



# Children, Schools and Families Bill

**Bill No 8 of 2009-10**

**RESEARCH PAPER 09/95** 16 December 2009

The *Children, Schools and Families Bill* was presented in the House of Commons on 19 November 2009 and is due to have its second reading debate on 11 January 2010. It provides 'guarantees' for pupils and parents in the school system, underpinned by new Home School Agreements, and makes provision for parental satisfaction surveys. It also makes changes to the powers of governing bodies of maintained schools; extends the remit of School Improvement Partners; provides greater powers for local authorities and the Secretary of State in relation to failing schools; paves the way for the introduction of School Report Cards; and makes provision to introduce a licence to practise for teachers. The Bill also seeks to implement the recommendations of several major reports. These changes affect the school curriculum; provide a registration system for home educators; and provide an additional right of appeal for parents of children with special educational needs.

The Bill would also make changes to the reporting of information relating to family proceedings.

Other provisions relate to Local Safeguarding Children Boards, Youth Offending Teams, the charitable status of academies, and the fees system for the inspection of independent schools.

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## Research Paper 09/95

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## Contents

	<b>Summary</b>	<b>1</b>
<b>1</b>	<b>Part 1: Children and schools</b>	<b>2</b>
1.1	Introduction	2
1.2	Pupil and Parent Guarantees	5
1.3	Home School Agreements	11
1.4	Parental satisfaction surveys	15
1.5	Children with special educational needs	16
1.6	Exceptional provision of education in short stay schools or elsewhere	18
1.7	Curriculum	20
	Areas of learning (primary curriculum changes)	20
	Personal, Social, Health and Economic Education	23
1.8	Powers of governing bodies	27
	Powers to provide community facilities	27
	Extending maintained school governing bodies' powers to establish academies and new maintained schools	28
1.9	School Improvement	29
	School Improvement Partners	30
	Provision of information about schools etc.	34
	The proposed School Report Card (SRC)	34
	Schools eligible for intervention: powers of local authority	38
	Schools causing concern: powers of Secretary of State	40
1.10	Teachers: licence to practise	41
1.11	Home education	46
	Home education: England	47
	Home education: Wales	52
1.12	Local Safeguarding Children Boards	52
1.13	Powers to intervene in Youth Offending Teams	56
<b>2</b>	<b>Part 2: Family proceedings</b>	<b>60</b>
<b>3</b>	<b>Part 3 Miscellaneous</b>	<b>74</b>
3.1	Charitable status for Academy providers	74
3.2	Fees for pre-registration inspections of independent educational institutions	75

<b>Appendix 1 – Estimates of pupils who are educated at home</b>	<b>76</b>
<b>Appendix 2: Financial impacts of the Bill</b>	<b>78</b>

## Summary

The *Children Schools and Families Bill* is in 3 parts. Parts 1 and 3 mainly relate to education, and part 1 also includes provision on Local Safeguarding Children Boards and on Youth Offending Teams.

Part 1 of the Bill seeks to give effect to aspects of the white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, to provide 'guarantees' for pupils and parents in the school system, and to strengthen existing provision for Home School Agreements. It also provides for local authorities to conduct parental satisfaction surveys and to prepare response plans. The Bill makes changes to the powers of governing bodies of maintained schools to allow them to use their delegated budgets for wider community purposes, and allows designated schools' governing bodies to be involved in the establishment of new maintained schools and academies. Other key changes would expand the remit of School Improvement Partners, increase the powers of local authorities and the Secretary of State in relation to failing schools, and extend the Secretary of State's powers to request information from schools, in order to provide for the introduction of School Report Cards. The Bill also makes provision to introduce a licence to practise for teachers.

Other major education-related provisions in the Bill implement the key recommendations of a number of independent reports. The reform of the primary curriculum follows the recommendations of Sir Jim Rose in the *Independent Review of the Primary Curriculum*. The provisions on Personal, Social, Health and Economic education follow the *Independent Review of the proposal to make Personal, Social, Health and Economic (PSHE) education statutory*. The introduction of a registration scheme for home educated children follows the *Report to the Secretary of State on the Review of Elective Home Education in England*. The Bill also makes changes to existing legislation on exceptional provision for those children not educated in school or at home. This follows the white paper *Back on Track: A Strategy for modernising alternative provision for young people* and the report by Sir Alan Steer, *Lessons Learned: learning behaviour*. The Bill also implements changes relating to the inspection of special education needs provision (SEN) and provides an additional right of appeal for parents of children with SEN. These changes follow recommendations by the *Lamb Inquiry into ways in which parental confidence in the SEN assessment process might be improved*.

Part 1 of the Bill also makes changes to Local Safeguarding Children Boards. In addition, Part 1 would give the Secretary of State powers to give directions to Youth Offending Teams (YOTs) and local authorities over the provision of youth justice services. This follows concerns about a small number of YOTs perceived to be 'failing'.

Part 2 of the Bill would make changes to the law on the publication of information relating to family proceedings involving children. It would provide a general restriction on the publication of information, subject to new arrangements to allow authorised information to be published.

Part 3 of the Bill, which contains miscellaneous provisions, provides for academies to become exempt charities, and makes an amendment to the legislation relating to fees for the inspection of independent schools to include fees for pre-registration inspections.

The paper outlines the main changes made by the Bill and provides background information on them. Fuller details on how the Bill seeks to amend existing legislation are given in the *Explanatory Notes* on the Bill.

## 1 Part 1: Children and schools

### 1.1 Introduction

The *Children Schools and Families Bill* was introduced in the House of Commons on 19 November 2009.<sup>1</sup> Part 1 of the Bill seeks to give effect to aspects of the white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system* to introduce pupil and parent guarantees, and amend existing legislation on home-school agreements; to make changes to the way schools operate together; and to introduce a licensing scheme for teachers.

The Bill also seeks to implement the recommendations of a number of independent reviews, including the *Independent Review of the Primary Curriculum*, the *Independent Review of the proposal to make Personal, Social, Health and Economic (PSHE) education statutory*, and the *Report to the Secretary of State on the Review of Elective Home Education in England*. In addition, the Bill makes other changes to pave the way for the introduction of School Report Cards, and to extend the remit of School Improvement Partners (SIPs). These reforms followed several earlier consultations.

The main elements of the Bill featured (as the Improving Schools and Safeguarding Bill) in the *Draft Legislative Programme*, published on 29 June 2009.

*Explanatory Notes* on the Bill have been published by the Department for Children, Schools and Families (DCSF)<sup>2</sup>, and an *Impact Assessment* has been published jointly by the DCSF and the Ministry of Justice.<sup>3</sup> An *Equalities Impact Assessment* has been published separately.<sup>4</sup> A *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform* from the DCSF has also been published.<sup>5</sup> Further documents may be found on the [DCSF Bill page website](#). The [House of Commons Library's Bill Gateways website](#) gives references to parliamentary proceedings on the Bill.

Most of the Bill's education provisions apply to England only; however, the Bill, as introduced, includes some provision within the legislative competence of the National Assembly for Wales (NAW). Existing powers of Welsh Ministers to require information to be supplied in respect of schools are extended, and new regulation-making powers are conferred on Welsh Ministers relating to information on alternative provision. There is also provision to amend the *Government of Wales Act 2006* to confer power on the NAW in respect to the regulation of home education.

The white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, published on 30 June 2009, set out the Government's plans for the next stage of education reform aimed at embedding across the country much of the best practice found in the most effective schools. The white paper follows the long-term aims of the *Children's Plan*, and builds on earlier education reforms, most recently the *Apprenticeships, Skills, Children and Learning Act 2009* (which received Royal Assent on 12 October 2009). In his statement on the white paper, Ed Balls, the Secretary of State for Children, Schools and Families highlighted the key changes. These included:

- legislation for pupil and parent guarantees;

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<sup>1</sup> *Children Schools and Families Bill*, Bill 8 of Session 2009-2010

<sup>2</sup> *Explanatory Notes, Children Schools and Families Bill, Bill 8, as introduced in the House of Commons on 19 October 2009*, DCSF

<sup>3</sup> *Impact Assessment Children Schools and Families Bill*, DCSF/Ministry of Justice, November 2009

<sup>4</sup> *Children, Schools and Families Bill - Equalities Impact Assessment*, DCSF, November 2009

<sup>5</sup> *Children Schools and Families Bill, A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, DCSF November 2009

- legislation to strengthen home-school agreements, so that all pupils and parents accept the school's rules;
- provisions for local authorities to survey parents about the choice of schools on offer to them;
- arrangements to accredit high-performing schools, colleges and universities to run chains of schools in not-for-profit accredited schools groups;
- new school report cards; and,
- a new licence to teach, similar to that used by other high-status professionals.<sup>6</sup>

Responding to the statement, Michael Gove, Conservative Shadow Secretary of State for Children, Schools and Families said that there was nothing original in the white paper, and pointed to policies that had already been announced. He claimed that all the good ideas in the white paper were in fact Tory ideas.<sup>7</sup>

David Laws, the Liberal Democrat Shadow Secretary of State for Children, Schools and Families welcomed the proposals for a licence to teach, and also the principle of the school report card 'provided that it is not diluted by a fuzzy focus on issues of partnership, which I think would detract from its ability to hold schools more effectively to account'. However, he expressed concern about moving from a system of targets to one of entitlements, and about how all the proposals will be funded.<sup>8</sup>

An [Analysis of Responses](#) to the schools white paper and the linked consultation document on school report cards was published by the DCSF.<sup>9</sup> The overview section of the report said that the vision of a 21st century schools system with the focus on providing a world-class education for every child was welcomed by the majority of respondents to the consultation, although some felt that there was insufficient detail on the practicalities of its implementation. Amongst other things, the report noted that the majority of respondents felt that the most effective way to enable schools to extend their role was by providing the necessary resources. It went on to state:

Funding, multi-agency working, leadership, recruitment and retention and cultural change were considered to be the main challenges to the children and young people's workforce in delivering the vision of the 21st century school. It was believed that these could be addressed by building the capacity of the workforce through the provision of adequate funding, improving training to equip staff for their wider role, making working in schools more attractive, reducing the level of interference from central government and engaging schools more in developing policy.<sup>10</sup>

The Select Committee on Children, Schools and Families took evidence from Ministers on the white paper, during which the Secretary of State for Children, Schools and Families was asked what his vision was for the school system. He responded:

**Ed Balls:** I would say that, first of all, it is not good enough to have a school system in which some children excel; every child must have the chance to succeed, and that means really focusing on guarantees to children and the extra barriers that they sometimes face because they have a problem with learning, reading, stammering or whatever. We focus on every child's barriers to progress, and we are only satisfied

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<sup>6</sup> [HC Deb 30 June 2009 cc165-7](#)

<sup>7</sup> [HC Deb 30 June 2009 cc167](#)

<sup>8</sup> [HC Deb 30 June 2009 cc170](#)

<sup>9</sup> The [Analysis of Responses](#) report was based on the 389 responses received to the formal written consultation between 9 December 2008 and 3 March 2009. A breakdown of the respondents was given in the introduction to the report.

<sup>10</sup> [Analysis of Responses](#), overview section

when every child succeeds. Secondly, you can only have a school system that delivers that if it is working with parents and the other experts in tackling those barriers. Thirdly, the leadership and drive for every child to succeed must come from schools themselves, and therefore the teachers and the head teachers will make the biggest difference in terms of success or failure. However, they cannot do it on their own, and therefore there will be increased collaboration between schools and within groups of schools—primary and secondary—to make sure that they can share their expertise and leadership, and spread their offer in terms of curricula. That will mean you can really deliver for every child, which is very hard for one school to do. Finally, I don't believe in a free market in relation to schools, so, in the end, where there is persistent underperformance in a local area, the local authority as the commissioner and, ultimately, the Secretary of State must have the ability to step in and say, "Look, this isn't good enough. These schools have got to get better. What are you going to do about it?" They should challenge the school and the local authority, so that in the end they are able to say, "We aren't going to put up with low expectations and poor performance in that school." I see my role—or our role—as setting the framework, supporting that local leadership and innovation, and only when necessary and as a last resort, stepping in when there is underperformance. I think that the alternative of having a more market-based schools system, where schools compete and you don't have proper support from children's services and it's the market that decides which schools succeed or fail, is a system that can only deliver excellence for some school children—probably a minority. In the 21st century, we should be about every child and not just a few.<sup>11</sup>

Earlier in his evidence to the Committee, the Secretary of State responded to questions about funding the white paper proposals, and said that the reforms could be delivered provided there is a good budget settlement after 2010-11 and that efficiency savings can be made through school partnerships and collaboration:

**Ed Balls:** We think that the schools White Paper and the commitments here are funded right through until 2010-11. We didn't see the White Paper as making new or additional commitments that would require additions to budgets. We thought that it was a statement of what schools were doing and should be doing, and we wanted to make sure that this was understood by parents and pupils through the guarantees in the spending review. In a sense, going back to the discussion we had before, there is no doubt that in the next spending review it is going to be more challenging. For example, a big theme in the White Paper is partnership and schools collaborating. We think that that is primarily, or first, about making great leadership work across the school system in raising standards, but we also think that this is an area in which we will be able to make economies and release resources, and therefore continue to fund the front line. When I look at the pupil guarantee or the parents guarantee, I think that that is the front line, and we need to make sure that we are more efficient so that we can continue to deliver those guarantees. We think we can.

**Q8 Derek Twigg:** But is there any source of new money that you need to identify at this stage? I understand what you are saying. You think that it can all be found within existing budgets. That is assuming that existing budgets remain as they are and as forecast. How would it fare, for instance, based on cutting budgets pretty early, which some people are suggesting, as opposed to your approach?

**Ed Balls:** I think that after 2010-11 we can continue to deliver the White Paper and our front-line commitments, so long as we have a good budget settlement and can make these efficiency savings. If we were to cut the education budget after 2011, and in

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<sup>11</sup> *Children, Schools and Families Committee – Oral Evidence, 21 October 2009*, Answer to Question 41



particular if we were to cut it in 2010-11, there is no way you could deliver this White Paper; you couldn't deliver these commitments. You would have to cut teacher numbers or one-to-one tuition. You couldn't deliver these guarantees if you were reducing the budget in 2010-11.<sup>12</sup>

Speaking at the Specialist Schools and Academies Trust annual conference on 26 November 2009, the Secretary of State called for a new drive in schools and local authorities to invest public money effectively, while securing frontline services after 2011. To promote a debate about how efficiencies in the use of resources can be achieved the DCSF published a discussion document, *Securing Our Future – Using Our Resources Well*. It sets out a number of broad areas which, in the Government's view, offer the greatest scope for savings, and gives examples of where schools can learn from the experiences of other schools and share best practice. Amongst other things, it highlights greater efficiency through the wider adoption of partnerships and shared services between schools, more effective use of external advice, and expert School Improvement Partners.

## 1.2 Pupil and Parent Guarantees

### *An overview and background*

The schools white paper described the Government's plans to introduce legislation for a pupil guarantee, setting out entitlements to personalised support for every child, matched by a parent guarantee to ensure that parents get what they need from the school system. Many aspects of the guarantees are existing duties or non statutory programmes that schools are following. The proposals include that:

- every pupil will go to a school where there is good behaviour, strong discipline, order and safety: new Home School Agreements will ensure that parents and pupils understand their roles in supporting behaviour policies;
- every pupil will go to a school where they are taught a broad, balanced and flexible curriculum including skills for learning and life: a new, more flexible primary curriculum will be introduced from 2011, alongside the new secondary curriculum introduced by 2010; and an entitlement to study a choice from any of the new Diplomas from age 14 by 2013;
- every pupil will go to a school where they are taught in a way that meets their needs, where their progress is regularly checked and where additional needs are spotted early and quickly addressed: every child has a personal tutor; every parent knows how their child is being supported in their areas of weakness and stretched to develop their talents, and receives real-time online reports about progress; there is one-to-one tuition for any child aged seven to eleven who is falling behind and not catching up; and one-to-one or small group tuition at the start of secondary school for all who are behind;
- every pupil will go to a school where they take part in sport and cultural activities: including access to 5 hours of PE and sport each week; a wide range of out-of-school activities; and there is childcare available for every primary school pupil; and
- every pupil will go to a school that promotes their health and wellbeing: every school is a healthy school; every child receives personal, social, health and economic education (PSHE); and every child has the chance to express their views; they and their families are welcomed and valued.<sup>13</sup>

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<sup>12</sup> *Children, Schools and Families Committee – Oral Evidence, 21 October 2009*

<sup>13</sup> *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, paragraph 2.3

The aim of the parent guarantee will be to ensure that schools work with parents and carers as full partners in their child's learning and development, and to this end:

- every parent will have opportunities, information and support to exercise choice with and on behalf of their child;
- every parent will have a Home School Agreement outlining their rights and responsibilities for their child's schooling;
- every parent will have the opportunity, information and support they need to be involved and engaged in their child's learning and development; and
- every parent will have access to extended services including support and advice on parenting.<sup>14</sup>

Annex A of the white paper sets out in detail what the new pupil guarantee will cover, and how it will build on existing provision; similarly, Annex B sets out in detail what the new parent guarantee will cover, and how it will be different from existing provision.

A central theme in the white paper is school partnerships and collaboration as it acknowledges that not all schools can individually offer everything covered by the guarantees.<sup>15</sup>

As noted above, it is envisaged that the key elements of the pupil guarantee will include a personal tutor for every child; one-to-one tuition for any child aged seven to eleven who is falling behind and not catching up; and, one-to-one or small group tuition at the start of secondary school for pupils who are behind. A 'progress check' assessment in year 7 will be introduced, and the details relating to this will be consulted on.<sup>16</sup> The Expert Group on Assessment recommended a number of measures to improve transition from primary to secondary school and to help children who had fallen behind to catch up, and the Government accepted these recommendations.

One-to-one tuition has already been piloted as part of the Making Good Progress programme in 450 primary and secondary schools in England. An independent evaluation of the pilots' first year carried out by PriceWaterhouseCooper, published in December 2008, found that short bursts of tailored, individual support, on top of effective whole-class teaching or small group support, resulted in improvements in English and Maths, and improvements in attitude, confidence and motivation in class.

In December 2008, Ministers announced funding to prepare for one-to-one tuition to be introduced nationally from September 2009. Ministers have said that it is for local authorities working with their schools to identify the pupils in each of the key stages who should benefit from the additional funding for one-to-one tuition, and that local authorities will be responsible for allocating funding to their schools to support these pupils. Once the pupils are identified for one-to-one tuition, they should receive 10 hours of additional support.<sup>17</sup> Further details were given on 16 September 2009 in a DCSF press release, which said that the Secretary of State wanted to create 'an army of tutors from newly-qualified, existing, retired and part-time teachers'. Over 25,000 one-to-one tutors had registered with the Training and Development Agency (TDA) by September 2009; the overall aim is to recruit 100,000 by 2010/11.<sup>18</sup>

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<sup>14</sup> *ibid.*, paragraph 2.4

<sup>15</sup> *ibid.*, paragraph 2.40

<sup>16</sup> *ibid.*, paragraphs 2.21 to 2.23

<sup>17</sup> [HC Deb 9 July 2009 c1016-7W](#)

<sup>18</sup> DCSF Press Notice, [Up to 300,000 pupils to get one-to-one tuition in English and maths this year](#), 16 September 2009

Information about the qualifications needed to become a one-to-one tutor, pay and conditions etc is provided on the TDA's national tutor recruitment campaign website.<sup>19</sup>

In evidence to the Select Committee on Children, Schools and Families, Ed Balls explained the proposed assessment arrangements relating to pupils requiring extra tuition, and confirmed that the results will not be published:

**Q27 Annette Brooke:** I have a quick question. It's clearly very important to provide additional support for year 7 pupils who haven't achieved what we might regard as very important levels, but I understand that you're actually going to have some sample testing of their progress. Seeing that that will be sampling of a small number, why isn't sample testing appropriate for Key Stage 2?

**Ed Balls:** We are actually not quite doing that; we are doing a sample for Key Stage 3, but for year 7, we won't be sampling. We will be saying to schools that they must do, for every child who didn't make level 4 in English or maths, a test at the end of the year, having delivered that extra one-to-one tuition, in order to show that the child's made progress. What we won't be doing is expecting schools to publish that information or provide it to us. This isn't information for school accountability purposes. What they will be required to do is ensure that the child has done a test and that the information is provided to parents. This is much more about parents knowing their child has been catching up in year 7 and getting the extra support. It's not a sample. But it is not for accountability purposes, and therefore we won't be publishing it. I presume it will be teacher-assessed with some moderation.<sup>20</sup>

In relation to access to PE and sport, by 2011 the Government wants five hours of PE and sport to be offered to all 5 to 16 year olds and three hours to all 16 to 19 year olds.<sup>21</sup> The *2008/09 PE and School Sport Survey* found that 50% of pupils in years 1 to 13 (pupils in compulsory education and in sixth form education) participated in at least three hours of PE and out-of-hours school sport.<sup>22</sup>

#### *Initial reaction to the proposals*

The commitment to ensuring minimum standards of provision for all children and parents was welcomed<sup>23</sup>; however, commentators questioned how the guarantees would be enforced, and stressed that delivery of the 'entitlements', particularly extra tuition, sport provision and out-of-school activities, would depend upon adequate funding and recruiting sufficient tutors.<sup>24</sup> In the case of sport, it was pointed out that the entitlement would also depend upon finding the time to fit it into an already 'over prescribed curriculum'.<sup>25</sup>

There was also concern about whether creating legal entitlements could result in litigation rather than co-operation between schools and parents.<sup>26</sup>

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<sup>19</sup> <http://www.tda.gov.uk/teachers/onetoonetuition.aspx>

<sup>20</sup> *Children, Schools and Families Committee – Oral Evidence, 21 October 2009*

<sup>21</sup> e.g. see HC Deb 13 May 2009 cc 845-6W

<sup>22</sup> *2008/09 PE and School Sport Survey*, Research Report DCSF-RR168, October 2009

<sup>23</sup> e.g. *Response to the white paper from the Association of Directors of Children's Services, 10 July 2009*; *Edexcel comments on the white paper*

<sup>24</sup> e.g. *National Association of Head Teachers, Education White Paper 2009 – Curate's Egg or unfinished Symphony?*; *Comments made by the chair of the National Primary Heads, 7 September 2009*; *Voice Press Release on the Education White Paper, 30 June 2009*

<sup>25</sup> *NUT Press Release on 21<sup>st</sup> Century Schools White Paper, 30 June 2009*

<sup>26</sup> e.g. *ATL Press Release, Education White Paper is a mixed bag 30 June 2009*; *NUT Press Release on 21<sup>st</sup> Century Schools White Paper, 30 June 2009*; *NASUWT comments on 21<sup>st</sup> Century Schools White Paper, 30 June 2009*

Some commentators wanted more attention to be placed on how pupils can play an active role in their own learning and in shaping and evaluating what they receive.<sup>27</sup>

Questions were asked about how specific aspects of the proposals would work in practice, for example: what the role of the local authority would be – whether it would need to support a school’s application in relation to parenting contacts and parenting orders in relation to Home School Agreements or whether it would act with neutrality. In addition the question was raised of what information teachers will need to ensure parents have access to on an on-going, up-to-date basis.<sup>28</sup>

The General Teaching Council for England (GTC) supported the principle of having a personal tutor (i.e. a named teacher) who will maintain an overview of each child’s progress and well-being, and with whom parents can liaise; however, it called for more detail on the skills and resources that would be required for this role. The GTC also welcomed the proposal for extra support for pupils with additional learning needs but wanted teachers to have flexibility in the deployment of resources using their professional judgement. Both the personal tutor and extra tuition initiatives, in the GTC’s view, will need to be evaluated to ascertain their impact and to assess which models adopted by schools prove most effective.<sup>29</sup>

In the debate on the Address, Michael Gove, Conservative Shadow Secretary of State for Children, Schools and Families and David Laws, Liberal Democrat Shadow Secretary of State for Children, Schools and Families questioned how meaningful the guarantees will be. Mr Laws also raised the question of the potential bureaucracy involved in some aspects of the guarantees, particularly the Home-School Agreements.<sup>30</sup>

#### *The Bill’s provisions*

**Clause 1** introduces the new pupil and parent guarantees. It provides for the Secretary of State to issue documents which will set out what pupils and their parents can expect from their school (i.e. the pupil and parent guarantees). The guarantees may impose mandatory requirements on local authorities, governing bodies, other proprietors, and head teachers in England; and may include guidelines setting out aims, objectives and other matters. The Secretary of State may revise the documents from time to time. It is not considered appropriate to set out the detailed guarantees on the face of the Bill because of their breadth; however, clause 1(3) states that the guarantees must be framed with a view to realising the ‘pupil and parent ambitions’, which are set out in clause 1(4) and (5) respectively:

(4)The pupil ambitions are:

(a) for all pupils to go to schools where there is good behaviour, strong discipline, order and safety;

(b) for all pupils to go to schools where they are taught a broad, balanced and flexible curriculum and where they acquire skills for learning and life;

(c) for all pupils to go to schools where they are taught in ways that meet their needs, where their progress is regularly checked and where particular needs are identified early and quickly addressed;

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<sup>27</sup> e.g. [Response to the white paper from the General Teaching Council for England \(GTC\), September 2009, 2009/137](#), paragraph 28

<sup>28</sup> [Local Government Association \(LGA\) briefing on the white paper, 30 June 2009](#)

<sup>29</sup> [Response to the white paper from the General Teaching Council for England \(GTC\), September 2009, 2009/137](#), paragraphs 16 to 18

<sup>30</sup> HC Deb 19 November 2009, e.g. c145, cc 178-180

- (d) for all pupils to go to schools where they take part in sporting and cultural activities;
  - (e) for all pupils to go to schools where their health and well-being are promoted, where they are able to express their views and where both they and their families are welcomed and valued.
- (5) The parent ambitions are:
- (a) for all parents to have opportunities to exercise choice with and on behalf of their children, and to have the information and support they need to help them do so;
  - (b) for there to be, for all parents, home-school agreements outlining their responsibilities, and those of the school, for their children's schooling;
  - (c) for all parents to have opportunities to be engaged in their children's learning and development, and to have the information and support they need to help them do so;
  - (d) for all parents to have access to a variety of activities, facilities and services, including support and advice with regard to parenting.

The guarantees may make different provision for schools or pupils of different descriptions (clause 1(7)). The [Explanatory Notes](#) point out that this means that the provisions in the guarantees may differ for children of different ages (e.g. primary or secondary) or for children with SEN statements.

Clause 1(8) sets out the schools to which the provisions will apply (i.e. community, foundation and voluntary schools in England; community and foundation special schools in England; local authority maintained nursery schools (but not special schools) in England, subject to the extent to which the Secretary of State thinks appropriate; and academies, city technology colleges and city colleges for the technology of the arts. The Secretary of State is empowered to make an order which amends the schools to which the guarantees apply and the bodies upon whom duties can be placed. This power is subject to the affirmative resolution procedure.

The procedure for issuing and revising guarantees is set out in **clause 2**. The Secretary of State must prepare a draft of the guarantee, and then consult on that draft. A draft must be laid before both Houses of Parliament, and approved by a resolution of both Houses.

