

Nursery Education and Grant-Maintained Schools Bill

[Bill 41 of 1995/96]

Research Paper 96/8

18 January 1996



This paper examines the background to, and the provisions of, the Nursery Education and Grant-Maintained Schools Bill presented in the House of Commons on 10 January 1996. The Bill seeks to amend the law to provide for the making of grants in respect of nursery education in England and Wales. Although the Bill makes no mention of a voucher scheme, the Government has made it clear that it intends to use the provisions of the Bill to introduce a nursery voucher scheme throughout England and Wales. Separate arrangements are being made for Scotland and Northern Ireland. The Bill also seeks to empower the governing bodies of grant-maintained schools in England and Wales to borrow from private sources. It is due to be debated on Second Reading on 22 January 1996.

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Part I Nursery Education

A. Background

Local education authorities are not under an obligation to provide education in nursery schools or classes, but they have the power to establish and maintain them, or assist those otherwise established.¹

There is a variety of education and care services for the under fives in England and Wales: nursery education in maintained nursery schools and nursery classes in maintained primary schools; early admission to reception classes in primary schools; playgroups; private nursery schools; day nurseries run by local authorities, voluntary bodies and the private sector; and childminders. Most four year olds receive some form of pre-compulsory school education.

As at January 1994 there were about 645,000 four year olds in England of whom nearly 500,000 (77 per cent) are estimated to have attended a maintained sector school full-time or part-time before reaching compulsory school age. Of this 77 per cent, 26 per cent were in nursery schools or classes and 51 per cent were in primary school reception classes. Of the remainder it is estimated that around 19 per cent of four year olds were in some form of private or voluntary provision leaving approximately 4 per cent of four year olds with no pre-school place at all.²

In Wales there are around 38,000 four year olds. The level of maintained sector provision is considerably higher than in England with some 90 per cent of four year olds having a place at LEA or grant-maintained nursery or primary school. The majority of these places - 70 per cent of four year olds - attended full-time in primary schools.³

The estimated unit cost of a full-time place in a nursery school in England was £3,250 in 1993/94 and £2,660 for a place in a nursery class in a primary school.⁴

¹ The *Education Act 1980*, section 24. This section replaced section 8(2)(b) of the *Education Act 1944* which had required LEAs when fulfilling their duties to have regard to the need to provide nursery education. LEAs behaved as though they had a power, not a duty, to provide and central government had not attempted to enforce the provision. The effect of section 24 of the *Education Act 1980* was to make it clear that the provision of nursery education was optional.

² *Nursery Education Scheme, The Next Steps*, DFEE, 9 January 1996, p.4

³ OPCS Population Estimates 1993, *Statistics of Education and Training in Wales: Schools 1995*

⁴ HC Deb 17 October 1995 c.239W

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There is general acceptance of the benefits of high quality nursery education and support for its expansion. Robin Squire, the Parliamentary Under-Secretary of State for Schools, has observed that: "There is a widespread acknowledgement, based on evidence from research studies in the United States and this country, that children benefit from good quality nursery education in primary education and beyond".⁵ The American research includes the cost-benefit analysis of the High/Scope program in the United States.⁶ The British research includes work by A.F. Osborn and J.E. Milbank⁷ and more recently a study which looked at the effect nursery and playgroup experience had on National Curriculum results for seven year olds.⁸ However, other research suggests a less conclusive link between pre-school experience and later academic achievement.⁹

At the 1994 Conservative Party Conference the Prime Minister made a commitment to expand nursery education:

"There are many views about nursery education. But my view is quite clear. I am in favour of it. The picture is improving. Over half our three-and-four year olds go to nursery school. Nine out of ten have been to a playgroup or nursery school before they are five. It's time to accelerate this trend. So I have asked Gillian Shephard to work up proposals to provide places for all four year olds whose parents wish them to take it up. This is a long term proposal, but we intend that this new provision will begin to come on stream during this Parliament.

This won't be an easy exercise. We must consult parents and practitioners to get it right.

Because any additional, publicly-funded provision must be of high quality, it must promote diversity and parental choice. And it must be carefully targeted in a way that expands, and does not crowd out, the private and voluntary provision we have at present.

Since we are making a lasting change to pre-school opportunities, we will have to phase in the introduction of this extra provision. But what I am doing today is giving you a cast-iron commitment that it will happen."¹⁰

⁵ HC Deb 18 December 1995 c.980W

⁶ L.J. Schweinhart and D.F. Weikart, *A Summary of Significant Benefits: The High/Scope Perry Pre School Study*, 1993. For an outline of earlier High/Scope research see the National Commission on Education Briefing No 8, November 1992, *Learning Before School* by Kathy Sylva and Peter Moss

⁷ A.F. Osborn and J.E. Milbank, *The Effects of Early Education: A Report from the Child Health and Education Study*, Oxford, 1987. For comment on this and other British research see The British Psychological Society, *Education Section Review*, Volume 18, Number 2, 1994

⁸ Sandra Daniels, Can Pre-School Education Affect Children's Achievement in Primary School, *Oxford Review of Education*, Volume 21, Number 2, 1995

⁹ JS Fuerste and D Feurst, Chicago Experience with an early childhood programme : the special case of the child parent centre programme. *Educational Research*, Vol 35 No. 3 Winter 1993; Caroline Sharp et al., How do season of birth and length of schooling affect children's attainment at key stage 1? *Educational Research*, Vol 36 No. 2 Summer 1994

¹⁰ Conservative Party Press Release, 14 October 1994, *John Major's speech to the 1994 Conservative Party Conference*

Although the aim of extending nursery education is widely shared, there are strong differences of opinion on how this should be achieved. Gillian Shephard, the Education Secretary set up a special task force to consider how the Prime Minister's commitment could be implemented.¹¹ Press reports suggested that two options were seriously being considered: a bidding system for new nursery places in each area, and a voucher scheme.¹² The Education Secretary confirmed that a voucher system was one option under consideration.¹³

The idea of vouchers for education has a long history. In the 1970s Sir Rhodes Boyson made the case for a voucher system involving state and independent schools, and in the early 1980s Sir Keith Joseph, then Education Secretary, considered the possibility of introducing school vouchers.¹⁴ Since then vouchers have continued to be discussed by academics and politicians but have not been widely supported. Some commentators noted that the introduction of formula funding under Local Management of School Schemes could make the introduction of school vouchers a more practical possibility.¹⁵ Interest in nursery vouchers can be traced to discussions for a nursery voucher scheme in Wandsworth in 1990.¹⁶

B. Proposals for a Pre-School Voucher Scheme

1. The 6 July 1995 announcements

On 6 July 1995 the Education Secretary announced that a pre-school voucher scheme would be introduced to provide a place for every four year old whose parents wish to take it up.¹⁷ This is the first time vouchers will be used to fund national educational provision in this country. The Government sees the scheme as a development of pupil-led funding in nursery education and as a way of increasing parental choice and boosting provision. The 6 July announcement set out the framework of the policy.¹⁸ The Secretary of State for Wales announced that the scheme would apply to Wales¹⁹ and the Welsh Office issued a separate

¹¹ HC Deb 1 November 1994 c.1332 and Department for Education Press Notice, *Shephard launches under fives task force*, 1 November 1994

¹² "Aitken backs voucher scheme for nurseries", *Financial Times*, 16 March 1995, p.9 and "Bidding is safer bet than vouchers", *Education*, 5 May 1995, p.2

¹³ HC Deb 13 June 1995 c.484W

¹⁴ Library Research Note No 112, Education Vouchers, 15 March 1983

¹⁵ "Vouchers by the back door feared", *TES*, 27 January 1989, pp 1 and 2

¹⁶ "Wandsworth tests school vouchers", *Sunday Times*, 21 October 1990, p.5

¹⁷ HC Deb 6 July 1995 cc 517-519. DFEE Press Notice, *Shephard Launches Nationwide Pre-School Plan £730 million Voucher Scheme to Give Purchasing Power to Parents*, 6 July 1995

¹⁸ The Education Secretary also announced that she was considering removing the statutory requirement to publish proposals to create new nursery classes in state schools: grant-maintained, voluntary and county schools. A consultation letter on this was issued by the DFEE on 26 September 1995. Final decisions on this have yet to be announced by the Government.

