

The Education Bill

[Bill 8 of Session 1996/97]

Research Paper 96/101

6 November 1996



This paper has been prepared for the Second Reading debate on the Education Bill which is due in the House of Commons on 11 November 1996. It describes the background to, and provisions of, the Bill. The provisions extend to England and Wales only, except for some provisions in Part VII (relating to the Qualifications and National Curriculum Authority) which also extend to Northern Ireland.

Christine Gillie, Gillian Allen
Social Policy Section

House of Commons Library

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

CONTENTS

		Page
I	Relaxation of Controls on Changes Affecting Character or Premises of Schools	6
II	Establishment etc. of Grant-Maintained Schools and Functions of Funding Authority	21
III	Assisted Places Scheme	25
IV	School Discipline	28
V	School Admissions: Parental Preferences	44
VI	Baseline Assessments and Performance Targets	51
VII	Supervision of Curriculum for Schools and External Qualifications [QNCA]	60
VIII	Inspection of Local Education Authorities and School Inspections	67
IX	Careers Education and Guidance	71
X	Miscellaneous and General	74

Introduction and Summary

The main provisions in the Bill seek to give schools greater powers to select pupils by ability or aptitude; to enable grant-maintained schools to expand to introduce nurseries, sixth-forms, and boarding facilities without publishing statutory proposals to introduce new provisions relating to school discipline (including changes to allow schools to detain pupils without parental consent, refuse to admit pupils who have been excluded from two or more schools, and allowing home-school agreements to be used as an admission criterion). It also provides for the baseline assessment of children beginning primary school, target setting by schools, an extension of OFSTED's powers in order to inspect LEAs, the establishment of a new Qualifications and National Curriculum Authority, and for a statutory framework for careers education and guidance in schools and further education colleges. Other provisions include powers relating to the establishment of management committees for Pupil Referral Units, and the extension of the rules on the barring of teachers to agency teachers and others.

Many of the proposals were contained in the June 1996 White Paper, *Self-Government for Schools*; others were set out in Consultation Papers or statements which are referred to in this paper. Much of the Bill seeks to amend the *Education Act 1996* and the *School Inspections Act 1996* which were consolidation measures. In this paper references are made to the earlier legislation but the detailed citation to consolidated legislation is always to the 1996 Acts.

I Relaxation of Controls on Changes Affecting Character or Premises of Schools

Background

Selection

From 1944 until the 1990s, selection in the maintained sector meant selection for a grammar school. The only variation on this was selection for the very small number for technical high schools which existed following the 1944 Act.¹ The 15 City Technology Colleges, established from 1988 onwards, select on the basis of technological aptitude but are themselves technically independent schools.

At present local education authorities [LEAs] have a duty, originally set out in the 1944 Act, to provide secondary education and secondary schools.² In certain circumstances, depending on the number of grant-maintained schools in the authority, the duty is shared with or transferred to the Funding Agency for Schools.³ The type of schools to be provided is a matter for LEAs and governing bodies. Although the White Paper on Educational Reconstruction, which foreshadowed the *1944 Education Act*, referred to three types of school - grammar, modern and technical, these distinctions were not enshrined in the legislation.

In 1965 the Labour Government issued a Department of Education and Science Circular 10/65 requesting all LEAs to submit plans for comprehensive reorganisation. This policy was replaced by the Conservatives with Circular 10/70 permitting different types of school. Circular 4/74 reaffirmed Labour's policy and the *1976 Education Act* gave the Secretary of State the power to require any LEA to submit proposals for comprehensive organisation. The *1979 Education Act* repealed these provisions of the *1976 Act* and thus restored the position whereby LEAs could make their own decisions on types of secondary school, subject to the Secretary of State's approval being required for a significant change of character.

¹ By 1952 there were 392 secondary technical schools as compared with 1,189 grammar schools. *Education and Policy in England in the Twentieth century*, P Gordon, R Aldrich and D Dean, 1991, p.182

² *Education Act 1996, ss 13 and 14*

³ *Education Act 1996, s. 27*

In moving the Second Reading of the Bill which became the *Education Act 1979*, the then Education Secretary Mark Carlisle said:

"The Bill is very short. It has two clauses, and its scope is limited.

Its simple and sole purpose is to remove the compulsion placed on local authorities and governors of voluntary schools by the 1976 Act to reorganise their secondary schools on comprehensive lines. It does not force the reintroduction of selection. It does not reflect any Government hostility towards comprehensive schools. The Bill in no way prevents authorities in the future from submitting proposals for the reorganisation of their schools on comprehensive lines where this accords with the wishes of local people.

What the Bill does is to restore the position to what it was under the 1944 Education Act. It removes secondary re-organisation from the field of compulsion and places it where it belongs-in the hands of local people. It is our belief that local education authorities and local people - not central Government - are best placed to determine the most suitable form of secondary school organisation in their area." ⁴

From 1979 the education legislation of the Government has reflected a commitment to choice although the focus has moved from "LEAs and local people" to parents.

The right to select on ability or aptitude was included in the *Education Act 1980* as an acceptable reason for an LEA or a governing body of a county or voluntary school not complying with parental preference for a school place.⁵ Similar provisions were made for grant-maintained schools.⁶

DFE Circular 6/93 *Admissions to Maintained Schools* introduced the idea of an element of selection which did not imply a significant change of character requiring the publication of statutory proposals. Support was given for the selection of "about 10%" of pupils on the basis of ability or aptitude in music, art, drama, sport and technology.⁷ The circular referred to the

⁴ HC Deb 19 June 1979 cc 1120-1121

⁵ *Education Act 1996*, s. 411

⁶ *Education (GM Schools) Initial Governing Instrument) Regulations 1993*, SI 1993/3102, Regulation 2 and Schedule 2. Also *Model Articles for GM Schools*

⁷ paras 44-51

Research Paper 96/101

Government's policy on specialisation as set out in the White Paper, *Choice and Diversity*,⁸ and quoted from it "A measure of specialisation ... does not mean selection, which implies choice by the school; instead it means increased choice for parents and pupils."⁹ The White Paper stressed a clear distinction between specialisation and selection¹⁰ and asserted.

"The Government wants to ensure that there are no tiers of schools within the maintained system but rather parity of esteem between different schools, in order to offer parents a wealth of choice."¹¹

Circular 6/93 was superseded by DFEE Circular 6/96 *Admissions to Maintained Schools* issued on the same day as the White Paper, *Self-Government for Schools*.¹² This much briefer circular suggested that selection of up to 15% of the intake on "the basis of ability in particular subjects or general ability" was "likely to be possible" without the need to publish proposals.¹³

The 1996 circular followed a consultation period earlier in the year. According to the DFEE summary of the responses to the consultation paper:

124 respondents commented on the Secretary of State's view, set out in the draft circular, that admission authorities could select up to 15% of pupils without needing to publish statutory proposals. 15 welcomed the Secretary of State's new view. Other responses included opposition to selection in principle and concern about the impact on the provision of school places locally.

However Ministers decided to proceed broadly as planned.¹⁴ Questions were raised over the possibility of a challenge in the courts to the guidance on partial selection.¹⁵

⁸ Cm 2021

⁹ Department for Education Circular 6/93, para. 44, Cm 202 para. 10.2

¹⁰ para. 1.48

¹¹ para. 1.49

¹² Cm 3315

¹³ Annex B para. 4

¹⁴ Review of Circular 6/93: Results of consultation paper, Library Deposit 3282(3s) and Schools (Admissions Policies), HC Deb 20 March 1996, c. 224W, which lists the responses in favour of the proposal.

¹⁵ *Diversity of Schools*, Headteacher's Bulletin, Croner's, R M Morris, 15 March 1995 and ACE Bulletin 72, August 1996, p.3

Self-Government for Schools Cm 3315

In relation to selection, the White Paper proposed:

- a. To encourage existing schools to put forward proposals to become grammar schools, with governing bodies having a right of appeal where their LEA opposes the proposal; to encourage promoters of new GM grammar schools; and, as a matter of general policy, to look favourably on proposals for change which increase diversity in the local pattern of schools.
- b. To give the Funding Agency for Schools the power, wherever a new school is needed to meet a shortage of school places, to submit proposals for a new GM school - including a new GM grammar school - alongside any proposals from the LEA.
- c. To give all GM schools the power, if they wish, to select up to 50% of their pupils by general ability, or by ability or aptitude in particular subjects, without needing central approval.
- d. To give LEA Technology and Language Colleges the power, if they wish, to select up to 30% of their pupils by ability or aptitude in their specialist subjects without needing central approval, with governing bodies having a right of appeal where their LEA opposes using this power.
- e. To give other LEA schools the power, if they wish, to select up to 20% of their pupils by ability or aptitude without needing central approval.
- f. To require all school governing bodies to consider each year, in consultation with parents, whether to introduce an element of selection as a means of adding to the diversity of local schooling.¹⁶

The argument was that greater diversity would help raise standards as it could be difficult for a single school to respond effectively to the full range of educational needs in the local community. It would also respond to what parents wanted.¹⁷ It was noted that a change at one school could have implications for other local schools and conceivably for the overall match between the number of children and the school places available.¹⁸

¹⁶ Cm 3315, Summary, Para. 9

¹⁷ Chapter 4, para. 6

¹⁸ Chapter 4, para. 22

The current debate on selection

Since the beginning of the year an intense debate on selection has been conducted in the press and in weightier publications. It is not easy to summarize but it is worth noting that it does not divide completely along party political lines. Will Hutton and George Walden both call for selection on ability in some form to bring those using independent schools back into the state sector.¹⁹ David Hargreaves, Professor of Education at Cambridge, has argued that diversity and choice can be defended from a left as well as a right libertarian position.²⁰ Stephen Pollard, Research Director of the Fabian Society, has argued that selection is not only necessary but desirable.²¹ Lord Skidelsky, Professor of Political Economy at Warwick University and a former curriculum adviser to the Government, is reported as writing in a recent paper for Politeia that the switch from grammar and secondary modern schools to comprehensives was irreversible.²²

Most educational organisations have been opposed to selection e.g. Secondary Heads Association [SHA], the National Association of Head Teachers [NAHT], the Society of Education Officers.²³

Research on the achievements of selective and non-selective education is inconclusive. Robert Audley, emeritus professor of psychology at University College, London, commented in a book review in 1995 that he was left hankering for a scientific analysis of the role of selection in education free of political polemics.²⁴ The National Commission on Education briefing, which summarised the research of the 1980s, concluded that any differences in the overall examination effectiveness of the two systems were small. However, once comprehensives had become established they appeared to reduce social class differences in attainment.²⁵ A recent publication, *Thirty Years On: Is Comprehensive Education Alive and Well or Struggling to Survive?*²⁶ reviews the present of comprehensive education and attitudes to it, together with recommendations for improving the system. Their view is that since Britain has effectively and irrevocably changed to a comprehensive system, it is time to concentrate on comprehensive excellence.

¹⁹ Will Hutton, *The State we're in*, 1995 and subsequent articles and George Walden, *We Should Know Better: solving the education crisis*, 1996

²⁰ *Oxford Review of Education*, Volume 22, No. 2, June 1996

²¹ Social Market Foundation, *Schools, Selection and the Left*, No. 16, October 1995

²² "Professor dismisses Major's grammar vision", *Times*, 16 September 1996

²³ "Head's 'nightmare' vision of selection"; "Proposals put decade's gains at risk, say directors", *TES*, 11 October 1996

²⁴ *A select gathering: a review of Measuring the Mind: Education and Psychology in England 1860-1990*, Adrian Wooldridge, *THES*, 1 September 1995

²⁵ Geoffrey Walford, National Commission on Education Briefing, *Selection for Secondary School*, No. 7, October 1992

²⁶ Caroline Benn and Clyde Chitty, 1996, p.462

Selective schools

There are 163 grammar schools in England, representing less than 5% of state secondary schools, and none in Wales.²⁷ The table below shows their distribution at January 1995.

Grammar schools and full-time pupils

LEAs in England: January 1995

	Number of grammar schools	Total number of maintained secondary schools	Grammar school pupils	Grammar school pupils as % of all maintained secondary pupils
Barnet	2	21	1,273	7%
Bexley	3	16	3,071	21%
Bromley	2	17	1,427	8%
Enfield	1	16	1,303	7%
Kingston-upon-Thames	2	10	1,805	23%
Redbridge	2	15	1,459	9%
Sutton	4	14	3,166	27%
Birmingham	8	79	6,137	9%
Walsall	2	20	1,307	7%
Wolverhampton	1	20	624	4%
Wirral	4	21	4,265	20%
Trafford	5	16	4,559	37%
Calderdale	2	15	1,539	11%
Kirklees	1	32	736	3%
Avon	1	60	468	1%
Berkshire	6	59	4,054	9%
Buckinghamshire	13	44	12,026	32%
Devon	7	63	5,253	9%
Dorset	4	56	3,566	8%
Essex	8	103	6,208	6%
Gloucestershire	7	42	4,716	14%
Kent	40	128	31,452	31%
Lancashire	4	106	3,622	4%
Lincolnshire	15	63	10,589	27%
North Yorkshire	4	59	3,593	8%
Shropshire	2	35	835	3%
Warwickshire	5	37	2,639	10%
Wiltshire	2	44	1,534	4%
England	157	1,211	123,226	12%

Source: DFEE

Parliamentary Answers on 11 June 1996 listed schools which had applied to become wholly or partly selective since 1989 and those which selected more than 10% and up to 10% of their pupils. Five schools (3 GM, 1 voluntary aided and 1 county) had been approved to become wholly selective and 15 (all grant-maintained) had been approved to become partly selective.

²⁷ HC Deb 20 March 1996 c.367 and 29 February 1996 cc 715-6W

Research Paper 96/101

Since the PQ the DFEE have informed us of 2 more approvals for partial selection, with one under consideration. There were 163 wholly selective schools and 41 selecting up to 10%.²⁸

In the rest of the UK, Northern Ireland has a wholly selective system, while there are no selective maintained schools in Scotland. In Europe only 3 EU/EEA states operate selective entry to secondary school at age 11 or 12; Belgium, Germany and the Netherlands. All other states provide comprehensive systems of lower education, although at upper secondary level - age 15+ - vocational and general education is offered in many different types of schools.²⁹

Grant-maintained schools

The grant-maintained [GM] sector was established by the *Education Reform Act 1988* and the legislation was refined and re-enacted in the *Education Act 1993* which also set up the Funding Agency for Schools [FAS]. The legislation now in force is in Part III of the *Education Act 1996*.³⁰ The governing bodies of GM schools are required to publish proposals for any significant enlargement of the premises or significant change of character.³¹ The procedures are very much on the lines of those to be followed by the governors of voluntary aided schools. An attempt in the Committee Stage of the 1993 Act to extend the statutory procedure to 10% selection failed.³² The *Nursery Education and Grant-Maintained Schools Act 1996* gives the governing body of a grant-maintained school the power to borrow and charge their land or other property.

The consultation on GM school admission arrangements in January 1996 led to a decision to remove the general requirement for GM schools to seek the approval of the Secretary of State before making changes to their admission arrangements. Because of potential financial implications approval was still to be required before a GM primary school could extend its age range to three year olds.³³

Self-Government for Schools Cm 3315

The White Paper proposed a range of new measures extending local management for LEA schools and increasing the independence of GM schools.³⁴ Most of the local management reforms do not require legislation and none of them appears in the Bill. Nor does the Bill

²⁸ HC Deb 11 June 1996 cc 129-134W

²⁹ HC Deb 12 July 1995 c. 670W

³⁰ For background see Library Reference Sheets Nos. 87/6 and 92/10

³¹ *Education Act 1996*, ss 259-266

³² Education Bill Standing Committee E, 21 January 1993, cc 1015-1030

³³ as reference 14

³⁴ Chapters 2-3

make the changes to the legal responsibilities of LEAs which would allow GM schools to take on services, such as home-school transport, currently provided by LEAs.³⁵ The changes to GM school governance, proposed by the Nolan Committee³⁶ and accepted in part by the Government, only figure in the Bill in relation to the reduction of the term of office of sponsor governors.³⁷

The other proposals in the White Paper which are in the Bill are measures:³⁸

To reinforce safeguards against abuse in GM ballot campaigns by providing, if schools wish, a neutral "ballot observer" to monitor campaigns.

To give GM schools more power to change what they do in response to local needs without having to get central approval. In future, GM schools would not normally need approval to open nursery classes or sixth-forms, to increase the number of places they have by up to 50%, or to offer boarding places. Existing funding controls would remain, and schools would have to consult locally before deciding to go ahead.

