

Education and Skills Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Children, Schools and Families, are published separately as Bill 12 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Ed Balls has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Education and Skills Bill are compatible with the Convention rights.

Education and Skills Bill

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TO

Make provision about education and training; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

CHAPTER 1

YOUNG PERSONS

Duty to participate in education or training 5

1 Persons to whom Part 1 applies

This Part applies to any person who is resident in England and who—

- (a) has ceased to be of compulsory school age,
- (b) has not reached the age of 18, and
- (c) has not attained a level 3 qualification (see section 3). 10

2 Duty to participate in education or training

- (1) A person to whom this Part applies must—
 - (a) be participating in appropriate full-time education or training (see section 4),
 - (b) be participating in training in accordance with a contract of apprenticeship, or 15
 - (c) both—
 - (i) be in full-time occupation (see section 5), and
 - (ii) participate in sufficient relevant training or education in each relevant period (see sections 6 to 8). 20

- (2) For the purposes of this Part, a person who is in full-time occupation is to be taken to be participating in sufficient relevant training or education at any particular time if –
- (a) arrangements have been made (whether by means of enrolment on a course or courses, or otherwise) for the person to receive sufficient relevant training or education during the current relevant period, and
 - (b) where the arrangements call for the person to be participating in training or education at the time, the person is so participating.

Interpretation

3 Level 3 qualification 10

- (1) In this Part, “level 3 qualification” means a prescribed external qualification, or an external qualification of a prescribed description, at level 3.
- (2) For this purpose, level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects. 15
- (3) A qualification, or description of qualification, prescribed under subsection (1) may be prescribed by reference to an assessment made by the Qualifications and Curriculum Authority of the level of attainment demonstrated by a qualification; and for that purpose regulations under subsection (1) may confer a function (which may include the exercise of a discretion) on the Authority. 20
- (4) In subsection (1), “external qualification” has the meaning given in section 24 of the Education Act 1997 (c. 44).
- (5) The Secretary of State may by order amend subsection (2) so as to substitute a different qualification for the qualification for the time being referred to.

4 Appropriate full-time education or training 25

- (1) In this Part, “appropriate full-time education or training”, in relation to a person, means full-time education or training which is suitable for the person, having regard –
- (a) to the person’s age, ability and aptitude, and
 - (b) to any learning difficulty which the person may have,
- and is provided at a school, at a college of further education, at an institution within the higher education sector or otherwise. 30
- (2) Regulations may provide that a particular description of –
- (a) education provided otherwise than at a school, or
 - (b) training,
- is, or is not, to be treated as being “full-time” for the purposes of this section. 35
- (3) Subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c. 21) (persons with learning difficulties) apply for the purposes of this section.

5 Full-time occupation

- (1) For the purposes of this Part, a person is in full-time occupation if the person works for at least 20 hours per week –
- (a) under a contract of employment, or
- 40

- (b) in any other way which may be prescribed, otherwise than under a short-term contract or arrangement.
 - (2) The power conferred by subsection (1)(b) includes, in particular, power to prescribe the following ways of working –
 - (a) as a self-employed person, 5
 - (b) otherwise than for reward, or
 - (c) as the holder of an office.
 - (3) For the purposes of this section, the number of hours for which a person works per week is –
 - (a) the number of the person’s normal weekly working hours, less 10
 - (b) the number of hours of actual guided learning –
 - (i) which constitute relevant training or education, and
 - (ii) in which the young person participates each week during normal weekly working hours.
 - (4) In subsection (3) – 15
 - “normal weekly working hours” –
 - (a) in relation to a person employed under a contract of employment, means the person’s normal working hours in a week (within the meaning of the Employment Rights Act 1996 (c. 18) (see section 234 of that Act)), and 20
 - (b) in relation to a person working in a way prescribed under subsection (1)(b), has the prescribed meaning;
 - “actual guided learning” has the meaning given by section 8(3).
 - (5) Regulations may make provision for a person to be, or not to be, treated as working for at least 20 hours per week in cases where the number of hours for which the person works per week (calculated under subsection (3)) varies from week to week. 25
 - (6) Where a person works otherwise than under –
 - (a) a single contract of employment, or
 - (b) a single arrangement (in the case of a way of working prescribed under subsection (1)(b)), 30the number of hours for which the person works per week is the aggregate of the amounts calculated under subsection (3) in relation to each of the contracts or arrangements under which the person works.
 - (7) For the purposes of subsection (1) – 35
 - (a) a contract of employment is a short-term contract unless it –
 - (i) has a fixed term of 8 weeks or longer, or
 - (ii) does not have a fixed term but has been, or can reasonably be expected to be, in force for at least 8 weeks;
 - (b) an arrangement, in the case of a way of working prescribed under paragraph (b) of that subsection, is a short-term arrangement unless it has been, or can reasonably be expected to be, in force for at least 8 weeks. 40
- 6 Relevant training or education**
- (1) In this Part, “relevant training or education” means training or education towards an accredited qualification provided by a course or courses. 45

- (2) For this purpose, “accredited qualification” means a qualification which has been accredited by the Qualifications and Curriculum Authority under section 24(2)(g) of the Education Act 1997 (c. 44) (functions of the Authority in relation to external vocational and academic qualifications).

7 Relevant period 5

- (1) In this Part, “relevant period”, in relation to a person, means a period beginning with a start date and ending with the next end date.
- (2) The following are start dates for the purposes of subsection (1) –
- (a) a date on which subsection (4) starts to apply to the person;
 - (b) the date immediately following the end of a relevant period (if on that date that subsection still applies to the person). 10
- (3) The following are end dates for the purposes of subsection (1) –
- (a) a prescribed date;
 - (b) a date on which subsection (4) ceases to apply to the person.
- (4) This subsection applies to a person at any time when – 15
- (a) this Part applies to the person, and
 - (b) the person is not participating in education or training in accordance with section 2(1)(a) or (b).

8 Sufficient relevant training or education

- (1) For the purposes of this Part, relevant training or education is “sufficient” in relation to any relevant period if it amounts in aggregate to – 20
- (a) at least 280 hours of guided learning, in the case of a relevant period which is one year;
 - (b) such number of hours of guided learning as is determined in accordance with regulations, in the case of any other relevant period. 25
- (2) For the purposes of this Part, a person participates in a particular number of hours of guided learning by –
- (a) participating in actual guided learning for that number of hours, or
 - (b) completing a course or courses which can reasonably be expected to be adequate to enable persons completing it or them to achieve any standard required to attain an accredited qualification to which that number of hours of guided learning has been assigned. 30
- (3) In subsection (2) –
- “accredited qualification” has the meaning given by section 6(2);
 - “actual guided learning”, in relation to a person, means time the person spends – 35
 - (a) being taught or given instruction by a lecturer, tutor, supervisor or other appropriate provider of training or education, or
 - (b) otherwise participating in education or training under the immediate guidance or supervision of such a person, 40
- but does not include time spent on unsupervised preparation or study, whether at home or otherwise;
- “assigned” means assigned by the Qualifications and Curriculum Authority under subsection (2)(g) of section 24 of the Education Act

- 1997 (functions of the Authority in relation to external vocational and academic qualifications) by virtue of subsection (2B) of that section.
- (4) Regulations may make provision for attributing to any relevant period a number of hours of guided learning in which a person participates (or is treated by the regulations as participating) by virtue of subsection (2)(b) in cases where courses do not begin and end during a single relevant period. 5
- 9 Assignment of numbers of hours of guided learning to external qualifications**
- In section 24 of the Education Act 1997 (c. 44) (functions of Qualifications and Curriculum Authority in relation to external vocational and academic qualifications), after subsection (2A) insert— 10
- “(2B) Any accreditation of a qualification under paragraph (g) of subsection (2) must assign to the qualification a number of notional hours (to be known as “the number of hours of guided learning”) representing an estimate of the amount of actual guided learning which could reasonably be expected to be required in order for persons to achieve the standard required to attain the qualification. 15
- (2C) Accordingly, criteria published under paragraph (f) of that subsection must include criteria for the assignment of numbers of hours of guided learning to qualifications mentioned in that paragraph.
- (2D) In subsection (2B), “actual guided learning” means time a person spends— 20
- (a) being taught or given instruction by a lecturer, tutor, supervisor or other appropriate provider of training or education, or
- (b) otherwise participating in education or training under the immediate guidance or supervision of such a person, 25
- but does not include time spent on unsupervised preparation or study, whether at home or otherwise.”

CHAPTER 2

LOCAL EDUCATION AUTHORITIES AND EDUCATIONAL INSTITUTIONS ETC

- Duty to promote fulfilment of duty imposed by section 2* 30
- 10 Local education authority to promote fulfilment of duty imposed by section 2**
- A local education authority in England must ensure that its functions are (so far as they are capable of being so exercised) exercised so as to promote the effective participation in education or training of persons belonging to its area to whom this Part applies with a view to ensuring that those persons fulfil the duty imposed by section 2. 35

Duty to promote good attendance

- 11 Educational institutions: promotion of good attendance**
- (1) The governing body of an institution in England to which this section applies must exercise its functions (so far as they are capable of being so exercised) so 40

as to promote the participation, through regular attendance, of persons to whom this Part applies and for whom the institution provides education or training in that education or training.

- (2) This section applies to –
- (a) a community, foundation or voluntary school; 5
 - (b) a community or foundation special school;
 - (c) a pupil referral unit;
 - (d) an institution within the further education sector.
- (3) For the purposes of this section, “governing body” –
- (a) in relation to a pupil referral unit maintained by a local education authority, means any management committee established for the unit by virtue of paragraph 15 of Schedule 1 to the Education Act 1996 (c. 56) or, if there is no such committee, the authority, and 10
 - (b) in relation to an institution within the further education sector has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13). 15

Duty to identify persons not fulfilling duty imposed by section 2

12 Duty to make arrangements to identify persons not fulfilling duty imposed by section 2

A local education authority in England must make arrangements to enable it to establish (so far as it is possible to do so) the identities of persons belonging to its area to whom this Part applies but who are failing to fulfil the duty imposed by section 2. 20

Information

13 Notification of non-compliance with duty imposed by section 2: educational institutions 25

- (1) Where –
- (a) arrangements have been made for a person to whom this Part applies to participate in education or training provided by an educational institution in England, 30
 - (b) the person is not participating in that education or training at a time when the arrangements call for the person to be so participating, and
 - (c) the responsible person has reasonable cause to believe that in consequence of that failure to participate the person is failing to fulfil the duty imposed by section 2, 35
- the responsible person must give notice to the appropriate service provider of those circumstances.
- (2) In this section –
- “educational institution” means –
- (a) a community, foundation or voluntary school, 40
 - (b) a community or foundation special school,
 - (c) a city technology college, a city college for the technology of the arts or an Academy,

- (d) a pupil referral unit,
 - (e) an institution within the further education sector, or
 - (f) an institution in receipt of funding from the Learning and Skills Council for England;
- “responsible person” means – 5
- (a) in relation to a school within paragraph (a) or (b) of the definition of “educational institution”, the governing body;
 - (b) in relation to an institution within paragraph (c) or (f) of that definition, the proprietor;
 - (c) in relation to a pupil referral unit, the local education authority by which it is maintained; 10
 - (d) in relation to an institution within the further education sector, the governing body within the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);
- “service provider”, in relation to a local education authority, means – 15
- (a) where the authority provides services in exercise of its functions under section 54, the authority;
 - (b) where, in exercise of those functions, the authority makes arrangements for the provision of such services, the person providing those services; 20
- “the appropriate service provider”, in relation to an educational institution, means the service provider of the local education authority in whose area the institution is situated.

14 Educational institutions: duty to provide information

- (1) Relevant information about a pupil or student – 25
 - (a) who is attending an educational institution in England, and
 - (b) to whom this Part applies,
 must, on request by a local education authority in England, be provided by the responsible person to the authority.
- (2) A local education authority may request information under subsection (1) only for the purpose of enabling or assisting it to exercise its functions under this Part. 30
- (3) For the purpose of subsection (1), “relevant information” means –
 - (a) the name, address and date of birth of the pupil or student;
 - (b) the name and address of a parent of the pupil or student; 35
 - (c) information in the institution’s possession about the pupil or student.
- (4) Information within subsection (3)(c) must not be provided under subsection (1) if –
 - (a) the pupil or student concerned, in the case of a pupil or student who has attained the age of 16, or 40
 - (b) a parent of the pupil or student concerned, in the case of a pupil or student who has not attained the age of 16,
 has instructed the responsible person not to provide information of that kind under this section.
- (5) In this section, “educational institution” and “responsible person” have the same meanings as in section 13. 45

15 Information: supply by the Secretary of State

- (1) The Secretary of State may supply information, including social security information, to a local education authority in England for the purpose of enabling or assisting the authority to exercise its functions under this Part.
- (2) In this section “social security information” means personal information about a person which is obtained by the Secretary of State in the course of the exercise of a function under –
- (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
 - (b) the Social Security Administration Act 1992 (c. 5).
- (3) For the purposes of subsection (2) “personal information”, in relation to a person, means –
- (a) the person’s name, address and date of birth, and
 - (b) the name and address of a parent of the person.
- (4) A person to whom information is supplied under subsection (1) commits an offence by disclosing the information unless the disclosure is made –
- (a) for the purpose of enabling or assisting the exercise of any function of a local education authority under this Part,
 - (b) for the purpose of the provision of services in pursuance of section 54 or 56(1)(b),
 - (c) in accordance with section 17 or any other enactment or an order of a court or tribunal,
 - (d) for the purpose of actual or contemplated proceedings before a court or tribunal,
 - (e) with consent given by or on behalf of the person to whom the information relates, or
 - (f) in such a way as to prevent the identification of the person to whom it relates.
- (5) It is a defence for a person charged with an offence under this section relating to a disclosure to prove that the person reasonably believed that the disclosure was lawful.
- (6) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (7) In subsection (6)(b) the reference to 12 months is to be read in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (increase in maximum term that may be imposed on summary conviction of offence triable either way) as a reference to 6 months.

16 Information: supply by public bodies

- (1) Any of the persons or bodies mentioned in subsection (2) may supply information about a person to a local education authority in England for the purpose of enabling or assisting the authority to exercise its functions under this Part.
- (2) Those persons and bodies are –

-
- (a) a local authority,
 - (b) the Learning and Skills Council for England,
 - (c) a Primary Care Trust,
 - (d) a Strategic Health Authority,
 - (e) a chief officer of police, 5
 - (f) a local probation board, and
 - (g) a youth offending team.
- (3) In this section –
- “local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43); 10
 - “youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).
- 17 Sharing and use of information held for purposes of support services or functions under this Part**
- (1) Any persons within subsection (2) may provide relevant information to each other. 15
- (2) Those persons are –
- (a) a local education authority in England, and
 - (b) a service provider of that authority.
- (3) Information provided under subsection (1) may only be used by the person to whom it is provided for a purpose which is a relevant purpose in relation to that person. 20
- (4) A local education authority in England may use relevant information held by it for any relevant purpose.
- (5) A local education authority in England may provide relevant information to any other such authority for a purpose which is a relevant purpose in relation to that other authority. 25
- (6) A service provider of a local education authority in England may provide relevant information to any other service provider of that or any other such authority for a purpose which is a relevant purpose in relation to that other service provider. 30
- (7) In this section –
- “relevant information”, in relation to a person providing or holding information, means information which –
- (a) is held by the person for a relevant purpose, and 35
 - (b) is about a young person or a relevant young adult in England;
- “relevant purpose” –
- (a) in relation to a local education authority, means the purpose of, or a purpose connected with, the exercise of any function of the authority –
- (i) under this Part, or 40
 - (ii) under or by virtue of sections 54 to 63;
 - (b) in relation to a service provider of a local education authority (other than the authority in question), means the purpose of providing services of the kind mentioned in section 54(1); 45

“service provider”, in relation to a local education authority in England, means –

- (a) where the authority provides services in exercise of its functions under section 54, the authority;
 - (b) where, in exercise of those functions, the authority makes arrangements for the provision of such services, the person providing those services. 5
- (8) In subsection (7) –
- (a) “young person” means a person who has attained the age of 13 but not the age of 20, and 10
 - (b) “relevant young adult” means a person who –
 - (i) has attained the age of 20 but not the age of 25, and
 - (ii) has a learning difficulty;
 and subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c. 21) (construction of references to learning difficulties) apply for this purpose. 15

Guidance

18 Guidance

In exercising its functions under this Part, a local education authority must have regard to any guidance given by the Secretary of State. 20

CHAPTER 3

EMPLOYERS

Interpretation

19 Contracts to which Chapter applies

- (1) In this Chapter, “relevant contract of employment” means a contract of employment – 25
- (a) under which the employee is required to work for at least 20 hours per week,
 - (b) which – 30
 - (i) has a fixed term of 8 weeks or longer, or
 - (ii) does not have a fixed term but can reasonably be expected to be, or has been, in force for at least 8 weeks, and
 - (c) under which the place of work, or one of the places where the employee may be required to work, is in England.
- (2) But a contract is not a “relevant contract of employment” if – 35
- (a) the employer has undertaken to provide the employee with sufficient relevant training or education in each relevant period, and
 - (b) by virtue of the contract, the employee is in full-time occupation for the purposes of this Part.

20 Appropriate arrangements

- (1) For the purposes of this Chapter, a person to whom this Part applies has made appropriate arrangements for training or education if –
 - (a) the person has enrolled on a course or courses constituting relevant training or education (or arrangements have otherwise been made for the person to receive relevant training or education), or 5
 - (b) the person is participating in full-time education or training.
- (2) References in this Chapter to appropriate arrangements made by the person are to the arrangements (of whatever kind and whether or not made by the person) for the person to receive the training or education in question. 10

Commencement of employment

21 Appropriate arrangements to be in place before employment begins

- (1) A person must not, as employer, enter into a relevant contract of employment with a person to whom this Part applies without being satisfied, having taken all such steps as are reasonable to ascertain, that the person has made appropriate arrangements for training or education. 15
- (2) In the case of a relevant contract of employment which provides for commencement of the employment to be conditional on the employee’s having made such arrangements –
 - (a) subsection (1) does not apply, but 20
 - (b) the employer must not permit the employment to commence, at a time when the employee is a person to whom this Part applies, without being satisfied, having taken all such steps as are reasonable to ascertain, that the employee has made appropriate arrangements for training or education. 25
- (3) Failure to comply with this section in relation to a contract of employment is not to be taken to affect the validity of the contract.

22 Financial penalty for contravention of section 21

- (1) Where a relevant local education authority is satisfied that a person (“the employer”) has contravened section 21, the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty. 30
- (2) The amount of the financial penalty is to be determined in accordance with regulations.
- (3) A penalty notice must state –
 - (a) the ground for imposing the penalty, 35
 - (b) the amount of the penalty,
 - (c) how payment may be made,
 - (d) the period within which the penalty must be paid (which must be not less than 4 weeks beginning with the date on which the notice is given), and 40
 - (e) the consequences of non-payment.

- (4) For the purposes of subsection (1), a local education authority is a relevant local education authority in relation to a contract of employment under which a person to whom this Part applies is employed if –
- (a) the person belongs to the authority’s area, or
 - (b) the person’s place of work, or one of the places at which the person works, under the contract is in the authority’s area. 5
- (5) Without prejudice to section 142(4), regulations under subsection (2) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid). 10

23 Withdrawal of penalty notice given under section 22

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 22 by a local education authority (and has not already been withdrawn).
- (2) The authority may withdraw the penalty notice by giving notice of the withdrawal to the employer. 15
- (3) If a penalty notice is withdrawn under subsection (2), any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered. 20
- (4) For the purposes of subsection (3) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).