¹⁹ HC Deb 6 July 1995 c.324W

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Consultation Document on the proposed scheme.²⁰ It was decided that the operation of the pilot scheme (Phase 1) would not be necessary in Wales.²¹

The key features of the Scheme as announced by the Education Secretary on 6 July 1995 are as follows:

- Vouchers worth £1,100 will entitle all **four year olds** to three terms of good quality pre-school education.
- Parents will be able to decide whether to use state, private or voluntary provision. Places in state schools will continue to be free but parents will be able to top-up the voucher in private and voluntary institutions. In the state sector the voucher will cover a part-time place in a nursery school or nursery class, and up to a full-time place in a reception class. LEAs and Grant-Maintained Schools will be free to spend more than the value of the voucher on four year olds in their schools if they choose, and will be able to continue to provide full-time places. The full value of the voucher will be provided for a part-time place in a playgroup.²² There had been some doubt about this following the announcement of the scheme. The DFEE has confirmed that the full value of the voucher will also be provided for a part-time place in a reception class.
- The scheme will be introduced in two phases. Phase 1 will be introduced in pilot areas with the first vouchers being issued to eligible parents in those areas in February 1996 for places at the start of the Summer term (i.e. April 1996). Phase 2 will introduce the scheme nationwide with vouchers being issued in February 1997 for places at the start of the Summer term of 1997 (i.e. April 1997).
- A total of about £730 million a year will be spent on the fully implemented scheme in England. This comprises £165 million new money to provide about 150,000 extra places for four year olds not already in some form of place in the state sector; £20 million new money to be spent on inspection and administration; and the remainder (currently about £545 million) will be recovered from local authority spending on provision and redirected through vouchers. In a recent Written Answer to a PQ, Robin Squire made it clear that £21 million in new money will be available for Phase 1 of the Scheme,²³ of this £5 million will be spent on inspection and administration

²⁰ *Pre-School Education: Implementation of the Voucher Scheme*, Welsh Office, 8 September 1995

²¹ HC Deb 30 October 1995 c.8

²² DFEE Press Notice, *Playgroups to get full pre-schools voucher* - Robin Squire, 6 October 1995

²³ HC Deb 4 December 1995 c.121W

and much of it will be spent on the recruitment and training of inspectors to carry out inspections in Phase 2.²⁴ In all £390 million new money will be made available for the period 1996-97 to 1998-99.²⁵

- A private company will administer the scheme.
- Every institution seeking to receive vouchers under the scheme will be required to provide education appropriate to stated learning outcomes.
- There will be a "light touch" inspection scheme to ensure that standards are maintained.

2. Main developments since the July announcements

Four local education authorities have chosen to take part in Phase 1 of the scheme: Wandsworth, Westminster, Kensington and Chelsea and Norfolk. The four authorities participating represent about 2.5 per cent of all 4 year olds in England.²⁶ According to the Times, Robin Squire, the Schools Minister, has said that Phase 1 will provide places for 3 per cent of the 150,000 four year olds currently lacking provision.²⁷ The Education Secretary had intended Phase 1 to cover areas which would account for up to 10 per cent of these new places.²⁸

Capita Managed Services Limited have been awarded the contract to administer Phase 1.²⁹ The document, *Invitation to Tender for the Issue and Redemption of Pre-School Education Vouchers*, issued by the DFEE on 19 October 1995,³⁰ outlined the private contractor's responsibilities for the operation of the scheme in Phase 1. Phase 1 will run without legislation and therefore somewhat differently from the full scheme. In Phase 1 the Child Benefit Centre (CBC) will send out application forms. In Phase 2 subject to Parliamentary approval, the voucher company will be supplied with computer files drawn from the CBC database, listing relevant information about eligible children. The contractor will use this information to send out application forms. The contractor will be responsible for the initial

²⁴ HC Deb 9 January 1995 cc 151-2W

²⁵ DFEE Press Notice, *£390m new money for nursery places*, 1 December 1995; HC Deb 4 December 1995 cc120-2W

²⁶ OPCS Population Estimates

²⁷ "Nursery Voucher test will cost £5m to run", *Times*, 3 November 1995, p.2, see also HC Deb 15 January 1996 c.471W

²⁸ HC Deb 6 July 1995 c.518

²⁹ DFEE Press Notice, *Nursery Voucher Scheme Moves Forward - Squire*, 2 November 1995

³⁰ Library Deposited Paper 2212

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validation of institutions applying to exchange vouchers. Full validated status will depend upon inspection to assess the quality of educational provision.

A Consultation document on Quality Assurance, including the regulation and inspection of institutions which redeem vouchers, was published jointly by the DFEE and Department of Health.³¹ This identified possible approaches and issues on: adult-child ratios; premises and equipment; special educational needs; the new inspection framework; publication of information by the institutions which redeem vouchers; the promulgation of good practice between providers; and training for early years workers. The paper envisaged a significant role for OFSTED in the inspection arrangements. A DFEE summary of the responses was deposited in the library on 9 January 1996.³² The Government's conclusions on these issues are set out in a detailed document on the operation of the scheme in England published by the DFEE on 9 January 1996³³ (see p.11).

At the request of the Education Secretary, the School Curriculum and Assessment Authority (SCAA) issued a consultation paper on the desirable learning outcomes for children's learning.³⁴ SCAA was asked to pay particular attention to the development of early literacy and numeracy. The desirable learning outcomes relate to six areas: personal and social development, language and literacy, mathematics, knowledge and understanding of the world, physical development and creativity. Providers of pre-school provision who wish to participate in the scheme will have to show inspectors that the education being offered is appropriate to the desirable outcomes. The Education Secretary has accepted in full SCAA's advice and a document setting out the details was published by SCAA on 9 January 1996.³⁵

A DFEE letter dated 27 July 1995 outlined how LEA funding in England would be affected by the voucher scheme:³⁶

Funding for the voucher scheme will come in part from the under-fives SSA in respect of existing four year-old places, and from new money for the estimated 150,000 four year-olds not currently in maintained provision.

The amount to be deducted from each LEA's existing funding will be the product of the number of four year olds in the maintained sector in that LEA and the voucher value. The deductions will take into account termly attendance. Therefore, where a child attends for only one term before compulsory

³¹ DFEE and Department of Health, *Quality Assurance Regime for Institutions which Redeem Pre-School Education Vouchers*, 4 September 1995

³² *Quality Assurance Regime for Institutions which Redeem Vouchers for Nursery Education, Analysis of Responses Received*, DFEE, Library Deposited Paper 3/2613

³³ *Nursery Education Scheme: The Next Steps*, DFEE

³⁴ School Curriculum and Assessment Authority, *Desirable Outcomes for Children's Learning and Guidance for Providers*, 7 September 1995

³⁵ *Nursery Education: Desirable Outcomes for Children's Learning on Entering Compulsory Education*, SCAA and DFEE, January 1996

³⁶ DFEE letter to all Chief Education Officers and Chief Executives of new Unitary Authorities, 27 July 1995

school age, the deduction will be one-third of the voucher value. If the patterns of admissions and attendance of four year-olds in maintained schools do not change, the aggregate funding for four year-olds, taking SSA and vouchers into account, will be the same. There will be no redistribution between LEAs. This means that SSA funding for four year-olds outside the voucher value is untouched. LEAs will be free to continue to spend additional resources on (for example) full-time nursery class places where they judge that appropriate. Similarly, SSA funding for three year-old places will be unaffected by the proposed arrangements. Of course, if more parents choose to send their four year-olds to maintained schools and are admitted, then each extra child bears the voucher value. And if parents decide to send their children away from the maintained sector and they are not replaced, the LEA will lose the voucher value.

