School Standards and Framework Bill

Bill 95 of 1997/98

Research Paper No 97/136

12 December 1997

The School Standards and Framework Bill was introduced in the Commons on 4 December 1997, and is due to have its second reading on 22 December 1997. This paper describes the background to, and the provisions of, the Bill.

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CONTENTS

Introduction and Summary

The main provisions of the Bill seek to limit class sizes for 5 -7 year-olds; to place a duty on LEAs to raise standards and prepare education development plans; to enable the establishment of Education Action Zones; and to set out powers of intervention in schools causing concern. It also sets out a new framework of community, foundation and voluntary schools and requires LEAs to establish a school organisation committee to make decisions about the supply of places at a local level. There is a revision of the scheme for funding schools and new arrangements for admissions and the future of grammar schools.

The Bill makes provision for home-school agreements; places a duty on LEAs to offer a paid school meal service and provides for compulsory nutritional standards for school meals; places a duty on LEAs to secure nursery provision and draw up Early Years Development Plans; allows for more flexible work experience options and for partnership arrangements in Wales between further education colleges and schools.

Most of the proposals were contained in the July 1997 White Paper, *Excellence in Schools*, Cm 3681 and the Welsh White Paper, *Building Excellent Schools Together*, Cm 3701 and in three further consultation papers, *Framework for the organisation of schools: technical consultation paper*, DfEE 1997, *Framework for the organisation of schools: a Welsh Office consultation paper*, Welsh Office 1997, and *Future Admission Arrangements for Grammar Schools*, DfEE 1997.

Summaries of the White Papers were widely distributed and led, in England alone, to nearly 12,000 responses. The written response are available for inspection in the DfEE's Public Enquiries Unit.

The DfEE published a summary of responses[1] and this paper refers to that summary and to a selection of responses from organisations, a set of which is available in the Oriel Room.

For ease of reference, a list of abbreviations used in this paper is in Appendix IV.

[1] DfEE PN 4.12.97

I Measures to raise standards of school education

A. Limits on infant class sizes

Background

The pledge to limit class sizes for 5, 6 and 7 year-olds to 30 was a Labour Party manifesto commitment.[2] David Blunkett, Secretary of State for Education and Employment, introduced a Bill to phase out the Assisted Places Scheme as a way of transferring resources in order to lower class sizes.[3] Although that Bill[4] made no procedural provision for the reduction in class size, the financial memorandum referred to savings being realised from the 1998-99 financial years onwards which would be spent in reducing infant class sizes in the maintained sector. The savings were put at about £100 million in total by the year 2000.[5] The Library Research Paper on the Education (Schools) Bill covered the estimates of the Government and others on the cost of reducing class sizes to 30.[6]

The White Paper, *Excellence in Schools*, linked the commitment to reduce class sizes to the drive to improve standards and reported the start of consultative work with Local Education Authorities (LEAs) in the issues involved.[7] A similar commitment appeared in the Welsh White Paper, *Building Excellent Schools Together*.[8]

The Department for Education and Employment (DfEE) Circular 13/97, *The Standards Fund 1998-99*, issued in September, invited LEAs in England to bid for grant to reduce infant class sizes. The Standards Fund is the new name for Grants for Education Support and Training (GEST) funding. Unlike most other grants, the grant to reduce infant class sizes attracts 100% funding. The allocations will be determined competitively with priority being given to LEAs producing the most cost effective plans for reducing the number of Key Stage 1 (5-7 year-olds) classes of over 30 pupils in 1998-99. The DfEE expect to allocate grants to a minimum of 30 authorities. The closing date for bids was 14 November 1997.[9]

Stephen Byers, School Standards Minister, has announced that £22 million will be available next September through funding released from the phasing out of the Assisted Places Scheme

[2] *New Labour because Britain deserves better*, Labour Party, 1997, p.7
[3] HC Deb 2.6.97 cc 22-28
[4] Education (Schools) Bill, Bill 4 of 1997/98, now *Education (Schools) Act 1997*, cap. 59
[5] HC Deb 22.5.97 c.123W
[6] Library Research Paper 97/90, Part III(E), p.14
[7] Cm 3681, Chapter 2 , para 16-18
[8] Cm 3701, Chapter 3, para 17-18
[9] DfEE Circular 13/97, para B45-51

(APS) and, in addition, local authorities are being invited to apply for capital funding from the New Deal for Schools to carry out related building alterations.[10] The number of classes at Key Stage 1 (in each LEA in England) with 31 or more pupils is shown in a table in Appendix I.[11]

The Financial Memorandum to the Bill gives the revenue costs in England and Wales as: in 1999-2000, £23 million; in 2000-2001, £64 million; and in 2001-2002, £106 million.[12]

The Welsh Office has surveyed KS1 class size in all Welsh authorities and will be consulting with authorities in January on a grants scheme which will offer 100% funding and run in parallel with the GEST scheme. Applications are expected to be requested in early Spring.[13]

The research evidence on the benefits of smaller classes suggest that there is only a link with educational attainment in the early years and with classes of under 20. The evidence has been reviewed by Peter Blatchford and Peter Mortimore who cite the STAR research in Tennessee.[14] In that study pupils in small classes (13-17) in grades K-3 (roughly 5-8 year olds) performed significantly better than pupils in regular classes (22-25). Supporting evidence can be found in Peter Mortimore's own research on London junior schools.[15] He found that smaller classes were associated with greater progress in mathematics for 8 year olds. His study defined smaller classes as 24 or fewer. OFSTED produced an analysis of 200,000 lessons to consider the impact of class size and concluded that small classes did appear to benefit children in the early years of primary education while they were achieving competency in basic learning. They also found that no simple link existed between the size of the class and the quality of teaching and learning within it.[16] However, Maurice Galton has suggested that smaller classes lead to increased learning gains, with favourable effects upon pupils' attitudes and on the morale of teachers.[17]

According to the DfEE summary of responses to the White Paper 35% of parents cited lower class sizes as their top priority. However, there was also widespread pressure from respondents for flexibility in how this was put into practice.[18]

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[10] DfEE PN 17.11.97
[11] HC Deb 20.5.97 cc 27-29W
[12] Bill p.xii
[13] Conversation with Welsh Office official 5.12.97
[14] The issue of Class Size for Young Children: what can we learn from research? *Oxford Review of Education*, Volume 20, No 4, 1994
[15] Mortimore, P. et al. School Matters: The Junior Years 1988
[16] *Class size and the quality of education*, OFSTED, November 1995
[17] Listen to those who are closest to classes, *TES*, 18.4.97
[18] DfEE PN 4.12.97

Certainly the majority of teachers and their associations strongly support a move to smaller classes.[19] The practical problem of implementation is seen as daunting by the Society of Education Officers (SEO) who called for a flexible development over time.[20] The Local Government Association (LGA), while welcoming the proposal, also called attention to practical problems, in particular, the '31st child' dilemma.[21]

The Bill: Clauses 1 - 4

Clause 1 gives the Secretary of State the power to set limits on the size of infant classes in maintained schools and fix the dates by which such limits should be met. Regulations may set different maxima for different year groups and allow exceptions. The power to make such regulations will be exercised by statutory instrument subject to the negative procedure.[22] The responsibility for meeting an imposed limit is placed on the LEA and the governing body. The clause does not state any limit. Clauses 77 and 85 and Schedule 24, para.11 of the Bill alter the legislation on admissions and appeals to allow compliance with this duty. They set very limited conditions for an appeal panel overriding an infant class limit.

Clause 2 requires LEAs to draw up plans to be approved by the Secretary of State, setting out how they propose to implement the limits. There is a duty of consultation with the prescription as to whom to follow in the regulations. However, the DfEE's paper on the Government's legislative plans refers to the LEA drawing up plans in partnership with heads, governors and parents.[23] There is also a duty on others, presumably governing bodies amongst them, to supply information.

Clause 3 covers the payment of grant to LEAs in connection with reductions in infant class size and **Clause 4** defines terms.

B. General responsibilities of local education authorities

Background

Raising standards in schools and the LEA's role in such a campaign has been an increasingly dominant aim of both the Conservative[24] and Labour parties.[25] While no one has disagreed

[19] Excellence in Schools, Response of the National Union of Teachers, October 1997, para 31-34
[20] Response to the White Paper, SEO, October 1997
[21] LGA response to the Education White Paper *Excellence in Schools*, October 1997, para.2.9
[22] Clause 118
[23] *Raising standards for all*, the Government's legislative plans, December 1997
[24] "Quality and Standards in Education" - Eric Forth, Education Minister, DfEE PN 20.01.95

with the aim, commentators have questioned whether LEAs had the power to act in the way Ministers wished. The question of the limits of LEAs' statutory powers is discussed in *The LEA Contribution to School Improvement*[26] which points out the limits of LEAs' current powers. The White Paper stated that: "If we are to hold LEAs to account for their performance, we owe it to them to ensure that they have a clear job description…"[27] However, the Framework paper in August concluded: "We do not propose to set out a full job description in the Bill, because in general LEA functions, duties and powers are already adequately covered by legislation", while at the same time inviting views on the form a job description might take.[28]

The wider thinking behind this chapter of the Bill is largely contained in Chapter 3 of the White Paper and had previously been outlined in Chapter 3 of *Excellence for everyone*[29] and in *Diversity and Excellence*.[30] Development planning has been expected at school level for a number of years; it is now to be expected of LEAs with the same aim, that of raising standards. Reports from Her Majesty's Chief Inspector of Schools have drawn attention to a lack of clear consensus among LEAs on how they might best support schools in raising standards.[31] The White Paper set out proposals for a statutory Education Development Plan (EDP) to be drawn up following DfEE guidance and to be approved by the Secretary of State.[32] To the existing power of OFSTED, with, if requested, the collaboration of the Audit Commission, to inspect LEAs[33] was to be added intervention by the Secretary of State in the case of failing LEAs.[34]

The Government's position following the report of their appointed Hackney LEA Improvement Team highlighted the lack of statutory right of intervention.[35] Hackney Council had welcomed the Government's Improvement Team into the authority but were not prepared to implement all its recommendations.[36]

The proposals for EDPs were given more detail in the Framework paper with the stress on the LEA's role in providing a statistical analysis of performance data and working with schools on setting targets. Other core items suggested were statements of the LEA's mechanisms and resources devoted to school improvement particularly for schools causing concern.

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[25] Excellence for everyone: Labour's crusade to raise standards, Labour Party 1995
[26] Dr Brian Fidler and Dr Robert Morris. Paper presented to the 1996 BEMAS Annual Conference
[27] Cm 3681 Chapter 7 para.19
[28] *Framework for the Organisation of Schools, Technical Consultation Paper*, DfEE, August 1997, Part 6, para.2
[29] Labour Party 1995
[30] Ibid;
[31] *Standards and Quality in Education 1994/95*, Annual Report of Her Majesty's Chief Inspector of Schools, HC 127 of 1996/97, para.27
[32] Cm 3681, Chapter 3, para 21-24
[33] *Education Act 1997* s. 38-41 and Library Research Paper 96/101 Part VIII
[34] Cm 3681, Chapter 3, para.42
[35] *Hackney LEA Improvement Team*, PN and report 30.10.97
[36] "Education hit squad challenged", *Guardian*, 5.11.97

Information on the LEA's other activities might be annexed in summary form to the EDP.[37] Draft working papers, *Education Development Plans: principles, issues and structure*, currently available to LEAs from the DfEE, suggest a detailed core plan, covering an LEA audit, target setting, school improvement plans and arrangements for monitoring and evaluation, with some mandatory annexes. Comments are invited on the linking and possible integration of School Development Plans with EDPs, possibly by 2000. There are also suggestions that the monitoring of EDPs will produce four categories of LEA based on level of improvement and attainment of targets. The bottom two categories will attract 'a three-part process of support and challenge' from the DfEE team, the third level being 'special measure', an OFSTED Stage 1 inspection, focusing on policy and statutory duties, and if that did not result in a successful re-submission of the EDP, a full Stage 2 inspection. The final step, "*in extremis*", might be an Improvement Team to advise the LEA and steer its improvement activities.[38] The DfEE expect to issue final guidance to LEAs in February.

In the Welsh White Paper and Framework Document, the references are to Education Strategic Plans (ESPs). However, the name appears to be the only difference, although there is less detail in the Welsh Framework paper about the content of ESPs. The legislation applies to England and Wales.

The summary of responses suggested support for these proposals with some concern over whether the LEAs had sufficient resources to carry out the new role. The support for Educational Development Plans (EDPs) went along with wide support for LEA consultation with schools on their EDPs. The Local Government Association (LGA) welcomed the placing on LEAs of a specific duty to raise standards and the role for EDPs and have accepted that their work should be scrutinised and inspected and that in extreme cases of failure, their powers could be suspended. However, they feel that to carry out that duty they need wider powers to review the quality of education and the power to inspect. Their response suggests that their current power in section 25 of the *School Inspections Act 1996* is not sufficient. This power allows them to inspect a school for a specific purpose when they cannot obtain the information in any other manner. However, statements by Ministers have suggested that one of the principles underpinning the White Paper: "Intervention will be in inverse proportion to success" is to be invoked as a reason for not including such powers in the Bill.[39] Stephen Byers has made it clear that LEAs will have "no licence to meddle." There will be a code of practice on the relationship between LEAs and schools.[40]

The Education Law Association has also drawn attention to the limited role of the LEA. "It is unclear in reality what remains for the LEA save as to crisis management".[41] The Funding Agency for Schools (FAS) welcomed the idea of a job description of an LEA closely

[37] *Framework for the Organisation of Schools, Technical Consultation Paper*, DfEE, August 1997, Part 6
[38] *Educational Development Plans: Principles, issues and structure*, DfEE, November 1997
[39] LGA response to the Education White Paper *Excellence in Schools*, October 1997
[40] DfEE PN 21 November 1997
[41] ELAs response to the White Paper, ELAS Bulletin No. 16, October 1997

prescribed by Circular or code of practice following consultation with schools.[42] Nord Anglia, one of the largest UK companies involved in education, felt that LEAs "siphoned off" money from school budgets to provide services that did not necessarily add value or have relevance and called for limited and defined core functions.[43]

The Bill: Clauses 5 - 9

Duty to promote high standards of education

Clause 5 adds a new clause (13A) to the *Education Act 1996* placing a duty on an LEA to promote high standards in primary and secondary education. It thus follows the section (13) which requires an LEA to contribute toward the spiritual, moral, mental and physical development of the community by securing that efficient education is available to meet the needs of the population of the area, a duty that derives originally from the *Education Act 1944*.

Education development plans

Clause 6 requires an LEA to prepare an education development plan (EDP) for their area, containing proposals for raising the standards of education and improving the performance of schools with annexes containing material to be prescribed or that the LEA considers relevant. Consultation with the governing body and headteacher of each school is statutory and may be extended to others the LEA considers appropriate. Regulations will prescribe the content of the plans and any further plans.

Clause 7 covers the approval, rejection or modification of a plan by the Secretary of State and its subsequent implementation.

Intervention by Secretary of State

Clause 8 inserts two new sections, 497A and B, in the *Education Act 1996*. It thus follows directly after the two sections, better known from their position in the 1944 Act (s.68 and s.99), setting out the Secretary of State's current powers to intervene and give directions in cases of unreasonable actions or failure to act by governing bodies or LEAs. *Clause 8* gives the Secretary of State detailed powers to ensure that LEAs are performing their functions "to

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[42] Response to the White Paper *Excellence in Schools* and the Technical Framework Document, FAS, October 1997
[43] Nord Anglia response to the White Paper, October 1997

an adequate standard (or at all)". The Secretary of State can exercise his power, as with his existing powers, either when he has received a complaint or otherwise. He can direct an officer of the authority to secure that the function is performed or give an officer of the authority directions to secure that the function is performed, "on behalf of the authority and at their expense" by another person specified by the Secretary of State. The clause also gives such a specified person powers relating to entry to premises and access to information, both in the authority and in schools.

This clause is viewed as empowering the Secretary of State to take over failing local authorities.[44]

Parent representatives on education committees

Background

This clause also makes provision for a representative of parents with voting rights on LEA Education Committees or committees dealing with education. The *Education Act 1993* withdrew the statutory requirement for an LEA to have an education committee. The *Local Government and Housing Act 1989* removed the right to vote from all co-opted members of education committees other than representatives of the churches, in their role as persons who appoint the foundation governors of voluntary schools.[45]

The proposals in both the English and Welsh Framework documents suggest a parent representative, who would have to be a parent governor, elected by all current parent governors in the LEA.

Parental representation on education committees has been generally welcomed. The LGA noted, however, that it raised the question of voting rights for other interests. The Society of Education Officers made a similar point, drawing attention to the position of representatives of governors and teachers. FAS questioned whether parent representatives could represent a non-cohesive group, a point echoed by the Catholic Education Service. The National Governors Council (NGC) pointed out that it was school governing bodies who held extensive legal responsibilities for education and who should therefore be represented with voting rights on education committees. They proposed two governor representatives, one of whom should be a parent of a child currently attending a school within the LEA.[46]

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[44] "What the Schools Bill will do", *TES*, 12.12.97
[45] For background see Library Reference Sheet 92/10, pp 60-62
[46] Response to White Paper "Excellence in Schools" and Technical Consultation Document, NGC, October 1997

Clause 9 adds to section 499 of the *Education Act 1996* (power of Secretary of Sate to direct appointment of members of education committees) regulations which require education committees to include parent representatives. All matters relating to the number of persons, their election, terms of office and voting rights are to be contained in the regulations.

C. Education Action Zones

Background

Education Action Zones might be seen as drawing on two somewhat disparate precedents: the educational priority areas of the 1960s, the funding of which Anthony Crosland cited as one of the acts which gave him most satisfaction[47] and the experiments in the USA of giving commercial firms the contract to run groups of schools. Educational priority areas were suggested by the Plowden Report[48] together with the recommendation that all LEAs should adopt "positive discrimination" within their own areas. As with the current proposals there were suggestions, later implemented on an individual school basis, for enhanced salaries for teachers. The second precedent fits with the developing view in this country through the 1990s that business and business methods have much to offer in the management of education. Although there are also charter schools in the United States which are publicly financed but with local control largely in the hands of teachers and parents. Of the commercial ventures, one firm running schools in Connecticut and Baltimore has lost contracts and money and is reported to have switched from urban to suburban schools[49] but others are getting favourable reports.[50]

Excellence for Everyone (1995) referred to partnerships between schools, further education and business in deprived areas[51] but it was a policy paper, *Education Action Zones: Labour's proposals to raise standards in schools*, issued by David Blunkett on 15 April 1997 which first set out plans for pilot zones:

> These pilots will be planned and delivered by partnerships between business, schools and LEAs - there will be an important role for TECs and colleges.
>
> The idea is to lever up standards, cut truancy, improve discipline, boost staying on rates.
>
> They will be concentrated in areas of social and economic disadvantage with poor educational achievement and expectations.
>
> The zones will have to set and meet tough targets. The results would be published.