#### *How guarantees can be enforced*

It is intended that parents will be able to enforce the guarantees by making a complaint initially to the head teacher, the school governing body or local authority, as appropriate; and if this does not resolve the problem by complaining to the Local Government Ombudsman (LGO) under the new school complaints procedure provided for in the *Apprenticeships, Children, Skills and Learning Act 2009*.<sup>31</sup>

**Clause 3** makes the necessary legislative provision as to who can make a complaint in respect of a failure to act in accordance with the guarantees, and under what circumstances. Changes are made to the Secretary of State's direction-making powers contained in sections 496, 497 and 497A of the *Education Act 1996* so that the Secretary of State could not give a direction to a local authority on the basis of a breach of a guarantee unless a complaint had been made to the Ombudsman and disposed of by him or her; or the circumstances are such that the Secretary of State considers it appropriate to give a direction without such a complaint being made and disposed of.

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<sup>31</sup> DCSF Press Release, [Your child, Your schools, our future: building a 21st century schools system](#), 30 June 2009

In evidence given to the Select Committee on Children, Schools and Families, Ed Balls explained how the guarantees would be enforced without recourse to courts:

**Paul Holmes:**— said that the guarantee was welcome, but that it has to be watertight and clear otherwise there will be a lot of vexatious legal processes going on. How do you respond to those two different views?

**Ed Balls:** If you make a guarantee, it has to be able to be enforced. As I said to Mr Twigg, for many schools that will be straightforward because they are doing it already. For some schools, it will be challenging, but I think that it is right to keep challenging the system, so I will not shy away from doing that. If, for example, a parent thinks that the behaviour contract is not being enforced; that they have not got a written statement of what their child is getting if they are gifted or talented; that in year 7, their child has not been given the extra 10 hours a week one-to-one or small group tuition that they should have had if they did not make level 4, and they are getting that year 7 catch-up testing; or that one of the other deliverables in the guarantee has not been enforced, you want them, in the first instance, to have a conversation with the personal tutor and then to speak to the head teacher. In the large majority of cases, the school will have its own procedure or formal process for making a complaint, if the complaint is not being heard by the head teacher. Obviously, in the vast majority of cases, John Dunford and his members will hopefully have sorted out the issue. However, if it has not been sorted out, there has to be a next step. The next step will be that every parent will have the right to go independently to the local government ombudsman to set out why, in their judgement, the school or the local authority is not delivering the guarantee. The local government ombudsman does not have the power to make a school do so, although we know the way in which the local government ombudsman works. The publishing of its report is, even of itself, quite a powerful statement, and that, in many cases, sorts things out. I know that John Dunford will think that the local government ombudsman's report is a sledgehammer and he would have liked to have cracked the nut at an earlier stage. So there will be a small number of cases. When it happens, a school should do it. If a school ignores the local government ombudsman and does not deliver the guarantee, I have statutory intervention powers. Obviously, they can go even further than that. Unless you have that backstop, you cannot really say that it is an enforced guarantee. John Dunford is right. In the vast majority of cases, parents and teachers will have wanted to sort this out at a much earlier stage.<sup>32</sup>

The Secretary of State stressed that parents would only go down a legal route if they went for judicial review.<sup>33</sup>

### Costs

The *Impact Assessment* notes that funding is available in school budgets to fulfil the guarantees, and that schools already have flexibility in the use of their budgets with further measures in this Bill to relax the use of school budgets. However, schools will be expected to use existing resources more efficiently, working in partnership to deliver the guarantees:

Schools are in the second year of a three year settlement which gives them nationally a per pupil increase of 13.1 per cent over the three years, on top of unprecedented increases over the last ten years. We are now moving to a period where such increases are no longer assured, so we expect schools to be working in partnership to use existing resources in a more effective and efficient way –bringing together funding and resources from different partners to deliver the Guarantees to all children across different schools. By bringing services together and identifying potential problems

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<sup>32</sup> *Children, Schools and Families Committee – Oral Evidence, 21 October 2009* Questions 14 and 15

<sup>33</sup> *ibid.*, Question 15



early, children will benefit from interventions (where they are necessary) and schools and services will save money in the long run.<sup>34</sup>

There may be additional costs due to the administration of an increased number of complaints. The *Impact Assessment* states that unit costs and volumes for the pupil and parent guarantee redress system are currently under discussion with the LGO. The final cost of redress for the guarantees is not yet known, but the DCSF will publish an Impact Assessment when it issues the guarantee documents for consultation, and this will contain developed costings. There may also be costs incurred to raise awareness of the guarantees.<sup>35</sup>

### 1.3 Home School Agreements

#### *Background*

At the heart of the statutory guarantees will be the Home School Agreement. At present all schools have a Home School Agreement but not all parents sign one.

Under the last Conservative Administration's *Education Act 1997* provision was made to allow schools to set out the terms and conditions of a home-school partnership document, and to make it a condition for admission to the school that the child's parent signs a parental declaration accepting the parental responsibilities specified in the partnership document. At the time, there was general support for improving home-school links and creating home-school partnerships. However, there were strong differences of opinion about linking such partnership documents with school admissions, and about the possible contents of such agreements. Following the change of government in 1997, the then DfEE wrote to LEAs, school governing bodies of maintained schools and others informing them that the new Labour Government had decided not to commence the provisions relating to home-school partnership documents, and intended to repeal and replace the provisions. Accordingly the *School Standards and Framework Act 1998* made it a statutory requirement for all schools to have written Home School Agreements; however, school admission authorities were prohibited from using such agreements as part of their admission arrangements.

The current statutory provisions on Home School Agreements are contained in sections 110 and 111 of the *School Standards and Framework Act 1998*, which provides that:

- All maintained schools, city technology colleges and city colleges for the technology of the arts adopt a home-school agreement and associated parental declaration
- A home-school agreement is a statement explaining: the school's aims and values; the school's responsibilities towards its pupils who are of compulsory school age; the responsibilities of the pupil's parents; and what the school expects of its pupils
- Before adopting or revising the home-school agreement, the governing body must consult all registered parents of pupils at the school who are of compulsory school age
- The governing body must take reasonable steps to ensure that all registered parents of pupils of compulsory school age sign the parental declaration to indicate that they understand and accept the contents of the agreement

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<sup>34</sup> *Impact Assessment*, p6

<sup>35</sup> *ibid.*

- The governing body is not required to seek the signature of a parent where they consider that there are special circumstances relating to the parent or pupil in question that would make it inappropriate to do so
- The governing body may also invite any pupil, whom they consider to have a sufficient understanding of the home-school agreement as it relates to him or her, to sign the parental declaration as an indication that he or she acknowledges and accepts the school's expectations of its pupils
- The governing body must review the agreement from time to time
- In carrying out their responsibilities in relation to home-school agreements, governing bodies must have regard to any guidance issued by the Secretary of State
- The Secretary of State may prohibit the inclusion of certain forms of words, or words which have a particular effect in home-school agreements or parental declarations
- Breaches of the terms of the agreement will not be actionable through the courts
- A child must not be excluded from school, nor should a child and/or his or her parents suffer any other adverse consequences on account of his or her parents' failure or refusal to sign the parental declaration
- The governing body or the LEA, where it is the admissions authority for the school, must not:
  - invite a parent or child to sign the parental declaration before the child has been admitted to the school
  - make the signing of the parental declaration a condition of the child's admission to the school
  - base a decision as to whether to admit a child to the school on whether his or her parents are or are not likely to sign the parental declaration<sup>36</sup>

Further information is contained in the [Secretary of State's Guidance](#).<sup>37</sup>

#### *Proposed new Home School Agreements*

The Government believes that at present Home Schools Agreements are largely ineffective, 'a bureaucratic process with few real benefits.'<sup>38</sup> Instead of the existing generic agreements, the Government wants to increase their 'personalisation', and strengthen them so that all parents and pupils understand their responsibilities and support good behaviour. The new Home Schools Agreements are to be closely aligned to behavioural support, and failure to sign or comply with an agreement will be considered grounds for a behavioural parenting order.

The school white paper said that it would be wrong to make signing a Home School Agreement a condition for school admission; however, when parents are applying for school places they will receive each school's behaviour policy as it appears in the Home School

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<sup>36</sup> DCSF website on Home Schools Agreement:  
[http://www.standards.dfes.gov.uk/parentalinvolvement/hsa/hsa\\_law/?version=1](http://www.standards.dfes.gov.uk/parentalinvolvement/hsa/hsa_law/?version=1)

<sup>37</sup> [http://www.standards.dfes.gov.uk/parentalinvolvement/hsa/hsa\\_guidance/](http://www.standards.dfes.gov.uk/parentalinvolvement/hsa/hsa_guidance/)

<sup>38</sup> *Impact Assessment*, p8



Agreement, and once the child is in the school the parents will be expected to sign the agreement each year and support the school's behaviour policy. Failure to do so could be used by schools in any application to the courts for parenting contracts and parenting orders:

It would be wrong to make signing the Home School Agreement a condition of admission, as this could unfairly deny a child a school place. However, once their child is in school the parents will be expected to sign the Home School Agreement each year, and parents will face real consequences if they fail to live up to the responsibilities set out within it. We will bring forward changes to the law so that parents' unwillingness to sign up and support their school's behaviour policy can be used by schools to support applications to the courts for Parenting Contracts and Parenting Orders. Parents will also have the right to complain if they believe the school is not holding other parents to their responsibilities in turn.<sup>39</sup>

Parenting contracts, for truancy and misbehaviour, enable formal agreements between parent and school or parent and the local authority setting out the steps to be taken to improve a child's attendance and behaviour.<sup>40</sup> Currently parenting orders can be used in cases of truancy, exclusion and serious misbehaviour in schools. A parenting order is a civil court order that compels a parent to attend parenting classes or counselling and to fulfil other requirements, as determined necessary by the court, for improving their child's attendance or behaviour - for example by ensuring that the child arrives for school on time or that the parent attends regular meetings with the school. Orders usually last for 12 months.<sup>41</sup> There is [Guidance](#) on parenting contracts and orders arising from truancy and exclusion from, or misbehaviour at, school.<sup>42</sup> Data on contracts and parenting orders issued are available on the [DCSF parental responsibility data website](#).

In evidence given to the Select Committee on Children, Schools and Families Ed Balls explained how the proposed Home School Agreements would differ from the present arrangements:

**Ed Balls:** As you say, every school has been required to have an agreement, but most parents do not know that they have signed up to one. The key difference is twofold. First, every parent will explicitly have to say, as part of the admissions process when their child applies to a school, that they are signing up to the expectations on them as a parent. They will also have to confirm that during the life of their child at the school. Secondly, if a parent does not then deliver their part of the package in terms of supporting good behaviour, that will be explicitly taken into account-ultimately by the courts-in enforcing parenting contracts or orders. That gives schools the teeth they need to say to parents, "You have to play a part."

Also, if parents feel that their child's learning is being disrupted by one or two kids in the class and that the school is not doing something about it, they will have the explicit right to appeal, ultimately to the local government ombudsman and beyond, and say that the school is not enforcing the proper discipline code and that they want it sorted out. So it gives teeth to the school and to parents who feel that the school is not delivering good behaviour. It also puts pressure on parents who are not pulling their weight. I think that it is tougher.<sup>43</sup>

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<sup>39</sup> [Your child, your schools, our future: building a 21<sup>st</sup> century school system](#), paragraph 2.10

<sup>40</sup> [DCSF website on parenting contracts](#) (as at 10 September 2009)

<sup>41</sup> *ibid.*

<sup>42</sup> Non-education-related parenting orders are also available to youth offending teams and the courts where a child has been involved in criminal or anti-social behaviour. [Guidance](#) on this is provided by the Ministry of Justice.

<sup>43</sup> [Children, Schools and Families Committee – Oral Evidence, 21 October 2009](#) Q11

The Secretary of State reiterated that the change in the law will mean that magistrates will be expected to take into account whether a parent has complied with a Home School Agreement when considering making a parenting contract order or enforcement of one:

On the home-school agreement, you are right that we are saying that the school should have the power to enforce against the parent, and other parents on the parent. We already have 6,861 parenting contracts for attendance and 222 parenting orders for attendance, so the court is already involved in these issues, although mainly on the attendance side. Up to now, schools have been reluctant to use those kind of legal routes around behaviour because they did not think that they had the legal powers. What the home-school agreement and the change in the law associated with it do is to make it clear that the magistrates court will be expected to take into account the home-school agreement and whether or not the parent has complied as part of their decision-making on the parenting contract order or enforcement. We will substantially strengthen the school's hand vis-a-vis the parent if it is a parent who is being recalcitrant and not engaging. Obviously, when you talk about special educational needs, there is a separate process for statementing, which we are also discussing. I cannot see that any school or ombudsman will be enforcing behaviour in respect of a special educational needs child.<sup>44</sup>

#### *The Bill's provisions*

**Clause 4** inserts a new section 109A into the *School Standards and Framework Act 1998* to make provision for annually-reviewed, personalised Home School Agreements for pupils at a maintained school, academy, city technology college or city college for the technology of the arts in England. Under new section 109A the head teacher is under a duty to provide each registered parent of a registered pupil with a Home School Agreement (as defined in subsection (4)) and a parental declaration. The duty does not apply where the head teacher considers that it would be inappropriate because of any special circumstances relating to the parent or pupil. Head teachers can provide different parents of the same pupil with different Home School Agreements. A Home School Agreement is to be reviewed at least once a year (in consultation with the parent). The head teacher must take reasonable steps to ensure that the parental declaration is signed by each parent when the Home School Agreement is first issued, and following every review; and a pupil may also be invited to sign the declaration. Any Home School Agreement lapses once the pupil leaves the school or is no longer of compulsory school age.

The existing provision contained in section 110 of the 1998 Act is amended by the Bill so that it will only apply to schools in Wales (schedule 4 (7)).

**Clause 5** amends the *Anti-social Behaviour Act 2003* (ASBA 2003), which makes provision for parenting contracts and orders. Section 19 of the ASBA 2003 would be amended so that in every parenting contract entered into in cases of misbehaviour at school or truancy there is a statement by the parent that they agree to discharge their responsibilities set out in the Home School Agreement, and a statement by the local authority or school governing body that it agrees to provide support to the parent for the purpose of discharging those responsibilities. Section 21 of the ASBA 2003 would be amended so that where a magistrates' court is considering making a parenting order in cases of exclusion or potential exclusion from school it must take into account any failure of the parent to discharge the responsibilities set out in the home-school agreement.

The Government believes that the provisions are compliant with the European Convention of Human Rights, and its conclusions are set out in paragraphs 206 and 207 of the [Explanatory Notes](#) on the Bill.

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<sup>44</sup> *ibid.*, Q15

The *Impact Assessment* estimates the transitional costs for schools arising from implementing the revised Home School Agreements (i.e. staff training and administrative costs) to be around £6 million. The total estimated cost of additional parenting contracts and orders is around £680,000 per annum.<sup>45</sup> The *Impact Assessment* goes on to consider the benefits to schools and pupils in terms of the potential effect of the changes on teacher retention, savings of teachers' time spent on dealing with behavioural issues, the possibility of fewer exclusions, and the potential for improving educational attainment.

Assuming that the new legislation comes into effect in September 2010, the policy on Home School Agreements will be reviewed in summer 2011 and summer 2012.<sup>46</sup>

#### 1.4 Parental satisfaction surveys

The white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system* said that a new requirement would be placed on local authorities to gather parents' views on the school choices available in their area, and to publish a local plan for improvement if a high proportion of parents are dissatisfied. Parents would, the white paper said, be able also to express views about their own child's school that will feed into the proposed new School Report Card. The Government believes that together these changes will significantly strengthen the parental voice in the education system and lead to improvement.

Depending upon the nature of parents' concerns, the white paper envisaged that local authority plans could include the creation of a federation of schools, the use of an accredited schools group, the expansion of good school places or, depending upon the availability of capital, the establishment of an entirely new school.

The white paper said that the DCSF would work with up to ten local authorities to try this approach to gathering information about parental satisfaction, and that information from the trials will help inform how the arrangements should work nationally.<sup>47</sup>

The Government points out that the current system is a reactive one, whereby local authorities respond to individual parental dissatisfaction, usually in the form of a school admission appeal or to local campaigns about particular schools. By placing a legal duty on local authorities to carry out parental satisfaction surveys the Government believes that local authorities will engage proactively with parents on a regular basis and will be able to canvass the views of all parents, not just a few.<sup>48</sup>

**Clause 6** of the Bill inserts seven new sections into Chapter 3 of Part 1 of the *Education Act 1996*. Essentially these would require local authorities in England to carry out an annual survey of parents' views on the provision of 'relevant schools' in their area. The *Explanatory Notes* state that the Government intends 'relevant schools' in this context initially to refer only to secondary schools, but this may be extended to primary schools in the future. The operational detail of the surveys will be set out in regulations, which may prescribe the particular matters on which parents' views may be sought and the form in which views must be obtained.

Where there is material dissatisfaction with existing provision, a local authority will be required to consult with parents and develop a 'response plan' that addresses the dissatisfaction and deals with any other issues raised in the survey that the authority considers necessary. Regulations will determine how such material dissatisfaction will be

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<sup>45</sup> *Impact Assessment*, pp10 and 11

<sup>46</sup> *Impact Assessment*, p8

<sup>47</sup> *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, paragraph 31 of the executive summary and chapter 5, paragraphs 5.37 to 5.42

<sup>48</sup> *Impact Assessment*, p15

determined. Parents will be given an opportunity to make representations on the content of a response plan and, where those representations are not sufficiently favourable, the local authority will be required to refer the plan to the Schools Adjudicator. The trigger level at which the local authority will be required to refer a plan to the Schools Adjudicator will be determined in accordance with regulations. Regulations may make provision about the procedures to be followed and the criteria to be taken into account by the adjudicator in making a determination, and the adjudicator must have regard to any guidance issued by the Secretary of State. If the adjudicator rejects the plan, the authority will have to withdraw it and prepare and publish a further plan.

The [Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform](#) states that the delegated powers sought under the provisions of clause 6 are to enable the DCSF to prescribe the elements of technical detail to ensure that the overarching duty contained in the Bill will operate in practice. For that reason the negative resolution procedure is deemed to be appropriate for the regulations.<sup>49</sup>

The [Impact Assessment](#) sets out how the new duty may increase staffing requirements within local authorities. One of the purposes of piloting the new duty is to get a better understanding of the associated costs and benefits. The DCSF will use that data to ensure the most cost effective and efficient approach to implementing the policy, and whether to introduce it nationally or in stages.<sup>50</sup>

### *Reaction*

The Government's summary of responses to the consultation on its draft legislative programme said that the proposal had been well received, and that the majority of parents consulted had said that they would be willing to complete a simple form.<sup>51</sup>

In its response to [Your child, your schools, our future: building a 21<sup>st</sup> century school system](#) the Local Government Association (LGA) emphasised that it would expect to be involved in discussions on the details for parental satisfaction surveys, and it questioned the intention to limit the survey to the secondary phase of education:

LGA will also expect involvement in discussions regarding the surveys of parents' views and any resulting development plan process. Currently the white paper is unclear about the methodology of parents' surveys, how representative they will be and at what point (e.g. simple majority of respondents) action is prompted to develop a plan. It is also interesting that the survey will only occur at secondary phase. If we are taking this route, ought not parents entering the system for the first time at primary phase to be asked their opinions too, along with all young people entering 14-19 provision? What should happen with regard to three tier areas? Are middle school parents to be surveyed as well?<sup>52</sup>

## **1.5 Children with special educational needs**

### *Background*

The current legal responsibilities of local authorities and schools towards children with special educational needs (SEN) are contained in Part 4 of the *Education Act 1996*, as amended. This provides for local authorities to make provision for children with SEN, including the drawing up of SEN statements where they are considered to be appropriate. A

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<sup>49</sup> [Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform](#), paragraph 25

<sup>50</sup> [Impact Assessment](#), p18

<sup>51</sup> [The draft Legislative Programme 2009/10- Government's Response and Summary of Consultation](#), Cm 7739, November 2009, p21

<sup>52</sup> [Local Government Association \(LGA\) briefing on the white paper, 30 June 2009](#)

statement of SEN describes the child's needs and the special provision that must be made. Guidance on the duties of local authorities and schools is set out in the statutory *Code of Practice on the Assessment and Identification of Special Educational Needs*.<sup>53</sup> The statementing process is described in detail in the Code of Practice. Statements must be reviewed annually but can also be reviewed at other times.

Parents have a right of appeal in certain circumstances. On 3 November 2008 the Special Educational Needs and Disability Tribunal became part of a new unified tribunal system. Appeals are heard by the First-tier Tribunal (Special Educational Needs and Disability).<sup>54</sup>

The Select Committee on Children, Schools and Families reported on special educational needs, and highlighted strong concerns about parents' confidence in the SEN system.<sup>55</sup> *Library Standard note SN/SP/3375* provides background on the Committee's report and the Government's response to it.

Part of the Government's response to the issues raised by the Select Committee was to ask Brian Lamb, the chair of the Special Educational Consortium, to carry out an enquiry into how parental confidence in the SEN assessment process might be improved. A series of reports has been published. Full details are available at the DCSF website on the Lamb Inquiry.<sup>56</sup>

The Lamb report on the *Quality and clarity of statements*, published in August 2009, said that in the statementing process there needed to be a much tighter focus on outcomes and a much more rigorous approach to setting out objectives in a statement. The objectives need to relate both to attainment and to wider outcomes for children. The report referred to evidence showing that annual reviews are not conducted with sufficient rigour.

Currently, if the local authority proposes an amendment to a statement following an annual review, there is a parental right of appeal. There is, however, no right of appeal if the local authority decides not to amend a statement following an annual or interim review. The report recommended that in such cases parents should be given a right of appeal. A number of other serious weaknesses in the way statements are drawn up were identified.

The Lamb report recommended that the DCSF commission guidance on good practice in drawing up statements; for the guidance to be promoted; and for related training to be provided. Further issues that the report said should be addressed in the guidance included: the allocation of support assistant time; the need for children attending special schools to have statements that set out tailored provision rather than just a general description of what the school offers; and support for local authority staff in describing the provision to be made in a statement.

Another report by the Lamb Inquiry, *Inspection, accountability and school improvement*, also submitted to the Secretary of State in August 2009, noted that the systems for inspection, accountability and school improvement have historic and structural weaknesses on SEN and disability. In an earlier report (April 2009) Brian Lamb had recommended that all School Improvement Partners should receive training on SEN and disability. The August report focussed on the inspection of schools and local authorities. The report welcomed the introduction of the new Ofsted inspection framework, with its emphasis on the quality of education offered to vulnerable pupils including disabled pupils and pupils with SEN; however, the report said that further measures were needed. Its recommendations include

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<sup>53</sup> DfES 2001

<sup>54</sup> <http://www.sendist.gov.uk/>

<sup>55</sup> Education and Skills Committee, Third Report of Session 2005-06, *Special Educational Needs*, HC Paper 478

<sup>56</sup> <http://www.dcsf.gov.uk/lambinquiry/>



placing a specific duty on Ofsted to report on the quality of the education provided for disabled children and children with SEN.

*The Secretary of State's response in a letter dated 3 August 2009* accepted the recommendations, and said that he would seek to amend the legislation at 'the next appropriate opportunity' to provide a right of appeal for parents if a local authority decides not to amend a statement after a review, and to place a specific duty on Ofsted to report on the quality of the education provided for disabled children and children with SEN.

On 16 December 2009, the Secretary of State announced that, in response to Brian Lamb's final report on parental confidence, further measures would be taken to help the parents of SEN pupils to get the right educational support for their children.<sup>57</sup>

#### *The Bill's provisions*

**Clauses 7 and 8** seek to give effect to the commitment made by the Secretary of State on 3 August 2009, and increase parental confidence in the SEN statementing system and the inspection of SEN provision.

**Clause 7** inserts into section 5 of the *Education Act 2005* (duty to inspect certain schools in England at prescribed intervals) a requirement for the Chief Inspector to consider, in reporting on how well a mainstream school (as defined) meets the needs of its pupils, the needs of children with disabilities or special educational needs.

**Clause 8** provides a new right of appeal to the First-tier Tribunal (Special Educational Needs and Disability) for parents in circumstances where, following a review of a statement of SEN, the local authority decides not to make any changes to the statement. The clause inserts a new section after section 328 of the *Education Act 1996*. The local authority must inform the parents in writing if it decides not to amend the statement and must also inform them of their right to appeal to the Tribunal. The appeal may be in relation to:

- the description of the local authority's assessment of the child's special educational needs in the unamended statement;
- the special education provision in the unamended statement and the name of a school specified in it; or
- the fact that no school is named in the unamended statement.

The extra costs associated with the proposed changes are set out in the *Impact Assessment*.

### **1.6 Exceptional provision of education in short stay schools or elsewhere**

Section 19 of the *Education Act 1996*, as amended, imposes a duty on local education authorities to make arrangements for securing suitable education for children who, because of exclusion from school, illness or for any other reason, may not receive such education if arrangements are not made for them. Local authorities may fulfil this duty by establishing and maintaining schools that are specially provided for this purpose called Pupil Referral Units (PRUs), recently renamed short stay schools.<sup>58</sup> At present section 19 provision does not have to be full-time, except for pupils who have been excluded from school. Since

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<sup>57</sup> DCSF Press Release, *A stronger voice and more support for parents of children with special educational needs*, 16 December 2009

<sup>58</sup> Section 249 of the *Apprenticeships, Skills, Children and Learning Act 2009* changes the name of Pupil Referral Units to short stay schools

September 2007, permanently excluded pupils must be provided with suitable full-time education from the sixth day of exclusion.

Around 135,000 children of compulsory school age receive alternative provision every year, and about one-third are educated in PRUs.<sup>59</sup> Other forms of alternative provision commissioned by local authorities and schools include placements in further education colleges, and in private and voluntary sector provision. On 20 May 2008, the Government published a white paper *Back on Track - A strategy for modernising alternative provision for young people*.<sup>60</sup> This highlighted the limited data on the performance of pupils in alternative provision, and that the available data indicated often very poor outcomes. The white paper followed on from the work undertaken by Sir Alan Steer to bring a practitioner perspective to the development of the white paper.<sup>61</sup> He concluded that, although there were some excellent examples of good practice in PRUs and alternative education, the overall picture gave cause for concern. The white paper stressed that there was a need for a step change in the quality of PRUs and other alternative provision. To this end, the Government said that it wanted to encourage greater diversity of alternative provision, with more input from the private and voluntary sectors. On 23 October 2008 the Secretary of State published feedback on the responses to the white paper, and set out the next steps for the proposed changes.<sup>62</sup> This said that legislation would be introduced to require the replacement of underperforming PRUs with specified alternatives and to change the statutory name 'Pupil Referral Units' into something that better described the provision. Subsequently, the *Apprenticeships, Skills, Children and Learning Act 2009* changed the name of PRUs to short stay schools, and provided new regulation-making powers to allow the Secretary of State to give a direction to an LEA about alternative provision.

Following these changes, the Government wants to ensure that all provision provided under section 19 will be full-time.