Employer to enable participation in education or training

24 Duty to enable participation: initial arrangements 25

- (1) This section applies where –
- (a) a person to whom this Part applies is employed under a relevant contract of employment, and
 - (b) before commencement of the employment the person notified the employer in accordance with subsection (3) of appropriate arrangements which the person had made. 30
- (2) The employer must permit the employee to participate in training or education in accordance with those appropriate arrangements.
- (3) A person notifies an employer (or a prospective employer) of appropriate arrangements in accordance with this subsection by giving a notice which –
- (a) specifies the arrangements,
 - (b) states the times when the person would need to be not at work in order to participate in training or education in accordance with those arrangements, and
 - (c) if so required under subsection (4), is given in writing. 35
- (4) Such a notice need not be given in writing, but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, 40

if the employer does so, the notice is not to be treated as having been given until given in writing.

- (5) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (3)(b) which falls during normal working time, for the employer – 5
- (a) if the contract was entered into before the notice was given, to offer to vary the terms and conditions of the contract of employment so as to secure that that time does not fall during normal working time, or
 - (b) in any case, to permit the employee to take that time off.
- (6) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work. 10

25 Duty to enable participation: arrangements subsequently notified

- (1) This section applies where – 15
- (a) a person to whom this Part applies is employed under a relevant contract of employment, and
 - (b) after commencement of the employment the person notifies the employer in accordance with subsection (4) of appropriate arrangements which the person has made.
- (2) The employer must, so far as is reasonable having regard to the matters mentioned in subsection (3), permit the person to participate in training or education in accordance with those appropriate arrangements. 20
- (3) Those matters are –
- (a) the needs of the person in order to fulfil the duty imposed by section 2;
 - (b) the circumstances of the employer’s business; 25
 - (c) the effect of the person’s absence from work on the running of that business.
- (4) A person notifies an employer of appropriate arrangements in accordance with this subsection by giving a notice which – 30
- (a) specifies the arrangements,
 - (b) states the times when the employee needs to be not at work in order to participate in education or training in accordance with those arrangements, and
 - (c) if so required under subsection (5), is given in writing.
- (5) Such a notice need not be given in writing but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, if the employer does so, the notice is not to be treated as having been given until given in writing. 35
- (6) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (4)(b) which falls during normal working time, for the employer – 40
- (a) to offer to vary the terms and conditions of the contract of employment so as to secure that, so far as is reasonable having regard to the matters mentioned in subsection (3), that time does not fall during normal working time, or 45

- (b) so far as is reasonable having regard to those matters, to permit the employee to take that time off.
- (7) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work. 5
- 26 Sections 24 and 25: extension for person reaching 18**
- (1) This section applies where –
- (a) a person to whom this Part applies is employed under a relevant contract of employment,
 - (b) the person reaches the age of 18, and 10
 - (c) at that time the person is participating in a course of education or training for the purpose of fulfilling the duty imposed by section 2.
- (2) The person is to continue to be treated, for the purposes of sections 24, 25 and 27 to 30, as a person to whom this Part applies until one of the following occurs – 15
- (a) the course of education or training concludes;
 - (b) the person reaches the age of 19;
 - (c) the person ceases to be resident in England;
 - (d) the person attains a level 3 qualification.
- 27 Contravention of section 24 or 25: enforcement notice** 20
- (1) This section applies where a person to whom this Part applies is employed under a relevant contract of employment.
- (2) Where a relevant local education authority in England is satisfied that the employer has contravened section 24 or 25, the authority may give the employer a notice (an “enforcement notice”). 25
- (3) An enforcement notice means a notice requiring the employer to take such steps as are specified in the notice.
- (4) The steps that may be specified in the notice are –
- (a) to offer to vary the terms and conditions of employment in the manner specified in the notice; 30
 - (b) to permit the employee to take time off during normal working time at the times specified in the notice.
- (5) But –
- (a) any variation specified under subsection (4)(a) must be a variation only for the purpose of securing that normal working time does not include any time when, in order to be able to participate in education or training in accordance with appropriate arrangements notified to the employer under section 24(1)(b) or 25(1)(b), the employee needs to be not at work; 35
 - (b) any time specified under subsection (4)(b) must be a time when the employee needs to be not at work in order to participate in education or training in accordance with appropriate arrangements so notified to the employer; 40
 - (c) in the case of an enforcement notice given in respect of a contravention of section 25, any steps specified in the notice must be steps which it 45

would be reasonable for the employer to take having regard to the matters mentioned in subsection (3) of that section.

- (6) An enforcement notice must also specify –
 - (a) the ground on which it is imposed, and
 - (b) the consequences of failure to comply with any requirement imposed by it. 5

 - (7) Where an enforcement notice requires the employer to offer to vary the terms and conditions of employment under subsection (4)(a) –
 - (a) the employer must make the offer within the time specified in the notice, 10
 - (b) the employer’s offer must not be made directly or indirectly conditional on the employee’s agreeing to any other variation of the terms and conditions of employment, and
 - (c) if the employee accepts the employer’s offer to vary the terms and conditions of employment, those terms and conditions have effect subject to the variation (but subject to any subsequent variation that may be agreed between the employer and employee). 15

 - (8) Where an enforcement notice requires the employer, under subsection (4)(b), to permit the employee to take time off at specified times during normal working time, the enforcement notice remains in force until – 20
 - (a) the last of the times so specified, or
 - (b) if earlier, the termination of the contract of employment.

 - (9) For the purposes of subsection (2), a local education authority is a relevant local education authority in relation to a contract of employment under which a person to whom this Part applies is employed if – 25
 - (a) the person belongs to the authority’s area, or
 - (b) the person’s place of work, or one of the places at which the person works, under the contract is in the authority’s area.

 - (10) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work. 30
- 28 Financial penalty for non-compliance with enforcement notice given under section 27**
- (1) This section applies where a local education authority has given an enforcement notice to a person (“the employer”) under section 27. 35

 - (2) Where the local education authority is satisfied –
 - (a) that the employer has failed to comply with the notice, or
 - (b) in the case of an enforcement notice requiring the employer to offer to vary the terms and conditions of employment by virtue of section 27(4)(a), the employee has agreed to the variation but the employer has failed to give effect to the variation, 40the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty.

 - (3) The amount of the financial penalty is to be determined in accordance with regulations. 45

 - (4) A penalty notice must state –

-
- (a) the ground for imposing the penalty,
 (b) the amount of the penalty,
 (c) how payment may be made,
 (d) the period within which the penalty must be paid (which must be not less than 4 weeks beginning with the date on which the notice is given), and
 (e) the consequences of non-payment. 5
- (5) Without prejudice to section 142(4), regulations under subsection (3) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid). 10
- 29 Withdrawal of enforcement notice given under section 27**
- (1) This section applies where an enforcement notice has been given to a person (“the employer”) under section 27 by a local education authority (and has not already been withdrawn). 15
- (2) The local education authority may withdraw the enforcement notice by giving notice of the withdrawal to the employer.
- (3) After the withdrawal, no penalty notice may be given under section 28 in respect of –
 (a) any failure to comply with the enforcement notice, or
 (b) any failure to give effect to any variation of terms and conditions of employment required by the enforcement notice to be offered,
 which occurred before the enforcement notice was withdrawn. 20
- (4) Where an enforcement notice is withdrawn –
 (a) any penalty notice given under section 28 in respect of the enforcement notice ceases to have effect, and
 (b) any sum paid or recovered in respect of any such penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered. 25
- (5) In subsection (4)(b) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110). 30
- (6) A notice of withdrawal under subsection (2) must state the effect of the withdrawal (but a failure to do so does not make the notice of withdrawal ineffective). 35
- 30 Withdrawal of penalty notice given under section 28**
- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 28 by a local education authority (and has not already been withdrawn).
- (2) The authority may withdraw the penalty notice by giving notice of the withdrawal to the employer. 40
- (3) If a penalty notice is withdrawn under subsection (2), any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with

interest at the appropriate rate running from the date when the sum was paid or recovered.

- (4) For the purposes of subsection (3) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).

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Supplementary

31 Right not to suffer detriment

After section 47A of the Employment Rights Act 1996 (c. 18) insert –

“47AA Employees in England aged 16 or 17 participating in education or training

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- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a person entitled to be permitted to participate in education or training by section 24 or 25 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.
- (2) This section does not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).”

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32 Dismissal to be treated as unfair

After section 101A of the Employment Rights Act 1996 insert –

“101B Participation in education or training

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An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a person entitled to be permitted to participate in education or training by section 24 or 25 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.”

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33 Other amendments of Employment Rights Act 1996

- (1) The Employment Rights Act 1996 is further amended as follows.
- (2) In section 63A (right to time off for young person for study or training), after subsection (5) insert –
- “(5A) References in this section to an employee do not include a person to whom Part 1 of the Education and Skills Act 2008 (duty to participate in education or training for 16 and 17 year olds in England) applies, or is treated by section 26 (extension for person reaching 18) as applying.”; and, in the title, after “young person” insert “in Wales or Scotland”.
- (3) In section 194 (House of Lords staff), in subsection (2)(c), after “47,” insert “47AA,”.
- (4) In section 195 (House of Commons staff), in subsection (2)(c), after “47,” insert “47AA,”.

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CHAPTER 4

PARENTING CONTRACTS AND PARENTING ORDERS

34 Parenting contracts

- (1) This section applies where a person to whom this Part applies (“the young person”) is failing to fulfil the duty imposed by section 2. 5
- (2) A local education authority in England may enter into a parenting contract with a parent of the young person—
 - (a) if the parent is resident in England, and
 - (b) the authority considers that entering into the parenting contract would be desirable in the interests of the young person’s fulfilment of that duty. 10
- (3) A parenting contract is a document which contains—
 - (a) a statement by the parent that the parent agrees to comply with such requirements as may be specified in the document for such period as may be so specified, and 15
 - (b) a statement by the local education authority that it agrees to provide support to the parent for the purpose of complying with those requirements.
- (4) The requirements mentioned in subsection (3) may include (in particular) a requirement to attend a counselling or guidance programme. 20
- (5) A parenting contract must be signed by the parent and signed on behalf of the local education authority.
- (6) A parenting contract does not create any obligations in respect of whose breach any liability arises in contract or in tort.

35 Parenting orders

- (1) This section applies where a person to whom this Part applies (“the young person”) is failing to fulfil the duty imposed by section 2. 25
- (2) A local education authority in England may apply to a magistrates’ court for a parenting order in respect of a parent of the young person, if the parent is resident in England. 30
- (3) If such an application is made, the court may make a parenting order in respect of the parent if it is satisfied that—
 - (a) the young person is failing to fulfil the duty imposed by section 2, and
 - (b) the making of the order would be desirable in the interests of the young person’s fulfilment of that duty. 35
- (4) A parenting order is an order which requires the parent—
 - (a) to comply, for a period not exceeding 12 months, with such requirements as are specified in the order, and
 - (b) subject to subsection (5), to attend, for a concurrent period not exceeding 3 months, such counselling or guidance programme as may be specified in directions given by the responsible officer. 40

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- (5) A parenting order under this section may, but need not, include a requirement mentioned in subsection (4)(b) in any case where a parenting order under this section or any other enactment has been made in respect of the parent on a previous occasion.
- (6) A counselling or guidance programme which a parent is required to attend by virtue of subsection (4)(b) may be or include a residential course but only if the court is satisfied that the following two conditions are fulfilled. 5
- (7) The first condition is that the attendance of the parent at a residential course is likely to be more effective than attendance at a non-residential course in the interests of the young person’s fulfilment of the duty imposed by section 2. 10
- (8) The second condition is that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.
- 36 Parenting orders: supplemental**
- (1) In deciding whether to make a parenting order under section 35, a court must take into account (amongst other things) – 15
- (a) any refusal by the parent to enter into a parenting contract under section 34 in respect of the person to whom this Part applies, or
- (b) if the parent has entered into such a parenting contract, any failure by the parent to comply with the requirements specified in the contract. 20
- (2) Subsections (3) to (7) of section 9 of the Crime and Disorder Act 1998 (c. 37) (supplemental provisions about parenting orders) apply in relation to a parenting order under section 35 as they apply in relation to a parenting order under section 8 of that Act.
- 37 Parenting orders: appeals** 25
- (1) An appeal lies to the Crown Court against the making of a parenting order under section 35.
- (2) Subsections (2) and (3) of section 10 of the Crime and Disorder Act 1998 (appeals against parenting orders) apply in relation to an appeal under this section as they apply in relation to an appeal under subsection (1)(b) of that section. 30
- 38 Parenting contracts and parenting orders: further provisions**
- (1) Local education authorities in England and responsible officers must, in carrying out their functions in relation to parenting contracts under section 34 and parenting orders under section 35, have regard to the extent to which any failure by, or anything done by, a parent of a person to whom this Part applies is affecting, or is likely to affect, that person’s fulfilment of the duty imposed by section 2. 35
- (2) Regulations may make further provision about the exercise by local education authorities in England of their functions relating to – 40
- (a) parenting contracts under section 34, or
- (b) parenting orders under section 35.
- (3) The provision that may be made under subsection (2) includes –

- (a) provision limiting the power of a local education authority to enter into a parenting contract, or apply for a parenting order, in prescribed cases;
 - (b) provision requiring one local education authority to consult with another before taking any prescribed step;
 - (c) provision requiring the provision of information by one local education authority in England to another; 5
 - (d) provision as to how the costs associated with parenting contracts under section 34 or parenting orders under section 35 (including in each case the costs of providing counselling or guidance programmes) are to be met. 10
- (4) In this Chapter –
- “parent”, in relation to a young person, is to be construed in accordance with section 576 of the Education Act 1996 (c. 56), but does not include a person who is not an individual;
 - “responsible officer”, in relation to a parenting order, means an officer of a local education authority who is specified in the order. 15

CHAPTER 5

ATTENDANCE NOTICES

Initial steps

- 39 Failure to fulfil duty under section 2: initial steps** 20
- (1) This section applies where it appears to a local education authority that a person to whom this Part applies and who belongs to the authority’s area is failing to fulfil the duty imposed by section 2.
 - (2) The authority may give a written notice to the person stating –
 - (a) that it appears to the authority that the person – 25
 - (i) is a person to whom this Part applies, and
 - (ii) is failing without reasonable excuse to fulfil that duty, and
 - (b) that if, after the date specified in the notice, the person appears to the authority to be failing, without reasonable excuse, to fulfil that duty, the authority may issue an attendance notice under section 40, 30
and explaining the effect of an attendance notice.
 - (3) The date specified under subsection (2)(b) must not be less than 15 days after the date on which the notice is given.
 - (4) Subsections (5) and (6) apply where an authority proposes to give a notice to a person under subsection (2). 35
 - (5) The authority –
 - (a) must take all reasonable steps to secure that relevant support is offered to the person, and
 - (b) may not give the notice unless satisfied that the person has been afforded an opportunity to take advantage of the support offered. 40
 - (6) The authority –
 - (a) must give the person an opportunity to make representations, and
 - (b) may not give the notice –

- (i) in a case within subsection (7), unless, having regard to any representations made, the person appears to the authority to have no reasonable excuse for the failure;
 - (ii) in any other case, if, having regard to any representations made, the person appears to the authority to have a reasonable excuse for the failure. 5
- (7) This subsection applies where –
 - (a) arrangements have been made for the person to participate during the current relevant period in a course or courses constituting relevant training or education, 10
 - (b) the only failure by the person during that relevant period is that the relevant education and training to which the arrangements relate is not sufficient relevant education and training,
 - (c) the course has not, or the courses have not all, concluded, and
 - (d) further arrangements for relevant training or education after the conclusion of the course or courses could be made which would enable the person to participate in sufficient relevant training or education during the current relevant period. 15
- (8) In subsection (5), “relevant support” means support provided by means of services made available by the local education authority in exercise of its functions under section 54. 20

Attendance notices

40 Attendance notice

- (1) This section applies where –
 - (a) a local education authority has given a notice to a person under section 39(2), 25
 - (b) this Part still applies to the person, and
 - (c) at any time after the date specified in the notice under section 39(2)(b), it appears to the local education authority that the person is, without reasonable excuse, failing to fulfil the duty imposed by section 2. 30
- (2) The local education authority may, before the end of the period of 6 months beginning with the day on which the notice under section 39(2) was given to the person, give the person a further notice in accordance with this section (an “attendance notice”) requiring the person to participate in education or training specified in the notice. 35
- (3) Subsections (6) and (7) of section 39 apply in relation to the giving of attendance notices as they apply in relation to the giving of notices under subsection (2) of that section.
- (4) The education or training specified under subsection (2) must satisfy section 41. 40
- (5) Where the education or training specified is education or training provided by means of a course, the attendance notice must specify –
 - (a) the school, college or other training or educational establishment at which the education or training is to be provided, and
 - (b) the name and description of the course. 45

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- (6) Where the education or training specified is training provided in accordance with a contract of apprenticeship otherwise than by a course, the attendance notice must specify prescribed details of the contract of apprenticeship.
- (7) An attendance notice given to a person must specify –
- (a) the place or places at which the person is required to attend, 5
 - (b) the time or times at which the person is required to attend,
 - (c) the person or persons to whom the person must present himself or herself,
- and may specify other prescribed requirements relating to the description of education or training specified in the notice. 10
- (8) An attendance notice must state –
- (a) the period for which the notice has effect,
 - (b) the consequences of failing to comply with any requirement imposed by the notice, and
 - (c) such other matters as may be prescribed. 15
- (9) An attendance notice given by a local education authority to a person has effect for the period beginning with the day on which it is given and ending with –
- (a) the last day on which the person is a person to whom this Part applies, or
 - (b) if earlier, the day on which it is revoked. 20
- 41 Attendance notice: description of education or training**
- (1) This section must be satisfied in relation to education or training specified in an attendance notice given to a person to whom this Part applies by a local education authority.
- (2) The education or training must be provided – 25
- (a) at a school, college or other training or educational establishment by means of a course, or
 - (b) in accordance with a contract of apprenticeship.
- (3) The education or training must be such that, by participating in it, the young person would fulfil the duty imposed by section 2. 30
- (4) For that purpose, account may be taken of any contract of employment of the person or other arrangement under which the person works.
- (5) The education or training must be suitable for the person.
- (6) Where the education or training is to be provided by means of a course, the local education authority – 35
- (a) must have consulted the governing body or proprietor of the school, college or other training or educational establishment at which the education or training is to be provided, and
 - (b) must have made arrangements, or be satisfied that arrangements have been made, for the education or training to be provided there for the person. 40
- (7) Where the education or training is training provided in accordance with a contract of apprenticeship, the local education authority must have consulted the employer in relation to the contract of apprenticeship.