The relaxation of control on nurseries is set in the context of the Government's commitment to expand nursery education through the voucher scheme. Governors are required to consider capital and recurrent costs. Four year olds would be funded through voucher income and applications could be made to FAS for three year olds. In some cases, this would be recouped from the LEA.³⁹

The extension of sixth form provision would involve governors in similar considerations of cost. Start-up running costs, normally paid by FAS, would remain cash-limited, suggesting, as with the nurseries, that there may be some guidance from FAS on the decisions.⁴⁰

Boarding education in both GM and LEA schools is encouraged by this White Paper, although it is admitted that demand for state boarding places has been falling in recent years. Consideration is to be given to enabling schools to accept non EU pupils and charge tuition as well as boarding fees; and to giving additional grant to GM boarding schools in respect of the VAT they are liable for on boarding provision.⁴¹

The White Paper cites National Audit Office [NAO] reports that GM schools are generally well managed and states that they have demonstrated that they can be relied on to act

³⁵ Chapter 3, paras. 24-36

³⁶ *Second Report of the Committee on Standards in Public Life, chaired by Lord Nolan: Local Public Spending Bodies*, May 1996, Cm 3270

³⁷ Chapter 3, paras 37-46

³⁸ op cit, Summary, para. 6

³⁹ Chapter 3, paras 10 to 11

⁴⁰ Chapter 3, paras 12-14

⁴¹ Chapter 3, para. 16 and Chapter 4, paras 33 and 34

Research Paper 96/101

reasonably and responsibly in deciding how to develop what they offer.⁴² The most recent NAO report on GM schools⁴³ confirms that GM schools are achieving value for money from their provision of services but found a general lack of clarity in strategic plans, many of which were not explicitly linked to financial forecasts or did not address some of the key initiatives.⁴⁴

There was also a proposal in the White Paper to give the Secretary of State "a last resort power" to appoint a body on the lines of an Education Association to take over the management of a failing GM school and resolve its problems.⁴⁵ Although this power is not in the Bill, there is an extension of FAS's powers to provide advice and assistance.⁴⁶

The relaxation of the controls on selection in GM schools have been covered in the previous section.⁴⁷

There are currently 1,133 GM schools approved in England, educating 3% of primary and 19% of secondary pupils.⁴⁸ There are 16 in Wales.⁴⁹

The Bill: Clauses 1-13, Schedules 1 and 2

Chapter 1 County and voluntary schools

Clause 1 with **Schedule 1** amends the current legislative controls for county and voluntary schools on changes of character relating to the selection of pupils by ability or aptitude. **Clause 1** adds sections to the 1996 Act after the relevant sections requiring statutory proposals for change of character⁵⁰ exempting the proposals for partial selection from that requirement. **Schedule 1** sets out the relevant thresholds: 20 per cent for county and voluntary schools other than specialist schools and 30 per cent for specialist schools.⁵¹ For a specialist school (currently Technology and Language Colleges, and in the future, Sports

⁴² Cm 3315, Chapter 3, paras 3 and 9

⁴³ *Good Stewardship: National Audit Office Examinations of Value for Money at Grant-Maintained Schools 1995-96*, HC 697 1995-96

⁴⁴ op. cit. Summary and conclusions, pp 1-10

⁴⁵ Chapter 3, paras 47 and 48

⁴⁶ Clause 18

⁴⁷ Chapter 4, para. 17

⁴⁸ Department for Education and Employment press notice, 9 October 1996

⁴⁹ HC Deb 30 October 1996 cc 148-9W

⁵⁰ ss 35 and 31

⁵¹ para. 2(6)

and Arts Colleges) the right to select 30%, without the publication procedure, is only acceptable if at least 10% are admitted by reference to ability or aptitude in the subject (s) in which the school specializes. This holds, *pro rata*, for any selective intake above 20%.⁵²

The schedule applies to primary and secondary schools but not to nursery pupils.⁵³ This reference is to be read with *Section 424* of the *1996 Act* which does not count four year olds admitted to a reception class as admitted for nursery education. Primary schools could therefore opt for partial selection for reception. It also allows selection, within the limits, for pupils over compulsory school age i.e. for sixth form education, without the publication procedure, although not if that means extending the age range of the school i.e. county and voluntary 11-16 schools must follow the current statutory procedure, now referred to as "the publication procedure".⁵⁴

The governing bodies of county specialist schools have a right of appeal to the Secretary of State if a school wants to use the new power to select pupils and the LEA does not respond constructively.⁵⁵ On receiving a appeal from a specialist school the Secretary of State can either direct the LEA to comply; or, after consultation with the governing body, direct the LEA to make some variation in admissions; or reject the request to select.

In a variation, rather than a relaxation, of controls on changes relating to selective admissions, the governing bodies of county schools which want to become grammar schools are given the right to publish the necessary statutory proposals themselves if the LEA does not respond constructively to such a request.⁵⁶ They are required to follow the procedure for voluntary schools.⁵⁷ If the LEA have published their own proposals, they will require the approval of the Secretary of State who will consider both sets together.⁵⁸ This change appears to allow a county schools a power, in this instance, to act as an admissions authority.

The LEA or voluntary school governing body, as admissions authority, is required to "carry out such consultation (if any) as appears to them to be appropriate" before introducing any of the permitted partial selections.⁵⁹ No reference is made to the existing statutory requirement for consultation⁶⁰ or any requirement to consult Church authorities,⁶¹ although the White Paper suggests that local consultation is a legal requirement for LEA or school.⁶² The Schedule also allows for the designation by order, but not by statutory instrument,⁶³ of

⁵² para. 2(7)

⁵³ para. 1(3)

⁵⁴ para . and para. 1(1)

⁵⁵ para. 4

⁵⁶ para. 5

⁵⁷ *Education Act 1996*, ss 41-43 and 45

⁵⁸ para. 5

⁵⁹ para. 6

⁶⁰ *Education Act 1996*, s. 412

⁶¹ Diocesan Boards of Education Measure 1991, s.3

⁶² Cm 3315, Chapter 4, para. 22

⁶³ see Schedule 9, para. 45

Research Paper 96/101

specialist county or voluntary schools. This designation will be necessary before any of these schools can adopt partial selection to the permitted level.

Clause 2 places a duty on the governing bodies of LEA secondary schools (unless the school is already wholly selective) to consider annually whether to introduce or increase selection in their admission arrangements and to record their decision(s) in their annual report.

This requirement is similar to the duty to consider holding a ballot on grant-maintained status.⁶⁴ In the White Paper, this decision was to be taken "in consultation with parents" although whether present or prospective parents was not stated.⁶⁵ This requirement is not in the Bill although Schedule 1 requires consultation "as appears to be appropriate" on proposals which do not need to be published.⁶⁶ For voluntary schools or county schools wishing to become grammar schools, there will be action to be taken following a decision to select. In the case of county schools wishing to opt for partial selection, it will be for the LEA to decide whether to act on the governing body's decision.

Chapter II Grant-maintained schools

Clause 3 enables GM schools, other than those requiring special measures, to expand their capacity to accommodate pupils by up to 50% or 30 pupils (whichever is the greater) without having to publish proposals and have them approved.

Clause 4 enables GM schools to select pupils up to certain thresholds without having to publish proposals and have them approved. The limits are:

- 50% for secondary schools
- 20% for primary schools and secondary schools requiring special measures to be taken.

Schools requiring special measures are those where an OFSTED inspection has revealed serious problems i.e. failing schools.⁶⁷ The other arrangements for implementing partial selection parallel those set out in Schedule 1 for LEA schools.

⁶⁴ *Education Act 1996*, s. 185

⁶⁵ Cm 3315, Summary, para. 9f

⁶⁶ Schedule 1, para. 6

⁶⁷ *School Inspections Act 1996*, ss 16-19 and 26-30

Clause 5 enables GM schools, except those requiring special measures, to add or remove nursery, sixth form or boarding provision without having to seek central approval. However the provisions of the 1993 Act that changes to part-time education for those over 16, part-time nursery education where full-time nursery education is provided or full-time education for those over 18 do not constitute a change of character even for schools requiring special measures is re-enacted.

Clause 6 requires consultation on the changes allowed as a result of Clauses 3-5. The phrase, as in Schedule 1, is "carry out such consultation (if any) as appears to them to be appropriate."⁶⁸ Again, as in Schedule 1, there is the requirement to have regard to any guidance issued by the Secretary of State. There are tighter requirements on consultation when there is a proposal to axe sixth form, nursery or boarding provision. In that case, every parent, the funding authority, the LEA and, if relevant, the appropriate further education funding council must be given notice. The governors must also notify the funding authority, the LEA and, if relevant, the appropriate further education funding council of any decision.

Clause 7 contains provisions that mean that GM schools identified as requiring special measures may need the consent of the Secretary of State for any enlargement of the premises of the school or change in its character. The tighter controls may be set out in regulations.

Clause 8 places the same duty on GM governing bodies as that imposed by Clause 2 in the LEA sector, namely to consider annually the introduction of selection.

Clause 9 sets out new procedures for altering the approved admission numbers for GM schools. It requires admission numbers to be set for any new relevant age group i.e. nursery or sixth form. GM schools may increase approved admission numbers but can only reduce the number for pupils of compulsory school age if the reduction is approved by the funding agency. Previously approval of any alteration of the admission number was a responsibility of the Secretary of State except where the funding agency held the responsibility for providing sufficient school places.⁶⁹

Clause 10 places a duty on GM school to keep their approved admission numbers under review, reflecting their greater power to enlarge their capacity.⁷⁰

⁶⁸ Clause 6, s. 265 C(2)

⁶⁹ *Education Act 1996*, s.427

⁷⁰ Clause 3

Chapter III: Supplementary and Connected Provisions

Clause 11 enables the Secretary of State to make regulations requiring single-sex schools to seek approval for changes to the school's character even where the publication would not apply, in cases where the LEA, FAS, or the Further Education Funding Council object to those changes on grounds relating to the Sex Discrimination Act. The regulations would enable the Secretary of State to refuse consent to the proposals if any such objection was well founded.⁷¹

Clause 12 gives the Secretary of State a reserve power to designate an area (not necessarily an LEA area) in which the ability of all schools to use partial selection would be limited to 20% of their intake.

The White Paper had raised the question of changes in admissions in individual schools causing problems in the number of places available. It had hoped that 'sensible co-operation' between admission authorities and FAS where appropriate; local consultation; and the two reserve powers of the 1993 Act:

- the power of the LEA, or FAS in some areas, to direct admission;
- the power of the Secretary of State to impose co-ordinated admission arrangements⁷² would be sufficient.

Consideration was to be given to an additional reserve power, and it has obviously been thought necessary.⁷³ There is no reference to any duty of an LEA or FAS to request the Secretary of State to use the power.

Clause 13 and Schedule 2 make provision for sponsor governors to be appointed to all types of LEA secondary schools. The 1993 Act only provided for sponsor governors at voluntary aided and GM schools. There is to be a limit of four years on the term of office for all sponsor governors. This is the normal term of office for all LEA school governors and was a recommendation of the Nolan Committee for first, foundation and sponsor governors in GM schools.⁷⁴ There is no requirement for specialist schools with sponsor governors to report the amount of the sponsorship.⁷⁵

⁷¹ Clause 11(1)(c). See Cm 2021, Chapter 3, paras 17 and 18

⁷² *Education Act 1996*, ss 430-431

⁷³ Cm 3315, Chapter 4, paras 22-24

⁷⁴ Cm 3315, Chapter 3, para. 46c

⁷⁵ Cm 3315, Chapter 3, para. 46d

The financial memorandum to the Bill suggests that there may be savings as a result of the deregulation of controls on change of character by GM schools.⁷⁶ The provisions on pupil selection⁷⁷ are unlikely to have any significant financial effect.⁷⁸

Comment

This part of the Bill gives a range of schools potentially substantially increased powers over their admission arrangements which could in the future affect the ability of LEAs and the funding agency to provide school places. However, there has been little immediate comment on the effect of these powers on planning or on the deregulation of GM schools in relation to nursery, sixth form and boarding education. The published reaction has concentrated on selection.

The Society of Education Officers responded to the White Paper raising concern over a proposed market-driven system in which schools choose pupils.⁷⁹

The present situation in the London Borough of Bromley where all secondary schools have moved to some level of selection is being watched with interest by other LEAs and, no doubt, by FAS.⁸⁰

The National Association of Head Teachers [NAHT] has stated its firm opposition to the extension of selection on the grounds that it limits parental choice and will do nothing to improve the achievement of those in most need.⁸¹ The National Union of Teachers [NUT] refers to the difficulty of motivating those not selected and opposes the reintroduction of what it categorizes as "a flawed process of separating children into educational sheep and goats."⁸²

The Labour Party made clear its opposition to selection (in the debate on the Address) on the grounds that it destroyed the cohesion of communities.⁸³ Its policy paper, *Diversity and Excellence*⁸⁴, sets out its plans for the grant-maintained sector. Labour's further and higher

⁷⁶ Clauses 3 and 5

⁷⁷ Clauses 1 and 4

⁷⁸ Bill 8, p.vi

⁷⁹ Society of Education Officers Letter to Department for Education and Employment, 3 October 1996

⁸⁰ "Testing time for choice in schools", *Guardian*, 7 September 1996

⁸¹ David Hart, General Secretary NAHT, comments on the publication of the Education Bill, NAHT Press Notice, 30 October 1996

⁸² National Union of Teachers press notice, *Education Bill - an irrelevance to good education*, 30 September 1996

⁸³ David Blunkett MP, HC Deb 29 October 1991, c.462

⁸⁴ *Diversity and Excellence: a new partnership for schools*, Labour Party, 1995

Research Paper 96/101

education spokesman, Bryan Davies, has warned that more small GM sixth forms could prove damaging for FE colleges.⁸⁵ The Liberal Democrats also opposed selection and categorised grant-maintained schools as a failed policy.⁸⁶

Plaid Cymru claimed that the encouragement of grant-maintained status, the extension of selection, the development of grammar schools, the weakening of the role of education authorities and the encouragement of the private sector were unacceptable to the vast majority of people in Wales.⁸⁷

Earlier reactions to the White Paper have been cited in the Background section to Part I.

⁸⁵ "V-cs wary of central control", *THES*, 25 October 1996

⁸⁶ Don Foster MP, HC Deb 29 October 1996, c.491

⁸⁷ Cynog Dafis MP, HC Deb 29 October 1996, c.530

II Establishment etc. of Grant-maintained Schools and Functions of the Funding Authority

Background

The Funding Agency for Schools [FAS]

FAS was set up by the 1993 Education Act to distribute grant to GM schools, monitor their financial arrangements and gradually take on wider planning responsibilities and further functions.⁸⁸ A School Funding Council for Wales was to be established when the number of GM schools in Wales grew.⁸⁹

The reaction at the time divided between those who regretted the end of the partnership between national and local government put in place by the 1944 Act and those who accepted the need for a national body to direct GM funding and have some role in planning the supply of school places. The grant-maintained school bodies welcomed FAS, but were concerned that its powers should be limited.⁹⁰ The provisions relating to the functions of FAS and its responsibility for school places are set out in Sections 20, 22-27 and Schedule 2-4 of *Education Act 1996*. Section 21 contains the power to establish the Schools Funding Council for Wales. At present GM schools in Wales are funded directly by the Welsh Office.

Self-Government for Schools Cm 3315

As part of the action to encourage new grammar schools the Government proposes:⁹¹

- to give FAS the power to put forward proposals to set up new schools in all areas where they are needed; in particular to propose grammar schools.

At present this power is limited to areas in which 10% of most of the pupils attend GM schools. In judging proposals from the LEA as well as from FAS, the Secretary of State would give preference to those which would most extend diversity.

⁸⁸ White Paper, *Choice and Diversity: A New Framework for Schools*, Cm 2021 1991, paras 3.7-3.11

⁸⁹ Cm 2021, paras 14.20-14.23

⁹⁰ Library Reference Sheet No 92/10, pp 2-7

⁹¹ Cm 3315, Chapter 4, para. 8 and paras 11 and 12, 26 and 27

Research Paper 96/101

- to allow FAS to pay grants to help meet the costs of potential promoters in drawing up proposals to set up new GM grammar schools. The White Paper cites the two previously independent grammar schools in the Wirral as examples of schools set up by promoters.

Proposals under the development of the GM Schools Programme are:

- to provide an independent ballot observer on request from schools embarking on GM ballots. The observer could screen documents, attend or chair parents' meetings, provide impartial advice on the requirements for the conduct of ballots and, investigate any complaints about irregularities in the ballot.⁹²

The Bill: Clauses 14-18

Establishment of GM schools

Clause 14 extends the powers of FAS to establish a new GM school in any area of England. It requires FAS in formulating any proposals to have regard to the desirability of increasing diversity and opportunities for choice. Such proposals may include boarding accommodation. The power applies only to England until the Schools Funding Council for Wales is functioning.

Clause 15 enables FAS to pay grants to potential promoters of new GM schools to help them draw up their proposals.

Clause 16 enables the Secretary of State to recoup from LEAs start-up grants made by FAS to the governing bodies of new GM schools. Such grants cover expenditure incurred between the date when the school's governing body is first established and the date when the school opens.

This power of recoupment was not proposed in the White Paper although chief education officers and the grant-maintained schools associations received a letter from the DFEE dated 17 September 1996 stating, *inter alia*, that the Department was considering the case for changes to primary legislation to allow for recoupment of start-up costs.⁹³ Start-up grants themselves have always been part of the GM funding procedure.⁹⁴

⁹² Cm 3315, Chapter 3, paras 56 and 57

⁹³ Department of Education and Employment, *Funding new GM schools which build up their numbers*, 17 September 1996

⁹⁴ *Education Act 1996*, s.216

Clause 17 gives the Secretary of State the power to appoint ballot observers to monitor the conduct of ballots for GM status. There is no reference to schools requesting an observer as there was in the White Paper.⁹⁵ The ballot observer is required to monitor the ballot for irregularity as set out in Section 192 of the *Education Act 1996*.