**Clause 9** of the Bill therefore proposes to reframe section 19 to provide for full-time education. Part-time provision will be allowed in the case of children for whom the local authority considers that, for reasons which relate to their physical or mental health, it would be impracticable or inappropriate for full-time education to be provided. The duty to make arrangements for the provision of education does not apply in the case of a pupil who has effectively come to the end of their compulsory schooling. The intended effect of the provisions is that all pupils in alternative provision will be entitled to full-time education, except for those with physical or mental health problems where it would be impracticable or inappropriate.

The *Impact Assessment* states that the cost of making full-time provision available to a pupil in alternative provision is estimated to be around £15,000 a year, compared to £4,000 in a maintained school. Local authorities will have increased costs where they have to commission extra provision. The *Impact Assessment* includes a range of costs but says that the Government expects the most likely scenario to be one in which a maximum of 6,000 pupils will need two additional hours to ensure full-time provision.<sup>63</sup>

**Schedule 4, paragraph 6**, of the Bill applies sections 406 and 407 of the *Education Act 1996* (political indoctrination and treatment of political issues) to short stay schools as the provisions apply to community schools.

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<sup>59</sup> *Back on Track - A strategy for modernising alternative provision for young people*. Cm 7410, May 2008

<sup>60</sup> Cm 7410

<sup>61</sup> Annex 3 to the white paper

<sup>62</sup> *Taking Back on Track Forward: Response to consultation and next steps 2008*, DCSF

<sup>63</sup> *Impact Assessment*, pp30-1

## 1.7 Curriculum

### ***Areas of learning (primary curriculum changes)***

#### *Background*

The Government is proposing to introduce the most significant overhaul of the primary curriculum in maintained schools since the National Curriculum was introduced 20 years ago. Under the reforms, the existing foundation subjects at Key Stages 1 and 2 (covering pupils aged from 5 to 11 years) will be replaced by six areas of learning. The intention is to have a more manageable curriculum; for teachers to have greater flexibility in order to focus on such important aspects as literacy, numeracy and ICT; and for these skills to be used across the curriculum. The changes were proposed by the [Independent Review of the Primary Curriculum](#) carried out by Sir Jim Rose, former Deputy Chief Inspector of Schools. These were accepted by the Government, following a consultation conducted by the Qualifications and Curriculum Authority. The Bill seeks to make the necessary statutory changes to implement the reforms.

The [Children's Plan](#) published by the Government in December 2007 stated:

17. As our experts highlighted, the curriculum should help children move seamlessly from nurseries to schools, from primary to secondary and then to work or further and higher education. It should ensure all children secure the basics, while allowing flexibility to learn new skills and develop the social and emotional skills they need to succeed. Therefore we have announced a root and branch review of the primary curriculum, led by Sir Jim Rose, to ensure there is:

- more time for the basics so children achieve a good grounding in reading, writing and mathematics;
- greater flexibility for other subjects;
- time for primary school children to learn a modern foreign language; and
- a smoother transition from play-based learning in the early years into primary school, particularly to help summer-born children who can be at a disadvantage when they enter primary school.

18. In order to meet our 2020 goals for educational achievement, we will need to improve the attainment of some specific groups who we know are currently underperforming. Our vision is that there will be ready access from schools to the range of support services necessary to ensure barriers to learning are broken down.

Sir Jim Rose was asked to provide an interim report by the end of October 2008 and to make final recommendations to the Secretary of State by March 2009, with the new primary curriculum introduced from September 2011.

The terms of reference of the review were extended to address a number of concerns about special educational needs particularly in relation to dyslexia<sup>64</sup> and, following concerns about the content of the proposed early years curriculum, the Rose review was asked also to look at some aspects of the proposed early years foundation stage.<sup>65</sup>

The [Independent Review of the Primary Curriculum; Final Report](#), published in April 2009, proposed a new core of essential skills and focused on literacy, numeracy, ICT and personal development and learning. The recommendations included restructuring the primary

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<sup>64</sup> [Written Ministerial Statement, 6 May 2008](#)

<sup>65</sup> [Written Ministerial Statement on 30 June 2008](#)



curriculum into six broad areas of learning, within which essential subject content would be organised and become more distinct as children progress from Key Stage 1 to Key Stage 2.<sup>66</sup> The areas of learning proposed were:

- understanding English, communication and languages;
- mathematical understanding;
- understanding the arts;
- historical, geographical and social understanding;
- understanding physical development, health and wellbeing; and,
- scientific and technological understanding.

The draft programmes of learning set out the knowledge, skills and understanding relating to these areas. The curriculum content was set out in three phases: early, middle and later primary. The review also recommended that a foreign language should become compulsory for the first time from age 7. Other recommendations were made including giving parents the option to send their child to school in the September after they are four. (Provision for this is being made in a revised *School Admissions Code*, published on 10 December 2009 for public consultation.<sup>67</sup>)

In his Written Ministerial Statement on 30 April 2009, Ed Balls announced that he had accepted, subject to public consultation, all the recommendations.<sup>68</sup>

The proposed curriculum was the subject of extensive consultation over the summer by the Qualifications and Curriculum Development Agency (QCDA) and the results of that consultation were published<sup>69</sup>, alongside the [Written Ministerial Statement on 19 November 2009](#).<sup>70</sup> The Secretary of State said that the findings of the consultation had shown high levels of support, between 70% and 80%, for Sir Jim's main proposals. In addition, he emphasised that:

70 per cent agreed that the areas of learning help teachers plan meaningful learning experiences;

71 per cent agreed that they will help children make useful links between related subjects;

83 per cent agreed that the proposals to integrate ICT through the curriculum will help children use technology to enhance their learning;

70 per cent agreed that the proposed curriculum will give schools more flexibility to adapt to the needs of their children; and

69 per cent agreed that the proposed curriculum is less prescriptive than the existing curriculum and provides schools with greater flexibility to adapt the curriculum to the needs of their pupils.

In the light of such support, the Secretary of State said that the Government had decided to implement the primary curriculum review report's recommendations to organise the primary curriculum into the six broad areas of learning rather than the current subjects, with less

<sup>66</sup> Key Stage 1 covers the year in which the child turns 6 and ends in the year the child turns 7; Key Stage 2 covers the year in which the child turns 8 and ends in the year that the child turns 11.

<sup>67</sup> DCSF Press Release, [Parents set to get more choice on when their children start primary school](#), 10 December 2009

<sup>68</sup> [Written Ministerial Statement on 30 April 2009](#)

<sup>69</sup> [Curriculum reform consultation report to the DCSF](#), QCDA/09/4355, September 2009

<sup>70</sup> [Written Ministerial Statement 19 November 2009](#)

detailed programmes of learning to allow greater focus on strengthening literacy and numeracy skills and more time to study essential knowledge and skills in depth. The Secretary of State said that due to the positive response to Jim Rose's proposals, few changes will be made to the proposed areas of learning. However, he said that after consulting with parents, teachers, the science community and other interested parties, pupils will be explicitly expected to cover evolution as part of their learning. Learning about evolution is an important part of science education, and pupils already learn about it at secondary school. He also pointed out that the revised area of learning for historical, geographical and social understanding will confirm learning about British history as a key feature. Religious Education is not part of the statutory National Curriculum; however, the Government will be publishing an illustrative programme of learning alongside new non-statutory guidance in January 2010.

The Written Ministerial Statement also commented on primary school assessment. The Secretary of State reiterated that Key Stage 2 tests in English and Mathematics will remain in place and that he had approved QCDA's choice of a preferred test operations contractor for the tests for 11 year olds in 2010. However, he also said he had decided to take a further step in recognising the value of teachers' own assessments:

From 2010, we will publish primary schools' teacher assessment data for pupils in year 6 in English, maths and science. This will be published alongside test data for English and maths in our Achievement and Attainment Tables. It is also my intention, from 2011, to introduce a light touch local moderation process for this teacher assessment. We will consult with schools, local authorities, other stakeholders and the Expert Group on the introduction of a system that will best support teachers and strengthen their assessments.

I have always said that the assessment and testing system is not set in stone and that what is important is that it works best for pupils and schools and provides parents with the information that they need. To that end from 2011, we are introducing the new School Report Card, which will be underpinned by the new powers we are taking in the Bill. We are currently consulting with stakeholders on the School Report Card, and we will consider data on teacher assessments as part of that consultation. These changes taken together are further evidence of our commitment to strong accountability.<sup>71</sup>

A separate, comprehensive, study of primary education has been directed by Professor Robin Alexander, University of Cambridge. The research was funded by the Esmée Fairbairn Foundation, a major charitable trust. This was an independent project launched in October 2006 to review primary education. Since then a series of 31 interim reports have been published, and the *Final Report of the Cambridge Primary Review* was published on 16 October 2009.<sup>72</sup> The report sets out a different approach to the reform of primary education.<sup>73</sup> Vernon Coaker, the Schools Minister dismissed the report as being not up to speed on many major changes in primaries, saying that "The world has moved on since this review was started", and that the report was "at best woolly and unclear on how schools should be accountable to the public."<sup>74</sup> Professor Alexander has strongly rejected the criticisms.<sup>75</sup>

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<sup>71</sup> [Written Ministerial Statement 19 November 2009](#)

<sup>72</sup> These reports and other information may be found at: <http://www.primaryreview.org.uk>

<sup>73</sup> "Primary reviews compared", *Education Journal*, Issue 115, 2009-02, p10

<sup>74</sup> *Government's response to the final report of the Cambridge Primary Review*, DCSF, 16 October 2009

<sup>75</sup> *Comments on the Government's response by Professor Robin Alexander*, further information on the report is available on the website: <http://www.primaryreview.org.uk/>

*The Bill's provisions*

**Clause 10** inserts a new section 83A into Part 6 of the *Education Act 2002* to provide the six new 'areas of learning' (set out in new subsection 83A(3)) within which the National Curriculum for primary level in England will be structured. In relation to each of these areas of learning, the National Curriculum will consist of programmes of study, and may specify attainment targets and assessment arrangements by area of learning too (new section 83A(2)). The Secretary of State may specify by order particular modern foreign languages which may be studied as part of the 'understanding English, communication and languages' area of learning, or may specify that any modern foreign language may be studied as part of that area of learning. He or she may also by order specify how to determine what constitutes a modern foreign language (new section 83A(5)). The Secretary of State may by order amend the areas of learning or the provisions about modern foreign languages (new section 83A(6)). Such an order is subject to the affirmative resolution procedure.

*Subsection (2)* of clause 10 inserts new subsections (2A) and (2B) into section 87 of the *Education Act 2002* to permit the Secretary of State to make an order setting out attainment targets and assessment arrangements not only in relation to the areas of learning, but in relation to specified parts only of areas of learning (new section 87(2B)) or across areas of learning (new section 87(2A)).

The DCSF *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform* describes the proposed procedures in relation to programmes of study, attainment targets and assessment arrangements, and the degree of parliamentary scrutiny in relation to these.<sup>76</sup> Negative resolution procedure will apply for programmes of study and attainment targets; assessment arrangements will not be subject to parliamentary scrutiny. The Secretary of State will, however, have to consult Ofqual and others before making any provision for assessment arrangements.

Estimated costs of the proposed changes are given in the *Impact Assessment*.<sup>77</sup>

***Personal, Social, Health and Economic Education***

The Government want to make Personal, Social, Health and Economic Education (PSHE) a compulsory part of the National Curriculum, and the Bill makes the necessary provision for this.

*Background*

The *Children's Plan*, published in December 2007, emphasised that it was important for schools to develop young people in the round, as well as ensuring that they receive an excellent education. Amongst other things, it announced a review of the delivery of sex and relationships education, and also set out the Government's commitment to examine the effectiveness of drugs education. Subsequently a Drugs and Alcohol Advisory Group was commissioned to carry out a review and to make its recommendations to the Secretary of State. Both these reviews recommended that good PSHE was vital to providing a healthy, rounded education.<sup>78</sup>

On 23 October 2008, Jim Knight, the then Schools Minister announced in a *Written Ministerial Statement* that the Government had decided that PSHE should have statutory status. He noted that under existing legislation parents have the right to withdraw their children from sex education, but not from those parts that are included in the National

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<sup>76</sup> *Children Schools and Families Bill, A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, DCSF November 2009, paragraphs 30 to 36

<sup>77</sup> pp 34 to 38

<sup>78</sup> DCSF Press Release, *All pupils to get healthy lifestyle lessons*, 23 October 2008

Curriculum. Mr Knight outlined those aspects of PSHE that are already statutory, but recognised that making other aspects of PSHE statutory would need to take into account several issues of concern including the position of parents who already withdraw their children or those who might want to in the future. He therefore asked Sir Alasdair Macdonald to report to the Secretary of State in April 2009 on a practicable way forward.

Sir Alasdair reported to the Secretary of State in March 2009: [Independent Review of the proposal to make Personal, Social, Health and Economic Education \(PSHE\) statutory](#).

The Government's response was set out in a [Written Ministerial Statement on 27 April 2009](#). This noted that Sir Alasdair had recommended that PSHE education should become part of the National Curriculum at both primary and secondary levels. The Secretary of State accepted this approach, subject to formal consultation alongside that on Sir Jim Rose's review of the primary curriculum.

Several other recommendations were made by Sir Alasdair which the Government accepted in principle, subject to formal consultation. These were that at secondary level the existing non-statutory programmes of study should be carried forward and that at primary level the relevant parts of the proposed new programme of learning 'Understanding Physical Development, Health and Wellbeing' should form the core entitlement of PSHE; that governing bodies should retain the right to determine their school's approach to Sex and Relationship Education (SRE) to ensure that this can be delivered in line with the context, values and ethos of the school but that this must be consistent with the core entitlement to PSHE education; that governing bodies should retain the duty to maintain an up-to-date SRE policy, which is made available to inspectors, parents and young people and that they should involve parents and young people (in secondary education) in developing that policy; that DCSF should seek the opinions of stakeholders and the wider public on whether to change the name of PSHE education within the secondary National Curriculum; and that legislation should seek to exclude PSHE education from the requirement to have statutory levels of attainment, but that the DCSF should work with the Qualifications and Curriculum Authority (now the Qualifications and Curriculum Development Agency (QCDA)) to find appropriate and innovative ways of assessing pupil progress in PSHE education.

Sir Alasdair also recommended that the existing right of parental withdrawal from sex and relationships education should be maintained. Sir Alasdair's report made a number of other recommendations about improving teaching and learning in PSHE education. The full list of recommendations, and the Government's response, is included in the statement.

Consultation on the detailed recommendations was carried out by the QCDA. The consultation report to the DCSF on [Personal, Social, Health and Economic Education Curriculum Reform](#) was published in September 2009. A wide range of views and opinions was expressed.<sup>79</sup>

In a [Written Ministerial Statement on 5 November 2009](#) the Secretary of State announced his decision to proceed with legislation to make PSHE education part of the statutory National Curriculum in both primary and secondary education, and that parents' right to withdraw their children from sex and relationship education (SRE) should continue but only until their children reach the age of 15, so that every young person will receive at least one year of SRE before the end of compulsory education:

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<sup>79</sup> [Personal, social, health and economic education - curriculum reform consultation report to the DCSF](#), QCDA, September 2009

I have considered carefully the outcomes of this consultation, together with Sir Alasdair Macdonald's report and all the other information that has become available about these matters since my decision to review SRE in November 2007.

As a result, I can confirm our decision to accept the recommendations of the SRE review group and to proceed with legislation to make PSHE education part of the statutory national curriculum in both the primary and secondary phases. As the SRE group established in 2008 recommended, PSHE education will therefore be a foundation subject in the national curriculum in key stages 3 and 4, with the existing non-statutory programmes of study forming the basis for a core entitlement that all pupils should receive. At primary level the proposed new programme of learning, "Understanding Physical Development, Health and Well-being" will be the basis of the core entitlement that all pupils should receive.

Over the last few months an issue has arisen about the age up to which parents should be able to withdraw their children from SRE, if they wish to exercise their right to do so. Currently parents have the right to withdraw their children up to the age of 19. In practice, only a very small minority of parents choose to exercise this right. However, I believe it is very important that this right is maintained. This is all the more necessary once, subject to the will of Parliament, PSHE education becomes a statutory part of the national curriculum.

It is important that parents, schools and young people are all clear about the age that is set, and that this is supported by parents and young people, as well as being practically deliverable and legally enforceable. We have, therefore, consulted experts in SRE and representatives of faith groups, among others, about this. In addition, my Department commissioned some further quantitative and qualitative research in October 2009 to gather further relevant information. I am placing reports of the outcomes from that research in the House Libraries.

This research, which was carried out with samples of parents and of adults, found quite a wide spectrum of opinion, against a context in which four out of five parent respondents (81 per cent.) to the surveys said they supported the principle that all children should receive SRE. When asked about the right of withdrawal, 20 per cent. of parents said there should be no right of withdrawal, 33 per cent. of parents said the right should end at age 11, 9 per cent. said it should end at age 14, and 7 per cent. at the age of 16. A clear majority therefore supported a reduction in the age to which a right of parental withdrawal should apply.

After careful consideration of the outcomes of discussions with experts and other interested parties, including representatives of faith groups, and of the findings of this research, I have concluded that parents' right to withdraw their children from SRE should continue until their children reach the age of 15. I have come to this view because I believe that proceeding on this basis is balanced, practically deliverable and legally enforceable, and maintains the right of withdraw for the small number of parents who wish to exercise it. I also believe that setting the age limit at 15 offers the best chance of building a strong consensus.

This means that every young person will receive at least one year of SRE before their 16th birthday.

It is of critical importance, in ensuring that PSHE helps children to achieve all their Every Child Matters outcomes, that the content of the new PSHE education curriculum is carefully thought through and constructed. This has already been the subject of detailed consultation with schools, young people, parents, faith groups and experts in the field, and through the work of the SRE review group. The proposed content of SRE

that will be taught when PSHE education becomes statutory will now be subject to further formal statutory consultation on the detail, the process to be overseen by the QCDA and to be concluded by autumn 2010.

In order to implement the measures set out in this statement we will include provisions, as necessary, in the forthcoming Children, Schools and Families Bill.<sup>80</sup>

#### *The Bill's provisions*

**Clauses 11 to 14** provide for the introduction of Personal, Social, Health and Economic education (PSHE) at Key Stage 3 and Key Stage 4<sup>81</sup> as a foundation subject within the National Curriculum for England. They also make the teaching of PSHE in academies at these Key Stages compulsory. The provisions also revise and re-enact provisions relating to sex education in the *Education Act 1996*.

Clause 11(4) inserts a new section 85B into the *Education Act 2002* to list the main headings of the curriculum for PSHE, i.e. education about: alcohol, tobacco and other drugs; emotional health and well-being; sex and relationships; nutrition and physical activity; personal finance; individual safety, and careers, business and economic education.

The content of the “sex and relationships” component of the subject will also be governed by the requirements of section 403 of the *Education Act 1996*, as amended by clause 13 of the Bill (see below). The list of contents of PSHE may be amended by the Secretary of State by order, which is subject to the affirmative resolution procedure.<sup>82</sup> The [Explanatory Notes](#) state that the Government does not presently intend to set any attainment targets or assessment arrangements for PSHE.<sup>83</sup>

New section 85B, subsections (5) to (7) set out “principles” which school governing bodies and head teachers must comply with in providing PSHE education. They are required to have regard also to any guidance issued by the Secretary of State or by someone nominated by the Secretary of State (e.g. QCDA).

**Clause 12** applies the provisions of clause 11 to academies, CTCs and CCTAs to require them to teach PSHE at Key Stages 3 and 4 in the same way as it will be taught in maintained schools in England.

**Clause 13** and paragraphs 3, 5, 6, 9 and 10 of Schedule 4 amend references in other legislation to “sex education” to read “sex and relationships education”. Clause 13(4) amends section 403 of the *Education Act 1996* so that guidance issued by the Secretary of State under the section must be designed to secure that, when sex and relationships education is given, the pupils learn about the nature of marriage and its importance for family life and bringing up children, the nature of civil partnership and the importance of strong and stable relationships. The definition of “sex and relationships education” contained in section 579 of the 1996 Act is amended to exclude from the definition teaching about human reproduction provided as part of a science curriculum. The existing parental right of withdrawal from sex education is amended by **clause 14** so that parents have a right to withdraw their child from sex and relationships education up to the age of 15 but not thereafter.

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<sup>80</sup> HC Deb 5 November 2009 c49WS

<sup>81</sup> i.e. secondary school pupils up to the end of compulsory education

<sup>82</sup> [Children Schools and Families Bill, A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform](#), DCSF November 2009, paragraph 38

<sup>83</sup> [Explanatory Notes](#), paragraph 74



The *Explanatory Notes* examine in detail the implications of the provisions in relation to the European Convention of Human Rights. The Government believes that providing access to sex and relationship education at the very least in the last year of compulsory education ensures that a child's Article 8 right to a private life is not infringed, and properly reflects Article 12 of the UN Convention on the Rights of the Child to ensure that a child can express their own views and have them given due weight. "It also reflects the accepted principle that parental rights dwindle as a child matures. The Government considers that it is acceptable and consistent with human rights principles to limit the parental right of withdrawal by reference to a child's age."<sup>84</sup>

Estimates of the costs of the proposed changes are set out in the *Impact Assessment*.<sup>85</sup>

## 1.8 Powers of governing bodies

The white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system* stresses that delivering the pupil and parent guarantees will require schools to work in partnership with other schools and with wider children's services.

It is envisaged that, amongst other things, the parent guarantee will ensure that every parent will have access to a range of extended services by 2010 including information and support on parenting skills and advice on parenting issues, childcare, activities, and opportunities to enhance their own learning.<sup>86</sup> Much of this support is already being provided under the existing extended schools programme. Many schools are offering access to a core of extended activities, including childcare in primary schools, parenting and family support, study support, specialist services and community facilities. Details are given on the [DCSF extended services website](#).<sup>87</sup>

### ***Powers to provide community facilities***

Currently, under Section 27 of the *Education Act 2002*, governing bodies of maintained schools have the power to provide community facilities for the benefit of families of pupils at the school, or people who work in the locality in which the school is situated. The Act permits governing bodies to enter into agreements with other partners to provide services on school premises, and enables governing bodies to charge for some services. At present governing bodies are prevented from using their delegated budgets for the provision of community facilities or services by section 50(4) of the *School Standards and Framework Act 1998*.

**Clause 15** amends section 27 of the 2002 Act to require governing bodies in England to give consideration, at least once in every school year, whether or not to use the power to provide community facilities, and how they might exercise it. The clause also amends section 50 of the 1998 Act to allow governing bodies in England to spend their delegated budgets on the provision of those community facilities or services, subject to specific restrictions on specified activities to be set out in regulations. The regulations will be subject to the negative resolution procedure.<sup>88</sup> The *Impact Assessment* states that schools will meet the costs 'through their delegated funding, promoting efficiencies and securing greater value for money.'<sup>89</sup>

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<sup>84</sup> *Explanatory Notes*, paragraphs 208 to 209

<sup>85</sup> pp 40 to 41

<sup>86</sup> *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, p103

<sup>87</sup> <http://www.teachernet.gov.uk/wholeschool/extendedschools/>

<sup>88</sup> *A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, paragraph 43

<sup>89</sup> *Impact Assessment*, p44

### ***Extending maintained school governing bodies' powers to establish academies and new maintained schools***

The Government wants to enable high-performing maintained schools to lead school improvement interventions in weak schools by enabling them to sponsor academies, form federations and propose new schools. Partnership and collaboration are considered to be central to the organisation of the school system, and the Government has highlighted research on the benefits of such working.<sup>90</sup>

Greater efficiency through the wider adoption of partnerships and shared services between schools is one approach that the Government has highlighted in its discussion document on the use of resources, [Securing Our Future – Using Our Resources Well](#).

#### *Proposals for a system of accreditation of school providers and school groups*

On 21 October 2009 the DCSF issued [Consultation on accreditation of School Providers and Schools Groups and on Academy Sponsorship Selection](#). This sets out proposals for a new accreditation process intended to identify the most suitable organisations to be Accredited School Providers and Accredited School Groups, through academies, majority trusts (including National Challenge Trusts) and federations. It also sets out a proposed process for selecting sponsors for future academies. The Annex to the paper describes in detail the proposed criteria for educational institutions, and consortia of non-educational institutions with an educational co-sponsor, to demonstrate their 'educational track record' and their vision and capacity to run one or more schools. The consultation period ends on 22 January 2010.

A list of the first institutions that have expressed an interest in becoming Accredited School Group providers was given in a [DCSF Press Notice, dated 30 June 2009](#).

The consultation document notes that there is a range of school improvement partnerships, including:

- Majority Trusts (including National Challenge Trusts) - where the school is established as a trust school with a lead partner and other partners working to ensure sustainable school improvement. A Majority Trust school is a Local Authority-maintained foundation school that is supported by a charity, referred to as a Trust, that appoints the majority of governors;
- Federations (including National Challenge Federations) - where one local authority maintained school acting as a lead partner federates with another local authority maintained school to support its improvement. A federation is where two or more maintained schools are governed collectively under a single governing body.
- Academies - all-ability, state-funded schools established by sponsors and run as charitable trusts, drawing on the expertise, experience and vision of sponsors with a track record of success.

Commenting on the consultation, the NASUWT said that securing high standards of education does not rest on structural reform, and that while it has no objection to schools supporting others it is fundamentally opposed to allowing providers to expand their influence. It also pointed out that the proposed criteria for providers omit a track record in relation to the workforce and industrial relations.<sup>91</sup>

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<sup>90</sup> HC Deb 16 July 2009 c644W; chapter 3 of [Your child, your schools, our future: building a 21<sup>st</sup> century school system](#)

<sup>91</sup> NASUWT, [21<sup>st</sup> century schools should promote 21<sup>st</sup> century practices](#), 21 October 2009



Commenting on the schools white paper, the National Association of Head Teachers said that the idea of Accredited School Groups is one which bears further careful examination; adding that it is important 'to guard against the potential for a restrictive 'cartel' approach'.<sup>92</sup> In its comment on the white paper, the NUT acknowledged that there are many virtues to federations and school collaboration; however, it said that 'the mix of ever more academies and trust schools will simply mean structural confusion at local level and artificial barriers erected that will militate against productive co-operation between schools'.<sup>93</sup>

**Clauses 16 to 18** of the Bill extend and define the powers of governing bodies of maintained schools in England so that certain designated governing bodies can be involved in the establishment of new maintained schools and academies, and all governing bodies are able to have further involvement in existing maintained schools and academies. However, there is no suggestion that schools would be required to establish other new schools or sponsor academies. The *Impact Assessment* stresses that this would be entirely discretionary, and emphasises that local authorities will continue to be responsible for planning educational provision. It explains the rationale for the provisions:

What is the problem under consideration? Why is government intervention necessary? Where a strong school wishes to extend the benefits of its leadership and governance to raise standards in the area by offering advice/assistance to an Academy, being a member of an Academy Trust, being involved in establishing an Academy, or being a member of the foundation it does not currently have the power to do so directly and must use a circuitous route that has certain limitations. Our view is that in relation to establishing a new maintained school, governing bodies may already have the power, but that this is not entirely clear. This lack of powers for governing bodies is not consistent with wider drives for schools to work in partnership with other schools, and to allow high performing providers to contribute more to the system through sharing existing good practice, and supporting weaker schools.<sup>94</sup>

**Clause 16** provides governing bodies in England with a power to form a company which can then enter into an agreement with the Secretary of State under which the company will establish and maintain an academy. The Secretary of State will establish a procedure for designating particular governing bodies, and will only enter into such an agreement with a company formed by a designated governing body. The clause also allows any governing body of a maintained school in England to become a member of an existing academy trust.

