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Education and Skills Bill

Bill 12 of 2007-08

The Education and Skills Bill introduces a new duty on young people in England to participate in education or training until the age of 18. The Bill follows the green paper *Raising Expectations: staying in education and training*, which described the perceived benefits to individuals, the economy and society of young people staying in education or training for longer. Responsibility for support services currently carried out by the Connexions service will be transferred to local education authorities (LEAs). The Bill makes changes relating to adult skills.

The Bill also provides for the transfer of the regulatory regime for independent schools in England from the Secretary of State for Children, Schools and Families to the Chief Inspector of Education, Children's Services and Skills (the new Ofsted)

There are miscellaneous provisions in relation to pupil behaviour, external qualifications, inspection of teacher training, and Schools Forums. Also a framework power is provided for the National Assembly for Wales to legislate in relation to the inspection of pre-16 education and training.

The territorial extent of the Bill varies according to the scope of the different provisions. The Bill contains provisions that trigger the Sewel Convention.

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Summary

The Education and Skills Bill was presented in the House of Commons on 28 November 2007. At the same time *Explanatory Notes*, an *Impact Assessment* and a *Memorandum of Delegated Powers* were also published. The Bill, as presented, is in five parts. Some of the provisions are linked to the Government's policies for reforming 14 to 19 education and improving the learning and skills of young people and adults. Other parts of the Bill are on separate matters particularly relating to the regulation and inspection of independent schools and colleges.

Part 1 introduces a new duty on young people in England to participate in education or training until the age of 18, and creates a statutory framework to support and enforce it with new duties on local education authorities (LEAs), educational providers and employers. The raising of the participation age will be introduced in two stages: to 17 by 2013 and to 18 by 2015. Provision is made for LEAs to enforce the participation duty, if necessary. They may issue attendance notices to young people who refuse to participate. New attendance panels will be created to hear appeals and to monitor the enforcement process. LEAs may also issue parenting contracts or parenting orders to parents of young people who are failing to fulfil the duty to participate. The proposals follow the green paper *Raising Expectations: staying in education and training* (March 2007), which described the perceived benefits to individuals and society of young people staying in education and training for longer. While there has been wide acceptance of the principle that young people will benefit from participating until they are 18, concern has been expressed about making it compulsory.

Part 2 makes provision for the transfer to LEAs of the information, advice and support services for young people currently provided by the Connexions service. This follows proposals in the *Youth Matters* green paper (July 2005). The funding for the Connexions service will be transferred to LEAs in April 2008. It is intended that LEAs will continue to maintain the Connexions database so as to help them provide the right support services to young people and promote the new duty on young people to participate in education or training. Part 2 also places a duty on LEAs to arrange for the assessment of the education and training needs of a person with a statement of special educational needs (SEN) during their last year of schooling. This takes account of the change in the Bill to raise the participation age. Other provisions in Part 2 include: a requirement for secondary schools to present careers information in an impartial way and to provide careers advice that is in the best interests of the child; an explicit duty on the Learning and Skills Council (LSC) to provide proper facilities for apprenticeships for 16 to 18 year olds, and to make reasonable provision for apprenticeships for those aged 19 and over; a requirement for LEAs to have regard to journey times in preparing their transport policies for students of sixth-form age attending educational establishments; and a requirement for LEAs to co-operate with partners who are responsible for 14 to 19 education and training.

Part 3 contains provisions in relation to adult skills. The issue of maintaining a sufficiently skilled workforce to meet the economy's needs in the face of growing global competition has become increasingly prominent, particularly since the publication of the Leitch Review of Skills in 2006. In its response to the review, the Government set out a range of goals relating to workforce skills for 2020 and outlined how it intended to achieve them. This Bill places duties on the LSC to provide a free entitlement to training for all adults in England aged over 19 up to their first full Level 2 qualification, with a similar entitlement up to Level 3 for those

aged 19-25. Provision is also made to enable the sharing of data between relevant departments and the devolved administrations in order to assist in the effective assessment and provision of education and training for those aged 19 and over.

Part 4 creates a wider definition of an independent educational institution in England, which includes certain part-time educational provision, to which the regulatory regime for independent schools in England will apply. That regime, currently contained in the *Education Act 2002*, is restated in Chapter 1 of Part 4. The regulatory framework for 'independent educational institutions' is changed so that the Chief Inspector of Education, Children's Services and Skills (the new Ofsted) and not the Secretary of State is the registration authority. The function of approving non-maintained special schools is also transferred from the Secretary of State to the Chief Inspector. Sixth-form pupils in non-maintained special schools are given a right to opt out of religious worship. (Pupils in mainstream maintained schools already have this right under the *Education and Inspections Act 2006*.) The Bill also seeks to amend section 347 of the *Education Act 1996* to remove in England the category of approved independent school for the placement of a child with a statement of SEN, and to remove the requirement for LEAs in England to seek consent to place pupils with statements of SEN in non-approved independent schools. Other changes in Part 4 include the introduction of a new management standard for independent educational institutions, and changes relating to fees for registration and inspection.

Part 5 includes miscellaneous provisions in relation to pupil behaviour, the Qualifications and Curriculum Authority (QCA) and the approval of external qualifications, the inspection of teacher training, and the constitution of Schools Forums. Also Part 5 creates a framework power for the National Assembly for Wales to legislate in relation to the inspection of pre-16 education and training.

The Bill extends to England and Wales. Many of the provisions apply to England only. A number of new or expanded powers are conferred on Welsh Ministers. (These are set out in table 1 of the *Explanatory Notes* to the Bill.) Five clauses that relate to sharing information extend to Scotland and trigger the Sewel Convention. Two clauses relating to the remit of the QCA extend to Northern Ireland.

This research paper outlines the key provisions of the Bill, and provides background on them. It is not intended to be a comprehensive account of the clauses. A detailed clause by clause account is given in the *Explanatory Notes* to the Bill.

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I Part 1 of the Bill: duty to participate in education or training (England)

A. Introduction

In March 2007 the Government's green paper *Raising Expectations: staying in education and training post-16*, proposed that the minimum age at which young people should leave education or training should be raised to 18.¹ The participation age would be increased in two stages: to age 17 from September 2013, and to 18 from September 2015. The green paper set out a detailed package of measures for consultation. Alongside the green paper the Government published an Initial Regulatory Impact Assessment on the estimated cost of the proposals.² (These projections have been reviewed and revised and are now published in the Impact Assessment that accompanies the Education and Skills Bill – see below).

In July 2007 the Government published a report of the consultation on the green paper's proposals. While it noted that there had been wide acceptance of the principle that young people would benefit from continuing to develop their skills formally until they were 18, it also noted that there was concern about making participation compulsory.³

Also in July 2007, the Government published *World Class Skills: Implementing the Leitch Review of Skills in England*.⁴ This set out the Government's plans to improve the skills of young people and adults. The Government's *Draft Legislative Programme*, published on 11 July 2007, announced that a bill would be introduced to ensure that young people stay in education or training until age 18, and to provide new rights to skills training for adults.⁵ In his Fabian Society lecture on 5 November 2007, Ed Balls, the Secretary of State for Children, Schools and Families, described the Government's proposals, and published a further document - *From policy to legislation*. This explained how the Government intended to proceed, and what aspects of the policy required legislation.⁶ Also on 5 November 2007, the Government published its strategy for reducing the proportion of young people not in education, employment or training.⁷

¹ *Raising Expectations: staying in education and training post-16*, Cm 7065, March 2007: <http://www.dfes.gov.uk/consultations/downloadableDocs/6965-DfES-Raising%20Expectations%20Green%20Paper.pdf>

² *Initial Regulatory Impact Assessment for Raising Expectations: staying in education and training post16*, DfES, March 2007: [http://www.dfes.gov.uk/consultations/downloadableDocs/RIA%20\[FINAL\]%20word%20version.pdf](http://www.dfes.gov.uk/consultations/downloadableDocs/RIA%20[FINAL]%20word%20version.pdf)

³ *Raising Expectations: Consultation Report*, DCSF, July 2007: <http://www.dfes.gov.uk/consultations/downloadableDocs/Raising%20Expectations%20Consultation%20Report.pdf>

⁴ <http://www.dfes.gov.uk/skillsstrategy/uploads/documents/World%20Class%20Skills%20FINAL.pdf>

⁵ <http://www.cabinetoffice.gov.uk/reports/governance.aspx>

⁶ *Raising Expectations: Staying in education and training post 16: From policy to legislation*, DCSF, November 2007: <http://www.dfes.gov.uk/14-19/documents/Raising%20Expectations.pdf>

⁷ *Reducing the number of young people not in education, employment or training (NEET) by 2013*, DCSF, 5 November 2007: <http://www.dfes.gov.uk/14-19/documents/NEET%20%20Strategy.pdf>

The Education and Skills Bill was presented in the House of Commons on 28 November 2007.⁸ *Explanatory Notes*⁹, an *Impact Assessment*¹⁰, a *Memorandum of Delegated Powers*¹¹ and a *Short Guide*¹² were also published.

B. Background

1. History

The *Education Act 1918* raised the compulsory school leaving age from 12 to 14. It also made provision for all young people to participate in at least part-time education until they were 18 but this provision was not implemented. The end of the First World War was followed by a period of austerity; public expenditure cuts dubbed the 'Geddes axe'¹³ meant that the aspiration of increasing participation was not achieved. The *Education Act 1944* made provision to raise the school leaving age to 16 but this was not implemented until 1972.¹⁴ The 1944 Act also re-enacted the 1918 provision to extend participation at least part-time until the age of 18 but again this was not implemented. The school leaving age has remained at 16 since 1972, although the leaving date was amended in 1997.¹⁵

2. Participation of 16 and 17 year olds in education, employment and training

At the end of 2006 around six out of every seven 16 and 17 year olds were provisionally estimated to be in some form of education or training. The large majority were in full-time education, others were in Government supported Work Based Learning (WBL)¹⁶, Employer Funded Training¹⁷ or other types of education and training including part-time courses. The latest data are summarised below:

⁸ *Education and Skills Bill*, Bill 12, Session 2007-08:

<http://www.publications.parliament.uk/pa/cm200708/cmbills/012/08012.i-v.html>

⁹ *Education and Skills Bill Explanatory Notes*:

http://www.publications.parliament.uk/pa/cm200708/cmbills/012/en/index_012.htm

¹⁰ *Impact Assessment of the Education and Skills Bill*, DCSF, 29 November 2009:

http://www.dfes.gov.uk/publications/educationandskills/docs/impact_assessment.pdf

¹¹ *Memorandum of Delegated Powers*, DCSF, 28 November 2007 (an electronic copy was not available at time of writing but a hardcopy was available from the Vote Office)

¹² DCSF, *Short Guide to the Education and Skills Bill*:

<http://www.dfes.gov.uk/publications/educationandskills/docs/BillNarrative.doc>

¹³ after Sir Eric Geddes who chaired a committee set up to suggest economies

¹⁴ SI 1972 No 444

¹⁵ The 1997 change introduced a single school leaving date - the last Friday in June in the school year in which a young person reaches age 16: DfES Circular 11/97, *School Leaving Date for 16 Year Olds*, September 1997

<http://www.teachernet.gov.uk/management/atoz/S/schoolleavingdate/index.cfm?code=furt>

¹⁶ Includes Advanced Apprenticeships, Apprenticeships, Entry to Employment and NVQ Learning.

¹⁷ Young people who received training in the previous four weeks, includes non-WBL apprenticeships.

Education, employment and training status of 16 and 17 year olds in England, 2006

	16 year olds		17 year olds		16 and 17 year olds	
	number	% of population	number	% of population	number	% of population
Full-time education	516,900	78.1%	428,600	65.0%	945,500	71.5%
Work Based Learning	37,700	5.7%	51,600	7.8%	89,300	6.8%
Of which also in full-time education	1,300	0.2%	1,200	0.2%	2,500	0.2%
Employer Funded Training	15,000	2.3%	26,700	4.0%	41,600	3.1%
Other education and training	25,600	3.9%	32,000	4.9%	57,600	4.4%
Total education and training	593,800	89.7%	537,600	81.5%	1,131,400	85.6%
Not in any education or training	68,400	10.4%	122,000	18.5%	190,400	14.4%
Of which also not in employment	42,800	6.5%	62,700	9.5%	105,500	8.0%

Source: *Participation in Education, Training and Employment by 16-18 Year Olds in England: 2005 and 2006 and Participation in Education and Training by 16 and 17 Year Olds in each Local Area in England: 2004 and 2005, DCSF*

Overall participation rates were higher for 16/17 year old females at 88% compared to 83% for males. The gap was nearly 10 percentage points for full-time education participation, but young men were more likely to be in one of the training categories.

These figures are based on the academic year age of young people, i.e. their age at the start of the academic year. Therefore 16 year olds are in their first year after the end of compulsory education. The data are estimated as at the end of the calendar year, hence some of these young people will have had their 17th/18th birthdays.

Among the one million 16 and 17 year olds in full or part time education in 2006, 426,000 were in further education/specialist colleges, 366,000 were in maintained schools, 130,000 in sixth form colleges and 82,000 in independent schools. The overall number in full-time education has increased by 14% over the last decade; the largest proportionate increases were at sixth form colleges (22%) and at maintained schools (19%). There was relatively little difference in the type of education attended by 16 and 17 year olds. A slightly higher proportion of 17 year olds attended further education colleges at the expense of maintained schools.¹⁸ Trends in participation by broad status are summarised in the table at the end of this section.

In the early 1950s (when the school leaving age was 15) fewer than one in five 16 year olds and fewer than one in ten 17 year olds were in full time education in England and Wales. Immediately before the leaving age was increased to 16 (1972) these figures had increased to around one in three 16 year olds and one in six 17 year olds. The 16 year olds' participation rate reached 50% in the mid 1970s; the 17 year olds' rate reached this level in the early 1990s.¹⁹ At the end of 2006 78% of 16 year olds and 65% of 17 year olds were in full time education in England.²⁰ Both were record highs.

¹⁸ DCSF SFR 22/2007, *Participation in Education, Training and Employment by 16-18 Year Olds in England: 2005 and 2006 and Participation in Education and Training by 16 and 17 Year Olds in each Local Area in England: 2004 and 2005*

¹⁹ *Statistics of Education 1962 part one*, Ministry of Education; *Education and training statistics for the United Kingdom 2006 and earlier*, DfES

²⁰ DCSF SFR 22/2007F

a. 16 and 17 year olds not in education or training

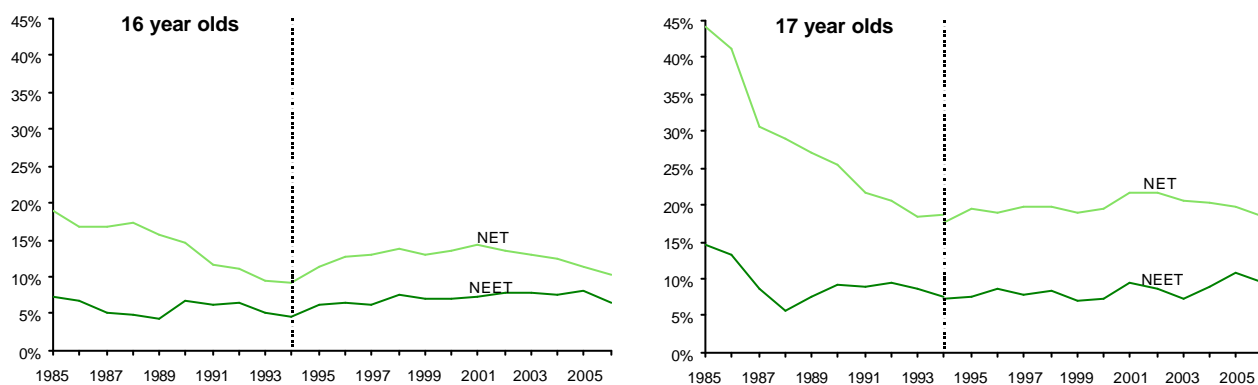
The earlier table showed that there were an estimated 190,000 16 and 17 year olds not in any education or training (NET), 106,000 of whom were not in work and hence not in any education, employment or training (NEET). The NEET rate among 16 and 17 year old males was 9.5% compared to 6.4% for females. 16 year olds had a lower NEET rate than 17 year olds (6.5% v 9.5%). Around 60% of those in the NEET category were classed as unemployed²¹, the rest were economically inactive.²²

While there is a particular focus of attention on young people who are not in education, employment or training (the 'NEETs'), the Bill proposes a duty on those in employment to participate in some training or education – hence it is also relevant for the 'NETs'.

The latest similar sub-national data collected is for the end of 2005. This only looked at education and Work Based Learning (WBL) and showed that the total proportion of 16 and 17 year olds *not* in either category was lowest in London (16%), the South East (18%) and the South West (18%) and highest in Yorkshire and the Humber (23%) and the East Midlands (21%).²³ More recent data from Connexions, which is not directly comparable, gives NEET rates at the end of 2006 which vary from 5.6% in the South East and 6.0% in the South West to 10.5% in the North East and 9.2% in Yorkshire and the Humber.²⁴

b. Trends

The table at the end this section summarises trends in NET and NEET rates. These are also illustrated in the charts below.



There was a break in the series in 1994 and there have been some recent more minor inconsistencies. However, some trends are clear. The NEET rate among 16 year olds fell in the early 1990s and increased steadily for much of the last decade to a high of 8.1% in 2005. The provisional fall to 6.5% in 2006 takes it to its lowest level for almost a decade. The NET rate for 16 year olds fell by a larger amount in the late 1980s and

²¹ ILO definition of unemployment

²² DCSF SFR 22/2007

²³ *ibid.*

²⁴ *NEET Statistics - Quarterly Brief*, DCSF

early 1990s as there was a general shift from employment and WBL to full-time education. This rate increased from 9.2% in 1994 to 14.3% in 2001, but has since fallen to 10.3% in 2006.

The NEET rate among 17 year olds fell by around half between 1984 and 1994 to 7.7%. This rate has increased more recently to 10.9% in 2005 before dropping back to 9.5% in 2006. The NET rate fell from 44% in 1984 to below 20% in 1993 as there was a major shift from employment to full-time education. The scale of this was even greater than that seen among 16 year olds. The level of this rate increased from the late 1990s onwards to almost 22% before falling back to below 18% in 2006.

Trends in education, employment and training status of 16 and 17 year olds in England ^{(a)(b)}

Percentages

	1985	1990	1995	2000	2001	2002	2003	2004	2005	2006p
Full-time education	39.7	51.1	65.6	65.6	64.8	65.4	66.0	67.2	69.2	71.5
Work Based Learning	16.1	19.1	11.6	9.5	8.4	7.9	8.1	7.9	7.4	6.8
Employer Funded Training	9.2	7.5	4.0	3.7	3.9	4.0	4.1	3.8	3.5	3.1
Other Education and Training ^(c)	4.5	3.5	4.3	4.9	5.2	5.2	5.2	4.9	4.5	4.4
Total Education and training	68.2	79.7	84.7	83.5	82.1	82.4	83.2	83.6	84.5	85.6
Total Not in any education or training	31.8	20.3	15.3	16.5	17.9	17.6	16.8	16.4	15.5	14.4
Of which also not in employment	11.0	8.0	6.7	7.1	8.4	8.2	7.7	8.3	9.5	8.0

Notes: There was a break in the series in 1994 due to changes in the source of further and higher education data.

(a) Participation estimates may be slightly underestimated for 16 year olds between 1999 and 2000 and 17 year olds between 2000 and 2001.

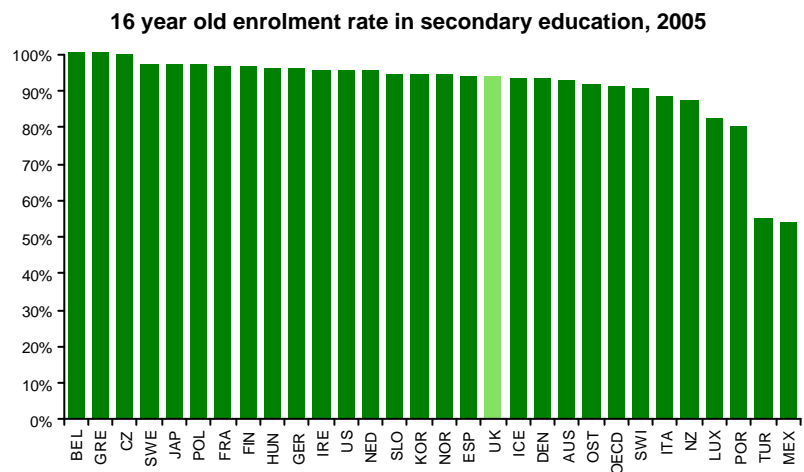
(b) There is a discontinuity from 2002 onwards whereby participation in additional institutions are included for the first time. This increases the full-time education rate by around 0.1 points and the any education or training rate by around 0.4 points

(c) Includes other part-time education not included elsewhere and full- or part-time education in independent further or higher education institutions.

Source: *Participation in Education, Training and Employment by 16-18 Year Olds in England: 2005 and 2006 and Participation in Education and Training by 16 and 17 Year Olds in each Local Area in England: 2004 and 2005, DCSF*

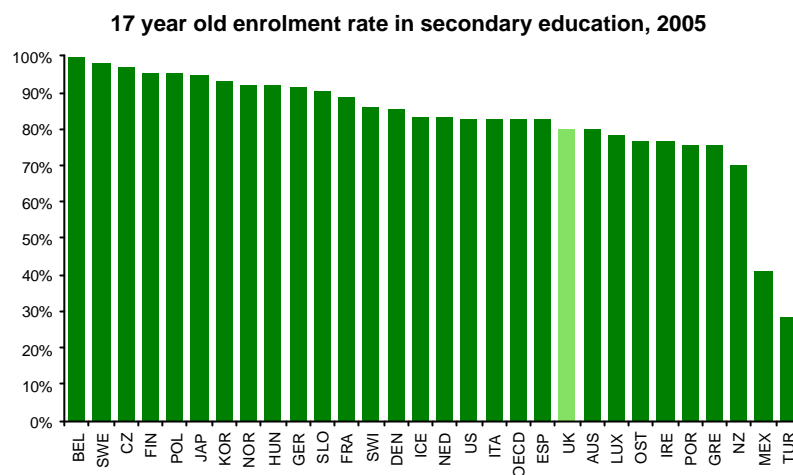
c. International comparison of enrolment in education

OECD data on enrolment by age look at the actual age of pupils/students, the rates calculated are different from those given earlier. In 2005 94% of 16 year olds and 80% of 17 year olds were in 'secondary'²⁵ education in the UK. The 16 year olds' rate was three percentage points above the OECD average, the 17 year olds' rate three points below. The UK's relative position is shown opposite.



²⁵ This is based on the assessed academic level using international classification which at their highest level split education into primary, secondary and tertiary. It does not mean these pupils are in secondary schools.

Although the UK's participation rate for 16 year olds was above the OECD average it was still below that of most other countries as the average was skewed downwards by much lower levels in Turkey and Mexico. The UK ranked 18th out of 29 states included in the 16 year olds measure and 20th on the 17 year olds rate.



Some of the countries ranked below the UK have relatively high enrolment rates in non-secondary education,²⁶ but direct comparisons cannot be made due to a lack of comparable data on enrolment on these types of education in the UK.²⁷

3. The green paper and the case for change

The green paper, *Raising Expectations: staying in education and training post-16*, described the perceived benefits to individuals and society of young people staying in education and training for longer.²⁸ It proposed a detailed package of measures for consultation. These were summarised in the DfES press notice launching the green paper:

- From 2013, young people should remain in education or training after 16 – this means the first pupils to be affected would be those entering secondary school in September next year.
- Young people would be required to work towards accredited qualifications at school, in a college, or in “on the job” training or day release;
- Apprenticeships will be significantly expanded so that they are available to any qualified young person who wants one;
- Participation should be full time for young people not in employment for a significant part of the week and part time for those working more than 20 hours a week;
- Better advice and guidance for young people to enable them to access the provision that's right for them;
- A high quality, accurate registration system to keep track of the education options a young person has chosen and to make sure they don't drop out;
- Building on the Education Maintenance Allowance we will consider new financial support measures to ensure young people from low income

²⁶ Tertiary and post-secondary non-tertiary

²⁷ *Education at a Glance 2007*, OECD, Table C2.3

²⁸ *Raising Expectations: staying in education and training post-16*, Cm 7065, March 2007: <http://www.dfes.gov.uk/consultations/downloadableDocs/6965-DfES-Raising%20Expectations%20Green%20Paper.pdf>

backgrounds get the support they need to overcome any barriers to participation.