For phase 1 only, the deduction will only be made for those four year olds who are educated by and resident the LEA. This will be necessary because four year olds resident outside the LEA will not receive vouchers. However, we expect admissions arrangements and local inter-borough recoupment agreements to continue as before. The pupil numbers involved will be determined through negotiation with the LEAs involved, with the January 1995 Schools Census as a starting point for discussion.

For full implementation of the scheme, the intention is to augment the January 1996 School Census and collect data on the number of four year olds in school in the autumn, spring and summer terms of the 1995-96 academic year. These data will be used to calculate a baseline transfer from 1996/97 RSG to the Department's Vote from which the vouchers will be paid. We do not propose to re-count pupil numbers each year.

This method of funding vouchers in part from RSG and in part from new money corresponding to the shortfall of places has been chosen specifically because, so long as maintained schools continue to recruit as many four year-olds as before, aggregate funding is unchanged. We will recoup only the sum of money that local authorities or their schools will be able to regain through vouchers if parents continue to choose the maintained sector.

Local authority associations have expressed concern about the adverse effects the SSA deduction method may have on existing and future LEA provision (see p.19). Ministers have stressed that if maintained schools continue to recruit the same number of pupils as they do now there would be no financial disadvantage.³⁷

The funding arrangements will be different for LEAs in Wales (see p.16).

3. Nursery Education Scheme: The Next Steps Document

The document describes how the nursery voucher scheme will operate in Phase 1 and indicates some aspects of Phase 2 in England. It states that the aim of the scheme is to allow all parents who wish to do so to place their four year old child in a participating institution.

³⁷ See e.g. HC Deb 11 December 1995 cc 537-8W; HC Deb 5 December 1995 c.176W; HC Deb 28 November 1995 c.677W; and HC Deb 23 October 1995 c.504W

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However, growth in provision will depend on providers supplying places where they are needed.

The following outlines some of the main points made in the document:

- The vouchers will be exchangeable for three terms of provision in participating institutions.
- The "voucher agency" (i.e. the private company administering the scheme. In Phase 1, Capita Managed Services Limited) will be responsible for issuing the vouchers. The termly voucher will be a single sheet comprising five parts. Each part will be exchangeable for a minimum of a half-day session for a term. Parents will agree the number of sessions per week for which the child will attend the provider and hand over the appropriate number of voucher parts. The parent will sign the voucher, or part voucher, and the provider will sign the parents' counterfoil. Each voucher will have an individual serial number to allow it to be tracked through the system. Arrangements may be made for a half-term breakpoint to allow children to move establishments mid-term (see Annex A to the document).
- In Phase 1 providers will enter the names of "voucher bearing children" on claim sheets and send the sheets and vouchers to the voucher agency or, in the case of some LEA maintained schools, to their LEA. The voucher agency will forward the voucher claims to the DFEE for payment. The voucher issue procedures set out in the document relate to Phase 1 but similar procedures are expected to be followed in Phase 2 (paragraph 3.15).
- In Phase 1 parents will receive voucher application forms from the Child Benefit Centre (CBC). Parents who do not receive their forms in this way will be able to apply direct to the voucher agency. In Phase 2, subject to Parliamentary approval of the Bill, the CBC will provide the voucher agency with details of eligible children and the voucher agency will send out application forms to parents.
- Institutions will only be able to participate in the scheme if:
 - a) they are registered or exempt from registration under the *Children Act 1989*, Part X; or are finally registered as an independent school with the DFE; or are a local authority maintained or grant-maintained school, or a local authority day nursery. (Childminders could form a playgroup and register under the Children Act as such.) **and**

- b) confirm that they will work towards the desirable outcomes for children as recommended by SCAA; agree to regular inspection of their educational provision; and agree to publish particular information about themselves for parents. This information must include details of their Special Educational Needs Policy. The DFEE will be discussing with interested parties during Phase 1 the impact of requiring all participating institutions to have regard to the Code of Practice on the Identification and Assessment of Special Educational Needs.

Applicant providers will be sent a self-assessment schedule to help them decide whether they are likely to meet the requirements of the scheme and to prepare for entry and inspection. The schedule is reproduced in Annex B to the document.

It will not be possible to inspect providers before they participate in the scheme. There will be a two-part approach to validation. Initial validation will be given if the basic qualifying conditions (noted above) can be satisfied. Final validation will be confirmed following satisfactory inspection. Full validation will normally have to be gained within two years of the first inspection (paragraph 4.7).

Inspection will focus on whether the educational provision is appropriate to the desirable learning outcomes. Providers will also be expected to meet other requirements relating to staffing ratios and qualifications, number of sessions offered, premises and equipment, and information for parents (chapter 5). Current providers of under fives provision are subject to different requirements. The present staffing requirements are summarised in paragraph 5.9 of the document. The Government's conclusions are set out in paragraph 5.11. These paragraphs are reproduced below:

- 5.9 There are at present different staffing regimes for institutions providing nursery education, depending on the type of institution.

private and local authority day nurseries and pre-schools/Playgroups providing full-time and sessional care and education: the Department of Health's guidance for the Child Act 1989 recommends a minimum adult child ratio of 1:8 for children between 3 and 5. At least half the staff must hold a relevant qualification in daycare or education, or have completed a specified training course;

nursery schools and nursery classes attached to local authority maintained and grant-maintained primary schools: for nursery schools, where the headteacher usually teaches, DfEE circular 2/73 recommends a ratio of 2:20 (ie 1:10). For nursery classes, it recommends 2.26 (1:13). Half the staff, and all those employed as teachers (with limited exceptions), must have qualified teacher status;

private nursery schools: subject to Child Act guidance. The recommended staffing ratios are the same as for maintained nursery schools and classes where half the staff have qualified teacher status, ie 2:20 or 2:26. One of the adults must have qualified teacher status and one be a qualified nursery assistant. Where more than one half of the staff are not qualified teachers, the recommended ratio 1:8, as for private day nurseries;

reception/infant classes in maintained schools: there is no guidance on staffing levels. Teachers have to have qualified teacher status, and may be supported by classroom assistants;

nursery classes in independent schools: no guidance.

5.10 Most of those who responded to the consultation paper thought the current guidance should be retained or new guidance introduced where current guidance does not apply. However, daycare providers in the private and voluntary sectors contrasted their 1:8 adult: ratio with those applying for other settings, and thought it an unfair and unnecessary obstacle to entry to the scheme.

5.11 The Government has considered the comments on recommended staffing alongside its concern to ensure the quality of provision and delivery of the recommended learning outcomes; to avoid unnecessary barriers to entry; and to have regard to the practicability of implementation, it has concluded that:

those institutions to which the Children Act guidance applies, and where half the staff have qualified teacher status, should operate at a minimum ratio of 1:10 or 1:13 (depending on whether the headteacher teaches) for voucher-bearing four year olds. Where fewer than half the staff have qualified teacher status, the ratio of 1:8 should continue to apply. The DfEE and Department of Health will issue a joint circular to local authorities, providers and other interests promulgating that decision in the near future; and

no change should be made to the present arrangements for other institutions.

There are no plans to change the present requirements relating to staff qualifications. However, *Next Steps* stresses that providers will need to review their training needs. It goes on to say that the voucher value assumes an element for training, just as institutions' existing budgets and fees will normally provide for staff training and other overheads, and that maintained schools will continue to receive support for in-service training (paragraphs 5.12-5.14).

Institutions must provide at least three sessions of nursery education a week, and be prepared to move to five sessions a week within two years (paragraphs 5.15-5.17).