**Clause 17** allows all governing bodies of maintained schools in England to provide advice and assistance to the proprietors of academies (in the same way that they can already provide advice and assistance to the governing bodies of other maintained schools).

**Clause 18** allows governing bodies in England that are designated by the Secretary of State, or by a person authorised by the Secretary of State, to publish proposals under section 7 (in a school competition) or section 11(2) of the *Education and Inspection Act 2006* to establish new foundation, voluntary or foundation special schools.

## 1.9 School Improvement

The white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system* set out the main components of the Government's proposed accountability and school improvement model:

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<sup>92</sup> *National Association of Head Teachers, Education White Paper 2009 – Curate's Egg or unfinished Symphony?*

<sup>93</sup> *NUT Press Release on 21<sup>st</sup> Century Schools White Paper, 30 June 2009*

<sup>94</sup> *Impact Assessment*, p49

- a. continual self-improvement – based on thorough and regular self-evaluation;
- b. the new School Report Card – providing clear, regular external assessments of each school's performance for the local community, wider public and prospective parents, local and central government, and Ofsted;
- c. Ofsted inspection – in-depth, qualitative, professional judgement of the school's overall effectiveness, complementing the annual, outcomes-based School Report Card; and
- d. SIPs (School Improvement Partners) – appointed by the local authority, who will monitor schools' performance, provide support and challenge, ensure issues are addressed through an effective school improvement plan, and help to broker external support.<sup>95</sup>

Where schools are judged to be failing (i.e. placed in special measures by Ofsted), the Government believes that closure should always be considered but that, where this is not possible or preferable, then in most cases a structural solution will be necessary (i.e. creating an academy, federation, trust status, involving a new provider or an Accredited Schools Group). Other schools with low performance, identified by the School Report Card, are likely (following an Ofsted risk assessment) to receive an early, full inspection or a monitoring visit. The white paper says that this will include up to 40 per cent of schools judged to be 'satisfactory' in their previous inspection. Some of these schools may be judged to be failing, and will need closure, or radical intervention. For others, a strong response from the governing body will be expected. If a convincing school improvement plan cannot be agreed with the SIP, the local authority will be expected to use its powers to issue a warning notice, and: appoint additional governors; establish an Interim Executive Board; direct the school to federate or collaborate with another school; or suspend the right to a delegated budget. Alternatively, if requested by the local authority or if he sees fit, the Secretary of State might ask Ofsted to inspect the school.<sup>96</sup>

### **School Improvement Partners**

#### *Background*

The *Education Act 2005* reformed the school inspection system in England to provide for regular, shorter, lighter-touch inspections based on the school's own self-evaluation. The changes followed *A New Relationship with Schools*, and *A New Relationship with Schools – Next Steps*, published in June 2004 and 2005 respectively, by the Office for Standards in Education (Ofsted) and the Department for Education and Skills (DfES). At the heart of the reformed inspection regime was the school's self-evaluation and School Improvement Partners (SIPs).

Section 5 of the *Education and Inspections Act 2006* requires local authorities in England to appoint SIPs to each of the maintained schools in their area. Only persons accredited or appointed by the Secretary of State can be SIPs. Most SIPs are experienced head teachers.

Advice and guidance on the role of SIPs was set out in *A New Relationship with Schools - the School Improvement Partner's Brief*.<sup>97</sup> This explained that the role of a SIP is to provide professional challenge and support to the school, helping its leadership to evaluate its performance, identify priorities for improvement, and plan effective change. The guiding principles of the School Improvement Partner's work were set out:

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<sup>95</sup> *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, paragraph 4.19

<sup>96</sup> *ibid.*, paragraphs 4.43 and 4.44

<sup>97</sup> DCSF, 2007

- focus on pupil progress and attainment across the ability range, and the many factors which influence it, including pupil well-being, extended services and parental involvement;
- respect for the school's autonomy to plan its development, starting from the school's self-evaluation and the needs of the pupils and of other members of the school community;
- professional challenge and support, so that the school's practice and performance are improved; and
- evidence-based assessment of the school's performance and its strategies for improving teaching and learning.

SIPs work under contract to local authorities and are the main (but not the only) channel for local authority communication on school improvement with the school. SIPs and Ofsted inspectors have different functions; and it is the local authority that has a relationship with Ofsted inspectors, not the SIP. The local authority will liaise with Ofsted inspectors about the performance of their schools; however, the local authority will draw upon the information from their SIPs to inform these discussions.

The Government believes that the current role of SIPs is not always correctly interpreted by SIPs and head teachers; that it needs to be more clearly defined; and, that it needs to focus on the wider goals of the *Every Child Matters* agenda and not only on educational attainment.

The white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system* announced the Government's intention to reform the role of SIPs. This is part of the Government's proposed approach to school improvement where support is expected to come from a wider range of providers, including high performing schools and nationally accredited providers. One of the main proposed changes is that SIPs should become increasingly involved in brokering support and, working with schools, will identify what support is needed to generate improvement. Where performance is low, SIPs will have to sign off improvement plans and the use of School Development Grant. The white paper said that the role of SIPs will be strengthened as the single agent for challenge and support to schools. They will be expected to:

- monitor school performance;
- provide advice to the school governing body;
- make sure school improvement plans are realistic and ambitious; and,
- make decisions about a school's specialist status, taking into account their performance, including their work with partner schools, and the local pattern of specialist provision.

To support SIPs, the white paper said that the Government would:

- a. clarify their role and position as the primary intermediary between schools and their local authority, using legislation where appropriate;
- b. increase the time they have in some schools, with a view to giving more days for weaker performers and a level of SIP support similar to National Challenge Advisers (20 days) for the lowest performing schools; and
- c. increase their leverage over weaker performers, by making part of these schools' funding for improvement contingent upon the SIP signing off their school improvement plans, and ensuring there is appropriate investment in improving core subjects like literacy and numeracy. This will ensure that schools take SIP input seriously and treat

SIPs as equal partners; and that robust and externally-validated school improvement plans are in place. If the SIP and school are unable to agree, this would trigger consideration by the local authority (the YPLA for academies) of the need for more directive intervention in the school, with the funding held back available to help secure any intervention needed.<sup>98</sup>

The National College for School Leadership (NCSL) has been asked to review and develop the accreditation process, undertake quality assurance of SIPs and provide SIPs with a 'licence to practice', and hold a national register of SIPs.<sup>99</sup>

The white paper also said that school governors will have a stronger say in who their SIP is, and it is proposed that they might select from a list of appropriate SIPs provided by the local authority and have a right to reject the SIP proposed by the local authority.<sup>100</sup>

### *Reaction*

The LGA expressed concern about extending the role of SIPs at a time of resource restraint, and pointed out that the white paper had not referred to the role of local authority-based school services in relation to SIPs:

It is distinctly unfortunate that as the appointees of School Improvement Partners, Government has not thought fit to discuss a reform to the role of SIPs with local government more fully first, though we welcome the pledge to consult now. There is a danger that so many requirements will be placed on SIPs in the time available to them, that they will find it increasingly difficult to undertake the job well within current resource constraints and that consequently local authorities will receive diluted feedback at a time when authorities are being asked to keep a closer eye out for the need to intervene early. The white paper makes no mention whatsoever of the role of local authority-based school improvement services in helping SIPs undertake the brokerage role or in maintaining an ongoing detailed review of schools' progress. Indeed, the diagram at Figure 8, describing accountability mechanisms, makes no reference at all to local authorities.<sup>101</sup>

The GTC said that while it thought that schools benefited from SIPs, there were risks associated with the Government's proposals:

48. The GTC has supported SIPs, believing schools benefit from sustained critical friendship about school improvement and perceiving benefits for the system of expert practitioners, especially serving heads, having the opportunity to interrogate the practice of another school in some depth. Although there is only limited research evidence on the work of SIPs, and little in particular on their impact, the White Paper proposes to invest heavily in what they contribute to the improvement and accountability system. The GTC suggests there are risks associated with this development.

49. While the references to additional training and accreditation are welcome, the demands of the enhanced SIP role may have an impact on the recruitment. It is important not only to recruit sufficient people with the expertise and authority to undertake the role, but also to guard against narrowing the field of those who can undertake the role – for example, if the SIP role became too onerous for many serving head teachers, there would be a loss to the system in terms of knowledge transfer. The

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<sup>98</sup> *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, paragraph 4.37

<sup>99</sup> *ibid*, paragraph 4.39

<sup>100</sup> *ibid*, paragraph 4.40

<sup>101</sup> *Local Government Association (LGA) briefing on the white paper, 30 June 2009*, p5

emphasis on proportionality else in the accountability system might also apply to the work of SIPs. The GTC is also concerned about the local authority being over-reliant on the SIP for evidence of school performance, given its responsibility to intervene in underperforming schools.

50. The GTC welcomes the government's clarity that the SIP role is one of support and challenge on school improvement *and* on wider the *Every Child Matters* work of schools.

51. The GTC supports the strengthened relationship between the SIP and the governing body as a means of ensuring that the SIP role results in appropriate challenge to the school.

52. The GTC notes the proposal that SIPs be empowered to authorise new specialisms on the part of schools. There will need to be mechanisms for ensuring that their decisions are based on the interests of the locality and not just the school with which they are working.

53. Finally, the GTC suggests that as SIPs are established in this new role it will be important to look closely at the balance of accountabilities between the head teacher and the SIP, to ensure that the head teacher is supported, challenged where appropriate, but not undermined.<sup>102</sup>

The NAHT welcomed the review of the role of SIPs, including the proposal to allow governing bodies an element of choice over the appointment of the SIP.<sup>103</sup>

The ADCS supported the proposed changes:

... we are pleased to see that the SIP role, though widened, continues to be positioned where it currently is – with local authorities. Local authorities cannot discharge their responsibilities for children and young people without this very important lever in relation to the performance of schools – and their contribution to the wider agenda. We support the right of a governing body to have a stronger say in who is the school's SIP, but governing bodies will need to understand that they cannot object to SIP after SIP.<sup>104</sup>

**Clause 19** amends section 5 of the *Education and Inspections Act 2006* to provide for additional 'prescribed' services that a School Improvement Partner (SIP) is to provide, with a view to improving standards and the well-being of pupils at the school. The [Explanatory Notes](#) gives examples of other 'prescribed services' to include identifying early a school's underperformance, brokering any additional support the school may need to improve its performance or helping the school leadership team to plan effective change. It is intended that the details will be set out in regulations that will be subject to the negative resolution procedure.<sup>105</sup> Subsection (3) of clause 19 amends section 5 of the 2006 Act by inserting a requirement that local authorities have regard to guidance issued by the Secretary of State when exercising functions under section 5 or under regulations made under that section.

The estimated cost of the proposed changes is set out in the [Impact Assessment](#). This emphasises that the proposed changes are necessary not only to confirm the SIP role as an

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<sup>102</sup> [Response to the white paper from the General Teaching Council for England \(GTC\), September 2009, 2009/137](#)

<sup>103</sup> [National Association of Head Teachers, Education White Paper 2009 – Curate's Egg or unfinished Symphony?](#)

<sup>104</sup> [Response from ADCS on the schools white paper, 10 July 2009](#)

<sup>105</sup> [A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform, paragraphs 46 and 47](#)



integral part of school improvement but also in order to use resources more efficiency, as currently, it points out, there is duplication between the work of SIPs and other local authority staff including the Link Advisors.<sup>106</sup> The proposed new accreditation system will be tested with a number of SIPs in 2010 to assess its effectiveness and suitability.<sup>107</sup>

### ***Provision of information about schools etc.***

Information is currently published about schools' performance in the Achievement and Attainment Tables, Ofsted inspection reports, the online School Profile<sup>108</sup>, and in school prospectuses. Section 537 of the *Education Act 1996* empowers the Secretary of State and Welsh Ministers to collect information currently used to compile the Achievement and Attainment Tables in England and national data sets in Wales. In England, the Achievement and Attainment Tables are to be replaced by the School Report Card (SRC).

**Clause 20** makes amendments to the 1996 Act to ensure that information for the SRC can be collected and published. Under clause 20(1) existing powers are extended to provide that regulations made under section 537 of the 1996 Act<sup>109</sup> may require the supply of information about the views of prescribed persons about a school; and that if they do so, they may also make provision about how those views are to be obtained. This will enable the views of parents and pupils to be obtained.

Clause 20(2) and (3) introduce a new power for the Secretary of State and Welsh Ministers to make regulations requiring the supply of information about education funded by a local authority under section 19 of the 1996 Act (i.e. alternative provision). The power mirrors that for schools in section 537, as amended by subsection (1) of clause 20.

Currently Welsh Ministers do not have the powers to collect information on the views of parents and pupils in schools, or alternative provisions funded under section 19 of the 1996 Act. The *Impact Assessment* includes a briefing from the Welsh Assembly Government (WAG) on the new powers. This states that WAG has no immediate plans to make regulations under these new powers but that it wants to ensure that the legislation does not close off any future decisions about the range of institutions for which data will be published. The proposed change would make clear that information about the views of prescribed persons about school or alternative provision could be obtained and provided to Welsh Ministers.<sup>110</sup>

Clause 20(4) removes the requirement on governing bodies of maintained schools to prepare and publish a school profile.

The *Impact Assessment* on the Bill noted that, as DCSF already collect and publish school performance data, it did not expect significant additional running costs for the SRC; there would be a one-off cost for the pilot; and there would be savings associated with removing School Profiles.

### ***The proposed School Report Card (SRC)***

It is envisaged that the SRC will provide a short summary of a school's performance, with an overall score, published at least annually, so that it will be easier for parents to understand the information available, and will help schools focus on their goals for improvement. The SRC will report on outcomes across a wide range of performance: pupil attainment, pupil

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<sup>106</sup> *Impact Assessment*, pp 50 to 55

<sup>107</sup> *ibid.*, p55

<sup>108</sup> Information on the school profile is available on the [DCSF school profile website](#).

<sup>109</sup> The existing powers to make regulations under section 537 of the *Education 1996 Act* are exercised by the negative resolution procedure.

<sup>110</sup> *Impact Assessment*, pp 60 to 63

progress and well-being; a school's success at reducing the effect of disadvantage; and parents' and pupils' views of the school and the support they are receiving. It is intended that the new SRC will be introduced from 2011, and will be piloted over the next two years.

An initial DCSF consultation paper on the general principles governing the design and implementation of a SRC was published on 8 December 2008, and the consultation closed on 3 March 2009.<sup>111</sup> The rationale for the SRC was explained in the consultation document:

5. The Achievement and Attainment Tables are published annually and provide a wide range of data. But, partly because they contain so much, they can be difficult for parents to use, do not signal clearly the relative importance of different academic outcomes and, with the exception of the pupils' attendance rate, do not contain information about outcomes relating to other aspects of pupils' wellbeing. Although they contain information about the value added by schools as well as their pupils' attainment, the focus of the Tables remains narrow. For example, they do not report schools' success in raising the attainment of pupils from disadvantaged backgrounds so that they have the same opportunities in life as their more advantaged peers. And, while the focus on age-related expectations is important – because reaching these levels provides children and young people with a good basis for continuing to progress in the next phase of learning – the sole use of threshold measures can mean that an undue premium is placed on the performance of a minority of pupils: those in Years 6 and 11, and those close to borderlines in their tests and examinations. A better system would equally support the progress of pupils both significantly below and significantly above these benchmarks.

6. Ofsted inspection reports and monitoring letters give a wider view of schools' effectiveness, taking account not only of the range of outcomes achieved but also of the quality of provision (especially the quality of teaching and its impact on learning), the effectiveness of leadership and management, and the school's capacity to improve. In so doing, inspection also provides an analysis and diagnosis of why a school's outcomes are as they are. Inspection reports are used by many parents, but most schools are only inspected once every three years and, for some, the interval between inspections may soon become longer; Ofsted inspection reports, on their own, cannot provide the balanced view of school performance at the frequency that parents and government require.

7. Schools sometimes see the information in the Achievement and Attainment Tables and the analyses based upon them as being in conflict with, rather than complementary to, the evaluations provided by Ofsted inspection reports. Another concern is that the combined effect of different, insufficiently co-ordinated accountability processes can make schools feel that they are placed under undue pressure, potentially distracting them from their greatest priority – to provide excellent education and development for all their pupils.

8. For all these reasons, we think that the arrangements for reporting school performance and holding them to account could be significantly improved. We believe that there is an opportunity to make the school accountability system more coherent, better co-ordinated, more streamlined and better able to recognise the full range of each school's achievements. However, this will only be possible if each school's performance is reported in a way which is clear, powerful, easily understood and easily used by school governors, parents and the public.

9. Our intention is that the School Report Card, with an overall score, should be the means by which we achieve this. It will complement rather than compete with Ofsted

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<sup>111</sup> [A School Report Card: consultation document](#), DCSF December 2008

inspection reports and form the core of the process by which Ofsted selects schools for inspection. It will underpin a school's dialogue with its School Improvement Partner and its governors. At the same time, it will incorporate information currently presented in the Achievement and Attainment Tables, supplement it with other available information to provide a broader picture of each school's performance, and present it in a way that is fair, balanced, comprehensive and easily understood by parents and the general public. The School Report Card will set out the range of outcomes for which schools will be held to account, show the relative priority given to each outcome, and provide an indication of the degree of challenge faced by each school.<sup>112</sup>

The consultation document proposed that a school's outcomes should be grouped into broad categories, with a score for the school's performance in each category and an overall score given on the SRC, calculated from the scores for each of the categories of performance. The consultation document proposed that the SRC should reflect both the outcomes that the school achieves, and the scale of the challenges that it faces, otherwise a strong performance in the face of challenging circumstances might be hidden behind what could otherwise be disappointing outcomes. Views were sought on the contextual information.

The responses to the consultation were summarised in the DCSF's *Analysis of responses to the consultation documents*. This noted that while there was significant majority support for a SRC, there was no majority support for including an overall score or rating:

The significant majority of respondents supported the need for a School Report Card, recognising the need to capture the wider performance of schools beyond academic attainment. Just over a fifth (21% of respondents), over two thirds of whom represented primary schools, expressed disagreement in principle with the School Report Card. Among the reasons given were that it would not capture the flavour of the school, that it would be confusing for parents, and that it would represent a duplication of effort and an additional layer of accountability for schools.

There were mixed views on the proposed performance categories to be included on the School Report Card, with most respondents agreeing with the inclusion of 'Pupil Progress', 'Attainment' and 'Wider Outcomes'. There was less support for the inclusion 'Pupils' and Parents' Views' and 'Narrowing the Gaps', which were seen as more difficult to quantify.

Just over half of respondents agreed that each performance category should have a numerical score and/or an assigned rating. Although there was no majority support for including an overall score or rating, respondents agreed that, if an overall score or rating were adopted, it should be based on performance in each of the categories in the School Report Card. Suggested alternatives to including an overall score or rating included: using the Ofsted inspection grade; providing a narrative report; scoring the individual categories without aggregating them; encouraging parents to visit the school; and adapting the Self-evaluation Form for public use.

Respondents were keen that the School Report Card should hold information on a school's context as a separate item, as it would help to give parents background information for the scores and ratings. There was also support for contextualising the scores for 'Attainment', 'Pupil Progress' and 'Wider Outcomes' as this would be fairer to those schools in the most challenging circumstances.

Most respondents thought that the School Report Card should show separate information about the school's performance in the previous three years. It was believed that this would give a better indication of trends, by ironing out annual peaks and

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<sup>112</sup> *ibid.*, paragraphs 5 to 9



troughs which were particularly prevalent in smaller schools where yearly cohorts could have significant variations.

There was agreement for including information about the school's contribution to its local partnerships in the School Report Card as this was considered to be an increasingly important aspect of a school's performance. There was some uncertainty however on how this could be measured.

Most respondents agreed that the School Report Card should cover all maintained schools, including special schools, Pupil Referral Units and alternative provision, in due course. There was also support for showing separate information about the effectiveness of sixth forms and the Early Years Foundation Stage where appropriate.

Including the latest Ofsted judgement on the School Report Card was widely accepted, with the caveat that it should only be shown if it was recent to ensure that it gave a current view of the school. However, respondents envisaged occasions where the Ofsted judgement could differ from the overall score or rating on the School Report Card, which could be confusing for parents.

There was agreement with proposals to agree a common set of indicators for the School Report Card and Ofsted's risk assessment, and that the School Report Card should take the place of Ofsted's proposed health check report. Respondents felt that both measures would obviate duplication and added bureaucracy. Most respondents were of the opinion that the School Report Card should be published annually.

The proposal to end the requirement on schools to complete the School Profile was welcomed. Respondents felt that to retain the School Profile alongside the School Report Card would be an unnecessary duplication, though there was a view that its ability to provide a fuller picture of the school could be usefully incorporated into the School Report Card.

The Government's current plans are set out in the white paper *Your child, your schools, our future: building a 21<sup>st</sup> century school system*, and in *A School Report Card: Prospectus*. The following gives a very brief overview of the proposed SRC arrangements.

The white paper confirmed that the SRC will report on outcomes across the breadth of school performance: pupil attainment, progress, and wellbeing; a school's success in reducing the effect of disadvantage; and parents' and pupils' views of the school and the support they are receiving. As indicated in the DCSF's *Analysis of responses to the consultation documents*, whether the SRC should include an overall score or rating for a school is controversial. There are concerns that a single overall score may not provide a balanced summary view of the different aspects of a school's work. While recognising the complexity of this, the Government believes that without an overall score or grade on the SRC it would be difficult for parents to make meaningful comparisons between schools. The Government has decided that for the pilot programme the SRC will provide an overall score; however, a final decision on this will be made after further work has been done on the individual indicators and performance categories for the SRC during the pilot.<sup>113</sup>

A very important consideration is how to take account of the school's context in the information provided in the SRC. The Government believes that absolute attainment must be clear in the SRC. It therefore proposes that the indicators of pupil attainment should not be contextualised in any way but that the pupil progress category should be the means through which the context of the pupil intake will be taken into account.

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<sup>113</sup> *A School Report Card: Prospectus*, paragraphs 20 and 21

Once established the SRC will replace the existing Achievement and Attainment Tables as the main source of externally-verified information about a school's achievements; however, the detailed performance data used to prepare SRCs will continue to be published. Ofsted will continue to publish inspection reports on individual schools, and it is intended that Ofsted judgements should be shown on the SRC.

The pilot is to last for two years from September 2009. It is intended that the new SRC will be introduced from 2011 for all mainstream primary and secondary schools (including academies); and, after considering the lessons learned, it will be developed for special schools, Pupils Referral Units and alternative provision.<sup>114</sup>

The Government proposes that the SRC should be published at least annually, and that the results of any more recent inspections should be incorporated as soon as possible.<sup>115</sup> An illustrative example of a SRC is given in the Annex to the *School Report Card: Prospectus*. The Prospectus also sets out what will happen during the first and second years of the pilot.

More detailed background information on the proposals is provided in *Library Standard Note SN/SP/5204*<sup>116</sup>, which also includes extracts of responses from a selection of organisations including some of the teachers' unions, the Local Government Association, and the General Teaching Council for England (GTC). The GTC, which contributed to the development of the SRC proposals, noted that most respondents to the consultation shared its scepticism about the usefulness of a single overall grade and said that it was disappointed to see that the Government was minded to proceed with it, without support or compelling evidence.<sup>117</sup> The Children, Schools and Families Committee has taken evidence from the Schools Minister and a DCSF official on school report cards.<sup>118</sup>

In the Debate of the Address, David Laws, Shadow Liberal Democrat Secretary of State for Children, Schools and Families said that, while he had welcomed the idea of school report cards, he had serious concerns about the model that the Government had proposed.<sup>119</sup>

### ***Schools eligible for intervention: powers of local authority***

The Government wants to encourage earlier intervention by local authorities in any school that is not performing as well as it could, or is at risk of underperforming. It also wants to strengthen the Secretary of State's powers to ensure that local authorities intervene and ensure that providers with an excellent educational track record and the capacity are brought in to lead interventions in schools, where appropriate.

The current statutory framework for schools causing concern and LEAs' powers of intervention and the Secretary of State's powers of intervention are contained in Part 4 of the *Education and Inspections Act 2006*, as amended by the *Apprenticeships, Skills, Children and Learning Act 2009*.<sup>120</sup> Currently, LEA powers include: appointing new members to the school's governing body, establishing an interim executive board (IEB), directing the school to federate or collaborate with or seek advice from another school or other person, and suspending the school's right to a delegated budget. Before any of these powers may be exercised the school must either be in one of the Ofsted categories of requiring 'special

<sup>114</sup> *ibid.*, paragraphs 126 and 127

<sup>115</sup> *ibid.*, paragraph 131

<sup>116</sup> 23 October 2009

<sup>117</sup> *A response to the White Paper from the General Teaching Council for England, September 2009*

<sup>118</sup> *School accountability, Children, Schools and Families Committee, oral evidence, 8 July 2009* (witnesses: Vernon Coaker, Minister of State for Schools and Learners, DCSF, and Jon Coles, Director General, Schools Directorate, DCSF)

<sup>119</sup> HC Deb 19 November 2009 c182

<sup>120</sup> The changes are summarised in the *Explanatory Notes on the Apprenticeships, Skills, Children and Learning Act 2009*

measures' or 'significant improvement', or be given a warning notice by the LEA and allowed time to respond.<sup>121</sup> The *Apprenticeships, Skills, Children and Learning Act 2009* enables the Secretary of State to direct a LEA to consider issuing a warning notice to a governing body if he thinks that there are reasonable grounds for the LEA to do so.

School federations can range from different types of collaborative working through to mergers and the creation of new schools. The [DCSF standards website on federations](#) describes this as a continuum from 'soft' to 'hard' federations.<sup>122</sup> The relevant regulations and guidance on forming federations are provided on the DCSF website. The [DCSF Guidance on the School Governance \(Federations\) \(England\) Regulations 2007](#) explains that, since 30 August 2004, all categories of maintained school have been able to federate under one governing body if they wish to do so.<sup>123</sup> The guidance outlines the legislative basis for federations and explains the procedures schools need to follow and the considerations they need to bear in mind. A useful general overview of the procedures and rules relating to school federations is provided in chapter 5 of the [DCSF Guide to the Law for School Governors](#), March 2009.