To make sure the right provision is in place the new requirement would not be implemented until 2013 by which time the new Diplomas will be a National Entitlement. This will give young people a choice of A levels, GCSEs, the International Baccalaureate, the new Diplomas, Apprenticeships, and accredited in work training.

Young people would be supported to re-engage if they drop out through integrated Youth Support Services. Any enforcement process would be used only as a last resort if a young person refused to re-engage.²⁹

Chapter 2 of the green paper set out the evidential basis for raising the education and training participation age. This referred to research showing that young people who stay on in education and training after 16 are more likely to gain further qualifications by 18 than those who go into employment without training or drop out altogether. Individuals with qualifications earn more than those without. In addition to higher wages, better-qualified individuals have improved employment prospects and an increased likelihood of receiving workplace training. There are also wider benefits associated with higher qualification levels, such as improved health and better social skills. The green paper noted evidence on the relationship between higher levels of skills and qualifications and economic performance and productivity. It highlighted evidence suggesting that up to one fifth of the UK's output per hour productivity gap with Germany and an eighth of the gap with France results from the UK's relatively poor skills. The green paper also noted the wider benefits to society from increased participation. It stated that those who participate are less likely to experience teenage pregnancy, be involved in crime or behave anti-socially. The green paper refers to a study that looked at Offender Index data between 1984 and 2001 which showed that an additional year of compulsory schooling decreases conviction rates for property crime, and that it has also been estimated that compulsory schooling lowers the likelihood of committing crime or going to prison.³⁰

The green paper went on to outline the combination of measures taken so far to encourage increased participation. These include changes to the 14 to 19 curriculum and the introduction of new specialist diplomas with an emphasis on applied and practical learning; changes to the curriculum for 11 to 14 year olds to allow greater flexibility and personalisation of learning; an expansion of work-based learning; from September 2007 a 'September Guarantee' of an offer of an appropriate learning place for every young person leaving school at 16; improvements in information, advice and guidance for young people to help them make choices; and financial support through educational maintenance allowances.

The Leitch Review of Skills, *Prosperity for all in the global economy – world class skills*, published in December 2006, projected a sharp decline in low-skilled jobs up to 2020

²⁹ DfES Press Notice, *Economic success depends on all young people staying on in education or training*, 22 March 2007: http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2007_0049

³⁰ *ibid.*, paragraph 2.7

and the increasing importance of high-tech jobs. It emphasised the challenges facing the British economy from globalisation and increased competition, and called for the British workforce to be as highly skilled as possible. (Further background on the Leitch Review is provided in Part 3 of this research paper.)

The *14 to 19 Education and Skills* white paper contained the aim of increasing participation to 90% of 17 year olds by 2015.³¹ The Government believes that the aim of 90% participation 'may be close to the maximum that can be achieved without compulsion. This would mean a significant proportion of the future workforce may lack the basic skills necessary to succeed in the workplace, and that society and the economy will not feel the associated benefits with these people being employed.'³² The Government argues that by compelling young people to remain in education or training to 18, it will be giving maximum opportunity for them gain qualifications, reduce costs associated with being not in education, employment or training, and train the work force for the future.³³

The green paper emphasised the measures that will be in place to encourage and support young people to participate, and it also set out the case for compulsion and the need to enforce the duty to participate. It referred to the experience of other countries (such as some US states and provinces in Canada) that have extended compulsory participation but with little effect where there has not been an effective enforcement system. The green paper pointed to the experience of Western Australia where participation has increased dramatically after a clear enforcement system was set out, comprising different levels of fines for young people, parents, providers and employers.³⁴

An enforcement system would need an accurate registration system, and the green paper envisaged that the system currently being used by the Connexions Service to gather data would be built on to create a comprehensive information system on the education and training experiences of young people. Responsibility for the system would transfer to local authorities as part of the transition of Connexions to local authorities. The green paper proposed key duties on providers (schools, colleges, work-based learning providers, and employers providing training) to inform the system as soon as a young person drops out. Steps would be taken to encourage and support the young person to re-engage. Where a young person refused to participate despite efforts of providers and the local authority to help them on to a programme of learning, action could be taken to enforce participation. The green paper proposed a new type of Attendance Order, and invited views on the feasibility of criminal and civil sanctions.

³¹ Cm 6476 February 2005

³² *Initial Regulatory Impact Assessment for Raising Expectations: staying in education and training post-16*, DfES, March 2007, paragraph 24

³³ *ibid.*, paragraph 25

³⁴ Green paper, *Raising Expectations: staying in education and training post-16*, paragraph 7.24

4. Responses to the green paper

A written answer to a PQ summarised written responses:

Mr. Laws: To ask the Secretary of State for Children, Schools and Families how many and what proportion of (a) young people and (b) all people consulted by his Department (i) supported, (ii) opposed and (iii) neither supported nor opposed the Government's proposal to extend the education leaving age to 18 years; and if he will make a statement. [163323]

Jim Knight: We received a total of 473 written responses to 'Raising Expectations' in the formal full consultation, and just under 1,000 written responses from young people in response to the magazine 'Reach', the additional young people's materials we developed. These included 14 group responses, representing a total of 805 young people.

In response to the question of whether they supported the Green Paper's central proposal to raise the participation age to 18, in the written response to 'Raising Expectations', 44 per cent. (202 people) were in agreement with the proposal, compared to 40 per cent. (186 people) who were opposed and 16 per cent. (76 people) who were unsure.

In the written responses to the young people's materials, 47 per cent. (450 young people) were against, 36 per cent. (345 young people) agreed and 17 per cent. (165 young people) were not sure.³⁵

a. *The Consultation Report: some highlights*

In July 2007 the Government published a report of the consultation on the green paper's proposals.³⁶ While the Consultation Report noted that there had been wide acceptance of the principle that young people would benefit from participating until they were 18, it also noted that there was concern about making this compulsory. The following highlights some of the responses particularly on the issue of compulsory participation. This can only give a flavour of some of the reaction, and readers are advised to consult the Consultation Report for a full account.

The Consultation Report noted:

Many respondents thought that it should not be compulsory for young people to participate in education or training beyond the age of 16 and that they should be free to choose what they wanted to do with their lives at this point. It was felt that compulsion was unnecessary and that the current situation, where young people had the option to stay in education or training should continue. Respondents said that the majority of young people chose to participate already, so making it compulsory seemed excessive.³⁷

³⁵ HC Deb 14 November 2007 c274W

³⁶ *Raising Expectations: Consultation Report*, DCSF, July 2007:
<http://www.dfes.gov.uk/consultations/downloadableDocs/Raising%20Expectations%20Consultation%20Report.pdf>

³⁷ *ibid.*, p5

Some respondents questioned whether disillusioned young people could be encouraged to participate meaningfully:

Respondents worried whether young people who were already disillusioned with education could be encouraged to participate meaningfully. A delegate asked at one of the regional conferences, “don’t young people have a right to opt out if they are totally disengaged?” There was also concern about the capacity in the system to cope with additional students, some of whom would rather not be participating, and whether this could act as a distraction for other learners.³⁸

The Consultation Report noted that many respondents did not agree that participation should be compulsory, however desirable, because they felt that a young person should have freedom of choice.

Some respondents expressed worries about the financial implications the change could have on families. The Response Report noted that there may have been some misunderstanding of the proposals as young people will have the option to work alongside participating in education or training.³⁹ The majority of people consulted agreed that financial support would play a key role.⁴⁰

The green paper had proposed two versions of the participation policy – that young people should participate in education or training until their 18th birthday (the Government’s stated preference at that time) or an alternative that they participate in education and training until their 18th birthday or completion of a level 2 qualification (5 A* to C GCSEs or equivalent), whichever is the earlier. The majority of respondents preferred the second version of the policy.⁴¹ The *From Policy to Legislation* document published on 5 November 2007 stated that young people should participate until their 18th birthday or until they have completed their A levels or equivalent, whichever is the sooner. The small number of young people who achieve this before their 18th birthday would therefore still be able to take a gap year before going into higher education, for example.⁴²

Some concern was expressed by respondents about whether there would be sufficient capacity in the system to accommodate all 16 and 17 year olds.⁴³

Under the proposals employers who do not wish to provide training or arrange training for their employees would be required to release the young person from work to undertake training for a sufficient time to allow the employee to work towards an accredited qualification. One area of concern expressed was that the commitment needed by employers to take on this role may be too much. In particular it was felt that the proposals could pose a significant challenge to small and medium-size enterprises.

³⁸ *ibid.*, p6

³⁹ *ibid.*, p6

⁴⁰ *ibid.*, p17

⁴¹ *ibid.*, p9

⁴² *Raising Expectations: Staying in education and training post 16: From policy to legislation*, DCSF, November 2007, paragraph 3.5

⁴³ *ibid.*, p12

Some respondents said that there was a danger that the proposals could be a disincentive to take on young people. Respondents suggested that it would be important to offer employers incentives. Some respondents thought that some regulation and compulsion of employers may be needed. There was also concern that some young people with special educational needs might be unable to find satisfactory work-based learning. Some respondents noted that there was no legal duty to promote learning for other age groups and thought that employers should not be asked to undertake work that they felt should have been done in schools. While many respondents urged the need for incentives for employers, some said that employers should pay all young people a reasonable wage. Some felt that it would be necessary to sell the benefits of having a more highly skilled workforce.⁴⁴

There were mixed views about the enforcement proposals. As some respondents were against compulsion, they thought that the system of enforcement was the entirely wrong approach. Others agreed with the principle but disagreed with the approach to enforcement set out in the green paper, commenting that it was too heavy handed and could further alienate disaffected young people. Some respondent questioned whether the system would be workable in practice.⁴⁵ The Response Report noted that in the magazine *Reach* different options for enforcement were discussed, and 56% of respondents agreed that young people who refused to attend education or training should be penalised by stopping any financial support they were getting, as set out in chapter 7 of the green paper.⁴⁶ 29% went further and suggested that those not attending should be fined. However some felt that these measures would serve to make a person less likely to return to their course as there would be a greater need to earn money to pay a fine.

On the issue of whether there should be criminal sanctions or civil/administrative sanctions, more respondents favoured administrative/civil sanctions. Many respondents said that criminalising young people would not help.⁴⁷

b. Reaction from specific organisations

Many interested organisations responded to the green paper. Extracts from a selection are given in Appendix I to this research paper. These include various bodies representing children and young people, the Local Government Association and the Learning and Skills Council, trade unions including the main teacher and college unions, and employers' bodies. Inevitably the extracts only highlight some of the views expressed; many of the organisations quoted have much more detailed information about their views on particular issues and their full responses can be found on their websites.

⁴⁴ *ibid.*, pp20-22

⁴⁵ *ibid.*, p27

⁴⁶ *ibid.*, p27

⁴⁷ *ibid.*, p28

c. Party political reaction

In response to the green paper, David Willetts, the then Conservative shadow education secretary, warned that forcing young people to stay in education and training would not guarantee they gain valuable qualifications. He urged the government to tackle underachievement at every stage of their development:

We are sceptical about simply forcing young people to stay in education or training until 18 because this does not of itself improve the education of young people, raise their skills or increase their chances of getting a job. In fact, it runs the danger of keeping teenagers in education, but not giving them a qualification. Even if they do gain qualifications, these may not improve their career and earnings prospects, since some NVQs have a negative value for their holders. And if they want to work, teenagers may be priced out of a job market because some employers will simply stop hiring 16-18 year-olds if they have to train them. Labour ignores that being in employment itself improves employability and social mobility.

The government needs to explain what compulsion would really mean. Will non-complying teenagers be jailed? Or their parents? Alan Johnson has spoken about the potential withdrawal of benefits for non-compliance, but would strict enforcement of compulsion to 18 really be feasible? Also, this comes at a time when Labour considers dropping compulsion from the New Deal programme which was once considered integral to its success.

Instead of conscripting teenagers into education and training until 18, we should address the problems of NEETs and educational underachievement at each stage of young people's development: school, career choice, vocational training and support for getting into work. First, we should raise standards in our schools by introducing synthetic phonics in all primary schools and promoting greater use of setting in secondary schools. Rigour needs to be restored to school exams and league tables should focus on the core subjects. Second, we should introduce a more effective careers service in schools so pupils can make informed career and training choices. For example, advising pupils choosing their GCSEs at 14 will help them to avoid picking subjects that are unsuitable to the kind of job they would like to do later in life. Third, we need to improve the quality of apprenticeships and NVQs, for example by making sure their curriculum teaches what employers really need. Fourth, we need to reform the New Deal to ensure participants don't immediately slide back into benefits once they leave the programme.

I fear compulsion to 18 would not work if all the chancellor offers young people is inadequate schooling, virtual apprenticeship and training schemes that don't boost employability. Instead, we need better schools, better vocational training and apprenticeships that employers really value. That is the only way to reverse the dramatic increase in the number of young people not in education, employment or training.⁴⁸

⁴⁸ *Qualifications not duration key to education*, 11 June 2007: [http://www.politics.co.uk/feature/education/schools/school-leaving-age/qualifications-not-duration-key-education-\\$474674.htm](http://www.politics.co.uk/feature/education/schools/school-leaving-age/qualifications-not-duration-key-education-$474674.htm)

More recently, Michael Gove, Shadow Secretary of State for Children, Schools and families, said that those leaving school should be offered 'high quality education and training whenever they think it will be useful – not when politicians think it will be useful'.⁴⁹ In the Debate on the Address, Michael Gove said that the Bill was being introduced for political reasons. He said that the numbers not in employment, education or training had risen under the Government and that therefore it wanted 'to get that embarrassing statistic down by legislating that record of failure out of existence.'⁵⁰

In response to the green paper, Sarah Teather, the then Liberal Democrats' education spokesperson said:

There is no doubt that in many areas our secondary school system is in dire straits, with failing schools, large numbers of students leaving at 16 with fewer than five A-C GCSE passes, high truancy rates, and chronic underachievement. In an increasingly global and service-based economy, where the number of unskilled jobs is falling fast, it is clear that something has to change if we are not to be left with large numbers of unemployed young people with none of the skills needed to hold down a job in the 21st Century.

Keeping teenagers in education or training, whether academic or work-based through apprenticeships, will go a long way towards addressing this. However, bold as this move is, I feel that an opportunity is being missed. We cannot address the problem of secondary school leaving rates only by making education and training compulsory to 18; we must also address the reasons why teenagers leave school at 16 in the first place. We must accept that for many students the secondary curriculum is old fashioned, uninteresting, and doesn't respond to their needs, while employers and universities alike complain that school leavers do not come equipped with the skills they need. Many young people have mentally switched off long before they get to 16.

The solution, therefore, would be to couple a rise in the school learning age with a comprehensive reform of the national curriculum and the replacement of GCSEs and A-Levels with a modern British Diploma system. Students should be able to mix vocational courses with academic learning in a way that would make the learning experience relevant to all teenagers, not only those who seek an academic education to prepare them for university.

We would introduce real choice into the education system, not only between different types of institution as proposed by the current government – but also in what is studied and how. I believe now is the time for the government to enact the proposals of the Tomlinson Report. This would end the historical betrayal of children at both ends of the academic spectrum, where the brightest are not stretched and many others are completely disenfranchised. It would also encourage students to stay in education by empowering them and allowing them to have real control over what they study.

⁴⁹ "Education reforms draw critics", *Financial Times*, 6 November 2007, p2

⁵⁰ HC Deb 13 November 2007 c630

We believe that this would keep teenagers in education, not because they are forced to sit through another two years of it, but because they will gain a meaningful qualification that will benefit them in their future lives.⁵¹

More recently, David Laws, Liberal Democrat spokesperson on Children, Schools and Families has described the plans as a 'big brother' approach based on 'threats, compulsion, fines, inspectors and criminal sanctions'.⁵²

Barry Sheerman, chairman of the Education and Skills Select Committee (now the Committee for Children, Schools and Families) welcomed the green paper's proposals but thought that they did not go far enough. He explained how his Private Member's bill (introduced last Session) could have further benefited young people marginalised by the current system by making a holistic assessment of their accomplishments, aptitudes, goals and abilities upon leaving school; by providing access to a mentor for each child; by providing a "community leadership programme" to enable young people to volunteer in the community; and by LEAs ensuring that young disabled people and young people with special educational needs benefited from an effective transition through education into further education, training or employment.⁵³ Speaking in the Debate on the Address, Barry Sheerman strongly welcomed the Bill.⁵⁴

C. Overview of the proposed system for raising participation

The following account is largely drawn from the Government's proposals as set out in the green paper, the subsequent document *From policy to legislation*, from recent answers to parliamentary questions, and the Explanatory Notes on the Bill.

The Government has stressed that the proposals are for the education and training leaving age, not only the school leaving age. Young people will be able to participate in a wide range of different ways - though full-time education, for example, at school or college; in work-based learning, such as apprenticeship; or one day a week part-time education or training, if they are employed, self-employed or volunteering more than 20 hours a week.⁵⁵ The Government estimates that most of the additional places required will be in FE colleges, not schools.⁵⁶

Young people should participate until their 18th birthday or until they have completed their A levels or equivalent to level 3, whichever is the sooner. The small number of young people who achieve this before their 18th birthday would therefore still be able to take a gap year before going into higher education, for example. The Government believe that young people should work towards recognised qualifications, although it is not intending

⁵¹ *Time to end historical betrayal of school children*, 11 June 2007: [http://www.politics.co.uk/feature/education/schools/school-leaving-age/time-end-historical-betrayal-school-children-\\$474670.htm](http://www.politics.co.uk/feature/education/schools/school-leaving-age/time-end-historical-betrayal-school-children-$474670.htm)

⁵² "Education reforms draw critics", *Financial Times*, 6 November 2007, p2

⁵³ [http://www.politics.co.uk/feature/education/schools/school-leaving-age/keeping-young-people-in-education-or-training-\\$474669.htm](http://www.politics.co.uk/feature/education/schools/school-leaving-age/keeping-young-people-in-education-or-training-$474669.htm)

⁵⁴ HC Deb 13 November 2007 c590

⁵⁵ Ed Balls, Secretary of State for Children, Schools and Families, Fabian Society lecture on 5 November 2007: <http://fabians.org.uk/events/progressivemanifesto-EdBalls-07/speech>

⁵⁶ HC Deb 15 November 2007 c425W

to make curriculum requirements of independent providers or home education. Publicly funded courses will however include functional skills in English and maths, at least up to level 2.

The primary responsibility for participating in education or training will rest with the young person. However, local authorities, parents, providers and employers are all to play a part.

There will be a duty on young people to participate. This will apply to all young people resident in England. High quality information advice and guidance will be needed on possible options. There will also need to be financial support so that money is not a barrier to participation, and targeted support to, for example, those young people with special educational needs, those who are homeless, and those who have caring responsibilities.

Parents will be expected to assist their children to participate. *Every Parent Matters* set out the Government's strategy to ensure that parents have access to a range of information, advice and support about services for their children.⁵⁷

Providers will be responsible for the quality of their provision, and for ensuring young people attend by helping them if they encounter problems. There will be a duty on providers to inform the local authority if a young person drops out of education or training.

Employers will have a central role providing work-related learning. There will be no requirements on them if they employ a 16 or 17 year old for fewer than 20 hours a week, or if they provide accredited training themselves. Where employers are not providing accredited training they will have to release the young person for the equivalent of one day a week so that they can train elsewhere. Employers will not be required to pay the young person for that time. There will be duties on them to check the young person's evidence that they are in learning. The green paper stated that the overall burden on employers would be kept as low as possible. It said that employers who had been found breaking the law would be asked to put the situation right. In a rare case of an employer failing to respond to such a request, a formal enforcement notice would state what action the employer needed to take and by when. Only where such a notice was ignored would there be a fine, but the green paper expected that very few, if any, cases would reach that point.

Local authorities will be responsible for ensuring that young people resident in their area participate and they will be responsible for providing the necessary support. They will be required to take action if they believe that a young person is not receiving suitable education or training. Key to this will be the need to maintain up-to-date and accurate information about what young people are doing. This will be done through building on the existing Connexions Service's Client Caseload Information System (CCIS). As proposed

⁵⁷ *Every Parent Matters*:
http://www.teachernet.gov.uk/doc/11184/6937_DFES_Every_Parent_Matters_FINAL_PDF_as_published_130307.pdf

in *Youth Matters* the duty to provide the Connexions Service will transfer to local authorities, including the duty to maintain the registration system. The duty to assess the education and training needs of young people with special educational needs will also transfer to local authorities.

Enforcement

Where a young person refuses to participate despite efforts of providers and the local authority to help them on to a programme of learning, action could be taken to enforce participation. The green paper proposed a new type of Attendance Order. The *From Policy to Legislation* document said that the system will be designed to ensure that each individual will be treated fairly and that full account will be taken of personal circumstances so that formal action will not take place unless it is justified. Where there are signs of a young person having problems, the first step would be for the provider to try to help address the problems and offer additional support or identify another learning programme. If a young person drops out of learning altogether, the learning provider will be required to inform the local authority's registration system. The local authority's guidance service will contact the young person to identify an alternative learning option and provide support to take up the opportunity. If the young person still does not participate they will be given a formal last chance to participate voluntarily.

Local authorities will decide on a case by case basis when it is appropriate to take more formal action. The local authority will have the power to issue an Attendance Notice specifying precisely the provision the young person must attend, and where and when s/he must do this. There would be a right of appeal to an independent panel, set up by the local authority. The panel would have powers to confirm or dismiss the Attendance Notice and to recommend what action the local authority should take. The local authority would be able to issue a young person in breach of an Attendance Notice with a Fixed Penalty Notice. Again there would be a right of appeal to the independent panel, which could confirm or dismiss the notice. Cases of unpaid fines could be brought before the Youth Court as a last resort. The penalty on conviction would be a fine. The *From Policy to Implementation* document said that custody would not be used as a means of enforcing fines though the Youth Court would have a number of other options including taking money from wages or imposing an unpaid work requirement.⁵⁸

Where a young person is not participating and parents are considered to be part of the problem, the local authority would be able to enter into a parenting contract setting out what the parent agrees to do and the support the authority will provide. It would also be able to apply to the Magistrates' Court for a Parenting Order obliging the parents to comply with certain requirements.⁵⁹

⁵⁸ *Raising Expectations: Staying in education and training post 16: From policy to legislation*, DCSF, November 2007, paragraph 4.34

⁵⁹ *ibid.*, paragraph 4.35

Parenting Contracts and Parenting Orders are already available to help local authorities address school children's behaviour and attendance issues with parents where they are otherwise unwilling to co-operate.⁶⁰

D. Suitable provision and enabling young people to participate: the 'four building blocks'

Underpinning the proposed requirements to participate are the measures that the Government has already taken or is taking to ensure that there is suitable post 16 opportunities and support. These are described by the Government as the 'four building blocks':

- curriculum and qualifications that provide the right learning opportunity for every young person, personalised to their needs, aptitudes and aspirations, including a solid grounding for all in functional skills in English, maths and ICT; stretching A-levels with extended projects, and GCSEs with less focus on coursework; and Diplomas which mix the best of theoretical and practical learning;
- advice and guidance that helps all young people make the right choices; with clear specifications for local authorities to provide every young person with guidance on the educational choices available to them, including local online prospectuses setting out the full range of courses; and 'taster' experiences to try out different courses;
- financial support so that no one is excluded because of cost; including an expansion of the Education Maintenance Allowance to support a broader range of courses and Entry to Employment programmes; changes to the New Deal programme; and continuing the Care to Learn scheme to pay for childcare for young mothers as they continue in post-16 education;
- employer engagement and the right training and apprenticeships to deliver a major expansion in high quality workplace learning, including the creation of a further 90,000 apprenticeships for young people by 2013 (a 60 per cent increase on the current number).⁶¹

Details of developments in each of these policy areas are described in the green paper, the *From Policy to Legislation* document and the Government's strategy for reducing the proportion of young people not in education, employment or training.⁶² The following gives some background on some of the developments in each area.