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[47] The Politics of Education, Edward Boyle and Anthony Crosland in conversation with Maurice Kogan, 1971
[48] Children and their Primary Schools, DES 1967, Chapter 5
[49] "Public face of private loss", *TES*, 29.3.96
[50] "Bandwagons roll in hunt for schools' magic bullet", *TES*, 3.1.97
[51] para 3.15-3.16

> Labour would give education action zones first call on funds from programmes like literacy teacher training; homework clubs; premier league partnership; specialist comprehensive schools programme; introduction of advanced skills teachers; early excellence centres.
>
> There would be the opportunity to free up the curriculum to have an hour each day devoted to literacy and numeracy in primary schools.
>
> There would be a stronger vocational element with more work experience for 14/15 year olds through links with local business freeing up curricular and other restrictions to get them back into school.
>
> There would be a strong role for parents with home school contracts and encouraging greater commitment from the earliest stages through family learning programmes linked to the early excellence centres.

The proposals in the White Paper[52] suggested up to 25 Action Zones, phased in over 2-3 years in areas of urban disadvantage. An action forum including parents and representatives from the local business and social community, as well as representation from constituent schools and the LEA would draw up an action programme, targets and plans for school rationalisation. Stephen Byers, School Standards Minister, has said that the scheme would start with 5 zones and eventually reach 25. [53]

The Welsh White Paper contained only an intention to consult on the usefulness of establishing EAZs in areas with a high concentration of socio-economic problems. The operation of an EAZ was outlined in similar terms to those used in the English Paper.[54] The Welsh Office press notice on the Bill also states that the introduction of EAZs in Wales will be the subject of further consultation[55] and the Bill itself provides that this Chapter does not apply to Wales unless the Secretary of State makes an order to that effect.

The DfEE summary reported a high level of support for Education Actions Zones. Nord Anglia welcomed the idea of outsourcing to the private sector a small part of the state funded service although they did not tie this specifically to EAZs rather to the running of individual failing schools. FAS supported the idea of EAZs and felt they should be able to extend over an LEA border if that made educational and community sense. The LGA felt the LEA should be the body to make a submission for pilot EAZ status. They were unsure about how the proposed power for school rationalisation would interact with the LEAs' statutory duties and the proposals for a school organisation committee (see Clause 23). There have been press reports of headteachers in the London Borough of Newham being furious that their LEA proposed to bid to become an action zone.[56] In the same article, David Hart, general secretary of the National Association of Headteachers (NAHT) was reported as welcoming the concept but being concerned about the position of individual schools.

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[52] Chapter 4 , para 6-9
[53] "Superheads wait in action zone wings", *TES*, 28.11.95
[54] Cm 3701, Chapter 7 para.15
[55] Welsh Office PN 4.12.97
[56] "Superheads wait in action zone wings", *TES*, 28.11.97

The Bill: Clauses 10 - 13 and Schedule 1

Clause 10 enables the Secretary of State to establish by order a group of schools to constitute an education action zone with a view to improving standards. The zone will exist for three to five years and may be varied by adding any school where the LEA has had cause to intervene.[57] No order can be made without the consent of the governing body of every participating school.

Clause 11 provides for the creation of an Education Action Forum for each zone. The members must include one person appointed, if they so wish, by the governing body of each school and one or two persons appointed by the Secretary of State. **Schedule 1** sets out the provisions for chairing, committees, proceedings and accounts for an Education Action Forum and **Clause 12** sets out the functions. Governing bodies may pass some of their duties and responsibilities to the forum. Regulations will set out the procedures. The Secretary of State may, after consulting with the LEA, modify any funding scheme made under Chapter IV of Part II of this Bill for schools where the Education Action Forum is discharging any of their functions.

Clause 13 substitutes a new Section 3 in the *School Teachers' Pay and Conditions Act 1991* disapplying the pay and conditions order to teachers at a school in an education action zone. Governing bodies can only apply for a disapplication after consulting the school teachers employed by them.

The financial memorandum records the grant of £250,000 which the Government has indicated will be the grant to each Zone through the Education Action Forum to cover administrative costs, local initiatives and additional teaching expertise. The total for 1998-99 is likely to be £1.5 million. In addition the DfEE is to seek matching sponsorship in each Zone from the private sector.

The DfEE press notice on the Bill and their paper, *Raising standards for all, the Government's legislative plans*, start with David Blunkett's assertion that Education Action Zones represent a radical programme to local partnerships to try out innovative ideas to raise standards. It is also made clear that Zones can be in rural as well as inner city areas and that they will be able to apply to the Government "to change the emphasis of the national curriculum to focus more on literacy and numeracy", using presumably the existing provision for special cases.[58] The paper adds other details which do not appear on the face of the Bill about the likely representation of the Churches, the local TEC, business, voluntary bodies and parents on the Forum.

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[57] Clause 15
[58] *Education Act 1996* s.362

The interesting point, not highlighted in the commentary, is that decisions on participating in an Education Action Zone, on passing powers to the Forum, on disapplying the pay and conditions order and on applying for a modification of the national curriculum rest with the governing body of each school. Immediate press reaction highlighted Newcastle-upon-Tyne as an LEA anxious to create an action zone but concerned about the short-term nature of the scheme.[59] Stephen Byers confirmed that zones might be run by a neighbouring LEA, a group of schools or a private sector organisation. Local government and teacher association response doubted the capacity of commercial firms to run education.[60]

Following the presentation of the Bill, the DfEE has published an introductory paper on Education Action Zones clarifying certain details.[61] The Zones will usually have not more than 20 schools and will often exist for longer than three years. Although they will be expected to attract outstanding heads on flexible contracts, they will be normally be run by a project director who could be employed directly by the Action Forum. Such directors could come from LEAs, schools or business. LEAs, business or voluntary and community organisations, in conjunction with a group of schools, will be able to take the initiative in proposing to create zones. A document inviting bids is to be published on 5 January 1998 and the first five pilot zones are expected to start in September 1998.

D. Intervention in schools causing concern

Intervention by LEAs

LEAs' current major powers of intervention in schools are the power to suspend the governing body's right to a delegated budget on the grounds of mismanagement[62] or where OFSTED have deemed special measures to be necessary[63] and the power to inspect a school for a specific purpose when there is no other way to obtain information necessary to exercise one of their functions.[64]

Excellence for everyone (1995) stated that LEAs would have a duty to identify struggling schools and the power to appoint additional governors. The concept of a formal warning, requesting a plan of action from the school appeared in the White Paper.[65] The proposed actions by the LEA if the governing body and headteacher had not taken effective action were:

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[59] "Blunkett targets poor school zones", *Guardian*, 5.12.97
[60] "Firms to be allowed to manage schools", *Guardian*, 5.12.97
[61] *Education Action Zones - an introduction*, DfEE, 9 December 1997
[62] *Education Act 1996* s.117
[63] *School Inspections Act 1996* s.28
[64] *School Inspections Act 1996* s.25
[65] Chapter 3, box on the LEA role in school improvement

- To invite OFSTED to inspect the school;
- to appoint additional governors to steer a better course of improvement and ultimately
- to withdraw budget delegation from the school.

The LEA would have the power to invite OFSTED to carry out a full inspection ahead of the routine schedule where an 'early warning' was in force. The Framework document stated that guidance would be available to schools and LEAs on the circumstances in which these powers might be exercised.[66]

Similar proposals for an early warning system were included in the Welsh White Paper[67] and Framework document.[68]

Both the representatives of schools and LEAs responded favourably to the early warning procedure. The National Governors Council welcomed the "early warning" system and hoped that good practice would ensure that governing bodies were informed directly by the LEA at the earliest opportunity if serious weaknesses were developing. A similar point was made by the Secondary Heads Association (SHA) although both they and the National Association of Head Teachers questioned the assumption that there was "a large category" of schools with serious weaknesses. The Society of Education Officers particularly welcomed the suggestion of a staged process leading to the withdrawal of delegation and looked for national guidance prepared jointly by the DfEE and the LEA to ensure comparable procedures in similar circumstances. They suggested appeal to LEA councillors in case of dispute or complaint. The Local Government Association also welcomed "early warnings" and hoped they would be rare. They suggested that in the case of voluntary aided schools the diocese should be consulted before withdrawal of delegation. A similar point was made by the General Synod, Board of Education, for the Church of England.

The Bill: Clauses 14 - 19

Clause 14 outlines the powers of intervention exercisable by LEAs: the power to appoint additional governors (Clause 16) and the power to suspend the right to a delegated budget (Clause 17).

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[66] Part 2, para.12
[67] Chapter 4, para.20
[68] Chapter 3, para.12

Clause 15 lists the cases where the powers of intervention may be exercised:

- a formal warning has been issued in cases of unacceptably low standards of performance or a serious breakdown in the way the school is managed or governed or a threat to the safety of pupils or staff (whether by the breakdown of discipline or otherwise);
- an OFSTED report has stated that the school has serious weaknesses;
- an OFSTED report has stated that special measures should be taken in relation to the school.

Clause 16 gives the LEA power to appoint additional governors in such circumstances and following certain procedures. In the case of a voluntary aided school, the appropriate appointing authority may appoint an equal number of additional foundation governors. If the school requires special measures, any number of additional foundation governors may be appointed. This reflects the power in the *School Inspections Act 1996* s.27(5) which is repealed. **Clause 17** provides for the suspension of the right to a delegated budget.

Clause 18 enables the Secretary of State to appoint and pay additional governors to a school requiring special measures and nominate one of those governors to replace the elected chairman. In such a case the LEA may not suspend the right to a delegated budget or, if that has already happened, the Secretary of State may revoke the suspension. **Clause 19** gives the Secretary of State power to direct the LEA to discontinue a maintained school requiring special measures having consulted the Church authorities or the person who appoints foundation governors in the case of a voluntary aided or foundation school.

Clauses 18 and 19 provide powers of intervention for the Secretary of State similar to those in Part II of the *School Inspections Act 1996* which is repealed by this Bill. There is no longer a power to establish an education association.

II New Framework for Maintained Schools

This part of the Bill sets out in 55 clauses and 21 schedules the new framework for schools and the constitution and duties of their governing bodies in England and Wales. Parts II and III of the *Education Act 1996* are repealed.

A. Introductory

Background

This chapter sets out the new categories and the new arrangements for local level decisions on school organisation. The current categories of schools derive from the *Education Act 1944*: county; three types of voluntary school: controlled, aided, and special agreement; and special schools, and from the *Education Reform Act 1988*: grant maintained schools. The 1988 Act also provided the statutory funding basis for city technology colleges which are not maintained schools but independent secondary schools offering free education with an emphasis on science and technology or technology in its application to the performing and creative arts.[69] The *Education Act 1993* added the category of grant-maintained special schools. Appendix II gives the numbers of primary and secondary schools (excluding special schools) in England and Wales by denomination and category.

The framework of schools created by the 1944 Act represented the Government's agreement with the Churches. The creation of grant-maintained schools by the 1988 Act arose from the Conservative Government's desire to allow schools to opt out of local authority control.[70] The framework proposed in this Bill brings all mainstream schools into three main categories of LEA maintained schools, together with two categories of special schools.

The original proposals in *Diversity and Excellence* (1995) and the White Paper and the Framework document envisaged three different mainstream categories:

[69] *Education Act 1996* s.482

[70] Library Reference Sheets No 87/6 pp 32-39 and No 92/10 pp 8-17 and Library Research Note No 92/65

- community schools, which would be similar to existing county schools;

- aided schools, which would encompass voluntary aided, special agreement and ex-voluntary aided and ex-independent grant-maintained schools, and

- foundation schools, which would encompass ex-county grant-maintained and voluntary controlled schools and possibly, the 1995 paper suggested, city technology colleges.

These would be initial allocations; all schools would be able to choose their own category. All special schools would become community special schools. The same framework was proposed in the Welsh White paper and Framework document.

These proposals attracted considerable immediate opposition from the Churches and from voluntary controlled schools whose governors did not want the added staffing and premises responsibilities of foundation schools and did not want to lose the church link but could not afford the 15% contribution to capital expenditure required of voluntary aided schools. The Churches were concerned that controlled school governors might therefore opt for community status. Their other concerns related to proposals to reduce the foundation majority on aided school governing bodies to a bare minimum to accommodate more elected parent governors and the proposals for a school admissions forum which they felt might impinge on the responsibilities of the governors, as the admissions authority, in aided and foundation schools.[71]

The strength of the Churches' opposition caused the Government to announce in October a change to its proposals. The Church sector was to remain virtually unchanged with voluntary aided and voluntary controlled schools. The majority of foundation governors was to be maintained; the right of church schools to use denominational affiliation in their admissions policies was confirmed and any questions on this aspect of admissions at the level of an admissions forum (Clause 81) was to be settled by the Secretary of State. In short, the 1944 arrangement was to hold. At the same time it was announced that there would be a category of foundation special schools.[72]

Responses generally were divided on the proposals for the categories of school. A number focused on the need for a foundation sector, many arguing that a return of grant-maintained schools to their previous categories would be the simplest solution.[73] There was concern that allowing schools to choose their category would lead to a period of debate if not dissension while schools evaluated which category of governance was in their own best interests.[74] A

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[71] Responses of the Church of England and the Catholic Education Service
[72] DfEE and Welsh Office PNs 27.10.97
[73] "Beware the rot about foundations", *TES*, 24.10.97
[74] Response of Society of Education Officers

substantial majority of the governing body associations in membership of the National Governors' Council felt that the proposals which would affect over 24,000 schools were drafted to change the status of just over 1,000 schools.[75] Other respondents questioned the use of the name "foundation" which was normally associated with church schools with their foundation governors and drew attention to the anomaly of the foundationless foundation schools.[76] The Education Law Association drew attention to the existing statutory definition of a community school in section 140 of the *Education Act 1996*.[77] The Funding Agency for Schools stressed strong support for the concept of foundation schools but wished their charitable status to be classified and their position within or without the public sector.[78]

The Bill: Clauses 20 - 22 and Schedules 2 and 3

The new schools

Clause 20 and **Schedule 2** set out five new categories of school:

a) community schools;

b) foundation schools;

c) voluntary schools, comprising

    i) voluntary aided schools, and

    ii) voluntary controlled schools;

d) community special schools; and

e) foundation special schools

and provide for the allocation of LEA maintained schools to the new categories and the process by which grant-maintained (GM) schools will choose their new category. The change in all cases to be on a day appointed by order by the Secretary of State. The allocation is as outlined in the October press notice:

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[75] National Governors' Council response
[76] Framework document, Part 3, para.7c
[77] ELAS response
[78] FAS response

County school	→	community school
Voluntary controlled school	→	voluntary controlled school
Voluntary aided school	→	voluntary aided school
Special agreement school	→	voluntary aided school
Maintained special school	→	community special school

Grant-maintained schools are given indicative new categories and must make a "preliminary decision" whether to accept the category or opt for a different one:

Former county or controlled GM school	→	Foundation school
GM school established by FAS	→	Foundation school
Former voluntary aided or special agreement GM school	→	Voluntary aided school
GM school established by promoters	→	Voluntary aided school
GM special school	→	Foundation special school

Regulations will make provision for the procedure to be followed by GM governing bodies making their "preliminary decision." They may require parental ballots, the costs of which will be met by central government.[79] There is provision for the Secretary of State to make the final determination if a governing body's final decision or the result of a ballot did not accord with the indicative allocation. If a final determination has not been made by the appointed day, transitional arrangements allow for the school to be allocated to its indicative allocation.

Later clauses allow, under certain conditions, community and voluntary schools to change their category following a prescribed period.[80] The existence of this later provision may defuse any reaction to choice initially being given only to the GM sector.

[79] Bill, p. xiii
[80] Clause 34 and Schedule 8

Clause 21 defines three kinds of foundation school:

a) those with an existing foundation;

b) those belonging to a group of schools for which a foundation body acts;

c) those who are neither a) nor b) - the foundationless foundation schools.

Similarly voluntary aided and voluntary controlled schools will either have an existing foundation or belong to a group of schools (of at least three), for whom a foundation body acts. The foundation is defined as a body of trustees or body corporate (other than the governing body) which holds property for the purposes of the school.

Foundation, voluntary or foundation special schools, foundation bodies under this Act, any other foundation having only the premises of schools as its property are exempt charities for the purposes of the *Charities Act 1993*. Community and community special schools are not to be charities. Regulations will make provision for the establishment and functions of foundation bodies.

Clause 22 sets out the duty of LEAs to maintain all schools established in or under this Act. The clause and **Schedule 3** make provision for recurrent funding for all schools and the differing responsibilities of the LEA, governing bodies and the Secretary of State in relation to premises. The distinction drawn between foundation, voluntary controlled or foundation special schools in Clause 22(4) and voluntary aided schools in Clause 22(5) make it clear that voluntary aided schools will continue to get grants for capital expenditure and external repairs from the Secretary of State.[81] All other schools will receive capital funding through the LEA. Part III of Schedule 3 extends the existing default powers of the Secretary of State in relation to voluntary schools[82] to foundation schools.

New arrangements for organisation of schools

Background

At present most decisions about the establishment, alteration, change of site or status of an LEA maintained school require the approval of the Secretary of State.[83] An Audit

[81] Schedule 3, Part II
[82] *Education Act 1996* s.71
[83] *Education Act 1996* ss. 35-58, 211-216, 259-279

Commission report in 1996 concluded that the Government might wish to give local agencies a stronger role in planning school places.[84]

The White Paper proposed the devolution to local level of decisions on changes to school organisation, character and the supply of places for both mainstream and special schools.[85] Part 10 of the Framework document set out proposals for a school organisation plan drawn up by the LEA and referred to a School Organisation Committee on which relevant interests such as the LEA, local dioceses, schools and parents would be represented. A representative of the Further Education Funding Council would attend but vote solely on issues relating to 16-19 provision. The Committee would agree the school organisation plan and determine any school organisation proposals by consensus, each interest group having a single vote.

There would be a system of regional adjudicators, who might also cover admission arrangements, for cases where it was not possible to reach local agreement. The school organisation plan would cover five years on a rolling basis and would say where places needed to be added or removed but would not identify individual schools. Statutory proposals would cover this level of detail.

The Committee would consider the plan and any objections and agree a revised plan for the area. If not, it would present options to the adjudicator.