**Clauses 21** amends section 63 of the *Education and Inspections Act 2006*. At present section 63 empowers LEAs to direct the governing body of a maintained school in England that is eligible for intervention to enter into specified partnership arrangements, including a federation. Clauses 21 would amend section 63 to provide a local authority with a power to require a school that is eligible for intervention to create a federation with another school whose governing body has been designated as suitable for these purposes by the Secretary of State, or by a person authorised by the Secretary of State (i.e. an accredited school that has already demonstrated its educational track record and can provide the necessary assistance). As noted earlier, DCSF has issued a [Consultation on Accreditation of School Providers and Schools Groups and on Academy Sponsorship Selection](#). This sets out proposals for a new accreditation process intended to identify the most suitable organisations to be Accredited School Providers and Accredited School Groups. The Annex to the paper describes in detail the proposed criteria for educational institutions, and for consortia of non-educational institutions with an educational co-sponsor, to demonstrate their 'educational track record' and their vision and capacity to run one or more schools. The consultation period ends on 22 January 2010. A list of the first institutions that have expressed an interest in becoming Accredited School Group providers was given in a [DCSF Press Notice, dated 30 June 2009](#).

The *Education and Inspections Act 2006* introduced a new kind of foundation school commonly referred to as trust schools. At the time, the proposals were very controversial. The policy objective of introducing trust schools was to strengthen the leadership and ethos of schools by enabling them to form long-term partnerships with charitable trusts, and bring in experience and expertise from new partners to raise standards. A change of school category to foundation school, the acquisition of a trust under the *Education and Inspections Act 2006*, and the acquisition of a foundation majority under the 2006 Act constitute a 'prescribed alteration' that would require a school governing body to publish statutory proposals.<sup>124</sup>

Clause 21 amends section 63 of the *Education and Inspections Act 2006*, so as to provide a local authority with a new power to require the governing body of a maintained school that is eligible for intervention to take steps to become a foundation school with a foundation (i.e. a trust school) where the majority of governors are appointed by the foundation. One of the

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<sup>121</sup> Schools eligible for intervention, section 60 of the *Education and Inspections Act 2006*

<sup>122</sup> [http://www.standards.dfes.gov.uk/federations/what\\_are\\_federations/?version=1](http://www.standards.dfes.gov.uk/federations/what_are_federations/?version=1)

<sup>123</sup> DCSF, May 2007

<sup>124</sup> Guidance on this is available on the [DCSF school organisation website](#).

members of that foundation must be designated as suitable for these purposes by the Secretary of State, or by a person authorised by the Secretary of State. Clause 21 amends section 63 further so as to provide a local authority with a new power to require a trust school that was established, or acquired its foundation, under the *Education and Inspection Act 2006* to publish proposals to remove its existing foundation. Schedule 4, paragraphs 15 and 16 of the Bill allow regulations made under existing powers to require the governing body to refer to the adjudicator for determination proposals to acquire or remove a foundation under clause 21. [The \*Children Schools and Families Bill\*, A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform](#) explains the changes in detail.

### **Schools causing concern: powers of Secretary of State**

The Government wants to strengthen the Secretary of State's powers to ensure that local authorities intervene in schools causing concern. Commenting on existing powers of intervention, the DCSF consultation document, [Consultation on accreditation of School Providers and Schools Groups and on Academy Sponsorship Selection](#), said that local authorities are reluctant to use warning notices, and that existing powers needed to be strengthened:

...since April 2007, when the EIA 2006 was commenced, only 51 Warning Notices have been issued (34 following extensive consultation commissioned by the Secretary of State in summer 2008). Rather than intervening early, LAs often wait until a school is placed in an Ofsted category (requiring either significant improvement or special measures) before taking action. Where LAs are reluctant to use their powers we will not hesitate to act quickly and directly to prevent failure. We are currently legislating within the Apprenticeships, Skills, Children and Learning Bill to enable the Secretary of State to direct an LA to consider issuing a Warning Notice if a school is underperforming and the LA has failed to act. However, we are not convinced that these powers will be sufficient in all cases and are considering options for strengthening them further. We are therefore keen to understand why LAs do not always use existing solutions and/or statutory interventions, such as Warning Notices, earlier and more effectively to prevent school underperformance leading to entrenched failure.

Further information on Warning Notices can be found in chapter 2 (pages 12 -22) of the [Amended Statutory Guidance for Schools Causing Concern](#).<sup>125</sup>

The new powers of the Secretary of State to direct a local authority to consider issuing a warning notice to a governing body if he thinks that there are reasonable grounds for the local authority to do so are contained in schedule 13 of the *Apprenticeships, Skills, Children and Learning Act 2009*.<sup>126</sup>

**Clause 22** amends Part 4 of the *Education and Inspections Act 2006* [*Schools Causing Concern: England*]. Clause 22(2) amends section 60 of the 2006 Act to require a local authority to provide a copy of a warning notice to the Secretary of State, as well as to the other persons and bodies currently listed in section 60(6). Clause 22(3) imposes an equivalent requirement in respect of a teachers' pay and conditions notice served under section 60A of the 2006 Act (which was inserted by *Apprenticeships, Skills, Children and Learning Act 2009*).

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<sup>125</sup> [Consultation on accreditation of School Providers and Schools Groups and on Academy Sponsorship Selection](#), paragraphs 3.4.4 and 3.4.5

<sup>126</sup> The changes are summarised in the [Explanatory Notes on the Apprenticeships, Skills, Children and Learning Act 2009](#)

Clause 22(4) amends section 68 of the 2006 Act. The *Explanatory Notes* state that the effect is to enable the Secretary of State to direct a local authority to close a school where it is eligible for intervention as a result of failing to comply with a performance, standards and safety warning notice, or where the school requires significant improvement, as well as where the school requires special measures. It does not, however, enable this power to be exercised where the school has failed to comply with a warning notice given for failing to comply with the Teachers' Pay and Conditions Document.

Clause 22 (5)(a) to (c) empower the Secretary of State to direct a local authority to give a performance, standards and safety warning notice to a school, where the Secretary of State has already directed that the local authority consider giving one and they have decided not to do so. Clause 22 (5)(d) seeks to provide that where a warning notice is given by virtue of a direction by the Secretary of State, it is final. Similar provision is made in relation to a teachers' pay and conditions warning notice given by virtue of a direction by the Secretary of State (clause 22 (6)(c)).

### 1.10 Teachers: licence to practise

#### *Current requirements for teacher qualifications and registration*

Under the *Education Act 2002*, sections 133 and 134, the Secretary of State is empowered to require persons undertaking specified work in schools to hold particular qualifications and to be registered with the General Teaching Council for England (GTC). The following outline of current requirements draws on the *Guide to the Law of School Governors*, which provides further details and references to where additional information may be found.<sup>127</sup>

Teachers employed at local authority maintained schools and non-maintained special schools in England and Wales are required to have Qualified Teacher Status (QTS). QTS can be gained either through an undergraduate or postgraduate training programme offered by an accredited Initial Teacher Training (ITT) provider, or by following the employment-based teacher training programme such as the Graduate or Registered Teacher Programme, the Overseas Trained Teacher Programme, Teach First and the Flexible and Assessment routes to QTS which are run by the Training and Development Agency for Schools (TDA) in England, and the Welsh Assembly Government. Teachers with relevant professional recognition from Scotland, Northern Ireland or other Member States within the EEA and Switzerland may be eligible for QTS. In certain circumstances, overseas trained teachers from outside the EEA may work for a limited period as teachers in maintained schools, but to be able to teach permanently in maintained schools they must obtain QTS.

From 1 June 2001 all teachers with QTS working in maintained schools or non-maintained special schools in England must be registered with the GTC. From that date, the GTC has had the power to take disciplinary action on teacher incompetence, and in some cases of teacher misconduct. The GTC charges an annual registration fee; however, teachers whose pay is determined under the statutory provisions of the *School Teachers' Pay and Conditions Document* (STPCD) receive an allowance towards this fee.

There is a system of performance management for teachers and head teachers. The *Education (School Teacher Performance Management) (England) Regulations 2006*<sup>128</sup> set out the framework for this. A key aspect of performance management is determining the training and development needs of the teacher, and how to address those needs. Continuing and professional development (CPD) may take a number of forms, for example attendance on relevant courses, coaching and mentoring, and assistance in the classroom.

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<sup>127</sup> DCSF, March 2009 edition

<sup>128</sup> SI 2006 No 2661



The Government has referred to evidence which shows that not all teachers can access the professional development identified for them through the performance management process:

The final report of the *Becoming a Teacher* research (University of Nottingham - School of Education, June 2009) found that:

- fourteen per cent of respondents in their third year of teaching during the year 2006-2007 reported receiving 'no training' during that year; and
- sixteen per cent of fourth year teachers in the year 2007-2008 reported they had not received any training or professional development during the course of the year.

Research commissioned by DCSF through IPSE at London Metropolitan University, covering the period November 2004 to April 2006, found that only 34% of supply teachers had experienced any CPD throughout 2004.

And the results for 2009 from the Teachers' Workloads Diary Survey, managed and funded by the DCSF, showed that the average time spent per week on CPD by head teachers was higher than that spent by classroom teachers (2.0 hours per week for primary head teachers versus 1.2 for primary classroom teachers, and 0.6 for classroom teachers in secondary schools. Comparable figures for secondary head teachers are unavailable for 2009, however in 2008 they were much higher than for their classroom counterparts).<sup>129</sup>

The *Annual Report of her Majesty's Chief Inspector of Education, Children's Services and Skills 2008-09*, said that although inadequate teaching in schools is rare, the challenge now is to get more teachers to teach consistently well and, in particular, to reduce the variation in teaching standards. In order to deliver good quality teaching, the report said, there needs to be a strong focus on being clear about what good teaching is, and providing the support, professional development and performance management.<sup>130</sup>

Schools receive funding for CPD of their workforce in their delegated budgets. It is for schools to decide how to spend this, based on individual teachers' needs and the school's own development and improvement priorities. DCSF data on expenditure of all local authority maintained schools (gathered from section 52 statements) suggest that, in the financial year 2007-08, maintained schools in England spent £180 million from delegated budgets on development and training for staff in schools, representing about 0.5 per cent of total expenditure in schools.<sup>131</sup>

The School Teachers' Review Body (STRB) was asked to consider how an entitlement to CPD might be framed. It recommended in its 18th report, part 1, published on 31 March 2009, that the statutory *School Teachers' Pay and Conditions Document* (STPCD) include a statement specifying that all teachers will have a reasonable expectation of access to, and participation in, CPD. The report said that the NUT had sought a specific entitlement to CPD in the STPCD but that the Review Body was not convinced of the benefit of setting out a specific entitlement to CPD.<sup>132</sup> As noted below, the Government is currently working with some of the teaching unions and other interested bodies on the details of an entitlement to CPD.

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<sup>129</sup> *Impact Assessment*, p76

<sup>130</sup> *Annual Report of her Majesty's Chief Inspector of Education, Children's Services and Skills 2008-09*, p104

<sup>131</sup> HC Deb 7 December 2009 cc150-1W

<sup>132</sup> *School Teachers' Review Body, 18th Report*, paragraph 3.43



*Proposals for a licence to practise for teachers, and initial reaction*

The Government wants to transform the culture of professional development in school teaching so that teaching becomes a 'Masters-level profession', with effective professional development throughout teachers' careers.

The schools white paper proposed a new 'licence to teach', which would be valid for five years, at the end of which the teacher would have to undergo a process of revalidation 'building on performance management arrangements and including other feedback.'<sup>133</sup> The Government believes that this would create a new learning culture that would put professional development at the forefront, improve teaching quality, provide teachers with the status they deserve, and demonstrate to parents that high-quality teaching standards are being maintained.<sup>134</sup> It points to research on the relationship between teaching quality and how well pupils perform.<sup>135</sup> And an international study produced by McKinsey reports that the most successful education systems have an unwavering focus on improving the quality of teaching, and that this is centred on the performance of individual teachers in the classroom.<sup>136</sup>

In terms of precedents for introducing a licensing system for teachers, the Government has pointed to the system currently being developed for doctors in the UK, and the 'practising certificate' for teachers adopted in New Zealand under which, in order to renew their 'practising certificate' every three years, teachers must demonstrate that they continue to meet specified standards and completed satisfactory professional development.<sup>137</sup>

The intention is for the General Teaching Council for England (GTC) to operate the proposed licensing system; and for the new arrangements for a licence to teach in England to start from September 2010 for qualified teachers and head teachers in maintained schools, non-maintained special schools and short-stay schools (formerly pupil referral units). The new arrangements would begin with newly qualified teachers and returners to teaching from September 2010, and would apply to supply teachers as soon as practicable thereafter.<sup>138</sup> It is envisaged that, as with current registration arrangements for teachers, the licence to teach will follow the award of Qualified Teacher Status (QTS) and any qualification, for example a Post Graduate Certificate in Education, that a teacher may have attained as part of their initial teacher training. The Government acknowledged that this represents a major change for the teaching profession, and stressed that it will work and consult closely with the profession in developing detailed proposals. The consultation will include whether or not a minimum number of hours of teaching practice is required to keep the licence current; and what arrangements may be made to enable teachers from overseas to obtain the licence to teach.<sup>139</sup>

*Initial reaction*

The Association of Directors of Children's Services (ADCS) welcomed the proposed consultation with the profession on the licence to teach.<sup>140</sup>

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<sup>133</sup> [Your child, your schools, our future: building a 21<sup>st</sup> century school system](#), paragraph 6.24

<sup>134</sup> DCSF Press Office Release on the Queen's Speech and the Children, Schools and Families Bill, 18 November 2009 and [DCSF Press Release, 19 November 2009](#), Children, School and Families Bill proposes more powers to parents

<sup>135</sup> [Impact Assessment](#), p76

<sup>136</sup> [Annual Report of her Majesty's Chief inspector of Education, Children's Services and Skills 2008-09](#), p104

<sup>137</sup> Some details about this are given on these in the [Impact Assessment](#), p77

<sup>138</sup> [Your child, your schools, our future: building a 21<sup>st</sup> century school system](#), paragraphs 6.22 and 6.23

<sup>139</sup> [HC Deb 9 July 2009 cc 1015-16W](#)

<sup>140</sup> [Response from ADCS on the schools white paper, 10 July 2009](#)

The teaching unions have expressed concern about the proposed licence to teach, with the NUT voicing strong opposition to it, and the other teaching unions seeking reassurances about the operation of the scheme and the availability of resources and support for professional development. Many teachers signed up to a NUT-organised protest against the proposals.<sup>141</sup>

NAHT said it is vital that any revalidation process does not become overly bureaucratic and an undue burden on head teachers faced with administering it.<sup>142</sup> Voice also expressed reservations about how the licence arrangement would operate, and what effect it would have on the role of the GTC. Voice stressed that entitlement to continuing professional development must be readily available and accessible if teachers are to be judged on this, and that the licence must be a measure of quality and raise teachers professional status, rather than a bureaucratic burden.<sup>143</sup> NASUWT noted that professions such as medicine and law already have licences to practise which enhance the standing of those professions. It said that a licence to teach could have merit if it helps emphasise to the public that teaching is a highly-skilled profession, and gives qualified teacher status ‘the long overdue recognition that it is a high status qualification.’<sup>144</sup> ATL’s immediate response was that the proposals would be ‘a bureaucracy nightmare and result in a horrendous paperwork trail following teachers as they move from school to school through their careers’.<sup>145</sup> However, it is working with the Government to link the licence with a ‘right to professional development and make it a non-threatening and routine accreditation.’<sup>146</sup> The NUT pointed out that there is no shortage of accountability measures against which teachers are judged and that teachers’ capacity and practices are persistently under review. It added that it was not clear that head teachers would welcome an additional responsibility. While stressing the importance of continuing professional development, the NUT said that it could see nothing to welcome in the proposal without adequate funding being attached to it, and felt that the Government would have done better to introduce a comprehensive professional development strategy for all teachers based on an individual, funded entitlement for each teacher.<sup>147</sup>

The GTC has said that a number of principles should underpin future policy development in this area:

- a Entry and re-entry to the register should require a demonstration of suitability and competence.
- b Teachers should retain registration through demonstrating competence against the appropriate professional standards as determined by performance management
- c Teachers who fall outside performance management must demonstrate their suitability and competence by some other means.
- d The GTC full register should hold only those whose competence is assured.
- e The efficacy of existing levers (the professional standards and performance management) must be quality assured

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<sup>141</sup> “Licence to teach protest on the cards”. *Times Educational Supplement*, 13 November 2009, p16

<sup>142</sup> [National Association of Head Teachers, Education White Paper 2009 – Curate’s Egg or unfinished Symphony?](#)

<sup>143</sup> Voice Press Release, *Voice concerned by uncertainty over education policy*, 17 November 2009

<sup>144</sup> [NASUWT comments on 21<sup>st</sup> Century Schools White Paper, 30 June 2009](#)

<sup>145</sup> [ATL Press Release, Education White Paper is a mixed bag 30 June 2009](#)

<sup>146</sup> [ATL Press Release, Dr Mary Bousted comments on the Queen’s Speech, 19 November 2009](#)

<sup>147</sup> [NUT Press Release on 21<sup>st</sup> Century Schools White Paper, 30 June 2009](#); *Times Educational Supplement*, ‘Licence to teach protest on the cards’, 13 November 2009, p16

f Any requirements to remain registered must be based on evidence about the forms of CPD that create positive impact on teaching and learning.

g The approach to revalidation needs to balance the benefits of the outcomes for teaching and learning with the cost of the administration and burden of the accountability.

h The accountability system needs to be reconfigured to take account of any new balance between institutional, system accountability and greater individual professional accountability which results from a revalidation requirement.<sup>148</sup>

EDM No 2085 tabled by Bob Spink and Peter Bottomley on 19 October 2009, expressed concern about the teacher licensing proposals; agreed with the NUT that there is no shortage of accountability criteria at present including Ofsted inspections, performance-related pay and school league tables; and called on the Government to re-consider its plans.

Another EDM, No 134, tabled on 19 November 2009 by Andrew Pelling and Lynne Jones called for a portion of school funding to be hypothecated for the provision of professional development for teachers, and for teaching cover to permit ease of release for such training.

Nick Gibb the Conservative Shadow Schools Minister said that under a Conservative government the entry requirements for teachers would be increased and the quality of training improved, and that schools would be afforded more freedoms to pay good teachers more.<sup>149</sup>

#### *The Bill's provisions*

**Clauses 23 to 25** make provision to introduce a licence to practise granted by the General Teaching Council for England (GTC), and for registered teachers in England employed in maintained schools, non-maintained special schools, academies, CTCs and CCTAs to be required to have a licence to practise as a teacher. The *Impact Assessment* indicated that alongside the licence to practise there will be will a contractual entitlement to CPD. The DCSF is currently working with some of the teaching unions and other interested bodies on the details of this.

Clause 23 inserts two new sections (sections 4B and 4C) into the *Teaching and Higher Education Act 1998*. New section 4B gives the Secretary of State the power to make regulations to authorise the GTC to issue registered teachers with a licence to practise in accordance with the regulations. The regulations will be required to make provision about the grant, refusal, renewal and withdrawal of a licence. The detailed arrangements will be set out in the regulations. It is proposed that the regulations will be subject to the negative resolution procedure on the basis that they are essentially about the administration of a licensing system, not the principle of it which is contained in the Bill.<sup>150</sup> New section 4C gives the Secretary of State the power to make regulations concerning an appeals process. The regulations will give registered teachers a right of appeal against decisions to refuse to grant or renew a licence, withdrawal of a licence and, in certain circumstances, decisions to grant or renew a licence conditionally, and about the duration of a licence. They will require the GTC to establish a committee to consider these appeals, and will set out how appeals should

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<sup>148</sup> [Response to the white paper from the General Teaching Council for England \(GTC\), September 2009, 2009/137](#)

<sup>149</sup> "Pupils held back by bad schools", *Conservative Party, News Story*, 24 November 2009

<sup>150</sup> [A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform](#), paragraph 58

be made and determined. Again the regulations will be subject to the negative resolution procedure. The decision of a GTC appeal panel may be open to judicial review.<sup>151</sup>

Clause 24 inserts new section 134A into the *Education Act 2002* to give the Secretary of State the power to make regulations making it a requirement that, in order to undertake 'specified work' in a relevant school, a qualified teacher has to hold a licence to practise. It is intended that this regulation-making power will be used to ensure that all qualified teachers (including supply teachers and teachers from overseas) in maintained schools, non-maintained special schools, pupil referral units, academies, city technology colleges and city colleges for the technology of the arts will be required to hold a licence to practise from a specified date or dates. As before, the DCSF considers it appropriate for these regulations to be subject to the negative resolution procedure.<sup>152</sup>

Clause 25 extends to academies, city technology colleges (CTCs) and city colleges for the technology of the arts (CTAs) the existing powers of the Secretary of State to require teachers to hold qualified teacher status and to be registered with the GTC. The clause also makes provision for the Secretary of State's power under section 496 of the *Education Act 1996* (to prevent the unreasonable exercise of functions) to be used if an academy, CTC or CCTA fails to comply with regulations that require teachers to hold qualified teacher status, be registered with the GTC and to hold a valid licence to practise.

The *Impact Assessment* gives cost estimates of the system but stresses that these are very early indications based on some elements of how the Government currently envisage the system might work, and are likely to be revised. Full details of how the licensing system will work have yet to be agreed and will be set out in regulations which will be subject to consultation with the teaching profession and other stakeholders. A further impact assessment will be made as these details are worked out.

It is envisaged that licence renewal would take place every five years, and that assessment for licence renewal will be based on performance management documentation, and other existing processes and information. It is yet to be decided who will carry out the assessment locally, but the Government assumes for now that head teachers may do so for the majority of teachers, that governing bodies may do so for head teachers, and that local authority staff may do so for centrally employed teachers.<sup>153</sup> The GTC will administer the licensing system, and DCFS is currently in discussions with the GTC about possible costs – both set-up and 'steady state running' costs. The *Impact Assessment* gives early cost estimates based on initial modelling.<sup>154</sup>

The Government does not consider that the establishment of a licensing scheme itself engages any of the European Convention rights. Its consideration of this is set out in paragraphs 210 to 212 of the *Explanatory Notes*.

### 1.11 Home education

The Government wants to introduce a registration scheme for home educated children in England. Home education in Wales is a matter for the Welsh Assembly Government.

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<sup>151</sup> *Explanatory Notes*, paragraph 211

<sup>152</sup> *A Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, paragraph 60

<sup>153</sup> *Impact Assessment*, p77

<sup>154</sup> *Impact Assessment*, p80

## ***Home education: England***

### *Current position*

Parents may choose home education for a variety of reasons, but they are responsible for ensuring that the education provided is efficient full-time education, suitable to the child's age, ability and aptitude. Section 7 of the *Education Act 1996* (which was a consolidation Act) provides that:

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable –

- (a) to his age, ability and aptitude, and
- (b) to any special educational needs he may have,

either by regular attendance at school or otherwise.

'Elective home education' or 'education otherwise' are terms used to describe home education for children of school age.

Appendix 1 of this Research Paper provides information on the estimated number of children being educated at home.

In November 2007, DCSF issued [Elective Home Education Guidelines for Local Authorities](#). Parents of children who have never attended school are not required to inform the local authority if they decide to educate their child at home. Where a child is attending school and the parents decide to withdraw the child to educate him/her at home the parents have to notify the school, and the school must notify the local authority. Chapter 2 of the guidance sets out the law relating to home education, and refers to the relevant statutory provisions, as well as case law on the matter. It notes the current statutory duties on local authorities to intervene if it appears that a child of compulsory education in their area is not receiving suitable education. As the guidelines make clear, local authorities have a duty under section 437 of the *Education Act 1996* (School Attendance Orders) to act if it appears to them that a child of compulsory school age in their area is not receiving suitable education. Under section 47 of the *Children Act 1989* local authorities can insist on seeing a home educated child if there is cause for concern about the child's safety and welfare. The *Education and Inspections Act 2006* placed a duty on all local authorities to make arrangements to identify children not receiving a suitable education. Revised guidance on local authorities' duties was issued at the same time as a review of home education was announced by the DCSF on 19 January 2009. Paragraphs 86 to 94 of the [Revised Guidance for Local Authorities in England to Identify Children not Receiving a Suitable Education](#) deal specifically with elective home education.

### *Proposals for change, and reaction to them*

The following gives a brief outline of what has led up to the proposals on home education contained in the Bill. More detailed background is provided in [Library Standard Note SN/SP/5108](#), dated 1 December 2009.

In January 2009 the Secretary of State for Children, Schools and Families asked Graham Badman, former Director of Children's Services at Kent County Council, to carry out a review of elective home education in England. The review was triggered by a number of issues and representations, particularly relating to concerns about the welfare of home educated children, and about ensuring that they receive a suitable education. The Government emphasised that it recognised the well-established right of parents to educate their children at home.



*The Report to the Secretary of State on the Review of Elective Home Education in England* was published on 11 June 2009.<sup>155</sup> It proposed a compulsory registration scheme, in which all parents who plan to educate their children at home have to inform their local authority. Other key recommendations include providing more support to home educating families; giving properly trained local authority officials the right of access to the child's home, following a minimum two-week notification to the parents; and enabling local authorities to refuse registration to home educate if there is clear evidence of safeguarding concerns.

The review sparked a furious reaction from home educators and others who said that the proposals were unnecessary and would allow the state an unprecedented intrusion into family life.<sup>156</sup> The charity, Education Otherwise, launched a campaign against the proposals.<sup>157</sup> On 9 June 2009, Mark Field introduced a [Westminster Hall debate on home education](#) in which he highlighted the concerns raised by home educators. He said that there was a real fear that the Government, under the 'banner of child protection', would try to interfere with freedom of choice of home educators.<sup>158</sup> More recently there has been an Early Day Motion<sup>159</sup> and several petitions presented to the House of Commons expressing concern about the Badman Review.<sup>160</sup>

In a Written Ministerial Statement on 11 June 2009 the Secretary of State said that the review had made a compelling case for change, and issued a consultation document on arrangements for the registration and monitoring of home educated children.<sup>161</sup> The consultation document, *Home Education - registration and monitoring proposals*, set out proposals for a registration scheme and arrangements for the monitoring of provision. It also proposes that, where there are serious concerns about the ability of parents to provide their children with suitable education in a safe environment, then they should not be permitted to educate their children at home. The consultation sought the views of home educating families, groups representing home educating families, local authorities, other agencies involved in the provision of services for children, and the public generally. The consultation closed on 19 October 2009. Over 5,000 responses were received.<sup>162</sup> At the time of writing this Research Paper, the DCSF summary of responses had not yet been published.