⁶⁰ DfES, *Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty notices*, 2004 <http://www.teachernet.gov.uk/docbank/index.cfm?id=6430>

⁶¹ DCSF Press Notice, *Raising the Participation Age – Four Building Blocks*, 5 November 2007: http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2007_0198

⁶² *Reducing the number of young people not in education, employment or training (NEET) by 2013*, DCSF, 5 November 2007: <http://www.dfes.gov.uk/14-19/documents/NEET%20%20Strategy.pdf>

a. 14 to 19 diplomas

The development of the diplomas is a central plank of the Government's proposals to raise the compulsory participation age to 18.

The *14-19 Education and Skills* white paper, which was published in February 2005, set out proposals for the reform of post-14 curriculum and qualifications with the aim of ensuring that all pupils benefit from the style and pace of learning that suits them.⁶³ The white paper followed the green paper, *14-19: extending opportunities, raising standards*, published in February 2002, and the report of a working group on 14 to 19 reform under the chairmanship of Sir Mike Tomlinson, which was published in October 2004. The green paper set out proposals designed to deliver a range of academic, vocational and mixed options to ensure that something relevant and attractive was offered to all pupils, not just the academically able. The rationale for the policy was both social (to raise young people's participation in education and training, reduce their likelihood of exclusion and increase their employability) and economic (meeting certain skill shortages, and creating savings by reducing social exclusion).

The white paper proposed new specialised diplomas in 14 broad subject areas reflecting key sectors of the economy, available at levels 1 (foundation), 2 (GCSE) and 3 (advanced). The white paper envisaged employers taking a lead through Sector Skills Councils in designing the specialised diplomas, with apprenticeships integrated into the diploma framework. GCSEs and A levels would continue as free-standing qualifications. The *14 to 19 Implementation Plan*, published on December 2005, set out what the Government's reform programme would mean in practice.⁶⁴ The then Education Secretary, Ruth Kelly, outlined the main changes in a Written Ministerial Statement on 14 December 2005.⁶⁵

The first five specialised Diplomas will be available in September 2008, the next five in 2009 and a further four in 2010. The *14 to 19 Implementation Plan* recognised that the proposed entitlement could not be delivered by individual schools acting alone, and that many colleges could not offer it in full. Therefore every area will develop a system in which schools and colleges would work together in different ways to deliver the entitlement. 14 to 19 partnerships will decide how to deal with local delivery issues. The 14 to 19 pathfinder programme has been examining different models of collaborative working in different circumstances in order to test out a range of ideas and develop best practice for 14 to 19 education and training so that a coherent 14 to 19 phase can be achieved using a variety of locations with different social circumstances and different mixes of schools and colleges.⁶⁶

On 23 October 2007, the Secretary of State for Children, Schools and Families announced plans to expand the diploma programme to include subject-based diplomas

⁶³ <http://www.dfes.gov.uk/publications/14-19educationandskills/>.

⁶⁴ http://www.dfes.gov.uk/14-19/documents/14-19_implementation_plan05.pdf.

⁶⁵ HC Deb 14 December 2005 c150WS

⁶⁶ For further information see: <http://www.dfes.gov.uk/14-19/index.cfm?sid=9>

in Science, Languages and the Humanities.⁶⁷ A DCSF document that accompanied the statement noted progress on the diplomas so far:

9. Diplomas have been designed by employers, HE and education professionals to guarantee all the skills and personal qualities that young people, business and universities value and need, set within a rigorous fully rounded learning experience. There will be three different levels of Diploma to meet the needs of young people at every level of their learning: Foundation (level 1), Higher (level 2) and Advanced (level 3).

10. Implemented in phases, from next year the first five Diplomas will be available in: Engineering; IT; Society, Health and Development; Construction and the Built Environment; and Creative and Media. All 14 Diploma lines covering all the major sectors of the economy will be available for first teaching from 2010 with all Diplomas being universally available for all 14-19 year olds from 2013. Our rigorous Gateway process is ensuring that all Diplomas are delivered to the highest standard from the outset.

11. Delivery of the Diplomas requires strong collaboration between institutions through the formation of local consortia. Ensuring the right infrastructure is in place also requires partners to work together to develop area wide strategies for issues such as timetabling, transport and development of the teaching workforce. 14-19 partnerships are already developing these local strategies in all areas.

12. Diplomas will take young people into the full range of post-19 options. As well as a route into Further and Higher Education, they will also offer excellent preparation for young people whose preferred pathway to a successful career is through an Apprenticeship.

13. That is why our first five Diplomas have already attracted significant support from employers and universities as a high-quality attractive learning route for young people to follow. Major employers including Cisco, Oracle, BT, Vodafone, British Gas, JCB, RWE npower, Rolls Royce, Jaguar, Channel 4, Barnados, McAlpine and Lovell are supporting Diplomas as a compelling route for young people to learn and apply their skills. Even at this early stage, Higher Education Institutions such as Leeds, Exeter and Warwick are backing Diplomas as having the potential to be excellent preparation for the most demanding university courses.

14. Of course the real test for Diplomas will be whether young people take up the new qualifications, which in turn will depend upon whether Higher Education and employers will themselves promote their value to young people and parents. Diplomas are already winning strong support from universities and employers so that parents and students should be confident that they are an excellent choice. The Diploma Gateway process has already attracted around 900 schools and colleges in two-thirds of Local Authorities who will be offering our first five Diplomas to around 40,000 pupils from next September.⁶⁸

⁶⁷ Written Ministerial Statement 23 October 2007 c6WS

⁶⁸ <http://www.dfes.gov.uk/pns/pnattach/20070195/1.htm>

The document went on to set out the case for the next stage of the reforms and why the Government had decided to expand the diploma programme to Science, Languages and the Humanities. The content for each of the new diplomas will be specified by a new body, the Diploma Development Partnership (DDP), following consultation with a wide range of partners and stakeholders.

The Education and Skills Select Committee looked at the aims and development of the new diplomas in its report, *14 to 19 Diplomas*, published in April 2007.⁶⁹

Some commentators have said that there needs to be greater clarity about the vocational and academic nature of the diplomas,⁷⁰ and how they will fit with current successful qualifications such as BTEC, City & Guilds etc.⁷¹

b. Advice and guidance

The green paper, *Youth Matters*,⁷² published for consultation in July 2005, identified the need “to provide better support to young people as they make decisions about their careers, education, health and other issues”. It proposed minimum standards for the information, advice and guidance (IAG) that each young person should receive:

25. We propose clear minimum expectations of the information, advice and guidance (IAG) that each young person and their parents should receive. These would be:

- at age 11-12 (year 7): an introduction from a variety of people, including other pupils, to what is on offer within secondary school;
- at age 13-14 (year 9): support in considering post-14 choices and a personal session with an adviser if they or their parents need or want it. This will complement plans for a local 14-19 learning prospectus;
- throughout the teenage years: better help to think through post-16 options, personal social and health issues and career choices; an easy-to-access, innovative and independent ICT service through which young people can access national and local information from a variety of sources, including through an easily navigable website, online advisers and a helpline.

26. We want to explore how we might give further impetus to the quality and impartiality of IAG by expressing these expectations in a set of quality standards, on which we will consult.

Quality Standards for Information Advice and Guidance were issued on 31 October 2007.⁷³ These set out the DCSF's expectations of the IAG services that local authorities

⁶⁹ HC Paper 249, Session 2006-07

⁷⁰ Mike Baker, 'Diplomas have some way to go', *Educational Journal*, Issue 106, p8

⁷¹ Ian Nash, What will diplomas be worth, *Education Journal*, Issue 106, p9

⁷² Department for Education and Skills (DFES) Green Paper, *Youth Matters*, Cm 6629, July 2005: <http://www.dfes.gov.uk/consultations/downloadableDocs/Youth%20matters%20pdf.pdf>

⁷³ <http://www.everychildmatters.gov.uk/iaq/>

will commission and manage after they assume responsibility for these services in April 2008.

c. Financial support for students aged 16 to 19

Financial support for the 16 to 19 age group is mainly provided in the form of Education Maintenance Allowances (EMAs).

EMAs provide means-tested financial assistance for 16 to 19 year olds living in low income households who stay on in education and training. The availability of EMA funding is intended to broaden participation and to improve the retention and attainment of young people of 16 to 19 in post compulsory education. Eligibility for funding depends on the student's age and household income.⁷⁴

The details of the EMA scheme are set out in a document called *The Administrative Scheme under Section 14 of the Education Act 2002 Governing the Payment of Education Maintenance Allowances*. The EMA consists of two types of payment, a weekly payment to the young person of £10, £20, or £30 (depending on household income) and intermittent bonus payments. Bonus payments are made to students as a reward for satisfactory progress against set learning goals. Bonus payments of £100 may be made in January and July in the first year of study and in September, January and July in subsequent years of study.

EMAs are available for all eligible students regardless of the type of educational institution attended. Students at schools, colleges, independent schools, specialist education institutions, charitable foundations and on many work based programmes should be able to gain access to funding. The EMA is available to any eligible learner who is enrolled on a valid learning programme; this includes a wide range of academic, vocational and work based courses up to and including Level 3.

Additional funding in the form of Learner Support Funds (LSF) is available on a discretionary basis for students experiencing financial hardship, or to help with specific needs such as childcare costs.⁷⁵ Unlike EMAs, this is not a weekly allowance but it does provide financial help via a system of one-off payments for learners with particular needs. Funds are held locally and allocated on a discretionary basis; any learner may apply for LSF support via their Local Authority if they are at a school sixth-form, or via their college.

The Learning and Skills Council (LSC) administers a Hardship Fund for young people on LSC-funded Entry to Employment programmes or Programme Led Pathways. This replicates the Learner Support Fund available to FE learners.

⁷⁴ EMA information at <http://ema.direct.gov.uk/ema.html>

⁷⁵ LSF information at http://www.direct.gov.uk/en/EducationAndLearning/AdultLearning/FinancialHelpForAdultLearners/DG_10033131

Funding is also available for young people with children through the Care to Learn⁷⁶ scheme.

d. Training, apprenticeships and employer engagement

Apprenticeships

Apprenticeships offer a combination of on-the-job training with the chance to gain qualifications. Modern Apprenticeships were introduced in 1994 and have undergone a series of reforms since then; in May 2004 Foundation Modern Apprenticeships and Advanced Modern Apprenticeships were renamed as Apprenticeships and Advanced Apprenticeships respectively. The Learning and Skills Council (LSC) took over responsibility for Apprenticeships in England from Training and Enterprise Councils (TECs) in March 2001.⁷⁷

Those aged 16 to 24 are eligible provided they are not in full-time education. Until August 2003, a Modern Apprenticeship had to be completed by the age of 25. Since then, those starting Apprenticeships at any point before their 25th birthday may complete them. More recently the Government introduced a programme of Young Apprenticeships for students aged 14-16 in September 2004, and Apprenticeships for Adults began national roll-out in August 2007 with initial funding of £25 million.⁷⁸

Apprenticeships are available in a wide range of subjects. A list is available on the Apprenticeships website.⁷⁹ There is no pre-determined duration but Apprenticeships usually take at least 12 months to complete and Advanced Apprenticeships at least two years. Apprenticeships and Advanced Apprenticeships lead to NVQ qualifications at level 2 and 3/4 respectively,⁸⁰ key skills qualifications (such as IT and communication) and technical certificates.⁸¹

In addition to receiving on-the-job training, apprentices usually spend time with a training provider (for example a local Further Education college) gaining key skills related to the job market, and studying for a technical certificate which provides further knowledge and understanding of the job.

⁷⁶ Care to Learn at http://www.direct.gov.uk/en/EducationAndLearning/14To19/MoneyToLearn/Caretolearn/DG_066971

⁷⁷ There is a separate Scottish Modern Apprenticeship scheme funded by the Scottish Executive and run by Scottish Enterprise and Highlands and Islands Enterprise (<http://www.scottish-enterprise.com/modern-apprenticeships>). Modern Apprenticeships in Wales are the responsibility of the Welsh Assembly Government's Department for Children, Education, Lifelong Learning and Skills (<http://www.elwa.org.uk/elwaweb/elwa.aspx?pageid=645>), and in Northern Ireland of the Department for Employment and Learning (<http://www.trainingforsuccess.co.uk/>).

⁷⁸ More information on Apprenticeships for Adults is available in part I,D, (d) of this paper.

⁷⁹ <http://www.apprenticeships.org.uk/list/apprenticeshipsdirectory/>

⁸⁰ Level 2 refers to a standard equivalent to five GCSEs at A* -C or a National Vocational Qualification at level 2. Level 3 refers to a standard equivalent to two A levels or a National Vocational Qualification at level 3. A Level 4 qualification includes first degree, 'other' degree and sub-degree higher education qualifications such as teaching and nursing certificates, HNC/HNDs, other HE diplomas. The National Qualifications Framework for England, Wales and Northern Ireland which provides full level equivalencies is available at is available at:

<http://www.qca.org.uk/libraryAssets/media/qca-06-2298-nqf-web.pdf>.

⁸¹ Technical certificates are vocation qualifications which provide the underpinning knowledge of the NVQ.

Under Apprenticeship rules, an apprentice must be paid at least £80 by the employer although apprentices may be paid more than this, while training providers will receive financial assistance from the LSC towards the cost of an apprentice's training only. Additionally, further funding may be available for individuals participating in Apprenticeships from training providers or the LSC to provide help with training related expenses.⁸² This is awarded on a discretionary basis and is known as the Learner Support Fund (LSF).⁸³ The LSF help towards direct costs incurred from participating in a course; for example childcare, travel costs or costs associated with buying equipment and/or clothing necessary for training. Apprentices wishing to receive LSF funding are required to contact their regional LSC⁸⁴ or the Student Support Officer at the college that they attend.

A document on funding for learning by the (then) DfES also states that:⁸⁵

Employed apprentices may be subject to the national minimum wage entitlement if they are over the age of 19. The national minimum wage does not need to be paid to apprentices who are under the age of 19, or to apprentices aged 19-25 and in the first year of their apprenticeship.

Employers with over 5,000 employees are eligible for additional assistance. This is outlined on the Apprenticeships website:⁸⁶

Large businesses are supported by our National Employer Service which can put you in touch with a suitable learning provider, work with you to customise your existing training programme, or help you to develop a new one.

The National Employer Service provides a single point of contact for large, multi-site employers who operate in a number of local Learning and Skills Council areas and who have more than 5,000 employees.

The National Employer Service can help you get the best out of Apprenticeships and arrange all your training needs. They can advise on available qualifications, appropriate Apprenticeships, Quality Assurance and Health and Safety issues. They can also assist you with funding.

Following the 2007 Comprehensive Spending Review, DIUS and DCFS jointly announced plans to expand funding to the LSC for Apprenticeships over the period to 2010/11 with the aim of 400,000 learners in England (281,000 aged 16-18 and 125,000 aged over 19) compared with approximately 250,000 currently.⁸⁷ In 2010/11 it is planned that funding for Apprenticeships for 16-18 year old will total £776 million (compared with

⁸² <http://www.dfes.gov.uk/financialhelp/quickguide/uploads/docs/final%20version.pdf>

⁸³ <http://lsf.lsc.gov.uk/>

⁸⁴ <http://www.lsc.gov.uk/>

⁸⁵ <http://www.dfes.gov.uk/financialhelp/quickguide/uploads/docs/final%20version.pdf>

⁸⁶ <http://www.apprenticeships.org.uk/wanttoemployanapprentice/employerover1000/>

⁸⁷ ["Ambitious plan to help boost nation's job prospects"](#), DIUS Press Release, 16 November 2007

£624 million in 2007/08) while Apprenticeships for those aged over 19 will receive £334 million in 2010/11 (compared with £275 million in 2007/08).⁸⁸

Additionally, in the 2007 Queen's Speech, the Government proposed bringing forward legislation in the 2008/09 session to reform Apprenticeships. A review of the Apprenticeship programme is currently underway. It is considering the scope for reforms to the programme and the need for any legislative changes. The review is due for completion in January 2008.

It is expected that legislation will cover the leadership of the Apprenticeship programme and the rights and responsibilities of those involved; apprentices, employers, training providers and statutory bodies.

Entry to Employment

Entry to Employment (E2E) was previously referred to as Life Skills and includes Work-Based Learning below Level 2. E2E has now replaced all other training from Entry Level to NVQ Level 1 for all 16-18 year-old learners in England (older young people up to the age of 24 may be admitted at the LSC's discretion). In May 2004, the (then) DfES announced that a "Pre-Apprenticeship" offer.⁸⁹

... will be based around the very popular 'Entry to Employment' programme for young people that have potential but are not yet ready or able to enter an Apprenticeship or maybe currently disengaged and disenfranchised from learning.

The E2E scheme supports learners in the achievement of entry level and level 1 qualifications (or other equivalent achievement) as a building block towards attainment at level 2 and progression to Apprenticeships or other appropriate provision. Although there is no set time for completing E2E - it depends on individual progress - on average a participant will spend 16-22 weeks on an E2E programme.

The E2E framework includes: formal learning opportunities to achieve accredited qualifications including basic or key skills; practical and vocational learning; employability skills and career management; informal and personal development activities; and work experience, with an emphasis on young people playing a full part in planning and reviewing their learning. E2E provides support to young people who have been disaffected for example as a result of school exclusion or low levels of school achievement or disadvantaged by circumstances or characteristics, such as homelessness, offending behaviour, health issues, care history or family difficulties.

Travel expenses and childcare costs (up to £5,000 per child per year) may be claimed back and participants now receive the maximum £30 weekly Education Maintenance Allowance payment, regardless of their household income.⁹⁰

⁸⁸ LSC, *Our statement of priorities*, November 2007

⁸⁹ <http://readingroom.lsc.gov.uk/pre2005/externalrelations/press/new-apprenticeships-will-widen-opportunity-and-boost-business-clarke.pdf>

⁹⁰ More information on E2E may be found at: <http://e2e.lsc.gov.uk/>

Existing employment rights

Guidance published by the Department for Business Enterprise and Regulatory Reform (BERR) sets out the current relevant employment rights:⁹¹

Time off for study or training

Employees aged 16 or 17 who have not achieved a certain standard in their education or training have the right to reasonable time off with pay to study or train for a relevant qualification which will help them towards that standard. Certain employees aged 18 have the right to complete study or training already begun. The study or training can be in the workplace, at college, with another employer or a training provider, or elsewhere. There is no qualifying period of employment for the employee.

Time off for job hunting or to arrange training when facing redundancy

An employee who is being made redundant, and who has been continuously employed by the same employer for at least two years, is entitled, whilst under notice, to take reasonable time off with pay within working hours to look for another job, or to make arrangements for training for future employment.

These provisions are contained in sections 63A and 63B of the *Employment Rights Act 1996*, which were inserted by sections 32 and 33 of the *Teaching and Higher Education Act 1998*. The *Employment Rights (Time off for Study or Training) (Northern Ireland) Order 1998/1761* makes similar provision in Northern Ireland. The current relevant secondary legislation is the *Right to Time Off for Study or Training Regulations 2001* SI No.2801 which list the institutions and diplomas that count towards the prescribed standard of achievement and provide other details about those standards. They replaced similar regulations which had been in force since 1 September 1999.

Under section 52 of the *Employment Rights Act 1996* an employee who has received notice that they will be made redundant may be entitled to time off work with 40% pay in order to look for new employment or for arranging training for future employment.

E. The Bill

1. Key provisions

The following outlines the key provisions of Part 1 of the Bill. It is not intended to be a comprehensive account of the clauses. A detailed clause by clause account is given in the *Explanatory Notes* to the Bill, prepared by the Department for Children, Schools and Families. These also comment on the financial and public service manpower effects of the provisions; the costs and potential benefits; and the compatibility of the provisions with the European Convention on Human Rights. The *Impact Assessment* sets out in detail the cost/benefit calculations. The *Memorandum of Delegated Powers* explains the

⁹¹ BERR, [Individual Rights and Responsibilities of Employees](#), URN 07/14, 16 October 2007

delegated powers sought by the Bill, including whether specific powers are subject to the negative or affirmative procedure.

a. *Duty to participate in education or training*

The central provision of Part 1 of the Bill is a new duty on young people above compulsory school age but under 18 years to participate in a form of education or training (**clauses 1 and 2**). The eligible forms are appropriate full-time education or training; a contract of apprenticeship; or part-time education or training towards an accredited qualification as part of full-time occupation or alongside occupation of more than 20 hours a week. The new duty applies to any person who is resident in England, has ceased to be of compulsory school age but not yet reached the age of 18, and has not attained a qualification at level 3. Level 3 is defined as the level of attainment, in terms of breadth and depth, which is demonstrated by GCE A level in two subjects. Provision is made for regulations to set out the qualifications that will count for this purpose (**Clause 3**). The participation duty will be commenced in two stages: to 17 years in 2013 and 18 years in 2015 (**Clause 149(9)**). The staged introduction is to allow appropriate provision for education and training and support to be in place, and to allow the expectations of the first young people to be affected to be set early.

Clauses 4 to 9: These clauses define the types of participation that will fulfil the duty to participate in education or training as set out in clauses 1 and 2. Specifically, they define what is considered appropriate, relevant and sufficient full-time training or education and part-time education or training if participation is concurrent with a full-time occupation. The definition of a full-time occupation is also stated and provision is set out to require the QCA to assign guided learning hours in accrediting qualifications (i.e. the number of hours in which it is planned to deliver the learning aim).

b. *Duties on Local education authorities and educational institutions*

Local education authorities (LEAs)⁹² will be required under **clause 10** to promote the participation of young people who are subject to the new duty to participate, and to identify those who fail to fulfil the duty (**clause 12**). **Clause 11** places a new duty on the governing bodies of educational institutions to promote the regular attendance of young people who are subject to the participation duty. The educational institutions affected are: community, foundation or voluntary schools and special schools, pupil referral units, and further education institutions. The *Explanatory Notes* state that the Learning and Skills Council will be asked to place the same duty on the private providers that it funds, through its existing power to attach conditions to funding under section 6 of the *Learning and Skills Act 2000*.

Provision is made to allow for the sharing of data between the Secretary of State, other public bodies and LEAs to facilitate the provision of support services, and enable authorities to identify young people who are failing to participate. Education and training

⁹² The *Explanatory Notes*, paragraphs 12 to 14, clarifies the use of the term local education authorities following the changes brought about by the *Children Act 2004* on delivering children's services.

providers will be under a duty to notify the Connexions Service if a young person drops out.

In exercising their duties under Part 1, LEAs must have regard to any guidance issued by the Secretary of State.

c. Duties on employers

Employers are dealt with in Part 1, Chapter 3 of the Bill. Powers to make regulations clarifying the identity of employers and employees affected by the Bill; and provisions for parliamentary employees are contained in Part 1, Chapter 6.

Various duties are placed on employers to enable young people who are their employees to participate in education or training. Only employees with a contract lasting longer than eight weeks, and working more than 20 hours per week, will be covered. In recruiting young people employers will be obliged to check that they have made appropriate arrangements for education or training before employing them. There are provisions for local education authorities to impose penalties.

Employers will be obliged to permit employees covered by the duty to participate in education or training. In some cases this may involve reasonable changes such as adapting the terms and conditions of employment or allowing time off to study. Local authorities may issue enforcement and penalty notices if employers fail to comply. Employees will also receive protection from detriment or dismissal for reasons related to participation in education or training under the Bill's provisions.

For those young people in England covered by the duty to participate in study, clauses 24 – 26 replace to a limited extent the existing rights to time off for study under section 63A of the *Employment Rights Act 1996*. These rights will remain in place for all young people in Wales and Scotland, and for young people in England not covered by the duty in Clause 2. Provisions in Northern Ireland under the *Employment Rights (Time off for Study or Training) (Northern Ireland) Order 1998/1761* will remain the same, subject to legislation by the devolved administration.

d. Enforcement action against parents: parenting contacts and parenting orders

Chapter 4 of Part 1 of the Bill sets out the circumstances in which an LEA may issue a parenting contract or order to a parent of a young person who is failing to fulfil the duty to participate. Parenting contacts and parenting orders in relation to children of compulsory school age were introduced under the *Anti-Social Behaviour Act 2003*. A parenting contract is a document signed by the parent and the LEA, and both parties agree to comply with it. It is a voluntary agreement and cannot result in legal action for breach of contract and or for civil damages.