Statutory proposals would be published by the LEA, governing bodies and promoters and would be decided by the Committee in the light of the School Organisation Plan or referred to the adjudicator. The Secretary of State would provide guidance on national policy objectives.

The arrangements are intended to replace the Secretary of State's current role, although he would retain the power, where needed, to direct LEAs and governors to bring forward proposals to add or remove places and to publish his own proposals.[86] Similar proposals were put forward for Wales except for the possibility of an expanded local education committee taking on the function of the School Organisation Committee. In Wales the adjudicators would be appointed to cover the whole of the country.[87]

There was general support for the principle of local level decision making but views on the proposed School Organisation Committee were more mixed. The Local Government Association did not support the School Organisation Committee in the form proposed. It believed that the LEA should make such decisions since it was responsible for the supply of

[84] *Trading Places: The Supply and Allocation of School Places*, Audit Commission, 1996, para.75
[85] Chapter 7, para 26-27
[86] Framework document, Part 10
[87] *Framework for the organisation of schools in Wales.* Welsh Office, August 1997, Chapter 8

school places. It also suggested that the role of adjudicator should be limited to judging whether there had been proper consultation and whether the decision was legally reasonable and that it should be carried out by a panel. It believed major policy decisions needed to be "the responsibility of the democratically elected and accountable LEA." The Education Law Association questioned whether a plan written without identifying individual schools would be helpful in practice.[88] The Funding Agency for Schools welcomed the proposal in general terms but noted that if it was to function effectively, it would "rely heavily on full co-operation and consultation between parties." They also noted that decisions on capital funding controlled the planning of school provisions.[89]

The Bill: Clauses 23 - 26 and Schedules 4 and 5

Clause 23 and **Schedule 4** require each LEA to establish a school organisation committee for their area and enable the Secretary of State to make regulations as to the constitution and proceedings, including voting procedure, of that committee. The membership must include at least one member of the LEA and a representative of the Church of England and of the Roman Catholic Church. The members of the committee may have travelling and subsistence and financial loss allowances. The LEA must provide financial assistance, services and premises and indemnity against any reasonable legal costs and expenses. The committee will come within the Secretary of State's general default powers.[90]

Clause 24 and **Schedule 5** make provision for the appointment of as many adjudicators for England as the Secretary of State considers appropriate and their terms of office. They will come under the supervision of the Council on Tribunals.

Clause 25 requires each LEA to prepare a school organisation plan, the contents of which, form of preparation and approval by the school organisation committee or adjudicator are to be set out in regulations. Plans in Wales are to be adopted, after consultation, by the LEA.[91]

Clause 26 allows regulations to be made to require school organisation committees or adjudicators in Wales. The clause also allows the Secretary of State to apply to Wales the provisions of Chapter II or VII of this Part or Chapter I of Part III and to disapply provisions in those Chapters which apply exclusively to Wales.

The Welsh Office press notice on the Bill makes it clear that it allows for distinct procedures in Wales for the organisation of school places in each local authority and the planning of

[88] ELAS response
[89] FAS response
[90] *Education Act 1996*, ss. 496 and 497
[91] Clause 25(6) and (7)

school admissions policies. Many of the Bill's provisions will become responsibilities of the Assembly in due course.

B. Establishment, alteration or discontinuance of schools

The Bill: Clauses 27 - 34 and Schedules 6 - 8

Mainstream schools maintained by LEAs

Clauses 27 and 28 transfer the decision making power on proposals relating to the establishment, alteration or discontinuance of schools to the school organisation committee or adjudicator (in England) or the Secretary of State (in Wales).

Proposals for the establishment or alteration of a community or foundation school (other than a change to its religious character) are to be made by the LEA, who may also publish proposals for the discontinuance of any school. The governing bodies of foundation or voluntary schools may also publish proposals for the discontinuance of their schools.

The procedure for making proposals is to be prescribed in regulations; the procedure for dealing with them is set out in **Schedule 6** - Part I - England, Part II - Wales. The school organisation committee in English LEAs will not be able to approve proposals unless they are satisfied adequate financial resources will be available to implement them.[92] LEA proposals will not require approval if there are no objections or all objections are withdrawn. They may then decide to implement the proposals.[93]

The requirement to implement all proposals, with the procedures for changing that decision, is set out in Schedule 6, Part I, para. 5 (for England) and the manner and duty of implementation in Part III. Part IV of the Schedule covers the provision of premises and assistance for schools other than community schools. Part V makes provision for single sex schools moving to co-education.

Clause 29 enables the governors of a foundation or voluntary school to discontinue the school by serving two years' notice of their intention to do so.

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[92] Schedule 6, Part I, para.4
[93] para.4

Special schools maintained by LEAs

Clause 30 makes similar provisions for community or foundation special schools.

Clause 31 empowers the Secretary of State to discontinue a community or foundation special school on health; safety or welfare grounds. This replaces the power currently in regulations.[94]

Clause 32 makes provisions supplementary to **Clauses 27-32** and enables the Secretary of State to make regulations requiring the provision of information about proposals.

Rationalisation of school places

Clause 33 and **Schedule 7** give the Secretary of State a new reserve power to direct LEAs and governing bodies to make proposals for the rationalisation of school places and to make such proposals himself.

The power applies in cases of excessive or insufficient places but is possibly more likely to be used in the former.

The proposals by the Secretary of State will be sent to the school organisation committee and will require approval in England by the committee or the adjudicator.[95] Proposals referred to the adjudicator have to be the subject of a local inquiry, as have proposals in Wales to which objections have been received.

Change of category of school

Clause 34 and **Schedule 8** provide for schools to change their category at the end of a prescribed period. The only exception to the period of delay is a voluntary aided school becoming voluntary controlled. This exception is presumably because such changes can occur when governors are unable to meet their financial obligations.

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[94] SI 1994/652, reg.7
[95] Schedule 7, Part IV, para.8

The DfEE's document, *Raising standards for all*, suggests that LEA schools will be able to publish proposals to change category "once they have had experience of the new framework." There is currently no information on the period intended; in Wales it will be decided by the Welsh Assembly.[96]

Regulations will set out the procedure which may apply any of the provisions in Clauses 27 and 28 and Part I and II of Schedule 6. They may also impose conditions (according to the circumstances of the case) including the requirement to join a group of schools for which a foundation body acts or proposes to act.[97] This clause allows a community school to become a foundation school if the proposals are agreed by the School Organisation Committee or the adjudicator.

The financial memorandum to the Bill points out that the introduction of local decision making on school organisation matters would give rise to new central government and local authority expenditure. The net cost is expected to be £1.2 million in the financial year 1998-99 and around £1 million each year thereafter. The additional financial responsibility on LEAs to provide sites and buildings for voluntary controlled, foundation and foundation special schools will attract compensation.

C. Government of maintained schools

Clauses 35 - 42 and **Schedules 9 - 11** set out the constitution of governing bodies for the new framework and implement the Government's proposals to simplify arrangements for instruments of government and replace articles of government with consistent regulations that apply to all schools.

Background

The proposals in *Diversity and Excellence* (1995) suggested changes to the composition of governing bodies with greater parent representation and more LEA governors on all schools and set out a proposed new composition.[98] The Framework document added to this representation for non-teaching staff and suggested a tightening up of the eligibility requirements for co-opted governors. It also suggested an end to sponsor governors as a separate category but the possibility for designated specialist schools of adding up to two co-opted governors nominated by sponsors. It also created "partnership" governors for

[96] Welsh Office PN 4.12.97
[97] Schedule 8, para.3(2)
[98] Appendix 3, Grid 2

foundation schools without foundations[99] and set out a "job description" for governing bodies which started with the main function of helping raise standards.[100]

The change to the framework proposals as a result of representations by the Churches meant a return to the majority of two or three foundation governors in voluntary aided schools.[101] Responses varied. The Funding Agency for Schools doubted whether increased parental representation would "necessarily lead to better decision making or more efficient, or even more democratic, government." They felt strongly, presumably from the experience of grant-maintained schools, that a good spread of skills and expertise was more important than the issue of representation.[102] The Local Government Association broadly supported the new composition but suggested a reduction in the number of co-opted governors to provide for smaller governing bodies.[103]

The National Governors' Council welcomed the "job description" for governors set out in the Framework document, but suggested that governors would need the legal powers to enable them to do the job. They also drew attention to the difficulty of finding sufficient parent governors in some areas.

The Bill: Clauses 35 - 42 and Schedules 9 -13

Governing Bodies

Clause 35 and **Schedules 9, 10** and **11** provide for each maintained school to have a governing body, its constitution, general powers, membership and proceedings. The constitution for each category of school, is set out in tables in **Schedule 9**. In each case, the headteacher can choose whether or not to be a governor. Previously headteachers in grant-maintained schools had to be governors; others could choose. The Framework document had proposed requiring all headteachers to be governors. Each phase is divided by size: normal and small (under 600 for secondary, under 100 for primary).

The main change for **community schools** is an increase in parent governors and a new category of staff governor, representing non-teaching staff, except in small primary schools.

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[99] Part 2, para.8
[100] para.2
[101] DfEE and Welsh Office PN 27.10.97
[102] FAS response
[103] LGA response

Community special schools will follow the pattern for community schools and may add a staff governor. However, whatever the number of registered pupils in the school they may opt for the model for small primary schools.

Foundation schools are to have a minority of foundation, or if there is no foundation, partnership governors. There must be 2 LEA governors on all foundation school governing bodies and a varying number of co-opted governors. The staff governor requirement also applies.

Foundation special schools may follow the model for small foundation primary schools.

The main change to **voluntary controlled schools** is an increase in parent governors and the requirement for a staff governor.

Voluntary aided schools have previously had a framework of representative governors which could be increased as the individual school wished so long as the foundation governors outnumbered them by two, or three if the total was over 18. Voluntary aided schools now have their numbers set in primary legislation. The main change is the requirement for a staff governor, a reduction in teacher governors in some schools, and a requirement that at least two of the foundation governors are parents of registered pupils (three in secondary schools over 600).

The procedure for reducing the number of governors in any category if it exceeds what is set out in this Schedule will be prescribed, if it is not eliminated by governors of that category resigning. If the excess has arisen in relation to foundation governors, the instrument of government of the school will set out the procedure for eliminating it.

On the appointed day the governing body of a school must be constituted according to **Schedule 9**.[104]

Schedule 10 sets out the requirements for incorporation and the powers of governing bodies. Governing bodies became corporate bodies in the 1993 Act. The powers of the governing body in the Schedule include the power for all governing bodies to borrow although it may only be exercised with the written consent of the Secretary of State or, if an order has been made to transfer this function, by the LEA. The power to dispose of land may also only be exercised with the consent of the Secretary of State.

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[104] Schedule 10, para.1(2)

Voluntary and county schools, unlike grant-maintained schools, have not previously had an explicit power to borrow.[105]
Foundation, foundation special and voluntary aided schools have the power, as previously, to enter into contracts for the employment of teachers and other staff.

Schedule 11 covers the membership and proceedings of governing bodies, including procedures for election and appointment. Regulations will make provision for the election of the chairman, the establishment of committees and the delegation of functions. As now, governors may receive expenses. A duty is placed on the LEA not only for free training but for the provision of appropriate information for governors. Provision is also made for the appointment of the clerk.

Instruments of government

Clause 36 and **Schedule 12** make new provision for the content of instruments of government, including the name of the school.

The procedure for making the instrument is that the governing body prepares a draft and submits it to the LEA. It must previously had been agreed by the foundation governors, the trustees and the appropriate diocese in the case of schools which have foundation governors.[106]

Schedule 12 makes provision for instruments of government, which are to be in place before the appointed day.[107] The content of instruments is set out together with the procedure for making and reviewing instruments and modifying inconsistent trust deeds.[108]

The Secretary of State may give guidance to be considered by those taking decisions on the names of schools.[109]

The sections 35(1) and (2) and 36(1) and (2) and Schedules 9,10 and 12 will come into force on the day the Act is passed for the purposes only of the preparation of instruments of government and the constitution of governing bodies. Section 35(1), the requirement to have a governing body, and Schedule 11, Parts I and III relating to the proceedings of governing bodies also come into force on that day.

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[105] *Education Act 1996*, Schedule 7
[106] Schedule 12, para.3
[107] Schedule 12, para.6
[108] para 4 & 7
[109] Schedule 12, para.3(6)

The financial memorandum considers that the savings to the LEAs from the abolition of articles of government will more than compensate them for the administrative burden of making new instruments for all schools. This administrative burden, however, is likely to fall mainly in one year while the savings from not making articles will only accrue over time.

Functions of governing body

Clause 37 places on governing bodies a new duty to conduct the school with a view to promoting high standards of education. It thus reflects the duty placed on LEAs in *Clause 5*. Regulations may set out terms of reference, and define the respective roles and responsibilities of governing bodies and headteachers, whether generally or in respect to particular matters, including the curriculum. They may also confer functions on governing bodies and headteachers.

The use of this enabling power to define roles was proposed in general terms in the Framework document (Part 2) although the White Paper stated that the Government did not think it right "to legislate for all details of the relationship between headteachers and governors" but commended instead the *Guidance on Good Governance.*[110]

Clause 38 covers additional functions and places a new duty on governing bodies to establish and publicise procedures for dealing with complaints other than those covered by statutory provision. It enables governing bodies to cause pupils attend outside the school premises[111] and it requires the governing bodies and headteachers of community or voluntary controlled schools to comply with any direction given by the LEA concerning health and safety.

Control of school premises

Clause 39 and **Schedule 13** make provision for the control of school premises in different categories of school. Community school governing bodies are now given control over the occupation and use of school premises during as well as outside school hours subject to certain savings.[112] The current arrangements for transfer of control agreements are restated.[113]

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[110] DfEE, 1996. Chapter 7, para.14
[111] *Education Act 1996* s.153
[112] para 1 and 8
[113] para.2

Fixing of school holidays and times of sessions

Clause 40 applies directly the previous responsibilities held by different categories of school for fixing the dates of terms and the times of sessions.

Reports and parents' meetings

Clause 41 places a duty on the governing body to produce an annual report. Regulations will specify the requirements which were previously in articles of government. **Clause 41(3)** requires the governing body to provide any reports required by the LEA and **41(4)** places a similar duty on the headteacher to provide reports to the governing body.[114]

Clause 42 requires governing bodies to hold an annual parents' meeting.

Following consultation, further regulations are likely to prescribe the contents of the annual report.

D. Financing of maintained schools

This chapter replaces Chapter V of Part II of the *Education Act 1996* and makes revised provision for financial delegation to schools. The main change involves the use of regulations to cover matters hitherto covered in LEAs' LMS schemes.

Background

Local management of schools was introduced by the *Education Reform Act 1988* and the primary legislation survives virtually unchanged in the 1996 Act.[115] All LEAs are required to prepare a scheme, to be approved by the Secretary of State, for determining the budget share for each school and its delegation to the governing body.[116] The legislation defined the general schools budget (GSB) as the amount appropriated by the authority for meeting expenditure for all schools and the "aggregated schools budget" (ASB) as the amount available for delegation. There were mandatory items which had to be removed from the GSB and held centrally and discretionary items which an LEA could hold back subject to

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[114] *Education Act 1996* s.165
[115] For background, see Library Reference Sheet 87/6, pp 29-31
[116] *Education Act 1996* ss.103-4

certain limits. Two mandatory items appear in primary legislation: capital spending and associated charges, and expenditure supported by central government grants.[117] Other items were to be prescribed and have since been added by regulation: EC grants; premature retirement and dismissal costs and the Education Psychology and Education Welfare Services. All other items can be delegated to schools although there is a category of discretionary items outside what is known as the Potential Schools Budget (PSB) i.e. their costs do not have to be included in the 85% of PSB which must be delegated. These are school meals; home-to-school transport; pupil support (clothing and maintenance grants); governors' insurance; LEA initiatives; and school specific contingencies. The last two have budgets limited to 0.5% and 1% of GSB respectively.

LMS schemes have been drawn up following detailed guidance in a series of circulars, the current one being DFE circular 2/94.

The scope for local discretion has meant a variety in the items and level of expenditure kept centrally. A recent Parliamentary Answer showed, for all LEAs in England, delegation ranging from about 63% of the General Schools Budget to over 82% with the average being 74.4%.[118]

Although the concept of local management of schools has been welcomed by everyone, there has been a constant concern from central Government that more money should get into schools. Currently 90% of the Potential Schools Budget must be delegated, since the previous Government did not legislate to raise it to 95%, as it had proposed in the White Paper, *Self Governance for Schools.*[119] The debate on the funding of grant-maintained schools and the experiments with the Common Funding Formula have also focused attention on the possibility of a system which applied more equally to all schools.

The English White Paper proposed legislation to change the coverage of Local Management of Schools (LMS) in order to delegate more money to schools and to provide statutory backing for key national policies.[120] The Welsh White Paper talked only of developing a new LMS framework and referred to the "many in Wales, including Heads and governors of small schools" who considered that 90% delegation was as far as LMS should go.[121]

The English Framework document gave further detail on the proposed legislation and suggested a 100% delegation model, with a financial framework which made clear separation between the functions of LEAs and schools. The intention was "to level up" towards the

[117] *Education Act 1996*
[118] HL Deb 18.11.97 ccWA 73-78
[119] Cm 3315, Chapter 2, para.4
[120] Cm 3681, para 20-25
[121] Cm 3701, Chapter 11, para 16-19

level of school budget management applying in the GM sector.[122] Currently GM schools have responsibility for all expenditure on the school, with the exception of such items as the LEA's support for pupils with special educational needs; the services needed to support special education; and pupil support grants.

The DfEE summary of response to their funding proposals recorded the belief of many that detailed definitions of functions, level of holdback and method of allocation would be crucial. FAS looked for all schools to receive a minimum guaranteed funding level and for LMS schemes to be broadly in line with the Common Funding Formula with other factors having to be negotiated with schools. The Local Government Association were concerned about the effect of the convergence of schemes on local policies. They wished to be certain that local authorities had the freedom to determine their own education budgets and opposed any suggestion that there should be a cap on any items, including central administration. The National Governors' Council accepted the need for review and local agreement on the amount to be retained by the LEA. However, they wanted a rigorous requirement for consultation and were concerned that LEAs' wish to retain funding to meet their new responsibilities would result in less money going into schools unless there was an overall increase in Government funding.

The Bill: Clauses 43 - 51 and Schedules 14 and 15

Budgetary framework

Clause 43 requires each LEA to allocate a budget share to every maintained school for each financial year.

As with the 1988 legislation, nursery schools and pupil referral units are not covered by requirement to delegate.