In his letter to Mr Badman on 11 June 2009, the Secretary of State said that he would make a fuller response to the individual recommendations of the review. This full response was published on 9 October 2009, *DCSF response to the Badman Review of Elective Home Education in England*. The response document reiterated the Government's support for statutory arrangements for the registration and monitoring of home education. The response stated that more work would need to be done to clarify what is 'suitable and effective' home education, and that a further review on this would be commissioned in early 2010. It also emphasised the Government's strong commitment to supporting home educators and outlined a package of support for home educated children. This included more tailored support for home educated children with special educational needs; more flexible access to public examinations and exam centres for home educated children; improved access to music lessons, school libraries, work experience, sports and other specialist facilities in schools and colleges; and, arrangements for flexi-schooling, so that home educated children

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<sup>155</sup> *The Report to the Secretary of State on the Review of Elective Home Education in England*, HC 610, June 2009

<sup>156</sup> e.g. "Report to call for crackdown on home schooling", *Guardian*, 6 June 2009, p12; "No place like home", *Sunday Times*, 14 June 2009 p9

<sup>157</sup> <http://www.education-otherwise.org/>

<sup>158</sup> HC Deb 9 June 2009 c220WH

<sup>159</sup> EDM No 409, 9 December 2009

<sup>160</sup> e.g. [HC Deb 2 December 2009](#); [HC Deb 3 December 2009](#); [HC Deb 7 December 2009](#); [HC Deb 8 December 2009](#); [HC Deb 14 December 2009](#)

<sup>161</sup> HC Deb 11 June 2009 cc44-5WS

<sup>162</sup> *The Draft Legislative Programme 2009/10 - Government's Response and Summary of Consultation*, p22



can have the option to attend school on a part-time basis (it is intended that amendments will be made to the *Pupil Registration Regulations 2006* for this to happen by September 2011). A number of other matters would be addressed in changes to regulations and/or in new statutory guidance or in strengthened guidance (see [Library Standard Note SN/SP/5108](#) for more information.)

The home education charity, Education Otherwise, said that trying to define 'suitable' education would create another layer of hard-to-define benchmarks.<sup>163</sup> Education Otherwise responded to the DCSF consultation paper and commented on other recommendations made by the Badman Review. Reaction to specific proposals was posted on the [Education Otherwise website](#).

#### *The Bill's provisions*

**Clauses 26 and schedule 1** cover home education in England. Clause 26 and Schedule 1 introduce a new requirement for local authorities in England to keep a register of all children of compulsory school age in their area who are home educated, and to monitor those children to ensure that they are receiving a suitable education and are safe and well. New sections 19A to 19I would be inserted into the *Education Act 1996*. There are new regulation-making powers under schedule 1 in new sections 19A, 19B, 19C, 19F, 19G and 19H. These allow for the procedural detail of the new registration scheme, and how it will operate, to be set out in regulations.

The following highlights key provisions in schedule 1; Members are advised to consult the Bill and the [Explanatory Notes](#) for full details. In brief, new section 19A requires a local authority to keep a register of all children of compulsory school age in their area who are being educated entirely at home. New section 19B sets out what a local authority is required to do when the parent of a home-educated child applies for registration. New section 19C confers power on the Secretary of State to make regulations about steps to be taken by a local authority in connection with an application for registration. In particular, regulations may make provision requiring an application for registration to include prescribed information including a statement giving prescribed information about the child's prospective education (new section 19C(4)(b)). New section 19D makes provision about how long registration will last. It also provides that, for enforcement purposes, a child will be treated as registered as soon as an application for registration has been made.

New section 19E obliges a local authority to make arrangements to monitor the education provided to a child on their home education register. The [Explanatory Notes](#) state that the objective of the arrangements is to ascertain, as far as reasonably practicable, whether the child is receiving a suitable education, whether the education accords with the information given about it, what the child's wishes and feelings about it are, and whether it would be harmful for the child's welfare for the education to continue. Subsection (2) of new section 19E defines what is meant by a suitable education for this purpose. Subsection (3) provides that the arrangements made by a local authority under new section 19E must include arrangements, in each registration period, for meetings and visits. The arrangements require an authority to see a child, the parent and the place (or at least one of the places) where the education is to take place, at least once in any registration period. Where a local authority considers that someone other than the parent is primarily responsible for providing education then the local authority will be under a duty to see that other person as well, at least once in any registration period. The [Explanatory Notes](#) state that for most home educated children, these visits will be carried out concurrently. Subsection (4) explains that the local authority cannot make arrangements to see the child on their own if the child or the parent objects to

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<sup>163</sup> [BBC News Education, 9 October 2009](#)

such a meeting. Subsection (5) requires a local authority to give at least two weeks' written notice of a proposed meeting or of a visit to a place where education is provided.

The Badman Review recommended that local authority officers should have a right to speak to a home educated child alone, if that is deemed appropriate. There were strong representations against this, and the Government has taken these into account in framing the legislation. In the debate on the Address, Ed Balls stressed that the Bill makes it clear that there is a right to see the child on their own only with the permission and agreement of the parent:

Local authorities have the right under existing legislation to enter the home where a child is at risk and there is a concern about safeguarding. On the quality of education - that is what is new in the Bill-the Bill makes it clear that there is a right to see the child on their own only with the permission and agreement of the parent and the child. There is no right for the local authority to enter the home or see the child without their agreement. That is clear in the Bill.<sup>164</sup>

New section 19F gives a local authority the power to revoke registration on their home education register in certain circumstances. New section 19G requires regulations to provide for a parent to be able to appeal against a local authority's decision to refuse or revoke registration. New section 19H permits the Secretary of State to make regulations requiring information relating to a child to be supplied to a local authority in England, in certain circumstances, for the purposes of the exercise of their home education functions. New section 19I requires local authorities to have regard to any statutory guidance issued by the Secretary of State when exercising their functions under sections 19A to 19H. Provision is also made in Schedule 1, paragraph 3, to require a local authority in England to make arrangements to identify unregistered children.

The new registration scheme is to be enforced through the existing system of school attendance orders. Paragraphs 5 to 10 of Schedule 1 amend the *Education Act 1996* to provide for this. It is a criminal offence to fail to comply with a school attendance order.

Registration for home educators in England is due to come into effect from April 2011. The [Impact Assessment](#) on the Bill gives further details of how the arrangements would operate and the associated estimated costs.<sup>165</sup> The Appendix to this Library Research Paper comments on the costs and benefits data provided.

Paragraphs 213 to 217 of the [Explanatory Notes](#) comment on the Government's view of the Bill's provisions in relation to the European Convention of Human Rights. The Government points out that the scheme will pursue a legitimate aim to ensure that home educated children receive a suitable education and are safe and well. The rights of parents, it states, are not absolute and cannot take precedence over those of their children. While the requirement to register for home education to be monitored will engage Article 8 rights of both parents and children, the Government considers that any interference with this right will be necessary and proportionate and pursue the legitimate aim of protecting the child. On the same basis, the limited sharing of information between local authorities is considered as justifiable. Likewise, any interference resulting from refusal or revocation of registration is considered justified and proportionate. The [Explanatory Notes](#) also point out that there will be a right of appeal against the refusal of registration to an independent panel; that parents would also be able to seek judicial review of any refusal of registration by the local authority, and would be able to complain to the local government ombudsman.

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<sup>164</sup> [HC Deb 19 November 2009 cc175-6](#)

<sup>165</sup> [Impact Assessment](#), pp 83 to 90

*Initial comment on the Bill's provisions*

[Education Otherwise issued a Press Release on 20 November 2009](#) strongly criticising the Bill's proposals. Fiona Nicholson, a trustee of Education Otherwise, was reported as saying that the charity was seeking legal advice on the drafting of the Bill as presented.<sup>166</sup>

In the Debate on the Address, Graham Stuart (Conservative) said that local authorities already have sufficient powers to intervene if a home educated child gives cause for concern<sup>167</sup>, and Michael Gove the Conservative Shadow Secretary of State for Children, Schools and Families acknowledged the importance of not stigmatising those who choose to educate their children at home.<sup>168</sup> Later in the debate, Mr Stuart urged the Government not to proceed with the proposals but instead to invest in more research to get a better understanding of who is not in school and who is being educated at home, and what the problems are. He also suggested a voluntary registration scheme, perhaps linked to additional financial support for home educators.<sup>169</sup>

For the Liberal Democrats, David Laws said that they accepted the Government's approach for home educators to be registered but had concerns about whether 'the registration process will involve imposing a central vision of education by the back door.' He said that he was also concerned that home educators had gained the impression that there is seen to be a particular relationship between home education and child protection, and that this had created a lot of anger throughout the country.<sup>170</sup>

The Children, Schools and Families Committee has undertaken a short inquiry into elective home education. It took evidence from Graham Badman, Diana Johnson, Parliamentary Under-Secretary of State, and Penny Jones from the DCSF as well as from home educators and bodies representing them, and other interested bodies including the National Children's Bureau, the Association of Directors of Children's Services, and the National Society for the Prevention of Cruelty to Children.

Home educator witnesses stressed that, in their view, the Badman Review had been hasty and ill-considered; they were concerned that the proposals would undermine the achievements that had been made between the home education community and local authorities. There was general agreement that more research was needed. Paul Ennals, chief executive of the National Children's Bureau and a member of the advisory group for the Badman Review, explained that he had long felt that much more support could and should be made available to home educators. He also felt that there were some genuine and significant safeguarding concerns about a very small proportion of home educated children. Peter Traves, from the Association of Directors of Children's Services (ADCS), said that ADCS broadly welcomed the review and thought it to be balanced and generally sensitive. However, he stressed the importance of there being a positive relationship between home educators and local authorities. Phillip Noyes, director of public policy at the National Society for the Prevention of Cruelty to Children, expressed concern about children who are completely 'under the radar', and said that NSPCC supported the Badman report.

The Committee's report was published on 16 December 2009.<sup>171</sup> It noted the dearth of information on home educated children in England, not least basic data about the number of these children. The Committee suggested that local authorities needed improved means of

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<sup>166</sup> "Home educators in a headlock", *Education Otherwise Press Release*, 20 November 2009

<sup>167</sup> HC Deb 19 November 2009 c164

<sup>168</sup> HC Deb 19 November 2009 c165

<sup>169</sup> HC Deb 19 November 2009 cc 208-210

<sup>170</sup> HC Deb 19 November 2009 c176

<sup>171</sup> Children, Schools and Families Committee, Second Report of Session 2009-10, *The Review of Elective Home Education*, HC 39-I and 39-II

identifying and differentiating between the children in their area who are in school, who are being home educated, and who are otherwise not in school. The report also said that parental responsibility in relation to the provision of home education should be strengthened, and that therefore the Committee supported proposals to introduce annual registration for home educating families. However, in view of the concerns expressed by home educators about compulsory registration, it suggested that registration should be voluntary. Any registration system should, it said, be accompanied by better information sharing between local authorities, Her Majesty's Revenue and Customs and other agencies—including NHS trusts and police forces—to help identify which children are in school, which are being educated at home, and which are in neither category. The Committee said that the voluntary registration system and improved information sharing should be reviewed after two years, and that if these arrangements do not meet expectations then a system of compulsory registration would need to be introduced. The requirement for home educating families to provide some form of statement of their intended approach to their child's education was supported, and the Committee felt this should be supplemented by meetings between home educating families and local authority officers on at least an annual basis. The Committee said that there needs to be a more precise definition of what constitutes a "suitable" education.

The Committee concluded that the Badman Report and the proposals in the Children, Schools and Families Bill had run into difficulty in their conflation of education and safeguarding matters. The committee suggested that existing safeguarding legislation was the appropriate mechanism for the purpose of safeguarding and promoting the welfare of home educated children, and that the proposed annual visits would offer little direct safeguarding benefit over and above this. The Committee strongly discouraged the notion that local authority home education teams should be given a more overt safeguarding role.

### ***Home education: Wales***

Home education in Wales is a matter for the Welsh Assembly Government.

**Clause 27** confers power on the National Assembly for Wales to make provision about the regulation of home education in Wales and the inspection of services provided by local authorities for persons involved in providing home education. A [Welsh Assembly Government Memorandum on Framework Powers Conferring Legislative Competence on the National Assembly for Wales](#) in respect to the regulation of home education in Wales has been published.

### **1.12 Local Safeguarding Children Boards**

The *Children Act 2004* provides the legislative basis for Local Safeguarding Children Boards (LSCBs). Their creation stems from recommendations to improve child protection procedures by Lord Laming, following a statutory inquiry into the murder of eight year old Victoria Climbié in 2000.<sup>172</sup> LSCBs co-ordinate the functions of their representative members for the purposes of safeguarding and promoting the welfare of children in the local area. In 2009, Lord Laming published a second progress report on child protection which included recommendations to clarify the laws on information-sharing between local agencies involved in child protection.<sup>173</sup>

#### *The origins of Local Safeguarding Children Boards*

Lord Laming's inquiry into the murder of Victoria Climbié, by her carers in 2001, identified a lack of priority given to safeguarding measures by local authorities, and also deficiencies in

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<sup>172</sup> Lord Laming, *The Victoria Climbié Inquiry*; Cm 5730, January 2003

<sup>173</sup> Lord Laming, *The Protection of Children in England: A Progress Report*; HC 330, March 2009

the existing structures to effectively detect and respond to cases of child abuse.<sup>174</sup> One of Lord Laming's recommendations was that the existing Area Child Protection Committees (ACPC) lacked real authority and strategic leadership<sup>175</sup> and should be replaced with a Management Board for services to children and families for each local authority which would be chaired by its chief executive.<sup>176</sup> The recommendation was taken forward by establishing statutory Local Safeguarding Children Boards (LSCBs) under the *Children Act 2004*. Under section 13 of the 2004 Act, children's services authorities<sup>177</sup> are required to establish a LSCB for their area. The Boards must include representatives from:

- district councils (if applicable);
- the chief police officer;
- local probation board;
- a provider of probation services;
- youth offending team;
- the Strategic Health Authority and Primary Care Trust;
- NHS trusts and NHS foundation trusts;
- Connexions services;
- Children and Family Court Advisory Support Service (CAFCASS);
- the governor or director of any secure training centre;
- the governor or director of any prison which ordinarily detains children that falls within the area of the children's services authority.<sup>178</sup>

There is a statutory requirement under section 13(7) for mutual co-operation between children's services authorities and each Board member.

The prime objective of the LSCB is to co-ordinate the functions of its representatives for the purposes of safeguarding and promoting the welfare of children in the local area.<sup>179</sup> LSCBs are also responsible for reviewing the deaths of children and for conducting serious case reviews<sup>180</sup> in accordance with statutory guidance.<sup>181</sup>

### *Baby Peter case*

Baby Peter died on 3 August 2007 from severe injuries which were inflicted whilst he lived with his mother, her partner and a lodger in the household. In November 2008, all three were convicted of causing or allowing the death of a child. Baby Peter had been subject to a child protection plan from December 2006, following concerns that he had been abused and neglected. He was still subject to this plan when he died aged 17 months. Following the convictions, the children's services authority, Haringey, came under intense criticism of the way it had handled the case. The Secretary of State for Children, Schools and Families, Ed Balls, requested the Office for Standards in Education, Children's Services and Skills (Ofsted), the Commission for Healthcare Audit and Inspection and the Chief Inspector of Constabulary to carry out an urgent Joint Area Review<sup>182</sup> of Haringey children's services. The report, published in December 2008, identified a number of serious concerns in relation to the safeguarding of children and young people in Haringey. It found that:

<sup>174</sup> Lord Laming, *The Victoria Climbié Inquiry*, Cm 5730, January 2003

<sup>175</sup> *Victoria Climbié Inquiry Report*, para 17.55.

<sup>176</sup> *Victoria Climbié Inquiry Report*, recommendations 6 and 7.

<sup>177</sup> A children's services authority is a high level local authority (e.g. a county council, or a London borough council). A full definition is set out in section 65(1) of the *Children Act 2004*.

<sup>178</sup> Section 13(2), *Children Act 2004*

<sup>179</sup> *Ibid*, section 14(1)

<sup>180</sup> *The Local Safeguarding Children Boards Regulations 2006*, SI 2006/90

<sup>181</sup> Every Child Matters, *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, 2006

<sup>182</sup> Under section 20 of the *Children Act 2004*



The contribution of local services to improving outcomes for children and young people at risk or requiring safeguarding is inadequate and needs urgent and sustained attention.<sup>183</sup>

Some of the inquiry's specific findings were:

- The LSCB failed to provide sufficient challenge to its member agencies. This was further compounded by the lack of an independent chairperson.
- Social care, health and police authorities did not communicate and collaborate routinely and consistently to ensure effective assessment, planning and review of cases of vulnerable children and young people.
- Too often assessments of children and young people, in all agencies, failed to identify those who were at immediate risk of harm and address their needs.
- The quality of front line practice across all agencies was inconsistent and not effectively monitored by line managers.

The report's recommendations included establishing clear procedures and protocols for communication and collaboration between social care, health and police services to support the safeguarding of children, and ensuring that those were adhered to.<sup>184</sup>

#### *Progress report on child protection*

Following the findings, the Secretary of State commissioned Lord Laming to provide an urgent report on the progress being made across the country to implement effective arrangements for safeguarding children. In his report, *The Protection of Children in England: A Progress Report*,<sup>185</sup> Lord Laming acknowledged that Government reforms provided a firm foundation, but that there needed to be a renewed commitment to child protection at every level of government and across all local services. He highlighted particular concerns in relation to health services, identifying a wariness among staff to engage with child protection work:

It appears that the safeguarding of vulnerable children is often not viewed as a priority for GPs in some areas.... [M]ore needs to be done to ensure GPs are proactive in doing all they can to keep children safe. There needs to be suitable rigour in the child protection training for each GP which enables them to contribute effectively to multi-agency approach to the well-being of children. This should include appropriate referral and information sharing training.<sup>186</sup>

Similar concerns were expressed in relation to evidence that paediatricians were sometimes reluctant to become involved in child protection work.<sup>187</sup>

The report found that, despite updated Government guidance on information sharing,<sup>188</sup> there remained confusion about the issue which was hindering effective joint working between agencies:

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<sup>183</sup> [Joint Area Review, Haringey Children's Services Authority Area](#)

<sup>184</sup> *Ibid*, p5

<sup>185</sup> [The Protection of Children in England: A Progress Report](#) HC 330, TSO March 2009

<sup>186</sup> *Ibid*, para 5.24

<sup>187</sup> *Ibid*, para 5.25

<sup>188</sup> HM Government, [Information sharing: Guidance for practitioners and managers](#); 2008



... there continues to be real concern across all sectors, but particularly in health services, about the risk of breaching confidentiality or data protection law by sharing concerns about a child's safety. The laws governing data protection and privacy are still not well understood by frontline staff or their managers. It is clear that different agencies (and their legal advisers) often take different approaches.

Whilst the law rightly seeks to preserve individuals' privacy and confidentiality, it should not be used (and was never intended) as a barrier to appropriate information sharing between professionals. The safety and welfare of children is of paramount importance, and agencies may lawfully share confidential information about the child or the parent, without consent, if doing so is in the public interest. A public interest can arise in a wide range of circumstances, including the protection of a child from harm, and the promotion of child welfare. Even where the sharing of confidential medical information is considered inappropriate, it may be proportionate for a clinician to share the fact that they have concerns about a child.<sup>189</sup>

In addition to specific improvements for health services, the report recommended that all agencies locally accountable for keeping children safe should ensure that all staff in every service "understand the circumstances in which they may lawfully share information about both children and parents, and that it is in the public interest to prioritise the safety and welfare of children".<sup>190</sup>

The Government accepted all of Lord Laming's 58 recommendations in full.<sup>191</sup> A detailed response to the Laming report - *The protection of children in England: action plan*<sup>192</sup> - was subsequently published by the Government.

### *The Bill*

#### *Information sharing provisions*

The Bill would implement Lord Laming's recommendations to clarify information-sharing policies by providing LSCBs in England and Wales with powers to require a person or body to supply specified information. The *Children Act 2004* currently places a duty on LSCB partners to co-operate, which the Department for Children Schools and Families (DCSF) views as extending to the supply of information.<sup>193</sup> The Bill would insert new sections into the *Children Act 2004*<sup>194</sup> to make information-sharing an explicit duty and extend it to persons who are not Board members but are likely to have information relevant to the LSCB's functions.<sup>195</sup> The request must be complied with if conditions relating to the purpose of the information request are satisfied. An explanation of those conditions is set out in the [Explanatory Notes](#) to the Bill.<sup>196</sup>

Information obtained by the LSCB under the new sections may only be used for the purpose of enabling or assisting the LSCB with its functions<sup>197</sup> and it must have regard to any guidance given to it by the Secretary of State, in connection with the exercise of its functions under the new sections.<sup>198</sup>

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<sup>189</sup> Paras 4.6-7 *The Protection of Children in England: A Progress Report*

<sup>190</sup> *Ibid*, para 4.8

<sup>191</sup> HC Deb 12 March 2009 c463-6.

<sup>192</sup> DCSF, Cm 7589, May 2009

<sup>193</sup> Section 13(7), *Children Act 2004*

<sup>194</sup> New section 14A for England and new section 32 for Wales

<sup>195</sup> Clause 28 (England); clause 29 (Wales)

<sup>196</sup> *Explanatory Notes to the Children, Schools and Families Bill*, Bill 8-EN, para 140

<sup>197</sup> Clauses 28(6) and 29(6)

<sup>198</sup> Clause 28(7). In Wales the LSCB must have regard to guidance issued by Welsh Ministers (clause 29(7))

The intention is that the express statutory provision will ensure that information is provided for the purposes of serious case reviews and child death review processes and so allay concerns about breaching data protection and confidentiality.<sup>199</sup> The impact assessment adds that the Bill would:

...drive improvement in the quality of services designed to safeguard and promote the welfare of children and provide a stronger culture of mutual challenge, improvement and openness within a local area.<sup>200</sup>

#### *Review by Chief Inspector of performance of LSCBs in England*

The Bill would add a regulation-making power to the *Children Act 2004*<sup>201</sup> to make provision for the Chief Inspector of Education, Children's Services and Skills<sup>202</sup> to conduct a review of the performance of specified LSCB functions.<sup>203</sup> The circumstances under which a review may be conducted are to be set out in regulations. In particular regulations may make provision for reporting by the Chief Inspector once a review has been completed, and about sharing information for the purposes of a review.<sup>204</sup> A wide provision for regulation-making has been included in order to retain flexibility as to which functions are reviewed. A [memorandum](#) from the DSCF explains:

Some LSCB functions may be more appropriately reviewed under other arrangements, for example, as part of Joint Area Reviews undertaken under section 20 of the Children Act 2004. The Department also considers that the detail as to when and how a review is required to be carried out is best set out in secondary legislation, given that this might vary depending on which functions are being reviewed. The Department considers it is appropriate for these procedural details to be taken forward through the negative procedure.<sup>205</sup>

### **1.13 Powers to intervene in Youth Offending Teams**

**Clause 31** would give the Secretary of State powers to give directions to Youth Offending Teams (YOTs) and Local Authorities over the provision of youth justice services. This follows concerns about a small number of YOTs perceived to be "failing".

YOTs were introduced in April 2000<sup>206</sup> by the *Crime and Disorder Act 1998*. They are multidisciplinary teams based in local authorities, who co-ordinate youth justice within their area and provide services and programmes to reduce youth offending. There are 157 YOTs in England and Wales.<sup>207</sup> By statute, they must include representatives from probation services, the police, education services, social services for children and the health service, but they can also contain other people the local authority thinks appropriate such as housing officers or drug and alcohol workers.<sup>208</sup>

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<sup>199</sup> [Impact Assessment to the Children Schools and Families Bill](#), p91

<sup>200</sup> [Impact Assessment to the Children Schools and Families Bill](#), p94

<sup>201</sup> New section 15A

<sup>202</sup> Ofsted

<sup>203</sup> Clause 30

<sup>204</sup> Clause 15(3)

<sup>205</sup> Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform from the Department for Children, Schools and Families, para 77

<sup>206</sup> Following pilots established in 1998

<sup>207</sup> See [Youth Justice System; YOT Contact Details](#) page of the Youth Justice Board website [on 14 December 2009]

<sup>208</sup> Section 39, *Crime and Disorder Act 1998*

### *Oversight of Youth Offending Teams*

There are two main mechanisms for monitoring the performance of individual YOTs. One is led by the Youth Justice Board as part of Local Government Performance Management against a framework of indicators and service standards.<sup>209</sup> The other is led by HM Inspectorate of Probation (HMIP), and produces both individual reports and thematic inspections. The two monitoring processes feed into the Government's new Comprehensive Area Assessment process.<sup>210</sup>

The inspections led by HMIP involve a partnership of nine inspectorates. Together, these partners carried out a programme of inspecting each YOT in England and Wales between 2003 and 2008. End of Programme Reports were published for England in March 2009<sup>211</sup> and for Wales in September 2009.<sup>212</sup> The March 2009 report noted progress in relation to some areas of the work, such as the inclusion of diversity in the assessment of children and young people. However, it stated that "considerable concerns" remained about YOTs' effectiveness in the areas of *Risk of Harm to others* and *Safeguarding*.<sup>213</sup> Individual reports on YOTs are available from Her Majesty's Inspectorate of Probation website.<sup>214</sup> A new programme of inspections began in April 2009.<sup>215</sup>

### *Announcement of changes*

The changes which the Bill would introduce were announced in the follow up report to the Government's Youth Crime Action Plan, published on 15 July 2009:

#### **Strengthening performance management arrangements for YOTS.**

YOT performance is part of the current Local Area Agreement indicators, Comprehensive Area Assessment and inspections in England and the Local Government Performance Framework in Wales. We and the Youth Justice Board will monitor performance on youth justice through these frameworks and will support, challenge and intervene where necessary.

The Youth Justice Board will refresh its "Sustaining the success" guidance to set clear improvement expectations on YOTs. This will include specific guidance on the roles and the responsibilities of the YOT management board but where inspection of YOTs finds serious problems which the local authority does not address, Ministers are clear that there should be further powers for intervention. The Government will bring forward legislation to be able to intervene directly to safeguard young people subject to YOT supervision, protect the public and maintain confidence in the youth justice system. These powers will, for example enable the Secretary of State to direct the local authority to make management changes to the YOT, to impose targets for

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<sup>209</sup> See the [Monitoring Performance](#) page on the Youth Justice Board website

<sup>210</sup> DCSF, *Children, Schools and Families Bill - Impact Assessment*, November 2004, p104; for further information see the [Comprehensive Area Assessments](#) on the Audit Commission website [on 14 December 2009]

<sup>211</sup> Youth Offending Team Inspection [Joint Inspection of Youth Offending Teams End of Programme Report 2003-2008](#), March 2009

<sup>212</sup> Youth Offending Team Inspection, [Joint Inspection Findings of Youth Offending Teams in Wales 2003-2008](#), September 2009

<sup>213</sup> Youth Offending Team Inspection [Joint Inspection of Youth Offending Teams End of Programme Report 2003-2008](#), March 2009, p13

<sup>214</sup> See the [Youth Offending Team Inspection Reports](#) page of the [HM Inspectorate of Probation](#) website [on 14 December 2009]

<sup>215</sup> See the [Youth Offending Teams YOT Inspection](#) page on the Youth Justice Board website [on 14 December 2009]

improvement or to require the YOT to work with the Youth Justice Board to improve practice.<sup>216</sup>

On 22 July 2009, the Government issued a press release which gave further details:

The Government is also today setting out future plans for turning around Youth Offending Teams (YOTs) where there are serious concerns. Whilst many YOTs are doing a good job identifying and working with young people who are one step away from the courts, Ministers are clear that there is no room for failure when it comes to protecting the public from crime.