Attendance panel, appeals and variations etc

42 Attendance panel

- (1) A local education authority in England must establish a panel (an “attendance panel”), constituted in accordance with regulations.
- (2) An attendance panel of a local education authority in England has the following functions –
 - (a) functions conferred on it by virtue of section 43 in relation to appeals against attendance notices;
 - (b) functions conferred on it by virtue of section 44(6)(b);
 - (c) functions conferred on it by section 46(5) and (6);
 - (d) functions conferred on it by virtue of section 48 in relation to appeals against fixed penalty notices.
- (3) Regulations under subsection (1) –
 - (a) must require a local education authority to secure that any person who chairs an attendance panel is not a member of the authority; and
 - (b) may make provision for the payment by the local education authority of allowances to members of an appeal panel.
- (4) Regulations made by virtue of subsection (3)(b) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (c. 70) (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an attendance panel.

43 Appeal arrangements

- (1) A local education authority in England must make arrangements for enabling a young person to whom an attendance notice is given by the authority to appeal against –
 - (a) the giving of the attendance notice;
 - (b) the description of education or training specified in the attendance notice;
 - (c) any variation of the notice –
 - (i) under subsection (2) of section 44;
 - (ii) by virtue of subsection (5) or (6)(b) of that section.
- (2) The arrangements must provide for any appeal under the arrangements to be to an attendance panel established under section 42.
- (3) Regulations may make provision about the making of appeals under arrangements under this section, including provision –
 - (a) as to the procedure on such appeals; and
 - (b) as to the powers of the attendance panel in relation to such appeals.

44 Variation and revocation of attendance notice

- (1) Subsection (2) applies where a local education authority has given an attendance notice under section 40 to a person to whom this Part applies.
- (2) If the attendance notice still has effect when –
 - (a) the education or training specified in the notice ends, or

- (b) it becomes impracticable for the person to comply with the requirements specified in the notice because of a change of residence, the local education authority may by notice to the person specify other education or training.
- (3) Subsections (5) to (7) and (8)(c) of section 40 apply in relation to specifying education or training under subsection (2) as they apply in relation to the giving of an attendance notice. 5
- (4) Where the local education authority gives a notice under subsection (2), the attendance notice has effect as if it specified the education or training specified in the notice under that subsection. 10
- (5) Prescribed matters specified in an attendance notice given by a local education authority may be varied by the authority by notice given to the person to whom the attendance notice was given.
- (6) Regulations may provide for other matters specified in an attendance notice given by a local education authority to be varied – 15
- (a) with the consent of the person to whom the notice was given, or
- (b) with the consent of an attendance panel established by the local education authority under section 42.
- (7) An attendance notice given by a local education authority may be revoked by the authority by notice given to the person to whom the attendance notice was given. 20

Failure to comply with attendance notice

45 Offence of failure to comply with attendance notice

- (1) It is an offence for a person to whom an attendance notice has been given to fail, without reasonable excuse, to comply with the requirements of the attendance notice. 25
- (2) It is a defence for a person charged with an offence under subsection (1) to show that he or she is, and since the giving of the attendance notice has been, fulfilling the duty imposed by section 2.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale. 30

46 Restrictions on proceedings for offences under section 45

- (1) This section applies to proceedings for an alleged offence under section 45 relating to an attendance notice.
- (2) The proceedings may not be instituted except by the local education authority which gave the attendance notice. 35
- (3) The proceedings may not be instituted if the attendance notice has been –
- (a) rescinded on an appeal by virtue of section 43, or
- (b) revoked under section 44(7).
- (4) The proceedings may not be instituted unless – 40

- (a) a penalty notice has been given under section 47 in respect of the alleged offence and has not been rescinded on an appeal by virtue of section 48, and
 - (b) the penalty imposed by the notice has not been paid in accordance with the notice. 5
- (5) The proceedings may not be instituted unless –
 - (a) the local education authority has consulted an attendance panel established by it under section 42, and
 - (b) the panel has recommended to the local education authority that the proceedings should be instituted. 10
- (6) In considering whether to make a recommendation under subsection (5)(b), an attendance panel must invite the person alleged to have committed the offence under section 45 to make representations to it.
- (7) The proceedings may not be instituted after this Part has ceased to apply to the person alleged to have committed the offence under section 45. 15
- (8) Subsection (7) does not affect proceedings for such an offence by a person which were instituted while this Part applied to the person.

47 Failure to comply with attendance notice: penalty notice

- (1) Where a local education authority which has given an attendance notice to a person under section 40 has reason to believe that the person –
 - (a) has failed, without reasonable excuse, to comply with the requirements of the notice, and
 - (b) has, at any time since the giving of the notice, not been fulfilling the duty imposed by section 2,the authority may give the person a penalty notice in respect of the failure mentioned in paragraph (a). 20 25
- (2) A penalty notice is a notice offering a person the opportunity of discharging any liability to conviction in respect of the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (3) Where a person is given a penalty notice –
 - (a) proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed; and
 - (b) the person cannot be convicted of the offence to which the notice relates if a penalty is paid in accordance with the notice. 30
- (4) Regulations may make –
 - (a) provision as to the form and content of penalty notices;
 - (b) provision as to the amount of any penalty and the time by which it is to be paid;
 - (c) provision as to the methods by which penalties may be paid;
 - (d) provision as to the records which are to be kept in relation to penalty notices; 40
 - (e) provision for or in connection with the withdrawal of a penalty notice, or its ceasing to have effect, in prescribed circumstances, including –
 - (i) provision about repayment of any amount paid by way of penalty under a penalty notice which is withdrawn or ceases to have effect; and 45

- (ii) provision prohibiting the institution or continuation of proceedings for the offence to which such a notice relates;
 - (f) provision for a certificate –
 - (i) purporting to be signed by or on behalf of a prescribed person, and 5
 - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate, to be received in evidence of the matters so stated;
 - (g) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice; 10
 - (h) provision for or in connection with the preparation of codes of conduct in relation to the giving of penalty notices;
 - (i) such other provision in relation to penalties under penalty notices or in relation to penalty notices as the Secretary of State thinks necessary or expedient. 15
- (5) Without prejudice to section 142(4), regulations under subsection (4)(b) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid). 20

48 Penalty notices: appeal arrangements

- (1) A local education authority in England must make arrangements for enabling a young person to whom a penalty notice is given by the authority under section 47 to appeal against the notice.
- (2) The arrangements must provide for any appeal under the arrangements to be to an attendance panel established under section 42. 25
- (3) Regulations may make provision about the making of appeals under arrangements under this section, including provision –
 - (a) as to the procedure on such appeals; and
 - (b) as to the powers of an attendance panel in relation to such appeals. 30

CHAPTER 6

MISCELLANEOUS

49 Alternative ways of working

- (1) Regulations may –
 - (a) provide for who is to be treated as the employer for the purposes of this Part in relation to any way of working prescribed by regulations under section 5(1)(b), and 35
 - (b) provide for any provision of this Part to apply with modifications in relation to any such way of working.
- (2) Regulations may provide for any provision of this Part to apply with modifications in cases where a person to whom this Part applies – 40
 - (a) is employed under a contract of employment, and

- (b) is for the time being supplied by the employer to another person (“the principal”) to perform work in accordance with a contract made between the employer and the principal.

50 Crown employment

- (1) For the purposes of section 5— 5
 - (a) Crown employment, and
 - (b) service as a member of the armed forces of the Crown,are each to be treated as working under a contract of employment.
- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in either of those ways. 10
- (3) Chapter 3 applies in relation to Crown employment and persons in Crown employment as it applies in relation to other employment and other employees, but subject to subsection (4).
- (4) For the purposes of the application of Chapter 3 in relation to Crown employment and persons in Crown employment— 15
 - (a) references to a contract of employment are to be construed, in relation to a person in Crown employment, as references to the terms and conditions under which the person works, and
 - (b) references to an employee are to be construed as references to a person in Crown employment. 20
- (5) In this section, “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by statutory provision, but subject to subsection (6).
- (6) Crown employment— 25
 - (a) does not include service as a member of the armed forces of the Crown, but
 - (b) does include employment by an association established for the purposes of Part 11 of the Reserve Forces Act 1996 (c. 14).

51 Parliamentary staff 30

- (1) For the purposes of section 5, working as a relevant member of the House of Commons staff is to be treated as working under a contract of employment.
- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in that way.
- (3) Chapter 3 applies in relation to employment— 35
 - (a) as a relevant member of the House of Lords staff, or
 - (b) as a relevant member of the House of Commons staff,as it applies in relation to other employment.
- (4) For the purposes of the application of Chapter 3 in relation to a relevant member of the House of Commons staff— 40
 - (a) references to a contract of employment are to be construed as including references to the terms of employment of a relevant member of the House of Commons staff, and

- (b) references to an employee are to be construed as references to a relevant member of the House of Commons staff.

(5) In this section –

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords; 5

“relevant member of the House of Commons staff” means any person who –

(a) was appointed by the House of Commons Commission, or

(b) is a member of the Speaker’s personal staff. 10

52 Financial penalties

(1) A penalty payable by virtue of a penalty notice under –

(a) section 22,

(b) section 28, or

(c) section 47, 15

is payable to the local education authority which issued the notice.

(2) Any sums received by a local education authority under any of those sections may be used by the authority for the purposes of any of its functions which may be specified in regulations but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State. 20

(3) A penalty under section 22 or 28 (and any interest or financial penalty for late payment) is recoverable, if a county court so orders, as if it were payable under an order of that court.

53 Interpretation of Part

(1) In this Part – 25

“appropriate full-time education or training” has the meaning given by section 4;

“contract of employment” means a contract of service, whether express or implied and (if it is express) whether oral or in writing, but does not include a contract of apprenticeship; 30

“level 3 qualification” has the meaning given by section 3;

“relevant period”, in relation to a person to whom this Part applies, has the meaning given by section 7;

“relevant training or education” has the meaning given by section 6;

“sufficient”, in relation to relevant training or education, is to be construed in accordance with section 8(1). 35

(2) Regulations may provide for a person to be, or not to be, regarded as resident in England for the purposes of any provision of this Part.

(3) Any reference in this Part to a person’s being in full-time occupation is to be construed in accordance with section 5. 40

(4) For the purposes of this Part, a person is failing to fulfil the duty imposed by section 2 if the person –

(a) is not participating in education or training in accordance with subsection (1)(a) or (b) of that section, and

- (b) is not in full-time occupation or is not participating in sufficient relevant training.
- (5) A reasonable excuse for a failure to be in full-time occupation is not a reasonable excuse for a failure to fulfil the duty imposed by section 2 (unless it is also a reasonable excuse for any failure to participate as mentioned in subsection (4)). 5

PART 2

SUPPORT FOR PARTICIPATION IN EDUCATION OR TRAINING: YOUNG ADULTS WITH LEARNING DIFFICULTIES AND YOUNG PEOPLE IN ENGLAND

Provision of support services 10

54 Support services: provision by local education authorities

- (1) A local education authority in England must make available to young persons and relevant young adults for whom it is responsible such services as it considers appropriate to encourage, enable or assist the effective participation of those persons in education or training. 15
- (2) Subsection (1) is subject to any direction given by the Secretary of State under section 55.
- (3) For the purposes of this section and section 55, a local education authority makes services available if it—
 - (a) provides them, or 20
 - (b) makes arrangements with another local education authority or another person for their provision.
- (4) In carrying out its functions under this section, a local education authority must—
 - (a) comply with any direction given by the Secretary of State under section 55, and 25
 - (b) have regard to any guidance issued by the Secretary of State.
- (5) Nothing in this section requires a local education authority to make services available to a young person or relevant young adult for whom it is responsible if—
 - (a) another local education authority in England is also responsible for the person, and 30
 - (b) services are being provided to the person by, or under arrangements made by, the other authority in exercise of its functions under subsection (1). 35

55 Directions

- (1) The Secretary of State may give directions to a local education authority relating to the exercise of its functions under section 54(1).
- (2) A direction under this section may, in particular—
 - (a) specify the services to be made available to young persons and relevant young adults; 40

- (b) specify how services provided in the exercise of those functions are to be made available;
 - (c) specify standards which are to be met in the provision of such services;
 - (d) impose requirements as to the keeping of records and the provision of information in connection with the provision of such services. 5
- (3) A direction under this section may, in particular, require a local education authority to exercise its functions under 54(1) in such a way that the person who provides services, or such services as are specified in the direction, as a result of the exercise of those functions is a person who also –
 - (a) exercises such functions, or 10
 - (b) provides such services,
 as are specified in the direction.
- (4) Functions or services specified under subsection (3) –
 - (a) need not relate to education or training, and
 - (b) may, in particular, be functions or services relating to social security. 15
- (5) A direction under this section may be varied or revoked by a later direction.

56 Local education authorities: supplementary powers

- (1) A local education authority in England –
 - (a) may provide, secure the provision of or participate in the provision of services under arrangements entered into by it with another local education authority in pursuance of any function of that other local education authority under section 54, and 20
 - (b) may provide, secure the provision of or participate in the provision of services for encouraging, enabling or assisting the effective participation in education or training of – 25
 - (i) young persons, or
 - (ii) relevant young adults,
 (including such persons from other areas) otherwise than in accordance with section 54 or paragraph (a).
- (2) Nothing in or done under section 54 or 55 or this section is to be taken to prejudice any powers which a local education authority has with respect to the exercise of its functions otherwise than under those sections. 30

57 Educational institutions: duty to provide information

- (1) Relevant information about a pupil or student who is attending an educational institution in England must be provided by the responsible person to a person involved in the provision of services in pursuance of section 54 or 56(1)(b), on a request by that person. 35
- (2) A request under subsection (1) by a person involved in the provision of services in pursuance of 54 or 56(1)(b) may be made only for the purposes of the provision of those services. 40
- (3) In subsection (1), “relevant information” means –
 - (a) the name, address and date of birth of the pupil or student;
 - (b) the name and address of a parent of the pupil or student;
 - (c) information in the institution’s possession about the pupil or student.

- (4) Information within subsection (3)(c) must not be provided under subsection (1) if –
- (a) the pupil or student concerned, in the case of a pupil or student who has attained the age of 16, or
 - (b) a parent of the pupil or student concerned, in the case of a pupil or student who has not attained the age of 16,
- has instructed the responsible person not to provide information of that kind under this section. 5
- (5) In this section –
- “educational institution” means – 10
- (a) a community, foundation or voluntary school,
 - (b) a community or foundation special school,
 - (c) a city technology college, a city college for the technology of the arts or an Academy,
 - (d) a pupil referral unit, 15
 - (e) an institution within the further education sector, or
 - (f) an institution in receipt of funding from the Learning and Skills Council for England;
- “responsible person” means –
- (a) in relation to a school within paragraph (a) or (b) of the definition of “educational institution”, the governing body; 20
 - (b) in relation to an institution within paragraph (c) or (f) of that definition, the proprietor;
 - (c) in relation to a pupil referral unit, the local education authority by which it is maintained; 25
 - (d) in relation to an institution within the further education sector, the governing body within the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13).

58 Educational institutions: access and facilities

- (1) The responsible person in relation to an educational institution in England, must, on a request by a person involved in the provision of services in pursuance of section 54 or 56(1)(b) – 30
- (a) permit that person to have access to a pupil or student attending the institution on the institution’s premises at reasonable times, and
 - (b) make available to that person, so far as is reasonably convenient, facilities on the institution’s premises for providing services to individual such pupils or students or groups of such pupils or students. 35
- (2) A request under subsection (1) by a person involved in the provision of services in pursuance of 54 or 56(1)(b) may be made only for the purposes of the provision of those services. 40
- (3) Subject to subsection (4), “educational institution” and “responsible person” have the same meanings in subsection (1) as in section 57.
- (4) In relation to a pupil referral unit for which there is a management committee established by virtue of paragraph 15 of Schedule 1 to the Education Act 1996 (c. 56), “responsible person” means that committee. 45

59 Internet and telephone support services etc

- (1) The Secretary of State may provide or secure the provision of services for encouraging, enabling or assisting the effective participation of young persons and relevant young adults in England in education or training.
- (2) The services which may be provided under subsection (1) are services provided by means of – 5
- (a) the publication whether electronically or otherwise of information, advice and guidance;
 - (b) the provision, in response to requests by young persons and relevant young adults, of information, advice or guidance to those persons by telephone or other electronic means. 10
- (3) In securing the provision of those services the Secretary of State may, in particular, make arrangements with other persons for the provision of services.
- (4) Arrangements under subsection (3) may include provision – 15
- (a) *for grants, loans and other kinds of financial assistance to be provided by the Secretary of State (whether or not on conditions);*
 - (b) requiring persons with whom arrangements are made to have regard to guidance issued by the Secretary of State.
- (5) For the purposes of this section, a young person or relevant young adult is in England if he or she is a person for whom a local education authority in England is responsible. 20

60 Inspection

- (1) Her Majesty's Chief Inspector of Education, Children's Services and Skills – 25
- (a) must, when requested to do so by the Secretary of State, inspect and report on the provision of services in pursuance of section 54 or 59, and
 - (b) may undertake such other inspections of the provision of those services as Her Majesty's Chief Inspector thinks fit.
- (2) A request under subsection (1)(a) – 30
- (a) may be in general terms or in relation to specific matters,
 - (b) may relate to a specific person providing services, or to a specific class of person, and
 - (c) may relate to a specific area.
- (3) A reference in subsection (1) to the provision of services includes a reference to the management and use of resources in providing services.
- (4) Subsections (5) to (7) apply to an inspection under subsection (1) of services provided by a person in pursuance of section 54 or 59. 35
- (5) A person carrying out or participating in the inspection has the same powers as Her Majesty's Chief Inspector has under the following provisions of the Education Act 2005 (c. 18) – 40
- (a) section 10(1)(a) and (d) (right of access), and
 - (b) section 58 (computer records).
- (6) Section 11 of the Education Act 2005 (publication of inspection reports) applies.
- (7) A person who wilfully obstructs a person in carrying out or participating in the inspection –

- (a) is guilty of an offence, and
- (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

61 Information relating to young persons: supply by Secretary of State

- (1) The Secretary of State may supply information, including social security information, to a local education authority or other person involved in the provision of services for young persons in pursuance of section 54 or 56(1)(b) for the purpose of the provision of those services. 5
- (2) In this section “social security information” means personal information about a young person which is obtained by the Secretary of State in the course of the exercise of a function under – 10
 - (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
 - (b) the Social Security Administration Act 1992 (c. 5).
- (3) For the purposes of subsection (2) “personal information”, in relation to a young person, means – 15
 - (a) the person’s name, address and date of birth, and
 - (b) the name and address of a parent of the young person.
- (4) A person to whom information is supplied under subsection (1) commits an offence by disclosing the information unless the disclosure is made – 20
 - (a) for the purpose of the provision of services in pursuance of section 54 or 56(1)(b),
 - (b) for the purpose of enabling or assisting the exercise of any function of a local education authority under Part 1,
 - (c) in accordance with section 17 or any other enactment or an order of a court or tribunal, 25
 - (d) for the purpose of actual or contemplated proceedings before a court or tribunal,
 - (e) with consent given by or on behalf of the person to whom the information relates, or
 - (f) in such a way as to prevent the identification of the person to whom it relates. 30
- (5) It is a defence for a person charged with an offence under this section relating to a disclosure to prove that the person reasonably believed that the disclosure was lawful.
- (6) A person guilty of an offence under this section is liable – 35
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.
- (7) In subsection (6)(b) the reference to 12 months is to be read in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (increase in maximum term that may be imposed on summary conviction of offence triable either way) as a reference to 6 months. 40

62 Information: supply by public bodies

- (1) Any of the persons or bodies mentioned in subsection (2) may supply information about a young person or relevant young adult to any person or body involved in the provision of services in pursuance of section 54 or 56(1)(b) for the purpose of the provision of those services. 5
- (2) Those persons and bodies are –
- (a) a local authority,
 - (b) the Learning and Skills Council for England,
 - (c) a Primary Care Trust,
 - (d) a Strategic Health Authority, 10
 - (e) a chief officer of police,
 - (f) a local probation board, and
 - (g) a youth offending team.
- (3) In this section –
- “local authority” has the meaning given by section 579(1) of the Education Act 1996 (c. 56) (interpretation); 15
 - “local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
 - “youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37). 20

63 Supplementary

- (1) In sections 54 to 62 and this section –
- “parent”, in relation to a child, has the meaning given by section 576 of the Education Act 1996;
 - “relevant young adult” means a person who – 25
 - (a) has attained the age of 20 but not the age of 25, and
 - (b) has a learning difficulty;
 and subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c. 21) (construction of references to learning difficulties) apply for this purpose; 30
 - “young person” means a person who has attained the age of 13 but not the age of 20.
- (2) For the purposes of sections 54 to 62, a local education authority is responsible for any young person or relevant young adult who is – 35
- (a) receiving education or training in its area,
 - (b) normally resident in its area, or
 - (c) otherwise within its area.
- (3) For the purposes of subsection (2)(a), “training” includes vocational, social, physical and recreational training.