The 1993 Act provided for the Secretary of State to prescribe a body which would make arrangements for parental ballots on behalf of governors.⁹⁶ The prescribed body for this purpose is the Electoral Reform Society's Electoral Reform (Ballot Services) Ltd.⁹⁷

Clause 18 adds to the functions of FAS that of providing advice and assistance to the governing bodies of GM schools.⁹⁸

FAS has already set up a School Improvement Unit to support failing GM schools and those identified as having serious weaknesses.⁹⁹ This clause would give a statutory basis for advice which went wider than financial management.

Comment

The requirement that FAS should make proposals for new schools that increase choice and diversity would appear to require proposals to be for grammar schools in those areas in which all other schools are comprehensives. Presumably FAS will have to produce evidence for an unmet demand for selective education. The White Paper commitment is for parents and pupils to have the choice of a grammar school, "where there is a demand for them in the local community."¹⁰⁰

The local authorities associations state that the proposal compromises sensible planning and notes that LEAs are to be charged the cost.¹⁰¹ Although the associations welcome the recognition that GM schools can fail, they feel that FAS lacks the expertise to provide support in these circumstances.

⁹⁵ Cm 3315, Chapter 3, paras 56 and 57

⁹⁶ *Education Act 1996*, s.189

⁹⁷ Department for Education and Employment Circular 18/93, *Education Act 1993: Grant-maintained Schools: Acquisition, Transfer and Governance*, para. 35

⁹⁸ *Education Act 1996*, s.22(1)

⁹⁹ Departmental Report, Department for Education and Employment and OFSTED, Cm 3210, March 1996, para. 1.38

¹⁰⁰ Cm 3315, Chapter 4, para. 9

¹⁰¹ Association of Metropolitan Authorities Circular 54/96, ACC Circular 1373/96

Research Paper 96/101

The Labour Party opposes the establishment of new grammar schools.¹⁰²

The proposal for a ballot observer was welcomed by the AMA, given that the request could also come from an LEA.¹⁰³ A similar point was made by Local Schools Information.¹⁰⁴

¹⁰² Tories fail the challenge of the future, Queen's speech brief 1996, Labour Party 1996

¹⁰³ Association of Metropolitan Authorities Education Committee, 19 September 1996, Item 5

¹⁰⁴ Local Schools Information, *Response to the White Paper*, August 1996

III Assisted Places Scheme

The Assisted Places Scheme was established in 1981, under sections 17 and 18 of the *Education Act 1980*, to widen the educational opportunities of able children by assisting them to attend independent schools which they would not otherwise have been able to afford. The statutory provisions relating to the scheme are now contained in sections 479 to 481 of the *Education Act 1996*. Assisted places are available at those independent schools providing secondary education which have made a “participation agreement” with the Secretary of State. The rules for the operation of the scheme are laid down in Regulations which are reviewed and updated annually. The scheme is means-tested and the amount of assistance with school fees is determined by reference to parents’ gross income from all sources. Expenditure on the scheme in the 1995-96 financial year was £105 million in England and £3 million in Wales. The number of assisted places offered was 33,906, and the number taken up was 29,917, in England in the 1995/96 academic year.¹⁰⁵ The number of places taken up in Wales was about 720.¹⁰⁶

The Prime Minister announced at the 1995 Conservative Party Conference that the Assisted Places Scheme would be doubled in size.¹⁰⁷ On 29 November 1995, the Education Secretary announced the plans for England for the expansion of the scheme. She said that expansion would depend on the supply of eligible places and on parental demand. Bids were invited for:

- new day places mainly for entry at age 11, but also at age 13 and for the sixth form, in mainstream independent secondary schools;
- some new places for children below age 11 in integral junior departments of independent secondary schools;
- some new aided places in specialist schools of music or ballet for talented pupils.¹⁰⁸

The Secretaries of State for Wales and Scotland made statements about the arrangements for the expansion of their schemes.¹⁰⁹

¹⁰⁵ HC Deb., 14 October 1996, c 728W; HC Deb., 16 October 1996, c 978W

¹⁰⁶ Welsh Office, *Statistics of Education and Training in Wales: Schools 1996*, Table 1.9

¹⁰⁷ John Major's Speech to the Conservative Party Conference, 13 October 1995

¹⁰⁸ HC Deb., 29 November 1995, cc 711-2W

¹⁰⁹ HC Deb., 29 November 1995, cc754-5W; HC Deb., 18 December 1995, cc998-9W

Research Paper 96/101

On 29 February 1996 the Education Secretary announced 4,000 new places for the 1996-97 academic year.¹¹⁰

The Education (Assisted Places) (Amendment) Regulations 1996¹¹¹ made provision for the scheme to be extended to children below age 11 in integral junior departments of independent secondary schools. The Regulations, which also provided for the annual uprating of the parental contribution tables, were debated in the House of Commons on 15 July 1996.¹¹²

Clause 19 of the Bill amends section 479 of the *Education Act 1996* to remove the reference to secondary education to allow independent schools which only provide primary education to participate in the scheme.

The Explanatory and Financial Memorandum to the Bill states that funding for the extension of the Assisted Places Scheme would be contained within the Government's published spending plans. With regard to business compliance cost assessment, the Memorandum notes that participation in the Assisted Places Scheme is voluntary but that schools which wish to participate are required to meet minimum conditions to ensure financial propriety and quality assurance to monitor the effectiveness of the scheme. "The total additional administrative costs to the schools will depend on the number of schools participating, but are estimated at around £30,000 in the first year. The recurring costs in subsequent years are likely to increase slightly to some £35,000." A full business compliance cost assessment is available from the DFEE.¹¹³

Subject to the passage of the legislation through Parliament, assisted places will be offered in preparatory schools from September 1997. Cheryl Gillan, the Schools Minister, announced on 31 October 1996 that she was inviting preparatory schools to bid for places under the scheme. She said that the Government especially wanted schools to offer places to children from the inner cities and the ethnic minority communities. Over 900 schools have been invited to bid (if eligible) for places. The majority of places are expected to be offered for pupils at ages 7 and 8, but schools may bid for places for pupils from aged 5.¹¹⁴

¹¹⁰ HC Deb., 29 February 1996, cc 667-68W

¹¹¹ SI 1996 No. 2113

¹¹² HC Deb., 15 July 1996, cc 894-912

¹¹³ DFEE, *Compliance Cost Assessment for the Extension of the Assisted Places Scheme to Preparatory Schools*, October 1996

¹¹⁴ DFEE Press Notice, *Prep schools to join Assisted Places Scheme*, 31 October 1996

The Labour Party is opposed to the Assisted Places Scheme. Labour is committed to phasing out the scheme and using the money to reduce class sizes to 30 or less for all five, six and seven year olds.¹¹⁵ The Liberal Democrats are also opposed to the scheme and are committed to phasing it out. However, they would allow LEAs, if they wished, to set up locally determined partnership schemes such as special needs bursaries or arts and sports initiatives, to support pupils at independent schools.¹¹⁶

¹¹⁵ Labour Party, *Excellence for Everyone*, 1995, p.36

¹¹⁶ Liberal Democrats, *Investing in Excellence: Policies for Education in England and Wales*, Policy Paper No. 21, September 1996

IV School Discipline

Background

Growing concern has been expressed recently about disruptive and violent pupils, the increasing number of pupils being excluded from school and exclusions taking place at earlier ages, and how the educational needs of such pupils can be met. The issue of how schools can tackle serious behavioural problems is not new; the 1989 Elton Report¹¹⁷ looked in detail at how schools can attempt to reduce disruptive behaviour. However, over the past year some highly publicised cases of disputes about pupil exclusions and reports of particular schools experiencing a serious breakdown in discipline have moved the question of what is to be done about pupil behaviour and discipline to the centre of political debate.¹¹⁸ The issues surrounding the current problems at Manton junior school, Worksop and at the Ridings school, Halifax were referred to by Mr Ashton, MP for Bassetlaw and Mrs Mahon MP for Halifax during the Debate on the Address.¹¹⁹ The issue of school discipline has become part of the wider current debate about society and morality, and how schools can promote the moral and social development of pupils. The School Curriculum and Assessment Authority has issued a consultation document on values in education and the community.¹²⁰

Exclusion from school is a disciplinary sanction which may be used where there has been a serious breach of a school's behaviour policy; permanent exclusion is meant to be used as a last resort. The law on exclusions was changed by the *Education Act 1993*. The ability of schools to exclude pupils on an indefinite basis was removed, and the Secretary of State took power to make regulations to cause funds for excluded pupils to be transferred in-year from the excluding school to the receiving school. The Act also made statutory provision for free-standing Pupil Referral Units. In effect this gave a specific status to arrangements which many local education authorities had made for providing "education otherwise than at school", apart from home tuition. During the passage of this legislation, Ministers said that

¹¹⁷ Elton Report, *Discipline in Schools*, HMSO 1989

¹¹⁸ e.g., see "Strike over disruptive pupil called off", *Guardian*, 26 April 1996, p. 6; "Teaching unions forces climbdown over return of "violent" pupil", *Guardian*, 14 May 1996, p. 3; "Teachers threaten strike to keep boy out", *Guardian*, 28 August 1996, p.4; "An isolation incident" and "Exclusion row girl removed", *TES*, 6 September 1996, p. 8; "Bully-boy union may face court over action to bar naughty pupils", *Guardian*, 9 September 1996, p.4; "Poor handling of case made boy notorious, says Shephard", *Times*, 12 September 1996, p. 10; "Truce sets in as children return", *TES*, 20 September 1996, p. 4; " Battle to ban 60 children from one school", *Independent*, 22 October 1996 p. 4; "Shephard orders Ridings inquiry" *TES*, 25 October 1996,p. 7; "Grammar schools dumped problem pupils on the Ridings", *Times*, 25 October 1996, p4; "A perfectly ordinary junior school for 200 pupils, closed by one naughty 10 year old. Why?", *Independent*, 29 October 1996, p. 1; "Judgement day follows trial by media" and "Boy's return shuts school", *TES*, 1 November 1996, pp.8-9; "New head expels 12 from troubled Ridings School", *Guardian*, 6 November 1996, p.5. Additional press comment on these cases is available in the Library.

¹¹⁹ House of Commons Debate on the Address [Fifth Day] HC Deb., 29 October 1996, cc 466,477-80,497-502.

¹²⁰ National Forum for Values in Education, *Consultation on Values in Education and the Community*, SCAA, October 1996.

the Department for Education would provide advice on a range of issues relating to pupil behaviour and discipline, emotional and behavioural difficulties, and the education of sick children.

In 1994, building on the recommendations of the Elton Report, the DfE issued six linked Circulars on pupil behaviour and discipline, emotional and behavioural difficulties, exclusions from school, the education by LEAs of children otherwise than at school, the education of sick children, and the education of children being looked after by local authorities.¹²¹

Since 1993-94 the Grants for Education Support and Training Programme (GEST) has included support for local projects tackling the problem of truancy and disaffected pupils.¹²² The National Foundation for Educational Research (NFER) has looked at school-based strategies for dealing with disaffection and at pupils' perspectives on the issue of disaffection.¹²³

Proposals for Change

On 27 September 1995 the Education Secretary announced measures to help schools combat the problem of disruptive pupils.¹²⁴ Mrs Shephard stressed that most schools were orderly places but that a small yet significant number of pupils whose behaviour gave serious cause for concern was undermining educational standards. She went on to announce:

- an urgent review of the time limits for fixed-term exclusions;
- a review of the arrangements for appeal against permanent exclusion from school; and,
- consultation on a new statutory framework to enable schools to detain ill-behaved pupils.

¹²¹ DfE pack of six Circulars on "Pupils with Problems". DfE Circulars: 8/94, *Pupil behaviour and discipline*; 9/94 *The education of children with emotional and behavioural difficulties*; 10/94, *Exclusions from school*; 11/94, *The education by LEAs of children otherwise than at school*; 12/94, *The education of sick children*; and 13/94, *The education of children being looked after by Local Authorities*

¹²² DfEE Circular 8/95, *Grants for Education Support and Training 1996-97*, July 1995

¹²³ *Three to Remember: Strategies for Disaffected pupils*, NFER, 1995; *Talking Back: Pupil Views on Disaffection*, NFER, 1996

¹²⁴ DfEE Press Notice, *Discipline at the heart of schools' standards drive*, 27 September 1995

Research Paper 96/101

Other initiatives were also announced: giving a key role to the Consultative Group on school standards in addressing pupil behaviour and discipline issues; funding new expert support teams to help schools tackle behavioural and discipline problems on a pilot basis; promoting school-based units for pupils at risk of exclusion; asking the Teacher Training Agency for advice on training for school staff to help them manage pupils' behaviour; establishing a programme of secondments of mainstream teachers to Pupil Referral Units, to provide experience of dealing with the most difficult pupils; introducing national awards for schools which offer models of good discipline; considering how to build on existing school-business links programmes to help motivate the most disaffected pupils; asking HMCI to look at how the exclusion system is working across the country; and issuing new guidance on the circumstances in which excluded pupils should be given home tuition.

In December 1995, the DfEE wrote to LEAs inviting them to submit proposals for developmental projects to support multi-disciplinary behavioural support teams, in-school centres for pupils at risk of exclusions, and programmes for seconding teachers to Pupil Referral Units. Bids worth £3.7 million in 1996-97 have been approved from 43 authorities covering 62 projects. The intention is that they will run for 3 years.¹²⁵

Speaking at the NASUWT annual conference in April 1996, the Education Secretary announced that legislation on school discipline would be introduced. She said that there would be action to:

- increase the flexibility in the time limits for excluding a child;
- consider modifying the arrangements for readmitting pupils who have been excluded from two or more schools;
- bring penalties more directly to bear for persistent truants;
- remove obstacles to the wider use of home -school contracts;
- disseminate the lessons learned from the development projects;
- send inspectors into all Pupil Referral Units.

The proposed legislative measures to tackle school discipline were outlined by the Education Secretary on 10 October 1996¹²⁶ and are contained in Clauses 20 to 26 and 28 to 31 and Schedules 3,4 and 5 of the Bill.

¹²⁵ DFEE Press Notice, *Squire announces £4 million to tackle pupil behaviour problems*, 4 March 1996

¹²⁶ DFEE Press Notice, *Discipline, standards and choice lead new Education Bill*, 10 October 1996

Responsibility for Discipline [Clauses 20 and 21]

Section 154 of the *Education Act 1996*¹²⁷ requires that the articles of government of every county, voluntary or maintained special school shall place a duty on the headteacher to determine measures to secure discipline and good behaviour in their schools. In carrying out this duty, headteachers are required to follow any written statement of general principles which the governing body provide, or any guidance offered by the governing body on particular matters. There are similar requirements for Grant-Maintained Schools through their articles of government.

Under section 155 of the *Education Act 1996*¹²⁸ an LEA has reserve powers to take such steps as it considers necessary (including the giving of any direction) to prevent the breakdown of discipline at a county, controlled or maintained special school. The LEA may not intervene directly in the case of aided and special agreement schools but the headteacher and governing body must consider any representations made by the LEA.

DfEE Circular 8/94, *Pupil Behaviour and Discipline*, offers guidance on how good behaviour and discipline can be achieved in schools. It contains sections on the roles of the governing body, the headteacher and the teacher. It also considers behaviour policies, encouraging respect for others, rewards and punishments, partnership with parents, truancy, bullying and harassment, and external support services. The Circular recognises that there is much existing good practice in managing pupil behaviour effectively, and stresses the importance of the quality of leadership provided by the headteacher and the school's senior management team and the importance of developing a whole-school approach to behaviour and discipline for a school's success in promoting good behaviour.

Clause 20 which seeks to replace section 154 of the *Education Act 1996* requires the governing body of each county, voluntary or maintained special schools to ensure that policies to promote good behaviour and discipline are pursued at the school. A duty is placed on the governing body to prepare a written statement of general principles which the headteacher must act in accordance with when determining measures to be taken on behaviour, discipline and conduct. Where the governing body considers that it would be desirable that any particular measure should be taken it must notify the Headteacher and may give such guidance as it considers appropriate. In exercising these powers the governing body must have regard to any guidance given by the Secretary of State. Clause 20(3) and (4) require the headteacher to determine behaviour and discipline measures in accordance with the governing body's statement of general principles and to have regard to any specific notification or guidance given by the governing body. Clause 20(6) requires the headteacher to publicise to pupils, parents and staff the measures taken under clause 20(3) on behaviour and discipline.

¹²⁷ previously contained in section 22 of the *Education (No 2) Act 1986*

¹²⁸ previously contained in section 28 of the *Education (No 2) Act 1986*

Research Paper 96/101

Clause 21 makes similar provision for Grant-Maintained schools by inserting a new section 306A into the *Education Act 1996* .

Detention [Clause 22]

Detention of pupils beyond normal school hours is a long-standing sanction used by schools. However, at present, it has no statutory basis. In the absence of parental consent, it is possible that after-school detention might be regarded as false imprisonment which could render members of staff and their employers liable to be sued for damages. **Clause 22** seeks to make it lawful for schools to detain a pupil after school on disciplinary grounds, despite the absence of parental consent, provided that certain conditions are met.