The Government is keen to get tough on failing YOTs because they play such a crucial role in preventing and tackling youth crime and anti-social behaviour in their areas. The proposed changes to the law would give the Government powers to intervene in YOTs if an inspection finds serious problems by:

- directing local council leaders to make significant changes to the YOT, including removing staff from post if necessary;
- imposing targets requiring YOTs to improve;
- sending in a team of youth justice experts to help improve practice.

The further actions to tackle youth crime are part of the Government's YCAP One Year On publication which is focused on three key areas:

- preventing young people offending by tackling problems such as alcohol or truancy early and providing positive and exciting things for them to do, particularly on Friday and Saturday nights;
- more support to address causes of bad behaviour including non-negotiable support for families whose children are getting into trouble and to tackle the difficulties lying behind their poor behaviour;
- tough enforcement, involving police working closely with other services on the streets and punishments that local communities have confidence in.<sup>217</sup>

Press reports indicated that particular concerns had been raised by the Inspection Reports into "two or three" YOTs, including Sefton in Merseyside.<sup>218</sup> The HMIP-led inspection into Sefton, published in June 2009, described the Inspectorates' findings as "extremely disappointing", with seven out of eight Inspection criteria requiring "substantial or drastic improvement".<sup>219</sup> A report into Rochdale YOT, published in July 2009, stated that there had been "clear evidence of de facto misrepresentation in some records of when certain assessment work actually took place" and that there was a need for "substantial improvement" in the overall quality of the youth offending work done.<sup>220</sup> The allegations of records falsification were denied by Rochdale Council,<sup>221</sup> but the reports led the *Guardian* to speculate that Rochdale YOT would be considered a "second likely candidate for outside intervention" under the Government's proposed legislation.<sup>222</sup>

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<sup>216</sup> HM Government, *Youth Crime Action Plan – One Year On*, July 2009, p69

<sup>217</sup> DCSF Press Release, *Government calls for tough family intervention to prevent youth crime*, 22 July 2009

<sup>218</sup> See for example "New powers allow takeover of failing youth offending teams" *Guardian*, 22 July 2009

<sup>219</sup> Inspection of Youth Offending, *Report on Youth Offending Work in Sefton*, June 2009, p3

<sup>220</sup> Inspection of Youth Offending, *Report on Youth Offending Work in Rochdale*, July 2009, p3

<sup>220</sup> "Probation inspectors say youth offending team doctored case records", *Guardian*, 12 August 2009

<sup>221</sup> See "Youth Offending Team accused of altering files", *Rochdale Observer*, 15 August 2009

<sup>222</sup> "Probation inspectors say youth offending team doctored case records", *Guardian*, 12 August 2009

The Bill's Impact assessment gives the following explanation for the Government's decision to introduce new powers:

In many cases where failings are identified during the inspection process the YJB's performance improvement team will work with YOT on their improvement plan. However, the YJB's improvement team are reliant on the YOT's, and other partners', willingness to engage. YOTs undertake wide ranging and multi faceted work supervising young people who have offended or who are at risk of offending. These are some of the most vulnerable young people in our society who may also pose a significant risk to the wider public. In light of concerns raised by HMIP about YOTs' effectiveness in dealing with risk of harm and safeguarding it is clear that YOT failings may well present a serious and significant risk of harm and under current arrangements Ministers might find themselves relatively powerless to act in cases of on-going underperformance or where serious weaknesses are identified through inspection or some other means (for example, in a specific case that comes to light). Consequently we believe it is important for Ministers to have powers to intervene where serious failings have been identified.

We believe that the current non statutory arrangements have significant weaknesses. To date there have only been a small number of cases where it has proved very difficult to engage the YOT in post inspection performance improvement plans. However, there have been a higher number of cases where the engagement process has taken considerable time which has been problematic and exposes the young people under YOT supervision and the public to greater degrees of risk and also has the potential to damage confidence in the youth justice system. Consequently, for the small number of YOTs who persistently fail to deliver on their statutory duties and who refuse to engage with central support the introduction of these new powers will provide us with a strengthened platform to intervene.

The other two direction making powers will compliment the duty to co-operate and will be used in more serious cases where failings are providing a clear and immediate risk to the safety of young people or the general public and urgent central intervention is required. There have been cases where significant YOT failings have been identified in serious incidents which have prompted formal reviews of YOT procedures. In one particular case failures were so serious that the YJB formally asked HMIP to conduct an urgent re-inspection. However, such a response has heavy financial implications for HMIP and is not the most effective way of securing longer term performance improvement. Under the new powers the Secretary of State will be able to direct the improvements he expects direct from the LA (eg setting targets or particular outcomes); and also, in the most extreme cases he can direct the LA (or LAs in those areas where YOTs belong to one or more LAs) on how it performs its statutory function to establish a YOT (e.g. changing the management structure).<sup>223</sup>

The Local Government Association reportedly criticised the Government's announcement that it would legislate on this issue, saying it had been made without consultation:

"Youth Offending Teams are doing crucial work preventing and dealing with crime carried out by children," said the LGA's Les Lawrence.

"Proposed changes to give intervention powers to national government are completely unnecessary. It is scaremongering to give the public the idea there is a problem

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<sup>223</sup> DCSF, *Children, Schools and Families Bill - Impact Assessment*, November 2004, p104.

without a proper explanation and where, as is acknowledged, the vast majority are actually doing excellent work in very difficult circumstances."<sup>224</sup>

### *The Bill*

**Clause 31** of the Bill would place a requirement on a YOT to co-operate with the Youth Justice Board over performance assessments, and a requirement on both Youth Offending Teams and Local Authorities to comply with directions and have regard to recommendations from the Secretary of State. In Wales, the Secretary of State would have to consult Welsh Ministers before giving a direction.

## **2 Part 2: Family proceedings**

The provisions in the Bill on family proceedings are the next stage of a Government commitment to remove the perception of secrecy which surrounds hearings in the family courts. The provisions follow two Government consultations in 2006<sup>225</sup> and 2007<sup>226</sup> on improving transparency in the family courts and the subsequent decision to amend the *Family Proceeding Rules 1991* to allow accredited media representatives to attend certain family proceedings held in private, subject to a power for the court to direct their exclusion.

### **Background**

The principle of open justice is enshrined in English law.<sup>227</sup> There are however a number of statutory exceptions which exist to restrict the publication of information in court proceedings in order to protect the identity of parties<sup>228</sup> or on the grounds of public morality.<sup>229</sup> Although reporting restrictions also exist for certain criminal and civil proceedings, the family courts in particular have been singled out for intense criticism by the media and family groups due to the additional perception of secrecy and lack of accountability which surrounds family cases heard in private.

This paper provides a brief background to the policy developments leading up to the Bill's provisions on family proceedings. A detailed background is available in the Library standard note, [Improving Transparency in the Family Courts](#).<sup>230</sup>

### *Privacy*

The family courts deal with matrimonial proceedings and proceedings relating to children including *Children Act 1989* matters (in particular inter-parental 'private law' disputes and 'public law' care proceedings), domestic violence and adoption applications. The *Family Proceedings Rules 1991* allow the hearing of proceedings involving children to be held "in chambers" (that is to be in private, in order to protect their identity)<sup>231</sup>. The rules require the court to keep a record of the oral evidence given at the hearing and to record, in writing, findings of fact and the reasons for its decision.<sup>232</sup>

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<sup>224</sup> "New powers allow takeover of failing youth offending teams" *Guardian*, 22 July 2009

<sup>225</sup> Department for Constitutional Affairs, [Confidence and confidentiality Improving transparency and privacy in family courts](#), Cm 6886, July 2006,

<sup>226</sup> Ministry of Justice, [Confidence & confidentiality: Openness in family courts – a new approach](#), Cm 7131, CP 10/07; June 2007,

<sup>227</sup> *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259.

<sup>228</sup> For example, *Children and Young Persons Act 1933*, sections 39 and 40

<sup>229</sup> *Judicial Proceedings (Regulation of Reports) Act 1926*, section 1

<sup>230</sup> SN/HA/4844

<sup>231</sup> SI 1991/1247, rule 4.16(7)

<sup>232</sup> *Family Proceedings Rules 1991*, rules 4.20-21



Both the European Court of Human Rights and the domestic courts have held that the provisions allowing family proceedings to be held in private do not infringe the *European Convention on Human Rights*.<sup>233</sup> Article 6(1) of the Convention provides:

In the determination of his civil rights and obligations ...

everyone is entitled to a fair and public hearing ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial ... where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

#### *Publication of information*

Section 97(2) of the *Children Act 1989* makes it a criminal offence to publish, to the public at large or any section of the public, any material which would identify, or which would be likely to identify, a child as being involved in family courts proceedings, unless a specific order has been made dispensing with this provision.

Furthermore, under section 12 of the *Administration of Justice Act 1960* it may also be a contempt of court to publish information relating to certain proceedings affecting children before a court sitting in private. Publication covered by section 12 is not confined to communication through the media but extends to private communications to individuals.<sup>234</sup>

#### **Criticism of the family courts**

Although the aim of the provisions requiring privacy is to protect the welfare of children, they have been subject to mounting criticism from family groups, Members of Parliament and the media in particular. Members of the press have argued that confidentiality rules prevent the highlighting of perceived injustices, with care proceedings and adoption cases specifically singled out for criticism. Fathers' rights groups have claimed that the practice of hearing child contact and residence cases in private also adds to the perception of court bias against fathers.

#### *The Constitutional Affairs Committee reports*

The issue of transparency in the family courts was examined in 2005, by the Constitutional Affairs Committee as part of its *Family Justice* inquiry.<sup>235</sup> The Committee recognised that the issue was a longstanding one and that there had been calls for change for a number of years.<sup>236</sup> Many of the witnesses who gave evidence to the Committee called for more open access to the family courts. The Committee noted that the judiciary proved very receptive to this criticism and that the witnesses representing the judiciary were unanimous in stating that something should be done to improve transparency.<sup>237</sup>

In response to the Committee's report, the Government recognised the growing body of concern about the lack of transparency in the family courts but spoke also of the need to ensure the continued protection of those involved in family cases and particularly children.<sup>238</sup>

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<sup>233</sup> *B v United Kingdom, P v United Kingdom* (2002) 34 EHRR 529, [2001] 2 FLR 261, *P v BW (Children Cases: Hearings in Public)* [2003] EWHC 1541 (Fam)

<sup>234</sup> *Administration of Justice Act 1960*, section 12(2),

<sup>235</sup> Constitutional Affairs Committee, *Family Justice: the operation of the family courts*, 2 March 2005, HC 116-I 2004–05, pp5-6

<sup>236</sup> *Ibid*, pp37-40

<sup>237</sup> *Ibid*, pp38-40

<sup>238</sup> *The Government Response to the Constitutional Affairs Select Committee Report: Family Justice: the operation of the family courts*, Cm 6507, March 2005,

The Constitutional Affairs Committee returned to the issue in a further report, *Family Justice: the operation of the family courts revisited*, which was published in June 2006.<sup>239</sup> The report followed an evidence session attended by members of the judiciary including Sir Mark Potter, the President of the Family Division, and members of the Justices' Clerks Society. The Committee noted that the views of the witnesses on how transparency could be improved were mixed.<sup>240</sup>

The Committee reiterated the point made in its previous report, that an obvious move to improve transparency would be to allow the press and public into the family court under appropriate reporting restrictions, subject to the judge's discretion to exclude the public.<sup>241</sup>

In its response to the Committee's follow-up report, the Government referred to its public consultation on increasing the transparency of the family justice system and said that it was in the process of considering the responses.<sup>242</sup>

### *Media coverage*

Unsurprisingly, media coverage of the issue has been particularly critical of the family courts system, given the inherent interest the press have in the lifting of reporting restrictions.

In 2008, *The Times* newspaper ran a [family justice campaign](#), led by columnist Camilla Cavendish, to open up the family courts. She pointed to the fact that the Court of Appeal hears family law cases in public with reporting restrictions. In a leading article, *The Times* said that it was "impossible to know the extent to which miscarriages of justice may be occurring, because the whole system is shrouded in secrecy":

Gagging orders on families and draconian reporting restrictions mean that very few cases come to light. Judges can choose to make their judgments public: but few do.

The authorities justify secrecy by arguing that the suffering of children caught in these fraught situations should not be made even worse by publicity. But secrecy also protects incompetence and wrongdoing. It should be quite possible to maintain the anonymity of children while also holding the professionals to account. Rape victims are anonymous in rape cases: that does not prevent police officers making statements in open court, nor the media reporting the evidence in full...

[The Times] believes that these are matters of pressing public interest. ... There is growing suspicion of the authorities which are meant to support families. The only way to quell those suspicions is to let the light in to the family courts.<sup>243</sup>

In a letter in response to the campaign, Sir Mark Potter, the President of the Family Division and Head of Family Justice, said that the present system was "far from perfect" but stressed that there was a distinction between privacy and secrecy:

Whatever the views of the media (or judiciary), the vast majority of parents and children in care cases want privacy, rather than the "washing of dirty linen" and the exploring of deeply emotional and personal issues in public.

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<sup>239</sup> Constitutional Affairs Committee, *Family Justice: the operation of the family courts revisited*, HC 1086; 11 June 2006

<sup>240</sup> *Ibid*, para 15

<sup>241</sup> *Ibid*, para 18

<sup>242</sup> *Response to the Constitutional Affairs Select Committee Report: Family Justice: the operation of the family courts revisited*, Cm 6971, November 2006,

<sup>243</sup> *A Conspiracy of Silence*, *The Times*, 7 July 2008

These considerations, and in particular the views of children old enough to give their opinion, have so far persuaded the Government that a better balance would be struck by publicising the judgments in all final hearings that result in the removal of children from their parents, with the parties remaining anonymous to protect the identity of the child.

Senior judges have welcomed this suggestion. Not only would it enable the court's reasoning to be understood; it is likely to justify decisions in the eyes of the wider public. It will certainly ease the frustration felt by many judges that they cannot respond to criticism in the media based on one-sided accounts by aggrieved parents...

Miscarriages of justice are a matter of deep concern to everyone, not least the judiciary. However, the idea that such cases would have been avoided by the presence of the press when the evidence was given is highly questionable. By what criterion would a reporter be more likely to spot faults or insufficiencies in the evidence undetected by the guardian, the advocates or the judge? I do, however, emphasise that the publicising of judgments, subject to anonymity, is a development to be commended and encouraged.<sup>244</sup>

### **Government consultations**

Against a background of increasing pressure to improve transparency in the family courts, including from the judiciary, the Government engaged in two public consultation exercises on the issue.

#### *Confidence and confidentiality: Improving transparency and privacy in family courts*

In its first consultation paper in 2006, [Confidence and confidentiality: Improving transparency and privacy in family courts](#), the Government noted that there was broad acceptance that change was either desirable or necessary but spoke of two principal areas of concern: first, the need for openness for the purpose of greater public scrutiny; and secondly, more openness in the form of more information, for those – adults and children alike – involved in proceedings. The Government made a number of proposals for change on which it sought views, including making changes to attendance and reporting restrictions consistent for all family proceedings.

In its [response to the consultation](#), the Government stated that there was wide support for increasing the amount of information available on how the family justice system works and for making this and other information available to those involved in proceedings.<sup>245</sup> There was also support for more openness but concerns had been raised about the related practicalities. Respondents had emphasised that any changes to the family court system must primarily take into consideration the needs, interests and welfare of children involved in proceedings. There were also reservations expressed about making family courts more open to others, especially the press. Some respondents had expressed a view that, even with extra reporting restrictions and stricter penalties for breaching those restrictions, the anonymity of parties involved in proceedings would be difficult to maintain. Stakeholders had discussed possible practical implications of the proposals including cost implications, possible delays to proceedings, security issues and lack of physical space in family courts.

Mixed views were expressed about allowing the media into family courts as of right: media organisations, amongst others, strongly supported these proposals but children, young people and organisations which protect, support and represent them strongly disagreed.

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<sup>244</sup> [Family justice is private - not secretive](#), *The Times*, 11 July 2008

<sup>245</sup> Department of Constitutional Affairs, Cm 7036, March 2007

The Government's conclusion was that it had considered the responses to the consultation very carefully and would be bringing forward proposals in due course.

*Confidence and confidentiality: Openness in family courts – a new approach*

A further consultation paper, *Confidence & confidentiality: Openness in family courts – a new approach* was published by the Ministry of Justice in June 2007.<sup>246</sup> The Government said that it had decided to take forward key proposals which had been widely welcomed by respondents to the previous consultation paper and that it was now consulting on further proposals. However, the Government had decided not to proceed with proposals to allow the media into family courts as of right; although the court would still have discretion to allow media attendance on application. Instead it wanted to focus on improving the openness of family courts not by the numbers or types of people going in to the courts, but by the amount and quality of information coming out of the courts.

In an accompanying press release, Lord Falconer of Thoroton, who was then Secretary of State for Justice and Lord Chancellor, announced:

Family courts make far-reaching decisions which permanently affect the lives of the people involved. Where children are involved, their welfare must be of paramount importance.

I have listened to the views of children and young people. The clear message was the media should not be given an automatic right to attend family courts as this could jeopardise children's rights to privacy and anonymity. We need instead a new approach which concentrates on improving the information coming out of family courts, rather than on who can go in.

So we will focus on providing better information about family proceedings to the public. In certain cases we will give more information to the people involved in proceedings, including to adults who were involved in family proceedings when they were children.<sup>247</sup>

*Family Justice in View*

The announcement in 2007, that the media would not be given automatic rights to attend family proceedings, was followed by a further Government announcement in December 2008 that the rules of court *would* be changed to allow the media to attend family proceedings. The Secretary of State for Justice and Lord Chancellor, Jack Straw, explained the change in policy:

...the debate about opening up the family courts has intensified in recent years, and two successive consultations have been carried out in 2006 and 2007. The results of those exercises were inconclusive, with strong representations, on the one hand in favour of improving transparency, and on the other in favour of maintaining the current position.

In recent months, the Parliamentary Under Secretary with responsibility for access to justice, my honourable friend the Member for Lewisham, East (Bridget Prentice), and I have been actively considering how we can shed more light on family courts whilst preserving the imperative of the welfare of the child.

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<sup>246</sup> Cm 7131, May 2009

<sup>247</sup> Ministry of Justice press notice, *Confidence and confidentiality: Openness in Family Courts - A new approach*, 20 June 2007

The government has now reached a conclusion. I am therefore announcing today that the rules will be changed to allow the media to attend family proceedings in all tiers of court.

The media will understandably be subject to reporting restrictions, similar to the youth courts. The courts will be able to relax or increase those restrictions in appropriate cases, and will have the power to exclude the media from specific proceedings altogether where the welfare of the child or the safety of the parties or witnesses requires it.

The overall effect of these changes will be fundamentally to increase the openness of family courts while protecting the privacy of children and vulnerable adults.<sup>248</sup>

The Minister also stated that the provision of written judgments would be piloted<sup>249</sup> and that the rules on the disclosure of information in family proceedings would be relaxed:<sup>250</sup>

Parties and legal representatives will be able to disclose more information for the purpose of advice and support, mediation, the investigation of a complaint, or—in an anonymised form—for training and research. In more cases, the person receiving the information will be able to disclose it to others, for the purposes for which it was originally disclosed to them, without seeking the permission of the court. To protect the anonymity of children after proceedings have concluded, the decision of the Court of Appeal in *Clayton v. Clayton* will be reversed. In principle, that decision removed the protection of the court once proceedings had been completed, although that protection could be reapplied in particular cases.

Although most of the proposals were to be brought about by changes to the rules of court, the Minister said that that others, including the reversal of the effect of the decision in *Clayton v Clayton*,<sup>251</sup> and the potential opening up of adoption proceedings would require primary legislation.

On the same day, the Government published a summary of responses to the 2007 consultation, along with details of the proposals for the media to attend family proceedings, in a consultation document, *Family Justice in View*.<sup>252</sup> The Government said:

Since we have decided to open up family proceedings to the media, we consider it essential to bring forward legislation that provides the necessary protection for children and families by preventing certain information from being published without the permission of the court. Children and families need to be confident that their privacy will be protected. **We will revise the law on reporting restrictions as soon as parliamentary time allows.**<sup>253</sup>

A summary of the way forward was included in the response document:

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<sup>248</sup> HC Deb 16 December 2009, cc980-1

<sup>249</sup> HC Deb 16 December 2009, c981

<sup>250</sup> *Ibid*

<sup>251</sup> [2006] EWCA Civ 878. The Court of Appeal held when making, what it believed to be a final order in proceedings under the *Children Act 1989*, that every tribunal should consider whether or not there was an outstanding welfare issue which needed to be addressed by a continuing order for anonymity. Otherwise it was likely that the penal consequences of section 97 of the *Children Act 1989* would cease to have any effect.

<sup>252</sup> Cm 7502

<sup>253</sup> *Ibid* p33

The way forward is based on three key principles. None of these principles can work alone to deliver more openness, while maintaining the protection of children and vulnerable adults. Underlying this is the need to provide those involved in proceedings with the support they need.

### 1. To Improve Confidence

We will:

- Change the law so that the media will be able to attend family proceedings in the courts, unless the court decides otherwise;
- Improve and increase the amount of public information accessible to all who want to know more about the way the courts work and how decisions are made.

And pilot:

- Placing anonymised judgments on-line from some typical family cases from local Family Proceedings Courts and County Courts, so that the public can see how decisions were reached;
- Giving the parties a copy of the judgment at the conclusion of their case so that they have a record of what was decided and why.

The pilot will also look at the practicalities of retaining judgments for children who are the subject of proceedings so they can access it when they are older, should they choose to do so.

### 2. To protect the interests of children and vulnerable adults

We will change the law so that:

The court may exclude the media in the interests of children or for the safety and protection of parties or witnesses;

There will be a consistent set of reporting restrictions to ensure children and families are protected; and that certain information cannot be published without the permission of the court;

The identity of children will be automatically protected beyond the conclusion of a case, unless the court decides otherwise.

### 3. To enable more access to support

Information will be shared more widely:

- Parties and legal representatives can disclose information for the purposes of advice and support, for mediation and the investigation of a complaint, or, in an anonymised format, for training and research.
- With the consent of the party involved, the person receiving it for the purposes of mediation and investigation of a complaint may onwardly disclose information.
- Information may also be onwardly disclosed, without the consent of the parties involved but in an anonymised format, for training and research.



These three planks of reform will be developed along different timelines to ensure that there is protection for children at all stages; and that confidence in the family courts may increase over time.<sup>254</sup>

### ***The new rules – the current provisions***

New rules came into force on 27 April 2009 and amended the *Family Proceedings Rules 1991*. The *Family Proceedings Courts (Miscellaneous Amendments) Rules 2009* deal with proceedings in Magistrates' Courts<sup>255</sup> and the *Family Proceedings (Amendment) (No. 2) Rules 2009*<sup>256</sup> deal with proceedings in the county courts and the High Court. These instruments make changes to the rules of court in relation to attendance, including by representatives of the media, during family proceedings, and in relation to the communication of information relating to proceedings concerning children. Similar principles now apply at all levels except placement and adoption proceedings<sup>257</sup> and financial dispute resolution hearings.

The rules enable duly 'accredited media representatives' to attend proceedings held in private, subject to a power for the court to direct their exclusion for all or a part of the proceedings for one of the specified reasons. Anyone entitled to be present at the hearing may request that media representatives be excluded and will not generally be required to give notice. The media are not allowed to identify children who may be involved in family proceedings and such proceedings must remain private.

An [Explanatory Memorandum](#) published with the new rules sets out how it is intended that the rules should implement the three inter-related policy principles set out in [Family Justice in View](#).

Media access addresses, in part, the first principle. The second principle, relating to protecting children and vulnerable adults, is dealt with in relation to media access by giving the courts discretion to exclude the media in certain circumstances. Currently the media have a right to attend family proceedings (except placement and adoption) in magistrates' courts. The new provisions aim to provide a consistent approach across all tiers of court.

The new provisions governing communication of information relating to proceedings deal in part with the third principle of more access to support. Following amendments to the current rules in 2005, it is clear that the existing provisions still cause confusion and make it hard for parties to seek the help they need. The new provisions remove many of the restrictions about to whom information can be communicated by parties, focusing more instead on the purpose for which it is communicated. There are also changes in relation to the extent to which further onward communication may be permitted.

Other aspects of the package of measures (reporting restrictions, and media attendance in relation to placement and adoption) require amendments to primary legislation....<sup>258</sup>

The President of the Family Division, Sir Mark Potter, issued two Practice Directions alongside the new rules to provide guidance to the courts on:

- the identification of accredited media representatives;

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<sup>254</sup> *Ibid* pp39-40

<sup>255</sup> [SI 2009/857](#)

<sup>256</sup> [SI 2009/858](#)

<sup>257</sup> The *Family Justice in View* paper seeks views on how adoption proceedings could be more open pp 34-35

- the handling of applications to exclude media representatives from the whole or part of a hearing and
- the exercise of the court's discretion to exclude media representatives whether upon the court's own motion or any such application.<sup>259</sup>

Reaction to the rule changes is set out in the Library standard note [Improving Transparency in the Family Courts](#).

The *Family Proceedings Rules* changes did not alter the reporting restrictions framework for family proceedings since that framework is set out in a number of statutes and would require primary legislation to change. The Minister explained why legislative change was necessary in a written Ministerial statement:

Primary legislation is needed to give effect to a clearer and more consistent reporting restriction framework applicable across all tiers of family courts, which will support the wider objectives of the transparency programme whilst respecting the rights to privacy of parties to proceedings, and children. This is because key existing restrictions on reporting are contained piecemeal in primary legislation, and the balanced, flexible and simplified framework which is our aim cannot be achieved through rule changes. We will do this as and when parliamentary time allows.<sup>260</sup>

### *Pilots*

In November 2009, the Parliamentary Under Secretary of State, Bridget Prentice, announced that proposals to pilot the increased provision of written judgments and place anonymised judgments and reasons in the public domain had begun:

The pilot will run from today in the magistrates courts in Leeds and in the magistrates court and county court in Cardiff, and it will run from the beginning of January at the magistrates court and county court in Wolverhampton.

The provision of the judgments and written reasons is being piloted in order that we can assess the benefits to parties to proceedings and the wider public, as well as the resource impacts on court service staff and the judiciary. The pilot is expected to run for 12 months, and evidence from the pilot will be evaluated to inform a decision on whether the arrangements should be implemented nationally.<sup>261</sup>

The pilots would follow different categories of family proceedings, including adoption applications, which were not affected by the changes to the *Family Proceedings Rules*.

### **The Bill**

The Bill would make provision for changes to the publication of information relating to family proceedings to be brought into effect in two stages.<sup>262</sup> Subject to passage of the Bill through Parliament, the first stage would bring Part 2 (clauses 32-40) into force while the pilots for written judgments, announced in *Family Justice in View*, are running. Further amending provisions in the Bill could come into force at stage two, following a review period of stage

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<sup>258</sup> Explanatory Memorandum, paras 7.2-7.4

<sup>259</sup> Attendance of Media Representatives at Hearings in Family Proceedings in the Family Proceedings Courts (magistrates' courts); Attendance of Media Representatives at Hearings in Family Proceedings in the county courts and the High Court; April 2009

<sup>260</sup> HC Deb 27 April 2009 c38WS

<sup>261</sup> HC Deb 2 November 2009, c32WS

<sup>262</sup> The Bill's provisions relating to family proceedings are set out in Part 2 (clause 32-41); Schedules 2 and 3; Part 2 of Schedule 4 and Part 2 of Schedule 5

one. The provisions would apply to England and Wales but not Scotland and Northern Ireland as family law is a devolved matter in those jurisdictions.