Clause 44 defines the LEA's Aggregated Schools Budget (ASB) as equal to their General Schools Budget (GSB) less such amounts as are set aside by the LEA in accordance with regulations. Regulations will also define the scope of the GSB.

Unlike the 1988 Act, no mandatory exceptions are defined in the Bill.

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[122] Part 7

Clause 45 requires the LEA to allocate budget shares determined in accordance with regulations. Regulations may also cover such matters as consultation, the time when schools' budget shares are to be initially determined and may make allowances not only for money following an excluded pupil as now but for the level of adjustment to be varied as prescribed in regulations.[123]

There is no detail given of what will be included in the allocation formula. Previously the requirement for LEAs to take account of numbers and ages was mandatory. The power to vary adjustment for an excluded pupil allows the possibility of financial inducements to take in excluded pupils as suggested in the White Paper.[124] The possibility of a set date for indicative budgets will be welcomed by governing bodies.

Local education authority schemes

Clause 46 and **Schedule 14** require each LEA to prepare a scheme for financing schools in accordance with regulations. The regulations may cover such matters as the carrying forward of surpluses and deficits, conditions - including financial controls, and the terms on which the LEA will provide services.

The specific reference to carrying forward surpluses may concern governing bodies as LEAs have a natural interest in controlling surpluses. Grant-maintained legislation was more prescriptive about the percentage which could be carried forward for particular purposes.

Schedule 14 covers the approval, imposition and revision of LEA schemes. There is a requirement to consult every governing body and headteacher on <u>any</u> proposed variation not as now only on significant variations.[125]

Clause 43-46 and **Schedule 14** come into force on the day the Act is passed for the purpose only of the allocation and determination of budget shares for the financial year beginning on 1 April 1999.[126]

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[123] Clause 45(3)
[124] Cm 3681, Chapter 6, para.19
[125] para.2(3)
[126] Clause 124(5)

Financial delegation

Clause 47 provides for the delegation of budgets to governing bodies (with limited and temporary exceptions).

Clause 48 outlines the effect of financial delegation and restates most of Section 116 of the *Education Act 1996* including the power of the governing body to delegate to the headteacher. There is a provision for governing bodies to spend (subject to any prescribed condition) for such purposes as may be prescribed. This is a new addition to the power to spend the budget "for any purposes of the school."[127]

Suspension of financial delegation

Clause 49 and **Schedule 15** enable an LEA to suspend a governing body's right to a delegated budget on grounds of financial mismanagement or breaches of rules under the scheme. There is a right of appeal to the Secretary of State. The provisions are very similar to those in force at present[128] with the exception of a new power of immediate suspension in cases of gross incompetence or mismanagement.[129]

Clause 50 requires the publication by the LEA of financial statements (the current s.122 statements).

Clause 51 restates the provision for the certification by the Audit Commission of statements prepared under **Clause 50**.

E. Staffing and conduct of schools

Clauses 52-58 restate the staffing responsibilities of schools with delegated budgets originally contained in Chapter VI of Part II of the *Education Act 1996* and in schools' articles of government. Most of the Government's proposals relating to the teaching profession are contained in the *Teaching and Higher Education Bill [HL]*, HL Bill 47. However, the proposals on tackling poor performance are covered by this Bill.

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[127] Clause 48(3)
[128] *Education Act 1996* ss 117-119
[129] Schedule 15, para.1(2)

Background

The English White Paper referred to legislating for powers for school governors to dismiss incompetent teachers and heads, while at the same time agreeing streamlined model procedures as part of its section on performance management.[130] The Welsh White Paper made similar suggestions.[131] The other area covered in both papers related to improving the appraisal arrangements.

All chairs of governing bodies of maintained schools were sent a letter by Stephen Byers on 17 November 1997 enclosing an outline capability procedure for teachers endorsed by him. The procedure had been drawn up by a working group established by the National Employers' Organisation for School Teachers including the six teacher associations, representatives of the LEAs, church authorities and governor associations under the chairmanship of ACAS.

It is an outline procedure envisaging the removal of incompetent teachers within two terms of the date on which formal procedures are activated and within four weeks in extreme cases. It is to be incorporated into all schools' capability procedures with initiating action coming from LEAs and church bodies.

Proposals relating to staffing in the Framework document covered the rationalisation of the safeguards relating to the religious opinions of staff to distinguish schools with a religious character within each sector.[132] It was made clear that governors' staffing responsibilities in foundation schools would mirror those in voluntary aided schools. There was to be legislation covering non-school activities, such as adult education, at "community schools" under section 140 of the 1996 Act. There was to be power for the LEA to make formal representations to the governing body when it had concerns about the performance of a headteacher and when it felt a proposed headteacher appointment was unsuitable.

The DfEE summary of responses reported mixed views on the proposed powers for LEAs to make representations about unsuitable headteacher appointments and to report to governing bodies if they had concerns about the performance of a headteacher. There was an emphasis on the need for clarity about the use of those powers to guard against possible unfairness. The Local Government Association generally accepted all the staffing proposals but felt that LEA representation about a proposed appointment was "a long stop of doubtful value." They argued for the Chief Education Officer (CEO) approving the short list and LEA appointed voting members on the selection panel. This last suggestion was not supported by the

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[130] Cm 3681, para 26-28
[131] Cm 3701, para.18
[132] Part 3, para 17 and 18

National Governors' Council who welcomed the professional advice of the CEO on appointments but felt, in the words of the White Paper, that the appointment of a headteacher "is plainly and properly a responsibility of the governing body."[133]

The Bill: Clauses 52 - 58 and Schedules 16 and 17

Staffing of schools

Clause 52 and **Schedule 16** contain provisions relating to the staffing of community, voluntary controlled and community special schools. They restate much of Schedule 14 of the *Education Act 1996.* The main additions cover:

- the power to engage an acting head (para.4(5));
- the requirement to consider representations form the LEA about a proposed headteacher appointment (para.6(4));
- the requirement in determining capability to have regard to any guidance from the Secretary of State (para.20(3));
- the possibility of rules and procedures relating to capability being prescribed by the Secretary of State;
- the duty of the LEA to report concerns about the performance of a headteacher (para.21);
- the power of the Secretary of State to make regulations about the employment of school meals staff (para.28).

The arrangements relating to dismissal have been strengthened by the specific requirement to have capability procedures and the Secretary of State's role in issuing guidance and making regulations, together with the duty on the LEA to report on the headteacher's performance.

Clause 53 and **Schedule 17** contain provisions relating to the staffing of foundation, voluntary aided and foundation special schools. Many of these requirements were previously covered in articles of government and therefore will have varied from school to school.

[133] Cm 3681, Chapter 3, para.25

Notable points are:

- the power to accord the CEO advisory rights, usual in voluntary aided schools but not for grant-maintained schools;
- the power of the Secretary of State to determine that such rights should be accorded (para.2);
- the right of the LEA to make representations on a headteacher appointment with a requirement on the governing body to supply information on the candidate if the CEO has no advisory rights and a duty on the LEA to have regard to any guidance from the Secretary of State (para.7(4-6));
- (as with community schools) the need to have regard to guidance and any regulation on capability (para.19(4)); and
- the duty of the LEA to report concerns about the performance of the headteacher.

Clause 54 contains staffing provisions relating to "non-school activities." The Framework document suggested that this related to old style "community schools" where adult education was under the control of the governing body.

Clause 55 sets out the responsibilities relating to staff dismissals, redundancies and premature retirement.

Appointment and dismissal of teachers of religious education

Clause 56 provides for the appointment and dismissal of teachers of religious education at schools with a religious character.

This distinguishes foundation and voluntary schools with a religious character from those covered by the next clause.

Religious opinions etc. of staff

Clause 57 provides a general protection for staff at community schools and foundation and voluntary schools without a religious character against disadvantage on the basis of religious

opinions or practice. Teachers at such schools may not be required to give religious education.[134]

Clause 58 sets out the employment safeguards for staff at foundation and voluntary schools with a religious character.

Discipline

Clauses 59-64 cover discipline and the arrangements for the exclusion of pupils.

Background

The White Paper proposed guidance to schools on pupil behaviour reflecting the provisions of the Education Act 1997.[135] It also called for effective strategies to deal with bullying and truancy. Detailed new guidance on exclusions was promised covering appeals and the merits of financial incentives for schools to admit pupils excluded by others (see Clause 45(3)). In both White Papers the proposals were set in the context of parents and schools working together to help pupils achieve. Other proposals related to early intervention on truancy and the range of LEA behavioural support plans required under the 1997 Act.

The Framework document opened consultation on the options for amending the exclusions framework in which at present there are different responsibilities and procedures in different types of school. The Government expressed its preference for a new hybrid model which would apply to all schools.

There was general support for these proposals among those who responded although it was thought better provision for pupils not attending school would require significant extra resources. The Advisory Centre for Education (ACE) reported the concern of parents over the more limited role of the LEA in exclusions from voluntary aided schools and their lack of involvement in exclusions from grant-maintained schools. They called for the LEA to have the same involvement in exclusions from all schools.[136] The Society of Education Officers also held this view with their support for a hybrid model for all schools. The hybrid model was not supported by the Church of England who felt it represented a further weakening in the position of voluntary aided school governors.[137] The Education Law Association felt all appeals against permanent exclusion, after review by the governors, should be heard by an

[134] *Education Act 1996* s.146(2)
[135] Library Research Paper 96/101, Section IV
[136] ACE response to the Framework document
[137] Church of England response

independent body.[138] Although not a specific response to the White Paper, the Local Government Ombudsman called for a change in the law to provide "consistent treatment of all complaints about the allocation of places in and exclusion from all publicly funded schools."[139]

The *Education Act 1997* contained a number of provisions relating to discipline which have not yet come into force and which are repealed by this Bill. Section 2 and 3 set out the responsibilities for discipline in LEA maintained schools and grant-maintained schools. Sections 6 to 8 dealt with the change to a "45 school days in any one year" limit on fixed term exclusions and the arrangements for appeals in LEA and grant-maintained schools.

The Bill: Clauses 59 - 64 and Schedule 18

Discipline: general

Clause 59 requires the governing body of every maintained school to ensure that policies to ensure good behaviour and discipline are pursued at the school. The headteacher must determine the measures to be taken to promote good behaviour and publicise them.

The Clause restates Sections 2 and 3 of the 1997 Act but omits the sub-section in Section 2, relating to LEA maintained schools, which required the governing body and headteacher to consult the LEA on any matter which might lead to increased expenditure by the LEA or affect the responsibilities of the LEA as an employer. This had been the only difference in these sections between the responsibilities in LEA maintained schools and grant-maintained schools.

Clause 60 gives the LEA reserve powers to take steps to prevent a breakdown of discipline within maintained schools. This clause applies the reserve power in relation to county and controlled schools in *Section 155* of the *Education Act 1996* to all maintained schools.

Exclusion of pupils

Clause 61 sets out the power of the headteacher to exclude a pupil for a fixed period or permanently. Fixed period exclusions may not exceed, in total, 45 days in any one year.

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[138] ELAS Bulletin, No. 16, October 1997
[139] *Local Government Ombudsman Annual Report 1996/97*, Chapter 1, Education appeal committees

This change from 15 days in any one term to 45 days in a year was previously applied to LEA and grant-maintained schools by *Section 6* of the *Education Act 1997*.

Clause 62 requires the headteacher to inform the parent of the type of exclusion, the reasons for it and his right to make representation to the governing body. There is a duty to inform the governing body and the LEA of permanent exclusions and fixed term exclusions totalling over five days in any one term, or causing the pupil to lose the opportunity to take a public examination.

This clause applies to all schools the substance of *Section 157* of the *Education Act 1996* which required similar provisions to be in articles of government of all LEA maintained schools.

Clause 63 requires the governing body to consider any representations by the parent of an excluded pupil. In the cases where they have received formal notification of the exclusion (i.e. exclusions over 5 days) they must consider the circumstances of the case, hear oral representations and may, if practical, order reinstatement. If they do not order the reinstatement of a permanently excluded pupil they must inform the parent (or pupil if he is over 18) of the right to appeal.

Regulations may provide a time scale for the actions of the governing body and if provisions under Schedule 11 (para.4) on the proceedings of governing bodies requires the establishment of a discipline committee it should act for the governing body in these procedures.

This clause restates for all schools the procedures for governors' consideration of exclusions and clarifies the responsibilities in relation to fixed term exclusions of under 5 days. The provisions for county schools were originally in *Schedule 15* of the *Education Act 1996*. The right of the LEA to direct reinstatement has not been included in this Bill.

Clause 64 and **Schedule 18** require the LEA to make arrangements for all appeals against the decision of a governing body not to reinstate following a permanent exclusion. The amendments made by *Section 7* of the *Education Act 1997* to *Schedule 16* of the *Education Act 1996* are contained in *Schedule 18* of this Bill. These covered the right of the headteacher to make written and oral representations and the requirement for the appeal committee to have regard "to both the interests of that pupil and the interests of other pupils at his school and members of its staff," and to the school's behaviour policy.[140] The requirement to take reasonable steps to make sure the parent and other persons entitled to attend can do so is

[140] now Schedule 18, para.13

included. The major change to the 1996 legislation is the disqualification of members of the authority from serving on an appeal panel.

These changes to the law governing exclusions appear to create a hybrid model along the lines suggested by the Education Law Association. The headteacher excludes; the governing body reviews the decision and determines whether or not to reinstate; the appeal from a governing body's decision not to reinstate in the case of a permanent exclusion is to an independent appeal panel set up by the LEA. The Education Law Association envisaged a greater level of independence, in suggesting something like a modified Special Educational Needs Tribunal. The Local Government Association is reported to be urging the Government to reconsider the removal of LEA powers to overturn exclusions.[141]

F. Religious education and worship

This chapter restates the provision for religious education and worship in all schools using the distinction, proposed in the Framework document (Part 3, para 17 and 18) and applied in Chapter V, between those voluntary and foundation schools with a religious character and those without.

The Church of England response to this proposed distinction was concern that some voluntary schools whose foundation was religious might claim otherwise.[142]

The Bill: Clauses 65 - 67 and Schedules 19 and 20

Religious education

Clause 65 and **Schedule 19** set out who is responsible for securing statutory religious education (RE) and describe the nature of RE in three categories:

- community schools, and foundation and voluntary schools without a religious character;
- foundation and voluntary controlled schools with a religious character;
- voluntary aided schools with a religious character.

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[141] "Labour accused of U-turn on selection", *TES*, 12.12.97
[142] Church of England response on the Framework document, Part 3, para.3.8

An order by the Secretary of State will designate those foundation and voluntary schools with a religious character and state the religion or religious denomination.

Schedule 19 allows ex-grant-maintained schools with and without a religious character to continue to use an agreed syllabus other than the local one (para 2(4) and 3(5)).

Religious worship

Clause 66 sets out responsibilities of the LEA, governing body and headteacher, for securing statutory collective worship in all schools other than special schools.

Schedule 20 describes the nature of collective worship in schools of different categories and the disapplication of the requirement. The governing body of all schools may allow occasional acts of collective worship to take place off the school premises (para.2(5) and (b)).

Clause 67 sets out parents' right to withdraw their children from collective worship and RE and the arrangements to be made for such children. Regulations will make provision for securing that, so far as practicable, all pupils at special schools receive RE and attend religious worship unless withdrawn by their parents.

G. Miscellaneous and supplemental

This chapter contains clauses covering a number of different areas, many of them making provisions which follow from the movement of schools into new categories.

The Bill: Clauses 68 - 74 and Schedules 21 and 22

Provision for new schools

Clause 68 enables provision to be made by regulations for new schools.

Transfer of staff and land

The Framework document[143] considered in some detail the ownership and disposal of school buildings and assets and the transfer of staff consequent on the changed categories of school. Most of the changes will affect former grant-maintained schools since the continuance of the voluntary controlled sector will leave those staffing and premises arrangements unchanged. The Government made it clear that it would start from the presumption that the existing arrangements should continue except in those specific areas where, particularly in the interests of fairness, change was needed.[144]

There was general support for the principle that schools should continue to hold the assets they have.[145] FAS drew attention to the problem of land transfers which could cause long running disputes, a view echoed by the Church of England. The Church was also concerned about the possibility of surplus land in voluntary aided schools being transferred to the LEA by the Secretary of State.[146]

Clause 69 provides for the transfer of staff and safeguards of their rights on the appointed day when:

- a special agreement school becomes a voluntary aided school;
- a grant-maintained school becomes a community or voluntary controlled school;
- a grant-maintained special school becomes a community special school.

In the first category the transfer would be from the LEA to the governing body; in the other two categories it would be from the governing body to the LEA.

Clause 70 and **Schedule 21** make provision for transfers of land on the appointed day. Paragraph 2(3) of the Schedule brings such transfers within the remit of the Education Transfer Council (the renamed Education Assets Board, see Clause 117).

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[143] Parts 3 and 4
[144] Framework document, Part 3, para.1
[145] DfEE Summary of Responses on the Framework Document
[146] Part 3, para.4

Disposals of land

Clause 71 and **Schedule 22** make provision for the disposal of land held by foundation, voluntary or foundation special schools and for the property of such schools on their discontinuance.

The Schedule requires the governing bodies to seek the consent of the Secretary of State for the disposal of land and allow him to determine the disposition of part or all of the proceeds to himself or the LEA or to require the land to be transferred to the LEA for a sum which the Secretary of State determines.[147] Similar controls by the Secretary of State apply to disposals of land by a foundation body.[148] In case of the disposals of certain land by the trustees of a foundation, voluntary or foundation special schools, the LEA and the trustees must determine how much of the proceeds should be paid to the LEA, with the Secretary of State making the decision if they fail to agree.[149]

There is provision for the Secretary of State to require land held by a foundation, voluntary or foundation special school and "not required for the purposes of the school" to be transferred, subject to payment, to the LEA, if requires for a new school. This applies only to land transferred to the school from the LEA following the acquisition of grant-maintained status.[150]

There are also proposals which allow the Secretary of State to make directions on the use of land, premises, property on the discontinuance of a foundation, voluntary or foundation special school.[151]

A major change here is that the Secretary of State is enabled to recover voluntary aided school grant where, on disposal, the sale proceeds of grant aided school buildings are not recycled through the maintained school system.[152]

Further education

Clause 72 restates the power for a governing body to provide further education provided it is not taught, except where prescribed, in a room with pupils of the school and that the

[147] Schedule 22, Part 1, para.1
[148] para.2
[149] para.3
[150] *Education Act 1996* s.201(1)(a)
[151] Schedule 22, Part II
[152] Financial Memorandum to the Bill, p.xiv

governing body of a community or foundation special school do not provide such education without the consent of the LEA.[153] This clause does not apply to part-time further education in Wales under *Clause 12*.