Different premises and equipment requirements apply to the private and voluntary sectors and the maintained sector. The *Children Act 1989* guidance makes recommendations on space and facilities for private and voluntary institutions. The Department of Health has encouraged Local Authority Social Services Departments to interpret these guidelines flexibly. The premises requirements, and other health and

safety matters, at maintained schools are covered by the Education (School Premises) Regulations 1981. The Government is intending to revise the Regulations to dispense with the statutory area requirements for teaching accommodation and recreation areas.³⁸ The Government has concluded that the different approaches will continue under the nursery voucher scheme. The present *Children Act* guidance, interpreted flexibly, will continue to apply to institutions registered under that Act; and the requirements for maintained schools redeeming vouchers will be the same as those which apply to all other maintained schools (paragraph 5.20).

The information which providers must publish for parents is listed, as follows, in paragraph 5.23 of the document:

Staffing policy including staff numbers, qualifications, training
Educational programmes and activity
Record keeping, progress recording, reporting to parents
Premises
Health and safety
Equal opportunities
SEN policy and implementation
Admissions policy
Term dates and timetable
Discipline policy
Fees (where applicable)
Complaints procedures
Copy of last inspection report

- Subject to Parliamentary approval of the Bill, inspections will be organised by OFSTED or by its agents working under contract. It is envisaged that certain umbrella organisations, already active in nursery education, could undertake work under contract to OFSTED in organising the inspection programme and letting contracts to inspectors (paragraph 6.8). OFSTED will train and register a new body of nursery education inspectors to carry out most of the inspection work. The new arrangements will dovetail with existing registration and inspection arrangements by Social Services Departments (for Children Act registered institutions), OFSTED (for maintained schools) and HMI (for independent schools). OFSTED has developed a draft framework for the inspection of the educational provisions for four year old children (see Annex C of the document). The arrangements for initial and subsequent inspection are outlined in paragraphs 6.9-6.27. The intention is that institutions which are not maintained schools will be inspected within a year of initial validation. After final validation they will be inspected at intervals of between two and four years as laid down by the Secretary of State in regulations (see Schedule 1, paragraph 6(1)(a) of the Bill). Maintained schools which have been inspected by OFSTED and found

³⁸ HC Deb 10 January 1996 cc 273-4W

satisfactory will be given final validation automatically. Inspection of maintained schools will normally be subsumed in inspections carried out under OFSTED's four yearly inspection programme for nursery and primary schools. Continuing validation will be based on the subsequent OFSTED inspections. OFSTED will monitor the quality of inspections by the registered nursery education inspectors. The arrangements for withdrawal of validation are set out in paragraphs 6.28 to 6.33. Decisions on removal of validation will be made by the Secretary of State, following an OFSTED visit to the institution to corroborate the registered nursery education inspector's judgements.

- The operational arrangements for Phase 1 will be evaluated in the course of the year. "Full evaluation must await the bedding down of the full scheme" (paragraph 8.2).
- The Education Secretary has asked SCAA to undertake an initial survey of current practice and views on the **baseline assessment** of children at the start of compulsory education, and to prepare draft proposals for consultation in Autumn 1996 (paragraph 5.7). This follows the Prime Minister's speech in September 1995 suggesting that the desirable learning outcomes would be used for baseline assessment.³⁹ The Education Secretary will decide after the SCAA consultation whether a voluntary or statutory national system is necessary.⁴⁰

Wales

As noted earlier, the Secretary of State for Wales announced on 6 July 1995 that the pre-school voucher scheme would apply to Wales. (Although Phase 1 is not operating in Wales it is intended that the full scheme will be introduced throughout England and Wales from April 1997.) The document, *Pre-School Voucher Education: Implementation of the Voucher Scheme*, issued by the Welsh Office on 8 September 1995 set out details of how the scheme would be implemented in Wales, and sought views on specific points. Among other things, it sought views on the method of recovering funding for vouchers from local authorities. Two options were floated: a deduction at individual authority level or an all-Wales approach. On 9 January 1996, Rod Richards, the Welsh Education Minister, announced that in the light of the responses, the Government had decided to make a once-for all transfer from the local government revenue settlement at the all-Wales level before allocation of settlement resources to individual authorities. He also announced that in Wales payment in return for vouchers will be made in the LEA maintained sector to LEAs for distribution to schools in accordance with authorities' own funding arrangements. As in England, it is proposed that the Chief Inspector of Schools will have overall responsibility for inspection of provision under the

³⁹ Prime Minister's speech to the Grant-Maintained Schools Foundation, Birmingham, 12 September 1995

⁴⁰ Education Secretary's letter to Sir Ron Dearing, Chairman of SCAA, 8 January 1996

voucher scheme.⁴¹ This announcement followed an earlier statement in which Rod Richards highlighted a number of misunderstandings about the scheme and sought to clarify them.⁴²

The Curriculum and Assessment Authority for Wales will be drawing up a separate document on the desirable learning outcomes for four year olds in Wales. This is expected to be completed in April 1996.⁴³

4. Reactions and Issues

This section notes some of the reactions to the proposed nursery voucher scheme and highlights some of the issues raised by commentators. The aim of extending nursery provision is widely shared; however, the Government's proposals have been severely criticised by Opposition parties, local authority associations and others.

David Blunkett, Labour's Education Spokesman condemned the scheme as an "absolute nonsense" which would subsidise those already paying for private provisions:

The only people could possibly gain from such a scheme are those who can afford to pay for places and are already paying. They will now receive a subsidy of £1,100, while everyone else will pay through the nose for the most convoluted administrative nightmare, which was invented not to deliver places for four-year-olds but to satisfy the right-wing ideologues who dreamed up the scheme in the first place. The whole thing is absolute nonsense.⁴⁴

Commenting on the *Next Steps* document Mr Blunkett said that the scheme would not extend parental choice: "Where there is no place, there can be no choice" and claimed it would create a "bureaucrat's charter". He went on to express doubt about whether the proposed inspection regime would ensure high quality provision, particularly given the demands already being made on OFSTED.⁴⁵

⁴¹ Welsh Office Press Release, *Rod Richards Announces Funding and Inspection of the Nursery Voucher Scheme*, 9 January 1996

⁴² Welsh Office Press Release, *Nursery Vouchers*, 4 January 1996

⁴³ Ibid

⁴⁴ HC Deb 21 November 1995 c.468

⁴⁵ Labour News Release, *New Nursery Proposals: A Bureaucrat's Charter*, 9 January 1996

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For the Liberal Democrats, Don Foster described the scheme as "a total con trick":

In effect, the scheme is a total con trick. Amazingly, just before the next general election, people might receive through their letter boxes a voucher with a large sum of money - £1,100 - written on it, but immediately after the election, they will find that in many parts of the country there is nowhere to cash it in. It is a con trick.⁴⁶

Sir Malcolm Thornton, Chairman of the Education Select Committee welcomed the Government's commitment to provide new money for nursery provision but expressed reservations about the introduction of a full voucher scheme against the background of limited resources:

No one, least of all me, would turn his back on new money for nursery education, but as I have said to my right hon. Friend the Secretary of State, if new money is to be provided - I accept that it is limited - would it not perhaps be better to think of widening existing provision than to bring in a new scheme against the background of limited money?

All members of the Select Committee who were privileged to see some of the nursery provision, which we visited during our inquiry, were impressed by its high quality. That in turn impressed on us the need for it to be central in any future provision. We have cast doubts, rightly, on the current system's ability to expand, without reflecting deeply on the need for good quality teaching and premises.