### ***Part 2 changes: the first stage***

Part 2 of the Bill would make changes to the law on the publication of information relating to 'relevant family proceedings' at which the public are not entitled to be present. Relevant family proceedings do not include matrimonial, civil partnership and certain probate matters. They would include family proceedings concerning children. However, the Lord Chancellor would, by statutory instrument, be able to amend the definition of 'relevant family proceedings' to bring other family proceedings within its ambit.<sup>263</sup>

#### *What information would be publishable?*

Unless a publication is specifically exempted by the Bill, the current default position that publication of information in private proceedings involving children amounts to contempt of court would remain,<sup>264</sup> but would also extend to cover an indefinite period after the proceedings cease.<sup>265</sup> The exempted publications are divided into three categories of information:

- authorised publications of court orders or judgments;
- authorised news publications; or
- authorised by rules of court.

#### *Authorised publications of court orders or judgments*

Authorised publications are defined in the Bill<sup>266</sup> as:

***Orders made in proceedings:*** the text or summary of the whole or part of an order, made by a court in proceedings, would be an authorised publication unless prohibited by the court. The default position is reversed for adoption<sup>267</sup> and parental order proceedings<sup>268</sup> where publication must be authorised by the court.

***Judgments:*** the text or summary of the whole or part of a court judgment, to the extent that it is permitted by the court.

The court would retain the discretion to prohibit or restrict publication on its own initiative or on the application of an interested party.<sup>269</sup> Under the current law, the court can authorise the publication of orders and judgments in private family proceedings so the Bill would reverse the default position (other than in adoption and parental order proceedings).

#### *Authorised news publications*

The Bill would introduce a new category of publication which could be published. The five conditions that would need to be met before a publication would come within the remit of an authorised news publication<sup>270</sup> are complicated and have a number of elements; two of the conditions have many exceptions. A summary of the conditions is set out below; a detailed

<sup>263</sup> Clause 32(6)

<sup>264</sup> Clause 32(2)

<sup>265</sup> Clause 32(4) which would reverse the effect of *Clayton v Clayton*

<sup>266</sup> Clause 33

<sup>267</sup> Proceedings under the *Adoption and Children Act 2002*

<sup>268</sup> Proceedings for parental orders are made under section 30 of the *Human Fertilisation and Embryology Act 1990* or the section 54 of the *Human Fertilisation and Embryology Act 2008*

<sup>269</sup> Clause 33(3). An system of appeals from decisions of the court under clause 33 is set out in clause 39

<sup>270</sup> Under clause 34

explanation of the conditions and exceptions is available in the [Explanatory Notes](#) to the Bill.<sup>271</sup>

**Condition 1:**

The information was obtained by an accredited news representative at proceedings attended under the rights conferred by the rules of court.

**Condition 2:**

The information was published by that accredited news representative; with the consent or agreement of that representative; or was obtained from another earlier authorised news publication.

**Condition 3:**

The information is **not**:

- i. identification information relating to a party involved in the proceedings;
- ii. identification information<sup>272</sup> relating to any other individual referred to in the proceedings;
- iii. sensitive personal information<sup>273</sup> relating to the proceedings;
- iv. restricted adoption or parental order information;
- v. restricted adoption or restricted parental order information.

The two exceptions to condition 3 are that the information:

- i. is permitted by the court under specified conditions.<sup>274</sup>
- ii. is identification information relating to a professional witness (see below) involved in the proceedings, but not restricted adoption information or restricted parental order information.<sup>275</sup>

**Condition 4:**

Where the publication is the text, or summary of:

- i. an order in adoption proceedings or parental order proceedings; or
- ii. a court judgment in relevant family proceedings,

permission has been given by the court authorising publication.

**Condition 5:**

The publication is not prohibited or restricted by the court.<sup>276</sup>

The court may permit the publication of information under condition 3<sup>277</sup> or restrict publication under condition 5<sup>278</sup> on its own initiative or on the application of any interested party.<sup>279</sup>

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<sup>271</sup> Bill 8-EN

<sup>272</sup> Defined in clause 41

<sup>273</sup> Defined in Schedule 3 of the Bill

<sup>274</sup> Set out in clause 35

<sup>275</sup> Clause 36 sets out when information is restricted adoption information or restricted parental order information.

<sup>276</sup> Under the requirements in clause 33 for authorised publications.

<sup>277</sup> The conditions for permitting publication are set out in clause 35

<sup>278</sup> The conditions for prohibiting or restricting publication are set out in clause 37

<sup>279</sup> Clause 35. A system of appeals from decisions of the court under clause 35 is set out in clause 39

*Authorised by rules of court*

Information on family proceedings authorised by rules of court is currently governed by Part XI of the *Family Proceedings Rules 1991* (as amended).

*Professional witnesses*

Although an exception to condition 3 would permit an authorised news publication to identify a professional witness, the exception would not extend to professionals involved with the family as part of their general work for example, social workers or GPs. The exception would apply to a 'professional witness' who is a person:

- involved in the proceedings to provide evidence in exchange for a fee; and
- whose instruction by a party to the proceedings has been authorised by the court<sup>280</sup>

The Bill would allow the Secretary of State, by statutory instrument, to amend the definition of 'professional witness' once the Act is in force.<sup>281</sup>

*Defences to contempt of court*

Unless a publication is exempted as authorised information by the Bill, it will remain a contempt of court to publish information relating family proceedings involving children. The Bill would provide two new defences in cases of publication of unauthorised information relating to relevant family proceedings:<sup>282</sup>

- (1) The defendant can prove that at the time of publication they did not know and had no reason to suspect that the information was information relating to proceedings
- (2) The publication of information would be an authorised news publication but for a failure to meet conditions 3 (identification information) and at the time of publication the defendant did not know or had no reason to suspect that the information was:
  - i. identification information relating to an individual in or referred to in the proceedings;
  - ii. sensitive personal information relating to the proceedings;
  - iii. restricted adoption or parental order information.

**Part 2 amending provisions: the second stage**

Schedule 2 of the Bill contains deferred provisions which would amend Part 2 if conditions in clause 40 (Power to alter treatment of sensitive information) are met. Along with related repeals in Schedule 5, the Schedule 2 provisions are referred to in the Bill as 'the Part 2 amending provisions' as they would amend what would by then be Part 2 of the *Children Schools and Families Act 2010*. This second stage of provisions would not be brought into effect unless the requirements in clause 40 were satisfied, namely that, the Lord Chancellor had carried out a review of Part 2 and laid the conclusions of that review in a report before Parliament. The review could not be carried out until at least 18 months after Part 2 was brought into force.

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<sup>280</sup> Clause 41

<sup>281</sup> Clause 41(3)

<sup>282</sup> Clause 38

If the conditions in clause 40 were met, Schedule 2 would alter the way 'sensitive personal information'<sup>283</sup> is treated by omitting all references to it in the legislation. So, for example, under clause 34 (authorised news publications), the effect would be that sensitive personal information alone would no longer be a category of information which would automatically be prohibited (unless the court permitted it). If however, the information was also identification information it would still be prohibited.

Schedule 2 would also make changes to the conditions under which the court could restrict publication under condition 5 of the authorised news publication conditions to require that the court consider the risk of infringement of the privacy of any person if publication was permitted. The Government has said that the change would "reflect the fact that information which is more sensitive will be more frequently in issue."<sup>284</sup> A memorandum from the Government sets out why a delayed commencement has been adopted in the Bill for sensitive personal information:

83. The preconditions for the exercise of this commencement power are stringent, to reflect the fact that the changes made by Schedule 2 are significant. The Lord Chancellor must first allow for a period of 18 months to elapse from commencement of clause 32 (for any purposes, so that if it is commenced in relation to certain kinds of court for limited purposes, for example, that will start the time period running), and can then (and only then) carry out a review of the operation of the reporting regime, and must then set out the conclusions of the review in a report and lay the report before Parliament. Only when all three preconditions have been fulfilled may the Lord Chancellor make the commencement order bringing the Part 2 amending provisions into force. The commencement order itself is subject to the affirmative resolution procedure. The Lord Chancellor does not have to carry out a review or lay a report before Parliament; but may not commence the Part 2 amending provisions without having done so.

84. These reforms are part of a longer journey towards greater transparency, not just within family courts but across government. Much of the sensitive personal information restricted in the initial stage of the reforms (the unamended version of Part 2) is essential for understanding the complexity of family cases and allowing the public to see how and why the courts come to their decisions. The Government believes that the media will be responsible when using this information and that the guarantee of anonymity afforded by the treatment of identification information (which will not change) protects the welfare of children and their families. The Government does, however, also understand the concerns surrounding privacy and will accordingly review the effect of the initial stage of the reforms before proceeding further. The approach adopted in the Bill allows for Parliament to debate, amend if necessary and approve the detail of both the starting point and the final destination by including the latter on the face of the Bill. It is for this reason that it operates by way of a commencement power, not a power to alter the treatment of the information as such: the actual alteration will have been agreed by Parliament on the face of the Bill.<sup>285</sup>

### **Reaction**

The issue of opening up the family courts has divided stakeholders and that trend continued with the Bill's proposals on family proceedings.

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<sup>283</sup> Defined in Schedule 3

<sup>284</sup> DCSF, *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform from the Department for Children, Schools and Families*

<sup>285</sup> *Ibid*



The judiciary were critical of provisions to identify professional witnesses. *The Times'* Family Justice campaign highlighted a number of cases in which the evidence of professional witnesses had subsequently been discredited.<sup>286</sup> However, the President of the Family Division was reported in a number of newspapers as describing the proposals as "undesirable":

Sir Mark Potter, the judge in charge of the family courts, warned the interim measures the government wanted to impose hastily were in danger of harming the vulnerable children the courts were trying to protect. The naming of social workers and other experts could result in their being more inhibited in what they say and make them more reluctant to participate in court proceedings.<sup>287</sup>

Sir Mark Potter's concerns were shared by the Magistrates' Association:

If experts fear that their reports will be subject to public scrutiny by those who are not qualified but may have their own opinions or standpoint there is a risk that experts will be more reluctant to be open and clear in their reporting and conclusions.<sup>288</sup>

In a briefing paper published by the University of Oxford's Department of Social Policy Work, the authors<sup>289</sup> also questioned the haste in which the proposals were being introduced, given that the Government was piloting proposals for written judgments. The briefing paper also asked why the Bill was so complex.<sup>290</sup>

Joshua Rozenberg, former legal journalist for the BBC and *The Telegraph* was, however, of the view that the provisions for the publication of authorised news publications did not go far enough and were too narrow to make a difference to the current reporting system. He believed that, rather than improving transparency, the Bill would restrict access to information and result in fewer reporters covering the family courts. In an article in the *Law Society Gazette*, he wrote:

First, the information must have been obtained by the accredited media representative by observing or listening to proceedings that he or she was permitted to attend. Gone is the option of asking the lawyers to fill you in if you missed something. You can't even ask another reporter.

Second, the information must initially be published either by the representative or by someone the representative works for. So law firms will not be able to publish their own accounts of their own cases.

Next, it must not be 'identification information' or 'sensitive personal information' or 'restricted adoption information' or 'restricted parental order information'. Some of these restrictions may be lifted by the court, but only if this would be in the public interest or the interests of a party. Specific permission will be needed to report court judgments, and the court can still restrict publication of any information at the request of an interested person.

The legislation may be reviewed after 18 months. But, in a final twist, it will reverse the burden of proof. If publishers want to avoid going to prison for contempt of court, it will be up to them to prove they 'did not know and had no reason to suspect' that the information they published was covered by these restrictions.

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<sup>286</sup> *Family justice: your word against theirs*, Times, 8 July 2008

<sup>287</sup> *Naming and shaming carries heavy price*. Guardian, 19 October 2009

<sup>288</sup> *Disclosure proposal 'threatens justice'* Telegraph, 16 November 2009

<sup>289</sup> Robert H George and Ceridwen Roberts, *Family Policy Briefing 6*

<sup>290</sup> *Ibid*

There must be an overwhelming temptation to write about The X Factor instead. Only a child could imagine that the family courts will deliver a renaissance in court reporting.<sup>291</sup>

### 3 Part 3 Miscellaneous

#### 3.1 Charitable status for Academy providers

Academies are independent publicly-funded schools providing education for pupils of different abilities who are wholly or mainly drawn from the area in which the school is situated.<sup>292</sup> They are established and managed by sponsors, and mostly funded by the Government. No fees are paid by parents. Academies have to operate within the law and in accordance with the funding agreement between the individual academy and the Secretary of State for Children, Schools and Families.<sup>293</sup>

The academies programme is a major part of the Government's strategy to improve educational standards particularly in disadvantaged communities and areas of poor educational performance. The idea is that academies will have innovative approaches to governance, management, teaching and the curriculum. The first academies opened in 2002, and developed out of the previous City Technology Colleges (established in the 1980s) and City Academy programmes. Statutory provisions relating to academies are contained in Part VII, Chapter IV of the *Education Act 1996*, as amended. The *Learning and Skills Act 2000* made provision for the creation of city academies, subsequently renamed academies.<sup>294</sup>

The Government is committed to establishing 400 academies. Currently there are 200 academies with a further 200 planned to open in the next two years. The Government has been considering how the programme can be most effectively supported, so that the necessary arrangements are made before the 400 target is reached. The *Apprenticeships, Skills, Children and Learning Act 2009* made provision for specified functions of the Secretary of State relating to academies to be carried out on the Secretary of State's behalf by the new Young People's Learning Agency for England (YPLA). The Government stressed that the change was in line with wider Government policy to separate the Secretary of State's decision-making role from front-line service delivery.

Currently each academy trust has to apply to the Charity Commission for charitable status. Charitable status confers such benefits as rates relief, corporation tax relief and gift aid. The Government wishes to maintain charitable status for academies and CTCs without their having to seek it individually. It also wants to avoid any suggestion that the charitable status of academies and CTCs is open to question. Foundation and voluntary schools' charitable status is in the process of being changed from excepted<sup>295</sup> to exempt, with the DCSF becoming the principal regulator, and the Government believes that it would be appropriate to adopt arrangements for academies and CTCs that are consistent with this.<sup>296</sup>

**Clause 42** provides for the legal entities that establish and operate academies, city technology colleges (CTCs) or city colleges for the technology of the arts (CCTAs) to be

<sup>291</sup> Joshua Rozenberg, *Why newspapers lack interest in court reporting*, Law Society Gazette, 26 November 2009

<sup>292</sup> *Education Act 1996*, section 482, as amended.

<sup>293</sup> Examples of individual funding agreements can be viewed via the DCSF's Freedom of Information site on <http://www.dcsf.gov.uk/foischeme/> by putting the word 'academies' in the search box

<sup>294</sup> under the *Education Act 2002*

<sup>295</sup> The Charities Commission website provides information on excepted and exempt charities and the role of principal regulators: *Question and answer page on the Charities Act 2006 – registration of excepted charities; Changes to the Regulation of Excepted and Exempt Charities*; and *CC23 - Exempt Charities*. Library research paper RP06/18 includes background information about the provisions relating to excepted and exempt charities in the *Charities Act 2006*

<sup>296</sup> *Impact Assessment*, pp106-8

charities and that they will be exempt from the requirement to register with the Charities Commission. Instead it is envisaged that the DCSF will become the principal regulator of academies and CTCs. The *Explanatory Notes* state that the YPLA may be asked to carry out the day-to-day functions associated with this on the Secretary of State's behalf.<sup>297</sup> There would be cost savings to the Charity Commission, and these are expected to be roughly the same as the additional costs to the DCSF; however savings are expected for academies and CTCs in administrative time.

### 3.2 Fees for pre-registration inspections of independent educational institutions

The *Education and Skills Act 2008* already sets out procedures for the registration of independent educational institutions. Inspections are carried out under section 99 of the Act, and section 111 empowers the Secretary of State to make regulations to require the payment of a fee in relation to an inspection of any registered independent educational institution that is not an academy, CTCs or CCTAs.<sup>298</sup>

**Clause 43** amends section 111 of the 2008 Act. The effect is to enable regulations to require the proprietor of any unregistered independent educational institution to pay a fee for an inspection carried out for the purposes of determining the institution's readiness for registration. Section 111(6) currently relates only to registered independent educational institutions. The *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform* on the Bill explains that the aim of the proposed change is to limit the burden of inspections of independent educational institutions on the public purse, and to encourage institutions to meet the required standards at the earliest opportunity so that they avoid incurring the cost of follow-up inspections. It is envisaged that the new regulations will require a £500 fee for each inspection connected with the institution's application to be included on the register.<sup>299</sup>

**Clauses 44 to 50** include standard provisions on the extent and commencement of the Bill, and Schedules 4 and 5 contain minor and consequential amendments to other legislation.

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<sup>297</sup> *Explanatory Notes*, paragraph 195

<sup>298</sup> *Education and Skills Act 2008*, section 111

<sup>299</sup> *Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform*, DCSF November 2009, p20

## Appendix 1 – Estimates of pupils who are educated at home

There are no routinely published official statistics on the number of children educated at home. Estimates vary considerably from 'at least 10,000'<sup>300</sup> to 170,000.<sup>301 302</sup> Home Education UK have quoted an estimate that 50,000 children were educated at home in the UK in 2005 and the annual growth rate was 10%.<sup>303</sup> This estimate is has been quoted widely in the press.

Research for the (then) DfES published in 2007 looked at home education in a small number of local authorities to investigate the feasibility of a national survey. It concluded that:

...it is not feasible to reliably ascertain the prevalence of home educated children through a national survey of LAs and home education organisations.

It added that improvements in data sharing about children may improve the ability of local authorities to monitor the number of home educated children and this should be assessed if the number of home educated children continued to rise.<sup>304</sup> The Badman report made the following comment about data on home educated children:<sup>305</sup>

It is a matter of some concern that despite a number of research studies and reports, it was not possible to identify with any degree of accuracy the number of children and young people currently educated at home.

It also made the following tentative estimates:<sup>306</sup>

Our own data concurred with the DfES (2007) report, that there are around 20,000 children and young people currently registered with local authorities. We know that to be an underestimate and agree it is likely to be double that figure, if not more, possibly up to 80,000 children. I have no doubt that the vast majority of these children and young people are safe and well but, that may not be true for all.

The nature of home education means that it is very difficult to quantify in the absence of any formal registration system. Many estimates are made by organisations involved in the promotion of home schooling. Higher estimates could potentially include pupils who receive *some* education at home, but still attend school part-time. An additional complicating factor is that there are some official statistics in this broad area that could be confused with home education. The DCSF has published the number of pupils educated at home under arrangements with their local authority. Such pupils include traveller children and asylum seekers at FE colleges and voluntary providers, but do not include those who are educated at home through parental choice.<sup>307</sup>

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<sup>300</sup> *When parents are a child's best teachers*, New Statesman 10 January 2005  
<http://www.newstatesman.com/200501100017>

<sup>301</sup> *Time to face the truth about home schooling*, The Independent 19 January 2006  
<http://www.independent.co.uk/news/education/education-news/tony-mooney-time-to-face-the-truth-about-home-schooling-523558.html>

<sup>302</sup> This uses an estimate produced by Education Otherwise an organisation that provides support and information for families of home educated children.  
<sup>303</sup> <http://www.home-education.org.uk/about.htm>

<sup>304</sup> Hopwood et al, *The Prevalence of Home Education in England: A Feasibility Study*, DfES research report 827 (2007)

<sup>305</sup> Graham Badman, *Report to the Secretary of State on the Review of Elective Home Education in England* (June 2009). Para 6.1

<sup>306</sup> *ibid.*

<sup>307</sup> HC Deb 27 October 2004 c1,266w

While estimates of total numbers vary by more than the factor of ten there is a more of a consensus that numbers are growing. Research for (then) DfES reported in 2007 that the number of home educated children known to local authorities may have increased three-fold since 1999. However, the authors stated that the reported rise could reflect better recording mechanisms and better information sharing. There was anecdotal evidence of an increase from local authorities, home education organisations and parents/carers.<sup>308</sup>

The Bill's Impact Assessment says that the number of home educated children in England is likely to be 25,000 to 30,000 and that it is unlikely to exceed 40,000. In its calculations of the costs and benefits it uses a range of 20,000 (the number known to local authorities) to 40,000 for most calculations, but also makes some on the 'very remote possibility' that it could be as high as 80,000.<sup>309</sup> A range of 20,000 to 80,000 is equivalent to 0.3-1.2% of the school age population.<sup>310</sup>

Little is known with any certainty about the characteristics of children who are educated at home. Some evidence suggests that they are more likely to be of secondary school age, with the transition from primary to secondary schooling a key point where children are taken out of the system. The same research showed similar proportions of boys and girls, relatively large numbers of Gypsy, Roma and Traveller children and children with statements of SEN.<sup>311</sup> The latter finding may simply be linked to why these children are known to their local authorities.

The large majority of research into outcomes for home educated children is based on very small numbers of families, often self selected. Even when larger sample sizes are used the results are of limited value without any attempt to adjust for underlying socio-economic differences between the children studied and national comparators. Some research has shown attainment levels considerably above national averages,<sup>312</sup> but no like-for-like comparison was made and without this or an indication of pupil characteristics or sample methods no general conclusions can be drawn.<sup>313</sup>

The Bill's Impact assessment quotes evidence from local authorities that 8% of the home educated children known to them receive no education and a further 12% were receiving an 'inadequate education'. These figures are applied to varying estimates of the total population of home educated pupils to calculated potential benefits from the Bill's measures on home education.<sup>314</sup> There is no way to be certain that these same rates of no/inadequate education apply equally to home educated children who are not known to local authorities.

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<sup>308</sup> DfES research report 827

<sup>309</sup> *Children, Schools and Families Bill. An Impact Assessment prepared the Department for Children, Schools and Families and the Ministry of Justice*

<sup>310</sup> *Schools, Pupils and Their Characteristics: January 2009, DCSF*

<sup>311</sup> DfES research report 827

<sup>312</sup> Rothermel P., *Home-Education: Aims, Practices and Outcomes*, Paper presented at the Annual Conference of the British Educational Research Association, University of Exeter, England, 12-14 September 2002

<sup>313</sup> This observation has also been made about other similar research, for instance this review of a book that found home education "an astonishingly efficient way to learn"  
<http://staff.lib.msu.edu/corby/reviews/posted/thomasa.htm>

<sup>314</sup> *Children, Schools and Families Bill. An Impact Assessment prepared the Department for Children, Schools and Families and the Ministry of Justice*

## Appendix 2: Financial impacts of the Bill

The Bill's [Impact Assessment](#)<sup>315</sup> gives details of the Department's best estimates of the financial costs and benefits of each measure included in the Bill. Background information about the basis for these estimates is also included. For some measures there is a wide degree of uncertainty about the financial impact. An estimate of the cost of virtually all measures is included in the Impact Assessment, but the majority do not give a figure or range for the monetised benefits. Various reasons are given for this including a lack of definitive evidence, benefits are non-economic or because they are 'not applicable'. In some instances the Impact Assessment sets out the unit benefits per pupil etc. and gives a figure for the number of pupils who would need to benefit from the measure for it to break even.

No total monetised costs or benefit calculation is made for the Bill as a whole. The policies with the largest estimated financial impact are listed below.

### Estimated present value of financial impacts over 10 years (£ million)

	Costs	Benefits
Home education (Register and monitor)	109-604	410-820
School Improvement Partners	325	293-360
Alternative provision	224	-
Reform primary curriculum	68-91	N/A
License to Practice	16-94	-
Accredited school groups	27-59	88

The measures with the greatest costs were more likely to have some information about their financial benefits. In most cases listed above the range of costs and benefits is substantial – up to six-fold and/or involving hundreds of millions of pounds. The basis for these assessments is set out in more detail in the Impact assessment. For some policies the large range reflects the uncertainty or unpredictability of number of beneficiaries. In other cases a central 'best' estimate is made and the range is the product of a sensitivity analysis where different assumptions (less likely but still possible) are included in the analysis.

The cost and benefit estimates for home education are the largest of any measure in the Bill. The size of the ranges reflects the state of knowledge about the number of home educated children. A range of 20,000 to 80,000 is used for the costs. Unit costs are assumed to be lower for the 20,000 pupils already known to local authorities as they are thought to need less ongoing monitoring. This means that if the number of home educated children was at the highest end of the range total costs would be almost six times the minimum level despite the four-fold increase in children. The calculations include estimates of the costs to local authorities of the registration scheme, monitoring by local authority offices, the use of additional School Attendance orders and administrative costs to schools of deregistration.

The benefits range quoted in the Impact Assessment's summary and in the table above uses the 'most likely' range of 20,000 to 40,000 home educated children. The detailed analysis puts the estimated benefits for 80,000 home educated pupils at £1.6 billion. All these figures

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<sup>315</sup> *Children, Schools and Families Bill. An Impact Assessment prepared the Department for Children, Schools and Families and the Ministry of Justice*



are based on higher earnings linked to assumptions about improvements in examination results. It is assumed that the estimated number of home educated children who received no education at all (8%) and inadequate education (20%) will reach national levels of attainment. Their additional lifetime earnings linked to this are said to be:<sup>316</sup>

No qualification → 5+ A*-C GCSEs	+£186,500
1-4 A*-C → 5+ A*-C GCSEs	+£88,500

Only the single financial figure above is included in the analysis. These figures are subject to a degree of uncertainty themselves and it is probable that they will change over time due to changes in the labour market and in pupil attainment. However, taking account of this uncertainty would only increase the estimated benefit range.

The estimates assume that results among the children affected by this measure will improve to reach the national average level. The largest impact is the one off effects on the 'stock' of home educated pupils. The present value calculations are based on the financial impact over 10 years, as with other data in the Impact Assessment.

The costs associated with School Improvement Partners (SIPs) are largely made up of increased SIP time in schools. The main bulk of the savings will be for local authorities as the Link Advisor role will no longer exist. Savings are also expected for Ofsted from fewer schools taken into special measures and the DCSF. This measure is the only one included in the table above to have a specific *net* benefit figure included in the impact assessment; the range is -£32 million to +£35 million.<sup>317</sup>

The central cost estimate for alternative provision (£224 million) included in the Impact Assessment's summary is based on the extra costs of providing full-time provision for 17,500 pupils. In the detail a range of £0 to £660 million is quoted using assumptions about the extra number of hours per day that each pupil would need. Assuming similar improvements in productivity as those for home education there would be a positive net benefit if more than 1,100 pupils achieved 5+ A\*-C GCSEs who would have otherwise had no qualifications.<sup>318</sup>

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<sup>316</sup> *ibid.* pp88-90

<sup>317</sup> *ibid.* pp52-55

<sup>318</sup> *ibid.* pp30-32