Modifications of employment law

Clause 73 gives the Secretary of State the power, after consultation, to modify employment law during financial delegation.

Clause 74 allows the Secretary of State to modify, after consultation, trust deeds relating to schools if necessary for the operation of any provisions of this Bill.

[153] originally *Education Act 1996* ss.176 and 293

III School Admissions

A. Admission Arrangements

Background

Admissions to schools are the responsibility of different bodies or "admission authorities." At present LEAs are the admission authorities for county and voluntary controlled schools, and the governing bodies are responsible for admissions to voluntary-aided schools and grant-maintained schools. City Technology Colleges also administer their own admission policies.

The law on school admissions is contained in the *Education Act 1996*[154], sections 411 to 436, as amended by the *Education Act 1997*.[155] DfEE Circular 6/96 [156] provides guidance on the law relating to school admission arrangements, replacing the much more detailed DFE Circular 6/93[157]. DfEE Circular 6/96 set out the basic principles which the then Conservative Government considered important in relation to school admissions. It explained the law on parental preference (which was subsequently amended by the 1997 Act), the statutory framework for proposals to make significant changes in the character of a school, the law relating to standard numbers for county and voluntary schools and approved admission numbers for grant-maintained schools, and the procedures for applying to vary them, and arrangements for admission appeals. The Labour Government has withdrawn the guidance in Circular 6/96 on partial selection. The DfEE wrote to schools and admission authorities [158] explaining the 1997 Act's provisions relating to admissions, and informing them of the Government's policy towards partial selection (see below).

A Code of Practice on procedures for admissions appeals, exclusion and reinstatement appeals for county, voluntary and maintained special schools was drawn up by local authority associations in conjunction with the Council on Tribunals, and a revised edition was published in 1994.[159] A similar Code for grant-maintained schools was prepared by the DFE and published in 1994.[160]

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[154] a consolidation Act
[155] enacted immediately before the General Election
[156] *Admissions to Maintained Schools*, DfEE, 25 June 1996
[157] *Admissions to Maintained Schools*, DfEE, 8 July 1993
[158] School Admissions, DfEE Letter to head teachers and chairs of governing bodies of all maintained schools, LEAs, Diocesan Authorities and others, 1 August 1997
[159] It is reproduced in Butterworths, *The Law of Education*, 9th edition, Vol.1, page A199
[160] This is also reproduced in Butterworths, *The Law of Education*, 9th edition, Vol.1, page A 261

Under section 411 of the *Education Act 1996* the LEA must make arrangements so that parents can express a preference for which LEA maintained school they would like their child to attend. The LEA and the governing body of a county or voluntary school may only refuse to admit a child to the school of the parent's preference, expressed in accordance with the published admission arrangements, 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 the school's character (generally religious);

- the preferred school's admission arrangements are wholly based on selection of pupils with high ability or aptitude, and the admission of the pupil would not be compatible with selection under those arrangements. As originally enacted in the *Education Act 1980* this provision relieved LEAs of their obligation where the school's admission arrangements were based "wholly or partly" on selection by reference to ability or aptitude. However, the provision was amended by section 10 of the *Education Act 1997* and took effect on 1 September 1997. This means that admission authorities for school that are not 100% selective will not be able to keep selective places unfilled if there are other applicants who wish to take them up.

- the child is of compulsory school age and has been permanently excluded from two or more schools (and not reinstated). This was one of the changes made by the *Education Act 1997*, and took effect on 1 September 1997. The LEA, or school governing body, whichever is responsible for deciding admission to a school, is relieved of its duty to comply with parental preference for two years after the second or subsequent exclusion provided the child was last excluded on or after 1 September 1997. Library Research Paper 96/101 provided background on the provision.[161]

LEAs and the governing bodies of voluntary aided and special agreement schools may not refuse to admit children to any "relevant age group" (i.e. a year group in which pupils are normally admitted to the school) on the grounds that the admission would "prejudice the provision of efficient education or the efficient use of resources" unless the number of applications for places in that relevant age group exceeds the school's standard number, or any higher published admission number. Standard numbers are set with reference to a school's capacity to accommodate pupils. Annex C of DfEE Circular 6/96 provides guidance on this.

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[161] Library Research Paper 96/101, The Education Bill, 6 November 1996

The Instruments and Articles of Government for grant-maintained schools impose similar requirements on governing bodies as regards the duty to comply with parental preference. The governing body of a grant-maintained school may not refuse to admit a child to any relevant age group on "prejudice" grounds unless the school has admitted up to its approved admission number or published admission limit, whichever is the higher.

At present LEAs and the governors of voluntary aided and special agreement schools must secure the Secretary of State's agreement before varying the standard numbers of their schools. Grant-maintained school governors must apply to the Funding Agency for Schools in those areas where more than 10% of pupils attend grant-maintained schools in the relevant sector (i.e. primary or secondary), and to the Secretary of State in all other LEA areas.

The 1997 Act also made provision to allow home-school contracts to form part of the admission arrangements. However, this has not been brought into force. The Government intends to replace it with fresh provision for home-school contracts that will not be part of the admission process. It will remain the case that admission authorities will not be able to offer places subject to parents or pupils entering into home-school agreements.

School admission authorities are required to publish their admission policies. If a school is oversubscribed the school's published admissions criteria are used to determine which children should be offered places. Circular 6/96 does not prescribe or advocate the use of particular criteria to be used when popular schools are oversubscribed, pointing out that schools may use any lawful criteria. Annex A of the Circular drew to the attention of admission authorities the relevant law, including the Greenwich Judgement,[162] and emphasised that the criteria used for over subscription must not be unreasonable, pointing out that the Courts will regard as unreasonable criteria which no sensible authority would have decided to adopt.

The legislation relating to open enrolment and the right of parents to express a preference for a school of their choice, the creation of grant-maintained schools, the increasing use of partial selection in admission policies, the Greenwich Judgement, and the publication of examination performance tables, have had an enormous impact on school admissions. There has been growing concern about the way in which admission policies work and the extent to which they are fair. Recently published figures show a steady and significant increase in school admission appeals. In 1995-96 a total of 62,900 appeals were lodged by parents in England, compared with 54,300 in 1994-95.[163]

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[162] The 1989 Greenwich Judgement ruled that admission authorities for county and voluntary schools may not discriminate against an applicant on the grounds that the child does not live in the LEA area in which the school is situated.

[163] HC Deb 27 October 1997 cc 672-775 and DfEE Press Notice 15 October 1997

The Audit Commission in its report *Trading Places*[164] highlighted the current problems surrounding school admission arrangements. It concluded that there is a mismatch between pupils and places and that in some areas parents have little choice. It found that nearly one parent in five did not get a place for their child at their genuine first preference state secondary school, and that the number of admissions appeals in both the primary and secondary sectors were increasing dramatically. Co-operation between LEAs and other local admission authorities was found to vary considerably, with only 14% of LEAs operating a fully unified system of admissions administration covering all secondary schools in their area. The number of parents seeking places across LEA borders had increased with the impact of the Greenwich Judgement. It noted that in some parts of the country parents can express a first preference for up to seven types of secondary school and be offered places at all of the schools to which they have applied. Without co-ordinated approaches by admission authorities, parents can hold on to their offers, not discarding unwanted preferences until the start of the term. This situation, it stressed, caused problems for schools, for parents further down the priority list, and for LEAs and other admission authorities. The report fuelled the growing pressure from LEAs and parents for a review of admission procedures.

In December 1995 the AMA called for a single admission authority for each area, clear and consistent administrative arrangements, common application forms, a single order of preference for parents, clear admissions criteria, and a clear, timely and efficient appeal procedure.[165]

A recent discussion paper prepared for the Research and Information on State Education Trust (RISE)[166] described the process of admissions to secondary schools, outlined relevant research studies on school admissions, examined various proposals for changing schools' admissions, and identified the key characteristics of a fair admissions policy. It also looked at admission arrangements for schools in other EU countries. Its main findings were summarised in an article in the *Times Educational Supplement.*[167]

The Government's Proposals: the White Papers and the Technical Consultation Documents

The Government set out its proposals to change the procedures for deciding school admissions in England in Chapter 7 of the White Paper, *Excellence in Schools*, and in Part 9 of the Technical Consultation Paper, *Framework for the Organisation of Schools.* Similar proposals for Wales were contained in Chapter 11 of the White Paper, *Building Excellent*

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[164] *Trading Places: the supply and allocation of school places*, Audit Commission, 1996

[165] Admissions to schools, AMA Education Committee, 19 September 1996, ED 96/54, this reproduced the December 1995 policy statement on school admissions

[166] Anne West, Hazel Pennell and Philip Noden, *Admission to Secondary School: Towards a National Policy?* The Research and Information on State Education Trust, May 1997

[167] "Shake up urged over admissions policy", *TES*, 23 May 1997, p 6

Schools Together, and in Part 7 of the Welsh Office Consultation Paper, *Framework for the Organisation of Schools in Wales*.

The main features of the proposed framework as described in these documents are as follows:

There would be a Code of Practice on admissions published by the Secretary of State, and all parties concerned would be required to have regard to it. The Code would be subject to consultation with all the partners in the admission process; and it would be drafted in conjunction with them. The Code would cover all aspects of the admission process, including parental appeals. It would set out the roles, responsibilities, duties and rights of redress for all the partners. It would include guidelines on good practice in admission policies and procedures, including the use of interviews and partial selection by aptitude, drawing on previous departmental guidance, specifically DFE Circular 6/93, and Welsh Office Circular 47/94.[168] The Code would also cover guidelines on parental appeal committees. The aim is for the Code to be published by Easter 1999, and so apply to the admissions round leading to intakes in September 2000 and beyond. Interim guidance will be issued before then.

The Technical Consultation Papers proposed that the LEA would be responsible for admissions to community schools and that the governing body would be responsible for aided and foundation schools. On 27 October 1997 the Education Secretary announced that, in response to consultation on the proposals on the new categories of schools, he had decided to replace the proposed Aided category with a broader "Voluntary" school category which will cover all Church schools in the LEA sector, including voluntary controlled schools. (Clause 79 of the Bill provides for the LEA to be the admission authority for community and voluntary controlled schools, and for the governing body to be the admission authority for foundation and voluntary-aided schools.) The Education Secretary stressed that there would be safeguards to protect the religious character of Church schools. These would include safeguards to guarantee the ability of Church schools to apply religious or denominational criteria in their admissions policies, and to provide that the cases of disagreement which are to be dealt with by the Secretary of State rather than the adjudicator may include denominational issues.[169]

The Greenwich Judgement would not be reversed (see below).

Local forums would be established to be the main representative vehicles for discussion and communication between different admission authorities. A forum would not take binding decisions but would be expected to agree the principles for admission arrangements in the

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[168] *Admissions of Pupils to Maintained Schools*, Welsh Office Circular 47/94 , 21 November 1994
[169] DfEE Press Notice, 27 October 1997

area. It will be expected to agree a common timetable and format for applications, and a common approach to decision taking and the sharing of information. It will be for LEAs and schools to decide how best to organise the forum or forums for their area, within the guidelines to be included in the Code of Practice. It is envisaged that membership of the forum would include head teacher or governor representatives of the three new categories of school of primary, secondary and special schools and of the LEA.

LEAs would be required to publish information relating to admissions to the new categories of school, covering basic admission policies and over-subscription criteria, the procedure to be followed by parents, and the timetable. Full information about individual schools would continue to be published in school prospectuses.

Adjudicators would be empowered to determine disputes over admission policies and practices. Their appointment and jurisdiction will be covered by Regulations. The right to refer a matter to the adjudicator will be given only to the LEA and governing body of voluntary and foundation schools. Admission authorities would be required to implement relevant decisions by the adjudicator. Although the Government expect the adjudicator to determine all disagreements, and for there to be no further redress other than through the courts, the Technical Consultation Paper raised whether it might be appropriate, in some circumstances, for there to be recourse to the Secretary of State.

The new admission framework would prevent schools from adopting admission criteria that included the selection of some pupils by general academic ability. It is intended that this would take effect from Autumn 1998, after which schools would not be able to introduce or increase partial selection by ability. Banding (the use of testing to ensure a representative spread of ability) would, however, continue to be permitted. The Code of Practice would make clear that schools which specialised in a particular subject might continue to give priority to children who had an aptitude for that subject, but they should not use that as a proxy for general academic ability. (See the section on selection below).

New provision would be made to allow parents to decide the future of existing grammar schools (see the section on grammar schools below).

School admission appeal committees would be made independent of the school and the LEA.

The jurisdiction of the Local Government Ombudsman would cover all admission authorities, not just the LEA as at present. The Local Government Ombudsman Report for 1995-96 expressed concern about the problems that are caused because the admission functions of the governors of voluntary aided, special agreement and grant-maintained schools are outside the Ombudsman's jurisdiction. The issue was raised again in the 1996-97 Report, which

welcomed a recommendation of the Financial Management and Policy Review of the Commission for Local Administration in England for including in the Ombudsmen's jurisdiction the actions of the governing bodies of these schools in relation to admissions, exclusions and appeals.[170]

Response to the proposals

There is widespread support for a more co-ordinated approach to school admissions, more detailed guidance on admissions and independent appeals committees. The DfEE summary of responses to the consultation on the proposals said:

> "There was support for the principle of more co-operation between schools in determining their admission arrangements, and for a Code of Practice on admissions. But many respondents commented that admissions were a controversial area, and clarification was sought particularly of what would be in the Code and how the adjudicator would operate."

It went on to note that concern had been expressed about the original proposal to put voluntary controlled schools in the foundation category (which would have substantially increased the number of admission authorities). However, as noted earlier, the proposals were revised by replacing the aided category with a wider voluntary school category, in which voluntary controlled schools will continue to have the LEA as their admission authority. The summary also noted that there had been concern that Church schools might be unable to retain religious and denominational criteria in their admissions. But the Secretary of State had since confirmed that they will be able to do so and that any disputes involving denominational issues would be referred to the Secretary of State, and not to the adjudicator.[171]

Some of the main issues raised in the consultation are noted below. This is not intended to be a detailed analysis, and Members are advised to consult a particular organisation's response to be sure of the details of its views.

- The role of LEAs. Some commentators argued that the LEA should administer admissions for all schools, which would obviate the need for an adjudicator (e.g. ACE, CASE, and LGA). The LGA observed in its response to the Technical Consultation Paper that: "Many schools will see it as an advantage to be their own admissions authority. At the same time a multiplicity of admission arrangements will militate against coherent policies and arrangements. A single admissions authority for all schools (other

[170] *Local Government Ombudsman Annual Report 1996-97*, p 3

[171] "Parents back Government's Standards Agenda-Blunkett", DfEE Press Notice, 4 December 1997, see attached DfEE Summary of Main Points Arising from Responses to Consultations, p 12

than the former aided school) would cut through the complications of Local Forums and Adjudicators. The LEA is, of course, required to consult annually with governors over admission issues. For equity, if separate admissions authorities are retained, the LGA urges that the LEA should have oversight of the admission arrangements for foundation as well as community schools."

- The Code of Practice. CASE maintained that the crucial questions in relation to admissions is how tight the guidelines will be and how they will be monitored. The Church of England expressed concern about the proposed Code "as it seems to be legislation without representation." It argued that there should be a statutory right of consultation on the Code and that it should be laid before Parliament like a statutory instrument. (Such concerns have been addressed, Clause 76 makes provision for consultation and parliamentary approval of the Code.) ACE, while welcoming the proposed Code, wished to see specific provision in the legislation for certain matters (e.g. timetables for consultation on changes in admission policies, common admission application deadlines, order of priority for over subscription criteria, and making the use of some criteria such as interviews unlawful).

- Local forums. Some commentators feared that the forums might become unwieldy and unworkable (e.g. CASE, LGA, NASUWT). Concern was expressed about the membership of forums. The Church of England called for diocesan representation. The Education Law Association argued that parents should be involved in the forums. The NUT in its response to the White Paper urged the Government to include representatives of parents, teachers and governor organisations on the local forums. The NAHT observed that the proposals made no mention of City Technology Colleges being included in the arrangements. Some commentators (e.g. FAS, NGC) stressed that the local forums will need to be able to consider cross-boundary issues.

- The Adjudicator. The appointment and accountability of adjudicators were raised. The LGA, for example, said that it was concerned about the concept of an adjudicator able to make policy without accountability. It wished to see the adjudicator or adjudicating panel making recommendations to the Secretary of State in cases where disputes could not be resolved locally. Some commentators expressed concern that the decision of a single adjudicator might give rise to increased litigation, and suggested that it might be more acceptable to have a panel of adjudicators (NGC).

- The role of the Local Government Ombudsman. The Church of England said that it was not convinced that the case has been made for extending the authority of the Ombudsman. CASE raised the question of what the adjudicator's role will be in relation to the Ombudsman.

The Greenwich Judgement

In 1989 the Court of Appeal upheld a High Court ruling that an LEA could not lawfully pursue a school admissions policy that preferred children living in its area to those living outside its area. This is known as the Greenwich Judgement.[172] The London Borough of Greenwich was refused permission to take the case to the House of Lords and so the Court of Appeal judgement was definitive. A subsequent attempt to challenge the judgement by Bromley Council was unsuccessful. The then Conservative Government made it clear that it did not intend to change the law in response to the Judgement.[173] DfE Circular 6/93 and subsequently Circular 9/96 drew attention to the Greenwich Judgement.

The Government has made it clear that it has no plans to reverse the Greenwich Judgement. However, in the Technical Consultation Paper on the Framework for the Organisation of Schools, it said that the Government recognise the importance of admission authorities working more closely together with those in neighbouring LEA areas so that sensible planning can take place. It said that the proposed new forums will be encouraged to address such issues (Part 9, paragraph 5).

In their responses to the White Paper and/or Technical Consultation Paper some organisations (e.g. CASE, the Church of England, LGA, and NGC) urged the Government to reconsider its decision on the Greenwich Judgement. The Church of England said in its response to the Technical Consultation Paper that "It is regrettable that the Government does not propose to reverse or at least clarify the Greenwich Judgement that is causing problems up and down the country." The LGA did not argue for the reversal of the Greenwich Judgement which, it said, might imply excluding all out-county pupils from admission, but it did argue for "greater flexibility to adopt sensible admission policies, regardless of borders, and to avoid the distorted admission patterns resulting from Greenwich". The NGC observed that in some LEAs it is now extremely difficult to find any school place, let alone a place of preference, for pupils living within the area of the LEA, because of the demand from those living in neighbouring authorities. It said that if the Greenwich Judgement is not reversed then there needs to be clarification of the rights of parents to a school place in their own LEA, and the obligations of LEAs to provide such a place. The NASUWT said that the Greenwich Judgement makes it virtually impossible for LEAs and schools to adopt rational admission procedures, which will satisfy most parents. The NUT also believes that the Greenwich Judgement should be modified. SHA said that it is difficult to see how neighbouring authorities can work together if the Greenwich Judgement is not reversed.