I say to my right hon. Friend and her colleagues that this is essentially a pilot to see whether the scheme can work, whether it can provide what we all want: an extension of nursery education. I ask her to look at it with an open mind; if it does not work, she should have the courage to say so and that it should not be extended. If it does work, by all means let us have the extra resources to let it expand and develop. A pilot scheme must mean just that, not a commitment to introduce the idea in a blanket form in future regardless of the results that it may show.⁴⁷

⁴⁶ HC Deb 21 November 1995 c.485

⁴⁷ Ibid, cc 487-8

The Government argue that the purpose of the nursery voucher scheme is to put purchasing power directly in the hands of parents. Some supporters of the scheme believe that "the voucher as a symbol of parental choice will be immensely powerful" and would like to see voucher entitlement extended throughout the school system.⁴⁸

Some of the main concerns raised by commentators are noted below:

- There is no separate capital funding for the scheme. Growth of provision will depend on providers supplying places. Parents may receive a nursery voucher but find that in their area no appropriate place is available for their child. The Government stress that providers in the private and voluntary sectors will be able to apply for commercial loans on the strength of voucher income; that grant-maintained schools will have powers to borrow, subject to Parliamentary approval of the Bill; and that other maintained schools will be able to take advantage of the Private Finance Initiative.⁴⁹

The National Campaign for Nursery Education has argued that "only the largest commercial companies will be able to overcome the problem of no new capital: without such money small providers and voluntary bodies cannot produce extra places. Vouchers will work chiefly in the interests of an already fast growing private sector and benefit those parents who use that provision and who can afford to top up the voucher".⁵⁰ David Soskin, founding director of a private day nursery chain and an adviser to the Government on vouchers, saw the private sector as poised to expand.⁵¹

- The funding arrangements may have an adverse effect on LEA provision. The Association of Metropolitan Authorities (AMA) is concerned that the proposed funding method⁵² will fail to operate as an incentive to LEAs which have historically made the greatest commitment to nursery education, and may result in penalising them. The AMA point out that authorities which make little provision will receive only a small reduction in SSA and may continue to divert money received via this SSA to other service areas. The Under 5 SSA is distributed on a unit cost per head of population basis whereas the "claw back" will be made on a different basis and the baseline figures used for the latter will not be updated annually.⁵³

⁴⁸ "Choice begins in the nursery" by Edward Lister, Leader of Wandsworth Council, *Independent*, 3 November 1995, p.21

⁴⁹ HC Deb 15 January 1996 c.434W

⁵⁰ "Going Down the Wrong Road: The Voucher Diversion", *National Campaign for Nursery Education*, October 1995

⁵¹ "Trick or Treat", *TES*, 28 July 1995, p.11

⁵² This will take from each LEA's Under Fives Standard Spending Assessment a sum equivalent to the number of four year olds in maintained provision multiplied by the voucher value, taking into account termly variations in attendance. See the DFEE letter dated 27 July 1995 reproduced above.

⁵³ AMA Education Officer Circular 95/64 and attached AMA Committee Paper ED 95 52 dated 21 September 1995 and Annex B which is an extract from a paper on the financial aspects of the proposed scheme.

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- There is concern about the validation arrangements. This has focused on the fact that some providers will be operating for a year before inspection. It has been pointed out that some institutions may over-estimate their ability to work to SCAA's desirable learning outcomes. Making preparations for inspections in a year's time is not the same as being quality assured from the outset.⁵⁴
- The plan to bring the various types of pre-compulsory school provision within a common inspection framework has been welcomed. However, there is concern about the availability of sufficient nursery education registered inspectors and about the increased workload on OFSTED.⁵⁵
- Staffing is another area about which concern has been expressed. The Pre-School Learning Alliance is disappointed that the Government had decided not to standardise staffing levels across the spectrum of nursery provision. It is particularly concerned about "the 326,000 four year olds in infant school reception classes, where there are no prescribed staffing levels and where children of four and five years old may be in classes as large as 30 or more with only one classroom teacher".⁵⁶ There is also concern about whether there will be a sufficient supply of teachers with early learning experience, and about whether the training needs of staff in daycare nurseries and playgroups will be met.⁵⁷
- There is concern about how children with Special Educational Needs will be provided for under the scheme. The responsibilities of LEAs to identify, assess and, where appropriate, statement children with Special Educational Needs remain unchanged. The Government is considering whether to require all nursery voucher redeeming institutions to have regard to the DFEE's Code of Practice on *The Identification and Assessment of Special Educational Needs* (1994).⁵⁸
- A number of other issues have yet to be clarified e.g. the interaction between Phase 2 of the nursery voucher scheme and LMS schemes.⁵⁹ In Phase 1 of the scheme, voucher income will be paid to LEAs through the Grants for Education Support and Training (GEST) programme. The mechanism for paying grants to LEAs in Phase 2

⁵⁴ Quality Assurance Regime for Institutions which Redeem Vouchers for Nursery Education, DFEE's Analysis of Responses, released 9 January 1996. Library Deposited Paper 3/2613; "Big Boost planned for nursery vouchers", *Financial Times*, 10 January 1996, p.1; "Investment now, vouchers later for nurseries" *Independent*, 11 January 1996, section two.

⁵⁵ "Pot luck over nursery quality", *Guardian*, 10 January 1996, p.6

⁵⁶ Pre-School Learning Alliance Press Release, *Pre-School Learning Alliance reacts to new Nursery Voucher Scheme Guidelines*, 9 January 1996

⁵⁷ Association of Teachers and Lecturers Press Release, *Fears for the future quality of nursery schooling - warns ATL*, 8 January 1996

⁵⁸ *Next Steps*, paragraph 7.4 and HC Deb 9 January 1996 cc 151-2W

⁵⁹ HC Deb 27 October 1995 c.821W

has not yet been announced.⁶⁰ Another matter yet to be decided is whether there will be regional variations in the value of the voucher under Phase 2 of the scheme.⁶¹

C. The Bill: Clauses 1-5 and Schedules 1 and 2 and Clauses 7-9 and Schedule 3

The Queen's Speech announced that legislation would be introduced "to expand nursery education for four year olds and to allow grant-maintained schools to borrow on the commercial market".⁶² The Nursery Education and Grant-Maintained Schools Bill⁶³ was presented on 10 January 1996. Its long title is "A Bill to provide for the making of grants in respect of nursery education and to permit borrowing by grant-maintained schools". It relates only to the education system of England and Wales. Robin Squire, the Schools Minister, announcing the publication of the Bill said:

"The Prime Minister and the Secretary of State gave a commitment that - over time - all children should have the opportunity to benefit from three terms of good quality nursery education before compulsory school. This Bill will fulfil that commitment: the parent of every four year old will receive a voucher with which to purchase good quality nursery provision for their child, if they wish."⁶⁴

William Hague, the Secretary of State for Wales, welcomed the Bill "as another significant step in the Government's drive to increase parental choice and diversity in education in Wales".⁶⁵

The legislation is required for the full implementation of the proposed nursery voucher scheme.

Clauses 1-5 and Schedules 1 and 2 cover nursery education. **Clause 6**, which deals with borrowing by grant-maintained schools, is dealt with in Part II of this paper. **Clauses 7-10 and Schedules 3 and 4** contain supplementary provisions. The financial effects of the Bill, the effect of the Bill on public service manpower and the business compliance cost of the provisions are stated in the Explanatory and Financial Memorandum to the Bill.

⁶⁰ Source: DFEE official

⁶¹ DFEE, *Invitation to Tender for the Issue and Redemption of Pre-School Education Vouchers*, DFEE, 19 October 1995 p.4

⁶² The Queen's Speech delivered on 15 November 1995

⁶³ Bill 41, Session 1995/96

⁶⁴ DFEE Press Notice, 10 January 1996, *Nursery Education and Grant-Maintained Schools Bill Published*

⁶⁵ Welsh Office Press Release, *William Hague welcomes new Education Bill*, 10 January 1996

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Clause 1 empowers the Secretary of State to make arrangements for the making of grants in respect of nursery education. The Bill does not use the term vouchers. Clause 1(2) defines nursery education for the purpose of the Act as "education provided for a child (whether at a school or any other premises) before his first school term starting after his fifth birthday (or, if he does not attend school, before such broadly corresponding time as may be provided by arrangements made under this section)." Clause 1(3) makes provision for the arrangements to specify the description of children whose education may be supported by grant. Grant made under the arrangements will be made to a LEA if it is in respect of education provided at a school maintained by the authority, and to the authority or other person providing the education in any other case (Clause 1(4)). Clause 1(5) provides for the grants to be paid in accordance with the arrangements and Clause 1(6) makes it clear that the section will not affect the Secretary of State's powers to make grants under other legislation. As the Bill stands it does not lay down the form in which the arrangements will be made. It does not state that the arrangements will be made by Order. The DFEE's *Next Steps* document sets out the arrangements for Phase 1 of the nursery vouchers scheme and the Government's conclusions on a number of operational issues relating to the arrangements for full implementation of the scheme. Presumably further arrangements will be set out in a similar document published by the DFEE.