64 Existing functions of Secretary of State 40

Sections 114 to 121 of the Learning and Skills Act 2000 (provision of support services for 13 to 19 year olds) cease to have effect.

*Assessments relating to learning difficulties***65 Assessments relating to learning difficulties**

Before section 140 of the Learning and Skills Act 2000 (c. 21) (assessments relating to learning difficulties) insert –

- "139A Assessments relating to learning difficulties: England** 5
- (1) Subsection (2) applies if a local education authority in England –
- (a) maintains a statement of special educational needs for a person, and
 - (b) believes that the person will leave school, at the end of his last year of compulsory schooling, to receive post-16 education or training or higher education. 10
- (2) The authority must arrange for an assessment of the person to be conducted at some time during his last year of compulsory schooling.
- (3) Subsection (4) applies if a local education authority in England –
- (a) maintains a statement of special educational needs for a person who is over compulsory school age, and 15
 - (b) believes that the person will leave school, during or at the end of the current school year, to receive post-16 education or training or higher education.
- (4) The authority must arrange for an assessment of the person to be conducted at some time during the current school year. 20
- (5) A local education authority in England may at any time arrange for an assessment to be conducted of a person –
- (a) who is within subsection (6), and
 - (b) for whom the authority is responsible. 25
- (6) A person within this subsection is one who –
- (a) is in his last year of compulsory schooling, or is over compulsory school age but has not attained the age of 25,
 - (b) appears to the authority to have a learning difficulty within the meaning of section 13, and 30
 - (c) is receiving, or in the opinion of the authority is likely to receive, post-16 education or training or higher education.
- (7) In exercising its functions under this section an authority must have regard to any guidance issued by the Secretary of State.
- 139B Assessments under section 139A: interpretation** 35
- (1) This section applies for the purposes of section 139A.
- (2) A statement of special educational needs is a statement maintained under section 324 of the Education Act 1996.
- (3) An assessment of a person is an assessment, resulting in a written report, of – 40
- (a) the person's educational and training needs, and
 - (b) the provision required to meet them.

- (4) A local education authority is responsible for –
- (a) a person who is receiving education or training in its area;
 - (b) a person who is not receiving education or training, but who is normally resident in its area;
 - (c) a person who is not receiving education or training, and who is not normally resident in its area or that of another authority, but who is otherwise within its area and, in its opinion, likely to receive post-16 education or training or higher education. 5
- (5) A person’s last year of compulsory schooling is the last school year at his school during the whole or part of which he is of compulsory school age; and in the application of section 139A(6) to a person who is receiving education at an institution other than a school, that institution is to be treated for the purpose of determining his last year of compulsory schooling as though it were a school. 10
- (6) “Higher education” is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988. 15
- (7) “Post-16 education or training” means post-16 education or post-16 training within the meaning of Part 1.
- (8) “School year” has the meaning given in section 579(1) of the Education Act 1996. 20

139C Assessments under section 139A: persons educated at home

- (1) Section 139A applies in relation to a person who is receiving education at home, subject to the following modifications.
- (2) In section 139A(1)(b) and (3)(b), references to a person’s leaving school to receive post-16 education or training or higher education are to be construed as references to a person’s ceasing to receive education at home in order to receive, otherwise than in a school, post-16 education or training or higher education. 25
- (3) References to a person’s last year of compulsory schooling are to be construed as references to the 12 month period ending when the person ceases to be of compulsory school age. 30
- (4) References to the current school year are to be construed as references to the period of 12 months beginning on the most recent 1st September.”

Careers education

35

66 Careers education: information and advice

- (1) Part 7 of the Education Act 1997 (c. 44) (careers education and guidance) is amended as follows.
- (2) In section 43 (provision of careers education in schools) –
- (a) after subsection (2) insert – 40
 - “(2A) Subsection (2B) applies where, in the course of a programme of careers education provided, in pursuance of subsection (1), to registered pupils at a school in England falling within

- subsection (2)(a), (c) or (e), information or advice is given which—
- (a) relates to any options available in respect of 16-18 education or training, or otherwise relates to the pursuit of particular careers (at any age), or 5
 - (b) relates to decisions or other steps to be taken in connection with any such options or careers.
- (2B) Any such information must be presented in an impartial manner, and—
- (a) any such advice must be advice which the person giving it considers will promote the best interests of the pupils concerned, and 10
 - (b) accordingly, in giving the advice, that person must not seek to promote, contrary to the pupils’ best interests, the interests or aspirations of the school or of other persons or institutions.”; 15
- (b) in subsection (3), after “subsection (1)” insert “(and, where applicable, subsection (2B))”; and
- (c) in subsection (6), at the end insert—
- ““16-18 education or training” means education or training suitable to the requirements of persons who have ceased to be of compulsory school age but have not attained the age of 18; 20
 - “training”, in connection with registered pupils at schools in England, includes a voluntary or other placement apt to enable the development of any skill or competency (whether or not taking place at a time when the person concerned is still such a pupil).” 25
- (3) In section 45 (provision of careers information at schools etc.)—
- (a) at the end of subsection (2) insert— 30
 - “and, in the case of any such school in England, the reference in subsection (1) to persons attending it is a reference to persons who are registered pupils there.”;
 - (b) after subsection (2) insert—
 - “(2A) Subsection (2B) applies where registered pupils at a school in England falling within section 43(2)(a) or (c) are provided, in pursuance of subsection (1), with access to materials of the kinds mentioned in that subsection. 35
 - (2B) The materials, taken as a whole, must present the pupils with (so far as relevant to them) a full range of— 40
 - (a) options available in respect of 16-18 education or training, and
 - (b) other options available to them (at any age) in terms of career opportunities,
 and must not unduly promote any particular options over any others.”; 45
 - (c) in subsection (3), after “subsection (1)” insert “(and, where applicable, subsection (2B))”; and
 - (d) in subsection (5), for “and careers education” substitute “, “careers education”, “16-18 education or training” and”. 50

- (4) After section 45 insert –

“45A Guidance as to discharge of duties

- (1) The persons responsible for discharging a relevant duty in relation to a school in England falling within section 43(2)(a), (c) or (e) must, in discharging the duty, have regard to any guidance given from time to time by the Secretary of State. 5
- (2) A “relevant duty” means a duty under any of sections 43(3), 44(9) and 45(3).”

Apprenticeships

67 Apprenticeships: functions of Learning and Skills Council for England 10

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows.
- (2) In section 2 (education and training for persons aged 16 to 19), in subsection (5), after paragraph (b) insert –
- “(ba) training includes training provided in connection with a contract of employment or a contract of apprenticeship;” 15
- (3) In section 3 (education and training for persons over 19), in subsection (5), after paragraph (b) insert –
- “(ba) training includes training provided in connection with a contract of employment or a contract of apprenticeship;”
- (4) Section 4 (encouragement of education and training) is amended as follows. 20
- (5) The existing provision is to become subsection (1) of that section.
- (6) After that subsection, insert –
- “(2) For the purposes of subsection (1)(b), participating in the provision of post-16 training includes participating by entering into –
- (a) a contract of apprenticeship, or 25
- (b) a contract of employment under or in connection with which training is provided.”

School transport etc

68 Provision of transport etc for persons of sixth form age: duty to consider journey times 30

In section 509AB of the Education Act 1996 (c. 56) (further provision about transport policy statements), in subsection (3)(c) –

- (a) for “distance from” substitute “distances, and journey times, between”; and
- (b) for “of establishments” substitute “and establishments”. 35

*Co-operation as regards 14-19 education and training***69 Co-operation as regards provision of 14-19 education and training**

- (1) The arrangements made by a children’s services authority in England (a “children’s authority”) under section 10 of the 2004 Act (co-operation to improve well-being of children) must include arrangements within subsection (2) or (3). 5
- (2) The arrangements within this subsection are arrangements to promote co-operation between—
- (a) the children’s authority,
 - (b) the authority’s relevant partners, and 10
 - (c) the other persons and bodies (of any nature) who exercise functions, or are engaged in activities, relevant to the provision of 14-19 education or training in the authority’s area.
- (3) The arrangements within this subsection are arrangements made jointly by the children’s authority and one or more other children’s authorities to promote co-operation between—
- (a) the authorities,
 - (b) the authorities’ relevant partners, and
 - (c) the other persons and bodies (of any nature) who exercise functions, or are engaged in activities, relevant to the provision of 14-19 education or training in each of the authorities’ areas. 15
- (4) Subsection (1) is not to be read as affecting the generality of the duty imposed by section 10(1) and (2) of the 2004 Act so far as relating to education and training.
- (5) In this section— 25
- “the 2004 Act” means the Children Act 2004 (c. 31);
 - “children’s services authority in England” has the meaning given by section 65(1) of that Act;
 - “14-19 education” and “14-19 training” mean, respectively, education and training suitable to the requirements of persons during the period beginning with the start of the academic year in which they attain the age of 15 and ending when they attain the age of 19; 30
 - “relevant partner”, in relation to a children’s services authority in England, has the meaning given by section 10(4) of the 2004 Act.
- (6) For the purposes of subsection (5)— 35
- (a) “education” means full-time or part-time education, but does not include higher education (namely, education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 (c. 40));
 - (b) “training” means full-time or part-time training, and includes vocational, social, physical and recreational training; 40
 - (c) “academic year” means any period beginning with 1 August and ending with the next 31 July.

PART 3

ADULT SKILLS

*Provision of courses of study***70 Learning aims for persons aged 19 and over**

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows. 5
- (2) In section 3 (Council’s duty to secure provision of facilities for education and training for persons aged 19 and over), after subsection (1) insert –
- “(1A) This section does not apply to the provision of facilities to the extent that section 4A applies to the provision of those facilities.”
- (3) After section 4 insert – 10
- “4A Learning aims for persons over 19: provision of facilities**
- (1) *The Council must secure the provision of proper facilities for relevant education or training for persons falling within subsection (3) which is suitable to their requirements.*
- (2) Relevant education or training is education (other than higher education) or vocational training provided by means of a course of study for a qualification to which paragraph 1 of Schedule 1A applies. 15
- (3) The persons falling within this subsection are persons who –
- (a) have attained the age of 19,
- (b) do not have the qualification in question or one (including one awarded by a person outside England) which appears to the Council to be at a comparable or higher level, and 20
- (c) satisfy such conditions as may be specified in regulations made by the Secretary of State.
- (4) Facilities are proper if they are – 25
- (a) of a quantity sufficient to meet the reasonable needs of individuals, and
- (b) of a quality adequate to meet those needs.
- (5) In performing the duty imposed on it by subsection (1) the Council must – 30
- (a) take account of the places where facilities are provided, the character of facilities and the way they are equipped;
- (b) take account of the different abilities and aptitudes of different persons;
- (c) take account of the education and training required in different sectors of employment for employees and potential employees; 35
- (d) act with a view to encouraging diversity of education and training available to individuals;
- (e) act with a view to increasing opportunities for individuals to exercise choice; 40
- (f) make the best use of the Council’s resources and in particular avoid provision which might give rise to disproportionate expenditure;

- (g) have regard to any guidance given from time to time by the Secretary of State.
- (6) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision. 5
- (7) For the purposes of this section –
 - (a) education includes both full-time education and part-time education;
 - (b) training includes both full-time and part-time training;
 - (c) higher education is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988. 10

4B Learning aims for persons over 19: payment of tuition fees

- (1) *The Council must exercise its functions under this Part so as to secure that a course of study for a qualification to which paragraph 1 of Schedule 1A applies is free to a person falling within subsection (2) if it is provided for the person by virtue of facilities whose provision is secured under section 4A.* 15
- (2) A person falls within this subsection if, at the time of starting the course in question, the person –
 - (a) has attained the age of 19, 20
 - (b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Council to be at a comparable or higher level, and
 - (c) satisfies such conditions as may be specified in regulations made by the Secretary of State. 25
- (3) *The Council must exercise its functions under this Part so as to secure that a course of study for a qualification to which paragraph 2 of Schedule 1A applies is free to a person falling within subsection (4) if it is provided for the person by virtue of facilities whose provision is secured under section 3.*
- (4) A person falls within this subsection if, at the time of starting the course in question, the person –
 - (a) has attained the age of 19 but not the age of 25, 30
 - (b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Council to be at a comparable or higher level, and 35
 - (c) satisfies such conditions as may be specified in regulations made by the Secretary of State.
- (5) In performing a duty imposed on it by this section, the Council must have regard to any guidance given from time to time by the Secretary of State. 40
- (6) The Secretary of State may by order –
 - (a) amend subsection (2)(a) by substituting a different age for the age for the time being referred to;
 - (b) amend subsection (4)(a) by substituting a different age for either of the ages for the time being referred to. 45

- (7) For the purposes of this section, a course is free to a person if no tuition fees in respect of the provision of the course for the person are payable by a person other than—
- (a) the Council, or
 - (b) a body specified by order by the Secretary of State for the purposes of this section. 5
- (8) In subsection (7), “tuition fees”, in relation to a course, means—
- (a) the fees charged in respect of the course by the person providing it, and
 - (b) such fees in respect of other matters relating to the course (such as undergoing a preliminary assessment or sitting an examination) as may be specified in regulations made by the Secretary of State. 10
- 4C Sections 4A and 4B: supplementary**
- (1) The Secretary of State may by regulations make provision as to circumstances in which—
- (a) despite having a specified qualification, a person is to be treated for the purposes of section 4A or 4B as not having that qualification;
 - (b) despite not having a specified qualification, a person is to be treated for any of those purposes as having that qualification. 15 20
- (2) A condition specified in regulations under section 4A or 4B may, in particular, relate to—
- (a) the possession, or lack, of a specified qualification;
 - (b) the completion of, or failure to complete, a course for a specified qualification. 25
- (3) A reference in subsection (1) or (2) to a specified qualification is to a qualification specified, or of a description specified, in the regulations.
- (4) Regulations under this section, or under section 4A or 4B, may confer a function (which may relate to the administration of an assessment and may include the exercise of a discretion) on a person specified, or of a description specified, in the regulations. 30
- (5) Part 2 of Schedule 1A makes further provision for the purposes of sections 4A and 4B.”
- (4) In section 13 (Council’s duty to have regard to needs of persons with learning difficulties), in subsection (1), after “3,” insert “4A, 4B,”. 35
- (5) Section 152 (orders and regulations) is amended as set out in subsections (6) and (7).
- (6) In subsection (2A), at the end insert “or an order to which subsection (2C) applies”. 40
- (7) After subsection (2B) insert—
- “(2C) An order under section 4B(6) or paragraph 9 of Schedule 1A may not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(2D) If a draft of an order under paragraph 9 of Schedule 1A would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.”

(8) After Schedule 1 insert – 5

“SCHEDULE 1A

LEARNING AIMS FOR PERSONS AGED 19 AND OVER

PART 1

Qualifications to which this Schedule applies

- 1 This paragraph applies to the following qualifications – 10
- (a) a specified qualification in level 1 literacy,
 - (b) a specified qualification in entry level 3 numeracy,
 - (c) a specified vocational qualification at level 2.
- 2 This paragraph applies to a specified qualification at level 3.

PART 2 15

Power to specify

- 3 (1) In paragraphs 1 and 2, a reference to a specified qualification is to an external qualification which is specified, or which is of a description specified, in regulations made by the Secretary of State.
- (2) The regulations may specify qualifications, or descriptions of qualifications, by reference to an assessment made by the Council of the level of attainment demonstrated by a qualification; and for that purpose the regulations may confer a function (which may include the exercise of a discretion) on the Council. 20
- (3) The regulations may make provision which applies subject to exceptions specified in the regulations. 25
- (4) In sub-paragraph (1), “external qualification” has the meaning given in section 24 of the Education Act 1997.

Level 1 literacy

- 4 Level 1 literacy is the level of attainment in literacy which, in the opinion of the Secretary of State, is the minimum required in that respect by persons aged 19 and over in order to be able to operate effectively in day-to-day life. 30

Entry level 3 numeracy

- 5 Entry level 3 numeracy is the level of attainment in numeracy which, in the opinion of the Secretary of State, is the minimum required in that respect by persons aged 19 and over in order to be able to operate effectively in day-to-day life. 35

Level 2

- 6 Level 2 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Secondary Education in five subjects, each at Grade C or above. 5

Level 3

- 7 Level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects. 10

Advice and information

- 8 In forming an opinion for the purposes of this Schedule, the Secretary of State may have regard, in particular, to advice or information relating to qualifications which is provided by – 15
- (a) the Council, or
 - (b) the Qualifications and Curriculum Authority.

Power to amend

- 9 (1) The Secretary of State may by order amend this Schedule so as to – 20
- (a) add a category of qualification to Part 1;
 - (b) remove a category of qualification for the time being referred to in Part 1;
 - (c) substitute a different qualification for a qualification for the time being referred to in Part 2;
 - (d) make consequential amendments.
- (2) The power conferred by sub-paragraph (1)(b) includes power to remove every category of qualification to which a paragraph of Part 1 for the time being applies.” 25

*Assessments of effectiveness of education or training***71 Revenue and Customs information**

- (1) The Commissioners for Her Majesty’s Revenue and Customs may disclose to the Secretary of State or a devolved authority information which falls within subsection (3). 30
- (2) The Secretary of State or the authority may use the information only in accordance with section 73.
- (3) The information is information about an individual which identifies the individual and relates to – 35
- (a) income (whether accrued from employment or otherwise);
 - (b) employment (including the dates when any period of employment starts or ends);
 - (c) any other means by which income is accrued; 40
 - (d) income tax;

(e) tax credits.

- (4) The reference to the Commissioners for Her Majesty’s Revenue and Customs includes a reference to a person authorised by the Commissioners.