Background

DfEE Circular 8/94, *Pupil Behaviour and Discipline*, Paragraph 41, observes that where any detention imposed is a reasonable response to a disciplinary incident (and where the parents have not expressly withdrawn their permission), the Courts have upheld teachers' right to use detention as a punishment. The Circular goes on to advise that schools should have agreed and understood procedures for the use of detention, covering both the circumstances in which it can be used and the arrangements for notifying parents. It is generally good practice to provide parents with at least twenty-four hours' written notice for detentions lasting longer than thirty minutes.

The Head's Legal Guide notes that:

“Mr Justice Phillimore in *Mansell v Griffin* [1908] I KB 947 said “It is enough for a teacher to be able to say - ‘The punishment which I have administered was moderate; it was not dictated by any bad motive; it was such as is usual in the school; and it was such as the parent of a child might expect that the child would receive if it did wrong’.

In 1980 a Blackpool County Court judge held that it was reasonable to detain a class of 25 pupils for 10 minutes as a punishment for disruptive behaviour. He warned, however, that punishment must not be indiscriminate and such a “blanket detention” should only be used as a last resort.”¹²⁹

The guide also points out that where detention is used as a punishment, this should be drawn to parents' attention in the school rules and as part of the information published to parents in the school prospectus. The headteacher should be aware of any regulations made by the LEA

¹²⁹ Croner, *The Head's Legal Guide*, June 1995, p. 3-308

for schools it maintains, e.g. a limit on the period for which a child may be detained. In addition the headteacher should consider any special circumstances in an individual case that might lead to extra risks to a child, e.g. the age of the child, the distance and travel arrangements between home and school, the hours of day light, crossing patrol availability, etc.. The guide reiterates the advice given in Circular 8/94 relating to notification of parents, and adds that in the rare circumstances that detention after school seems appropriate for a primary school child, direct contact should be made with a parent in advance.

Consultation Paper on Detention

On 1 May 1996, the DfEE issued a Consultation paper setting out the Education Secretary's proposal to amend the law. It proposed provision to:

- enable schools to impose detention beyond normal school hours, irrespective of parental consent;
- restrict such lawful detentions to instances where they are reasonable in all the circumstances of the case; and,
- require at least two days' written notice to be provided to parents before detention beyond normal school hours takes place.

The Consultation Paper suggested that the statutory provision should require that any detention given should be reasonable in all the circumstances with specific regard being made to "the proportionality of the punishment" and "any special circumstances" - such as the child's age; any special educational needs the child may have; travel arrangements; and any religious requirements affecting the child.¹³⁰ The deadline for responses was 12 July 1996.

Response

The DfEE's analysis of responses¹³¹ reported that a total of 89 responses had been received, constituted as follows:

LEAs 49 (40%)
educational organisations 18 invited and 4 uninvited responses (41% response rate)
schools 16 (uninvited)
universities 2 (uninvited)

¹³⁰ DfEE, *Detention : A Consultation Paper*, 1 May 1996

¹³¹ DfEE, *Report on the Consultation Exercise on A New Statutory Framework on Detention : Analysis of Responses*, 9 August 1996.

Research Paper 96/101

The majority of respondents agreed with the proposal (i.e. 64). The report noted that:

“Those having major reservations, including the AMA and ACC, made the following key points: it would undermine the crucial parent-school relationship; impossible to legislate for good behaviour- those pupils it is aimed at will not change because of statute; impractical; and conflicts with Article 5 (right to liberty) and Article 8 (right to family life) of the European Convention on Human Rights (ECHR). Many LEAs and educational bodies while supporting the underlying principle of augmenting schools’ disciplinary armoury had reservations about certain aspects of its practicality and legality. The overwhelming majority emphasised the need for clear and comprehensive guidance once the proposal reached the Statute Book.”

Other responses included comments on:

- the proposal to give parents’ two days notice of detention - some felt it should be reduced to 24 hours. Two days, it was argued, was too long and would dilute the purpose and effectiveness of the sanction;
- making specific provision for detention to be proportional to the punishment-some felt that this requirement was unnecessary if there is to be a general requirement for detention to be reasonable in all the circumstances;
- making provision for consideration of specific special circumstances. Concern was expressed about the difficulty each category presented and the attendant need for detailed guidance. Some felt that the provision was not necessary, others thought that the list should be expanded;
- the need for guidance on various associated issues (e.g. child protection; responsibility for arranging home-school transport; method of notification of parents; limits to when a school is deemed to have discharged its legal duty of care for a child, for instance, where a parent does not reply to a notice, consent is implied, and the child suffers harm on a delayed journey home; governors’ liabilities in the case of court action; group detention; detention refusers etc.).
- whether there would be a right of appeal. The analysis report said that it was envisaged that the existing mechanism for parental complaint to headteachers and governors would be available.

The AMA made the following additional points:

Singling out detention as a sanction to be enshrined in primary legislation may inappropriately highlight one amongst many behaviour management tools;

The statutory requirements will place additional burdens on schools. Guidance will be needed covering the arrangements for schools to register full details of detentions; school policy on detention; information on detentions to be contained in governors' annual reports; dealing with complaints about detention; and the need to review detention policy linked to policies on child protection.

Difficulties may arise in rural areas where pupils depend on LEA organised home school transport.¹³²

Clause 22

The provisions in **clause 22** are very similar to those set out in the May Consultation Paper, except that the clause provides for parents to be given at least 24 hours' notice not at least 2 days as originally proposed. Clause 22(1) makes it lawful for schools to detain a pupil after school on disciplinary grounds, despite the absence of parental consent, provided certain conditions are met. The conditions are set out in clause 22(3). Essentially they are that:

- it must be known that detention is one of the school's measures for regulating the conduct of pupils at the school;
- detention is imposed by the headteacher or on his or her authority;
- the detention is reasonable in all the circumstances; and,
- the pupil's parent has been given at least 24 hours' written notice that the detention is due to take place.

Clause 22(4) sets out particular matters which must be taken into account when determining whether detention is reasonable:

- whether the detention constitutes "a proportionate punishment" in the circumstances; and
- any special circumstances relevant to the imposition of detention, in particular:
 - the pupil's age;
 - any special educational needs he may have;
 - any religious requirements affecting him; and
 - where arrangements have to be made for him to travel from school to his home, whether suitable alternative arrangements can reasonably be made by his parent.

¹³² *AMA Education Committee*, ED 96 29, 4 July 1996, item 12, "A statutory framework on detention"

Research Paper 96/101

The provision applies to pupils who have not attained the age of 18 and are attending a LEA maintained school, a Grant-Maintained school, or a City Technology College or a city college for the teaching of arts.

Exclusion of Pupils from School [Clauses 23, 24 and 25 and Schedule 3]

Background

The law on exclusions was changed by the *Education Act 1993*. Under the *Education (No 2) Act 1986*, exclusions from LEA maintained schools could be for a fixed period, indefinite or permanent. Similar provision was contained in the articles of government of Grant-Maintained schools. Section 261 of the *Education Act 1993* abolished the category of indefinite exclusions (with effect from 1 September 1994) and tightened up the arrangements for fixed period exclusions by setting a limit for fixed period exclusions of up to 15 school days in any one term. (The power to exclude a pupil permanently remained unchanged.)

The provisions relating to exclusions from county, voluntary or maintained special schools are now contained in the *Education Act 1996*, sections 156 to 160 and Schedules 15 and 16. Sections 307 and 308 and Schedules 23 and 28 of the Act apply to Grant-Maintained schools.

The removal of indefinite exclusions was a response to this category of exclusion being used, in practice, as a permanent exclusion but without conferring the rights of an appeal against permanent exclusion. There has been some pressure to reintroduce indefinite exclusion on the grounds that fixed period exclusions do not provide sufficient time for arranging support services for the excluded pupil. It has also been argued that removal of the indefinite exclusion has resulted in more permanent exclusions being made. The National Association of Head Teachers (NAHT) believes strongly that the right to exclude indefinitely should be restored and has argued for the exclusion limit of 15 days in any one term to be replaced by a limit of 45 days in any one year so as to give schools greater flexibility.¹³³

Only the headteacher or, exceptionally a deputy headteacher acting in the headteacher's absence may exclude a pupil from school. Exclusions must be either for a fixed period (and cannot be over 15 days in any one term) or permanent. The headteacher must inform the pupil's parents of the duration and reasons for the exclusion, and of their right to make representations to the school governing body. Where the exclusion is over 5 days or where there is a loss of opportunity to take a public examination, the governing body and the LEA (in respect of schools it maintains) have the power to direct the headteacher to reinstate a pupil. The LEA must consult the governing body before directing a reinstatement. If the

¹³³ NAHT Press Notice, *NAHT Submits a Hard Hitting Paper to the Secretary of State on Pupil Behaviour, Discipline and Parental Responsibilities*, 22 September 1995

parents wish to make representations, the governing body must convene a committee for the purpose of considering an exclusion, and arrange a meeting with the parents to discuss the exclusion as soon as practicable. In cases of permanent exclusion LEAs have a duty to consider whether to uphold the exclusion or, if not, to direct the headteacher to reinstate the pupil. Parents have a right of appeal to an independent appeal committee against an LEA decision to uphold a permanent exclusion. Governing bodies have a right of appeal against an LEA decision to direct reinstatement of a permanently excluded pupil.

The procedures for Grant-Maintained schools are similar to those for LEA maintained schools, except the LEA has no powers to direct reinstatement of a pupil to a GM school. Headteachers of GM schools are required to notify LEAs of all permanent exclusions. The GM school's discipline committee, set up by the governing body, is responsible for confirming exclusion or directing reinstatement. The governing body must also set up an appeal committee against decisions made by the discipline committee. It must include an independent person and a lay person.

DfEE Circular 10/94, *Exclusions from School*,¹³⁴ explains the changes made by the 1993 Act, provides guidance to schools on the proper use of exclusions, sets out model procedures to be followed when a child is excluded for a fixed term or permanently, and explains the rights of parents and pupils. The Circular emphasises that exclusion should be used sparingly in response to serious breaches of school policy or law; that permanent exclusion should be used as a last resort when all other reasonable steps have been taken, and when allowing the child to remain in school would be seriously detrimental to the education or welfare of the pupil or of others. Reasonable prior steps include alternative sanctions, interviewing the pupil and parents, identifying special educational needs, negotiating agreements with the pupil and parents, issuing a formal warning, withdrawing from class, or involving social services or the police.

A Code of Practice setting out procedures on admissions, exclusions and reinstatements appeals has been drawn up by the local authority Associations in consultation with the Council on Tribunals and the Commission for Local Administration (the local government Ombudsman).¹³⁵ Guidance on these procedures is provided in a booklet published by the DfEE.¹³⁶

¹³⁴ DfEE Circular 10/94, *Exclusions from School*, May 1994

¹³⁵ *Revised Code of Practice for Appeals Under the Education Act 1980 and the Education (No 2) Act 1986*, as amended. (Reproduced in Butterworths, *The Law of Education*, 9th edition)

¹³⁶ DfEE, *Guidelines for County, Voluntary and Maintained Special Schools: Appeal Committees- Admission, Exclusion and Reinstatement Appeals*, 1995

Research Paper 96/101

An excluded pupil may be admitted to another mainstream school. Where this is not immediately practicable alternative arrangements will be made: home tuition may be provided or the pupil may be placed in a Pupil Referral Unit; the pupil may be assessed for special educational needs.

Concern has been expressed about the increase in the number of exclusions and the underlying causes of it, and about how the educational needs of excluded pupils can be met. In the past information on the number of exclusions was collected on an *ad hoc* basis. Data on permanent exclusions from maintained schools in England was assembled by the DfEE over a two year period starting with the summer term 1990 under the voluntary national exclusions reporting system. In the first year 2,910 permanent exclusions were reported and in the second 3,833. A survey, conducted for the DfEE by a research team at Christ Church College Canterbury, published in July 1995 showed that there were 10,624 permanent exclusions in the school year 1993-94 in the 101 out of 109 LEAs in England which responded to the survey questionnaire. Of the 10,624 exclusions, 1,230 were from primary schools, 8,960 were from secondary schools, and the remaining 434 were from special schools. The survey also showed there were 4,550 permanent exclusions in the autumn term 1994 in 101 LEAs.¹³⁷ LEAs and schools vary in their rates of exclusions. The survey found that in some LEAs the rates of permanent exclusion are ten times higher than in others, and concluded that this variation is much greater than can be explained by the socio-economic characteristics of the area. The survey data appeared to show that only 15% of permanently excluded secondary pupils and 27% of primary age pupils return to mainstream schools. However, the survey report observed that this was certainly an under-recording and possibly a substantial understatement of the numbers as some LEAs were not able to give the figures and others have a “revolving door” policy of getting pupils speedily into a new school but do not keep count of these cases. A number of LEAs reported that it was becoming increasingly difficult to return pupils, particularly the older pupils, to mainstream schools.¹³⁸

In Wales in 1994-95 367 pupils were permanently excluded from LEA secondary schools and 31 pupils were permanently excluded from Grant-Maintained secondary schools.¹³⁹

From this year the DfEE is collecting for the first time systematic data on permanent exclusions from all maintained schools through the annual school census return issued in January. Information is being collected on age, gender, ethnic background, and whether excluded pupils have statements of Special Educational Needs. The data for 1994-95 is expected to be published shortly¹⁴⁰ and may show the same number of exclusions as in 1993-94.¹⁴¹

¹³⁷ HC Deb., 1 April 1996 c26W; HC Deb., 2 March 1996 cc362-363W

¹³⁸ Final Report to the Department for Education, *National Survey of Local Education Authorities' Policies and Procedures for the Identification of, and Provision for, Children Who Are Out of School By Reason of Exclusion or Otherwise*, Survey conducted by Canterbury Christ Church College, July 1995

¹³⁹ HC Deb., 24 July 1996 c402W

¹⁴⁰ “Rise in primary exclusions”, *TES*, 1 November 1996, p.1

¹⁴¹ *Speech by Robin Squire to the National Children's Bureau Conference, 7 July 1996*

There is evidence that African and African-Caribbean boys are disproportionately excluded from school. OFSTED drew attention to this in its report, *Achieving Good Behaviour in Schools*.¹⁴² DfEE Circular 10/94 noted OFSTED's comments and stressed that headteachers should ensure objectivity and consistency across all ethnic groups. Research carried out by David Gillborn of the London Institute of Education found that African-Caribbean boys and girls are considerably more likely to be excluded than their white and South Asian peers.¹⁴³ The Education Secretary has asked OFSTED to carry out a study of exclusions, focusing in particular on the wide variation in exclusion rates between schools in similar areas. A report is expected to be published shortly.

A recent study of permanently excluded primary school pupils stressed that exclusion from primary school was shown to be a relatively rare event, with permanent primary school exclusions being even more unusual - predominately affecting boys. The report said that there is certainly evidence that many of these children have acknowledged high levels of special educational need and have come to the attention of non-mainstream agencies, usually because of concern about their family circumstances. The author states that a more competitive, market-oriented school environment makes it more difficult and less attractive to cater for children with emotional and behavioural difficulties, and notes that the move to integrate children from special schools and units into mainstream education means that there are children presenting real challenges to schools and teachers who may be ill-equipped to respond. Broader socio-economic changes in family formation and breakdown, increasing relative poverty and related changes in patterns of employment and unemployment form part of the wider picture which surrounds the issue of school exclusion.¹⁴⁴

Some commentators have emphasised that explanations for the increase in exclusions have to include problems created by "negative parenting", the closure of special schools, and the integration of pupils with emotional and behavioural problems into mainstream schools with insufficient support.¹⁴⁵

Fixed period exclusions [Clause 23]

Clause 23 amends section 156 of the *Education Act 1996* (exclusion of pupils from county, voluntary or maintained special school) and section 307 (exclusion of pupils from grant-maintained schools) to allow headteachers to exclude pupils for fixed periods of up to a total of 45 days a year, rather than the present limit of up to 15 days per term. The proposal has been generally welcomed.

¹⁴² *Achieving Good Behaviour in Schools*, OFSTED, 1993

¹⁴³ David Gillborn, *Exclusions from School*, Institute of Education Viewpoint No. 5, September 1996; "Crisis over black pupils' exclusions", *Guardian*, 11 October 1996, p.11

¹⁴⁴ Carol Hayden, Christine Sheppard and Derek Ward, *Primary Age Children Excluded from School*, University of Portsmouth, Social Services Research and Information Unit, Report No. 33, 1996

¹⁴⁵ "Schools cannot cope with violent pupils", *Independent*, 10 April 1996 p.4; "More powers for schools to exclude unruly pupils", *Independent*, 15 May 1996, p. 4; "Teachers attack poor parenting", *Times*, 14 September 1996, p.6.

Research Paper 96/101

As noted above the *Education Act 1993* tightened up the law on fixed term exclusions. Since then the NAHT has urged the Government to provide some additional flexibility in the law, and has therefore welcomed the Government's proposal. However, it has pointed out that for some pupils, 45 days is still an insufficient length of time and has argued that once the 45 days have been used for fixed term exclusion, the only remaining option would be permanent exclusion. NAHT believe that the restoration of indefinite exclusion is the most effective alternative, and suggests that there could be built-in review periods.¹⁴⁶

Exclusion Appeal Arrangements [Clauses 24 and 25 and Schedule 3]

The Government is concerned that in a small number of cases the school's perspective may not have been adequately considered at appeal committee hearings, and therefore it proposes to amend the appeal arrangements to require the appeal committee to have regard explicitly to the interests of the other pupils and members of staff at the school as well as to the interests of the excluded pupil.