Clause 2 authorises the arrangements under clause 1 to include the provision for grant-making and related functions to be delegated, wholly or partly, without prejudice to the Secretary of State's powers. The clause does not specify to whom delegated powers may be given.

Clause 3 provides for the Secretary of State to impose requirements on an authority or other persons in receipt of grants in respect of nursery education. The requirements are not specified and may be imposed on, or at any time after, the making of any grant, and may at any time be varied, waived or removed. Presumably the requirements would include provision for the keeping of proper accounts and audit arrangements.

Clause 4 and Schedule 1 make provision for the inspection of "funded nursery education" (i.e. provision funded under the arrangements covered by Clause 1 of the Bill) and "nursery education under consideration for funding". The Chief Inspectors of Schools in England and Wales are required to establish and maintain registers for England and for Wales of nursery education inspectors and to ensure that periodic inspections of funded nursery education, or nursery education under consideration for funding, are carried out by registered inspectors. The Chief Inspectors may organise the inspections or may arrange for others to organise the inspections (paragraph 6(3), Schedule 1). As noted earlier, the *Next Steps* document states that the Government believes that certain umbrella organisations, already active in nursery education, could work under contract to OFSTED in organising the inspections by registered nursery education inspectors. It has been estimated that about 4,000 registered nursery education inspectors will be required for the fully implemented nursery voucher scheme. The

precise number will depend upon the number of providers who take part.⁶⁶ The provisions in the Schedule for the appointment, training, registration and de-registration of registered nursery education inspectors are similar to those contained in the *Education (Schools) Act 1992*. Paragraph 6 of Schedule 1 seeks as far as possible to dovetail the new inspection arrangements with existing arrangements for registration and inspection (i.e. the existing requirements for registration and annual inspections of daycare provision by local authority Social Services Departments under Section 76 of the *Children Act 1989*; the requirement of four yearly OFSTED inspections of maintained schools under the *Education (Schools) Act 1992*; and the arrangement for independent school registration with the DFEE under Section 70 of the *Education Act 1944*). The timing of inspections at institutions which are not maintained schools will be prescribed by regulations made by the Secretary of State under paragraph 6(1)(a) of Schedule 1. The *Next Steps* document outlines the proposed inspection arrangements for the different types of nursery voucher provision.⁶⁷

The Chief Inspector has the general duty of keeping the Secretary of State informed about:

- a) the quality and standards of funded nursery education; and
- b) the spiritual, moral, social and cultural development of children for whom funded education is provided. (Paragraph 3 of Schedule 1).

Provision is also made for the Chief Inspector to give advice to the Secretary of State on matters relating to nursery education covered by the Act (paragraph 3(4)(5) of Schedule 1). The Chief Inspector's Annual Report to the Secretary of State must include an account of the exercise of his functions under Schedule 1 (paragraph 14 of Schedule 1). The reserve powers of the Chief Inspector include the power to monitor inspections carried out by registered nursery education inspectors (paragraph 17 of Schedule 1).

Clause 5 and Schedule 2 empower the Secretary of State to supply prescribed social security information to a person exercising any functions under the arrangements made under Clause 1 and prohibit its further disclosure. **These provisions apply throughout the UK.** The provisions are necessary to give effect to the proposals for the supply of voucher application forms in Phase 2 of the voucher scheme. It is intended that the Child Benefit Centre will provide the voucher agency with details of all eligible children on its database and the voucher agency will use this information to send application forms to parents. Clause 5 and Schedule 2 are needed to preserve the confidentiality of social security records and to permit

⁶⁶ HC Deb 15 January 1996 c.472W

⁶⁷ *The Next Steps*, Chapter 6

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the use of such records to contact the parents of children eligible for nursery education vouchers.

Clause 6 is dealt with in Part II of this Research Paper.

Clause 7 makes provision for statutory instruments made under the Act to be subject to the negative resolution procedure.

Clause 8 contains the financial provisions to cover the cost of nursery education grants and the cost of administering the new legislation.

Clause 9 and Schedule 3 contain consequential amendments. These include in **paragraph 2 of Schedule 3** an amendment to Section 4 of the *Education (Miscellaneous Provisions) Act 1948* which relates to the time of admission of children to schools as registered pupils. The amendment provides that general directions given by a LEA as respects admission dates for registered pupils must not prevent the admission to school of voucher bearing children. As drafted the amendment applies to all LEA maintained schools. However, an official at the DFEE has said that the amendment taken together with present arrangements relating to admission authorities would mean that the restriction on general directions would, in practice, apply **only** to voluntary-aided schools. The LEA is normally the admission authority for county schools and voluntary controlled schools and as such sets the admission dates. In the case of voluntary-aided schools and special agreement schools the school governing body is the admissions authority. The effect of the proposed amendment would prevent a general LEA direction affecting the decision of governors of a voluntary-aided school as to when to admit voucher bearing pupils.⁶⁸ It is unclear how this provision will interact with LMS schemes.

The purpose of **paragraph 9 of Schedule 3** is to amend Section 55 of the *Local Government Finance Act 1992* to reset capping limits in the light of the new arrangements for funding vouchers. At present there is no power to lower the capping limit to keep it in line with the reduced education SSA proposed under the funding arrangements for the voucher scheme.

⁶⁸ DFEE Official

D. Reactions to the Bill

Comment on the proposed nursery education voucher scheme is covered on pp 17-21 of this paper. As noted earlier, the Bill makes no mention of vouchers. It is framed in broad terms making the necessary legislative provision to introduce the proposed scheme throughout England and Wales. At the time of writing little substantial comment on the Bill's provisions has appeared. Dr Robert Morris has written a critical commentary on the Bill for the AMA. He has made the point that it will be important to have on Hansard record Ministers' explanations of, and assurances about, the proposed scheme since the Bill leaves much to Ministerial discretion and does not provide for the details to be contained in Regulations.⁶⁹

⁶⁹ Robert Morris, *The Nursery Education and Grant-Maintained Schools Bill: A Critical Commentary*, written for the AMA, January 1996

Part II Borrowing by grant-maintained schools

A. Background

1. Grant-maintained schools

The grant-maintained sector was established by the *Education Reform Act 1988*. The *Education Act 1993* established the Funding Agency for schools and broadly replicated the provisions of the earlier Act relating to the operation of existing grant-maintained schools. In Wales, funding and oversight remain the Welsh Office's responsibility, although the 1993 Act also provides for the Secretary of State for Wales to establish a funding authority.

There are currently 1,085 grant-maintained schools in England⁷⁰ and 16 in Wales. With the exception of two schools which "opted in" from the independent sector, the schools have opted out of local education authority control. Once the application to opt out is approved, the school is funded directly by central government grants for revenue and capital and the ownership of assets and the responsibilities of the local education authority in respect of the school are in general transferred to the school's governing body. The exceptions are the former voluntary schools where the land and buildings are vested in trustees. This remains the case when these schools opt out.