LEAs may apply to a Magistrates' Court for a parenting order in respect of a parent of a young person who is not fulfilling the duty to participate under clause 2. A parenting order requires the parent to comply with the requirements specified in it. The requirements can include a counselling or guidance programme, part of which may be residential if certain conditions are met. There is a right of appeal to the Crown Court

against a parenting order. If a parent does not enter into a parenting contract when it is offered, or fails to comply with one, a court must take this into account in deciding whether to make a parenting order. Regulations may make further provision about the exercise of LEAs' functions in relation to parenting contracts and parenting orders.

e. *Enforcement action against young people who are not fulfilling the duty to participate: Attendance Notices*

Chapter 5 of Part 1 of the Bill provides for LEAs to issue attendance notices to young people who are not fulfilling their duty to participate, and to set up independent panels to hear appeals against the issue of an attendance notice or its content. Before a LEA can start the process of issuing an attendance notice, it must ensure that appropriate support has been made available to the young person, and that s/he has been given the opportunity to take advantage of the support. The LEA must give the young person notice in writing of its intention to issue an attendance notice, and the young person must be given the opportunity to make representations. The LEA may issue an attendance notice after it has given written notice and the young person fails to participate without 'reasonable excuse' (as set out in **clause 39 (6) (7)**). The attendance notice must specify the type of provision that should be undertaken, a description of the course, and details of where and when the young person should attend, the period for which the notice has effect, and the consequences of failure to comply with the notice.

A LEA must establish an attendance panel in accordance with regulations, with a chairperson who is not a member of the authority. Regulations will specify how the panel must be constituted and its procedure for carrying out its functions. The panel will be able to confirm or dismiss attendance notices and penalty notices, and make recommendations to the LEA.

Clauses 45, 46, 47 and 48 set out the enforcement procedures if a young person fails to comply with an attendance notice. Failure to comply with an attendance notice is an offence and liable to a fine of a maximum of level 1 on the standard scale. The *Explanatory Notes* state that currently level 1 is a maximum of £200, with the actual amount in each case being decided by the court in light of individual circumstances. **Clause 46** provides that proceedings cannot be commenced unless a penalty notice has first been given under clause 47 and has not been paid. Regulations may be made in relation to penalty notices including, for example, their contents, the amount of the penalty, the time it must be paid and the action to be taken if a penalty is not paid in accordance with the penalty notice. Provision is made for appeals to an attendance panel against a penalty notice.

f. *Costs and benefits of the provisions*

A summary of the costs and benefits of the provisions is given in the *Explanatory Notes* to the Bill. More detailed information is given in the *Impact Assessment* on the Bill. This states that the additional economic benefit to the economy from 100% of young people participating until 18 (over and above the current 90% participation aspiration) will be around £2.4 billion for each single cohort of young people, discounted over their lifetimes (in 2016-17 prices). This is the central estimate, or what the Government views as the most likely outcome. Varying the underlying assumptions results in best and worst case scenario benefits of £5.4 billion and £0.3 billion respectively. The economic costs of

raising the participation age to 18 (over and above the 90% participation) will be around £774 million (2016-17 prices). A summary breakdown of this figure is given in table 1 on p23 of the *Impact Assessment*.

g. European Convention on Human Rights (ECHR)

The *Explanatory Notes* to the Bill state that the Secretary of State for Children, Schools and Families believes that the Bill's provisions will be fully compatible with the ECHR. It goes on however to note areas that need clarification in relation to the primary duty to participate on young people; the requirements relating to data sharing about young people; enforcement action against employers; and the use of parenting contracts and parenting orders.

h. Equality

An *Initial Equality Impact Assessment* was published alongside the Government's response to the Green Paper consultation.⁹³ This covered the equality issues for disability, gender and race, giving relevant headline facts, statistics, issues and criteria for assessing the equality impacts relevant to the proposals.

Of relevance are also the findings of the Women and Work Commission, which was set up by the then Prime Minister in 2004. It was charged with carrying out an independent review of the gender pay gap and other issues affecting women's employment. Their final report entitled *Shaping a Fairer Future* highlighted the need for better use of women's skills as a key to economic prosperity.⁹⁴ The report found that many girls and young women are still following traditional routes in education and training, and being paid less than men as a result. Research shows that three years after graduating, women earn 15 per cent less than their male counterparts. One of the Commission's recommendations was for schemes to give girls a better understanding of the pay and prospects in the careers they choose.

2. Comment

Organisations made detailed comments on the proposals in their responses to the green paper. An overview of these is given in part 1, B. 4 of this paper above, and extracts from a selection of organisations' responses are given in Appendix I to this paper.

At the time of writing relatively few organisations had made written comments on the Bill itself. The following notes some comment readily available.

The DCSF Press Notice announcing the publication of the Bill noted comments from the Association of Colleges, the Association of Directors of Children's Services, and the Association of Teachers and Lecturers:

Sue Dutton, Acting Chief Executive of the AoC, said:

⁹³ DfES, [Initial Equality Impact Assessment](#) accompanying [Raising Expectations: staying in education and training post-16 – From policy to legislation](#), July 2007

⁹⁴ Women and Work Commission, [Shaping a Fairer Future](#), February 2006

“AoC believes that requiring all youngsters to stay on until they are 18 is a worthwhile ambition with clear economic, social and personal benefits both for the individuals and the nation as a whole. It is important to understand that the policy it is not about forcing more people to stay in school but offering them new and innovative options in college and in the workplace.”

John Freeman, Joint President of the Association of Directors of Children's Services, said:

“ADCS welcomes the intentions behind this Bill. Ensuring that every young person engages in education and training up to the age of 18 is a laudable aim, but will challenge local authorities, schools and colleges to provide a curriculum that engages them. The new Diplomas are a major step in the right direction, and local 14-19 consortia are making great progress on their introduction.

“We believe that sanctions on parents, employers and young people should be an absolute last resort; if we get the curriculum offer right, sanctions should not be needed.”

Martin Johnson, acting deputy general secretary of the Association of Teachers and Lecturers (ATL), said:

“We support making education or training compulsory to 18 since past evidence shows that raising the participation age always raises achievement. It is important the content of diplomas and apprenticeships is relevant and attractive to the target group – the 10 per cent of 16-18 year olds currently not in education, training or employment – if they are going to be enticed back into learning.”⁹⁵

Commenting on the publication of the Bill, the Association of School and College Leaders (ASCL) General Secretary, Dr John Dunford said:

“The young people impacted by this bill primarily will be those who have turned their back on education and training. Re-engaging them will be a huge challenge. If this bill is to make a difference, it is fundamental that the government fully supports colleges and schools and that these new initiatives are appropriately funded. Keeping the last 10 per cent of recalcitrant young people in education and training will not come cheap.”

“ASCL has serious reservations about the proposed sanctions for non-participation. While the government has said that no young person will be forced to stay at school, it has also indicated that it will make non-participation a criminal offence. This is wrong. Young people under 18 should not be criminalised for refusing to learn a skill. The law must not penalise young people who are disenfranchised or misinformed or there will be very little chance of ever getting them back into education or training.”

“If government insists on compulsion it must be an absolute last resort, used rarely. ASCL believes that there is much more to be gained by putting resources into carrots rather than sticks.”

⁹⁵ DCSF Press Notice, *Raising the participation age has potential economic benefits of £2.4bn per year group. The biggest reforms to education, training and skills in a generation*, 29 November 2007: http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2007_0225

“Full participation at 18 will only be achievable if employers also fully commit to doing their part to help young people get into work. It is time for business to get off the bench and onto the playing field, and fully engage with colleges and schools in making this happen.”

“Effective careers guidance is key to helping young people make the right choices and the recognition of this is welcome. However, if schools and colleges are to have a duty to provide impartial careers advice, they must also have the authority to decide how best this is done.”⁹⁶

In its briefing on the Bill, the LGA noted the cost implications of the proposals for local government:

Key messages from local government:

- Raising the participation age is an important step to ensure all young people gain skills to earn a decent living, and for the economy at large. There must be a broad range of options available to young people.
- It will be councils who are responsible for ensuring that young people resident in their area participate in education. They will have a duty to plan and commission a significant variety of quality education opportunities including diplomas and apprenticeships. Where appropriate, they will need to plan and commission jointly with other local authorities and 14-19 Partnerships.
- This will however lead to significant cost implications for councils and partners if they are to track all 16 and 17 year olds effectively, enforce participation and ensure education and training staff receive sufficient professional development.
- Local Authorities do not want to criminalise and punish young people but want to motivate and incentivise them, remembering that the most important children and young people to help are also the hardest to reach.⁹⁷

Natalie Evans, Head of Policy at the British Chambers of Commerce, said:

"It is pleasing to see that the Education and Skills Bill, being published today, recognises the problems businesses face trying to find appropriately skilled employees. We welcome much of what is proposed, in particular the principle behind raising the compulsory participation age to 18 and the introduction of specialist diplomas for 14 to 19 year olds.

"The OECD has previously warned that Britain's poor participation rates beyond the age of 16 threaten our ability to compete globally. An educated and skilled workforce is absolutely essential to the ongoing sustainability of the UK economy and is a serious concern for business."⁹⁸

⁹⁶ ASCL comment on the Education and Skills Bill, 29 November 2007:

<http://www.ascl.org.uk/MainWebSite/SearchResultsd24452490f5d494.aspx?Map=0014830DE8403804B0E0833ED4F2E002&NewsItemID=93&NewsGroupID=0>

⁹⁷ LGA Brief: *Education and Skills Bill*, 30 November 2007

⁹⁸ British Chambers of Commerce Press Release, *Raising the compulsory participation age is a must for a competitive economy*, 29 November 2007:

<http://www.britishchambers.org.uk/YbgVwSBoarMi4g.html>

II Part 2 of the Bill: Support for participation in education or training: young adults with learning difficulties and young people in England

A. Provision of support services (Connexions Service)

1. Background

Connexions is a multi-agency service which provides information, advice, guidance and access to personal development opportunities for all young people aged 13 to 19 in England. It also provides support up to the age of 25 for young people who have learning difficulties or disabilities (or both).

The service is currently the responsibility of the Secretary of State and its legislative framework is provided for in the *Learning and Skills Act 2000*. It was phased in from 2001, and provides an integrated advisory and support service, offering practical help with choosing education courses and careers, and advice on access to activities related to broader personal development, and also providing help and advice on problems such as drug abuse and homelessness. It gives particular support to those who are disengaged, or at risk of becoming disengaged, from education or training.

There are currently 47 Connexions partnerships across England. Personal advisers are available for face-to-face interviews at local Connexions centres, and can also be contacted by telephone and email. The Connexions Direct website offers a range of information about the service.⁹⁹

An integral part of the delivery of the Connexions Service is the Client Caseload Information System (CCIS). This holds a range of information on young people aged 13-19 in order to assess progress in local areas on a range of measures, including cutting the number of young people not in education, employment or training. The information held on the system includes data on a young person's needs, current levels of attainment, intended destination on leaving school, and details of any other agency working with the young person. All lead professionals in the area working with young people can be given access to their local CCIS.¹⁰⁰

The green paper, *Youth Matters*,¹⁰¹ published for consultation in July 2005, identified the need "to provide better support to young people as they make decisions about their careers, education, health and other issues". It proposed minimum standards for the information, advice and guidance (IAG) that each young person should receive. The green paper also went on to propose that local authorities, working through children's

⁹⁹ <http://www.connexions-direct.com/index.cfm?go=ConnexionsService>

¹⁰⁰ <http://www.everychildmatters.gov.uk/delivering/services/ccis/>

¹⁰¹ Department for Education and Skills (DFES) Green Paper, *Youth Matters*, Cm 6629, July 2005: <http://www.dfes.gov.uk/consultations/downloadableDocs/Youth%20matters%20pdf.pdf>

trusts, schools and colleges, should take over responsibility for commissioning advice services:

27. We believe that schools and colleges should be accountable for ensuring the wellbeing and maximum progression of all their pupils and students, including those with severe and complex learning difficulties.

28. To support this and to reflect the wider reforms of services for children and young people set out in *Every Child Matters*, we will devolve responsibility for commissioning IAG and the funding that goes with it, from the Connexions Service to Local Authorities, working through children's trusts, schools and colleges.

29. In devolving funding, we will aim to ensure that young people have a better service linked to the school curriculum and to pastoral care; that services are efficient and cost-effective; and that high-performing Connexions Services are preserved. In most cases, we would expect to see children's trusts, schools and colleges agreeing on new arrangements for commissioning IAG locally. But where schools and colleges believe that local provision is poor, they should have the right to commission the service directly. Following a phased approach from 2006, we would expect these new arrangements to be in place by 2008.¹⁰²

An analysis of the responses to the *Youth Matters* green paper was published.¹⁰³ This noted that there was majority support for greater integration of services for young people. A majority of respondents also thought that the Connexions brand should continue after the transfer of responsibilities for services to local authorities.

The Government published *Youth Matters: Next Steps* - its response to the *Youth Matters* consultation, in March 2006. This largely endorsed what was proposed in the green paper:

6.13 *Youth Matters* said that we would devolve responsibility for commissioning IAG, and the funding that goes with it, from Connexions to local authorities working through children's trusts, schools and colleges. We want local authorities to lead a genuinely collaborative approach to new arrangements for delivering IAG that clearly meets the needs of young people in their areas.¹⁰⁴

The *Next Steps* report also cited the results of case studies where the Connexions service has been moved to children's trusts:

The progress made by the eleven areas acting as case studies for Connexions moving to children's trusts offers learning to inform the different local decisions that are being taken. It also provides powerful examples of the contribution of

¹⁰² *Ibid*, pp 7-8

¹⁰³ *Youth Matters: Analysis of Responses to the Consultation Document*: <http://www.dfes.gov.uk/consultations/downloadableDocs/Youth%20Matters%20Consultation%20Report.doc>

¹⁰⁴ DFES, *Youth Matters: Next Steps*, March 2006, para 6.13 : <http://www.dfes.gov.uk/publications/youth/pdf/Next%20Steps.pdf>

high-performing Connexions Partnerships to strategic development of children's trusts and delivery of outcomes and transformed services for young people.¹⁰⁵

Quality Standards for information advice and guidance (IAG) were issued on 31 October 2007.¹⁰⁶ These set out the DCSF's expectations of the IAG services that local authorities will commission and manage after they assume responsibility for these services in April 2008.

UNISON has suggested that some authorities are using the changes to make savings, and has expressed concern that this could affect the services to young people.¹⁰⁷

2. The Bill

Clauses 54 to 64 and **clause 65** give effect to the commitment given in *Youth Matters: Next Steps* to devolve responsibility for delivering the Connexions Service from the Secretary of State to local authorities.¹⁰⁸ This ties in with LEAs' duties under the Bill to ensure that young people aged 16 to 18 in their area participate in education or training. The funding for the Connexions Service will be transferred to LEAs in April 2008.

LEAs in England will be under a duty to make available to young people and relevant young adults for whom they are responsible such services as they consider appropriate to encourage, enable or assist them to engage and remain in education or training. A relevant young adult is a person aged 20 to 24 years who has a learning difficulty. Currently, the Connexions service offers such people information, advice and guidance, and the Bill puts this on a statutory footing.

The *Explanatory Notes* state that the services made available will continue to be known as Connexions services. LEAs may make arrangements with others, including other LEAs, for the provision of these services. Provision is made for LEAs to have regard to any guidance issued by the Secretary of State, and they must comply with any directions given by the Secretary of State relating to the exercise of their functions. As noted above, the DCSF issued Quality Standards for information, advice and guidance (IAG) on 31 October 2007.

Educational institutions will be required to provide relevant information about their pupils or students to persons delivering Connexions services. Connexions service providers must be given reasonable access to pupils and students and access to facilities on the institution's premises.

The Secretary of State may provide or secure the provision of remote Connexions services on a national basis, for example, through the internet and other electronic

¹⁰⁵ *Ibid*, para 8.2. The Connexions into children's trusts pilots:

<http://www.everychildmatters.gov.uk/resources-and-practice/EP00140/>

¹⁰⁶ <http://www.everychildmatters.gov.uk/iag/>

¹⁰⁷ "Connexions jobs in jeopardy as councils take control, says union", *Children and Young People Now*, 14-20 November 2007, p3

¹⁰⁸ *Youth Matters: Next Steps*, DCSF, March 2006:

<http://www.everychildmatters.gov.uk/files/3804D7C4B4D206C8325EA1371B3C5F81.pdf>

media, for all 13-19 year olds, and for those aged 20 to 24 years old who have a learning difficulty.

Provision is made for Her Majesty's Chief Inspector of Education, Children's Services and Skills to inspect and report on the Connexions services.

The Secretary of State may supply information to an LEA or other person in relation to the provision of Connexions services. Specifically, the Bill gives the Secretary of State the power to supply social security information in relation to young people so that Connexions services can maintain records.

Sections 114 to 121 of the *Learning and Skills Act 2000*, which provided for the establishment of the Connexions service by the Secretary of State, will be repealed.

The *Impact Assessment* of the Bill notes that the Government is expecting local authorities to deliver broadly the same services as those currently provided by the Connexions Service, funded by a commensurate budget.

B. Assessments relating to learning difficulties

a. Background

A child has special educational needs (SEN) if s/he has a learning difficulty which needs special educational provision to be made.¹⁰⁹ The legal responsibilities of Local Education Authorities (LEAs) and schools towards children with SEN are contained in the *Education Act 1996*, as amended by the *Special Educational Needs and Disability Act 2001* (SENDA).¹¹⁰ Guidance on the duties of LEAs and schools is set out in the statutory *Code of Practice on the Assessment and Identification of Special Educational Needs*.¹¹¹ The Code of Practice sets out a graduated approach to SEN that recognises that children learn in different ways and can have different kinds of SEN. In some cases the LEA will need to assess a child's SEN, and on the basis of that assessment it may then make a statement of SEN. The statement describes the child's needs and the special provision that must be made. The *Code of Practice* sets out the detailed procedures relating to the assessment of SEN and statements of SEN.

In 2006 there were about 24,000 pupils with statements of Special Educational Needs in England who were in year 11 and/or over compulsory school age. Around 55% were in maintained mainstream secondary schools; the other pupils were in either maintained, non-maintained or independent special schools.¹¹²

Section 140 of the *Learning and Skills Act 2000* places a duty on the Secretary of State to make arrangements for the assessment of people under 19 years who have SEN statements drawn up by the LEA and intend to leave school to continue with post 16

¹⁰⁹ *Education Act 1996*, section 312

¹¹⁰ SENDA 2001 and the Explanatory Notes on it are available on the HMSO website: www.hmsso.gov.uk

¹¹¹ DfES 2001: <http://www.teachernet.gov.uk/docbank/index.cfm?id=3724>

¹¹² *National Pupil Database*, DCSF

education or training or higher education. The Secretary of State has delegated the carrying out of assessments to the Connexions Service. The Connexions Service may make assessments of other young persons with SEN who plan to go on to further education or training or higher education. Under section 13 of the *Learning and Skills Act 2000*, the Learning and Skills Council (LSC) has a particular duty to have regard to the contents of assessments and the needs of young persons assessed when discharging its functions.

b. The Bill

Clause 65 of the Bill inserts new sections into the *Learning and Skills Act 2000*. The effect is to transfer to local authorities the existing duties of the Secretary of State to arrange for assessments of a young person's educational and training needs. This change is part of the transfer of the responsibility for the Connexions Service from the Secretary of State to LEAs. Clause 65 re-enacts and expands the existing provision contained in section 140 of the 2000 Act to take account of the change in the Bill to raise the participation age. As the *Explanatory Notes* state, new section 139A(2) and (4) places a duty on a LEA to arrange for an assessment of a person in respect of whom they maintain a statement of special educational needs, who is either in his last year of compulsory schooling or over compulsory school age but still at school, at some time during the person's last year of schooling. In either case, the assessment is only required where it is believed that the person will leave school during or at the end of the current school year to pursue post-16 education, training or higher education. This expands on the current duty on the Secretary of State under section 140 of the 2000 Act to arrange for these assessments at some time in year 11 (the last year of compulsory schooling), where the Secretary of State believes that the person will be leaving school at the end of that year to receive post-16 education or training. LEAs are empowered to arrange for an assessment at any time of a person:

- a) who is in their last year of compulsory schooling; or
- b) who is over compulsory school age but has not reached the age of 25; and
- c) who appears to the authority to have a learning difficulty within the meaning of section 13 of the 2000 Act; and
- d) who is either already receiving, or likely to receive in the opinion of the authority, further education, training or higher education.

The *Impact Assessment* of the Bill states that funding for the assessments is included within the Connexions grant.

C. Careers education

Section 43 of the *Education Act 1997* requires publicly funded schools to provide secondary school aged pupils (in England) with a programme of careers education. Section 44 of the Act is concerned with the facilities to be afforded to 'careers advisers.'

The majority of respondents to the *Youth Matters* green paper had reservations about the proposals to give responsibility for Information, Advice and Guidance (IAG) to

schools and colleges. There was concern that schools might not be impartial if they were biased in favour of their own institution.¹¹³ Also the *Impact Assessment* of the Bill cited evidence suggesting that some schools are not acting impartially.¹¹⁴

Clause 66 of the Bill inserts new provision into section 43 of the 1997 Act to require all secondary schools to present careers information in an impartial manner and to provide careers advice which is in the best interests of the pupil, and not to promote the interests of the school or other persons or institutions contrary to the pupil's interests. Information and reference materials provided must present a full range of learning and career options and not unduly promote one option over another. Schools are required to have regard to guidance issued by the Secretary of State.

D. Apprenticeships

Clause 67: This clause amends sections 2 and 3 of the *Learning and Skills Act 2000* in order to explicitly place a duty on the LSC to provide proper facilities for Apprenticeships for 16-18 year olds and reasonable facilities to those aged over 19 in England. In this case Section 3 of the *Learning and Skills Act 2000* defines reasonable facilities as being of such a quantity and quality that the LSC can reasonably be expected to secure their provision (taking account of the LSC's resources).

Section 4 of the *Learning and Skills Act 2000* is also amended by this clause and places a requirement on the LSC to encourage employers to offer a contract of Apprenticeship or a contract of employment where training is provided as part of their existing duty under subsection (b).¹¹⁵

E. Provision of transport for persons of sixth form age: journey times

The *Education Act 2002* introduced new duties in relation to transport for post-16 students, which were added to the *Education Act 1996* as sections 509AA, 509AB and 509AC. Under the provisions every LEA must draw up and publish a policy statement setting out the provision of, and support for, transport for 16 to 18 year olds and those completing courses started before their 19th birthday. The policy statement should include the arrangements that the authority considers necessary for the provision of financial assistance for reasonable travelling expenses of persons of sixth form age receiving education or training.

The introduction of the new diplomas for 14 to 19 year olds may have travel implications for post 16 students. Every area will develop a system in which schools and colleges will work together in different ways to deliver the diploma entitlement. 14 to 19 partnerships

¹¹³ *Youth Matters: Analysis of Responses to the Consultation Document*, Q18: <http://www.dfes.gov.uk/consultations/downloadableDocs/Youth%20Matters%20Consultation%20Report.doc>

¹¹⁴ *Impact Assessment of the Education and Skills Bill*, paragraph 6.11, p35

¹¹⁵ For more information on Apprenticeships see the part I, D, (d) of this paper.

will decide how to deal with local delivery issues. The 14 to 19 pathfinder programme has been examining different models of collaborative working in different circumstances.

Clause 68 of the Bill introduces a requirement on local education authorities to have regard to journey times in preparing their transport statement. The *Explanatory Notes* on the Bill state that the effect of the clause will be to ensure that travelling time will be one of a range of factors a local education authority must consider, along with cost, the distance a young person will have to travel and the need for choice of education provision.

The *Impact Assessment* of the Bill stated that the Government does not expect the change to place any additional cost burdens on local authorities, and that the objective is to ensure that authorities strike a balance between all competing factors when drawing up their transport statements.¹¹⁶

F. Co-operation as regards provision of 14 to 19 education and training

The *14 to 19 Implementation Plan*, published in 2005, recognised that the 14 to 19 reforms could not be delivered by individual schools acting alone, and that many colleges could not offer full diploma provision. Therefore it was proposed that each area would develop a system in which schools and colleges would work together in different ways to deliver the entitlement. As noted above, 14 to 19 partnerships are working on how to deal with local delivery issues.