In an adjournment debate in the House of Commons in July 1996, Toby Jessel, MP for Twickenham, raised the case of a school in his constituency from which two boys had been excluded, having been found in possession of cannabis. The LEA decided to reinstate the boys, and this decision was upheld by the independent appeal committee. The headteacher and governors felt that their authority had been undermined, and that the LEA and the appeal committee had focused overmuch on the situation of the excluded pupils and had given insufficient attention to the position of the school and the implications reinstatement would cause for the school in maintaining its discipline policy. Replying to the debate, Robin Squire said that the Government was considering whether legislation would be appropriate to ensure that the wider interests of schools are properly taken into account by appeal committees.¹⁴⁷

Clause 24 amends the procedures set out on Schedule 16 of the *Education Act 1996* for the hearing of exclusion appeals or reinstatement appeals concerning pupils at LEA maintained schools. In particular, clause 24(3) makes provision for the governing body to be represented at appeal hearings and clause 24(4) requires the appeal committee to have regard to both the interests of the excluded pupil and the interests of other pupils and staff at the school, in considering whether the excluded pupil should be reinstated. In making any such decision the appeal committee must have regard to the measures determined by the headteacher relating to the conduct of pupils. Other changes are made to the procedures for exclusion appeal hearings. Clause 24(2) requires an appeal committee, for the purposes of fixing a time at which the hearing is to take place, to take reasonable steps to ascertain any times which the pupil or parent, or any other person entitled to make oral representations, would be able

¹⁴⁶ NAHT Press Release, 11 September 1996

¹⁴⁷ HC Deb., 8 July 1996 cc 149-56

to attend. The appeal committee must take those times into account with a view to ensuring, as so far as it is reasonably practicable to do so, that that person is able to attend. Clause 24(3) requires the appeal committee to allow the appellant to be represented or to be accompanied by a friend. (At present, Paragraph 8 of Schedule 16 states that the appeal committee may allow this.)

Clause 25 and Schedule 3 make similar provision for exclusion appeals at grant-maintained schools.

The NAHT has expressed support for the proposal relating to the wider interests of a school being taken into account by appeal committees and in its comments on the Government's consultations on school discipline suggested that the appeal arrangements should take account of the school's behaviour and discipline policy. It also suggested that when considering whether to return an excluded pupil to school, committees should consider the effect this would have on the victims of any violent incidents perpetrated by the excluded pupil.¹⁴⁸

The AMA has pointed out that the existence of formal appeals is *prima facie* evidence of system failure. Whatever the outcome either an aggrieved parent remains dissatisfied or the governors and management of the excluding school are forced to accept implied criticism of their original decision. Tinkering with the appeals mechanism, it argues, is unlikely to reduce the distress and disruption that tends to result when appeals reach a formal hearing, and attention should therefore be placed on mediation and reconciliation before formal appeal stages are reached.¹⁴⁹

LEA Plans Relating to Children with Behavioural Difficulties [Clause 26]

The precise point at which external assistance is sought by schools will depend on the nature and degree of the difficulty concerned. Schools may ask for assistance from the LEA's education welfare and educational psychology services in dealing with difficult pupils. Most LEAs have behavioural support teams. Some operate on an outreach basis from Pupil Referral Units and some work as part of a multi-professional team with Educational Welfare Officers and Educational Psychologists. Teams working to support schools with difficult pupils may carry out a range of activities: counselling, individual and group work, in-class support and staff development. A few LEAs have instituted monitoring systems to give early

¹⁴⁸ NAHT Press Notice, 11 September 1996

¹⁴⁹ AMA, *Education Committee*, ED 95 71, Item 6, 7 December 1995

warnings of pupils at risk of exclusion.¹⁵⁰

Clause 26 places a duty on each LEA to draw up and publish a statement setting out the arrangements it makes or proposes to make in relation to the education of children with behavioural problems. Clause 26(2) sets out the arrangements which are to be covered by the statement, including the support and assistance the authority provides to schools in promoting good discipline and dealing with behavioural problems; its arrangements for excluded pupils and others not attending mainstream school; and any other arrangements it makes for assisting children with behavioural difficulties to find places at suitable schools. The statement will also deal with the interaction between the arrangements referred to in subsection (2) and those made by the authority in relation to pupils with behavioural difficulties who have special educational needs (clause 26(3)). Provision is made for consultation on, and publication of, the statement in such manner as may be prescribed (clause 26(4)(5)). LEAs are required to have regard to any guidance given by the Secretary of State (clause 26(6)).

The Explanatory and Financial Memorandum to the Bill states:

“Administration of the new duty for LEAs to produce and publish plans for supporting schools in relation to pupil behaviour may entail a small increase in LEA staff, but the staffing implications for individual LEAs would depend on the extent to which they already undertake such activity voluntarily.”

Party political response to the Government’s school discipline proposals

Labour broadly supports the Government’s proposals on discipline and exclusions. However, there are policy differences on home-school contracts (see below). Labour’s policies on school discipline and exclusion were set out in its policy document, *Excellence for Everyone* (1995), and in a speech made by David Blunkett to the Association of Teachers and Lecturers on 2 April 1996.¹⁵¹ Labour has drawn up a ten point plan to combat indiscipline in schools and tackle under-achievement by boys. The programme sets out proposals for encouraging mentoring schemes, developing homework centres, building partnerships with business to offer one-day work placements for 14 and 15 year olds, building partnerships with parents and the wider community, developing new discipline policies (including assertiveness discipline, and strategic development plans which set out discipline procedures), encouraging greater use of Information Technology in the curriculum, boosting literacy skills, introducing written

¹⁵⁰ Final Report to the Department for Education, *National Survey of Local Education Authorities’ Policies and Procedures for the Identification of, and Provision for, Children Who Are Out of School By Reason of Exclusion or Otherwise*, Survey conducted by Canterbury Christ Church College, July 1995, p.11

¹⁵¹ Speech by David Blunkett at the ATL Annual Conference, 2 April 1996

home-school contracts for every school with a strong emphasis on homework, enhancing the role of careers education and sharing best practice through a Standards and Effectiveness database.¹⁵²

The Liberal Democrats have expressed support for the proposals relating to school detention (subject to parents being given appropriate notice) and increased flexibility in fixed term exclusions. However they are concerned about the proposals for home-school contracts (see below).¹⁵³

Some Conservative backbench MPs wish to see the Bill amended to reintroduce corporal punishment into schools. The Education Secretary has expressed her personal view that corporal punishment can be a useful deterrent to bad behaviour in schools but she has made it clear that the Government will not put the restoration of corporal punishment in the Bill and will not give Government backing to any amendments which may seek to do so.¹⁵⁴ Corporal punishment was abolished for all pupils in publicly funded schools and for all publicly funded pupils in independent schools, by section 47 of the *Education (No 2) Act 1986*. The provisions relating to corporal punishment are now contained in sections 548 and 549 of the *Education Act 1996*. The 1986 legislation was introduced in response to a judgement made by the European Court of Human Rights in 1982.

¹⁵² "Boys will be boys: Closing the gender gap", Labour Party Consultation Paper, November 1996

¹⁵³ Debate on the Address, HC Deb., 29 October 1996, cc488-9

¹⁵⁴ Debate on the Address, HC Deb., 29 October 1996, c 475

V School Admissions: Parental Preferences

Chapter I County and Voluntary schools [Clauses 27 to 30 and Schedule 4]

Background

Under section 411 of the *Education Act 1996*¹⁵⁵ the LEA and the governing body of a county or voluntary school may refuse to admit a child to the school of his parents' preference only in certain specified circumstances where:

- to admit a child would prejudice the provision of efficient education or the efficient use of resources;
- the preferred school is an aided or special agreement school and admission would be incompatible with any arrangements between the governing body of the school and the LEA intended to preserve its (generally religious) character; or
- the preferred school's admission arrangements are based wholly or partly on selection by reference to ability or aptitude, and the admission of the pupil would not be compatible with selection under the admission arrangements.

DFEE Circular 6/96, *Admissions to Maintained Schools*, provides guidance on school admission arrangements and the duty to comply with parental preference.¹⁵⁶

Admission to partly-selective schools [Clause 27]

Clause 27 amends section 411(3) of the *Education Act 1996* to limit the restriction to refuse admission to selective schools. Clause 27 provides for the restriction to apply only where the school's admission arrangements are wholly selective. This means that partially selective schools would not be able to refuse admission on the grounds that they are partially selective if they still had places available.

¹⁵⁵ previously section 6 of the *Education Act 1980*

¹⁵⁶ DFEE Circular 6/96, *Admission to Maintained Schools*, 25 June 1996

Persons permanently excluded from two or more schools [Clauses 28,29 and Schedule 4]

The Government has recognised that schools with vacancies may receive a disproportionate share of pupils who have been permanently excluded from other schools and that this may cause difficulties for the receiving school. It is therefore proposing that the general requirement to admit pupils in accordance with parents' preference will be removed for pupils who have been excluded from two or more schools.

Under **Clause 28** the duty to comply with parental preference will not apply to a "disqualified person". **Clause 28(2)** provides that where a child has been permanently excluded from two or more schools, he is regarded as a "disqualified person" for the period of two years beginning with the date on which the latest of those exclusions took effect. The provision applies to LEA maintained schools and Grant-Maintained or Grant-Maintained special schools (clause 28(5)).

Clause 29 and Schedule 4 remove the right of a parent of a child who is regarded as a "disqualified person" to appeal against a decision refusing him admission to a school. Clause 29 gives the governing body of an LEA school the right to appeal against a decision of the LEA admission authority that such a child should be admitted to the school.

Home-school partnership documents [Clauses 30]

In the *Citizen's Charter-Five Years On*, the Government announced that legislation would be introduced to allow schools to use a parent's willingness to sign a home-school partnership agreement as part of the admissions procedure. (Sample contracts from a secondary school which parents and pupils are asked to sign was provided in a supplement to the report. The sample contracts included items covering punctuality, regular attendance and homework.)¹⁵⁷

Background

The 1989 Elton Report, *Discipline in Schools*, stressed the need for effective home-school partnership in fostering good behaviour and discipline in schools. There are many different forms of home-school contact ranging from informal involvement through Home-School Associations, fund raising activities, helping in the classroom, home-school reading and maths schemes, to the formal involvement of parent governors in the school decision-making

¹⁵⁷ *Citizen's Charter-Five Years On*, Cm 3370, September 1996, pp. 19 and 30. (The sample contracts are contained in the pocket attached to the report.)

Research Paper 96/101

process. In recent years there has been increasing interest in formalising parental involvement with schools through the development of home-school “contracts”. There has been a number of studies on home-school partnerships. For example, John Bastiani has compiled a directory of home-school initiatives and more recently, in collaboration with other researchers, has produced a practical guide on home-school policies.¹⁵⁸

In 1988 the National Association of Headteachers produced a discussion paper on the possibilities of a Home-School Contract of Partnership. It outlined the aims of such a partnership and criteria by which its success might be judged, and suggested a number of home-school expectations which would form the basis of a shared commitment.¹⁵⁹ Subsequently the NAHT joined with the Royal Society of Arts’ “Education for Capability” project and a number of associated groups to promote and explore practices in home-school contracts of partnership. A recurring question was the extent to which such contracts could be enforced. NAHT produced a further paper on home-school contracts in 1990. This offered practical advice on establishing a partnership and reproduced an example of a contract used in one school. It stressed that there is no legal way in which maintained schools could enforce a contract by applying sanctions. “The contract can only be based on agreement and consensus and cannot be imposed.”¹⁶⁰

Sally Tomlinson in a report published by the Institute for Public Policy Research (IPPR), has examined the issues surrounding home-school partnerships. The report set out the principles for a model home-school agreement and proposed that any breakdown in the agreement could be referred to the local Ombudsman or to an Educational Standards Council.¹⁶¹

DfEE Circular 8/94, paragraph 47, makes the following observations on home-school agreements and points out that at present schools cannot insist on home-school contracts being part of the admissions process:

“Some schools have found home-school agreements to be of significant benefit in involving parents constructively in considering pupil behaviour. Such agreements, which specify the expectations of pupils, parents and the school, have proved useful in setting out for parents their particular responsibilities in relation to their child and in defining the school’s role and policies. Such agreements are likely to work best if they offer the prospect of benefits as well as sanctions. They are of course voluntary and do not have legal effect. Schools cannot insist on them being part of the admissions process.”

¹⁵⁸ John Bastiani, *A Directory of Home-School Initiatives in the U.K.*, December 1993; Titus Alexander, Emma Beresord and John Bastiani, *Home-School Policies: A Practical Guide*, October 1995

¹⁵⁹ NAHT, *Home-School Contract of Partnership: A Discussion Paper*, March 1988

¹⁶⁰ NAHT, *Home-School Contract of Partnership*, March 1990

¹⁶¹ IPPR, *Teachers and Parents*, Education and Training Paper No. 7, 1991

DfEE Circular 6/96, *Admissions to Maintained Schools*, Annex A, gives advice to school admission authorities on constructing admission policies, and paragraphs 22 to 24 deal with the use of home-school contracts in admission arrangements:

22. School places may not lawfully be offered subject to the agreement by parents or pupils to specified conditions or undertakings. This would include the signing of a home-school 'contract', or other similar agreement.

23. The willingness, or otherwise, of a parent to sign a home-school contract may only be taken into account in making admission decisions if a school is oversubscribed. The school's published admission arrangements should make clear that this will happen, and the place must be offered before the parent is asked to sign. The terms of the contract itself would need to be reasonable.

24. If a school is not oversubscribed, a place cannot be refused on the grounds that a parent is unwilling to sign a home-school contract.

A recent Written Answer on the subject states that the guidance does not mean that places can be withheld where parents are unwilling to sign a home-school contract; rather that admission authorities may decide that parents willing to sign should be afforded higher priority when there are more applicants than places.¹⁶²

Clause 30: Home-school Partnership documents

Clause 30 makes new provision to allow the admission arrangements for a county or voluntary school to include a provision setting out the terms of a home-school partnership document, and making it a condition for admission to the school that every child's parent gives the admission authority a signed parental declaration, by which he acknowledges and accepts the parental responsibilities specified in the partnership document. The admission authority will be empowered to dispense with that condition if there are special reasons for doing so. Under section 412 of the *Education Act 1996* where the LEA is responsible for determining admission arrangements for a county or voluntary school, it must consult the school's governing body before determining or varying any of those arrangements, and, at least once a year, consult the governing body as to whether those arrangements are satisfactory. The Bill specifically requires the LEA to have regard to any representations the governing body makes in relation to home-school partnership as part of the admission arrangements.

¹⁶² HC Deb, 4 July 1996, c.509W

Research Paper 96/101

The partnership document will specify the school's aims and values, the responsibilities which the school expects to carry out, and the responsibilities which the parents are expected to carry out in connection with their child's education. An admission authority must have regard to any guidance given by the Secretary of State on the provision relating to home-school documents as part of the admission arrangements. The Secretary of State may by order provide that any form of words is not to be used in a partnership document or in a parental declaration.

Where a parent fails to sign a parental declaration, and the admission authority is not satisfied that there are special reasons for dispensing with the condition, there is no requirement to admit the child to the school and any allocation of a conditional place may be cancelled.

A partnership document "shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort." (Clause 30, New Section 413B(6)).

Chapter II Grant-Maintained Schools [Clause 31 and Schedule 5]

Clause 31 and Schedule 5 apply to Grant-Maintained schools the same provisions as those applied to LEA maintained schools in Clauses 27 to 30.

Response to the Proposal for Home-School Partnerships as an Admission Criterion

There is general support for improving home-school links and creating home-school partnerships. However, there are strong differences of opinion about linking such partnerships with admissions, and about the possible content of such agreements. NAHT has strongly endorsed the Government's proposal to make the signing of a home-school agreement a condition of school admission.¹⁶³ However, in a recent letter to the *TES*, Peter Miller, President of the Secondary Heads Association, made it clear that SHA do not support the proposal.¹⁶⁴ Other bodies have expressed concern about its wider implications. The Campaign for State Education (CASE) believes that the vast majority of parents are already contributing to a far greater extent than the expectations of contracts, and argues that the contracts will create barriers, alienate supportive parents, and mean more bureaucracy.¹⁶⁵ The National Consumer Council's Education Forum has described the proposed contracts as

¹⁶³ NAHT Press Notice, 11 September 1996

¹⁶⁴ "Home-school deals cloud the issues", *TES*, 1 November 1996, p.22

¹⁶⁵ CASE, *Home-school links: why they matter*, October 1996

unworkable and counter-productive.¹⁶⁶ The AMA is reported to be doubtful about whether the measure will be effective and points out that, faced with a legal challenge, LEAs may prefer to direct a school to admit a child regardless of whether the parent has refused to sign a partnership agreement.¹⁶⁷ Some commentators have argued the case for a more "evolutionary approach" involving parents in the development of home-school agreements, rather than imposing them as part of the admission arrangements.