72 Benefit and training information

- (1) Information which falls within subsection (4) or (5) may be made available for use by or disclosed to (as the case may be) a person in connection with the exercise of relevant functions of the Secretary of State or a devolved authority. 5
- (2) Information which falls within subsection (5) may be disclosed –
- (a) by the Secretary of State to a devolved authority;
 - (b) by a devolved authority to the Secretary of State. 10
- (3) The Secretary of State or a devolved authority may use the information in accordance with section 73.
- (4) The information is information about an individual who has attained the age of 19 held by the Secretary of State for the purposes of any function of the Secretary of State relating to social security. 15
- (5) The information is information held by the Secretary of State or the authority about an individual who has attained the age of 19 if it relates to any training or course of education undertaken by the individual (whether before or after the individual attained the age of 19).
- (6) Relevant functions are functions relating to training or education provided for persons who have attained the age of 19. 20

73 Use of information

- (1) Information disclosed or made available in consequence of section 71 or 72 may be used by the Secretary of State or a devolved authority for the purpose of – 25
- (a) evaluating the effectiveness of training or education provided for persons who have attained the age of 19;
 - (b) assessing policy in relation to the provision of such training or education;
 - (c) assessing policy in relation to social security or employment as it affects the provision of or participation in such training or education. 30
- (2) The Secretary of State or the authority may take such steps as are necessary or expedient to facilitate the use of the information for that purpose.
- (3) Information relating to an individual must not be used in such a way that the identity of the individual is disclosed to or capable of being discovered by a person carrying out the evaluation or assessment. 35
- (4) Subsection (3) does not apply in so far as a person using information relating to an individual as mentioned in that subsection has previously used the information for the purposes of subsection (2).

74 Wrongful disclosure of information

40

- (1) This section applies to information disclosed or made available in consequence of section 71 or 72.

- (2) A person commits an offence if—
- (a) the person discloses the information to another otherwise than for the purposes of that section, and
 - (b) the information relates to a person whose identity is specified in or can be deduced from the disclosure. 5
- (3) It is a defence to prove that a person charged with the offence reasonably believed—
- (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public. 10
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both. 15
- (5) A prosecution for an offence under this section may be instituted in England and Wales only with the consent of the Director of Public Prosecutions.
- (6) In subsection (4)(b), the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed in England and Wales before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences). 20

75 Information: supplementary

- (1) This section applies for the purposes of sections 71 to 74.
- (2) Nothing in these sections affects the use or disclosure of information by virtue of—
- (a) section 3 of the Social Security Act 1998 (c. 14);
 - (b) any other enactment or rule of law. 25
- (3) These are the devolved authorities—
- (a) the Scottish Ministers;
 - (b) the Welsh Ministers. 30
- (4) A reference to the Secretary of State includes a reference to a person providing services to the Secretary of State.
- (5) A reference to a devolved authority includes a reference to a person providing services to the authority.
- (6) A reference to training or education does not include a reference to higher education (within the meaning of the Education Reform Act 1988 (c. 40) or section 38 of the Further and Higher Education (Scotland) Act 1992 (c. 37)). 35

PART 4

REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND

CHAPTER 1

INDEPENDENT EDUCATIONAL INSTITUTIONS IN ENGLAND

Introductory

5

76 Independent educational institutions

- (1) For the purposes of this Chapter, “an independent educational institution” means –
- (a) an independent school, or
 - (b) an institution other than an independent school which –
 - (i) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
 - (ii) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time. 15
- (2) For the purposes of this section, an institution provides “part-time” education for a person if it provides education for the person –
- (a) for at least 12.5 hours a week, for at least 28 weeks, during an academic year at the end of which the person is under the age of 12, or 20
 - (b) for at least 15 hours a week, for at least 28 weeks, during an academic year at the end of which the person is aged 12 or over, which does not amount to full-time education.
- (3) Regulations may –
- (a) provide that a specified institution or an institution of a specified description is not an independent educational institution by virtue of subsection (1)(b); 25
 - (b) provide that time spent on a specified activity or on an activity of a specified description is or is not to be treated as time during which education is being provided for the purposes of this section; 30
 - (c) amend subsection (2)(a) or (b) so as to substitute a different number of weeks for the number of weeks for the time being mentioned there.
- (4) In this section –
- “an academic year” means a period of 12 months ending with 31 August;
 - “specified” means specified in regulations under this section. 35

77 Application of Chapter to institutions in England only

- (1) References in this Chapter to an independent educational institution are to an independent educational institution in England.
- (2) For provision regulating independent schools in Wales, see Chapter 1 of Part 10 of the Education Act 2002 (c. 32). 40

Standards

78 Independent educational institution standards

- | | |
|--|----|
| (1) The Secretary of State must by regulations prescribe standards for the purposes of this Chapter about the following matters – | 5 |
| (a) the quality of education provided at independent educational institutions; | |
| (b) the spiritual, moral, social and cultural development of students at independent educational institutions; | |
| (c) the welfare, health and safety of students at independent educational institutions; | 10 |
| (d) the suitability of proprietors of and staff at independent educational institutions; | |
| (e) the premises of and accommodation at independent educational institutions; | |
| (f) the provision of information by independent educational institutions; | 15 |
| (g) the manner in which independent educational institutions handle complaints; | |
| (h) the quality of the leadership in and management of independent educational institutions. | |
| (2) A standard may be prescribed in relation to – | 20 |
| (a) all independent educational institutions, | |
| (b) specified independent educational institutions, or | |
| (c) independent educational institutions of a specified description. | |
| (3) In subsection (2) “specified” means specified in regulations made under this section. | 25 |
| (4) The standards do not apply to early years provision for children who have not attained the age of three (separate requirements as to such provision being imposed by or under Part 3 of the Childcare Act 2006 (c. 21)). | |
| (5) In this Chapter “independent educational institution standards” means – | 30 |
| (a) the standards for the time being prescribed under this section, and | |
| (b) in relation to early years provision for children who have attained the age of three, the Early Years Foundation Stage (see section 39 of the Childcare Act 2006). | |

Requirement of registration

79 The register

- | | |
|--|----|
| (1) The Chief Inspector must keep a register of independent educational institutions. | 35 |
| (2) The register is to be known as “the register of independent educational institutions in England”. | |
| (3) The Chief Inspector must publish the register in such manner, and at such times, as the Chief Inspector considers appropriate. | 40 |

80 Unregistered independent educational institutions: offence

- (1) A person must not conduct an independent educational institution unless it is registered.
- (2) A person who conducts an independent educational institution in contravention of subsection (1) is guilty of an offence. 5
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in subsection (3) substitute “six months”. 10

81 Unregistered independent educational institutions: inspection

- (1) Where the Chief Inspector has reasonable cause to believe that an offence under section 80 is being committed on any premises, the Chief Inspector may at any reasonable time – 15
 - (a) enter and inspect the premises, and
 - (b) inspect and take copies of any records or other documents which the Chief Inspector has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
- (2) Section 58 of the Education Act 2005 (c. 18) (computer records) applies in relation to the inspection of records or other documents under this section. 20
- (3) It is an offence intentionally to obstruct a person in the exercise of the person’s functions in relation to the inspection.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 25

*Registration procedure***82 Applications for registration**

- (1) The proprietor of an independent educational institution may apply to the Chief Inspector for the institution to be entered on the register.
- (2) An application to enter an institution in the register must – 30
 - (a) contain the prescribed information, and
 - (b) be made in the prescribed manner.
- (3) The information prescribed under subsection (2)(a) must include information as to the following matters relating to the institution – 35
 - (a) whether the institution is –
 - (i) an independent school, or
 - (ii) an institution within section 76(1)(b);
 - (b) the age range of students;
 - (c) the maximum number of students;
 - (d) whether the institution is for male or female students or both; 40
 - (e) whether the institution provides accommodation for students;

- (f) whether the institution is specially organised to make special educational provision for students with special educational needs;
- (g) in the case of an institution within paragraph (f), the type or types of special educational needs for which the institution is specially organised to make special educational provision.

5

83 Determination of applications for registration

- (1) Where the proprietor of an institution makes an application for registration under section 82, the Chief Inspector must inspect the institution.
- (2) The Chief Inspector must prepare a report on the extent to which it appears from the inspection that the independent educational institution standards are likely to be met in relation to the institution once it becomes a registered independent educational institution. 10
- (3) The Chief Inspector must then decide, taking into account –
 - (a) the findings on the inspection, and
 - (b) any other evidence relating to the independent educational institution standards,
 whether those standards are likely to be met in relation to the institution once it becomes a registered independent educational institution. 15
- (4) The Chief Inspector must notify the proprietor of the institution of the decision made under subsection (3). 20
- (5) If the Chief Inspector decides under subsection (3) that the independent educational institution standards are likely to be met in relation to the institution once it becomes a registered independent educational institution, the Chief Inspector must enter the institution in the register.
- (6) An entry in the register for an independent educational institution must include – 25
 - (a) the name and address of the institution,
 - (b) the name of the proprietor of the institution, and
 - (c) the information supplied pursuant to section 82(3)(a) to (g).

84 Institutions no longer required to register: power to deregister

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- (1) If the Chief Inspector –
 - (a) has reasonable cause to believe that a registered institution has ceased to be an independent educational institution, and
 - (b) does not have reasonable cause to believe that the institution will become an independent educational institution again within the following twelve months,
 the Chief Inspector may remove the institution from the register. 35
- (2) The Chief Inspector must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Chief Inspector’s decision does not have effect during the period in which – 40
 - (a) an appeal may be brought under section 109 against the decision, or
 - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

Approval of material changes to registered details

85 “Material change”

- (1) This section defines “a material change” in relation to an independent educational institution for the purposes of this Chapter.
- (2) In relation to an institution other than a special institution, “a material change” means a change in respect of any matter referred to in section 82(3)(e) or (f). 5
- (3) In relation to a special institution, “a material change” means –
 - (a) a change of proprietor,
 - (b) a change of address, or
 - (c) a change in respect of any matter referred to in section 82(3)(a) to (g). 10
- (4) In this section “a special institution” means an independent educational institution that is specially organised to make special educational provision for students with special educational needs.

86 Requirement to apply for approval for material change

- (1) Where the proprietor of a registered independent educational institution is aware that a material change is to be made in relation to the institution, the proprietor must make an application to the Chief Inspector for approval of the change. 15
- (2) An application for approval under this section must be made in writing and, in the case of approval of a change of proprietor, must be made by the proposed new proprietor. 20

87 Inspection and report where applications made for approval

- (1) Where an application for approval of a material change is made under section 86, the Chief Inspector may inspect the institution.
- (2) If the Chief Inspector inspects an institution under this section, the Chief Inspector must prepare a report on the extent to which it appears from the inspection that any relevant standard is likely to continue to be met in relation to the institution if the change is made. 25
- (3) In subsection (2) “any relevant standard” means any independent educational institution standard considered to be relevant by the Chief Inspector in the circumstances of the case. 30

88 Determination of applications for approval

- (1) Where an application for approval of a material change is made under section 86, the Chief Inspector must –
 - (a) approve the change, if satisfied that the independent educational institution standards are likely to continue to be met in relation to the institution if the change is made; 35
 - (b) in any other case refuse to approve it.
- (2) In coming to a decision under subsection (1) the Chief Inspector must take into account – 40
 - (a) the findings on any inspection carried out under section 87, and

- (b) any other evidence relating to the independent educational institution standards.
 - (3) The Chief Inspector must notify the proprietor of the institution of any decision under subsection (1).
 - (4) A decision under subsection (1) to refuse to approve a material change does not have effect during the period in which –
 - (a) an appeal may be brought under section 110 against the decision, or
 - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.
- 89 Power to deregister institution that makes unapproved material change** 10
- (1) The Chief Inspector may remove an independent educational institution from the register if –
 - (a) there has been a material change in relation to the institution,
 - (b) the change has not been approved under this Chapter, and
 - (c) either –
 - (i) no application has been made under section 86 for approval of the change, or
 - (ii) such an application has been made but has been refused.
 - (2) The Chief Inspector must notify the proprietor of an institution of any decision to remove it from the register under this section. 15
 - (3) The Chief Inspector’s decision does not have effect during the period in which –
 - (a) an appeal may be brought under section 109 against the decision, or
 - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of. 20

Independent inspectorates

- 90 Independent inspectorates**
- (1) The Secretary of State may –
 - (a) approve a body or bodies to carry out inspections of registered independent educational institutions; 30
 - (b) withdraw approval previously given under paragraph (a).
 - (2) The Secretary of State may approve a body in relation to –
 - (a) specified registered independent educational institutions, or
 - (b) registered independent educational institutions of a specified description. 35

In this subsection “specified” means specified by the Secretary of State.
 - (3) The power in subsection (2)(b) to specify a description of independent educational institution includes power to specify a description by reference to membership of a body.
 - (4) The Secretary of State may by regulations specify matters that must be taken into account in deciding to approve or withdraw approval from a body under this section. 40

- (5) In this Chapter, “an independent inspectorate” means a body approved under this section.

91 Quality assurance of independent inspectorates

- (1) The Chief Inspector must, at intervals of no more than a year, prepare and send to the Secretary of State a report about independent inspectorates. 5
- (2) In preparing a report under this section the Chief Inspector must have regard to such matters as the Secretary of State may direct.
- (3) The Secretary of State may in particular give directions about –
- (a) matters to be taken into account in preparing a report, and
 - (b) the form and contents of a report. 10

Inspections and reports

92 Duty to inspect certain registered institutions at prescribed intervals

- (1) The Chief Inspector must –
- (a) inspect each independent educational institution to which this section applies at such intervals as may be prescribed, and 15
 - (b) prepare a report on the extent to which the independent educational institution standards are met, and are likely to continue to be met, in relation to the institution.
- (2) This section does not require the Chief Inspector to carry out an inspection or prepare a report if, by the relevant time –
- (a) the institution has been inspected by an independent inspectorate that is approved under section 90 in relation to the institution, and
 - (b) the inspectorate has prepared and sent to the Chief Inspector a report on the extent to which the independent educational institution standards are met, and are likely to continue to be met, in relation to the institution. 20
- (3) In subsection (2) “the relevant time” means –
- (a) the time at which, apart from subsection (2), the Chief Inspector would have been required to inspect the institution under this section, or
 - (b) the end of such period after that time as may be prescribed. 30
- (4) An interval may be prescribed under subsection (1) by reference to the time of an inspection carried out –
- (a) by the Chief Inspector in compliance with subsection (1), or
 - (b) by an independent inspectorate as mentioned in subsection (2).
- (5) This section applies to any registered independent educational institution that is not –
- (a) an Academy,
 - (b) a city technology college, or
 - (c) a city college for the technology of the arts. 35

93 Duty to inspect registered institution on direction of Secretary of State

- (1) The Secretary of State may direct the Chief Inspector to inspect a registered independent educational institution specified in the direction.
- (2) Where such a direction is made the Chief Inspector must –
 - (a) inspect the institution, and 5
 - (b) make a report to the Secretary of State on the extent to which any relevant standard is being met.
- (3) In this section “any relevant standard” means any independent educational institution standard specified by the Secretary of State in the direction.

94 Power to inspect registered institution 10

- (1) The Chief Inspector may at any time inspect a registered independent educational institution.
- (2) On an inspection under this section, the Chief Inspector must prepare a report on the extent to which it appears from the inspection that any relevant standard is being met, and is likely to continue to be met, in relation to the institution. 15
- (3) The Chief Inspector may at any time arrange for an independent inspectorate –
 - (a) to inspect a registered independent educational institution in relation to which it is approved under section 90, and 20
 - (b) to prepare a report on the extent to which it appears from the inspection that any relevant standard is being met, and is likely to continue to be met, in relation to the institution.
- (4) In this section “any relevant standard” means any independent educational institution standard that is – 25
 - (a) in the case of an inspection by the Chief Inspector, considered to be relevant by the Chief Inspector in the circumstances of the case, or
 - (b) in the case of an inspection by an independent inspectorate, specified by the Chief Inspector for the purposes of the inspection.
- (5) The Chief Inspector may specify a standard for the purposes of – 30
 - (a) a particular inspection, or
 - (b) inspections of institutions of a particular description.

95 Inspections under this Chapter: power of entry etc

- (1) This section applies to any inspection of a registered independent educational institution that is carried out by the Chief Inspector under this Chapter. 35
- (2) The Chief Inspector has at all reasonable times –
 - (a) a right of entry to the premises of the institution for the purposes of the inspection, and
 - (b) a right to inspect and take copies of any records kept by the institution and any other documents containing information relating to the institution that are required for the purposes of the inspection. 40

- (3) Section 58 of the Education Act 2005 (c. 18) (computer records) applies in relation to the inspection of records or other documents under subsection (2)(b).
- (4) It is an offence intentionally to obstruct a person in the exercise of the person's functions in relation to the inspection. 5
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

96 Fees for inspections by Chief Inspector under this Chapter

- (1) Regulations may require the proprietor of an institution to which this section applies to pay to the Chief Inspector a fee in respect of an inspection of the institution carried out by the Chief Inspector under this Chapter. 10
- (2) Regulations under this section must make provision for determining –
- (a) the amount of any fee, and
 - (b) the time or times at which it must be paid.
- (3) Regulations under this section may make different provision for different cases including in particular – 15
- (a) different provision for inspections carried out for different purposes;
 - (b) different provision for inspections carried out for the same purpose but in different circumstances.
- (4) Regulations under this section may prescribe circumstances in which – 20
- (a) the amount of a fee may be varied in accordance with the regulations;
 - (b) a fee payable under the regulations may be waived.
- (5) This section applies to any registered independent educational institution that is not –
- (a) an Academy, 25
 - (b) a city technology college, or
 - (c) a city college for the technology of the arts.

97 Failure to pay fees

- (1) Where the proprietor of an institution fails to pay a fee in accordance with regulations under section 96, the Chief Inspector may remove the institution from the register. 30
- (2) The Chief Inspector must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Chief Inspector's decision does not have effect during the period in which – 35
- (a) an appeal may be brought under section 109 against the decision, or
 - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

98 Publication of inspection reports

- (1) The Chief Inspector may arrange for the publication of the report of any inspection carried out by the Chief Inspector under this Chapter. 40

- (2) A report published by virtue of this paragraph must be published in the prescribed manner.

Failure to meet standards

99 Action plans

- (1) This section applies to a registered independent educational institution if the Chief Inspector is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards is or are not being met in relation to the institution. 5
- (2) In subsection (1) “relevant evidence” means – 10
- (a) the findings on an inspection carried out by the Chief Inspector,
 - (b) the report of an inspection carried out by an independent inspectorate, or
 - (c) any other evidence in respect of the institution.
- (3) The Chief Inspector may require the proprietor of a registered independent educational institution to which this section applies to submit an action plan to the Chief Inspector for approval. 15
- (4) In this Chapter “an action plan” means a plan specifying –
- (a) the steps that will be taken to meet a standard or standards, and
 - (b) the time by which each step will be taken.
- (5) Any requirement imposed under this section to submit an action plan must be imposed by serving a notice on the proprietor of the institution in question – 20
- (a) identifying the standard or standards that the Chief Inspector is satisfied is or are not being met in relation to the institution, and
 - (b) specifying a date by which the action plan must be submitted.
- (6) Where an action plan is submitted in pursuance of a requirement imposed under this section (whether or not by the date specified in the notice), the Chief Inspector may – 25
- (a) approve it, with or without modifications, or
 - (b) reject it.
- (7) Where the Chief Inspector rejects an action plan, the Chief Inspector may impose a further requirement under this section to submit an action plan. 30
- (8) An action plan that has been approved may be varied at any time by the proprietor of the institution in question with the agreement of the Chief Inspector.