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[172] R v Greenwich London Borough Council, ex parte Governors of the John Ball Primary School [1990] Fam. Law 469, CA. A summary of the decision is provided in Butterworths, *The Law of Education*, (9th edition), Volume III F[97] and [98]

[173] e.g. see HC Deb 8 May 1990 c 40W; HC Deb 13 June 1990 cc 219-20W; HC Deb 30 January 1992 cc 662-3 W

The Bill: Clauses 75-89, Schedules 23-25

These provisions seek to incorporate all maintained schools in a new framework for school admissions. The provisions need to be read in conjunction with Clauses 1-4 of the Bill which introduce limits on infant class sizes. Provisions for the establishment of school organisation committees and the appointment of adjudicators are contained in Clauses 23-26 and the associated schedules. (Those clauses are covered earlier in this paper.) There are three main differences between the proposals outlined in the White Papers and in the Technical Consultation Papers and the Bill's provisions on admission arrangements:

- The admission authority for voluntary controlled schools will continue to be the LEA not the governing bodies.

- The Secretary of State will have a power to determine disputes between admission authorities involving denominational issues.

- The Secretary of State for Wales will retain powers in relation to admissions. However, Clause 26 empowers the Secretary of State to appoint adjudicators, or panels of adjudicators, in Wales. It is not yet known what arrangements will be made once the Welsh Assembly is established.

Clauses 75 and 76 make provision for a Code of Practice on school admission arrangements. The provisions are similar to those for the Code of Practice on special educational needs contained in sections 313 and 314 of the *Education Act 1996*.

Clause 75 requires the Secretary of State to issue a Code of Practice containing such practical guidance as he thinks appropriate in respect of the schools admission functions carried out by LEAs, the governing bodies of maintained schools, appeal panels and adjudicators. The Code may include guidelines setting out aims, objectives and other matters in relation to the discharge of their duties. Admission authorities or any other person, to whom admission functions have been delegated, appeals panels, and adjudicators must have regard to any relevant provisions in the Code when carrying out their functions under the Act.

Clause 76 requires the Secretary of State to prepare a draft Code of Practice (or a draft revised Code of Practice) and consult such persons as he thinks fit. He must consider any representations made by them. Provision is made for seeking parliamentary approval for the Code. If the Secretary of State proceeds with the draft (either in its original form or with modification) he must lay a copy of it before each House of Parliament. If, within the 40 day period, either House resolves not to approve the draft, no further steps will be taken in relation to the proposals (however, this will not prevent a new draft being laid before

Parliament). If no such resolution is made the Code will be issued, and will come into force on a date appointed by the Secretary of State by order.

Clauses 77 to 89 make fresh provision for admission arrangements for maintained schools (community, foundation and voluntary).

Clause 77 requires LEAs to make arrangements for parents to express a preference as to the school they wish their child to attend, and requires LEAs and governing bodies of maintained schools to comply with that preference unless any of the stated exceptions apply. This is the same as the current provisions contained in section 411 of the 1996 Act, with one additional exception related to the proposed duties on LEAs and governing bodies to comply with limits on infant class size under Clause 1. Clause 77(4) provides that the exception based on prejudice to the provision of efficient education or the efficient use of resources may apply where complying with the parental preference would cause the limit on class size to be breached (contrary to the duty in Clause 1(4)).

Clause 78 restates the provisions currently contained in section 411A of the *Education Act 1996*, which was inserted by section 11 of the *Education Act 1997*. It removes the duty to comply with parental preference where a child has been permanently excluded from two or more schools (and not reinstated). This disapplication of the duty to comply with parental preference runs for two years from the beginning of the most recent exclusion. The exclusion must have taken effect at a time when the child was of compulsory school age, and in at least one case, begun after the 1 September 1997.

Clause 79 defines admission authorities and admission arrangements. The LEA is the admission authority for community and voluntary controlled schools, unless the authority has delegated the responsibility for determining admission arrangements to the governing body, with its agreement. The governing body is the admission authority for foundation and voluntary aided schools. "Admission arrangements" in relation to maintained schools means the arrangements for the admission of pupils to the school, including the school's admissions policy.

Clause 80 sets out the procedures to be followed by admission authorities in determining their admission arrangements, including a requirement for consultation. The Bill does not make specific statutory provision for the local forums envisaged in the Technical Consultation Paper. The Paper made it clear that it would be for LEAs and schools to decide how best to organise the local forums, within the guidelines to be included in the Code of Practice.

Clause 80(2) provides that before determining their admission arrangements for a particular school year, the admission authority must consult the following about the proposed arrangements:

a) the LEA (where the governing body is the admission authority);

b) the admission authorities for all other maintained schools in the "relevant area" or "for such class of such schools" as may be prescribed. Relevant area means the area of the LEA or such other area as may be provided for in regulations (Clause 80 (3)); and,

c) the admission authorities for maintained schools of any prescribed description.

Where the LEA is the admission authority for a community or voluntary controlled school, it must consult the governing body about the admission arrangements proposed for the school (Clause 80(9)).

Following such consultation, the authority must determine that their proposed admission arrangements (either in their original form or with modifications) will be the admission arrangements for the school year in question and notify the bodies consulted (except in such circumstances as may be prescribed) (Clause 80(4)).

Where an admission authority have determined their admission arrangements for a particular school year but before the end of that year consider that the arrangements should be varied in view of a major change of circumstances, the authority must refer their proposed variations to the adjudicator, and notify those bodies with whom they have consulted under Clause 80(2) (see Clause 80(5)). The adjudicator must consider whether the proposed variations should have effect. The proposed variation may be subject to such modification as the adjudicator determines (Clause 80(6)).

The Secretary of State may make regulations in connection with the determination or variation of admission arrangements (Clause 80(8)).

For maintained schools in Wales the Secretary of State for Wales is required to consider any proposed in-year variations to admission arrangements (Clause 80(7)).

Clause 81 sets out the circumstances in which objections about admission arrangements may be referred to either the adjudicator or the Secretary of State. Provision is made for the publication of the decision on an objection and the reasons for it (Clause 81(5)). The decision of the adjudicator or the Secretary of State will be binding on the admission

authority and on all the bodies consulted under Clause 80(2). If the decision is to uphold the objection, the admission arrangements must be revised by the admission authority in such a way as to give effect to that decision (Clause 81(6)). The Clause provides for Regulations to be made on matters associated with the procedures. Specific provision is made for the regulations to provide for the Secretary of State rather than the adjudicator to consider cases relating to denominational issues (Clause 81(8)).

Clause 82 provides for a LEA and the governing body of a foundation or voluntary aided school to make arrangements for the admission of pupils, which will preserve the particular religious character of the school. The adjudicator or the Secretary of State may decide such matters where agreement between the LEA and the governing body cannot be achieved. This extends a similar provision in the *Education Act 1996* which currently applies to aided and special agreement schools.

Clause 83 sets out the requirements for the publication of information about school admissions and other matters, and provides for associated regulations to be made.

Clause 84 and Schedule 23 provide a new framework for the determination, variation and review of annual standard numbers[174] for admission to community, foundation and voluntary school. The provisions are subject to the duty on LEAs and governing bodies to comply with limits on infant class sizes. Under Clause 84(1) an admission authority for a maintained school must not fix an admission number which is less than its relevant standard number. However, provision is made in Clause 84(8) for the Secretary of State to make regulations to allow for the disapplication of Clause 84(1) so that admission authorities can review standard numbers for infant classes following the imposition of any limit on infant class size under Clause 1. Applications to reduce standard numbers will be considered by the school organisation committee. Schedule 23 makes new provision to devolve the Secretary State's current role on fixing school admission numbers to the school organisation committee or the adjudicator in England.

The Bill makes separate provision for Wales: the Secretary of State is empowered to make decisions on applications to vary standard numbers.

Clause 85 and Schedule 24 require admission authorities to make arrangements for parents to appeal against their decisions. Clause 85(3) provides for joint appeal arrangements to be made between the governing bodies of two or more foundation or voluntary aided schools maintained by the same LEA. Schedule 24 sets out the detailed arrangements which apply to appeals brought by parents against admission decisions taken by LEAs and governing bodies.

[174] Standard numbers for county, voluntary controlled, voluntary aided and special agreement schools, and approved admission numbers for grant-maintained schools, are set with reference to the school's capacity to accommodate pupils.

The constitution of appeal panels and the procedure for the making, hearing and deciding appeals are laid down in Schedule 24. The composition of appeal panels must be the same for all maintained schools, and the members of such panels must be independent of the LEA and the school in question. The decision of the appeal panel is binding on the LEA or the governing body (Clause 85(5)). Schedule 24, paragraph 11, provides for an appeal panel to consider a case where a decision under appeal was made on the ground that compliance with preference would prejudice the provision of efficient education, or the efficient use of resources, by causing the limit on class size to be breached. In such cases the appeal panel can only determine that a place be offered to the child if they are satisfied:

"a) that the decision was not one which a reasonable admission authority would make in the circumstances of the case; or

b) that the child would have been offered a place if the admission arrangements (as published under section 83) had been properly implemented."

Clause 86 and Schedule 25 disapply the duty to make arrangements for parental appeals against refusal of admission where the provisions of Clause 78 apply (where a child has been excluded from two or more schools). The LEA is required to make arrangements for the governing body of a school for which the LEA are the admission authority to appeal against the LEA's decision that such a pupil should be admitted. Similar provision was made in section 12 of the *Education Act 1997*. Schedule 25 of the Bill sets out the detailed arrangements which apply to an appeal brought by the governing body of a school.

Clause 87 empowers a LEA to direct a school to admit a child who has been refused admission to, or permanently excluded from, all schools within a reasonable distance from his home. Similar provision exists in the *Education Act 1996*. Clause 87(4) precludes a direction where the child's admission would put the school in breach of the class size duty contained in Clause 1(4).

Clause 88 sets out the procedure to be followed by LEAs in issuing a direction under Clause 87.

Clause 89 disapplies certain requirements relating to admission arrangements where a child is admitted for nursery education, where admission is to a special school, or where a child has a statement of special educational needs. The Secretary of State is given a power to prescribe admission arrangements relating to community or foundation special schools.

B. Selection of Pupils

Partial Selection

Background

The Conservative Government sought to give schools greater powers to select pupils by ability or aptitude. As noted above, the right to select on ability or aptitude was included in the *Education Act 1980* as an acceptable reason for a LEA or a governing body of a county or voluntary school not complying with parental preference for a school place. Similar provision was made for grant-maintained schools in their Instruments and Articles of Government.

DFE Circular 6/93 introduced the idea of an element of selection that did not imply a significant change of character of a school 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". DfEE Circular 6/96 suggested that selection of up to 15% of the intake "in any subject or combination of subjects, or by general ability " was "likely to be possible" without the need to publish statutory proposals (paragraphs 8 and 9). Opposition to selection in principle and concern about the impact of the change on provision of school places locally was expressed in response to the consultation that preceded the issuing of the Circular.

The June 1996 White Paper, *Self-Government for Schools*, and the subsequent Education Bill[175] introduced by Gillian Shephard, sought to give schools greater powers to select pupils by ability or aptitude. However, these controversial provisions were dropped from the Bill so that it could receive Royal Assent before Parliament was dissolved.

According to a recent Written Answer to a PQ the DfEE does not hold comprehensive information on partially selective schools. Information is available only on those schools which since 1989 have had statutory proposals approved to introduce partial selection, and on those grant maintained schools which received approval to select up to 10% of their pupils on the basis of ability or aptitude in certain specified subjects between January 1989 and August 1996. Those schools are listed in the answer.[176]

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[175] Bill 8 of Session 1996/97
[176] HC Deb 25 November 1997 cc 490-1W

The July 1997 White Paper, *Excellence in Schools*, noted that the use of partial selection had created problems particularly in areas such as Bromley and Hertfordshire, and that the Government would rule out for the future partial selection by academic ability. The DfEE issued a circular letter on 1 August 1997[177] withdrawing paragraphs 8 and 9 of Circular 6/96 (which had permitted schools to select up to 15% of their intakes by ability or aptitude without the need to publish statutory proposals). However, the DfEE letter said that schools with a specialism would be able to give priority to children who show the relevant aptitude but must not misuse this to select by general academic ability.

The Technical Consultation Papers issued by the DfEE and the Welsh Office stated that the new admission framework would prevent schools from adopting admission criteria that included the selection of some pupils by general academic ability. This is expected to take effect from Autumn 1998, after which schools will not be able to introduce or increase partial selection by ability. The adjudicator would be able to end partial selection in schools where it currently exists. Banding[178] would, however, continue to be acceptable. The Code of Practice is expected to make it clear that schools which specialise in a particular subject might continue to give priority to children who had an aptitude for that subject, but that they would not use that as a proxy for general academic ability.

The Education Secretary has said specialist schools are at the heart of his and the Government's vision of an education system "where education caters for the individual strengths of children rather than assuming a bland sameness for all." The present Government has relaunched the Specialist Schools Programme, first announced in September 1993, with a new emphasis on specialist schools involving other schools and the wider community in their plans. The programme will be extended from the current 258 to over 300 schools by next September.

While welcoming the decision to end partial selection by general academic ability, some commentators expressed concern about retaining admission criteria that give priority to children with an aptitude for a subject. ELAS felt that this could be a "minefield", and questioned whether there is a clear distinction between tests of aptitude and tests of ability. ATL strongly support the growth of specialist schools with a major proviso: "no school should be permitted to use its specialist status to mask academic or social selection." The NUT pointed out that the Code of Practice will have to be very precise if specialisation is not used as a proxy for general academic ability. CASE felt that it would be more in keeping with the Government's stated aim of "raising standards of achievement if specialist schools could only select pupils who showed the least aptitude for the subject!"

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[177] School Admissions, DfEE Letter to head teachers and chairs of governing bodies of all maintained schools, LEAs, Diocesan Authorities and others, 1 August 1997

[178] The principle of "banding" is to admit pupils based on their scores in a common test to achieve a balanced intake at each school involved.

The Bill: Clauses 90-94

Clause 90 prohibits any maintained school from operating admission arrangements which select pupils by ability or aptitude unless it is a grammar school or the arrangements are permitted forms of selection as set out in Clauses 90 to 94.

The permitted forms of selection by ability are:

a) pre-existing arrangements authorised by clause 91;

b) banding of pupils authorised by clause 92; and,

c) "any selection by ability conducted in connection with the admission of pupils to the school for secondary education suitable to the requirements of pupils who are over compulsory school age."

The permitted forms of selection by aptitude are:

a) pre-existing arrangements authorised under clause 91; and,

b) any selection by aptitude for particular subjects authorised under clause 93.

Clause 91 enables a school that selects by ability or aptitude at the beginning of the 1997-98 school year to continue to do so, providing there is no increase in the proportion of pupils selected, or change in the basis upon which they are selected. The clause does not apply to grammar schools (Clause 91(4)).

Clause 92 allows schools to select by ability if the arrangements are designed to secure the admission of pupils by reference to ability bands which are representative of all levels of ability amongst applicants, and that no level of ability is substantially over-represented or substantially under-represented. The introduction of such banding arrangements would require the publication of statutory proposals under Clause 27 of the Bill.

Clause 93 allows schools to select a proportion of their pupils on the basis of aptitude for one or more subjects where:

a) the admission authority for the school is satisfied that the school has a specialism in the subject or subjects in question; and,

b) the proportion of "selective admissions in any relevant age group" (defined in Clause 93(5)) does not exceed 10%. (This means that the proportion of pupils selected must not exceed 10% of the total intake for the normal year of entry.)

Such arrangements must not involve either a test for aptitude in a subject other than the one in question or a test of ability, except for banding purposes provided under Clause 92.

Clause 94 specifies the procedures to be followed with regard to the variation or abandonment of the different forms of permitted selection.

Grammar Schools

Background

There are 163 grammar schools[179] in England, and none in Wales.[180] A Written Answer to a PQ listed these schools by parliamentary constituency.[181] This is reproduced in Appendix III to this paper. Library Research Paper 96/101 provides background on the history of selection and recent debates surrounding the issue.[182]

The Conservative Government's policy was to encourage more grammar schools wherever parents wanted them, and to give schools greater powers to select pupils by ability. Proposals to achieve these objectives were contained in its June 1996 White Paper, *Self-Government for Schools*, and in the subsequent Education Bill.[183] However, the relevant clauses were dropped from the Bill so that it would be passed before the General Election. The Conservative Manifesto 1997 promised that a Conservative Government would "help schools to become grammar schools in every major town where parents wanted that choice."[184]

The Labour Party's 1995 policy paper, *Diversity and Excellence*, said that Labour would oppose any return to selection through the 11-plus, and stressed that while it "never supported grammar schools in their exclusion of children by examination, change can only come

[179] i.e. maintained secondary schools which classify themselves as fully selective schools
[180] White Paper, *Excellence in Schools*, Cm 3681 July 1997, p 72; HC Deb 2 December 1996 c 544W
[181] HC Deb 3 December 1996 cc 605-607W
[182] Library Research Paper 96/101, The Education Bill, 6 November 1996
[183] Education Bill, Bill 8 of Session 1996/97
[184] *Conservative Party Manifesto 1997*, p 24

through local agreement. Such change in the character of the school would only follow a clear demonstration of support from the parents affected by such decisions."[185] At the 1995 Labour Party Conference David Blunkett reportedly said "Watch my lips, no selection by exams or interview under Labour." [186] Labour's 1997 General Election Manifesto gave a commitment that Labour would "never force the abolition of good schools whether in the private or the state sector, and that any changes in the admissions policies of grammar schools would be decided by local parents."