Clause 69 clarifies LEAs' duties to make collaborative arrangements under section 10 of the *Children Act 2004*, which relates to arrangements to promote co-operation between authorities and others with a view to improving the well-being of children. The purpose of clause 69 is to provide that the arrangements under the 2004 Act must include arrangements to promote co-operation between the LEA and partners who are responsible for 14 to 19 education or training. The clause also allows LEAs to set up joint arrangements for co-operation on 14 to 19 education or training covering the areas for which they are responsible. The *Impact Assessment* of the Bill notes that such collaboration would support the policy for raising the participation age.

¹¹⁶ *Impact Assessment of the Education and Skills Bill*, paragraph 6.10, p34

III Part 3 of the Bill: Adult Skills

A. Background

Currently, 13% of the UK working age (16-59/64) population possesses no qualifications, while almost 29% have qualifications at level 4 or above.¹¹⁷ This represents a considerable improvement from a decade ago when those with no qualifications stood at almost 19% and those with qualifications at level 4 or above stood at around 20%.¹¹⁸ But, the proportion of those aged 16-24 in the UK not in education, employment or training (NEET) increased from 13.2% in 1997 to 13.9% in 2006.¹¹⁹

Highest qualification of UK working age population: Jul-Sep 2007

% of total

	In employment	ILO unemployed	Inactive	All Persons Aged 16+
Degree or equivalent	23.2%	11.9%	9.8%	19.9%
Higher education qualification	9.8%	4.4%	5.4%	8.6%
GCE A Level or equivalent	24.2%	18.5%	19.0%	22.8%
GCSE grades A-C or equivalent	21.7%	28.3%	23.1%	22.3%
Other qualifications	12.0%	16.7%	13.6%	12.5%
No qualification	8.4%	19.3%	28.1%	13.0%
Don't know	0.8%	0.9%	0.6%	0.8%
Total	100.0%	100.0%	100.0%	100.0%

Note: Columns may not add to 100% as a small proportion of respondents answered not applicable to the qualification question.

Source: ONS, Labour Force Survey, Jul-Sep 2007

In addition to the national table above, the chart below¹²⁰ provides some comparisons of educational attainment in selected OECD and partner countries.¹²¹ In 2005, of the 29 OECD countries for which data are available, the UK ranks as 14th in terms of countries with the highest proportion of 25-64 year-olds with 'low' qualifications. However, the UK does better on the proportion of those aged 25-64 with a 'high' level of educational attainment, ranked 12th highest.¹²²

¹¹⁷ A Level 4 qualification includes first degree, 'other' degree and sub-degree higher education qualifications such as teaching and nursing certificates, HNC/HNDs, other HE diplomas. The National Qualifications Framework for England, Wales and Northern Ireland which provides full level equivalencies is available at:

<http://www.qca.org.uk/libraryAssets/media/qca-06-2298-nqf-web.pdf>.

¹¹⁸ Data based on UK quarterly Labour Force Survey for summer 1997 and calendar quarter Jul-Sep 2007. All data are not seasonally adjusted.

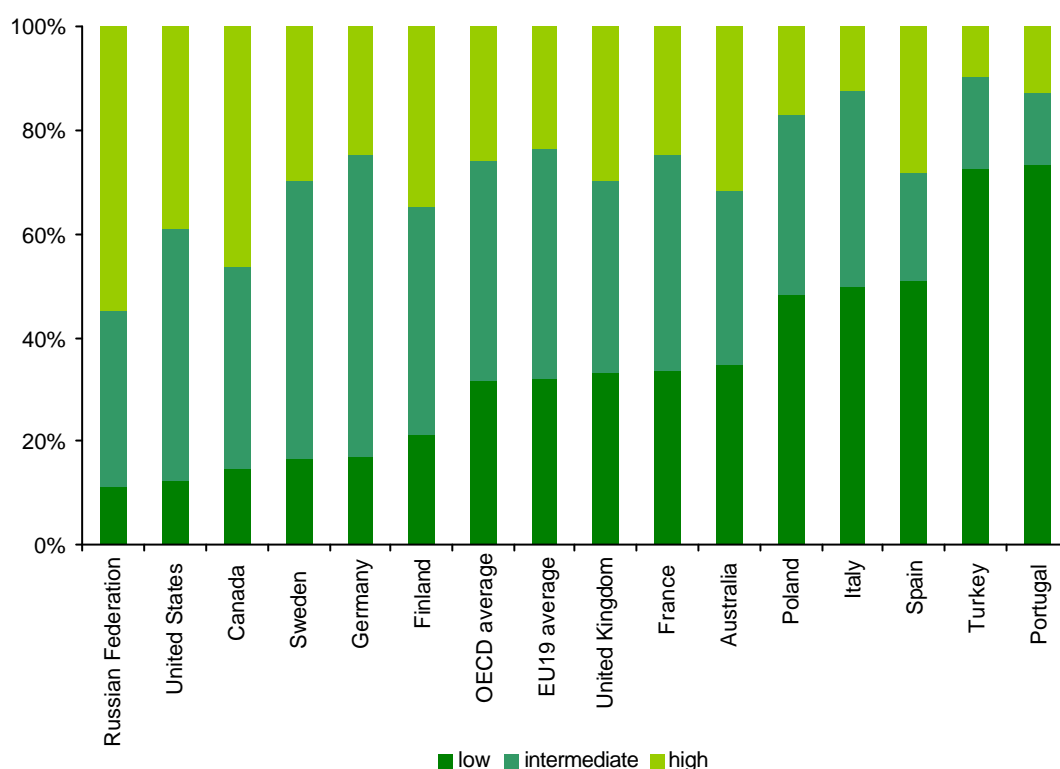
¹¹⁹ HC Deb 15 October 2007 cc901-3W

¹²⁰ This chart is based on chart 2.1 on page 40 of the Final Report of the Leitch Review of Skills.

¹²¹ In this context 'Low' level qualification comprises persons having primary school, lower secondary school or International Standard Classification of Education (ISCED) 3C short programmes (upper secondary education not designed to tertiary education) as their only formal qualification. An 'Intermediate' qualification is equivalent to an 'upper secondary' achievement (including post-secondary non-tertiary education), while 'High' refers to tertiary level education.

¹²² OECD, *Education at a Glance*, 2007, table A1.1a

Educational attainment: adult population (2005); Distribution of the 25 to 64 year-old population, by highest level of education attained



Source: OECD, Education at a Glance, 2007, Table A1.1a

The incidence of low skills in the economy can also be seen when looking at results from the *National Employers Skills Survey 2007* which analyses skills shortages in England.¹²³ The proportion of employers reporting skills gaps¹²⁴ has fallen from 22% in 2003 to 15% in 2007 while the proportion of staff described as lacking proficiency has also fallen over this period from 11% to 6%. However, in 2007 15% of establishments employed staff they regarded as not fully proficient (6% of the total workforce in England).

Recruitment problems also persist for employers, with 7% reporting hard-to-fill vacancies at the time of interview (unchanged from 2005), and 4% of all employers reporting that at least some of these positions were hard-to-fill because they cannot find suitably skilled (or qualified, or “proven”) candidates – ‘skill shortage vacancies’ (unchanged since 2001).¹²⁵ As a percentage of all vacancies, those caused by skill shortages has fallen from 25% in 2005 to 21% in 2007. The survey also report that 67% of employers surveyed had provided training in the previous 12 months, up from 65% in 2005 and 59% in 2003.

¹²³ LSC, [National Employer Skills Survey: Headline findings](#), November 2007

¹²⁴ Defined as the proportion of employers reporting deficiencies in the proficiency of their existing staff.

¹²⁵ Reasons for employers describing a vacancy to be hard-to-fill often include skills-related issues, but can simply involve such aspects as poor pay or conditions of employment, or the employer being based in a remote location.

While these statistics show a general improvement in adult skills in recent years, many are still of the opinion that the UK skills base must continue to be improved in order to compete in the global economy. In recent years, the Government has published a range of documents surrounding measures to address skills problems in the adult workforce: most notably the two Skills Strategy White Papers of 2003 and 2005;¹²⁶ the Further Education White Paper published in March 2006;¹²⁷ and most recently the Treasury-commissioned Leitch Review of Skills which was completed in December 2006 with the Government response following in July 2007.¹²⁸

1. The Leitch Review of Skills

In December 2004 the Government commissioned the Leitch Review of Skills to identify the UK's "optimal skills mix in 2020 to maximise economic growth, productivity and social justice, and to consider the policy implications of achieving the level of change required". The Leitch Review of Skills published its interim report on 5 December 2005. Notably it stated that:¹²⁹

The UK's skills profile is unimpressive in comparison with other countries. A significantly larger proportion of the adult population in the UK has low qualifications and a significantly smaller proportion holds intermediate level qualifications than many comparator countries. [...]

The UK is consistently out-ranked by countries such as Sweden and Finland, the USA and Germany. In strict terms, the UK performs at or around the OECD mean, though this figure incorporates the qualification profiles of countries such as Mexico, Portugal and Turkey.

The Chancellor announced in the 2006 Budget Report that the review would be extended to include better alignment of measures to tackle worklessness to support "labour market flexibility, better employment outcomes and greater progression to productive and sustainable jobs for those with skill needs".¹³⁰ The Final Report of the Leitch Review of Skills was published on 5 December 2006.

This report projected a sharp decline in low-skilled jobs up to 2020 and the increasing importance of high-tech jobs, particularly in the face of growing international competition. Significantly, it called for a demand-led skills system which meets the needs of, and engages, individuals and employers rather than being centrally planned. Lord Leitch in particular highlighted the initial performance of the Train to Gain programme as an example of the success of a demand-led approach. The report outlined a number of objectives for 2020:¹³¹

¹²⁶ See Section 2 below.

¹²⁷ DfES, *Further Education: Raising Skills. Improving Life Chances*, March 2006

¹²⁸ See Section 1 below.

¹²⁹ Leitch Review of Skills, *Skills in the UK: The long-term challenge – Interim Report*, December 2005, p43

¹³⁰ HM Treasury, *2006 Budget Report, Chapter 3*, March 2006, p64

¹³¹ Leitch Review of Skills, *Prosperity for all in the global economy – world class skills – Final Report*, December 2006, p37

- 95% of adults to achieve the basic skills of functional literacy and numeracy, an increase from levels of 85% and 79% respectively in 2005;
- More than 90% of adults qualified to at least level 2, an increase from 69% in 2005. A commitment to go further and achieve 95% as soon as possible;¹³²
- Shifting the balance of intermediate skills from level 2 to level 3.¹³³ This would require 1.9 million additional level 3 attainments over the period and an increase in the number of Apprentices to 500,000 a year; and
- More than 40% of adults qualified to level 4 and above, up from 29% in 2005, with a commitment to continue progression.

Despite these “stretching” objectives and the comments made in the Interim Report on international comparisons, their Final Report did note that in recent years the UK’s education and training program had improved “significantly”:¹³⁴

The number of working age people in England qualified to Level 2 is estimated to have risen by over 1 million since 2003. The proportion of adults with a high qualification has risen from 21 per cent in 1994 to 29 per cent in 2005. The proportion of people with no qualifications has nearly halved, down from 21 per cent to 13 per cent.

In response to the Leitch Review, the Government published *World Class Skills: Implementing the Leitch Review of Skills in England* in July 2007.¹³⁵ The provisions outlined in the paper are designed to help over four million adults learn new skills and improve existing ones over the next three years and, by 2020, “make Britain’s workforce one of the most skilled in the world”. The Government also adopted the targets for 2020 of the Leitch Review as set out above, and stated a further target for 68% of the adult population to be qualified to level 3. The key announcements to help achieve these targets were as follows:

- The creation of a new UK Commission for Employment and Skills, Local Employment and Skills Boards and reform of Sector Skills Councils to give employers further influence over both the content and delivery of skills and employment programmes.
- Employers will be given a leading role in the reform and development of vocational qualifications for their sector, and make it easier for them to have their own training programmes accredited.
- Skills Pledges outlining individual employers’ commitment to support their employees to become more skilled and better qualified, with Government help.

¹³² Level 2 refers to a standard equivalent to five GCSEs at A* -C or a National Vocational Qualification at level 2.

¹³³ Level 3 refers to a standard equivalent to two A levels or a National Vocational Qualification at level 3.

¹³⁴ Leitch Review of Skills, *Op Cit.*, December 2006, p40

¹³⁵ DIUS, [World Class Skills: Implementing the Leitch Review of Skills in England](#), July 2007

- Expansion of Train to Gain.
- The creation of Skills Accounts and the new adult careers service with the aim of providing tailored employment and skills.
- The Information, Advice and Guidance (IAG) services of learndirect and nextstep providers will be merged into a new, universal adult careers service in England, working in partnership with Jobcentre Plus.
- Legislation to strengthen the current funding entitlement for adults to free training in basic literacy and numeracy and to achieve first full level 2 qualifications.

In order to finance these initiative, DIUS's Comprehensive Spending Review settlement for the period 2008/09 to 2010/11 outlined funding of £5.3 billion a year by the end of the period "to increase adult skills and apprenticeships and make progress against the Leitch ambitions for world-class skills" with the aim of providing 3.7 million adult qualifications to 2010/11.¹³⁶

2. Current measures to address adult skills

Many of the strategies and programmes currently in operation to address the skills gaps in the economy were outlined in the most recent Skills Strategy White Paper titled *Skills: Getting on in business getting on at work*,¹³⁷ published in March 2005 (this was a follow-up to the 2003 Skills Strategy White Paper).¹³⁸ The UK Government's skills agenda is also driven by the conclusions of the Leitch Review. Key elements of the strategy include:

a. Level 2/3 entitlement

Since September 2006 there has been a new entitlement for any adult aged 19 and over (there is no upper age limit) in the labour force to have access to free tuition for their first full level 2 qualification.¹³⁹ Additionally, an entitlement to free training for first full level 3 qualifications was recently announced for all learners aged up to 25 in May 2007; national roll-out began in August 2007.¹⁴⁰

¹³⁶ HM Treasury, *2007 Pre-Budget Report and Comprehensive Spending Review*, [Annex D15](#), October 2007

¹³⁷ DfES, [Skills: Getting on in business getting on at work](#), 22 March 2005

¹³⁸ For more information on both of these White Papers see the following two Library Standard Notes:

SN/EP/3443 – [Development of the Skills Strategy](#)

SN/EP/2589 – [The Skills Strategy](#)

¹³⁹ Level 2 refers to a standard equivalent to five GCSEs at A* -C or a National Vocational Qualification at level 2. Level 3 refers to a standard equivalent to two A levels or a National Vocational Qualification at level 3.

¹⁴⁰ DCFS Press Release, ["Free training for under 25s – Rammell"](#), 22 May 2007

b. *Train to Gain*

Train to Gain offers employers fully subsidised training for low skilled employees up to a first full level 2 qualification and support for progression to level 3. It has been fully operational in England since August 2006.¹⁴¹ By the end of 2010 it is expected that over 500,000 learners will have achieved a first full level 2 qualification through Train to Gain.

Since August 2006, two level 3 trials have also been operating in the North West and West Midlands regions, offering businesses with less than 250 employees a subsidy for employees to achieve a first full level 3 qualification through Train to Gain. A third level 3 trial began in London in September 2006, targeting women and ethnic minority women in occupational areas where they are under-represented at level 3.

Three higher education Train to Gain pathfinders are being introduced by the Higher Education Funding Council for England (HEFCE) in the North East, North West and South West.

The Government recently announced the further expansion of Train to Gain (most notably the programme's expansion to include level 3 training nationally) with funding rising from £460 million in 2007/08 to £657 million in 2008/09 and exceeding £1 billion by 2010/11.¹⁴²

c. *National Skills Academies*

A network of National Skills Academies (NSAs) is currently being developed. NSAs are employer-led, sector based, national centres of excellence for skills training, and build on the existing network of the 403 Centres of Vocational Excellence. The first three NSAs were launched on 31 October 2006, in the financial services, construction and manufacturing sectors. A fourth, in the food and drink sector, was approved in January 2007. Four other sectors have successfully applied to be part of the National Skills Academy programme in a second round. The Government's aim is to have 12 NSAs operational by 2008.

d. *Adult Learning Grant*

The Adult Learning Grant offers an entitlement of up to £30 per week to individuals on low income undertaking a first full level 2 or level 3 qualification. Since September 2006 this has been available to adults aged 19 plus in 24 of the 47 LSC areas, and national roll-out began in September 2007.

e. *Apprenticeships and Apprenticeships for Adults*

The system of Apprenticeships for individuals aged 16-24 is described earlier in this paper. In addition, Apprenticeships for Adults are seen a key contributor to increasing Adult Skills. Until August 2003, participants on Apprenticeships had to complete the

¹⁴¹ National roll-out began in April 2006. Train to Gain was preceded by, and developed from, the Employer Training Pilots programme which ran from September 2002 to March 2006 in selected areas in England.

¹⁴² LSC, [Our Statement of Priorities](#), November 2007, p50

programme before their 25th birthday. The Government's 2003 Skills Strategy announced that the age limit would be lifted.

Trials of Apprenticeships for Adults initially operated in four sectors: health and social care; construction; IT; and engineering. Following these trials Apprenticeships for Adults began national roll-out in August 2007 with initial funding of £25 million.

The following groups of learners receive priority for the programme:

- Those without employment, including those on incapacity benefit, who are seeking to train or retrain in order to enter long-term employment.
- Individuals, in particular women or people from an ethnic minority, who are seeking to enter atypical careers.
- Adults working within sectors that have been identified as local, regional or national priorities, and who, though they have existing skills, lack the formal qualifications for these skills, including those who, having achieved an NVQ level 2 or 3 through Train to Gain, now wish to complete an Apprenticeship.

It has since been announced that Apprenticeships for Adults will receive an additional £90 million over the period to 2010/11 to aid the programme's expansion.¹⁴³

3. House of Commons Education and Skills Committee report: Post-16 Skills

The Leitch Review and the Skills Strategy White Papers were recently the subject of an inquiry by the (then) House of Commons Education and Skills Committee. Upon the inquiry's announcement in November 2006, the Committee intended to consider:

- the underpinning principles of the Government's Skills Strategy to date – especially, the focus on training up to first full level 2 qualifications;
- the recommendations of the Leitch Review and how these should be taken forward;
- supply-side issues surrounding those looking to develop their skills; and
- the development of a so-called 'demand-led' system for skills.

The report of the inquiry, *Post 16-Skills*, was published in August and contained a range of recommendations. While commending the Department's focus on adult skills the Committee also criticised the assumption in Government policy of a direct relationship between prosperity and skills:¹⁴⁴

The Committee commends the Government for its sustained focus on skills. It is vital that this policy focus is continued within the new Departmental structure, and that higher education is not allowed to dominate the work of the Department for Innovation, Universities and Skills.

Skills and prosperity—a fundamental link?

¹⁴³ ["Ambitious plan to help boost nation's job prospects"](#), DIUS Press Release, 16 November 2007

¹⁴⁴ Education and Skills Committee, [Post-16 Skills](#), 2 August 2007, HC 333-I 2006–07

We nevertheless raise a number of concerns about the direction of current policy. The Government's approach to skills is one predicated on a direct relationship between prosperity—both social and economic—and skills. Our evidence suggests that skills are only part of a very complex equation, and simply boosting training will not necessarily lead to increased prosperity—particularly in economic terms. What is needed is more coherent support for employers to develop their businesses as a whole, addressing skills needs alongside other issues such as capital investment, innovation and workforce planning. This should be coupled with a much stronger focus on management skills than is currently the case.

The report highlighted a number of further issues. In particular, the Committee called for a coherent and streamlined skills infrastructure which simplified the system for users, clarified the remit of Sector Skills Councils, and enabled greater access to comprehensive Information, Advice and Guidance (IAG). On the subject of a demand-led approach to skills training, the Committee believed the most important goal should be to raise demand from employers and individuals, not simply respond better to them. Although the Government's focus on the new Train to Gain programme was welcomed, concerns were also raised regarding bureaucracy and funding constraints associated with it, while the assessment of the effectiveness of contracted Train to Gain brokers had to be more explicit.

In response to the Committee's report the Government recognised that efforts to improve skills should be integrated with wider action to support business.¹⁴⁵ The response noted that businesses involved in the Train to Gain programme are generally also informed about other business support schemes.¹⁴⁶ In February 2007, the Public Accounts Committee provided a detailed account of how government support for small business is currently delivered.¹⁴⁷

On simplifying the skills infrastructure, the Government said that it was currently considering the future design of the post-19 skills "landscape" with the goals of simplification for customers and ensuring good effectiveness and value for money in the delivery of skills policy.¹⁴⁸ Regarding Train to Gain, the Government response said:¹⁴⁹

In World Class Skills we committed to expanding and improving the skills brokerage service to support employers of all sizes and in all sectors to improve the skills of their employees. Following a review of the service, the LSC will publish a detailed delivery plan for the expansion of Train to Gain in the autumn.

We will support that expansion by introducing greater flexibility to the way colleges and training providers can work directly with employers. We will work with partners to develop a major programme of capacity building for providers, and in particular their staff who work with employers, building on the current

¹⁴⁵ Education and Skills Committee, [Post-16 Skills: Government Response to the Committee's Ninth Report of Session 2006-07](#), 29 October 2007, p2

¹⁴⁶ BERR, [Business Support Solutions](#).

¹⁴⁷ Public Accounts Committee, [Supporting Small Business](#), 6 February 2007, HC 262 2006-07; See also [Budget 2006](#), HC968, paragraph 3.51

¹⁴⁸ Education and Skills Committee, *Op Cit.*, 29 October 2007, p9

¹⁴⁹ *ibid.* p10

improvement programme led by the Quality Improvement Agency. The new standard for employer responsiveness and vocational excellence, and the existing brokerage standards, will provide the framework for this activity.

Initial evidence suggests that there had been some additional bureaucracy caused by the Train to Gain processes, particularly those operating between provider consortia leads and their sub-contractors. We are currently considering how this can be addressed. The LSC has confirmed that they will welcome any recommendations for reducing bureaucracy within its operations and these will be reflected in the delivery plan. The findings from the review of Train to Gain will also be shared with the independent Further Education and Training Bureaucracy Reduction Group which will be publishing a report on their views on Train to Gain later this year.

The response also affirmed the Government's commitment to effective IAG, outlining plans for a universal adult careers service aimed at:¹⁵⁰

... bringing together the [IAG] services provided by learndirect and nextstep providers, working in partnership with Jobcentre Plus.

Working with Jobcentre Plus, the new careers service will be a 'one-stop-shop', giving every adult easy access to skills and careers advice that will help them find work and progress in their careers. The service will offer a range of support comprising personalized assessment through a skills health check, advice on skills and employment, Skills Accounts and continuing support for progression. For people who are out of work and have low skills, the service will play a crucial role in helping them get the right balance of job search and training to help them into sustained employment and to progress in their career. The service will signpost individuals to other complementary services, for example child care or advice on employment rights. It will also help them to learn about financial entitlements they may have to help with tuition fees or access to learning.

Access to the service will be through whatever means is convenient and appropriate to individuals' circumstances—face to face, online, by telephone or by a combination of these. There will be a 'no wrong door' approach, and the quality and appropriateness of the support will be the same, whether the contact is with a Jobcentre, a learning provider, or the careers service itself.

Trialling of the new service will start in 2008–09 with a view to it being fully operational by 2010–11.

In relation to the Committee's recommendations on a demand-led approach the Government highlighted the roll-out of the new Skills Accounts in 2010/11 with funding of approximately £1.3 billion, and again highlighted the role Train to Gain had to play.

B. The Bill

Clause 70 of part 3 of the Bill applies to England only and places duties on the LSC to secure the *proper* provision of facilities and courses to allow learners over the age of 19

¹⁵⁰ *ibid.* p11

to attain their first functional literacy (level 1), entry level 3 numeracy and full level 2 qualifications. A duty is also placed on the LSC to ensure learners are not liable to pay fees for such courses (and some other specific course-related costs). Additionally, learners aged 19-25 will be entitled to attain their first full level 3 qualification without having to pay tuition fees. These measures aim to provide adults the right and access to basic and intermediate skills at no cost to the learner. In doing so, this clause inserts three new sections and a new schedule into the *Learning and Skills Act 2000*.