100 Power of Chief Inspector to take enforcement action 35

- (1) This section applies to a registered independent educational institution if the Chief Inspector is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards is or are not being met in relation to the institution.
- (2) In subsection (1) “relevant evidence” means – 40
- (a) the findings on an inspection carried out by the Chief Inspector,

- (b) the report of an inspection carried out by an independent inspectorate, or
 - (c) any other evidence in respect of the institution.
- (3) The Chief Inspector may take enforcement action under section 101 against the proprietor of a registered independent educational institution to which this section applies if either of the following conditions is met. 5
- (4) The first condition is that –
- (a) the Chief Inspector has, during the period of three years before the enforcement action is taken, required the proprietor of the institution to submit one or more action plans under section 99, and 10
 - (b) any action plan required as mentioned in paragraph (a) –
 - (i) has not been submitted, and the date specified by the Chief Inspector under section 99(5)(b) has passed,
 - (ii) was submitted but was rejected, or
 - (iii) was approved but was subsequently not complied with. 15
- (5) The second condition is that –
- (a) at least two years before the enforcement action is taken the Chief Inspector required the proprietor of the institution to submit an action plan,
 - (b) at least one inspection of the institution has been carried out, by the Chief Inspector or an independent inspectorate approved under section 90 in relation to the institution, since that requirement was imposed, and 20
 - (c) the Chief Inspector has not at any time since that requirement was imposed been satisfied that the institution was meeting all of the independent educational institution standards. 25

101 Enforcement action available to Chief Inspector

- (1) Where the Chief Inspector is entitled under section 100(3) to take enforcement action against the proprietor of an institution, the Chief Inspector may –
- (a) impose a relevant restriction on the proprietor, or 30
 - (b) remove the institution from the register.
- (2) The Chief Inspector must notify the proprietor of the institution in question of any decision to take enforcement action under subsection (1).
- (3) A decision to take enforcement action under subsection (1) does not have effect during the period in which –
- (a) an appeal may be brought under section 109 or 110 against the decision, or
 - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of. 35

102 “Relevant restriction”

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- (1) In this Chapter a “relevant restriction” imposed on the proprietor of a registered independent educational institution is a requirement that the proprietor take one or more of the following steps by a specified time or by specified times –

- (a) to cease to use any part of the institution’s premises for all purposes or specified purposes;
 - (b) to close any part of the institution’s operation;
 - (c) to cease to admit any new students or new students of specified descriptions. 5
- (2) In subsection (1) “specified” means –
- (a) in the case of a relevant restriction imposed by the Chief Inspector under section 101(1)(a) specified by the Chief Inspector;
 - (b) in the case of a relevant restriction imposed by an order of a justice of the peace under section 105, specified in the order; 10
 - (c) in the case of a relevant restriction imposed by an order of the Tribunal under section 109, 110 or 111, specified in the order.
- 103 Relevant restriction imposed by Chief Inspector: supplementary**
- (1) This section applies where the proprietor of an institution is subject to a relevant restriction imposed by the Chief Inspector under section 101(1)(a). 15
 - (2) If the proprietor fails to comply with the relevant restriction the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
 - (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in subsection (2) substitute “six months”. 20
 - (4) The proprietor may apply to the Chief Inspector for the restriction to be varied or revoked.
 - (5) On an application under subsection (4) the Chief inspector must – 25
 - (a) vary or revoke the restriction as requested in the application, if the Chief Inspector is satisfied that it is appropriate to do so because of any change of circumstance, and
 - (b) in any other case, refuse to do so.
 - (6) The Chief Inspector must notify the proprietor of the decision made under subsection (5). 30
 - (7) A decision to vary or revoke the restriction has effect as from the date on which the proprietor receives notice of it.

Unsuitable persons

- 104 Unsuitable persons** 35
- (1) The Chief Inspector may remove an institution from the register if satisfied that a person to whom subsection (2) applies –
 - (a) carries out work of a prescribed kind in relation to the institution, or
 - (b) is the proprietor of the institution.
 - (2) This subsection applies to any person who is subject to a direction, order or decision of a prescribed description made under any prescribed enactment having effect in any part of the United Kingdom. 40

- (3) The Chief Inspector must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (4) The Chief Inspector’s decision does not have effect during the period in which –
 - (a) an appeal may be brought under section 109 against the decision, or 5
 - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.
- (5) The reference in subsection (1) to the proprietor of the institution is –
 - (a) in a case in which the proprietor is a company, a reference to any director of the company; 10
 - (b) in a case in which the proprietor is any other body of persons, whether corporate or unincorporate, a reference to any member of the body.

Emergencies

105 Application to justice of the peace for order

- (1) The Chief Inspector may apply to a justice of the peace for –
 - (a) an order imposing a relevant restriction on the proprietor of a registered independent educational institution, or
 - (b) an order that such an institution be removed from the register.
- (2) If it appears to the justice that a student at the institution in question is suffering or is likely to suffer significant harm, the justice may make the order. 20
- (3) An application under this section may be made without notice.
- (4) An order under this section must be in writing.
- (5) A copy of an order under this section must be served on the proprietor of the institution by the Chief Inspector as soon as reasonably practicable after the order is made. 25
- (6) An order under this section has effect from the time the copy is served on the proprietor (and, accordingly, in the case of an order under subsection (1)(b), the Chief Inspector must not remove the institution from the register in pursuance of the order before that time).
- (7) For the purposes of this section, “harm” has the same meaning as in the Children Act 1989 (c. 41) and the question of whether harm is significant is to be determined in accordance with section 31(10) of that Act. 30

106 Relevant restriction imposed by justice of the peace: supplementary

- (1) This section applies where the proprietor of an institution is subject to a relevant restriction imposed by an order of a justice of the peace under section 105(1)(a). 35
- (2) If the proprietor fails to comply with the relevant restriction, the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both). 40

- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in subsection (2) substitute “six months”.

107 Order of justice of the peace: notification

- (1) The Chief Inspector must comply with this section as soon as reasonably practicable after an order is made under section 105 against the proprietor of an institution. 5
- (2) The Chief Inspector must serve on the proprietor –
- (a) a copy of any written statement in support of the application for the order, and 10
 - (b) notice of the right of appeal conferred by section 111.
- (3) In the case of an order made against the proprietor of a special institution, the Chief Inspector must notify the following that the order has been made –
- (a) the local education authority in whose area the institution is situated;
 - (b) any other local education authority that the Chief Inspector, after reasonable enquiry, is aware has specified the institution in a statement of special educational needs in respect of a student at the institution. 15
- (4) In this section “a special institution” means an institution that is specially organised to make special educational provision for students with special educational needs. 20

Provision of information by proprietors

108 Provision of information by proprietors

- (1) Regulations may make provision for requiring the proprietor of a registered independent educational institution to provide the Chief Inspector or the Secretary of State, on request, with such particulars relating to the institution as may be prescribed. 25
- (2) Regulations under this section may in particular –
- (a) require the provision of such information as is needed by the local authority in whose area the institution is situated for the purpose of determining whether the institution is a children’s home within the meaning of the Care Standards Act 2000 (c. 14) (see section 1 of that Act); 30
 - (b) provide for the Chief Inspector to remove from the register any institution in respect of which any requirement imposed by or under the regulations is not complied with; 35
 - (c) provide that a person who fails to comply with any specified provision of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) In subsection (2) “specified” means specified in regulations under this section.
- (4) Regulations that include provision by virtue of subsection (2)(b) must include the provision required by subsections (5) to (6). 40

- (5) The regulations must require the Chief Inspector to notify the proprietor of an institution of any decision to remove the institution from the register by virtue of subsection (2)(b).
- (6) The regulations must provide that a decision by the Chief Inspector to remove an institution from the register by virtue of subsection (2)(b) does not have effect during the period in which – 5
- (a) an appeal may be brought under section 109 against the decision, or
 - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

Appeals 10

109 Appeal by proprietor against decision of Chief Inspector to deregister

- (1) The proprietor of a registered independent educational institution may appeal to the Tribunal against a decision of the Chief Inspector to remove the institution from the register – 15
- (a) under section 84 (no longer required to register),
 - (b) under section 89 (unapproved material change),
 - (c) under section 97 (failure to pay fees),
 - (d) under section 101 (failure to meet standards),
 - (e) under section 104 (unsuitable persons), or
 - (f) by virtue of section 108 (failure to provide information). 20
- (2) Any appeal under this section must be brought within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.
- (3) On an appeal under this section the Tribunal may – 25
- (a) confirm the decision,
 - (b) direct that the decision is of no effect, or
 - (c) in the case of an appeal under subsection (1)(b), (d) or (e), direct that the decision is of no effect and make an order imposing a relevant restriction on the proprietor of the institution.
- (4) Where the Tribunal confirms the decision, the Chief Inspector must remove the institution from the register on such date as the Tribunal may specify or, if it does not specify a date, from such date as the Chief Inspector may determine. 30
- (5) In this Chapter “the Tribunal” means the tribunal established under section 9 of the Protection of Children Act 1999 (c. 14).

110 Appeal by proprietor against other decisions of Chief Inspector 35

- (1) The proprietor of an institution may appeal to the Tribunal against a decision of the Chief Inspector in relation to the institution under – 40
- (a) section 83(3) (standards not likely to be met on registration),
 - (b) section 88(1) (refusal to approve a material change),
 - (c) section 101(1)(a) (imposition of relevant restriction on proprietor), or
 - (d) section 103(5)(b) (refusal to vary or revoke a relevant restriction).

- (2) Any appeal under this section must be brought within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.
- (3) On an appeal under subsection (1)(a), the Tribunal may – 5
- (a) confirm the decision, or
 - (b) require the Chief Inspector to reconsider the decision, taking into account, amongst other things, the findings of the Tribunal on the appeal.
- (4) Section 83(4) and (5) applies in relation to the Chief Inspector’s decision on reconsideration under subsection (3)(b) above as it applies to a decision made under section 83(3). 10
- (5) On an appeal under subsection (1)(b) the Tribunal may –
- (a) confirm the decision, or
 - (b) itself approve the change.
- (6) On an appeal under subsection (1)(c), the Tribunal may – 15
- (a) confirm the decision,
 - (b) direct that the relevant restriction is to cease to have effect, or
 - (c) direct that the relevant restriction is to cease to have effect and make an order imposing a different relevant restriction on the proprietor.
- (7) On an appeal under subsection (1)(d), the Tribunal may – 20
- (a) confirm the refusal, or
 - (b) if the Tribunal is satisfied that it is appropriate to do so because of a change of circumstance since the restriction in question was imposed –
 - (i) direct that the relevant restriction is to cease to have effect, or
 - (ii) direct that the relevant restriction is to cease to have effect and make an order imposing a different relevant restriction on the proprietor. 25
- 111 Appeal by proprietor against order of justice of the peace**
- (1) The proprietor of a registered independent educational institution may appeal to the Tribunal against the making of an order under section 105 (order of justice of the peace in an emergency). 30
- (2) On an appeal under this section the Tribunal may –
- (a) confirm the making of the order,
 - (b) direct that the order is to cease to have effect, or
 - (c) direct that the order is to cease to have effect and make an order – 35
 - (i) imposing a relevant restriction on the proprietor of the institution, or
 - (ii) requiring the Chief Inspector to remove the institution from the register on such date as the Tribunal may specify or, if it does not specify a date, from such date as the Chief Inspector may determine. 40
- (3) Subsection (4) applies where –
- (a) an appeal is brought under this section against an order that the institution be removed from the register, and
 - (b) the Tribunal directs that the order is to cease to have effect. 45

- (4) The institution—
 - (a) must be restored to the register by the Chief Inspector, and
 - (b) is to be treated as if it had not been removed from the register in pursuance of the order.

112 Relevant restriction imposed by Tribunal: supplementary 5

- (1) This section applies where the Tribunal makes an order under section 109, 110 or 111 imposing a relevant restriction on the proprietor of an institution.
- (2) The order in question has effect from the time the proprietor receives notice of it in accordance with regulations under section 9 of the Protection of Children Act 1999 (c. 14) or from the Chief Inspector. 10
- (3) If the proprietor fails to comply with the relevant restriction, the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in subsection (3) substitute “six months”. 15
- (5) The proprietor may apply to the Tribunal for the relevant restriction to be varied or revoked.
- (6) On an application under subsection (5) the Tribunal must— 20
 - (a) vary or revoke the relevant restriction as requested in the application, if the Tribunal is satisfied that it is appropriate to do so because of any change of circumstance, and
 - (b) in any other case, refuse to do so.

Prohibition on participation in management of independent educational institutions 25

113 Prohibition on participation in management

- (1) The appropriate authority may direct that a person—
 - (a) may not take part in the management of an independent educational institution;
 - (b) may take part in the management of such an institution only in circumstances specified in the direction; 30
 - (c) may take part in the management of such an institution only if conditions specified in the direction are satisfied.
- (2) A direction under this section may be given in respect of a person only on one or more prescribed grounds connected with the suitability of persons to take part in the management of an independent educational institution. 35
- (3) Regulations may prescribe the procedure for giving a direction under this section (including provision about notification of persons who are subject to directions).
- (4) The appropriate authority may vary or revoke a direction under this section in prescribed cases. 40

- (5) Regulations may prescribe the grounds on which a person subject to a direction under this section may seek to have it varied or revoked under subsection (4).
- (6) In this section and sections 114 to 116, “the appropriate authority” means –
- (a) the Chief Inspector, or
 - (b) such other public authority as may be prescribed.

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114 Directions under section 113: appeals

- (1) A person in respect of whom a direction has been given under section 113 may appeal to the Tribunal –
- (a) against the decision to give the direction;
 - (b) against a decision not to vary or revoke the direction.
- (2) Regulations may –
- (a) provide that the Tribunal may not entertain an appeal under this section insofar as the appellant’s case is inconsistent with the appellant having been convicted of an offence;
 - (b) prescribe circumstances in which the Tribunal must allow an appeal under this section;
 - (c) prescribe the powers available to the Tribunal on allowing an appeal under this section.

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115 Directions under section 113: information

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- (1) Where the appropriate authority is a public authority other than the Chief Inspector, the Chief Inspector may provide to that authority any information relating to a person which is held by the Chief Inspector in connection with the Chief Inspector’s functions under this Chapter.
- (2) The Welsh Ministers may provide to the appropriate authority any information relating to a person which is held by them in connection with their functions under Chapter 1 of Part 10 of the Education Act 2002 (c. 32).
- (3) The Secretary of State may provide to the appropriate authority any information relating to a person which is held by the Secretary of State in connection with the Secretary of State’s functions and which appears to the Secretary of State to be relevant to the exercise of the appropriate authority’s functions under section 113 or by virtue of section 114.
- (4) The Independent Barring Board may provide to the appropriate authority any information relating to a person which is held by the Board in connection with its functions and which appears to it to be relevant to the exercise of the appropriate authority’s functions under section 113 or by virtue of section 114.
- (5) The appropriate authority may provide to the Independent Barring Board, the General Teaching Council for England, the General Teaching Council for Wales, the Secretary of State, the Welsh Ministers or, where the appropriate authority is a public authority other than the Chief Inspector, the Chief Inspector, any information relating to a person which is held by the appropriate authority in connection with its functions under section 113.

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116 Directions under section 113: notification

Where the appropriate authority gives a direction under section 113(1), or varies or revokes any such direction, it must notify –

- (a) the Chief Inspector (unless the appropriate authority is the Chief Inspector), and 5
- (b) the Welsh Ministers and (if different) the appropriate authority for the purposes of sections 167A to 167D of the Education Act 2002 (c. 32) (prohibition on participation in management of independent schools in Wales).

Independent colleges for 16 to 18 year olds 10

117 Providers of independent education or training for 16 to 18 year olds

- (1) Regulations may provide for any provision of this Chapter to apply in relation to an independent post-16 college as it applies in relation to an independent educational institution, subject to such modifications as may be prescribed.
- (2) For this purpose, “an independent post-16 college” means an institution in England – 15
 - (a) at which relevant education or training is provided for –
 - (i) five or more persons who are not under compulsory school age, including at least one who is over compulsory school age but is under the age of 18, or 20
 - (ii) at least one student to whom subsection (4) applies who is over compulsory school age but is under the age of 18,
 - (b) which is not –
 - (i) an independent educational institution,
 - (ii) a school maintained by a local education authority, 25
 - (iii) a special school not so maintained, or
 - (iv) an institution in receipt of funding from the Learning and Skills Council for England, and
 - (c) which is outside the further education and higher education sectors.
- (3) In subsection (2)(a), “relevant education or training” provided for a person means education or training which – 30
 - (a) is provided for the person for at least 16 hours a week, for at least 4 weeks, during an academic year, and
 - (b) is not education or training provided in connection with facilities for adventure activities (within the meaning of section 1 of the Activity Centres (Young Persons’ Safety) Act 1995 (c. 15) (adventure activities: licensing)). 35
- (4) This subsection applies to a person –
 - (a) for whom a statement is maintained by a local education authority under section 324 of the Education Act 1996 (c. 56) (statement of special educational needs), or 40
 - (b) for whom a statement was so maintained immediately before –
 - (i) the person ceased to be a pupil at his or her last school, or
 - (ii) the institution started providing relevant education or training for the person. 45

- (5) Regulations may –
- (a) provide that a specified institution or an institution of a specified description is not an independent post-16 college;
 - (b) provide that time spent on a specified activity or on an activity of a specified description is or is not to be treated as time during which education or training is provided for the purposes of this section; 5
 - (c) amend subsection (3)(a) so as to substitute a different number of hours or weeks for the number of hours or weeks for the time being mentioned there.
- (6) In this section – 10
- “an academic year” means a period of 12 months ending with 31 August;
 - “specified” means specified in regulations under this section.

118 Regulations under section 117: supplementary

- (1) Regulations under 117(1) applying – 15
- (a) section 105, or
 - (b) any of the provisions mentioned in –
 - (i) section 109(1), or
 - (ii) section 110(1),
 in relation to an independent post-16 college must also apply any provision conferring a right of appeal against a decision or order made under that provision. 20
- (2) No draft of any regulations under section 117(1) may be laid before Parliament unless the Secretary of State has first consulted – 25
- (a) the Chief Inspector, and
 - (b) such other persons as the Secretary of State considers appropriate, about the proposal to make the regulations.

Supplementary

119 Proceedings for offences

No proceedings for an offence under this Chapter may be instituted except by or with the consent of the Chief Inspector or the Secretary of State. 30

120 Offences by bodies corporate

- (1) Where an offence under this Chapter committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of – 35
- (a) any director, manager, secretary or other similar officer of the body corporate, or
 - (b) any person who was purporting to act in any such capacity,
- that person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with 40

the member’s functions of management as it applies to a director of a body corporate.