Writing recently in the *Guardian*, Lord Hattersley quoted what David Blunkett had said about selection at the 1995 Labour Party Conference and criticised him for subsequently repudiating the promise of no selection. The Education Secretary has strongly defended his policy.[187]

The Liberal Democrats said in their 1997 Election Manifesto that they were "opposed to selection, but believe that decisions on this should be made by local communities through their local councils and not by politicians at Westminster."[188]

The White Paper, *Excellence in Schools*, stressed that there would be no going back to the 11-plus and said that where grammar schools already exist, local parents have an interest in their admission arrangements. It emphasised that any changes in the admission policies of grammar schools will be decided by local parents, and not by LEAs.[189]

Consultation Letter on the Future Admission Arrangements for Grammar Schools and Response

On 1 August 1997 the DfEE wrote to chairs of governors and head teachers of grammar schools in England (i.e. those schools which are fully selective by academic ability), and to the Chief Education Officers of LEAs in which these schools are located, and to the Chief Executives of relevant shadow unitary authorities which will become LEAs from 1 April 1998.[190] This consultation letter invited views on the implementation of the Government's proposals for giving parents a say in determining any change in the admission arrangements

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[185] *Diversity and Excellence*, Labour Party, June 1995, p 5 and p 11

[186] "Read Blunkett's lips-then read them again' (by Roy Hattersley*), Guardian*, 26 November 1997 p 23; "Grammars remain a key election issue" *TES*, 14 February 1997, p 4. The planned text of Mr Blunkett's Conference speech was: "no selection by examination and no social selection. No return to the eleven-plus." News Release from Labour. 4 October 1995. All such news releases are issued on a check against delivery basis.

[187] "Read Blunkett's lips-then read them again'(by Roy Hattersley), *Guardian*, 26 November 1997 p 23; Letter to the Guardian from David Blunkett, *Guardian*, 27 November 1997 p20; "Battle of the lip readers"(by Roy Hattersley), *Guardian* 28 November 1997 p19

[188] *The Liberal Democrat Manifesto 1997*, 12

[189] Cm 3681, July 1997, p 72, paragraph 34

[190] Future Admission Arrangements for Grammar Schools, DfEE Consultation Letter, 1 August 1997.

for grammar schools. The DfEE received about 1,100 responses to the consultation letter.[191] The DfEE summary of the main points raised in the consultation noted that the majority of responses came from grammar schools and parents of children at grammar schools. "This pattern of responses meant that most respondents supported the retention of selective admission arrangements for grammar schools. Many sought clarification of the detailed procedures which would apply for petitions and ballots, and made suggestions about particular aspects."[192]

The decision to restrict the circulation of the consultation letter on grammar schools was severely criticised by some commentators. For example, in its response, CASE objected strongly to the fact that the consultation letter was circulated only to grammar schools and to those LEAs with grammar schools, pointing out that neighbouring LEAs, secondary modern schools and primary schools are affected by the existence of grammar schools in their areas. The NUT, ACE and LGA[193] also raised this matter.

Those commentators who are fundamentally opposed to selective education have argued that the Government's proposals are a poor alternative to ending selection completely. For example, ACE observed that "The continuation of grammar schools encourages divisiveness, perpetuates the idea that academic qualifications acquired at grammar schools are superior to vocational qualifications acquired at non-selective institutions and contradicts the policy of raising standards for all."[194] CASE said that it wanted the Government to end selection by ability and open up admission to grammar schools to all children in the area. "We believe not to do this is a betrayal of the principles of comprehensive education which the Labour Party claims to support."[195] The NUT said that "The Government should have enough confidence in the new measures it is putting in place to be able to move from political expediency to a successful way of managing the transition of wholly selective schools to non-selection" and argued that the net effect of continuing with selective grammar schools is an "unnecessary twin track approach to admissions which will be constantly used against the Government as evidence of double standards."[196]

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[191] HC Deb 10 November 1997 c 445W
[192] DfEE Press Notice, 4 December 1997, see attached DfEE Summary of Main Points Arising from Responses to Consultations, p12
[193] LGA letter to Chief Education Officers of Member LEAs, Education Letter 97/46, 18 August 1997
[194] ACE response to the consultation letter
[195] CASE response to the consultation letter
[196] Response of the NUT to the White Paper Excellence in Schools, October 1997, paragraphs 365 to 367

The consultation letter stated the key principles of the Government's approach as follows:

a) that any change in the future admission arrangements of grammar schools should be decided through a ballot of local parents; and

b) that a ballot will take place only where a petition has been put forward by local parents.

The consultation letter asked for views on the issues arising and the procedures that might be adopted. It sought views on:

Which schools should come within the scope of the provisions? The consultation letter said that one option would be to apply the legislation to that group of schools that are shown in departmental records as selecting all of their pupils by reference to high academic ability. It made the point that some schools which call themselves grammar schools no longer select on that basis. It said that the arrangements would not cover partially selective schools. The LGA[197] and NAHT,[198] for example, supported the view that the provisions should apply only to those schools that are fully selective.

Should there be a single mechanism for parental ballots covering all the schools in question, or different approaches for different circumstances? For example, in some LEAs the whole school system is selective, while in others there are individual grammar schools in an otherwise non-selective system. Some grammar schools are mixed while others are single sex, sometimes with separate boys' and girls' grammar schools serving the same area. The DfEE summary of the main points raised in the consultation noted that there was general support for the proposal that different ballot mechanisms were appropriate in view of the different circumstances of grammar schools.

Which parents should be eligible to take part? The consultation letter noted that the options include the parents of children at:

- all maintained schools in the LEA in which the grammar school is located;
- "feeder" primary schools from which the grammar school recruits pupils, whether in the home or other LEA, where there is a tradition of pupils going on to the grammar school.
- other schools such as preparatory schools whose parents could be eligible.

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[197] LGA response to the consultation letter, 7 October 1997
[198] NAHT response to the consultation letter, 1 October 1997

In its response the LGA noted that the views of LEAs on this reflected their various circumstances. A large county that has only a small area with grammar and secondary modern schools would not wish to ballot all relevant parents in the authority. But a small unitary authority with only grammar and secondary modern schools, and few pupils coming from neighbouring LEAs, would wish the ballot to be restricted to parents in the LEA. The LGA suggested that when a ballot is requisitioned, the DfEE should discuss with all relevant schools and LEAs which parents should be involved.

SHA[199] argued in its response that where grammar schools are well established within an authority where the local system is non-selective then there should be a local ballot involving parents of children in all maintained schools since, it argued, this is not the exclusive concern of individual schools or vested interest groups.

NAHT thought that there could be no justification for all maintained schools in the LEA taking part as many of the parents of pupils at these schools would have no interest in the outcome. It said that the parents of children attending the grammar school concerned must be included since they have a direct interest in the outcome. It also wished to see the governors and all the staff at the grammar school being given the right to vote. The issue of parents whose children transfer to grammar school sixth forms was also raised. On the question of whether parents of children at "feeder" primary schools should take part, NAHT said that there would need to be a precise definition of "feeder" primary school, and argued that this should include schools outside the LEA which send pupils to the grammar school, and independent preparatory schools which send pupils. NAHT considered that there is a strong case for limiting eligibility to vote in respect to the feeder primary schools to those schools which send a minimum number of pupils every year for the last, say, three years to the grammar school.

ACE made a similar point suggesting that where a percentage (say 5%) of pupils from a primary school had been admitted to the grammar school over a period of time (say ten years) then all the parents of children at those schools should be eligible to take part. This would be in addition to the parents of children in the secondary system. ACE said that greater weight should be given to the votes from the primary sector as these children would be more affected by any decision.

What should be the mechanism and threshold for petitions to trigger a ballot? The consultation letter said that the Government intended that only a petition of eligible parents would trigger ballots. A threshold would need to be set for the number or proportion of eligible parents who would need to sign the petition in order to trigger a ballot. (Under existing legislation covering grant-maintained schools, a number of parents that is equal to at least 20% of the number of pupils at the school need to sign the petition to trigger a ballot on

[199] SHA response to the consultation letter, 2 October 1997

grant-maintained status.) The administration of such petitions would be covered by regulations made under the new legislation.

The DfEE summary of responses said that most of those commenting supported the proposition that ballots should not be automatic, but triggered through a petition or some other process. However, CASE has pointed out that this proposal was not in the Labour Party Manifesto, and that it would impose a huge hurdle in the way of those wanting to test parental opinion. This was a view shared by ACE, which proposed instead a local referendum among parents. Some commentators questioned whether a 20% threshold would be appropriate. The LGA thought that it would be better to trigger a ballot by a fixed number, perhaps 100, of local government electors requesting one. NAHT stressed in its response that LEAs must be prevented from agitating for a ballot.

What should be the mechanism for conducting the ballots? There could be different mechanisms in different cases. The consultation paper said that the basic requirements would be set out in regulations. An option would be for the procedures for the conduct of ballots for grant-maintained status to be followed. If so, this would imply that the administration of ballots should be undertaken by an agency independent of all local interests. The DfEE summary of responses reported that there was unanimous support for an independent agency to handle the administration of any ballots.

NAHT called for a Code of Practice to deal both with the petition campaign and the ballot campaign. It also stressed that the legislation should require that full unbiased information be given to voters regarding the implications of the vote.

What should be the mechanism for following up the result? The consultation letter said that this could vary depending on the circumstances. It raised the issue of whether there should be a five year moratorium on proposing further change if parents vote in favour of retaining selective admissions. It noted that where parents vote in favour of change there would need to be a duty placed on the relevant admission authority to implement change, and there would need to be arrangements for considering any consequential changes that might be needed in other schools.

The DfEE summary of responses observed that most respondents supported the proposal for a moratorium for a specific number of years following a ballot where parents did not vote for a change.

In its comments CASE thought a moratorium would be unwise as a change in a neighbouring (school or area) might make it desirable to reconsider the decision. ACE made the point that if there is a vote in favour of retaining grammar schools governing bodies could be required

to consider on an annual basis whether to ballot parents in the same way as governing bodies have been required to consider grant-maintained status.

The Bill: Clauses 95-97

These clauses relate to parental ballots on future admissions to grammar schools. The detail arrangements will be laid down in regulations.

Clause 95 enables the Secretary of State to make an order specifying that those maintained schools that had selective admission arrangements at the beginning of the 1997-98 school year be designated as grammar schools for the purposes of this legislation. A school will be regarded as having selective admission arrangements for this purpose if its admission arrangements are:

a) wholly based on selection by reference to general ability, and

b) so based with a view to admitting only pupils with high ability.

Clause 96 empowers the Secretary of State to make regulations enabling parents to petition for a ballot to determine whether particular grammar schools or groups of grammar schools should retain their selective admission arrangements. The ballot regulations may make provision for: determining the parents who are eligible to request and vote in a ballot; requiring a request for such a ballot to be made by means of a petition and signed by such number of eligible parents as may be specified or determined in accordance with the regulations; prescribing other requirements in relation to any such petition; prescribing the designated body to which any such petition is to be sent and which, under arrangements made by the Secretary of State, is to make the arrangements for holding the ballot; requiring prescribed bodies or persons to provide prescribed information to the designated body; prescribing the terms of the question on which a ballot is to be held and the manner in which such a ballot is to be conducted; specifying how the result of a ballot is to be ascertained; enabling the Secretary of State to declare a ballot void and require the holding of a fresh ballot; and requiring action to be taken within such period as may be specified in or determined in accordance with the regulations.

The ballot regulations may specifically provide for the eligible parents to request and vote in a ballot to include parents of pupils at independent schools, and parents of any prescribed class of persons under the age of 19 who are receiving education otherwise than at school.

Provision is made to prevent LEAs and governing bodies of maintained schools publishing any material which is designed to influence the result of a ballot, or giving any assistance to others for the purpose of influencing the outcome of a ballot (Clause 96 (9) (10)).

Clause 97 provides that, in the event of a ballot in favour of ending selective admissions at a grammar school or schools, a duty is placed on the admission authorities to bring forward revised non-selective admission arrangements.

The Explanatory and Financial Memorandum to the Bill states that:

"The costs resulting from the provisions for grammar school ballots would depend largely on how many such ballots are triggered by local parents through parental petitions. The main costs will relate to expenditure incurred by the body that is awarded the contract to check any petition and, as necessary, administer a ballot. These costs will be met by central government."

IV Other Provisions About School Education

A. Home-School Agreements

Background

Sections 13 and 14 of the *Education Act 1997* (which have not been brought into force) made provision to allow schools to set out the terms and conditions of a home-school partnership document, and to make it a condition for admission to the school that the child's parent sign a parental declaration accepting the parental responsibilities specified in the partnership document. There was general support for improving home-school links and creating home-school partnerships. However, there were strong differences of opinion about linking such partnership documents with school admissions, and about the possible contents of such agreements. The NAHT, which had campaigned for many years for home-school contracts, strongly supported the Conservative Government's policy. However, other bodies, including the SHA and CASE, expressed concern about the provisions. Library Research Paper 96/101 provides background information on the Conservative Government's policy and the reactions to it.[200]

The Government's Proposals

On 1 August 1997 the DfEE wrote to LEAs, to governing bodies of maintained schools and to others informing them that Ministers had decided not to commence the provisions relating to home-school partnership documents, and intended to repeal and replace the provisions. The letter said that it would remain the case that admission authorities could not lawfully offer a school place subject to the agreement of parents or pupils to specified conditions or undertakings.[201]

Earlier the White Paper, *Excellence in Schools*, had announced that the Government intended to introduce home-school contracts:

> "Involving parents in literacy and numeracy work is an excellent example of school-parent partnerships in practice. To build even stronger partnerships, all schools should, in discussion with parents, develop a written home-school contract. We intend to make it a requirement that all schools should have an agreement of this kind in place. These agreements will reflect the respective

[200] Library Research Paper 96/101, The Education Bill, 6 November 1996, pp 45-50
[201] DfEE letter on School Admissions, 1 August 1997, paragraph 5

> responsibilities of home and school in raising standards, explaining clearly what is expected of the school, of the parent and of the pupil.
>
> Such agreements will not be legally binding, but they will be powerful statements of intent. The detail will differ from school to school, but all agreements are likely to include expectations about the standard of education, the ethos of the school, regular and punctual attendance, discipline, homework, and the information schools and parents will give to one another. They will be important in helping engage parents in raising pupils' achievements and in action to combat truancy, bullying and unacceptable behaviour which undermines pupils' progress. We will provide guidance on the preparation and content of home-school contracts."[202]

A similar commitment was given in the Welsh White Paper, *Building Excellent School Together*.[203]

A consultation letter summarising the Government's proposals and inviting comment was sent to LEAs and other bodies in August 1997.[204] This said that Ministers were minded to make statutory provision to require governing bodies:

(i) to produce a written home-school contract explaining what is expected of the school, of the parent and of the pupil;

(ii) to consult parents of pupils at the school, and others as may be prescribed by the Secretary of State, on the terms of the contract;

(iii) in drawing up the contract, to have regard to any guidance issued by the Secretary of State;

(iv) to invite all parents of registered pupils of compulsory school age to sign the contract within a reasonable time of the pupil's admission (but seeking the pupil's own signature, where appropriate, would be optional). Schools would be able to seek a parental signature on an annual basis if they wished; and

(v) to review the contract from time to time.

The letter reiterated that such contracts would not form part of the admission process.

The principle of home-school contracts or agreements is generally supported. However, different views are taken on whether there should be a statutory requirement on schools to make such agreements, and about their use in admission arrangements. Replying to a PQ,

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[202] pp 54-55 paragraphs 7 & 8
[203] p 44, paragraph 6
[204] DfEE letter on home-school contracts, 8 August 1997; DfEE Press Notice 11 August 1997

Estelle Morris, Minister for Schools, said that "four out of the six teacher associations supported the proposal that all schools should have written home school agreements. Of the six parent organisations who commented, three were opposed to home-school agreements and three expressed support for the principle but did not feel they should be made a requirement."[205]

The UK Education Forum, whose members include ACE, CASE, the National Consumer Council and the Welsh Consumer Council, is opposed to statutory home-school contracts on the grounds that they are "unworkable and counter productive", but it supports voluntary agreements.[206] The NGC said that governors generally welcome the indication that home-school contracts should not be legally binding, nor form part of admission arrangements.[207] The LGA welcomed the decision not to link home-school contracts to admission arrangements, and supported the requirement for consultation with parents.[208] The NUT also welcomed the fact that the proposals will not form part of the admission process, but expressed concern about the implications of requiring every school to introduce an agreement. The NUT does not think that the agreements should be compulsory and considers that schools should decide whether or not an agreement would provide a useful basis for communication between itself and parents.[209]

The view that home-school agreements should not form part of the admission process is not shared by all the teachers' unions. The NAHT "regret the Government's decision not to make home-school agreements part of the admission process" and argue that this "risks undermining the significance of home-school agreements, and makes it very difficult for heads when they are faced with parents who are unwilling to sign a contract."[210]

In its response to the Welsh consultation, the Welsh Secondary Schools Association said that an invitation to parents to sign an agreement would be purposeless and counter productive: "Those parents who would readily sign would normally behave in a civilised and co-operative manner and support their children's learning and development. The recalcitrant, the uncooperative would merely refuse to sign and interpret their right of refusal as a clear indication of their power over the school."[211]

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[205] HC Deb 2 December 1997 cc 137-8W

[206] UK Education Forum response to the Home-School Contracts Consultation, 17 September 1997; Education Forum response to the White Paper, Excellence in Schools, October 1997

[207] NGC response to the White Paper, Excellence in Schools

[208] LGA response to the White Paper, Excellence in Schools, 8 October 1997

[209] NUT response to the consultation letter on home-school contracts

[210] NAHT Press Release 11 August 1997

[211] Welsh Secondary Schools Association, response to the consultation on home-school agreements, 29 September 1997

The Bill: Clauses 98 and 99

Clause 98 requires the governing body of every maintained school and every city technology college and city college for the technology of the arts to adopt a home-school agreement for the school, together with a parental declaration to be used in connection with the agreement. Governing bodies are required to consult "qualifying parents" and such other parents as may be prescribed before adopting the home-school agreement and parental declaration (Clause 98(9)). City technology colleges are technically independent schools but receive public funds to cover their recurrent expenditure. In general, the statutory requirements placed on schools have not been extended to the city technology colleges.

Clause 98(2) provides for a home-school agreement to be a statement specifying the school's aims and values, the school's responsibilities, the parents' responsibilities, and the school's expectations of its pupils. The "parental declaration" will be used for recording that qualifying parents take note of "the school's aims and values and its responsibilities and that they acknowledge and accept the parental responsibilities and the school's expectations of its pupils." The governing body must take "reasonable steps to secure that the parental declaration is signed by every qualifying parent" (Clause 98(3)). However, the governing body do not have to fulfil this requirement if, having regard to any special circumstances relating to the parent or the pupil in question, they consider that it would be inappropriate to do so (Clause 98(4)). The governing body may invite the pupil to sign the parental declaration as an indication that he acknowledges and accepts the school's expectations of its pupils (Clause 98(5)).