There has been a free entitlement since September 2006 to training up to a first full level 2 qualification for those aged over 19 while an entitlement to level 3 was introduced for 19-25 year olds in August 2007; however, these are currently only specified in LSC and DIUS guidance (see Part III, Section A2 this paper).

Clauses 71 to 75 contain a range of provisions to enable data sharing of specific tax, employment, benefit, and training information between HMRC, DWP, DIUS and the devolved administrations.¹⁵¹ This is in order to assist in the effective assessment and provision of education and/or training of those aged 19 and over (including, for example, determining eligibility for provision under clause 70). The Explanatory Notes accompanying the Bill state that the provisions under clauses 71 to 75 will require Legislative Consent Motions (formerly Sewel Motions) in the Scottish Parliament. In a Written Statement following the Queen's Speech, the Secretary of State for Scotland, Des Browne, stated:¹⁵²

Education is a devolved matter but the Bill is likely to include provisions relating to data sharing that extend to Scotland to allow access to longitudinal surveys. This will enable assessments to be made on wage impact of education and training provisions.

The Government estimates that the additional cost of Part 3 will be £20 million each year (in 2007/08 prices). However, it is also estimated that the benefit to one year's cohort over the course of their lifetimes will be £70 million (in 2007/08 prices).¹⁵³

1. Reaction

Upon the announcement of the Bill in the Queen's speech the British Chamber of Commerce commented on the potential benefits to adult skills:¹⁵⁴

...is also heartening to see that the Government is now tackling the lack of skills in the existing working age population. Around 70 per cent of the 2020 working age population have already left compulsory education and unfortunately a substantial minority do not have adequate workplace skills. By investing in adult skills, we should hopefully see an increase in the number of people equipped with the skills needed in the workforce.

¹⁵¹ See Part VI of this paper.

¹⁵² HC Deb 7 November 2007 cc12-13WS

¹⁵³ *Education and Skills Bill Explanatory Notes*, Bill 12-EN paragraph 183

¹⁵⁴ ["Government approach to education and learning along the right lines to meet the challenges of today and the future"](#), BCC Press Release, 6 November 2007

Similarly, EEF, the industry body for engineering and manufacturing employers stated:¹⁵⁵

Government has gone some way towards establishing a world class education and training system. It must now put in place the final pieces of the jigsaw recommended by Lord Leitch to deliver a truly demand-led skills system

However, in a recent interview with *Personnel Today*, the Director General of the CBI, Richard Lambert, said:¹⁵⁶

"I thought the response to the Leitch proposals was a bit lame" ... "I thought that the government pulled back from some of the bolder recommendations." [...]

Lambert warned that the slow pace of the government's response to the skills crisis would count against any attempts to make training compulsory.

Leitch proposed that giving workers time off to gain Level 2 training should be made compulsory in 2010 unless enough progress was being made voluntarily.

"I think the rather leisurely way the government is going about the Leitch proposals will make it very difficult for businesses to make much of a change in such a short time," said Lambert.

At the time of writing no other reactions were readily available to the Bill's provisions on adult skills.

IV Part 4 of the Bill: regulation and inspection of independent educational provision in England

A. Current arrangements for regulation and inspection of independent schools

The *Education Act 2002* requires all independent schools to be registered. Under section 158 of the Act the register of independent schools in England is kept by the Secretary of State for Children, Schools and Families. Regulations made under the Act set out the standards that independent schools must meet as a condition of registration. These cover the quality of education; the spiritual, moral, social and cultural development of pupils; welfare, health and safety of pupils; suitability of proprietors and staff; premises and accommodation; and, the provision of information and complaints handling.¹⁵⁷ Failure to take appropriate action to meet standards could result in a school being removed from the register of independent schools. When an independent school applies for registration the proprietor is required to specify whether or not the school will cater

¹⁵⁵ ["Manufacturers welcome Queen's Speech"](#), EEF Press Release, 6 November

¹⁵⁶ ["CBI chief Richard Lambert condemns government's slow response to Leitch review of skills"](#), *Personnel Today*.com, 4 December 2007

¹⁵⁷ *The Education (Independent School Standards) (England) Regulations 2003, SI No. 1910*, as amended by *The Education (Independent School Standards) (England) (Amendment) Regulations 2004, SI No 3374* and *The Education (Independent School Standards) (England) (Amendment) Regulations 2007, SI 2007 No 1087*

wholly or mainly for pupils with SEN, and where it caters for pupils with learning difficulties it will only be registered to admit pupils of the SEN type specified. Approval is required if it wishes to change the SEN type.

Independent schools must seek approval from the Secretary of State for: a change of proprietor; a change of age range of pupils; a change in maximum numbers; a change of address; to become fully or partly co-educational; to provide or cease to provide boarding accommodation; or to admit pupils with SEN.

There are about 95 independent schools catering wholly or mainly for pupils with SEN that are approved by the Secretary of State under section 347(1) of the *Education Act 1996*.¹⁵⁸ They have to meet the independent school standards referred to above and additional standards set out in separate regulations.¹⁵⁹ Local Authorities may place pupils with a statement of SEN in these approved independent schools. If they wish to place a statemented child in other independent schools, the consent of the Secretary of State must be obtained.

Non-Maintained special schools (NMSSs) are approved under section 342 of the *Education Act 1996*, and must meet requirements set out in regulations.¹⁶⁰ They are operated by charities and charitable trusts on a not-for-profit basis, and they receive some revenue and capital funding from central government. There are currently 73 NMSSs.

Independent schools are inspected either by Ofsted¹⁶¹ or by a body approved by the Secretary of State under section 162 of the 2002 Act. The Independent Schools Inspectorate (ISI) and the Schools Inspection Services (SIS) are approved bodies. ISI inspects all the independent schools belonging to the five heads' associations which form the Independent Schools Council (ISC). The SIS inspects a very small number of schools that belong to the Focus Learning Trust.

There are about 2,300 independent schools in England, of which around 1,100 are inspected by Ofsted.¹⁶² Ofsted also inspects both the boarding and the early years provision in independent schools. The inspection of boarding provision was transferred from the Commission for Social Care and Inspection (CSCI) to Ofsted in April 2007.

According to ISC, 1,195 schools (based on DCSF registration numbers) are inspected by ISI, though, as ISC point out, there may be more as a DCSF number can cover several schools. 80% of pupils in independent schools in England are in schools inspected by ISI.¹⁶³ ISI inspection teams are drawn from a pool of serving or recently-retired independent school headteachers and senior teachers, Ofsted Registered Inspectors

¹⁵⁸ Consultation document, paragraph 2.10

¹⁵⁹ The *Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994*, SI 1994 No 651

¹⁶⁰ The *Education (Non-Maintained Special Schools) (England) Regulations 1999*, SI 1999 No 2257

¹⁶¹ The new Ofsted – the Office for Standards in Education, Children's Services and Skills – came into being on 1 April 2007.

¹⁶² DCSF Consultation document, paragraph 2.39

¹⁶³ ISC Response to the consultation, paragraphs 18 and 20

and retired HM Inspectors. ISI publishes regulatory guidance documents, which are available on its website.¹⁶⁴ Ofsted monitors the inspection work of the approved bodies, and Ofsted's annual report on the work of ISI was published on 5 September 2007.¹⁶⁵

Inspections of independent schools normally occur every six years though under section 162A of the *Education Act 2002* an independent school may be inspected at any time. The *Education Act 2005* made provision for a new inspection model based on more frequent, short inspections taking account of school self-evaluation. This has been implemented in the state school sector. From April 2008, independent school inspection will begin to move to a three year cycle using a similar inspection model.

B. Consultation proposals

On 27 July 2007 the Government issued a consultation document¹⁶⁶ and a partial regulatory impact assessment¹⁶⁷ on proposals for:

- the transfer of responsibility for the registration and regulation of independent schools and non-maintained special schools (NMSSs) from the Secretary of State to Ofsted
- the repeal of section 347 of *Education Act 1996* which requires local authorities to seek consent for placements of pupils with Special Educational Needs (SEN) in independent schools catering wholly or mainly for pupils with SEN
- 'small' changes to the legislation covering the regulation and monitoring of independent schools: to introduce a new management standard; allow Ofsted to publish a higher proportion of inspection reports; streamline the system for approving changes to the provision of registered independent schools; provide a more flexible procedure for dealing with poorly performing schools; and eliminate dual registration for children under 3 in independent schools (currently under early years and school-related legislation).
- changes in the inspection fee arrangements for independent schools

Under the proposals, Ofsted, not the Secretary of State, would be responsible for the regulation and registration of independent schools. The inspection of schools belonging to the Independent Schools Council or the Focus Learning Trust would continue to be

¹⁶⁴ http://www.isinspect.org.uk/highlights/highlights_schools.htm

¹⁶⁵ http://www.ofsted.gov.uk/assets/Internet_Content/Shared_Content/Files/2007/sept/hmci_isilet_07.pdf

¹⁶⁶ Department for Children, Schools and Families (DCSF) consultation about the transfer of responsibility for the registration of independent schools and the regulation of independent and non-maintained special schools (NMSSs) to Ofsted, July 2007:

<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1498>

¹⁶⁷ Partial Regulatory Impact Assessment for the transfer of responsibility for the registration of independent schools and the regulation of independent and Non Maintained Special Schools (NMSSs) to Ofsted, DCSF July 2007:

<http://www.dfes.gov.uk/consultations/downloadableDocs/Transfer%20RIA%20-%2027%20July.doc>

carried out by the Independent Schools Inspectorate and the Schools Inspection Services respectively. All other independent schools would be inspected by Ofsted.

a. *Transfer of regulation and registration of independent schools from the Secretary of State to Ofsted; repeal of section 347*

The rationale for the proposals to transfer regulation and registration from the Secretary of State to Ofsted, and the implications of the change and associated proposals, were described in paragraphs 2.23 to 2.36 of the consultation document:

Rationale

2.23 The current arrangements have grown up over a number of years and we believe we should rationalise the registration, monitoring and categorisation of schools in the NMSS and independent sector. This has been prompted by the transfer of the inspection of boarding schools and the inspection and registration of children's homes from CSCI to Ofsted in April 2007. Ofsted now registers and inspects early years and inspects (but does not register) education in independent schools.

Independent Schools

2.24 We propose that the registration and monitoring of independent schools will transfer to Ofsted. The principles of the existing statutory framework set out in the Education Act 2002 will remain. The major change from a school's perspective will be that Ofsted will assume responsibilities formerly discharged by the Secretary of State, and Ofsted will be a school's point of contact in relation to registration. Schools in membership of ISC and FLT will continue to be inspected by ISI and SIS respectively.

Approved Independent Schools

2.25 Section 347 of the 1996 Education Act created two categories of independent schools, approved and non-approved schools. Approved schools cater wholly or mainly for pupils with SEN, and are required to meet additional standards. For this reason local authorities are able to place pupils in these schools without seeking consent from the Secretary of State. The standards were originally needed because independent school standards were not in the past set out in a way that was helpful for special schools.

2.26 Since the Education Act 2002 higher standards have been set for the independent sector as a whole, through the Act itself and supporting regulations. We believe these new standards, together with an improved inspection framework for independent schools, remove the need for a separate category of approved independent schools.

2.27 We therefore propose to remove the category of approved independent school, which will clear the way for a single inspection regime, and unified registration and regulation of all independent schools.

2.28 Unified inspection arrangements for all independent schools will mean that the former approved independent schools will be inspected on the same basis as all independent schools. This includes paying for inspections. Inspections will be carried out by Ofsted or the relevant approved inspectorate, and the current

arrangements which apply to mainstream independent schools will apply to all independent schools. Details of the current charging arrangements are detailed in paragraph 2.46 onwards.

2.29 We are considering whether to put in place transitional arrangements for schools currently approved under section 347 of the 1996 Act, where charges for inspections will result from the proposed changes. We invite suggestions about transitional arrangements as part of this consultation.

Secretary of State consent for children with statements of SEN

2.30 Removing the category of approved independent schools would also remove the need for local authorities to seek consent from the Secretary of State to educate a pupil with a statement of SEN in independent schools catering wholly or mainly for pupils with SEN. We believe that the duty on local authorities to ensure appropriate provision is in place for pupils for whom they maintain statements will continue to ensure that children with SEN have their needs met.

2.31. We propose to produce guidance for local authorities setting out the information they may wish to consider in deciding whether to educate a pupil with a statement of SEN in an independent school. This would emphasise the responsibility the authority has to assure itself of the suitability of any placement before naming a school, and might cover areas such as the pupil's type of SEN; the category of SEN a school caters for; the descriptors used by Ofsted in inspection reports; and possible sources of 'soft' information that may be available about independent schools.

2.32 Where there are disagreements between parents and local authorities about naming an independent school in a child's statement of SEN the parents' right of appeal to the Special Educational Needs and Disability Tribunal (SENDIST) would remain.

2.33 We welcome suggestions as to what any guidance might include as part of this consultation.

Non-Maintained Special Schools

2.34 The major change for NMSSs will be the transfer of approval and monitoring to Ofsted. The statutory provisions governing these schools will be retained but registration and regulation will rest with Ofsted rather than the Secretary of State. The current inspection arrangements will continue unchanged and schools will continue to be eligible for a range of grants which would be paid directly by DCSF.

Local Authority responsibility for children with statements of SEN

2.35 The requirement for local authorities to provide parents with a list of non-maintained special schools would remain. However, the proposed changes mean there would no longer be a category of approved independent school. We think that the best way to support authorities would be for Ofsted to maintain a list of all NMSSs and independent schools that cater wholly or mainly for pupils with SEN. This list would be available for local authorities to use in supplying information to parents.

2.36 The list would be prepared using inspection information and it is intended that it will contain a summary of Ofsted's judgements on the quality of education; spiritual, moral, social and cultural development; and welfare. This list could be used by an authority to determine whether a school is suitable for a particular pupil. We welcome suggestions as to what information should be included in such a list.

b. *Changes to the legislation covering the regulation and monitoring of independent schools*

The proposed 'small' changes to the legislation covering the regulation and monitoring of independent schools would:

a. introduce a new management standard to ensure that independent schools have good quality leadership that enables the school to meet the standards required for registration, and continued registration. It is particularly important that mechanisms are in place to sustain any improvements which may be required following an inspection;

b. publish Ofsted inspection reports which support registration and subsequent changes to the school's registration. This will allow parents and others to have better information about standards at a school from initial registration onwards;

c. streamline the system for agreeing changes in a school's provision (e.g. change of age range/premises) in good schools to reduce the burdens on these schools and allow Ofsted to target its resources on agreeing changes to provision in poorly performing schools. We propose that all schools will be required to notify Ofsted of proposed changes but will not require prior approval to implement any change except where a school caters for pupils with SEN. In these cases, the present approval system will continue to ensure that provision for those children will meet their SEN. In other cases, supplementary information or a re-inspection will not be required unless the school's previous inspection history indicates the school was not fully meeting the standards;

d. change the procedure for de-registering poorly performing schools to allow a more timely and measured response. The regulatory body would have the flexibility to restrict a school's operations where standards had slipped if it was judged that there was a good chance of recovery. It would then be possible to move to de-registration of the whole school if it did not quickly improve. De-registration would remain an option where there was little prospect of improvement;

e. clarify the system in a way that ensures provision for children under 3 will be regulated solely under early years legislation. This will clarify which regulatory regime applies if regulatory action is needed. In addition, we will ensure that schools that do not meet the definition of an independent school because they do not have the required number of pupils can be de-registered where this is appropriate. Where pupil numbers suffer a temporary dip the school would continue to be registered.¹⁶⁸

¹⁶⁸ Consultation document, paragraph 2.38

c. **Registration and inspection fees**

Under section 162A of the *Education Act 2002* registered independent schools are charged fees by Ofsted for a full inspection. At present, no charge is made for considering applications for registration or for a first follow-up inspection where a school is found to have failed to meet a substantial number of regulations during its inspection. Fees are charged for a second follow-up inspection. Schools may pay the fee in a one-off payment or in two instalments over a year. The consultation document noted that the current fees are not based on the recovery of full costs, and in some cases represent only a small fraction of the cost of the inspection. Furthermore, it is argued, these arrangements provide no incentive for new schools to meet all the standards prior to application for registration.¹⁶⁹

The consultation document proposed changes to the fee paying arrangements to better reflect the cost of Ofsted inspections and to provide a two tier regime with lower fees for schools complying with all or most of the statutory standards. Fees would continue to be on a sliding scale based on the size of the school. Also, fees would be introduced for initial applications to register as an independent school, and schools would be required to pay a fee for all subsequent registration inspections until they meet the full standard. Fees will be charged where schools require follow up inspections. Details of the proposed arrangements and their costs were given in the partial regulatory impact assessment.

C. **Response**

The consultation closed on 19 October 2007. DCSF had already discussed the proposals with Ofsted before the consultation. The other main body affected by the proposals is the Independent Schools Inspectorate, which inspects all the independent schools belonging to the five heads' associations which form the Independent Schools Council.

The Independent Schools Council (ISC) and the Independent Schools Inspectorate (ISI) are vociferously opposed to the proposals, and have also complained about the timing of the consultation and the lack of any prior discussion. They have also challenged the DCSF's figures on the number and extent of inspections.

In summary, ISC believe that the proposals are unnecessary and that the rationale for their introduction is both flawed and lacking foundation.¹⁷⁰ It argued that the changes would not achieve their aim of a unified regulatory and inspection regime as the ISI would continue in their inspection role. ISC questions the need for the change being prompted by the transfer of the inspection of boarding schools to Ofsted, pointing out that the current position is that regulation and inspection of boarding provision are separate as the responsibilities that transferred from the CSCI to Ofsted did not include

¹⁶⁹ Consultation document, paragraph 2.41

¹⁷⁰ Response from the Independent Schools Council to the DCSF consultation *about the transfer of responsibility for the registration of independent schools and the regulation of non-maintained special schools*, 18 October 2007: http://www.isc.co.uk/Consultations_ISCResponsesEvidence.htm

regulation and registration functions. ISC believes that it is vital to keep the regulatory and inspection functions separate.

It stresses that ISI is a highly-regarded inspector of the majority of schools that educate 80% of pupils in the independent sector. Furthermore it seriously doubts Ofsted's capacity and ability to take on such additional responsibilities, citing a report from the Education and Skills Select Committee which expressed concern about the complex set of objectives and sectors that Ofsted now covers and its capacity to fulfill its core mission.¹⁷¹ ISC has concerns about Ofsted acting as both regulator and inspector.

ISC notes that its member schools have faith in the current system and see no reason for change. It argues that the regulation of independent schools should remain with the Secretary of State who is answerable to Parliament. Also it believes that if the Government wants a unified inspection regime the answer is for ISI to be given responsibility for inspecting all provision in independent schools.

a. Removal of the section 347 approval

ISC believes that that no evidence has been produced to justify the removal of the section 347 approval mechanism for independent schools which cater wholly or mainly for children with special educational needs:

The current system assures parents and local authorities of the specialisms such schools can offer and the quality of provision they make. ISC does not believe that local authorities will have the resources to, nor should, take over the Secretary of State's role in approving and monitoring these schools;

In any event, ISC would urge the Department to permit ISI to inspect those non-maintained special schools and section 347 schools which, if these proposals are implemented, will no longer be subject to the Secretary of State approval mechanism.¹⁷²

b. Proposed management standard

ISC stated that the proposed management standard had caused member schools concern, not through any fear of their ability to measure up to the standard, but because there had been no prior discussion of the idea with ISC or ISI and because no detail had been set out about what the standard might comprise.

c. Changes to the fee regime

On the proposed changes to the fee regime, ISC questioned whether existing ISC schools which wanted to open, say, a prep school, would be required to pay a registration fee to Ofsted as well as paying for an ISI accreditation inspection. It also pointed out that there were no proposals for discussion of future fee increases, and argued that, at the least, a mechanism should be specified by which proposed fee levels

¹⁷¹ Education and Skills Select Committee, *The work of Ofsted*, HC Paper 165, July 2007

¹⁷² *ibid.*, executive summary, paragraphs 5 and 6

are considered and consulted on, with provision to refer these to the Secretary of State in the event of a dispute.

In its response, the Independent Schools Inspectorate made many points similar to those made by the ISC.

At the time of writing, the DCSF had not yet published its summary of the consultation responses.

D. The Bill

Part 4 of the Bill changes the regulatory framework for independent educational institutions and makes other changes relating to their inspection. For a clause by clause analysis, see the *Explanatory Notes* to the Bill.

A wider definition of independent educational institution is introduced to include independent schools and other independent educational institutions that offer part-time provision.¹⁷³ Institutions offering less than 12.5 hours per week for children under 12 years and less than 15 hours for children aged 12 or over are excluded. The Secretary of State may exempt certain settings. The *Memorandum of Delegated Powers* states that the new regulations will exclude: temporary provision that would otherwise fall within the definition, such as summer schools; hospital schools that would otherwise fall within the definition; LEA home tutorial services or home education by parents.

Provision is made for the application of existing standards to independent educational institutions, and an additional standard is created relating to the quality of leadership and management of the institution. The standards are to be prescribed by the Secretary of State in regulations. The intention is that the standards currently set out in section 157 of the *Education Act 2000* will be retained, and be supplemented with the new standard relating to the quality of leadership and management.

The Bill transfers the responsibility for the registration and regulation of independent educational institutions from the Secretary of State to the Chief Inspector (Ofsted). The function of approving non-maintained special schools is also transferred from the Secretary of State to the Chief Inspector.

The existing power of the Secretary of State to approve inspectorates (in addition to Ofsted) to undertake inspections of independent educational institutions will continue.

The Secretary of State is empowered to require the payment of fees in relation to Ofsted inspections of independent educational institutions. (This does not apply to academies, city technology colleges or city colleges for the technology of the arts.) Details of the arrangements will be covered in regulations. Provision is made for the Secretary of State to set the amount of fees and the times at which they must be paid. The

¹⁷³ There was a separate DCSF consultation on this from 3 August to 26 October 2007: <http://www.dfes.gov.uk/consultations/downloadableDocs/IND%20DEP%20SCH%20FINALconsultationDocument.doc>

regulations may vary or waive fees, and make different arrangements in relation to inspections carried out for different purposes or in different circumstances. The aim of the power is to limit the burden of inspection of independent educational institutions on the public purse, and encourage institutions to meet the required standards at the earliest opportunity.

The Chief Inspector may publish any report of an inspection which he has made. He is empowered to require an action plan from a proprietor of an independent educational institution where the standards are not being met. The Chief Inspector may apply to a Justice of the Peace to impose an immediate restriction on an independent educational institution in an emergency where there is significant risk of harm to a student at the institution. Similar provision is made in relation to the withdrawal of approval from non-maintained special schools in an emergency.

The Secretary of State may make regulations to apply any provisions of the regime for the regulation of independent educational institutions to independent post-16 colleges.

Section 342 of the *Education Act 1996* is amended to give sixth-form pupils in non-maintained special schools a right to opt out of religious worship. The intention is to give such pupils the same rights as sixth-form pupils in mainstream maintained schools following a change made by the *Education and Inspections Act 2006*.

Section 347 of the *Education Act 1996* is amended to abolish the requirement for independent schools in England to be approved for the placement of children with statements of special educational needs. Also the requirement is removed for LEAs in England to get the consent of the Secretary of State for the placement of children with statements of special educational needs in "non-approved" independent schools. The requirements for approval and consent remain for Welsh education authorities.

Paragraphs 12.1 to 12.27 of the *Impact Assessment* of the bill set out the costs to Ofsted in taking over this area of activity, and comments on the costs and benefits of the other changes made by Part 4 of the Bill.

V Part 5 of the Bill: miscellaneous provisions

A. Pre-16 education and training: Wales

The *Government of Wales Act 2006* gave the National Assembly for Wales (NAW) the power to pass legislation known as Assembly Measures. Part 3 of the Act gives the NAW powers to pass Measures in relation to the matters listed in Part 1 of Schedule 5 to the Act. **Clause 132** adds to the list under field 5 (education and training) the inspection of education and training for those aged 16 and under. This would complement the framework power conferred by the *Further Education and Training Act 2007* in respect of the inspection of post-16 education and training.