121 Offences by unincorporated bodies

- (1) Proceedings for an offence alleged to have been committed under this Chapter by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation. 5
- (2) A fine imposed on an unincorporated body on its conviction of an offence under this Chapter is to be paid out of the funds of that body. 10
- (3) If an unincorporated body is charged with an offence under this Chapter, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43) (procedure on charge of an offence against a corporation) apply as they do in relation to a body corporate.
- (4) Where an offence under this Chapter committed by an unincorporated body other than a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, that person (as well as the body) is guilty of the offence and liable to be proceeded against and punished accordingly. 15
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- (5) Where an offence under this Chapter committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly. 25

122 Service of notice etc

For the purposes of this Chapter, any notice, order or other document required to be given to or served on the proprietor of a registered independent educational institution may be given to or served on the proprietor by delivering it to the registered address of the institution. 30

123 Interpretation of Chapter

- (1) In this Chapter –
 - “an action plan” has the meaning given by section 99(4);
 - “the Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills; 35
 - “early years provision” has the meaning given by section 96(2) of the Childcare Act 2006;
 - “independent educational institution standards” has the meaning given by section 78;
 - “an independent inspectorate” has the meaning given by section 90; 40
 - “a material change”, in relation to an independent educational institution, has the meaning given by section 85;
 - “proprietor”, in relation to an institution, means the person or body of persons responsible for the management of the institution;

- “the register” means the register of independent educational institutions in England (see section 79);
- “registered” means entered in the register;
- “relevant restriction” has the meaning given by section 102;
- “student” means – 5
- (a) in relation to an independent school, a pupil (for the meaning of “pupil” see section 3 of the Education Act 1996 (c. 56));
- (b) in relation to an institution within section 76(1)(b), a person for whom the institution provides part-time education within the meaning of that provision or full-time education; 10
- “the Tribunal” has the meaning given by section 109(5).
- (2) In section 82 the reference to the proprietor of an independent educational institution includes the proprietor of an institution that it is proposed should become an independent educational institution (and accordingly the information required by subsection (3) of that section, in the case of such a proprietor, is information about the institution as it is proposed to be). 15

CHAPTER 2

SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

Non-maintained special schools in England

- 124 Interpretation** 20
- For section 337 of the Education Act 1996 (special schools) and the italic heading preceding it substitute –
- “Interpretation*
- 337 Special schools**
- A school is a special school if – 25
- (a) it is specially organised to make special educational provision for pupils with special educational needs, and
- (b) in the case of a school that is not maintained by a local education authority, it is approved under section 342.
- 337A Interpretation of Chapter** 30
- In this Chapter –
- “the Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;
- “a non-maintained special school” means a school that is approved under section 342; 35
- “the relevant authority” means –
- (a) in relation to a school in England, the Chief Inspector;
- (b) in relation to a school in Wales, the Welsh Ministers.”

125 Function of approving schools transferred to Chief Inspector

- (1) Section 342 of the Education Act 1996 (c. 56) (approval of non-maintained special schools) is amended as follows.
- (2) In subsection (1) –
- (a) for “Secretary of State” substitute “relevant authority”;
 - (b) omit “his”.
- (3) In subsection (5)(a) for “Secretary of State” substitute “relevant authority”.

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126 Right of sixth-form pupils to opt out of religious worship

- (1) Section 342 of the Education Act 1996 is amended as follows.
- (2) After subsection (5) insert –
- “(5A) Regulations shall make provision for securing that, so far as practicable, every pupil attending a school in England that is approved under this section –
- (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of the pupil’s parent, and
 - (b) attends religious worship unless withdrawn from attendance at such worship –
 - (i) in the case of a sixth-form pupil, in accordance with the pupil’s own wishes, and
 - (ii) in any other case, in accordance with the wishes of the pupil’s parent.
- (5B) In subsection (5A) “a sixth-form pupil” means a pupil who –
- (a) has ceased to be of compulsory school age, and
 - (b) is receiving education suitable to the requirements of pupils over compulsory school age.”
- (3) In subsection (6) for “special school” substitute “school in Wales that is”.

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127 Protection of pupils in an emergency

After section 342 of the Education Act 1996 insert –

“Non-maintained special schools in England: protection of pupils in an emergency

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342A Application to justice of the peace: power to make regulations

- (1) Regulations may make provision conferring power on a justice of the peace, on the application of the Chief Inspector, to make an order in an urgent case that a non-maintained special school in England should cease to be approved under section 342.
- (2) Regulations under this section may in particular make provision corresponding, with or without modifications, to that made in –
- (a) section 105(2) to (7) of the Education and Skills Act 2008 (emergency orders in relation to registered independent educational institutions), or
 - (b) section 107 of that Act (notification).

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128 Appeals

After section 342A of the Education Act 1996 (c. 56) (inserted by section 127) insert –

“Non-maintained special schools in England: appeals

- | | |
|--|----|
| 342B Appeal against decision of Chief Inspector | 5 |
| <p>(1) Regulations may make provision for an appeal against a decision of the Chief Inspector –</p> <p style="margin-left: 20px;">(a) to withdraw approval from a non-maintained special school in England by virtue of section 342(4)(b) (failure to comply with prescribed requirement) otherwise than at the request of the proprietor;</p> <p style="margin-left: 20px;">(b) not to approve, not to approve a change to, or to withdraw approval from, relevant arrangements in relation to such a school.</p> | 10 |
| <p>(2) In subsection (1)(b) “relevant arrangements” means arrangements that require the approval of the Chief Inspector by virtue of section 342(5)(a).</p> | 15 |
| <p>(3) Regulations under this section must provide that an appeal brought by virtue of this section –</p> <p style="margin-left: 20px;">(a) lies to the tribunal established under section 9 of the Protection of Children Act 1999 (c. 14), and</p> <p style="margin-left: 20px;">(b) must be brought by the proprietor of the school in question.</p> | 20 |
| <p>(4) The regulations may in particular make provision, in the case of an appeal brought by virtue of subsection (1)(a), prohibiting the Chief Inspector from acting on a decision to withdraw approval during the period in which –</p> <p style="margin-left: 20px;">(a) an appeal against the decision could be brought, or</p> <p style="margin-left: 20px;">(b) where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.</p> | 25 |
| 342C Appeal against order of justice of peace | 30 |
| <p>(1) Regulations may make provision for an appeal against the making of an order by virtue of section 342A (order by justice of peace in an emergency).</p> | |
| <p>(2) The regulations must provide that an appeal brought by virtue of this section –</p> <p style="margin-left: 20px;">(a) lies to the tribunal established under section 9 of the Protection of Children Act 1999, and</p> <p style="margin-left: 20px;">(b) must be brought by the proprietor of the school in question.”</p> | 35 |

Independent schools in England

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|---|----|
| 129 Abolition of requirement of approval for independent schools: England | 40 |
| <p>(1) Section 347 of the Education Act 1996 (approval of independent schools) is amended as follows.</p> | |

- (2) In subsection (1) –
- (a) for “The Secretary of State” substitute “The Welsh Ministers”;
 - (b) after “independent school” insert “in Wales”.
- (3) In subsection (3) for “the Secretary of State sees” substitute “the Welsh Ministers see”. 5
- (4) In subsection (4) for “the Secretary of State may withdraw his” substitute “the Welsh Ministers may withdraw their”.
- (5) In subsection (5) –
- (a) for “a child with special educational needs” substitute “a relevant child”; 10
 - (b) in paragraph (a) for “the Secretary of State” substitute “the Welsh Ministers”;
 - (c) in paragraph (b), for “the Secretary of State is” substitute “the Welsh Ministers are”, and for “consents” substitute “consent”.
- (6) After subsection (5) insert – 15
- “(5ZA) In subsection (5) “a relevant child” means a child with special educational needs –
- (a) for whom a local education authority in Wales maintain a statement under section 324, or
 - (b) for whom no local education authority maintain such a statement and who is in the area of a local education authority in Wales.” 20
- (7) In subsection (5A) –
- (a) for “But that” substitute “Subsection (5)”;
 - (b) after “local education authority” insert “in Wales”. 25

130 Approval of independent schools: consequential amendments

- (1) Section 349 of the Education Act 1996 (c. 56) (variation of trust deeds by order) is amended as follows.
- (2) In subsection (1) –
- (a) for “The Secretary of State” substitute “The appropriate authority”; 30
 - (b) for “him” substitute “it”;
 - (c) omit “or 347”.
- (3) After that provision insert –
- “(1A) In subsection (1) “the appropriate authority” means –
- (a) in relation to a school in England, the Chief Inspector; 35
 - (b) in relation to a school in Wales, the Welsh Ministers.
- (1B) The Welsh Ministers may by order make such modifications of any trust deed or other instrument relating to a school in Wales as, after consultation with the governing body or other proprietor of the school, appear to them to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 347.” 40

- (4) Section 483A of that Act (city colleges and academies: special educational needs) is amended as follows.
- (5) For subsection (3)(a) and (b) substitute –
- “(a) the statement is maintained by a local education authority in England, or 5
- (b) the statement is maintained by a local education authority in Wales and the Welsh Ministers consent to the child being educated at the school.”
- (6) In subsection (4) of that section for “The Secretary of State” substitute “The appropriate national authority”. 10
- (7) At the end of that section add –
- “(6A) In subsection (4) “the appropriate national authority” means –
- (a) in relation to a school in England, the Secretary of State;
- (b) in relation to a school in Wales, the Welsh Ministers.”
- (8) In section 59(3) of the Safeguarding Vulnerable Groups Act 2006 (c. 47) 15
(vulnerable adults) –
- (a) in paragraph (b), for the words following “which” substitute –
- “(i) is in England and is specially organised to make special educational provision for pupils with special educational needs (within the meaning of section 312 of that Act), or 20
- (ii) is in Wales and is approved by the Welsh Ministers under section 347 of that Act;”;
- (b) in paragraph (c), for “the Secretary of State” substitute “the Welsh Ministers”. 25

131 Approval of independent schools: transitional provision

- (1) This section applies where, immediately before the coming into force of section 129, a relevant child is being educated in an independent school in England and –
- (a) the school is for the time being approved by the Secretary of State under section 347 of the Education Act 1996 (c. 56), or 30
- (b) the Secretary of State has consented to the child being educated there under subsection (5)(b) of that section.
- (2) In subsection (1) “a relevant child” means a child with special education needs – 35
- (a) for whom a local education authority in Wales maintains a statement under section 324 of the Education Act 1996 (statement of special educational needs), or
- (b) for whom no local education authority maintains such a statement and who is in the area of a local education authority in Wales. 40
- (3) On the coming into force of section 129 the Welsh Ministers are deemed to have consented, under section 347(5)(b) of the Education Act 1996, to the child being educated at the school.
- (4) The Welsh Ministers may withdraw consent deemed to have been given under subsection (3) as if it had in fact been given. 45

- (5) In this section “child” has the same meaning as in Part 4 of the Education Act 1996 (c. 56) (see section 312(5) of that Act).

PART 5

MISCELLANEOUS AND GENERAL

CHAPTER 1

5

PRE-16 EDUCATION AND TRAINING: WALES

132 Powers of National Assembly for Wales

In Part 1 of Schedule 5 to the Government of Wales Act 2006 (c. 32) (Assembly Measures), in Field 5 (education and training), after matter 5.10 insert –

“Matter 5.10A

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The inspection of education or training provided (whether or not at a school) for children who are not above compulsory school age.”

CHAPTER 2

MISCELLANEOUS

Maintained schools in England: behaviour and attendance etc

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133 Power of governing body: educational provision for improving behaviour

After section 29 of the Education Act 2002 (c. 32) insert –

“29A Power of governing body in England: educational provision for improving behaviour

- (1) The governing body of a maintained school in England may require any registered pupil to attend at any place outside the school premises for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil. 20
- (2) In subsection (1) “maintained school” does not include a maintained nursery school. 25
- (3) Regulations must make provision –
- (a) requiring prescribed persons to be given prescribed information relating to the imposition of any requirement under subsection (1), and
- (b) requiring the governing body of the school to keep under review the imposition of any such requirement. 30
- (4) Regulations under this section may also make provision –
- (a) requiring a governing body exercising functions under subsection (1) or under the regulations to have regard to any guidance given from time to time by the Secretary of State, 35

- (b) requiring the governing body to request prescribed persons to participate in any review of the imposition of any such requirement,
- (c) about the time within which the first review must be held and the intervals at which subsequent reviews must be held, and 5
- (d) in relation to any other matter relating to the exercise of the power conferred by subsection (1).”

134 Application of s.444 of Education Act 1996 to alternative education provision

- (1) Section 444ZA of the Education Act 1996 (c. 56) (application of section 444 to alternative education provision) is amended as follows. 10

- (2) After subsection (1) insert –

“(1A) Where –

- (a) a child of compulsory school age has been excluded for a fixed period on disciplinary grounds from a relevant school in England, 15
- (b) the child remains for the time being a registered pupil at the school,
- (c) the appropriate authority for the school has made arrangements under section 19 above or section 100 of the Education and Inspections Act 2006 for the provision of full-time education for the child otherwise than at the school or at the child’s home during the period of exclusion, and 20
- (d) notice in writing of the arrangements has been given to the child’s parent,

subsections (1) to (7) of section 444 have effect during that period as if the child were not a registered pupil at the school and as if the place at which the education is provided were a school and the child were a registered pupil at that school (so far as that would not otherwise be the case). 25

- (1B) Where – 30

- (a) a child of compulsory school age who is a registered pupil at a relevant school in England is required by the appropriate authority for the school to attend at a place outside the school premises for the purpose of receiving any educational provision, and 35
- (b) notice in writing of the requirement has been given to the child’s parent,

subsections (1) to (7) of section 444 have effect as if the place at which the child is required to attend were a school and the child were a registered pupil at that school (in addition to being a registered pupil at the school mentioned in paragraph (a)). 40

- (1C) Subsection (1B) does not apply if –

- (a) the place at which the child is required to attend is another relevant school (whether in England or elsewhere), and
- (b) the child is a registered pupil at that other school. 45

- (1D) In relation to a maintained school or a pupil referral unit –

- (a) references in subsection (1A) to exclusion are references to exclusion under section 52 of the Education Act 2002, and
 - (b) the requirement referred to in subsection (1B) is a requirement imposed under section 29(3) or 29A(1) of that Act.”
 - (3) In subsection (2)(a), after “relevant school” insert “in Wales”. 5
 - (4) In subsection (4) –
 - (a) in paragraph (a), after “within subsection (1)” insert “or (1A)”;
 - (b) in paragraph (b), after “within subsection” insert “(1B) or”; and
 - (c) in the words following that paragraph, after “(1)(b)” insert “, (1A)(d), (1B)(b)”. 10
 - (5) In subsection (5), after “(1)(b)” insert “, (1A)(d), (1B)(b)”.
 - (6) In subsection (6), after “subsection (1)” (in both places) insert “or (1A)”.
 - (7) In subsection (7) –
 - (a) after paragraph (a) insert –
 - “(aa) in relation to a place at which education is provided as mentioned in subsection (1A) of this section, means leave granted by any person authorised to do so by the appropriate authority for the school;”;
 - (b) in paragraph (b), after “subsection” insert “(1B)(a) or”. 15
- External qualifications* 20
- 135 Approved external qualifications: England**
- (1) Section 98 of the Learning and Skills Act 2000 (c. 21) (approved qualifications: England) is amended as follows.
 - (2) After subsection (2) insert –
 - “(2A) A body may be designated under subsection (2)(b) in relation to the giving of approvals under –
 - (a) section 96,
 - (b) section 97, or
 - (c) both of those sections.”
 - (3) Omit subsection (4) (which renders an approval given by a designated body ineffective unless the Secretary of State consents to the approval). 30
- 136 Approved external qualifications: Wales**
- (1) Section 99 of the Learning and Skills Act 2000 (approved qualifications: Wales) is amended as follows.
 - (2) After subsection (2) insert –
 - “(2A) A body may be designated under subsection (2)(b) in relation to the giving of approvals under –
 - (a) section 96,
 - (b) section 97, or
 - (c) both of those sections.”

- (3) Omit subsection (4) (which renders an approval given by a designated body ineffective unless the Welsh Ministers consent to the approval).

137 Functions of Qualifications and Curriculum Authority in England and Northern Ireland

- (1) The Education Act 1997 (c. 44) has effect subject to the following amendments. 5
- (2) Section 24 (functions of QCA in relation to external vocational and academic qualifications) is amended as follows.
- (3) In subsection (2) –
- (a) for paragraph (f) substitute –
- “(ea) to develop and publish criteria for the recognition of persons who, as outside persons, award or authenticate such qualifications or credits in respect of components of such qualifications; 10
- (eb) to recognise, where they meet such criteria, any such persons who apply to be recognised; 15
- (f) to develop and publish criteria for the accreditation of such qualifications where they are awarded or authenticated by persons recognised under paragraph (eb);” and
- (b) after paragraph (g) insert – 20
- “(ga) to develop and publish rules and procedures for dealing with the effect on the continued accreditation of such qualifications where any person awarding or authenticating them ceases to be recognised;”.
- (4) In subsection (4), for “(g)” substitute “(ga)”. 25
- (5) In subsection (7) –
- (a) in paragraph (a), after “a qualification” insert “or a credit in respect of a component of a qualification” and after “the qualification” insert “or component”; and
- (b) in paragraph (b), after “a qualification” insert “or a credit in respect of a component of a qualification”. 30
- (6) Section 26 (supplementary provisions relating to discharge by QCA of their functions) is amended as follows.
- (7) In subsection (3), after “the Authority” insert “recognise any person or”.
- (8) In subsection (3A) – 35
- (a) after “the Authority” insert “recognise any person or”;
- (b) after “at the time of” insert “recognition or of”;
- (c) after “conditions on” insert “recognition or”; and
- (d) after “continued” insert “recognition or”.
- (9) In subsection (4)(b)(i), for the words from “maintained” to “receiving the accreditation” substitute “maintained by the recognised person in question in relation to the award or authentication of qualifications generally or in relation to the award or authentication of the qualification in question”. 40
- (10) Section 26A (power of QCA to give directions) is amended as follows.