The Labour Party has long supported the concept of school and parent partnerships. *Looking to the Future*, said that a Labour government would ask every school to create a parent-school contract¹⁶⁸ and the 1991 *Charter for Parents: The Parents' Partnership* said that a Labour government would encourage home-school partnerships as a key priority in education policy. It set out a model document.¹⁶⁹ The recent Labour Party policy paper, *Excellence for Everyone*, pledged that Labour will "ensure that written home-school contracts are developed for every school, every parent and every pupil."¹⁷⁰ David Blunkett, the Shadow Education and Employment Secretary, wants all schools to have a home-school contract, and has criticised the Government's proposals because: "Under the Bill, the home-school contract would be compulsory in some schools but not in others".¹⁷¹ In a Press Release on his speech on the Debate on the Address, Mr Blunkett said:

"So far, it looks as if the contracts will be adopted voluntarily. Labour wants every school to have such agreements, because there is a danger that if only some do, the more difficult schools may not and parents not signing up could have their children excluded from the school prioritising such partnerships"¹⁷²

The Liberal Democrats are committed to extending home-school links. However, during the Debate on the Address, Don Foster expressed concern about the imposition of home-school contracts:

"I disagree fundamentally with the Labour Party's proposal to make home-school contracts compulsory in every school and to require parents to sign them before their children can enter school.

It is vital that we improve the relationship between home and school. Far too many parents are not prepared to support either their children or the school that they

¹⁶⁶ National Consumer Council, Education Forum Press Release, *Home-school contracts won't work, say parent groups*, 10 October 1996

¹⁶⁷ "Contract or potential con trick", *TES*, 18 October 1996, p.6

¹⁶⁸ Labour Party, *Looking to the Future*, 1990, p.31

¹⁶⁹ Labour Party, *The Parents' Partnership: Labour's Charter for Parents*, September 1991

¹⁷⁰ Labour Party, *Excellence for Everyone: Labour's Crusade to Raise Standards*, 1995

¹⁷¹ Debate on the Address, 29 October 1996, c461

¹⁷² Labour Party Press Release, "All schools should have home-school contracts-Labour", 29 October 1996

Research Paper 96/101

attend. However, forcing parents to sign a piece of paper will not solve that problem . . .

I am equally worried about the Government's proposal. The legislation introduces a system whereby individual schools will be free to decide whether to use a home-school contract as an entry requirement . . .

Joan Sallis is highly respected in the area of education. She has been involved in the Campaign for the Advancement of State Education and with many other bodies. She is a frequent contributor to education debates and she makes it clear that she has no party political allegiances . . .

I asked her to share her views about this issue. In a letter I received today . . . she says:

'The link with admissions is ludicrous: children have a legal right to education and the only logic of basing admission on a signed contract, and retention on its fulfilment, is to have sink schools which don't demand parental support, a form of selection more savage than any yet proposed.' ¹⁷³

¹⁷³ HC Deb, 29 October 1996, cc 488-90

VI Baseline Assessments and Performance Targets

Background

This part of the Bill provides a statutory basis for two strategies aimed at improving standards.

Baseline Assessment

A review of baseline assessment published by Professor Sheila Wolfendale in 1994 referred to assessments being carried out by most schools.¹⁷⁴ Professor Wolfendale cited the long pedigree of baseline assessment and outlined the debate between, at the extremes, those who value most the principles and processes of learning and those who see education as linear progression. She viewed whole-LEA baseline assessment as one trend which led to calculating "value added" in Key Stage 1 and described an alternative trend as regarding on-entry-to-school assessment as an opportunity to begin pupil profiling, emphasising description and achievement.

Whole-LEA schemes of assessment are inevitably better known: two which have reached the national press being those adopted by the London Borough of Wandsworth and Birmingham City Council.

The Wandsworth scheme was introduced in every reception class in 1992/93. It had been designed to help teachers assess and record significant aspects of pupils' development and skills on entry to school. Its aims were diagnostic and formative as well as providing a baseline for measuring value added. A baseline checklist and a shortened adaptation of the Canadian Linguistic Awareness in Reading Readiness [LARR] test were used. The results showed an extremely wide range of scores across schools with a number of factors associated with performance: season of birth, pre-school education, sex differences and bilingual pupils. Wandsworth used the information on the number of children in the lowest achieving group in each school as a factor for resourcing under the special needs element of its local management of schools [LMS] formula.¹⁷⁵ Following this cohort's Key Stage tests Wandsworth used the information to work out an overall indicator of the value added by each school i.e. by how much in each school the pupils were exceeding or failing to reach their expected KSI scores.¹⁷⁶

¹⁷⁴ NUT Education Review, *Baseline Assessment: a Review of Current Practice*, Volume 8, No 2, Autumn 1994

¹⁷⁵ Research Report, *Wandsworth Baseline Assessment 1997/98*, November 1993. AMA Education Office Circular 95/22

¹⁷⁶ "Winners from the baseline", *Guardian Education*, 17 September 1996

Research Paper 96/101

Birmingham's scheme is linked to its Primary Guarantee which sets clear literacy and numeracy targets for improvement at ages seven and eleven. It is based on teacher assessment rather than tests. It is based on teacher assessment rather than tests.¹⁷⁷ It is cited by the Labour Party as one of the local schemes which have a national application and is linked to the Labour proposal to develop national guidelines for baseline assessment.¹⁷⁸

Government proposals

In January 1996 the Secretary of State asked the School Curriculum Assessment Authority [SCAA] to undertake a preliminary survey of current practice and views on baseline assessment, and to prepare draft proposals for formal consultation in the Autumn. The draft proposals, *Baseline Assessment*,¹⁷⁹ were published in September 1996 and a wide consultation process has been started which ends on 8 November 1996.¹⁸⁰ Final advice is to be submitted to the Secretary of State in January 1997.

The SCAA survey found that about half of all English LEAs and many schools had developed or adopted local schemes. SCAA suggested that a single national scheme might not be able to respond effectively to different local circumstances in the same way. It recommended a National Framework as a means of regulating local schemes and ensuring quality. The National Framework would set out key principles which all local schemes would be required to meet.¹⁸¹ The key principles are divided into the essential and the desirable:¹⁸²

The National Framework will require baseline assessment schemes to:

- ensure equal entitlement for all children to be assessed, including those children for whom English is an additional language;
- be sufficiently detailed to identify individual children's learning needs, including special educational needs, in order to support effective and appropriate planning for teaching and learning;
- enable children's later progress to be monitored effectively;
- involve parents/carers in partnership with the school;
- take place in the first half term of the child's entry to the reception class (or year one if the child enters school at that point);

¹⁷⁷ "A city raises its sights", *Guardian Education*, 17 October 1996

¹⁷⁸ Labour Party 1995, *Excellence for everyone: Labour's crusade to raise standards*, para.4.3

¹⁷⁹ School Curriculum and Assessment Authority, September 1996

¹⁸⁰ Department for Education and Employment press notice, *Schools to assess all five year olds - Shephard*, 3 September 1996

¹⁸¹ op cit, p.5

¹⁸² op cit, p.12

- focus as a minimum on early literacy and numeracy;
- be unobtrusive for children;
- be manageable for teachers; and
- provide outcomes which will contribute to value-added measurement.

The National Framework will encourage baseline assessment schemes to:

- contribute to the child's attainment record over the key stage;
- build upon assessments and records from pre-school providers;
- include accounts of,
 - personal and social development
 - physical development
 - creative development
 - other aspects of children's development e.g. knowledge and understanding of the world
- be an integral part of the school's assessment policy.

The SCAA document lists fourteen specific proposals which give rise to the key principles. In particular, all schemes are to be required to cover early literacy and numeracy and encouraged to cover the scope of all the 'desirable outcomes'.¹⁸³ This links entry assessment to the desirable learning outcomes of pre-school education drawn up by SCAA in connection with the Nursery Voucher Scheme.¹⁸⁴ Providers of pre-school education who wish to participate in the nursery voucher scheme have to show inspectors that the education being offered is appropriate to the desirable outcomes.¹⁸⁵ All schemes are required to offer early opportunities for dialogue with parents/carers and to involve them as fully as possible in the assessment.¹⁸⁶

¹⁸³ Proposal 7

¹⁸⁴ School Curriculum and Assessment Authority and Department for Education and Employment, *Nursery Education: Desirable Outcomes for Children's Learning on Entering Compulsory Education*, January 1996

¹⁸⁵ see Nursery Education and Grant-Maintained Schools Bill, Library Research Paper 96/8, p.10

¹⁸⁶ Proposal 5

Research Paper 96/101

This involvement of parents in any baseline assessment, and thus in their children's education, has been stressed by both Sir Ron Dearing and the Secretary of State, although only a few of the current schemes recognised this significant role.¹⁸⁷ Sir Ron's letter presenting the draft proposals stated:

Finally, we have looked at the important role of parents in baseline assessment. We regard their role as crucial, but underdeveloped in most existing schemes. For this reason we believe that particular emphasis should be placed on the need for baseline assessment to involve parents actively in the process, both as recipients of the information generated by the assessments, and also in the assessments themselves. We look forward to developing this theme further during the consultation, and shall be conducting a separate consultation with a sample of parents to help guide our thinking. In the longer term we believe that the introduction of baseline assessment on a national scale provides an unparalleled opportunity to mount a campaign to involve parents more closely in their children's education. The benefits of this would be substantial in terms of a society more committed to learning and educational progress.

Mrs Shephard's reply emphasized that she shared his view 'that the introduction of baseline assessment provides a unique opportunity to involve parents in their child's education.'¹⁸⁸

The consultation document sets out for consideration the essential elements of three baseline assessment schemes: one using specified criteria to identify three levels of performance in relation to the desirable outcomes; the second giving a check list of key skills in the areas of early literacy and numeracy; and the third providing a framework which allows teachers to make descriptive statements about children's attainments under the headings of desirable outcomes but also incorporating the checklist of the second scheme. Each of these schemes is currently being trialled in a random selection of schools.¹⁸⁹

Mrs Shephard has recorded her interest in a scheme which will produce numerical data that can be used for value added analysis.¹⁹⁰

The costs to SCAA of implementing the proposals would be around £285,000. Mrs Shephard has 'noted' these costs. Sir Ron also suggested that support to schools could be provided through grants for education support and training [GEST].¹⁹¹

The intention is that baseline assessment should be introduced on a voluntary basis from September 1997, moving to statutory provision by September 1998. The responsibility to

¹⁸⁷ op cit, p.7

¹⁸⁸ see letters attached to Department of Education and Employment press notice, 3 September 1996

¹⁸⁹ For summary, see "Trial of strengths", *Times Educational Supplement* 2, 6 September 1996

¹⁹⁰ Department for Education and Employment press notice, 3 September 1996

¹⁹¹ Department for Education and Employment press notice, 3 September 1996

accredit schemes would rest with the new Qualifications and National Curriculum Authority [QNCA.]

The introduction of baseline assessment and testing for five year olds is now included in The Citizen's Charter.¹⁹²

Performance Targets

Target-setting is defined in a recent OFSTED report on good practice in the area as "an approach to raising standards by establishing specific measurable goals for improved pupil performance".¹⁹³

The encouragement for schools to make use of the information from Key Stage assessments and examination results to set targets for improvement is the main thrust of the DfEE's Improving Schools Programme.¹⁹⁴ The responsibility of schools, staff and governors to monitor achievement and set targets to raise standards has also been a theme of reports from Her Majesty's Chief Inspector of Schools [HMCI].¹⁹⁵

Sir Ron Dearing in his report on 16-19 year old qualifications recommended both local and school based targets linked to the National Targets for Education and Training.¹⁹⁶

"The Government should work with LEAs, TECs and other relevant partners to ensure that the setting, monitoring and achievement of local targets is consistent with and contributes to the National Targets for Education and Training.

In addition, LEAs, TECs, and the Further Education Funding Councils should work with locally managed schools and colleges on setting, monitoring and achieving institutional targets, linked to the National Certificates.

The Government should consider the case for governing bodies of schools and colleges to report on progress against institutional targets as part of the annual report to parents and the wider community."

¹⁹² The Citizen's Charter - Five Years On, Cm 3770, September 1996, para. 4.7

¹⁹³ *Settings Targets to Raise Standards: A survey of good practice*, OFSTED/DFEE, 1996

¹⁹⁴ Department for Education and Employment press notice, *Shephard launches school standards action plan*, 25 May 1995

¹⁹⁵ Standards and Quality in Education 1994/95, Annual Report of HMCI, OFSTED, HC 127 of 1995/96

¹⁹⁶ Review of Qualifications for 16-19 Year Olds, Summary Report, Ron Dearing, SCAA, March 1996, para. 5.12

Research Paper 96/101

The National Targets for Foundation and Lifetime Learning were launched by the CBI, with Government support, in July 1991 and have since been revised. They are monitored by the National Advisory Council on Education and Training Targets Council [NACETT].¹⁹⁷ The National Certificate proposed by Sir Ron would recognise achievement at the Intermediate and Advanced levels of the National Targets.

The Labour Party's policy for school improvement published in June 1995 stated that all schools would have a duty to set clear targets for improvement based upon their previous best performance.¹⁹⁸

Wales

In November 1995 the Secretary of State for Wales set a target for secondary schools in Wales that by the year 2000 half of all 15 year olds should gain A*-C grades in GCSE in mathematics, science, English or Welsh (first language). He also set out a programme of action to raise school standards.¹⁹⁹

Government Proposals

The third Competitiveness White Paper published in June 1996 stated that the Government would continue to encourage schools to set their own targets.²⁰⁰

Self-Government for Schools Cm 3315

In the section of the White Paper on LEAs and Quality Assurance the Government stresses the need for the LEA role to be specified so that it complements the responsibilities of the school.²⁰¹ The Improving Schools Programme will supply schools with better "benchmark" performance data for comparing their performance with that of other schools.²⁰²

¹⁹⁷ Departmental Report, Department for Education and Employment and OFSTED, Cm 3210, March 1996, paras 1.1-1.8

¹⁹⁸ *Excellence for everyone: Labour's crusade to raise standards*, Labour Party, para. 4.4

¹⁹⁹ *A Bright Future: Getting the Best for Every Pupil at School in Wales* and *A Bright Future - The Way Ahead*, Welsh Office, April and December 1995 and Cm 3315, Chapter 6

²⁰⁰ *Competitiveness: creating the enterprise centre of Europe*, Cm 3300, June 1996, para. 4.16

²⁰¹ Chapter 5, para 31

²⁰² Chapter 5, para. 24a

The White Paper refers to a further announcement in the Autumn on the system of school self-improvement. In September the Secretary of State announced her intention to legislate to require schools to set targets and to publish them in the governors' annual reports.²⁰³ SCAA and NACETT are to prepare benchmarks that will not just be national averages but will show the performances of different types of school. They will take account of their intake characteristics, especially pupils' prior performance. In her speech on 24 September the Education Secretary stated that she wanted every school to set out and review targets annually for mathematics, English and science. She suggested that most schools would want to go further and set targets for other subjects.²⁰⁴

The Bill: Clauses 32-36

Clause 32 defines a baseline assessment scheme as a scheme for assessing children at primary school to assist the planning of their education and the measurement of their future educational achievements. The designated body to accredit schemes is to be designated by the Secretary of State. Given Parliamentary approval it will presumably be the new Qualifications Agencies.²⁰⁵ The schemes apply to all maintained primary schools and special schools (other than hospital schools) and, in Wales only, to maintained nursery schools.

Clause 33 requires the governing body of every primary school to adopt a centrally accredited baseline assessment scheme. LEAs must select an accredited scheme, which may be drawn up by them, and governing bodies of LEA maintained schools must consider that scheme in making their choice.²⁰⁶ There is a reserve power for the Secretary of State to require a governing body to use a scheme named in the order.

Clause 34 places a duty on the LEA (for LEA maintained schools), the governing body and the headteacher to see that all pupils are assessed, with the timing of the assessment to be specified in regulations. There is a limited power of disapplication.

Clause 35 allows regulations, *inter alia*, to require the results of assessment to be recorded and notified to other schools when the pupils transfer and to such persons as are specified in the regulations. LEAs may be required to forward information on assessments at LEA schools to the designated body.

²⁰³ Department for Education and Employment press notice, *Shephard to legislate to raise schools standards*, 24 September 1996

²⁰⁴ extracts from speech included in *School Self-Improvement*, AMA Education Office Circular 96/87

²⁰⁵ Bill 8, Part VII

²⁰⁶ Clause 33(3)-(5)

Research Paper 96/101

Clause 36 enables the Secretary of State by regulations to require schools to set and publish annual targets for pupils' performance in examinations, National Curriculum assessments and other external qualifications. The legislation applies to all maintained schools including sixth form pupils.