2. Issues in capital financing

Capital funding for grant-maintained schools has been seen as generous and the majority of schools have benefited from one or more successful bids for capital funding since incorporation.⁷¹ However, by 1994-95 the amount of funding available in England was only one tenth of the cost of bids submitted, although the Welsh Office was able to fund a higher proportion of bids. In 1995-96 the Funding Agency rejected 74 per cent of the new bids submitted and 78 per cent of the expenditure proposed, and made reductions in the scope of some approved bids.⁷²

⁷⁰ HC Deb 13 December 1995 c.693W

⁷¹ *Value for Money at Grant-Maintained Schools: a review of performance*. National Audit Office, HC 640, 1994-95

⁷² *Planning for Change: National Audit Office Examinations of Value for Money at Grant-Maintained Schools 1994-95*, National Audit Office, HC 768, 1994-95

The Public Accounts Committee recorded their concern in May 1995 that some grant-maintained schools had taken out finance leases, which were tantamount to borrowing. Under the current legislation such borrowing is statutorily prohibited.⁷³

3. The governing body's current power to borrow

Under section 68(7) of the *Education Act 1993*, which re-enacted, with modifications, section 57 of the *Education Reform Act 1988*, governing bodies of grant-maintained schools are prohibited from borrowing commercially or from using their land or buildings as security. There is provision under Section 92 of the Act for borrowing from the Funding Agency for Schools.⁷⁴ Such loans are reserved for schools in financial difficulties.

4. Proposals for change

The first reports that the Government might legislate to allow governing bodies to use buildings and land as collateral for loans appeared in the press in August 1994.⁷⁵ The pressure for change came from the grant-maintained headteachers and the Grant-Maintained Schools Advisory Committee. One reason was their desire to be able to plan ahead rather than be dependent on annual bidding rounds. In evidence to the Public Accounts Committee on 13 February 1995 Sir Tim Lankester, then Permanent Secretary at the Department for Education, stated that the Department was actively considering allowing grant-maintained schools to borrow.⁷⁶

The proposed legislation was announced in the House on 30 March 1995.⁷⁷

Grant-maintained Schools

Mr. McLoughlin: To ask the Secretary of State for Education if she will make a statement on future funding for grant maintained schools. [179841]

Mrs. Gillian Shephard: I am pleased to announce that the Government propose to introduce legislation amending the Education Act 1993 to allow grant-maintained schools

⁷³ *Value for Money at Grant-Maintained Schools in England: a review of performance.* Committee of Public Accounts. 23rd Report. HC 225, 1994-95

⁷⁴ *Education (Grant-Maintained Schools) (Loans) Regulations 1993.* SI 1993/3073

⁷⁵ "Opt-outs may soon raise own income", *TES*, 12 August 1994

⁷⁶ *Value for Money at Grant-Maintained Schools in England: a review of performance.* Committee of Public Accounts. 23rd Report. HC 225, 1994-95 pp 19-20

⁷⁷ HC Deb 30.3.95 cc 718-719W

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to borrow from sources other than the Funding Agency for Schools. This measure opens the way for increased business investment in schools in accordance with the Government's private finance initiative. Local education authorities can already, within limits, borrow commercially and fund their school capital programmes from a mix of capital receipts, revenue monies and borrowing. GM schools are at present almost entirely dependent on central Government grant.

GM schools have expressed keen interest in the possibility of commercial borrowing. They have demonstrated that they are able to manage their own budgets effectively, and it is right that they should be able to benefit from the flexibility that such legislation will bring. Vital schools assets must of course be protected, and the new arrangements will provide for that.

The proposal would give grant-maintained schools the same power to borrow as that held by colleges of further and higher education.⁷⁸

The proposed legislation was one of the twelve measures to reinforce standards and choice in the grant-maintained sector, announced by the Prime Minister in his speech to the Grant-Maintained Schools Foundation on 12 September 1995.⁷⁹

B. The proposals

1. *Consultation Paper on Proposed Arrangements for Commercial Borrowing and Disposal of Assets by Grant-Maintained Schools.* DFEE. 10 October 1995

The DFEE issued a consultation paper on commercial borrowing on 10 October 1995 with a closing date for responses of 20 November 1995.

The paper included a draft of the proposed legislation to allow commercial borrowing and the granting of mortgages and outlined the responsibilities of the Funding Agency for Schools and the operating arrangements. As these details do not appear in the legislation, they are reproduced below:

⁷⁸ *Education Reform Act 1988*, s.124 (higher education corporations) and *Further and Higher Education Act 1992*, s.19 (further education corporations)

⁷⁹ 10 Downing Street Press Release 12 September 1995

Responsibilities of the Funding Agency for Schools

3. In exercising the powers delegated to it by the Secretary of State, the Agency would be responsible for the monitoring and control of school borrowing, and any other financial arrangements of comparable effect, as seems to the Agency to be necessary to:

- a. protect the public interest in publicly funded assets;
- b. have regard to schools' duties to provide education in accordance with statutory requirements; and
- c. maintain accountability for the use of public funds.

4. The Agency will make clear in its Financial Memorandum with schools that schools shall obtain the prior consent of the Agency to any secured or unsecured borrowing proposal or any revision to the detail of any existing arrangement.

5. Consent is to be given on a case-by-case basis and only if the Agency is satisfied

- that the school will be able both to repay the sum borrowed and to pay interest thereon without recourse to additional grant from the Agency;
- that the borrowing is not to be charged against core fixed assets viz.: facilities essential to the school's functioning or needed for essential educational purposes such as the delivery of the National Curriculum;
- that repayments in any one year should not normally exceed a prudential ceiling of 5% of the school's income, based on annual maintenance grant, formula-based Special Purpose Grant and anticipated net income from trading activities or other sources; and
- that the ability of the school to maintain financial viability will not be impaired as a result
- that borrowing by schools subject to special monitoring procedures because of financial difficulties should only be undertaken as part of a recovery planned approved by the Agency.

6. Such consent should not be construed as implying financial backing by the Agency or Secretary of State for a loan. The Agency would not guarantee or underwrite any school borrowing or other financial instruments entered into. Thus it would not grant loans under section 92 or pay moneys under section 113 of the Education Act 1993 in order to settle a school's loan debts with the private sector.

7. The Agency would establish effective arrangements for monitoring schools' borrowing, including; where it saw fit, the imposition of a condition to give notice to the Agency for any intention to borrow.

Detailed operation of borrowing regime

The purposes for which sums may be borrowed

8. Borrowing arrangements would be entered into to finance capital expenditure on fixed assets - or to provide other capital assets - directly related to the educational aims of the school.

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The types of agreement that may be entered into

9. The legislation is intended to cover straight-forward borrowing and other financial arrangements of comparable effect such as finance leases.

Fixed asset accounting

10. Any schools wishing to borrow will need to have committed themselves to commercial fixed asset accounting. The Agency is at present developing proposals for fixed asset accounting in consultation with schools.

Terms and conditions of loans

11. It will be for the Agency, as the body responsible for giving consent on behalf of the Secretary of State and for monitoring the financial viability of GM schools, to approve the terms and conditions under which schools borrow.

The charging of assets

12. Loans cannot be secured against assets which the Agency deems essential to the continuance of the school ('core' assets), i.e. land needed to meet the requirements of the Education (School Premises) Regulations 1981 as amended, and buildings or other assets essential for the minimum delivery of the national curriculum. The scope of this provision would be considered case by case.

The charging of ex-LEA Assets

13. GM schools will be able to use the full value of appropriate ex-local education authority (LEA) assets for securing loans and no return will be needed to LEAs in the rare event that the asset is called in. This position may be reviewed if the frequency and scale of default is significantly greater than anticipated.

Guaranteeing of support by a third party

14. Any grant of support by a third party would by nature be support to the school concerned in a private capacity. Such an arrangement would be without prejudice to the requirement on schools to satisfy the terms and conditions on which the Agency's approval would normally be granted.

Schools with repayment difficulties

15. The Agency would monitor schools experiencing difficulties in meeting their loan repayments according to the general procedures for monitoring GM schools in financial difficulties. This might include: discussions between schools and lenders; production of a business plan including the strengthening of school management and steps to improve the income/expenditure ratio; and a possible rescheduling of repayments. Should a loan be called in, the Department's normal procedures for asset disposal would apply.

