration by local education authorities in relation to their education functions subject to the exclusions in paragraph 5 of Schedule 5. The effect of this amendment is to provide that a complaint about special educational needs may be considered by the Local Commissioner, even where it may relate to conduct, curriculum, internal organisation, management or discipline of a local education authority maintained school.

Part 13: General

Section 262: Orders and regulations

887. **Section 262** contains general provisions about orders and regulations under this Act. All orders or regulations are to be made by statutory instrument apart from any made under Chapter 1 of Part 1, or Part 3 or 4 which are exercisable by the Department for Employment and Learning in Northern Ireland, which are to be made by statutory rule.
888. Affirmative resolution procedure is required for any orders made by the Secretary of State under the sections listed in *subsection (6)*. These have been noted in the Commentary on Sections section of these Explanatory Notes. All other statutory instruments have to follow the negative resolution procedure apart from commencement orders which require no Parliamentary procedure. There is also an exception for the orders within subsection (7), which are required only to be laid before Parliament.

Section 264: General interpretation of Act

889. This section provides that Parts 3, 4, 5, 7, 8, Chapter 4 of Part 10 and sections 248, 251, and 252 are to be construed as if they were contained in the Education Act 1996 unless a different meaning is given in the sections of the Act in which case that meaning prevails. *Subsection (4)* provides that section 562 of the 1996 Act (as amended by section 49), which provides that the Act does not apply to certain persons detained under order of a court, does not apply for the purposes of Part 4 of the Act. The effect will be that the Secretary of State's functions in respect of Part 4 (which relate to the Chief Executive of Skills Funding) apply to those persons.

Section 265: Power to make consequential and transitional provision etc

890. This section enables the Secretary of State to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of, in consequence of, or giving full effect to, any provision of the Act. Where such an

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

order amends or repeals primary legislation it is subject to the affirmative resolution procedure.