Costs

The financial memorandum refers to the cost of developing baseline assessment materials as around £300,000 in 1997-98 and £200,000 each year thereafter. The Government would consider supporting training and supply cover through GEST. Local government would be expected to have increased expenditure of around £1 million each year for administering baseline assessment and 'a small additional burden' for the introduction of school targets.²⁰⁷

Comment

This part of the Bill is supported by the Labour Party on the grounds that these ideas were first thought of by them.²⁰⁸ The AMA and ACC suggest that LEAs will support baseline assessment since it is already well established within many schools and Authorities. Target setting is supported in principle by the AMA and ACC although there are concerns over detail.²⁰⁹

The AMA would wish LEAs to be required to adopt an approved scheme and for governing bodies to have to consider their LEA's scheme before adopting another. Since the draft proposals recommend that responsibility for monitoring whether LEA maintained schools are using an accredited scheme would fall to the LEA, the AMA would wish this to be a statutory duty on LEAs. They would also seek a statutory right for LEAs to receive pupil level data.²¹⁰ The AMA detect a steer by SCAA towards schemes 2 and 3 of the draft proposals. Mrs Shephard's interest in numerical data for value added analysis might be seen as favouring the checklists in 2 and 3. However, the interest of both Sir Ron and Mrs Shephard in involving parents in their child's education might favour schemes in line with Option 1 since the desirable outcomes cover personal and social learning, knowledge and understanding of the world and physical and creative development as well as literacy and numeracy. This would provide a wider remit for parental involvement.

²⁰⁷ Bill 8, pp vi-viii

²⁰⁸ "Labour claims ideas as its own", *Independent*, 24 October 1996

²⁰⁹ ACC Circular 1373/96, AMA Education Circular 54/96

²¹⁰ Association of Metropolitan Authorities, Education Officer Circular 96/85, 26 September 1996

Early years specialist are reported as recognising the need for assessment but having doubts about the flexibility and implementation of the schemes. The NAHT spokesman was sceptical about their value.²¹¹

²¹¹ "Testing at 5 gets muted welcome", *TES*, 6 September 1996

VII Supervision of Curriculum for Schools and External Qualifications

Chapters I. and II. **The Qualifications and National Curriculum Authority [QNCA] and the Qualifications, Curriculum and Assessment Authority for Wales [ACAAC]**

Background

School Curriculum and Assessment Authority [SCAA]

SCAA was set up in 1993²¹² to succeed the School Examinations and Assessment Council [SEAC] and the National Curriculum Council [NCC]. NCC and SEAC had been statutory bodies set up by the *Education Reform Act 1988* to introduce the National Curriculum and its associated assessment arrangements.²¹³ The decision to merge NCC and SEAC was generally welcomed at the time and criticism focused on the continued provision for the Secretary of State to make appointments to the new body.²¹⁴

SCAA's functions are set out in primary legislation.²¹⁵ Its responsibilities cover all aspects of curriculum and examinations up to and including A level. It has been responsible for the new National Curriculum, the review of school assessment and testing arrangements, the development jointly with the National Council for Vocation and Qualifications [NCVQ] of the Part One General National Vocational Qualification [GNVQ], the code of practice for the GCE and approving the new generation of National Curriculum GCSEs. An account of its activities is given in its annual accounts.²¹⁶ Sir Ron Dearing has been chairman since the creation of SCAA and the current chief executive is Nick Tate.

²¹² *Education Act 1993*, ss 244-248

²¹³ see Library Reference Sheet No. 87, pp 12-13

²¹⁴ see Library Reference Sheet No 92/10, pp 49-52

²¹⁵ *Education Act 1993*, s.245

²¹⁶ School Curriculum and Assessment Authority Accounts 1995-96

Wales

Section 252 of the 1993 *Education Act* allowed the transfer of SCAA's functions in relation to Wales to the Curriculum and Assessment Authority for Wales. This transfer by order was carried out with effect from 1 April 1995.²¹⁷

National Council for Vocational Qualifications [NCVQ]

The NCVQ was set up in 1986, following the publication of the White Paper, *Education and Training*.²¹⁸ It was charged with creating a new structure of National Vocational Qualifications [NVQs] to bring about improvements in the provision of work based qualifications in England, Wales and Northern Ireland. It was not set by up statute but operates as a charity and a registered company and a Non-Departmental Public Body accountable to the Secretary of State. Its main functions are to promote vocational educational and training to help raise the nation's skill base by developing, implementing and monitoring a comprehensive system of vocational qualifications.²¹⁹ The functions were first set out as tasks in the White Paper. Annual guidance letters from the Secretary of State have set out the functions in more detail, including the commission to develop General National Vocational Qualifications [GNVQs]. GNVQs are unit based qualifications, taken in schools and colleges, which are designed to give students knowledge and skills relevant to broad areas of work. GNVQs in ten vocational areas have been introduced and they have also been accepted as entry qualifications for higher education.

NCVQ was funded by Grant-in-Aid but the intention was that it should become self-financing, raising its main income from charges on the Awarding Bodies. Grant-in-Aid ceased in April 1995 but 80% of NCVQs income still comes from public funds in the form of specific contracts for review and marketing of NVQs and a grant for GNVQ development.

NCVQ and its work have recently been the subject of intensive scrutiny: the Capey²²⁰ report on GNVQs, the Beaumont²²¹ report on NVQs and SVQs and the quinquennial review. The review found that any decisions on mergers were to wait on the Dearing review. It also recommended that the DfEE should consider legislation extending NCVQ's regulatory role in respect of all vocational qualifications.²²²

²¹⁷ *Education (School Curriculum and Assessment Authority) (Transfer of Functions) Orders*, SI 1994/645 and 1995/903

²¹⁸ Cmnd 9823

²¹⁹ Department for Education and Employment press notice, *Top advisers join forces to raise standards - Shephard*, 19 September 1996

²²⁰ GNVQ assessment review, Dr John Capey, NCVQ, 1995

²²¹ Review of 100 NVQs and SVQs, Gordon Beaumont, NCVQ 1996, Library Dep. 2618(3s)

²²² NCVQ 1996 Quinquennial Review, Executive Summary, DfEE, May 1990

Research Paper 96/101

The recommendations in these reports are already being acted upon, but their full implementation will be a major task for the successor organisation.²²³

The chairman of NCVQ is Sir Michael Heron and the chief executive is John Hillier.

Scotland

The *Education (Scotland) Act 1996* set up the Scottish Qualifications Authority to take over the functions of the Scottish Examinations Board [SBE] and the Scottish Vocational Educational Council. The new single body was welcomed by SEN and SCOTVEC and the other representatives of bodies giving evidence to the Scottish Select Committee.²²⁴

The quinquennial review of NCVQ recommended that the logical place for the Standards Programme, by which industry organisations are encouraged to formulate occupational standards as a national basis for vocational qualifications, was with NCVQ. However the current Standards Programme operates on a UK basis. In particular the occupational standards form the basis of Scottish Vocational Qualifications [SVQs] as well as NVQs. The consultation paper (see below) suggested that issues relating to this would have to be resolved by the DFEE and the Scottish Office.²²⁵

4. Proposals for amalgamation of SCAA and NCVQ

The Review by Sir Ron Dearing of 16-19 Education recommended that a single body should oversee both academic and vocational qualifications.²²⁶ He suggested two options:

- Setting up two new bodies:
 - one responsible for qualifications from 14+;
 - the other responsible for the curriculum and for statutory assessment by national tests, or
- Replacing SCAA and NCVQ with one body to oversee qualifications, the curriculum and statutory assessment.

²²³ "Developing a framework for vocational qualifications is always going to be expensive", John Hillier, Chief Executive NCVQ, *TES*, 18 October 1996

²²⁴ HL Paper 62 1995-96 and Library Research Paper 96/68, pp 3-17

²²⁵ *Building the Framework*, DFEE 1996

²²⁶ Review of Qualifications for 16-19 Year Olds, Ron Dearing, SCAA, March 1996

The Dearing Report also made substantial recommendations relating to a coherent framework of qualifications and the acquisition of key skills which are currently being taken forward by a Joint Committee of SCAA and NCVQ.

In issuing its consultation document, *Building the Framework*,²²⁷ the Government accepted that implementing either of the Dearing's proposals would require legislation and stated its view that a single body was the preferred option. The paper sought comments on both options; the powers required by a single body with oversight of qualifications; functions of the NCVQ which might be transferred to a qualifications body; the constitution of any new body or bodies and on various issues arising out of the quinquennial review of NCVQ. It accepted that the Joint Committee with no status in law was not the ideal basis for ongoing work.²²⁸

At the same time the Welsh Office and the Department of Education for Northern Ireland [DENI] issued consultation papers.²²⁹

Consultation on the DfEE paper closed on 5 July 1996 and a summary of the responses has been prepared and will be deposited in the Library. Over 100 responses were received; over 75% in favour of a single body.²³⁰ On 19 September 1996 Gillian Shephard, Secretary of State for Education and Employment, announced plans for a new body, the Qualifications and National Curriculum Authority [QNCA].²³¹ Mrs Shephard welcomed QNCA as mirroring the successful merger of the Department of Education and the Employment Department and helping to secure the highest standards in the full range of qualifications and in the national curriculum. The press release stated:

The main objective of the QNCA will be:

- To work with and assist the Secretary of State to ensure that the curriculum and qualifications available to young people and adults are high quality, coherent and flexible; and that they contribute effectively to improving the nation's level of attainment in education and training and to building the economy.

²²⁷ Department for Education and Employment, *Building the Framework*: a consultation on bringing together the work of NCVQ and SCAA. 1996

²²⁸ op cit, paragraph 1.7

²²⁹ *The Future Management of the Qualifications Framework*, Welsh Office, May 1996

²³⁰ Department for Education and Employment press notice, 19 September 1996

²³¹ Department for Education and Employment press notice, *Top advisers join forces to raise standards - Shephard*, 19 September 1996

Research Paper 96/101

The specific functions it should be engaged in to support and achieve this are to:

- Develop and keep under review the National Curriculum;
- Develop and implement assessment arrangements for pupils of compulsory school age, including baseline assessment:
- Accredite and ensure quality assurance as appropriate of externally awarded academic and vocational qualifications, including GCSEs, A levels, GNVQs and NVQs; and
- Advise the Secretary of State on the approval of qualifications for use in wholly or mainly publicly funded programmes of education and training, excluding Higher Education.

In order to do this the organisation will need to:

- Keep under review the curriculum, assessment and qualifications and offer advice to the Secretary of State:
- Carry out appropriate research and development to support its functions; and
- Publish and disseminate information, including providing support and guidance for teachers, lecturers and employers, where it is best placed to do so.

The Bill: Clauses 37-48. Schedules 6 and 7

Clauses 37 to 42 and Schedule 6 provide for the merger of SCAA and NCVQ to form the Qualifications and National Curriculum Authority. [QNCA.]

Clause 37 provides for the establishment of QNCA and the size (8-13) and experience of its membership.

Schedule 6 sets out the procedural arrangements.

Clause 38 gives QNCA the general function of advancing education and training.

These two clauses extend to Northern Ireland as well as England and Wales.

Clause 39 specifies QNCA's more detailed functions in relation to the curriculum, assessment and examinations in schools in England. If designated by the Secretary of State, this will include baseline assessments.

Clause 40 specifies QNCA's functions in relation to other types of academic and vocational qualifications used in further education and employment, including accrediting such qualifications. **Clause 40(3)** provides for QNCA to act for the time being in relation to external vocational and academic qualifications in Wales. **Clause 40(4)** applies sub-section 2(a) to (g) to Northern Ireland but only with respect to National Vocational Qualifications. It is made clear in Clause 40(5) and (6)(a) that the duty of reviewing qualifications does not apply to higher education except where qualifications have been submitted for accreditation under Clause 40(2)(g).

Higher institutions had been concerned that QNCA's powers might extend to higher education.

Clause 41 allows GNCA to advise on any other matters relating to education and training which the Secretary of State may specify.

Clause 42, which also applies to Northern Ireland, contains supplementary provisions relating to the discharge of QNCA's functions, including conditions which may be attached to the accreditation or approval of a qualification.

Clauses 43 to 48 and Schedule 7 contain parallel provisions relating to Wales. The Curriculum and Assessment Authority for Wales [ACCA] remains in existence with a new name, the Qualifications, Curriculum and Assessment Authority for Wales, to be known by its Welsh acronym, [ACCAC].²³²

Clause 46 makes provision for the functions exercised by QNCA in Wales for the time being to be transferred by order to ACCAC or to ACCAC and QNCA acting concurrently.

Clauses 49 and 51 dissolve the National Council for Vocational Qualifications [NCVQ] and the School Curriculum and Assessment Authority [SCAA] and provide for the transfer of their staff and property to QNCA and to ACCAC in Wales.

²³² Clause 43

Research Paper 96/101

Clause 52 provides for bodies which award vocational qualifications accredited by QNCA or by ACCAC in Wales to pay a levy to the relevant authority, with the proceeds being used to support the raising standards in vocational qualifications.

Clause 53 amends the existing controls which prevent state schools from offering courses leading to external qualifications unless those qualifications have been approved.²³³ It allows the Secretary of State to make regulations which would continue to apply those controls to schools, but which would extend them so that specified public funds could only be used to support other courses leading to external qualifications in further education and employment if those qualifications had been approved. The higher education sector would be outside the scope of the clause.

There has been a power²³⁴ to extend controls of A levels which has not been used. This clause would allow for the control of both academic and vocational qualifications.

Comment

Most published comment supports the merger, or at least certainly supported it at the time of the Dearing Review.²³⁵ The Labour Party supports the principle of the proposal.²³⁶

Any adverse comment has focused on the potential disadvantage of a single body noted in the consultation documents: that it would find itself dealing with and regulating a very wide range of interests, with a remit stretching from nursery to post-graduate provision and that this remit would be demanding and would give rise to concern that all interests should be reflected even-handedly.²³⁷ The Education Select Committee in February had not been convinced that a merger **at that stage** was appropriate. They favoured an evolutionary development from the current SCAA and NCVQ Joint Committee but recognised the dangers of creating a monopoly.²³⁸

²³³ *Education Act 1996*, s.400

²³⁴ *Education Act 1996*, s.401

²³⁵ AMA Education Committee Agenda, 4 July 1996, Item 33

²³⁶ Tories fail the challenge of the future, Labour Party, 1996

²³⁷ "Ministers rush to back superquango", *TES*, 17 May 1996

²³⁸ Education and Training for 14 to 19 year olds. Education Select Committee, HC 63-1, 1995-96, paras 148-150

VIII Inspection of Local Education Authorities and School Inspections

Background

Inspection of LEAs

The idea of inspecting LEAs was cited as a key element of Government policy by the Prime Minister in 1995.²³⁹ An article by the chief education officers of Staffordshire and Hammersmith & Fulham in February 1995 had suggested re-establishing inspections on the lines of the HMI programme of inspecting LEAs. They pointed out that OFSTED alone did not have the necessary experience but that it would be possible to put together a team from OFSTED, district and the DFEE.²⁴⁰ Proposals by Chris Woodhead, the chief inspector, for OFSTED to survey the effectiveness of LEAs followed. The Society of Education Officers responded that it recognised the importance of external review but that assumptions about the role of the LEA had to be agreed by Government.²⁴¹

Self-Government for Schools Cm 3315

The White Paper devoted a chapter to the role of LEAs.²⁴² It listed and described what the Government considered were the main functions which LEAs should, or might undertake²⁴³

- Organising forms of education which take place outside schools
- Planning the supply of school places, handling complaints and other regulation
- Allocation and monitoring of school budgets
- Organising services to support individual pupils
- Supplying support services for schools to buy if they wish
- Promoting quality in schools, complementing the responsibility of schools for their own performance and the responsibility of the national inspectorates for inspecting and reporting on that performance
- Co-ordinating school networks and developing good practice, particularly in carrying out national initiatives.

²³⁹ Main points of Major's Education Speech, Press Association, 12 September 1995

²⁴⁰ "Ofsted for the officers", *Education*, 17 February 1995

²⁴¹ "Define our role plea by education chiefs", *TES*, 9 February 1996

²⁴² Chapter 5

²⁴³ Cm 3315, Chapter 5, para. 6

Research Paper 96/101

It was proposed to extend OFSTED's and OHMCI's powers to inspect LEAs' work in monitoring and supporting schools. Reference was made to OFSTED's pilot reviews of LEAs, (initially Staffordshire and Cornwall) focusing on their support for school improvement and the development by the Standing Conference of Chief Education Officers, with the Society of Education Officers, of a framework for LEAs to use in reviewing their own performance.²⁴⁴

The review of Staffordshire Education Authority was published in September 1996.²⁴⁵

The report noted:

"The OFSTED contribution (an introductory report analysing data and a review of the effects of LEA activities on school effectiveness) makes it necessary to be explicit about the status and focus of our report. The OFSTED exercise provides a summative evaluation of the work of the LEA in improving school effectiveness. Our study takes note of those conclusions but puts them into the context of policy and planning within which the LEA operates, its effectiveness in operating within the larger set of institutions concerned with education, its achievements in enhancing education outside schools and in the services provided to individual parents and pupils. It also offers recommendations which might inform the LEA's future development."²⁴⁶

The overall verdict on the LEA was that it was competent and in many ways better than competent.²⁴⁷

The Bill: Clauses 54-57

Clause 54 confers a power on the Chief Inspector of Schools in England and Wales to arrange for the inspection of LEAs. Each Chief Inspector will also have a duty to arrange an inspection when requested to do so by the Secretary of State. Inspections may cover any LEA function relating to the provision of school education or to the education of children of compulsory school age outside school. This presumably refers to education at home or in pupil referral units, although not obviously to adult education or necessarily to the Youth Service.