Possible charges on schools' bank accounts

16. There will be no formal charging by lenders of schools' bank accounts as in practice this would mean public funds underwriting repayments from revenue which are designed to cover the core activities of schools such as teaching salaries and equipment.

The position of ex-voluntary schools or other schools with assets held in trust

17. In the case of former voluntary schools, the governing body would need to bear in mind the need to consult trustees and the Charity Commission. The same applies to property held by the local authority as trustee.

2. Wales

The Welsh Office did not issue a separate consultation paper but wrote in nearly identical terms to the heads of all grant-maintained schools in Wales.⁸⁰ The major difference is that in Wales it will be for the Secretary of State to approve the terms and conditions under which individual loans are made.

3. Response to Consultation

In a Written Answer on the consultation, Cheryl Gillan stated that there had been 114 responses.⁸¹ Of those which gave a view on the principle, 75 per cent were in favour including 80 per cent of the grant-maintained schools which responded. A policy briefing sheet summarising the responses is available in the Library.⁸² Issues noted in the summary were the level of safeguards; the possibility of an over bureaucratic procedure; whether a school's future income was sufficiently predictable to allow the taking on of a long term loan; and the possibility that the former maintaining LEA might have an outstanding debt for an asset which a GM school now wished to charge. 35 per cent of LEAs and LEA organisations who responded were opposed to the proposals in principle.

The detailed response published by the Association of County Councils [ACC] and supported by the Association of Metropolitan Authorities [AMA] made clear their concern that grant-maintained schools should be granted the right to borrow against the security of assets on which the LEA might still have loan debt outstanding. They viewed the development as inflationary in increasing overall debt in an untargeted way without addressing capital spending priorities. The local authorities looked for compensating adjustments in capital allocations to increase the level of annual capital guidelines of LEAs.⁸³

⁸⁰ *Proposed Borrowing Arrangements for Grant-Maintained Schools.* Welsh Office. 25 October 1995

⁸¹ HC Deb 19 December 1995 c.1017

⁸² Library Deposited Paper 38/2547

⁸³ *Commercial Borrowing and Asset Disposal by Grant-Maintained Schools.* ACC. 15 November 1995

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The ACC also commented on the difficulty of defining core assets. A recent Parliamentary Answer has made it clear that the revised Education (School Premises) Regulations will not give statutory requirements for teaching accommodation and recreation.⁸⁴ A DFEE official suggested that the revised Regulations would be used to define core assets in relation to sports fields and that buildings would normally be taken to be totally core assets.

Another ACC point related to schools being able to spend 5 per cent of income on repaying the loan. ACC suggested this represented over-generous funding. Since the current model Financial Memorandum for grant-maintained schools does not take account of the proposed legislation it is not clear whether this 5 per cent will have to be set against the current 2½ per cent plus 10 per cent for premises limit on carry forwards.⁸⁵

4. Asset disposal

The proposals in the consultation paper that from 1 April 1996 grant-maintained schools would normally be allowed to retain 100 per cent of the proceeds from the sale of surplus assets (as opposed to the current practice of 50 per cent returning to the local education authority for debt redemption) does not appear in the Bill. This proposal was announced by the Prime Minister in his speech to the Grant-Maintained Schools Foundation on 12 September 1995.⁸⁶

The present legislation gives the Secretary of State the power to decide whether any part of the proceeds from such a disposal should be paid to the local authority.⁸⁷ There is therefore no need to legislate for the proposed change. However, the Association of Metropolitan Authorities has raised concerns over fettering the Secretary of State's discretion in this way.⁸⁸

There has been no Ministerial statement on the outcome to consultation on this issue as officials are still working on the responses to this part of the paper. The issue is seen as linked to the issue of commercial borrowing since a school would have to have a clear title to assets and a right to retain the proceeds from any disposal in order to use them as collateral against a commercial loan.

⁸⁴ HC Deb 10 January 1996 cc 273-4W

⁸⁵ Financial Memorandum for Grant-Maintained Schools, para. 17

⁸⁶ 10 Downing Street PN 12 September 1995

⁸⁷ *Education Act 1993*, Section 132

⁸⁸ Text of the Joint ACC AMA and ALG Brief - *Education Legislation - On the Queen's Speech Debate*. Annex to AMA ED 95 73. 24 November 1995

5. Self-Government for Voluntary Aided Schools

A consultation paper on a fast-track to self-government for church and other voluntary aided schools was issued by the DFEE on 27 October 1995.⁸⁹ Nearly 2,000 responses were received, clearly stating the view of the churches and church schools that they did not want special treatment and supporting the existing arrangements, particularly for the role of parents in applying for grant-maintained status. The Government decided in the light of these views not to amend the legislation governing the acquisition of grant-maintained status.⁹⁰ A summary of the responses has been placed in the Library.⁹¹

C. The Bill: Clause 6 and Schedule 3 paragraphs 10 and 11

The draft clause in the consultation paper is reproduced in the Bill with the last two sections appearing in Schedule 3 paragraphs 10 and 11.

Clause 6 amends Section 68 of the *Education Act 1993* which lists the powers of a governing body of a grant-maintained school. The power to borrow and, in connection with borrowing, to grant security over land and other property is added. The powers are subject to the written consent of the Secretary of State.⁹² This function may be delegated to a funding agency.⁹³

The Explanatory and Financial Memorandum to the Bill notes that the administration of the new borrowing arrangements will entail a small increase in the administrative staff of the Funding Agency for Schools.

D. Reactions to the Bill

The Bishop of Ripon in the Debate on the Address drew attention to the position of former voluntary aided grant-maintained schools under the proposed Bill. He felt that Church of England trustees would not sell or mortgage assets to meet schools' immediate needs. Therefore those schools would be placed at a disadvantage particularly if assumptions about borrowing were taken into account when grant-maintained school finances were calculated.⁹⁴

⁸⁹ Self-Government for Voluntary Aided Schools. Consultation Paper, DFEE, 27 October 1995

⁹⁰ *Nursery Education and Grant-Maintained Schools Bill published*. DFEE. Press Release 10 January 1996

⁹¹ HC Deb 11 January 1996 c.306W. Library Deposited Paper 3/2605

⁹² Clause 6

⁹³ Schedule 3 para. 10

⁹⁴ HL Deb 21 November 1995 cc 251-2

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The Labour Party has not commented on the proposals for commercial borrowing in the Bill, although David Blunkett MP, the Shadow Education and Employment Secretary, was reported as saying at the time of the original announcement that any such arrangements should ensure that all schools were treated equally.⁹⁵

The statement by Don Foster MP, the Liberal Democrat Education and Employment Spokesman, drew attention to the difficulties schools might find in repaying loans.⁹⁶

The Association of Teachers and Lecturers (ATL) commented on the position of parents who would have to evaluate a school's financial assets in order to judge its ability to fund education.⁹⁷

The Association of Metropolitan Authorities' response to the Bill in Education Circular 5/96⁹⁸ restates the criticisms made in the joint Associations briefing.⁹⁹ The critical commentary on the Bill written for the AMA accepts the strength of the safeguards to protect public assets set out in the consultation paper, but contends that the LEA should have a say in whether or not such surplus fixed assets should be disposed of or mortgaged.¹⁰⁰

⁹⁵ "Shephard frees grant schools to take bank loans", *Times*, 31 March 1995

⁹⁶ New Education Bill - Yet More Gimmicks say Lib Dems, Liberal Democrats PN 10 January 1996

⁹⁷ New Education Bill Forces Schools to Live on Tick, warns ATL. ATL PN 10 January 1996

⁹⁸ 11 January 1996

⁹⁹ Text of the full ACC, AMA and ALG Brief, *Education legislation - on the Queen's Speech Debate Annex to AMA ED 95 73*, 24 November 1995

¹⁰⁰ *The Nursery Education and Grant-Maintained Schools Bill: a critical commentary*. Robert Morris for the AMA. January 1996