A Welsh Assembly Government Memorandum explained the proposals.¹⁷⁴ This set out background to the provision including the distinctive arrangements for school inspection in Wales and recent policy developments, as well as possible areas of further change. The scope of the proposed powers is outlined.

In a letter sent to all MPs on 28 November 2007, Huw Irranca-Davies, Parliamentary Under-Secretary at the Wales Office, said that the Government will also be seeking an amendment to the Bill to enable the NAW to register and regulate independent schools in Wales.¹⁷⁵ A separate Welsh Assembly Government Memorandum described the proposed framework powers for the regulation and inspection of independent schools in Wales.¹⁷⁶ It also sets out the policy background which explains that in general terms the current policy of the Assembly Government is similar to that in the Education and Training Bill (described in Part 4 above); however, consideration of the policy is at an early stage in Wales.

B. Maintained schools in England: behaviour and attendance

Section 29(3) of the *Education Act 2002*, as amended, makes provision for school governing bodies of maintained schools (except nursery schools) to "require registered pupils to attend at any place outside the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school."

Clause 133 introduces a new section 29A to the 2002 Act to allow a governing body of a maintained school in England to require a 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. Regulations must require prescribed persons (normally parents) to be given information relating to this requirement. Regulations must also require the governing body to keep under review the exercise of their power. The Secretary of State is given regulation-making powers in relation to parental involvement in reviews, the timing of the initial and subsequent reviews, and in connection with other matters. Governing bodies will be obliged to have regard to any guidance issued by the Secretary of State.

Clause 134 makes amendments to section 444ZA of the *Education Act 1996 Act*. Section 444ZA extends the circumstances in which a parent or a carer can be issued with a penalty notice or prosecuted for failing to ensure that their child regularly attends the alternative provision that has been made for the child. The scope of section 444ZA is extended by **clause 134** to cover pupils who have been directed off-site to receive educational provision which is intended to improve their behaviour. There is also a

¹⁷⁴ Welsh Assembly Government Memorandum on the Framework Provisions for the National Assembly for Wales. *Education and Skills Bill. Framework powers for education and training for those aged 16 and under*. Library Deposited paper 2007-0186
<http://www.walesoffice.gov.uk/2008/Education%20and%20Skills%20Bill%20-%20Wales%20framework%20powers%20memorandum2.doc>

¹⁷⁵ Wales Office letter dated 28 November 2007 to all MPs

¹⁷⁶ Welsh Assembly Government Memorandum on the Framework Provisions for the National Assembly for Wales. *Education and Skills Bill. Framework powers for the regulation, registration and inspection of independent schools in Wales*. Library deposited paper 2007-0192

change to clarify that the failure of a parent to secure the attendance of a pupil who has been excluded from school for a fixed period would come within the scope of the section 444 offence for non attendance.

The *Memorandum of Delegated Powers* explains how the regulation-making powers will be used.

C. External qualifications

Clauses 135 to 139 change the process of approval for qualifications in England, Wales and Northern Ireland. Under current legislation contained in the *Learning and Skills Act 2000* only qualifications which are approved by the Secretary of State, or a body designated by him, are eligible for public funding. Clause 135 removes the requirement for the Secretary of State to give consent to approval decisions made by designated bodies. Clause 136 applies these powers to Ministers in Wales.

Clause 137 extends the remit of the Qualifications and Curriculum Authority (QCA) to enable it to develop and publish criteria to be used for the recognition of bodies wishing to be granted powers to award and accredit qualifications. These provisions would allow QCA to recognise new awarding bodies and accredit qualifications designed by them. Clause 138 will extend similar powers to Wales and clause 139 will add vocational qualifications to the remit of the QCA in Northern Ireland.

These clauses will allow further education colleges and other learning providers, including employers, to create and accredit their own qualifications.

The QCA is currently developing a Qualifications and Credit Framework (QCF); the proposed framework will be a unit-based qualification framework underpinned by a system of credit accumulation and transfer, designed to recognise a wider range of learner achievements than the National Qualifications Framework (NQF).¹⁷⁷ The QCF will allow people to accumulate learning 'credits' over time from smaller units of study. The new approval process for external qualifications could allow employers to design their own in-house training courses which could be nationally recognised and included in the QCF as transferable credits.

This new approach to regulation and accreditation was announced in a QCA press release in May 2007:

This approach also involves creating a clear framework within which the skills agenda can develop. The regulatory framework aims to ensure that learners can access recognised qualifications that provide the skills that employers are looking for, as well as ensuring that employers can have confidence that learners with particular qualifications have suitable skills. Regulation should allow organisations to introduce new qualifications that respond to demand and address skills shortages, at the same time as ensuring that standards for these qualifications are correct, clear and transparent.¹⁷⁸

¹⁷⁷ QCA Qualifications and Credit framework at http://www.qca.org.uk/qca_8150.aspx

¹⁷⁸ QCA "A new regulatory approach" 22 May 2007 http://www.qca.org.uk/qca_10351.aspx

The Secretary of State for Innovation Universities and Skills, John Denham, made a speech to the Association of Colleges in November 2007 which explained how these changes will facilitate the recognition of learners' qualifications and will play a key part in furthering the skills agenda:

Developing the qualifications framework is crucial to employer engagement and employer confidence.

Ed Balls recently announced that QCA would be separated into a curriculum and qualifications development body and regulator entrusted with upholding standards.

SSCs will help to develop the content of qualifications and to ensure that they represent what employers need.

For many years employers have complained that we haven't recognised the best training that they offer to their employees. Employer accreditation is a vital step forward in the reform of qualifications. And by Christmas we expect to announce the first few who will have their training recognised in this way.

These changes will also improve the ability of colleges and providers to develop and award their own qualifications.

Of course, the big test for colleges and employers offering qualifications will be to ensure that learners gain transferable and recognisable skills they can take to other employers and conditions.¹⁷⁹

An article in *The Guardian* on 4 December 2007 suggested that these clauses would increase flexibility of provision and would allow further education colleges to respond to employers needs:

John Denham, secretary of state at the Department for Innovation Universities and Skills, has made clear that employers are to be offered the chance to get their training programmes nationally accredited.

Ioan Morgan, principal of Warwickshire College, and former chair of the 157 group of larger colleges. "It's about colleges being able to make a flexible local response to the companies they deal with. "We are being encouraged by government not to offer a fixed menu of courses on a take or leave basis.

"We've got to say to industry: tell us what your training needs are and we'll come up with courses for them."¹⁸⁰

QCA has suggested that the new system of accreditation and credit transfer would have numerous benefits:

¹⁷⁹ Department for Innovation, Universities and Skills *John Denham speech: Association of Colleges, 22 November 2007* http://www.dius.gov.uk/speeches/denham_association_of_colleges_221107.html

¹⁸⁰ "Colleges soon big enough to go out on their own" *The Guardian* 4 December 2007 <http://education.guardian.co.uk/further/story/0,,2221177,00.html>

The reforms are not just about reorganising the qualifications that are already accredited. We want to reach out and bring into the QCF the best learning and training, wherever it exists and whoever provides it. We believe that bringing employers' and providers' training into the QCF is a critical part of the work to develop a skills base built on high-quality training. Accredited training in a flexible system provides a number of benefits to employers and employees:

- development of qualifications based around employers' training and skills needs
- transferable achievements across and between employment sectors
- quick and responsive ways to 'up-skill' or 're-skill' the workforce
- support for continued professional development
- assistance with recruitment.

In addition to the benefits to employers and employees, the following are the benefits for providers and learners:

- transferable achievements across and between sectors
- quick and responsive ways to 'up-skill' or re-skill' the workforce
- support for continuous professional development
- assistance with learner retention, motivation and achievement
- wider learner participation
- help for providers to support employer training and skills needs.¹⁸¹

The article in *The Guardian* discussed the possible level of interest among colleges in accreditation of their courses:

Will there be a stampede of colleges applying for accreditation for their products? Maggie Scott, director of learning and quality at the Association of Colleges, doubts it. "I don't think we're going to see wholesale competition. Colleges are going to be interested in particular niche markets and highly specialised areas."¹⁸²

It has been suggested that employers will be more likely to provide training courses if they can get accreditation, as these courses will then attract public funding.¹⁸³

D. Inspections of teacher training in England

Clause 140 makes changes to the notice period given to providers of initial teacher training prior to an Ofsted inspection. Section 18 B of the *Education Act 1994* specified a notice period of a minimum of eight weeks; this time requirement will now be at the discretion of the Chief Inspector.

Ofsted is currently consulting on proposals to change the way it inspects initial teacher training education (ITE).¹⁸⁴ At present there are two separate inspection frameworks, one for ITE leading to qualified teacher status (QTS), mainly for schools, and a second

¹⁸¹ QCA Employer and Provider Recognition http://www.qca.org.uk/qca_14937.aspx

¹⁸² "Colleges soon big enough to go out on their own" *The Guardian* 4 December 2007 <http://education.guardian.co.uk/further/story/0,,2221177,00.html>

¹⁸³ *ibid*

¹⁸⁴ New ITE inspection framework under consideration at <http://ofstednews.ofsted.gov.uk/article/242>

for inspecting the training of further education teachers in the learning and skills sector. The proposals aim to introduce a single inspection framework.

E. Schools Forums

Section 43 of the *Education Act 2002*¹⁸⁵ required LEAs to establish Schools Forums. The purpose of the Forums is to represent the views of schools, and such other bodies as determined by the LEA, on the authority's schools budget. The functions of Schools Forums are set out in Regulations. Initially, their role was advisory and consultative but subsequently provision was made to give Forums some decision-making powers in relation to the schools budget.¹⁸⁶

Clause 141 enables regulations to require all Schools Forums to include representatives from non-school bodies, as well as re-enacting the current requirement for regulations to provide for the membership to include school representatives. It is anticipated that Schools Forums will be required to have members representing 14 to 19 partnerships and private, voluntary and independent early-years providers.

In September 2007, the Government published for consultation new draft *Schools Forums (England) (Amendment) Regulations 2007* and draft *School Finance (England) Regulations 2008*.¹⁸⁷ Under the draft regulations non-schools members comprise up to one third of the schools forum membership. This is a change from the previous regulations which allowed only one fifth of members to be non-schools representatives.

F. General provisions

Chapter 3 of Part 5 of the Bill contains general provisions in relation to the making of orders and regulations; functions exercisable the Welsh Ministers; general interpretation; minor and consequential amendments, repeals and revocations; financial provision; extent; commencement and the short title of the legislation. Some of these provisions will have been mentioned in passing in the relevant parts of this research paper; a full description of the provisions is given in the *Explanatory Notes* to the Bill. These give details about the territorial extent of the Bill, and in particular provide a table of the clauses which affect the existing powers of Welsh Ministers, confer new powers on them, or otherwise affect Wales. As noted earlier, the *Memorandum of Delegated Powers* sets out in detail the powers sought under the Bill and their purposes, and Annex A to the memorandum summarises the powers to make regulations, orders and directions under the Bill as presented, and indicates the parliamentary procedure in relation to each provision.

¹⁸⁵ inserted new section 47A into the *Schools Standards and Framework Act 1998*

¹⁸⁶ Changes brought about by the *Education Act 2005* and the *Education and Inspections Act 2006*

¹⁸⁷ DCSF, *Consultation on School Finance (England) Regulations 2008 and Schools Forums (Amendment) (England) Regulations 2007* (published 20 September 2007)
<http://www.teachernet.gov.uk/docbank/index.cfm?id=11905>

VI Data processing

Ensuring participation in education and training, providing associated support services and assessing the outcomes of adult skills training would involve additional information sharing between a number of organisations. **Clauses 13-16** provide for the supply of information to local education authorities by educational institutions, the Secretary of State and specified public bodies so that young people failing to participate can be identified. **Clause 17** provides for further information sharing powers in pursuit of this aim and to aid the maintenance of support services for young people. **Clauses 61-62** include information sharing powers for the purpose of supporting the Connexions services for young people. For the limited purposes of assessing the effectiveness of training and education of persons aged 19 and over and of the associated policies, **clauses 71-75** allow for information sharing between HM Revenue and Customs, the Department for Work and Pensions, the Department for Innovation, Universities and Skills and the devolved administrations.

The Bill's provisions on data matching and the use of databases come against a background of wider government initiatives in data sharing. Many of these are being introduced to improve access to services and avoid duplication of effort. This is related to the "Transformational Government" strategy published by the Cabinet Office in November 2005 (Cm 6683) which comments: "Modern government – both in policy making and in service delivery – relies on accurate and timely information about citizens, businesses, animals and assets. Information sharing, management of identity and of geographical information, and information assurance are therefore crucial." It further observes: "data sharing is integral to transforming services and reducing administrative burdens on citizens and businesses. But privacy rights and public trust must be retained. There will be a new Ministerial focus on finding and communicating a balance between maintaining the privacy of the individual and delivering more efficient, higher quality services with minimal bureaucracy."¹⁸⁸

One result can be the sharing of information for purposes other than those for which it was originally collected. This is one way in which there is scope for conflict with the *Data Protection Act 1998*, the principles of which include:

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

Personal data shall be processed in accordance with the rights of data subjects under this Act.

Among the rights of data subjects under the 1998 Act are those that provide for access to one's own personal data and the right to correct or destroy inaccurate data. While one effect of the *Data Protection Act* is to achieve a measure of protection of an individual's right to privacy, this is more explicitly provided for by the incorporation, by the *Human*

¹⁸⁸ http://www.cio.gov.uk/transformational_government/strategy/index.asp

Rights Act 1998, into UK law of the European Convention on Human Rights. Article 8 of the convention reads:

Article 8 – right to respect for private and family life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Government cites economic well-being as a legitimate aim both in connection with the proposed sharing of data on young people and the matching of education and training data with income, benefits and employment history.¹⁸⁹

The right protected by Article 8 is sometimes referred to as a *qualified right*. In other words, the right is not absolute. Interference with qualified rights is permissible if what is done:

- a) has its basis in law;
- b) is done to secure a permissible aim set out in the relevant Article, for example for the prevention of crime, and
- c) is necessary in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued.

The need for “proportionality” under condition (c) is an important restriction on the interference with an individual’s rights by any public authority. While Article 8 does not explicitly state that any interference with the right to privacy should be proportionate, the case law of the European Court of Human Rights indicates that a restriction on a freedom guaranteed by the Convention must be “proportionate to the legitimate aim pursued”.¹⁹⁰ One yardstick of proportionality could be one of the high level principles suggested by a Performance and Innovation Unit report on *Privacy and Data-Sharing* published in April 2002:

adopting the least intrusive approach - i.e. where the public sector can achieve improvements in services or efficiency without requiring more data and affecting personal privacy, it should do so, recognising that the protection of privacy is itself a public service¹⁹¹

Another legal obstacle to achieving policy goals on data sharing centres around questions of the extent and scope of administrative powers to collect, hold and share

¹⁸⁹ Bill 12 – EN, paras 191 and 197

¹⁹⁰ See for example *Handyside v United Kingdom* (1976) ECHR 393

¹⁹¹ *Privacy and Data Sharing*, Performance and Innovation Unit, April 2002, http://www.strategy.gov.uk/work_areas/privacy/index.asp

personal data rather than the statutory framework imposed by the *Data Protection Act 1998*. Local authorities and other statutory bodies may be restricted by the requirement that they can do only what statute allows them to: this is known as the doctrine of *ultra vires* (literally, “beyond the powers”). There does exist close interplay between data protection and other legislation, which is borne out by closer examination of the 1998 Act.

The *Data Protection Act 1998* regulates the processing (collection, use and disclosure) of personal information held on computer, other electronic media and, in certain circumstances, in paper files. “Data controllers” (organisations etc. which process personal information) must comply with eight data protection principles set out in Schedule 1 of the Act. The first data protection principle reads:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

The first principle requires that personal data may not be processed at all unless one of the conditions in Schedule 2 of the DPA is met. These conditions are quite broad. The first condition is that the individual has given consent, but there are various conditions which would enable personal information to be processed without consent. For example, processing may be carried out where:

The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Another condition is that the processing is necessary for the administration of justice; the exercise of any functions conferred on any person by or under any enactment; the exercise of any functions of the Crown, a Minister of the Crown or a government department; or for the exercise of any other functions of a public nature exercised in the public interest by any person. The *Education and Skills Bill 2007-08* would provide a suitable enactment for the processing of data held by local education authorities as well as government departments.

The conditions in Schedule 3 of the 1998 Act for processing “sensitive personal data” are more stringent, as one might expect. Again, there are various conditions which would enable sensitive data to be processed without consent, including the exercise of any functions conferred on any person by or under an enactment; however, the Bill does not appear to relate to the processing, at least directly, of sensitive personal data, a term which includes the racial or ethnic origin of the individual, political opinions or religious beliefs, whether he or she is a member of a trade union, physical or mental health or condition, sexual life and any information about criminal convictions or any offence he or she is alleged to have committed.

Data sharing provisions in previous Bills, such as the *Serious Crime Bill 2006-07*, attracted calls for explicit oversight by the Information Commissioner to ensure that the powers were being used reasonably.¹⁹² The present Bill is silent on the role of the Information Commissioner, though he will retain his existing enforcement powers in relation to the *Data Protection Act*. Of particular topicality is the seventh data protection principle which is designed to secure, in principle if not in practice, the security of personal data:

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

VII Appendix I: Reaction from specific organisations to the green paper, *Raising expectations: staying in education and training*

Many interested organisations responded to the green paper. Extracts from a selection of organisations are given below. These include various bodies representing children and young people, the Local Government Association and the Learning and Skills Council, trade unions including the main teacher and college unions, and employers' bodies. Inevitably the extracts highlight only some of the views expressed; many of the organisations quoted have much more detailed information about their views on particular issues and their full responses can be found on their websites.

a. *Learning and Skills Network*

Research carried out by the Learning and Skills Network (LSN)¹⁹³ earlier this year, *Raising the leaving learning age: are the public convinced?* found that only about 50% of young people supported raising the compulsory education/training learning age to 18. The research was based on an opinion poll to which 920 parents of teenagers aged 13-18 and 320 teenagers aged 13-18 responded. Commenting on the research, John Stone, Chief Executive of LSN said:

“Parents support the proposal but they don't want young people who drop-out of education or training before they are 18 to face hard sanctions or be criminalised. The concern amongst parents is understandable but getting a balance between persuading teenagers to take part and enforcement where necessary is complex.

“One route could be to work closely with young people who aren't motivated to learn and offer more imaginative solutions such as online learning programmes, young enterprise schemes and internships.”¹⁹⁴

¹⁹² HL Deb 7 February 2007 c 746

¹⁹³ The Learning and Skills Network (LSN) is an independent not for profit organisation committed to making a difference to education and training. It is one of the two successor organisations of the Learning and Skills Development Agency: <http://www.lsneducation.org.uk/>

¹⁹⁴ LSN Press Release, *Parents support learning to 18 but against hard measures to ensure teenagers comply*, 2 May 2007: <http://www.lsneducation.org.uk/news/press.aspx?ID=3187&back=/News/press.aspx>

b. British Youth Council

The British Youth Council (BYC)¹⁹⁵ strongly opposed the introduction of compulsory participation to age 18. In its response to the green paper it argued that compulsion would remove an element of choice for young people about how they live their lives, and that staying in education or training might not always be appropriate. It said that those who do not achieve a level 2 qualification (5 or more A*-C GCSEs or equivalent) after two further years of compulsory learning may not feel that this has been an effective use of their time which could have been spent in employment. BYC noted that the United Nations Convention on Rights of the Child, Article 12, stipulates that young people have a right to have their opinions taken into account on matters that concern them. The BYC survey of young people's views on the proposed legislation echoed the findings of the LSN's research (referred to above). BYC believed that 50% support among young people was arguably insufficient for the proposals to be carried and does little to evoke confidence in the likelihood of success. It was vehemently opposed to enforcement provisions under any circumstances, arguing that if the education system is positively engaging young people then they will elect to stay on after 16. The key points in its response were:

- BYC opposes the introduction of compulsory participation to age 18.
- Young People have a right to participate in decisions that affect their lives - remaining in education or training until 18 might not be right for everyone.
- The government should focus its efforts on reforming pre-16 education to ensure that all young people have obtained Level 2 Qualifications by the age of 16.
- Legislation should concentrate on broadening the focus of the curriculum to better prepare young people for the 'real world'; delivering a comprehensive and universal PSHE curriculum and ensuring young people are given personalised support regarding their choices post-16.
- Legal enforcement is highly inappropriate and will only have the effect of criminalising those that the new system is intended to help.¹⁹⁶

c. National Youth Agency

In its response to the green paper the National Youth Agency (NYA)¹⁹⁷ stressed two key factors that contribute to the disengagement of 16 to 18 year olds from education and

¹⁹⁵ The British Youth Council represents a coalition of young people from national, regional and local youth organisations. Its membership includes 180 organisations and 40 youth councils. One of its main aims is to provide a voice for young people: <http://www.byc.org.uk/>

¹⁹⁶ http://www.byc.org.uk/downloads/Raising_Expectations-final2.pdf

¹⁹⁷ The National Youth Agency supports those involved in young people's personal and social development and works to enable all young people to fulfil their potential within a just society. It is funded primarily by the Local Government Association and government departments:

training. First, some have a complex range of needs that effectively prevent them from engaging – including unsettled family circumstances, poor or temporary housing, mental health difficulties, drug and alcohol related problems, involvement in criminal activity and financial difficulties. Second, the education and training system is seen as irrelevant to their needs and interests. NYA believed that compulsory participation will not be effective in engaging the ‘hard to reach’ 10% of 16 to 18 years olds not participating, unless strategic, sustained and intensive measures are taken to address the two key issues underlying non-participation. Such measures should include personal support, a holistic approach with agencies working together, and a personalised approach based on the needs and interests of the individual learners. While supporting the introduction of the new specialist diplomas and the expansion of apprenticeships, the NYA put the case for more non-formal learning:

For young adults who have not succeeded through formal learning at school, re-engaging in formal settings, such as school and college, is unlikely to be an attractive option. Many young people find the school environment off putting – but FE colleges, training and the work place can also be intimidating – with bullying and feeling powerless often causing difficulties for those young people most disenfranchised.

The specific dimensions of race and gender have also not been fully considered, nor has there been an appreciation of the needs of those young people who come from a background of inter-generational and sustained alienation from the formal sector.

Evidence indicates that community-based and non-formal learning can have a key role to play in re-engagement. Youth and community based projects and programmes are often perceived as non-threatening, approachable and understanding of the needs and experiences of young adults. Such programmes consistently provide high quality, relevant learning which produce important outcomes for young adults. In addition, they often bridge the gap to more formal provision and qualifications. Providers of such programmes are clear that it is their focus on tailored and supportive approaches that provide the critical catalyst in re-engaging disaffected young people.

We suggest that the Government should build upon the expertise and the range of community-based provision developed through initiatives such as the Neighbourhood Support Fund and the Adult and Community Learning Fund. These initiatives were effective in engaging and motivating thousands of young adults who may not otherwise have participated in learning.

The NYA strongly disagreed with the proposal to use civil or criminal sanctions for enforcement. Instead it argued for incentives.¹⁹⁸

d. Barnardo's

Barnardo's said in its response to the green paper that while it welcomed proposals to raise the participation age it strongly opposed the use of compulsion to achieve this. It stressed the need for a wide range of options to engage all young people, and pointed

¹⁹⁸ <http://www.nya.org.uk/Templates/internal.asp?NodeID=89403>
http://www.nya.org.uk/shared_asp_files/GFSR.asp?NodeID=95611

out that the context - how and where education and training are delivered, and the content - must be right:

There need to be a wide range of options to engage all young people, including flexible packages combining elements of different routes (academic and vocational).

There must be a recognition that context - i.e. how and where education and training is delivered – matters greatly to those who have already been failed by or rejected the traditional school or college environment. The Green Paper places great hope in improved course content; but if the context is not right, you will not get these young people through the door.