- (11) For subsection (1) substitute –
- “(1) If it appears to the Qualifications and Curriculum Authority –
- (a) that any recognised person has failed or is likely to fail to comply with any condition subject to which the recognition has effect, and 5
- (b) that the failure –
- (i) prejudices or would be likely to prejudice the proper award or authentication by that person of any accredited qualification, or
- (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain any accredited qualification awarded or authenticated by that person, 10
- the Authority may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the recognition has effect. 15
- (1A) If it appears to the Authority –
- (a) that any person who awards or authenticates any accredited qualification has failed or is likely to fail to comply with any condition subject to which the accreditation has effect, and 20
- (b) that the failure –
- (i) prejudices or would be likely to prejudice the proper award or authentication of the qualification, or
- (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification, 25
- the Authority may direct the person mentioned in paragraph (a) to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect.” 30
- (12) In subsection (2), for “the awarding body” substitute “the recognised person or (as the case may be) the person mentioned in subsection (1A)(a)”.
- (13) After subsection (3) insert –
- “(4) In this section –
- “accredited qualification” means a qualification accredited by the Authority, and 35
- “recognised person” means a person recognised by the Authority.
- (5) In this section any reference to the award or authentication of any qualification by any person is a reference to its award or authentication by any person alone or jointly with others.” 40

138 Functions of Welsh Ministers etc

- (1) The Education Act 1997 (c. 44) has effect subject to the following amendments.
- (2) Section 30 (functions in Wales in relation to external vocational and academic qualifications) is amended as follows.
- (3) In subsection (1) – 45

-
- (a) the existing paragraphs (i) to (vi) are re-numbered as paragraphs (a) to (f);
- (b) for paragraph (d) (as re-numbered) substitute –
- “(ca) to develop and publish criteria for the recognition of persons who, as outside persons, award or authenticate such qualifications or credits in respect of components of such qualifications; 5
- (cb) to recognise, where they meet such criteria, any such persons who apply to be recognised;
- (d) to develop and publish criteria for the accreditation of such qualifications where they are awarded or authenticated by persons recognised under paragraph (cb);” and 10
- (c) after paragraph (e) (as re-numbered) insert –
- “(ea) to develop and publish rules and procedures for dealing with the effect on the continued accreditation of such qualifications where any person awarding or authenticating them ceases to be recognised;” 15
- (4) For subsections (1B) and (1C) substitute –
- “(1B) The following functions are exercisable solely by the Welsh Ministers – 20
- (a) the functions set out in paragraphs (ca) and (cb) of subsection (1); and
- (b) the functions set out in the other paragraphs of that subsection so far as they relate to external qualifications other than National Vocational Qualifications. 25
- (1C) The functions set out in those other paragraphs so far as they relate to National Vocations Qualifications are exercisable as follows –
- (a) the functions set out in paragraphs (a) to (c), (d) and (ea) of subsection (1) are exercisable concurrently by the Welsh Ministers and the Qualifications and Curriculum Authority; 30 and
- (b) the functions set out in paragraphs (e) and (f) of that subsection are exercisable solely by the Qualifications and Curriculum Authority.
- (1D) Subsections (1B) and (1C) are subject to any exercise of the power conferred by subsection (2).” 35
- (5) After subsection (5) insert –
- “(6) Subsection (7) of section 24 (interpretation of references to the award or authentication by outside persons of external qualifications or credits in respect of components of them) applies for the purposes of this section as it applies for the purposes of that section.” 40
- (6) Section 32 (supplementary provisions relating to discharge by Welsh Ministers of their functions) is amended as follows.
- (7) In subsection (3), before “accredits” insert “recognises any person or”.
- (8) In subsection (3A) – 45
- (a) before “accredits” insert “recognises any person or”;
- (b) after “at the time of” insert “recognition or of”;

- (c) after “conditions on” insert “recognition or”; and
 - (d) after “continued” insert “recognition or”.
- (9) In subsection (4)(b)(i), for the words from “maintained” to “receiving the accreditation” substitute “maintained by the recognised person in question in relation to the award or authentication of qualifications generally or in relation to the award or authentication of the qualification in question”. 5
- (10) For section 32A substitute –
- “32A Power of Welsh Ministers to give directions**
- (1) If it appears to the Welsh Ministers –
- (a) that any recognised person has failed or is likely to fail to comply with any condition subject to which the recognition has effect, and 10
 - (b) that the failure –
 - (i) prejudices or would be likely to prejudice the proper award or authentication by that person of any qualification accredited by them or by the Qualifications and Curriculum Authority, or 15
 - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain any such qualification awarded or authenticated by that person, 20the Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the recognition has effect.
- (2) If it appears to the Welsh Ministers –
- (a) that any recognised person who awards or authenticates any qualification accredited by them has failed or is likely to fail to comply with any condition subject to which the accreditation has effect, and 25
 - (b) that the failure –
 - (i) prejudices or would be likely to prejudice the proper award or authentication of the qualification, or 30
 - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification, 35the Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect.
- (3) It shall be the duty of the recognised person to comply with any direction under this section. 40
- (4) Any direction under this section is enforceable, on the application of the Welsh Ministers, by a mandatory order. 40
- (5) In this section “recognised person” means a person recognised by the Welsh Ministers. 45
- (6) In this section any reference to the award or authentication of any qualification by any person is a reference to its award or authentication by any person alone or jointly with others.” 45

139 Functions of Qualifications and Curriculum Authority in Northern Ireland in relation to vocational qualifications

- (1) In section 24 of the Education Act 1997 (c. 44) (functions of QCA in relation to external vocational and academic qualifications), in subsection (4), for “National Vocational Qualifications” substitute “external qualifications which are vocational qualifications”.
- (2) In section 58 of that Act (extent etc.), in subsection (6), for “section 24(4)” substitute “section 24(4), (6) and (7)”.

Inspections of teacher training

140 Inspections of teacher training in England: removal of duty to notify 10

In section 18B(7) of the Education Act 1994 (c. 30) (period of notice to be given of inspections of teacher training), after “subsection (1)” insert “of training provided by a training provider in Wales”.

Schools forums

141 Constitution of schools forums 15

- (1) Section 47A of the School Standards and Framework Act 1998 (c. 31) (schools forums) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) Every local education authority must, in accordance with regulations, establish for their area a body to be known as a schools forum.” 20
- (3) After subsection (4) insert –
- “(4A) Regulations must provide for a schools forum to include –
- (a) members representing governing bodies of schools maintained by the relevant authority, and
- (b) members representing head teachers of such schools. 25
- (4B) Regulations may provide for a schools forum to include –
- (a) members representing such other persons –
- (i) as may be prescribed, or
- (ii) as the relevant authority may from time to time, in accordance with regulations, determine, and 30
- (b) other members,
- and may make further provision as to the constitution of a schools forum.”
- (4) In subsection (5), omit “the constitution”.

CHAPTER 3

GENERAL

142 Orders and regulations

- (1) The following are to be made by statutory instrument –
 - (a) orders and regulations made by the Secretary of State under this Act; 5
 - (b) orders made by the Welsh Ministers under section 149.
- (2) A statutory instrument containing –
 - (a) an order under section 3(5),
 - (b) regulations under section 5(1)(b) or section 49,
 - (c) regulations under section 117(1), or 10
 - (d) regulations under section 146 which amend or repeal any provision of an Act,may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing any other order or regulations under this Act, other than an order under section 149, is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (4) Any power of the Secretary of State to make an order or regulations under this Act includes power –
 - (a) to make different provision for different cases, circumstances or areas, 20
 - (b) to make provision generally or in relation to specific cases, and
 - (c) to make such incidental, supplementary, transitional, transitory or saving provision as the Secretary of State thinks fit.

143 Functions to be exercisable by Welsh Ministers

Any function conferred on the Secretary of State by section 141, so far as exercisable in relation to Wales, is to be taken to be transferred, immediately after that section comes into force in relation to Wales, to the Welsh Ministers by an Order in Council under section 58 of the Government of Wales Act 2006 (c. 32). 25

144 General interpretation

- (1) Subject to subsections (3) and (4), the Education Act 1996 (c. 56) and the provisions of this Act specified in subsection (2) are to be construed as if those provisions were contained in that Act.
- (2) The provisions of this Act referred to in subsection (1) are –
 - (a) Part 1 (other than section 9 and sections 31 to 33); 35
 - (b) Chapter 1 of Part 4;
 - (c) section 131;
 - (d) section 149(9).
- (3) Where an expression is given for the purposes of any provision falling within subsection (2) a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act. 40

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- (4) Sections 561 and 562 of the Education Act 1996 (c. 56) (Act not to apply to persons in service of the Crown or persons detained under order of a court) do not apply for the purposes of Part 1.
- (5) Unless the context otherwise requires, any reference in this Act to a community, foundation or voluntary school or a community or foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998 (c. 31). 5
- 145 Minor and consequential amendments, repeals and revocations**
- (1) Schedule 1 has effect to make minor and consequential amendments.
- (2) The provisions mentioned in Schedule 2 are repealed or revoked to the extent specified. 10
- 146 Power to make consequential and transitional provision etc.**
- (1) The Secretary of State may by regulations make –
 (a) such supplementary, incidental or consequential provision, or
 (b) such transitory, transitional or saving provision, 15
 as the Secretary of State considers necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) Regulations under this section may in particular –
 (a) provide for any provision of this Act which comes into force before another provision (of this or any other Act or in subordinate legislation) has come into force to have effect, until that other provision has come into force, with specified modifications; 20
 (b) amend, repeal or revoke any provision of –
 (i) an Act passed before or in the same Session as this Act, or
 (ii) subordinate legislation made before the passing of this Act. 25
- (3) Nothing in this section limits the powers conferred by section 142(4)(c) or 149(7)(c).
- (4) The amendments that may be made by virtue of subsection (2)(b) are in addition to those that are made by any other provision of this Act.
- (5) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30). 30
- 147 Financial provisions**
- (1) *There are to be paid out of money provided by Parliament –*
 (a) *any expenditure incurred by the Secretary of State or the Office for Standards in Education, Children’s Services and Skills by virtue of this Act, and* 35
 (b) *any increase attributable to this Act in the sums which by virtue of any other Act are payable out of money provided by Parliament.*
- (2) *Any sums received by the Secretary of State or Her Majesty’s Chief Inspector of Education, Children’s Services and Skills by virtue of this Act are to be paid into the Consolidated Fund.* 40

148 Extent

- (1) Subject as follows, this Act extends to England and Wales only.
- (2) Sections 71 to 75 extend to England and Wales and Scotland.
- (3) The following provisions extend to England and Wales, Scotland and Northern Ireland – 5
 - (a) section 142;
 - (b) section 146;
 - (c) this section;
 - (d) sections 149 and 150.
- (4) Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates. 10

149 Commencement

- (1) The following provisions of this Act come into force on the day on which it is passed – 15
 - (a) section 65, paragraphs 27 to 29 of Schedule 1 and the repeal in Schedule 2 relating to section 140 of the Learning and Skills Act 2000 (c. 21) (and section 145 so far as relating to those paragraphs and that repeal);
 - (b) sections 142 to 144;
 - (c) sections 146 to 148;
 - (d) this section; 20
 - (e) section 150.
- (2) Sections 132 and 140 come into force at the end of the period of 2 months beginning with the day on which this Act is passed.
- (3) The following provisions come into force in accordance with provision made by the Welsh Ministers by order – 25
 - (a) sections 136 and 138 and the repeals and revocations in Schedule 2 relating to – 30
 - (i) section 99(4) of the Learning and Skills Act 2000,
 - (ii) paragraph 8 of Schedule 17 to the Education Act 2002 (c. 32), and
 - (iii) paragraphs 19 and 20 of Schedule 1 to the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3239),35

(and section 145 so far as relating to those repeals and revocations);
 - (b) section 141 so far as exercisable in relation to Wales.
- (4) The remaining provisions of this Act come into force in accordance with provision made by the Secretary of State by order.
- (5) Before making an order under subsection (4) containing provision for the coming into force of sections 71 to 75, the Secretary of State must consult the Scottish Ministers and the Welsh Ministers. 40
- (6) Before making an order under subsection (4) containing provision for the coming into force of section 137(4) or 139, the Secretary of State must consult the Department for Employment and Learning in Northern Ireland.

-
- (7) An order under this section may –
- (a) make provision generally or for specified purposes only;
 - (b) make different provision for different purposes and in relation to different areas; and
 - (c) contain such transitory and transitional provisions and savings as the person making the order thinks fit. 5
- (8) An order under subsection (4) may provide for Part 1 to come into force with the substitution in section 1(b) of “the first anniversary of the date on which the person ceased to be of compulsory school age” for “the age of 18”.
- (9) The Secretary of State must – 10
- (a) exercise the powers conferred by subsections (4) and (8) so as to secure that Part 1 is in force with that substitution no later than the day after the day which is the school leaving date for 2013, and
 - (b) exercise the power conferred by subsection (4) so as to secure that Part 1 is in force without that substitution no later than the day after the day which is the school leaving date for 2015, 15
- subject, in each case, to any provision made by virtue of subsection (7).

150 Short title

- (1) This Act may be cited as the Education and Skills Act 2008.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56). 20

SCHEDULES

SCHEDULE 1

Section 146

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

REGULATION AND INSPECTION

5

Disability Discrimination Act 1995 (c. 50)

- 1 The Disability Discrimination Act 1995 is amended as follows.
- 2 For section 28D(7)(c) substitute –
 - “(c) schools approved under section 342 of the Education Act 1996 (non-maintained special schools).”;
- 3 For section 28M(2)(a) substitute –
 - “(a) schools approved under section 342 of the Education Act 1996 (non-maintained special schools); and”;
- 4 For section 28Q(4)(d) substitute –
 - “(d) a school approved under section 342 of the Education Act 1996 (non-maintained special schools);”.

Education Act 1996 (c. 56)

- 5 The Education Act 1996 is amended as follows.
- 6 For section 6(2) (reference to definition of special school) substitute –
 - “(2) A school is a special school if –
 - (a) it is specially organised, and
 - (b) in the case of a school that is not maintained by a local education authority, it is approved, as mentioned in section 337.”
- 7 In section 313(5) (codes of practice) for “Part” substitute “Chapter”. 25
- 8 In the table in section 580 (index), in the entry for “the Tribunal” for “(in Part IV)” substitute “(in Chapter 1 of Part 4).
- 9 In that table insert the following entries at the appropriate places –

“the Chief Inspector (in Chapter 2 of Part 4) | section 337A”

“a non-maintained special school (in Chapter 2 of Part 4) | section 337A”

“the relevant authority (in Chapter 2 of Part 4) | section 337A”

Protection of Children Act 1999 (c. 14)

- 10 In section 9 of the Protection of Children Act 1999 (the Tribunal) in subsection (2) (proceedings of Tribunal for which regulations may be made under that section) after paragraph (c) insert— 5
 “(cb) an appeal by virtue of section 342B or 342C of the Education Act 1996.”

Education Act 2002 (c. 32)

10

- 11 The Education Act 2002 is amended as follows.
- 12 In the definition of “qualifying body” in section 1(3) (interpretation) for paragraph (g) substitute—
 “(g) the proprietor of a school approved under section 342 of the Education Act 1996 (non-maintained special schools).” 15
- 13 Before section 157 insert—
“156A Application of Chapter to schools in Wales only
 (1) References in this Chapter to an independent school are to an independent school in Wales.
 (2) For provision regulating independent schools in England, see Chapter 1 of Part 4 of the Education and Skills Act 2008.” 20
- 14 In section 158 (the registers), omit subsections (1)(a) and (2).

Education Act 2005 (c. 18)

- 15 The Education Act 2005 is amended as follows.
- 16 For section 5(2)(g) (duty to inspect certain schools) substitute— 25
 “(g) schools approved under section 342 of the Education Act 1996 (non-maintained special schools).”
- 17 For section 28(2)(d) (duty to arrange inspections of certain schools) substitute—
 “(d) schools approved under section 342 of the Education Act 1996 (non-maintained special schools).” 30

Childcare Act 2006 (c. 21)

- 18 In the following provisions of the Childcare Act 2006 for “approved by the Secretary of State” substitute “approved”— 35
 (a) section 13(1)(c)(ii);
 (b) section 34(2)(a)(ii);

- (c) section 53(2)(a)(ii);
- (d) section 63(3)(a)(ii).

Education and Inspections Act 2006 (c. 40)

- 19 The Education and Inspections Act 2006 is amended as follows.
- 20 In section 11(9) for “approved by the Secretary of State” substitute “approved”. 5
- 21 In the following provisions for “approved by the Secretary of State or the Assembly” substitute “approved” –
 - (a) paragraph (e) of the definition of “relevant school” in section 88(5);
 - (b) the definition of “governing body” in that provision. 10

PART 2

MISCELLANEOUS

Children Act 1989 (c. 41)

- 22 In section 36(5)(b) of the Children Act 1989 (education supervision orders) –
 - (a) in sub-paragraph (ii), after “subsection (1)” insert “or (1A)”; and 15
 - (b) in sub-paragraph (iii), after “subsection” insert “(1B) or”.

Education Act 1996 (c. 56)

- 23 The Education Act 1996 has effect subject to the following amendments.
- 24 In section 444A(1)(b) (penalty notice in respect of failure to secure regular attendance at school of registered pupil), for sub-paragraph (iii) and the “or” before that sub-paragraph substitute –
 - “(iii) in a case falling within subsection (1A) of that section, to a place at which education is provided for a child in the circumstances mentioned in that subsection, or
 - (iv) in a case falling within subsection (1B) of that section, to a place at which a child is required to attend in the circumstances mentioned in that subsection,”. 25
- 25 In section 566(3) (evidence: documents) –
 - (a) in paragraph (a), after “subsection (1)” insert “or (1A)”; and
 - (b) in paragraph (b), after “subsection” insert “(1B) or”. 30
- 26 (1) Paragraph 8 of Schedule 35B (meaning of “eligible child” for purposes of section 508B) is amended as follows.
 - (2) In sub-paragraph (1), for paragraph (c) substitute –
 - “(c) the appropriate authority for the school has made arrangements for the provision of full-time education for him otherwise than at the school or at his home during the period of exclusion,”. 35
 - (3) In that sub-paragraph, for “the child is required to attend” substitute “the education is provided”.

- (4) In sub-paragraph (2), for paragraph (b) substitute –
 “(b) in relation to a maintained school or a pupil referral unit, references in that sub-paragraph to exclusion are references to exclusion under section 52 of the Education Act 2002.”

5

Learning and Skills Act 2000 (c. 21)

- 27 The Learning and Skills Act 2000 is amended as follows.
- 28 In the following provisions after “section” insert “139A or” –
- (a) section 6(3)(f);
 - (b) section 13(1)(b);
 - (c) section 35(3)(f);
 - (d) section 41(1)(b).
- 29 In section 140 (the title of which becomes “Assessments relating to learning difficulties: Wales”) –
- (a) in subsection (1)(a) after “local education authority” insert “in Wales”;
 - (b) in subsection (1)(b) for “Secretary of State believes” substitute “Welsh Ministers believe” and for “Part 1” substitute “Part 2”;
 - (c) in subsections (2) and (3) for “The Secretary of State” substitute “The Welsh Ministers”;
 - (d) in subsection (3)(b) for “to the Secretary of State” substitute “to the Welsh Ministers” and for “section 13” substitute “section 41”;
 - (e) in subsection (3)(c) for “Secretary of State’s opinion” substitute “opinion of the Welsh Ministers” and for “Part 1” substitute “Part 2”;
 - (f) in subsection (5) after “local education authority” insert “in Wales” and for “Secretary of State on his request” substitute “Welsh Ministers on their request”;
 - (g) omit subsection (6).

Anti-social Behaviour Act 2003 (c. 38)

- 30 In section 19(2) of the Anti-social Behaviour Act 2003 (parenting contracts in case of misbehaviour at school or truancy) –
- (a) in paragraph (b), after “subsection (1)” insert “or (1A)”; and
 - (b) in paragraph (c), after “subsection” insert “(1B) or”.

SCHEDULE 2

Section 146

REPEALS AND REVOCATIONS

35

<i>Title</i>	<i>Extent of repeal or revocation</i>
Education Act 1996 (c. 56)	In section 342(1), the word “his”. In section 349(1), the words “or 347”.
School Standards and Framework Act 1998 (c. 31)	In Schedule 30, paragraph 60.

40

<i>Title</i>	<i>Extent of repeal or revocation</i>	
School Standards and Framework Act 1998 (c. 31)	In section 47A(5), the words “the constitution”.	
Learning and Skills Act 2000 (c. 21)	Section 98(4). Section 99(4). Sections 114 to 121. Section 140(6).	5
Education Act 2002 (c. 32)	In section 158 – (a) subsection (1)(a) and the word “and” at the end, and (b) subsection (2). In Schedule 17, paragraph 8.	10
Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3239)	In Schedule 1, paragraphs 19 and 20.	15

Education and Skills Bill

A

B I L L

To make provision about education and training; and for connected purposes.

*Presented by Secretary Ed Balls
supported by
The Prime Minister,
Mr Chancellor of the Exchequer,
Secretary Des Browne, Mr Secretary Hutton,
Mr Secretary Hain, Mr Secretary Woodward,
Secretary John Denham,
Jim Knight, Caroline Flint,
Malcolm Wicks and
Mr David Lammy.*

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