²⁴⁴ Cm 3315, Chapter 5, para. 40

²⁴⁵ Review of Staffordshire Education Authority: report of a team appointed by the local education authority led by Professor M Kogan. Staffordshire County Council, September 1996

²⁴⁶ op cit, para. 8

²⁴⁷ "County gets gentle pat on the back", *TES*, 11 October 1996

Clause 55 provides for the publication of LEA inspection reports and places a duty on the LEA to publish an action plan in response to the report.

Clause 56 confers upon those conducting LEA inspections a right of access to premises and documents, and requires LEAs to provide all reasonable assistance.

Clause 57 gives the Audit Commission the power to assist with an inspection when requested to do so by the Chief Inspector.

The **financial memorandum** to the Bill²⁴⁸ notes that this chapter would impose a new burden on HMCI in England and Wales, partially offset by reductions in other areas of their work. New additional costs would be met within the total resources allocated to the Offices of the Chief Inspectors.

School Inspections

Clause 58 and **Schedule 8** make miscellaneous amendments relating to school inspections. The amendments are minor and do **not** relate to the revised inspection arrangements to be introduced for secondary schools in September 1997 on which consultation took place earlier this summer.²⁴⁹ These proposals have been accepted by the Secretary of State.²⁵⁰

OFSTED issued a consultation letter on various technical adjustments in August 1996.²⁵¹ All the adjustments listed in the letter are in the Schedule. These include amendments relating to:

the grounds on which inspections can be removed from the register of inspectors; the lifting of the inspection requirement where schools are due to close; the period within which parents must be sent summaries of a school inspection report; the arrangements for tendering for inspections, and the timing of consultation with schools about inspections; the requirements on inspection team members; and powers for inspectors to inspect education provided by other schools for pupils of the school being inspected.

²⁴⁸ Bill 8, p.vii

²⁴⁹ Consultation on arrangements for the inspection of maintained schools, OFSTED, May 1996

²⁵⁰ HC Deb 15 October 1996 c. 882W

²⁵¹ *Technical adjustments to inspection legislation*, consultation letter, OFSTED, 13 August 1996

Comment

The response on LEA inspections from the local authority associations supported LEA services being subject to external review but considered that the proposals needed to take account of the democratic status of LEAs and that OFSTED's inspection expertise did not extend beyond schools.²⁵² Concerns about the legal basis of the LEA role in school improvement were expressed in a paper by Brian Fidler and Robert Morris presented to the BEMAS annual conference in September. Their analysis of Chapter 5 of the White Paper concluded that what was to be inspected in LEA business would have to be as defined in law as the detailed requirements relating to the curriculum and other matters which bear on the individual school. In a statement which is reflected by the views expressed by the local authority associations, they write:

"The text (of Chapter 5 of the White Paper) takes little account of the fact that LEAs are public authorities, created by Parliament and have within their boundaries in aggregate the whole of the land of England and Wales."²⁵³

The Labour Party support the proposals for inspection of LEAs as being in line with their own policies.²⁵⁴

The amendments to school inspections were accepted at consultation stage by the Association of Metropolitan Authorities as either genuinely technical or, in the proposal that schools should be alerted to a pending inspection **after** the initial invitation to tender had been completed, as welcome.²⁵⁵

²⁵² Education Bill, Acc Circular 1373/96 and AMA Education Circular 54/96

²⁵³ Dr Brian Fidler and Dr Robert Morris, *The LEA Contribution to School Improvement*, Centre for Education Management, The University of Reading, September 1996

²⁵⁴ *Tories fail the challenges of the future*, Queen's speech brief 1996, Labour Party, October 1996

²⁵⁵ Education Bill - Minor amendments to legislation, AMA Education Circular 44/96, 5 September 1996

IX Careers Education and Guidance

Background

The Trades Union Reform and Employment Rights Act 1993 transferred responsibility for careers services from local education authorities in England and Wales (and from education authorities in Scotland) to the Secretaries of State for Education and Employment, Wales and Scotland. The Secretary of State may make arrangements for local careers services provision with whomsoever is considered to be most suitable. It is intended that all career services will be contracted out. The Annual Report of the Chief Inspector of Career Services gives details of the contracted services and outlines recent activities in careers guidance in school and further education.²⁵⁶

The Government's 1994 and 1995 White Papers on Competitiveness²⁵⁷ and, more recently, Sir Ron Dearing's *Review of Qualifications for 16-19 year olds*²⁵⁸ highlighted the need for effective career education and guidance. Following the 1994 White Paper the Government published new guidelines for schools on how to integrate careers advice into the curriculum²⁵⁹ and the Society of Education Officers published a Code of Practice setting out the principles for local partnership between schools, colleges, LEAs, TECs, careers services and employers in providing careers education and guidance.²⁶⁰ The School Curriculum and Assessment Authority (SCAA) published guidelines to schools on delivering effective careers education and guidance to pupils.²⁶¹ However, a report by OFSTED pointed to a very uneven picture of career education and guidance. A third of schools inspected were found to be providing good or very good careers education and guidance for their pupils, but in another third of schools standards were described as poor.²⁶² A recent study looked at careers guidance in seven OECD countries and concluded that it could be made much more effective.²⁶³

The 1995 White Paper, Competitiveness: Forging Ahead, announced that the Government would introduce a number of measures, including legislation, to improve careers education and guidance in schools and colleges. A Consultation Paper was issued in June 1995.²⁶⁴

²⁵⁶ Annual Report of the Chief Inspector of Careers Services, 1995-96, September 1996

²⁵⁷ DTi, *Competitiveness: Helping Business to Win*, May 1994, Cm 2563; *Competitiveness: Forging Ahead*, May 1995, Cm 2867

²⁵⁸ Ron Dearing, *Review of Qualifications for 16-19 Year Olds*, March 1996

²⁵⁹ DFE Press Notice, *New guidelines for schools as part of the drive to improve careers advice-Gillian Shephard and Michael Portillo*, 2 November 1994

²⁶⁰ DfEE Press Notice, *Paice welcomes new guidelines*, 12 December 1995

²⁶¹ SCAA, *Looking Forward- Career Education and Guidance in the Curriculum*, July 1995

²⁶² OFSTED, *A Survey of Careers Education and Guidance in Schools*, December 1995

²⁶³ OECD, *Mapping the future, 1996*. (The seven countries looked at were Austria, Canada, Finland, Italy, Japan, Mexico and Scotland.)

²⁶⁴ DFE and Employment Department, *Careers Education and Guidance: Proposed Legislation A Consultation Paper*, June 1995

Research Paper 96/101

Announcing the proposals,²⁶⁵ Eric Forth, the Education Minister, said that most secondary schools were well aware of the crucial importance of careers education and that many have strong and effective working relationships with their local careers service which have been formalised through a service level agreement. However, he considered that given the organisational changes in the management of education and the careers services there was a strong case for clarifying the law on what schools are expected to provide and how schools and the careers service are to work together. He emphasised that the Consultation Paper did not propose that careers education should become a National Curriculum subject but that it should have a statutory context so that all those involved are clear about what the Government expect. He said that the proposed legislation would:

- require all maintained secondary school to provide a programme of careers education appropriate to the needs of individual pupils both in key stages 3 and 4 (i. e. for 11-16 year olds);
- require that all schools and colleges work with the Careers Services and provide facilities for them to provide effective careers guidance; and,
- make the Careers service responsible for providing young people with information on both work based and further education options.

A separate consultation exercise was conducted in Wales.²⁶⁶

A summary of responses to the consultation was published by the DfEE in November 1995.²⁶⁷ This reported that although there were many specific aspects of the proposals which individual respondents would have liked to see changed, nearly all of the respondents were in favour of providing a statutory basis for careers education within the secondary curriculum, and clarifying the relationship between institutions and careers services. Virtually all the respondents wanted career education to be compulsory but with the proviso that there should be detailed guidance to accompany the legislation. Concern was expressed about the financial implications of the proposals. Improvement of provision without additional funding was not seen as realistic.

²⁶⁵ DFE Press Notice, *Government moves to boost careers guidance for pupils*, 15 June 1995

²⁶⁶ Welsh Office, *Careers Education and Guidance: Proposed Legislation A Consultation Paper*, June 1995

²⁶⁷ DFEE, *Summary of Responses to Consultation Paper Careers Education and Guidance Proposed Legislation*, November 1995

Clauses 59 to 62

Clause 59 places a duty on schools to provide a programme of careers education for pupils aged 14 to 16 years of age. The requirement applies to county and voluntary schools, grant-maintained schools, maintained or grant-maintained special schools, and city technology colleges and city colleges for the technology of the arts. (The provisions do not extend to independent schools.)

Clause 60 requires schools and further education colleges to provide careers advisers with relevant information on pupils and students, except where a parent or student who has attained the age of 18 has indicated that this information should not be provided to the careers adviser. Schools and further education colleges are required on request to give careers advisers access to pupils and students for the purpose of providing careers advice and guidance. Such access must include an opportunity for the careers adviser to interview a pupil or student about his career, if he agrees to be interviewed. Any request for information about, or access to, individuals must be made in writing to the headteacher, principal or other head of an institution in question. The provisions apply to students receiving full-time education or part-time education undertaken “in order to fit them for employment”.

Clause 61 requires secondary schools and further education colleges to ensure that pupils and students have access to guidance materials and a wide range of up-to-date reference materials relating to careers education and career opportunities.

Clause 62 empowers the Secretary of State to make Regulations to extend or modify the provisions contained in clauses 59 to 61.

The Explanatory and Financial Memorandum to the Bill states that it is estimated that funding for the provision required by clause 59 would cost around £15 million for schools for a full year. The Memorandum states that the costs relating to access to careers materials under Clause 61 are expected to be met from within planned funding already announced by the Government. The proposals are expected to lead to a “small increase in teaching time allocated to careers education”.

Reaction to the proposals

As noted above, the proposals as set out in the Consultation Paper were generally supported. At the time of writing there had been little response specifically to the Bill.

X Miscellaneous and General

Management Committees for Pupil Referral Units [Clause 63]

Section 298 and Schedule 18 of the *Education Act 1993* made statutory provision for Pupil Referral Units (PRUs). In effect this gave a specific status to arrangements local education authorities had made for providing “education otherwise than at school”, apart from home tuition, for children who are excluded from school or who are for some other reason not attending a mainstream school. These provisions are now contained in section 19 and Schedule 1 of the *Education Act 1996*.

DfEE Circular 11/94, *The Education by LEAs of Children Otherwise than at School*, provides detailed guidance on the way PRUs are required to operate, the curriculum they should offer, and other issues such as staffing and accommodation. There are about 300 PRUs. An OFSTED Report, following inspections of 12 PRUs (to pilot the use of OFSTED’s Framework for school inspections) highlighted problems of low achievement, weak teaching and lack of planning in PRUs, poor accommodation and inadequate strategic support by LEAs. OFSTED reported that as a result of these problems, reintegration of pupils into mainstream schooling was often difficult or impossible. The report concluded that while a minority of PRUs had shown that success is possible, few are appropriately supported in their efforts to deal with the most disaffected pupils within the education system.²⁶⁸

The Government decided to bring all PRUs into the OFSTED inspection regime.²⁶⁹ The White Paper, *Self- Government for Schools*, said that the Government was considering what action was needed to raise the quality of education provided in PRUs. One option being considered was having management committees representing local interests.²⁷⁰

Clause 63 empowers the Secretary of State to make Regulations requiring LEAs to establish management committees for their PRUs. Such management committees would include representatives of schools (including grant-maintained schools) in the area served by the unit. Regulations may also make provision for the composition, functions and procedures of management committees.

²⁶⁸ OFSTED, *Pupil Referral Units: the first twelve inspections*, December 1995; OFSTED Press Notice, *Pupil Referral Units are failing to raise achievement, says HMI*, 19 December 1995

²⁶⁹ The Education (Pupil Referral Units) (Application of Enactments) (Amendment) Regulations 1996 SI No. 2087

²⁷⁰ White Paper, p. 34, para. 60

Teachers not under contract of employment and persons having access to those under 19 [Clause 64]

Under section 218 of the *Education Reform Act 1988* the Secretary of State may by regulation make provision for prohibiting or restricting, on medical grounds and in cases of misconduct, the employment of teachers and other persons employed by LEAs or governing bodies of schools or institutions in work which brings them regularly into contact with pupils and students under 19 years of age. The statutory provisions are contained in the *Education (Teachers) Regulations 1993*, as amended.²⁷¹ DfE Circular 13/93, *Physical and Mental Fitness to Teach of Teachers and of Entrants to Initial Teacher Training*,²⁷² and DfEE Circular 11/95, *Misconduct of Teachers and Workers with Children and Young Persons*,²⁷³ explain the Secretary of State's powers. At present the provisions do not extend to agency teachers.

On 28 June 1996 Robin Squire announced new guidance on the employment of supply teachers to ensure that the same investigations are made into the background of supply teachers as permanent staff, to ensure that they are not barred from teaching or have criminal records or health problems. He said that legislation would be introduced to give statutory force to this guidance.²⁷⁴ Before this, Margaret Hodge had introduced a Ten Minute Rule Bill providing for the regulation of supply teachers and had drawn attention to instances of teachers being supplied by recruitment agencies without checks being made on their background, and barred teachers being employed as supply teachers.²⁷⁵

Clause 64 amends the existing power to make regulations governing the employment of teachers so that the rules on barring of teachers on medical grounds or for misconduct can be extended to agency teachers. It also provides for the regulations on barring of teachers for medical grounds or for misconduct to be applied to volunteers and others who have regular contact with pupils and students under the age of 19 years in schools and colleges.

Definition of "School" [Clause 65]

Clause 65 makes a technical amendment to the definition of school contained in the *Education Act 1996* so that it covers only those institutions providing primary or secondary education, and not institutions providing full-time education solely for 16-19 year olds.

²⁷¹ SI 1993 No. 543, as amended by the *Education (Teachers) Regulations 1994* SI 1994 No. 222, and by the *Education (Teachers) (Amendment) Regulations 1995* SI No. 602, and the *Education (Teachers)(Amendment)(No.2) Regulations 1995* SI 1995 No. 2594

²⁷² DfE, Circular 13/93, *Physical and Mental Fitness to Teach of Teachers and of Entrants to Initial Teacher Training*, 10 November 1993

²⁷³ DfEE Circular 11/95, *Misconduct of Teachers and Workers with Children and Young Persons*, October 1995

²⁷⁴ DfEE Press Notice, *Tougher checks on supply teachers announced by Robin Squire*, 28 June 1996. DfEE Circular 7/96, *Use of Supply Teachers*, June 1996

²⁷⁵ HC Deb., 16 July 1996, cc 950-5

Compulsory School Age [Clause 66]

Clause 66 amends section 8 (compulsory school age) of the *Education Act 1996* to enable the Secretary of State to specify which dates should be used each year for the purpose of determining when children start to be of compulsory school age. The Government intends to use this power to introduce a single national set of dates at which compulsory education is deemed to start, to ensure smooth dovetailing with the nursery education voucher scheme.

The aim of the nursery education voucher scheme is to provide a voucher for four year old children which can be exchanged for three terms of education before compulsory school age. The scheme is being introduced in two phases. Four authorities (Kensington & Chelsea, Wandsworth, Westminster, and Norfolk) have been participating in Phase 1 of the scheme. Nationwide implementation starts in April 1997. For general background information on the scheme, see Library Research Paper 96/8.²⁷⁶

In July 1996 the DfEE issued a Consultation Paper, *Nursery Education Vouchers : Eligibility Dates*, which sought views on the notion of adopting a common set of dates to assess children's eligibility for nursery education vouchers. The paper stressed that the proposals were only concerned with eligibility dates, not term dates, and explained that existing legislation means that compulsory education begins at the start of the first term following a child's fifth birthday, which implies children should be eligible for vouchers for the three terms following their fourth birthday. Admissions authorities use either actual term dates or nominal dates such as 1 January or 1 September as cut off dates for eligibility for compulsory education. Practice varies locally. To use actual term dates as the eligibility dates for the voucher scheme would make it more difficult to guarantee that all children receive three vouchers. Therefore the paper proposed a single national set of eligibility dates for the voucher scheme. Admission authorities would remain free to set term dates for compulsory education.²⁷⁷

General Provisions [Clauses 67 to 72 and Schedules 9 and 10]

These parts of the Bill contain technical provisions including: the making of orders and regulations; finance; interpretation; minor and consequential amendments and repeals; and commencement.

²⁷⁶ Library Research Paper 96/8, *Nursery Education and Grant-Maintained Schools Bill*, 18 January 1996

²⁷⁷ DfEE, *Consultation Paper on Eligibility Dates for Nursery Education Vouchers*, 10 July 1996

Related Research Papers

87/6	Education Reform Bill	24.11.87
91/9	Education (Schools) Bill 1991-92	15.11.91
92/10	Education Bill 1992-93	05.11.92
96/8	Nursery Education and Grant-Maintained Schools Bill	18.01.96
96/68	The Education (Scotland) Bill [HL]	31.05.96
96/72	The Quango Debate	14.06.96