An expansion of work-based learning as well as alternative and specialised provision, responsive to the needs of the individual, will be critical to engaging 'hard to reach' young people.¹⁹⁹

e. Skill: National Bureau for Students with Disabilities

In its response to the green paper, Skill²⁰⁰ said that it was not sure of the case for introducing compulsory participation to age 18. It noted that some disabled students already need longer to progress and stay on in education until they are 19, and that the proposal would be a good opportunity for improving the quality of education offered. Also Skill pointed out that as disabled young people are twice as likely not to be in education, employment or training than their non-disabled peers it would be important for a wide range of learning opportunities to be available to engage this group. It expressed disappointment that there was only limited reference in the green paper to learners with learning difficulties and disabilities. Skill thought that it might not be appropriate for all students to work towards accredited qualifications:

For young people with learning difficulties and/or disabilities it is important that their programme of study is person centred, appropriate to their needs and their progress is assessed. It may not be appropriate for all students to be studying for an accredited qualification. Skill recommends that the Learning and Skills Council (LSC) use the RARPA (Recognition and Recording of Progress and Achievement) approach especially within the Foundation Learning Tier. Although the Foundation Learning Tier includes accredited qualifications, it is important to still recognise that not all learning will be accredited.²⁰¹

f. National Union of Students

The NUS stressed that the proposal will not raise the school leaving age - instead with changes in types of provision on offer and the institutional delivery routes available, the

¹⁹⁹ http://www.barnardos.org.uk/raising_expectations_staying_in_education_and_training_post_16_-_0706_anne_pinney.pdf

²⁰⁰ Skill is a national independent charity that promotes opportunities for people in learning and entry to employment: <http://www.skill.org.uk/>

²⁰¹ Skill: http://skillcms.ds2620.dedicated.turbodns.co.uk/uploads/media/Raising_expectations_staying_in_education_and_training_post16_response.doc

school leaving age will be effectively reduced to 14 as students participate in non-school learning settings. It favoured incentives rather than compulsion:

NUS' broad position on "raising the age" is the carrot is more powerful than the stick - that is, that having any focus on compulsion might mean the policy will be resisted by those it seeks to engage, and thus be counterproductive.

2. Furthermore, NUS believes that any policy of compulsion would be unnecessary if (and only if) better education maintenance allowances, flexible curricula, better information and advice and real, quality employer opportunities were on offer. If compulsion were introduced without these improvements, NUS believes that the policy would be a disaster.

3. If compulsion is on the table, NUS wants to see the other players compelled first- employers to offer more and better WBL opportunities, colleges and the government to ensure a better range of provision and parity of esteem with academic routes, and the Government to adequately fund learning through an increase in EMA and related benefits.²⁰²

g. The organisation '11 million' led by the Children's Commissioner

The national organisation, 11 million, is led by the Children's Commissioner, Professor Sir Al Aynsley-Green.²⁰³ Its response to the green paper expressed qualified support:

1. 11 MILLION supports the raising of the education and training participation age to 18. In doing so, we acknowledge a tension between children and young people's right to – and expectation – of choice in matters which affect them, and the Government's wish to meet all children and young people's right to education.

2. Our support for a raised participation age is conditional on changes to the educational culture within schools. Meaningful participation must begin long before 18, and long before Key Stage 4. We look for greater evidence of progress towards giving students a more significant voice in their own education and the running of their own schools.²⁰⁴

The response went on to make detailed comments on the proposals including comments on the routes into and support for participation. It strongly opposed the introduction of Attendance Orders with criminal sanctions and doubted whether fines would improve young people's outcomes.

h. Local Government Association

The LGA said that there is a strong case for raising participation in education or training to 18 but wanted to see constructive engagement with young people rather than sanctions. It felt that it would be counterproductive to take proceedings against young

²⁰² <http://resource.nusonline.co.uk/media/resource/ETLA.pdf>

²⁰³ The Children's Commissioner was established under the *Children Act 2004*

²⁰⁴ Response by 11 Million, led by the Children's Commissioner:
<https://www.childrenscommissioner.org/documents/11%20MILLION%20Raising%20Expectations%20Response.pdf>

people particularly if they have previously been disaffected. The key messages of the LGA were summarised as follows:

LGA believes there is a strong case for raising participation in education or training to the age of 18. The Green Paper reinforces councils' strategic leadership role. We want to see that role in 14-19 further supported and developed in practice to ensure the effective join up of curriculum, supply of workplace learning, appropriate advice and guidance, and Youth Matters initiatives. No single institution can deliver this alone;

We reiterate the central importance of engaging with the views of young people regarding what motivates and incentivises them. We wish to see positive and genuinely constructive engagement and participation of young people (given the local authority's championing role) rather than sanctions.

- LGA believes the Paper underestimates the depth of alienation of some of the young people to whom the policy is most clearly directed, many of whom drop out of education at the beginning of secondary school or during Key Stage 3.
- The Paper also tends to view young people purely as individuals and underplays the effects on them of peer groups and place. If the test is whether the Paper's proposals will result in young people who are involved in gangs on disadvantaged inner city estates continuing to learn up to age 18, we are not convinced they are fit for purpose. A lot of further thought and hard work will be needed over the next five years if the impact of this policy on these young people, their families and communities, is to be positive. LGA wants to work with the Government and with LAs and their partners within Children's Trusts to this end.
- LGA is pleased that these proposals will not be applied to young people in care without careful consideration; it will be important to think through their potential impact on young people and their carers (both residential and foster) alongside that of the proposals in the Care Matters Green Paper that go forward – e.g. the proposal that young people should stay in care until they are 18;

The recently announced Comprehensive Spending Review for education will be stretched by existing duties and councils will be facing a tight settlement. The Green Paper has very little to say about the cost implications of developing facilities, workforce development costs, payment of staff or additional administrative duties, e.g. maintaining the register of 16-17 year olds and enforcing participation.²⁰⁵

i. Learning and Skills Council

In its response the Learning and Skills Council (LSC) welcomed and strongly supported the proposal to make participation compulsory for all young people aged 16-18. It made

²⁰⁵ LGA Response:
<http://www.lga.gov.uk/Documents/Briefing/Lobbying/Legislative%20Programme/Raising%20Expectations%20briefing.pdf>

detailed comments on the proposals and noted a number of overarching themes. These included:

- we would stress that this proposal is not about simply making participation by young people compulsory to age 18, but is part of a package of measures which will offer high-quality and relevant learning opportunities, including the development of the 14 Diploma lines, the phased implementation of Progression Pathways as part of the development of the Foundation Learning Tier and further development of the Apprenticeship route
- our ambition to ensure that all young people enjoy a positive experience in learning from age 16 to 18 depends crucially on their experience in learning at Key Stage 3 and Key Stage 4; the further education system should no longer be the “second chance” for young people, but rather a part of a seamless journey in learning from 14-19
- there will be a need for a comprehensive range of support including mentoring, personal support and financial support
- as participation rates rise towards 100 per cent, those not participating will be increasingly harder to engage, and we will need to be imaginative, innovative and flexible, including, in particular, greater involvement of voluntary and community groups
- given the scale of the challenges raised by these proposals, we believe that, rather than the current requirement that every children’s services authority should have a 14-19 component in its Children and Young People’s Plan, consideration should be given to requiring a distinct local 14-19 plan to deliver the trajectory towards 100% participation by 2015, including underpinning capital strategies. This plan should be developed by a formal partnership led by the LA and the LSC and including representatives from schools, further education, independent training providers, employers and such other parties as might be considered appropriate at local level.²⁰⁶

j. TUC

The TUC welcomed the ambitions of the green paper but expressed reservations on compulsion:

Rather, the primary focus should be on support, encouragement and an attractive offer. All young people need access to independent advice and guidance, which particularly takes into account the needs of young people most at risk of disengaging.

Appropriate financial support is also crucial, and in particular should include increasing the support available to young people from disadvantaged backgrounds.

Adequate resources are required to increase participation, including resources for education, training and support services.

²⁰⁶ <http://readingroom.lsc.gov.uk/lsc/National/nat-raising-expectations-response.doc>

The balance of responsibility as set out in the green paper lies with the young person. The TUC believes this responsibility should be more evenly balanced across the system, for example there should be more of an onus on employers to train young people, including levers to increase employer engagement in training for young people such as through sector levies and procurement policy.

There is a strong role for trade unions in supporting young people in the workplace, including bargaining with employers to expand training opportunities, which would be supported through statutory rights to collective bargaining over training. Unions and in particular union learning reps also have a role in providing information to young people as well as mentoring support to young people. Young people should be actively encouraged to join trade unions.

The TUC prefers a more positive approach, for example around the idea of entitlements to stay on in education and training including via the workplace. This should be backed by a right to paid time off for young people in the workplace.²⁰⁷

k. Association of Colleges

The Association of Colleges (AoC) stressed that the proposals were not so much about raising the school leaving age as about raising the college leaving age since, it pointed out, two-thirds of 16 to 18 year olds are in colleges:

When the education secretary published his green paper 'Raising Expectations: staying in education and training post-16' newspaper headlines about the 'school leaving age' followed. Those headlines should have, of course, been about the 'college leaving age' as two-thirds of all young people aged 16-18 choose to study in a college.

AoC believes that requiring all youngsters to stay on until they are 18 is a worthwhile ambition with clear economic, social and personal benefits both for the individuals and the nation as a whole. There are strong correlations between low levels of qualifications and unemployment and between productivity and staying-on rates. Britain's high-drop rate at 16 has been identified as a particular weakness in our economy by the OECD.

This ambition is not about confining bored youngsters to classrooms and forcing them to pursue academic subjects which have long since turned them off. It will need new and unconventional ways of learning with students spending some of their time in a workplace and some of their time in a college. The old rigidities need to be broken down and replaced with flexible unitised options.

Colleges are well placed to deliver the required exciting and innovative curriculum which will be needed to make staying on a choice rather than a duty. By 2013 all 14 of the new diplomas should be available to young people. They will offer a mix of practical and theoretical study with an understanding of a particular employment sector. The success of the government's ambitions will, to a large extent, depend on the success of the diploma.

²⁰⁷ <http://www.tuc.org.uk/skills/tuc-13463-f0.cfm>

The Education Maintenance Allowance has proved extremely successful in increasing participation amongst 16-18 year olds. For some it has become a vital part of the family income and often helps cover transport costs – and will be even more important if we are to engage those currently dropping out. Any future system must ensure there are no financial barriers to youngsters participating in education and training.

The final component to ensure success is an invigorated independent advice and guidance service. Currently schools largely shape the way in which young people are advised about post-16 options: too often encouraging high achievers to stay on at school on academic courses, neglecting vocational options and leaving others to find their own way. We need young people to be given high-quality impartial advice so they are aware of all their options and not encouraged to believe that the only solution is 'more of the same'²⁰⁸

I. University and College Union

University and College Union (UCU) said:

UCU gave the paper a cautious welcome but warned against the use of compulsion rather than incentives to encourage young people to pursue education and training after 16. The union said sufficient resources would be needed to achieve this goal and also called for the use of equality impact assessments to ensure that new opportunities would be provided fairly.

Paul Mackney, joint general secretary of UCU, said: 'College lecturers will applaud the principle of extending the right to education and training beyond the age of 16 but there are many questions about how this is to be funded and implemented. It will need resources and the right curriculum to be workable and it is not clear from the budget statement where the funds for this will come from.

'We must make learning attractive to young people, especially those who have dropped out of education at some point but also if we want more students to progress to higher education. The government should provide incentives like Education Maintenance Allowances (EMAs), which are more likely than sanctions to encourage further study. It should definitely not go down a punitive routes that could criminalise and stigmatise young people.

'16-19 year olds should not be prevented from working but must be able to have day release to study. Many employers obstruct this legal right and should be fined if they do so - currently release for studies is only enforceable through employment tribunals.'²⁰⁹

²⁰⁸ [http://www.politics.co.uk/in-focus/education/schools/school-leaving-age/aoc-raising-leaving-age-worthwhile-ambition-\\$474700.htm](http://www.politics.co.uk/in-focus/education/schools/school-leaving-age/aoc-raising-leaving-age-worthwhile-ambition-$474700.htm)

²⁰⁹ <http://www.ucu.org.uk/index.cfm?articleid=2430>

m. National Association of Head Teachers

The National Association of Head Teachers (NAHT) said:

The benefits for young people and society in ensuring that everyone receives education and/or training to the age of 18 are clear. However, unless the curriculum and educational structure are fit for purpose, it would not be wise to raise the school leaving age in an arbitrary fashion.

Compulsion, because of the negative impact which it will have both on the younger generation and on schools, is emphatically not the route to choose.

Subject to the successful revision of the curriculum and subject to continued investment in schools, colleges and other providers, NAHT would support the idea of requiring participation to age 18 but the sanctions and enforcement techniques are totally inappropriate.

n. National Union of Teachers

Steve Sinnott, General Secretary of the National Union of Teachers (NUT) observed that:

“This is entirely the wrong approach. The government appears to want it both ways: voluntary involvement in education and training post-16 but being criminalised if you don’t take part.

“What is needed is for the Government to talk to teachers’ and employers’ organisations and to young people’s groups about the sort of provision that should and can be available and then ensure that happens.

“Criminalising young people is no way to ensure committed involvement. It will only serve to alienate and undermine any desire disaffected young people may feel towards continuing their education.”²¹⁰

o. The Association of Teachers and Lecturers

The Association of Teachers and Lecturers (ATL) stated:

The case for compulsion has not been made. Practically speaking, a lot hangs on the success of various other reforms, such as the Diploma programme; but over and above this there must be serious doubt as to whether introducing a kind of educational national service is compatible with notions of individual liberty or gives the right kind of message about what education is and what it is for.²¹¹

²¹⁰ NUT Press Release, 22 March 2007: <http://www.teachers.org.uk/resources/word/pr2207.doc>

²¹¹ ATL response: http://www.atl.org.uk/atl_en/images/DfES%20Consultation%20Raising%20Expectations%20staying%20in%20education%20and%20training%20post%2016_tcm2-31823.pdf

p. NASUWT

The NASUWT agreed that the rationale and vision underpinning the proposals were undoubtedly right, but it stressed that raising the leaving age would have significant implications for the school and further education workforce:

Commenting on reports of the publication by the DfES of the Green Paper on raising the age of leaving education, Chris Keates, General Secretary of NASUWT, the largest union representing teachers and headteachers throughout the UK, said:

"The proposals are designed to address the undeniable evidence that young people who leave education early without qualifications are at much greater risk as adults of low income and social exclusion.

"The rationale and the vision underpinning the proposals are undoubtedly right.

"Raising the leaving age will, however, have significant implications for the workforce in schools and FE.

"Staffing, provision of targeted support and the capacity of existing facilities are obvious issues to be addressed. With appropriate funding and carefully planned implementation these are unlikely to be insurmountable issues.

"But perhaps the most significant challenge, particularly during the transition phase, will be that of enforcement. It is unlikely that a change in the law will change the minds and attitudes of youngsters who are disinclined to stay on now. This is a duty which should rest firmly with local authorities and not with individual schools.

"The DfES will need to work closely with social partners to ensure that the overall policy for 14-19 stacks up to a coherent whole.

"As always the devil will be in the delivery detail and this will need to be considered carefully."²¹²

q. Employers' organisations

Policy to develop skills inevitably rests heavily on the cooperation and participation of employers. In general, employers' representatives have been supportive of the proposals and recommendations that have been made. There are, however, calls for these to be treated together with support for the development of businesses as a whole, in particular small business. The main criticism by employers relates to employer-led skills funding. The **CBI** believe that the Government should take forward the recommendation in the Leitch Report that, by 2010, funding should be directed through employers or people being trained rather than through suppliers such as further

²¹² <http://www.nasuwt.org.uk/Templates/Internal.asp?NodeID=73178&Arc=0>

education colleges.²¹³ Regulatory issues are also of concern to employers. The CBI response to the green paper warned that

unintended consequences of these proposals will be to discourage employers from providing these employment opportunities as a result of inflexible training requirements, red tape and overly rigorous compliance regimes.²¹⁴

In the response to consultation on the Green Paper, the Government summarised the plans as regards the role of employers as follows:²¹⁵

Employers have a central role, providing work-related learning opportunities and Apprenticeships. There will be no requirements on them if they employ a 16 or 17 year old for less than 20 hours per week, or if they provide accredited training. If they employ a young person for more than that, without training, the young person will need to provide evidence that they are in learning before they can start employment, and the employer will need to check this. The employer will also need to release the young person for the equivalent of a day each week so that they can train elsewhere. Employers will not be required to pay the young person for that time. To help them, employers can expect support to get their own training schemes accredited where they are of good quality; and a brokerage service to help them to choose appropriate training for their employees.

In the same document, the key benefits of the proposed legislation for employers were stated to be:

Employers will benefit through higher productivity, competitiveness and profitability. The country will be better able to compete in the rapidly changing global economy, leading to increased productivity and employment rates and decreased poverty and disadvantage.

Commenting on the green paper the **Institute of Directors** supported the underlying aim but warned that compulsion was no panacea for current underachievement:

Miles Templeman, Director General of the IoD, said:

“The IoD supports the Government’s intention to tackle low levels of post-compulsory participation: the UK has historically come well down the international league tables for the proportion of young people continuing in education and training. This waste of potential must be stemmed if we are going to improve the long term flow of skills into the workforce.

“But this initiative, though well-intentioned, fails to tackle the root of the problem. The reality is that many children become disaffected with learning and switch off long before 16. The answer, therefore, is not simply to compulsorily raise the education leaving age. The Government’s efforts must remain focused on

²¹³ Personnel Today, [CBI chief Richard Lambert condemns government's slow response to Leitch review of skills](#)

²¹⁴ *The CBI response to the Green Paper, 'Raising Expectations – Staying in Education and Training Post-16'*

²¹⁵ DfES, [Raising Expectations: staying in education and training post-16 – From policy to legislation](#), July 2007

increasing attainment, engagement and motivation earlier in the education phase. In the first place, young people must want to continue learning – they must believe that acquiring skills is absolutely fundamental to their lives.

“Putting high quality academic, vocational and work-based routes in place, complemented by good careers advice, will help. Above all, the best way to secure later participation is to ramp up early achievement. Currently, too many children complete 11 years’ compulsory schooling without mastering basic skills. Last year, only 45% of 15 year olds got five or more good GCSEs including English and maths. Over 20,000 did not achieve any qualifications at all.”²¹⁶

VIII Appendix II: relevant documents

The following draws on a list that the DCSF produced²¹⁷ and also gives some additional references:

a. *Raising the participation age*

14-19 Education and Skills White Paper (February 2005)

<http://www.dcsf.gov.uk/publications/14-19educationandskills/pdfs/14-19WhitePaper.pdf>

14-19 Education and Skills Implementation Plan (2005)

<http://www.dcsf.gov.uk/publications/14-19implementationplan/docs/14-19%20Implementation.pdf>

Raising Expectations: Staying in Education and Training Post-16 (March 2007)

<http://www.official-documents.gov.uk/document/cm70/7065/7065.pdf>

Raising Expectations: Staying in Education and Training Post-16 - Consultation Report (July 2007)

<http://www.dcsf.gov.uk/consultations/downloadableDocs/Raising%20Expectations%20Consultation%20Report.pdf>

Raising Expectations: Staying in Education and Training Post-16 – From policy to Legislation (November 2007)

<http://www.dcsf.gov.uk/14-19/documents/Raising%20Expectations.pdf>

DfES, Initial Equality Impact Assessment accompanying *Raising Expectations: staying in education and training post-16 – From policy to legislation*, July 2007

Raising the Participation Age: An Assessment of the Economic Benefits (November 2007)

<http://www.dfes.gov.uk/research/data/uploadfiles/DCSF-RBW026.pdf>

²¹⁶ IOD Press Release, 22 March 2007: <http://press.iod.com/newsdetails.aspx?ref=270&m=2&mi=62&ms=>

²¹⁷ <http://www.parliament.uk/deposits/depositedpapers/2007/DEP2007-0192.doc>

Raising the Participation Age in Education and Training to 18: Review of Existing Evidence of the Benefits and Challenges (November 2007)

<http://www.dfes.gov.uk/rsgateway/DB/RRP/u015220/index.shtml>

b. Support for participation; information, advice and guidance

Every Child Matters: Next Steps (February 2004)

<http://www.everychildmatters.gov.uk/files/A39928055378AF27E9122D734BF10F74.pdf>

Youth Matters Green Paper (July 2005)

<http://www.everychildmatters.gov.uk/files/Youth%20Matters.pdf>

Every Parent Matters (March 2007)

<http://www.teachernet.gov.uk/wholeschool/familyandcommunity/workingwithparents/everyparentmatters/>

Care Matters: Time for Change White Paper (June 2007)

<http://www.dfes.gov.uk/publications/timeforchange/>

Quality Standards for Young People's Information, Advice and Guidance (IAG) (October 2007)

http://www.cegnet.co.uk/files/CEGNET0001/ManagingCEG/QualityStandardsforIAG/quality_standards_young_people.pdf

c. Adult Skills and Further Education

21st Century Skills: Realising Our Potential – Individuals, Employers, Nation (July 2003)

<http://www.dfes.gov.uk/skillsstrategy/uploads/documents/21st%20Century%20Skills.pdf>

Leitch Review: Prosperity for all in the global economy – World Class Skills (December 2006)

http://www.hm-treasury.gov.uk/media/6/4/leitch_finalreport051206.pdf

World Class Skills: Implementing the Leitch Review of Skills in England (July 2007)

<http://www.dius.gov.uk/publications/worldclassskills.pdf>

Aiming High for Young People: A Ten Year Strategy for Positive Activities (July 2007)

<http://www.dcsf.gov.uk/publications/tenyearyouthstrategy/index.shtml>

Education and Skills Committee Education and Skills Committee, *Post-16 Skills*, HC 333-I 2006–07 (2 August 2007)

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmmeduski/333/333.pdf>

Evidence:

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmmeduski/333/333ii.pdf>

Post-16 Skills: Government Response to the Committee's Ninth Report of Session 2006–07, HC 1101 (29 October 2007)

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmmeduski/1101/1101.pdf>

Adult Learning and Skills: Investing in the first steps (November 2007)
<http://www.dius.gov.uk/publications/Adult-Learning-and-Skills-investing-in-the-first-steps.pdf>

Opportunity, Employment and Progression: Making skills work (November 2007)
<http://www.dius.gov.uk/publications/7381-TSO-Skills.pdf>

Race Equality Impact Assessment on proposed changes to the funding arrangements for English for Speakers of Other Languages (March 2007)
<http://www.dfes.gov.uk/readwriteplus/bank/ACF1BE9.pdf>

Learning and Skills Council: Statement of Priorities - Better Skills, Better Jobs, Better Lives (November 2007)
<http://readingroom.lsc.gov.uk/lsc/National/nat-statementofpriorities-nov07.pdf>

Learning and Skills Council: Statement of Priorities - Better Skills, Better Jobs, Better Lives (November 2007)
<http://readingroom.lsc.gov.uk/lsc/National/nat-statementofpriorities-nov07.pdf>

Further Education: Raising Skills, Improving Life Chances' White Paper (March 2006)
<http://www.dfes.gov.uk/publications/furthereducation/docs/6514-FE%20White%20Paper.pdf>

Further Education White Paper Update November 2006
<http://www.dcsf.gov.uk/furthereducation/uploads/documents/2006-11%20Milestone%20Chart2.pdf>

Further Education White Paper Update July 2007
http://www.dfes.gov.uk/furthereducation/uploads/documents/FEWP_OneYearOn_web2.pdf

d. Apprenticeships

The Government Response to the House of Lords Select Committee on Economic Affairs' Fifth Report of Session 2006-07 on Apprenticeships (October 2007)
<http://www.official-documents.gov.uk/document/cm72/7228/7228.pdf>

e. Independent Educational Institutions

Guidance on the existing independent school standards
<http://www.dcsf.gov.uk/reg-independent-schools/>

Consultation on the transfer of responsibility for the registration of independent schools and the regulation of independent and non-maintained special schools (NMSSs) to Ofsted (July 2007)
<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1498>

Consultation on the definition of an independent school (August 2007)
<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1502>

f. Special educational needs

Special Educational Needs Code of Practice (November 2001)

http://www.teachernet.gov.uk/_doc/3724/SENCodeOfPractice.pdf

Removing Barriers to Achievement: The Government's Strategy for SEN (February 2004)

<http://publications.teachernet.gov.uk/eOrderingDownload/DfES%20117%20200MIG1994.pdf>