Clause 99 requires governing bodies when discharging their functions to have regard to any guidance given by the Secretary of State. Specific provision is made for governing bodies to ensure that any form of words specified by the Secretary of State by order are not used in a home-school agreement or in a parental declaration (Clause 99(2)). Governing bodies or the LEA where it is the admission authority must not use home-school agreements as part of their admission arrangements (Clause 99(4)).

A home-school agreement "shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort" (Clause 99(6)).

The Explanatory and Financial Memorandum to the Bill states:

"Clause 98, which provides a statutory requirement for all schools to have written home-school agreements, would increase local government expenditure. The development of home-school agreements is likely to cost around £1.6m in financial year 1998-99 and some £0.5m each year thereafter."

B. Extension of Educational Opportunities for Key Stage 4 Pupils (i.e. pupils aged 14 to 16 years)

The White Paper, *Excellence in Schools*, and the Welsh White Paper, *Building Excellent Schools Together*, stressed the importance of work-related learning for motivating young people and raising their levels of achievement. *Excellence in Schools* noted that there is already considerable flexibility at Key Stage 4 of the National Curriculum, but that the extent to which work-related learning is compatible with the existing statutory requirements needs to be clear. Therefore SCAA (now replaced by QCA) had been asked to advise on the most appropriate ways of enabling schools to increase the focus on work-related education at this key stage.[212]

At present section 560 of the *Education Act 1996* enables LEAs and the governing bodies of grant maintained schools to arrange for children to have work experience as part of their education in the last year of compulsory schooling (which is taken for these purposes to mean "from the beginning of the term at (the child's) school which precedes the beginning of the school year in which he would cease to be of compulsory school age"). This is a permissive power. There is no statutory requirement on schools to provide work-experience; however, most schools provide the opportunity for pupils to have 2 weeks work experience.

Clause 100 amends section 560 of the *Education Act 1996* to extend the period during which pupils can undertake work experience as part of their education. It permits work experience from the beginning of the last two years of compulsory schooling.

The White Paper, *Excellence in Schools*, indicated that as part of the Government's policy to re-motivate young people who have become disaffected with the school system and a traditional curriculum, steps would be taken to enable them to be able to pursue options in a different environment such as a further education college, and through links with local employers and community organisations. At present it is not clear that it would be lawful for Key Stage 4 pupils to attend further education colleges.

Clause 101 amends section 18(1) of the *Further and Higher Education Act 1992* to allow further education corporations, in collaboration with LEAs, to provide secondary education to pupils at Key Stage 4. It also amends the Act to ensure that, except in circumstances prescribed by regulations, such pupils do not receive secondary education in a room where, at the same time, a college is providing further education.

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[212] pp 62 & 63, paragraphs 39 to 41

C. School Meals

Background

The current law on the provision of meals at schools maintained by LEAs is contained in sections 512 and 533 of the *Education Act 1996*. Section 512 gives LEAs the power but not a general duty to provide milk, meals and other refreshments for pupils at schools maintained by them. Save for exempted pupils, the LEA must charge for what they provide and must charge every pupil the same price for the same quantity of the same item. The pupils exempted from charges are those whose parents are receiving income support, or an income-based jobseeker's allowance (and those pupils who are themselves receiving such benefit). The LEA has a duty to ensure that these pupils are provided with a midday meal. Any free milk must also be provided at midday (section 512 (3)). Section 534 of the 1996 Act makes the same provision for grant maintained schools, substituting the governing body of the grant maintained school for the LEA.

Regulations made under Section 49 of the *Education Act 1944* had required LEAs to provide pupils with a school dinner that was "suitable in all respects as the main meal of the day". Section 49 was replaced by Section 22 of the *Education Act 1980* which replaced LEAs' duties with discretionary powers, except for children entitled to free school meals. Further changes were made by the *Social Security Act 1996* that limited the number of children entitled to free school meals and the *Local Government Act 1988* that introduced compulsory competitive tendering (CCT). This meant that local authority caterers had to bid alongside private contractors for a renewal of catering contracts. The present Government has exempted new school meals contracts from CCT requirements with effect from 12 December 1997.[213] However, the exemption does not apply where the formal tendering process has started before the commencement date. (In Wales a moratorium on CCT was introduced in 1994 because of local government reorganisation.)

Government nutritional guidelines for school meals in England and Wales were discontinued in 1980. The nutritional content of school meals had been set by the Department of Education and Science in Departmental Circulars. The recommended nutritional standards for school meals were contained in *DES Circular 3/78, The Schools Meals Service*, paragraphs 6-8 and Appendix 1. Before this, the standards were set out in Circular 3/66, which had been endorsed, with minor modifications, by the *Working Party on the Nutritional Aspects of School Meals* (1975). Circular 3/78 stated that the Secretaries of State for Education and for Wales had accepted the main recommendations of the Working Party, and expected the recommended nutritional standards (as set out in

[213] The Local Government (Direct Labour Organisations) (Competition) (Amendment) Regulations 1997, SI 1997/2756; The Local Government Act 1988 (defined Activities) (Exemptions) (Schools) Order 1997, SI 1997/2748

Appendix 1 of the Circular) to be maintained. With the implementation of the 1980 Act, the nutritional guidelines were discontinued. *DES Circular 1/80, Education Act 1980,* made clear that the Government's policy was that LEAs should be responsible for the school meals service, including the nutritional quality of meals.

There has been concern about the impact of removing nutritional standards from school meals and the requirement of LEAs to provide meals beyond their statutory duties for children from low-income families. A recent trend, especially for secondary schools, is to provide a cash cafeteria system. A short note published by the National Children's Bureau summarises the key issues surrounding the present debate on school meals and the nutrition and health of children.[214] This noted that some local authorities (11% in 1992) have ceased to provide school meals beyond their statutory requirements. The uptake of school meals has been progressively decreasing from around 64% in 1979 to around 43% in 1997 in England.[215]

Since 1980 there has been a campaign for the reintroduction of Government nutritional guidelines for school meals. The 1992 White Paper, *The Health of the Nation* said that the then Conservative Government would produce and disseminate voluntary nutritional guidelines for catering outlets. In January 1997 the Government published dietary guidance for school food providers.[216]

The Government's Proposals

The Government announced in the White Paper, *Excellence in Schools*, that it proposed to specify minimum nutritional standards for inclusion in school meals contracts which allow schools, LEAs and caterers flexibly to respond to local tastes and offer choice. The White Paper also said that schools would be encouraged to adopt a consistent whole-school approach to food and nutrition, involving governors, head teachers, teachers, caterers, pupils and their families. This could entail drawing up a nutritional policy for the school.

The DfEE summary of the main points arising from the responses to the White Paper said that "Although there was a limited response to the proposal to establish nutritional standards for school meals, those who did respond expressed general support".

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[214] Dr Rosemary Hunt, School food: nutrition and health among young people, *National Children's Bureau, Highlight Briefing*, No. 154, July 1997

[215] DfEE Press Notice, 26 June 1997

[216] *Eating Well At School*, Vols 1-3, DfEE ,1997

The Bill: Clauses 102 and 103

Clause 102 enables the Secretary of State to make regulations which will set out compulsory nutritional standards for school lunches provided for pupils at maintained schools.

Clause 103 amends section 512 of the *Education Act 1996* to place a duty on LEAs to offer a paid meal service and provides that, where milk is provided to a pupil who is entitled to free school meals, the milk must be free whenever it is provided.

The Explanatory and Financial Memorandum to the Bill states:

"The nutritional standards for school lunches will be determined following public consultation. Their introduction would not necessarily lead to an increase in the cost of free school meals. Most LEAs already operate a paid meals service. Those who do not may have to incur some additional expenditure on capital and running costs to meet the new duty."

With regard to the effect of the provisions on public service manpower it said:

"The provisions relating to school meals could lead to a small increase in the number of local authority school meal staff needed to implement the standards. Small numbers of local authority staff might be involved in monitoring compliance with the nutritional standards but the staffing implications for individual authorities will vary according to the nutritional standards and monitoring arrangements already in place. Local authorities, which do not have, or have restricted, paid meal services will probably need to appoint additional school meals staff to meet the new duty. It will have no effect on authorities which already operate a paid meal service."

V Nursery Education

Background

At present LEAs 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.[217] *The Nursery Education and Grant-Maintained Schools Act 1996* made provision for the making of grants in respect of nursery education in England and Wales. Under the provisions the then Conservative Government introduced the scheme for nursery education vouchers. The scheme was introduced nationally from April 1997. Background on the scheme was provided in Library Research Paper 96/8.[218]

The Labour Party Manifesto 1997 said:

> "Nursery vouchers have been proven not to work. They are costly and do not generate more quality nursery places. We will use the money saved by scrapping nursery vouchers to guarantee places for four year olds. We will invite selected local authorities to pilot early excellence centres combining education and care for the under-fives. We will set targets for universal provision for three year olds whose parents want it."

The Liberal Democrats Manifesto 1997 said that the Liberal Democrats would scrap the "bureaucratic voucher scheme" and "ensure a variety of provision from a wide range of public, private and voluntary providers" so that high quality early years education would be available for "every three and four year old whose parents want it."

On 22 May 1997 the DfEE wrote to LEAs and other bodies explaining the Government's proposals to replace the nursery education voucher scheme from September 1997. LEAs were invited to prepare interim Early Years Development Plans showing how they would provide early education places, in partnership with the private and voluntary sectors, for four year olds for the three terms before the child reaches compulsory school age. Between September 1997 and March 1998 interim arrangements will apply. From April 1998, the Government expect that all LEAs should be operating an Early Years Development Plan prepared by an Early Years Development Partnership.[219] By July 1997, 79 LEAs had drawn up Interim Early Years Development Plans.[220]

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[217] *Education Act 1996*, section 17 which consolidated provision contained in the *Education Act 1980*, section 24.

[218] Nursery Education and Grant-Maintained Schools Bill, Bill 41 of Session 1995/96, Library Research Paper 96/8, 18 January 1996

[219] DfEE Letter to Chief Education Officers and others on nursery education vouchers and early years education, 1997/98, 22 May 1997

[220] DfEE Press Notice, 14 July 1997

The White Paper, *Excellence in Schools*, stressed that the aim is a comprehensive and integrated approach to pre-school education and childcare. The Early Years Development Plans would "demonstrate how co-operation - in particular between private nurseries, voluntary pre schools and playgroups, and schools - can best serve the needs of children and their parents". Details of the funding arrangements for LEAs with interim Early Years Development Plans were set out in a DfEE letter.[221] Draft guidance was issued by the DfEE on the arrangements for establishing Early Years Development Partnerships and Early Years Development Plans.[222] The final guidance has now been published.[223] It describes the plans in detail, and announced that the Government would introduce primary legislation to place a statutory duty on local authorities to secure a good quality early education place for all four year olds whose parents want it. It said that this duty would not be brought into effect before April 1999 at the earliest. At present there is no statutory framework for the establishment of Early Years Development Partnerships and Early Years Development Plans.

The key elements of the new arrangements as set out in the Guidance are as follows:

Early years services should be planned in each local authority area through an Early Years Development Plan drawn up by a body that represents all the relevant early years interests in the area, the Early Years Development Partnership. The local authority will be responsible for convening the Partnership within the guidelines issued by the DfEE. All Partnerships will need to ensure that they have representation from the following groups: the LEA; maintained schools; the Social Services Department; the health authority; providers of other local authority services such as day nurseries and family centres; private sector providers; voluntary sector providers; registered childminders; diocesan authorities; local employers, possibly represented through the Training and Enterprise Councils (TECs) or Chambers of Commerce; special education needs groups; and parents.

Local authorities will be starting from different points in their provision; therefore it will be necessary to have a combination of short and longer-term objectives. The initial focus will be on securing at least a free part-time place for all four year olds, whose parents want it, by September 1998. The plans will also need to set targets for provision for three year olds. The plan for 1998-99 will need to demonstrate how the local authority will secure three terms of good quality pre-school education for all four year olds, whose parents want it, including those children with special educational needs. The plan will be expected to demonstrate how co-operation and collaboration between authorities and the private and voluntary sectors can be used to secure these places.

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[221] DfEE letter to Chief Education Officers on headcount and funding arrangements for 1997/98
[222] DfEE letter to Chief Education Officers and others, dated 4 July 1997
[223] *Early Years Development Partnerships and Plans, Guidance 1998-99*, DfEE

The local authority will be responsible for implementing the plan, in the light of its statutory duties, its broader policies, and the resources available. The plan must be approved by the Secretary of State. The plans should cover a period of at least three years, but will initially focus on the first financial year. By 2 February 1998, all local authorities will need to submit their plans to the DfEE for approval by the Secretary of State. The plan will be assessed against a number of evaluation criteria.[224]

In drawing up plans, the partnership must have regard to the level of funding available for the provision of early years education places. For the financial year 1998-99 the funding to local authorities will be through two routes: Revenue Support Grant, and specific grant under the provisions of the *Nursery Education and Grant Maintained Schools Act 1996.* The details of how these will be calculated are set out in paragraphs 30 to 37 of the *Early Years Development Partnerships and Plans, Guidance 1998-99.* LEAs will fund provision for maintained schools and pay grants to the private and voluntary providers. DfEE specific grant to fund such payments will continue to be at the flat rate of £1,100[225] per child per annum "for five sessions per week lasting at least two and a half hours over at least 33 weeks."[226] The next two financial years will be transitional years for funding arrangements. It is intended that by 2000-2001, specific grant will have been phased out, and all funding for early years education will be through the under fives SSA sub-block. This would mean a shift away from the flat rate allowance of £1,100 per child and would link more closely to the cost of provision in the area reflecting such factors as sparsity and levels of deprivation (see paragraphs 42 to 44 of the Guidance).

On 26 November 1997 the Government announced that it is returning to LEAs the deduction of £527 million from standard spending assessments made by the Conservative Government in respect of the voucher scheme. These funds will allow authorities to develop their Early Years Development Plans. Central government funds of £135 million will provide additional grant support to local authorities, to support expansion in the number of places available, and the development of Early Excellence Centres.[227]

Providers who are eligible to be included in a plan are listed in paragraph 47 of the Guidance. They are:

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- Maintained schools, including grant maintained schools;
- Local authority institutions which provide day care under section 18 of the Children Act 1989 i.e. family centres, local authority day nurseries;
- Institutions exempted from registration under the Children Act;

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[224] *Early Years Development Partnerships and Plans, Evaluation Criteria 1998-99*, DfEE
[225] The amount originally spent on the nursery education voucher
[226] *Early Years Development Partnerships and Plans, Guidance 1998-99*, DfEE, paragraph 31
[227] HC Deb, 26 November 1997, c588W

- Institutions registered under section 71(1)(b) of the Children Act 1989 e.g. pre-schools, playgroups, private day nurseries;
- Independent schools finally registered with the Registrar of Independent Schools at DfEE;
- Independent schools provisionally registered with the Registrar of Independent Schools at DfEE in the case of schools for children with statements of special educational needs with the consent of the Secretary of State or with the approval of the authority which maintains the statement;
- Non-maintained special schools;
- Portage schemes registered with the National Portage Association; and,
- Childminders registered under section 71(1)(a) of the Children Act, subject to the conditions and timing constraints set out in paragraph 50."

Parents can be asked to contribute to the cost of services provided in addition to the core education place. However, plans cannot include providers who charge parents fees for the core education element in addition to the grant payable through the plan.

All early years educational providers in receipt of grant funding in the plan will be subject to the following conditions:

- they must belong to one of the categories set out in paragraph 47 of the Guidance;

- they must work towards the desirable learning outcomes;[228] and,

- those providers who are not maintained schools will be subject to inspection by a registered nursery inspector recruited, trained and registered by Her Majesty's Chief Inspector of Schools.

At present nursery provision in maintained schools is inspected by OFSTED under section 10 of the *Schools Inspection Act 1996.* Private and voluntary providers are subject to inspection under section 5 and Schedule 1 of the *Nursery Education and Grant-Maintained Schools Act 1996.* (Schedule 1 is reproduced in Schedule 26 of the Bill.) In effect this means that there are two, broadly similar, inspection frameworks which will continue to be the case under the Bill.

Plans will be monitored and evaluated by the local authority working with the Partnership.

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[228] *Nursery Education: Desirable Outcomes for Children's Learning on Entering Compulsory Education*, SCAA, 1996

A network of 25 Early Excellence Centres will be established to promote innovation in integrated services and high quality training, to act as models for cross-sectoral partnerships and for the dissemination of good practice. The first seven centres were announced on 1 December 1997.[229]

The Audit Commission has recently reported that reviews by auditors suggest that many local authorities will need to improve partnership working and co-ordination if they are to establish the proposed arrangements.[230] The report concluded that many authorities lack a clear strategy on which to base their Early Years Development Plans, and that even where there are enough places, they may be spread unevenly across the authority.

The DfEE summary of points arising from responses to the White Paper said that most respondents welcomed the inclusion of the voluntary and private sectors in the planning of early years places and the idea of Early Years Development Plans.

The Bill: Clauses: 104-111

Clause 104 defines nursery education as " full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at school or elsewhere)."

Clause 105 places a duty on LEAs to secure that the provision of nursery education for their area (whether provided by the LEA or otherwise) is sufficient to meet the needs of resident children who have not reached compulsory school age but have reached an age specified in regulations. LEAs must have regard to guidance issued by the Secretary of State.

Clauses 106 to 108 provide the statutory basis for Early Years Development Partnerships and Early Years Development Plans.

Clause 106 places a duty on each LEA to establish an Early Years Development Partnership and to take responsibility for arranging meetings of the Partnership. The LEA must have regard to any guidance given by the Secretary of State.

Clause 107 places a duty on each LEA to establish an Early Years Development Plan for their area and to update the Plan in accordance with any guidance given by the Secretary of

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[229] DfEE Press Notice, 1 December 1997

[230] *Counting To Five, A Review of Audits of Education for the Under fives,* Audit Commission ,1997

State. The plan must include a statement setting out the authority's proposals for complying with their duty under Clause 105. The statement of proposals must be approved by the Secretary of State under Clause 108.

Clause 108 sets out how the LEA plan will be approved by the Secretary of State. The Secretary of State may: approve the statement wholly or in part, for a limited period of time, or subject to conditions; require the authority to make modifications to the statement as he may specify; or reject the statement (Clause 108(2)).

Clause 109 and Schedule 26 set out the arrangements for inspection of nursery education. These provisions ensure that those early educational providers who are not maintained schools will be subject to inspection by a registered nursery inspector. The Schedule deals with: the general functions of the Chief Inspector; the organisation of inspectors and the frequency of inspections; the registration of nursery education inspectors; the training of inspectors; the impartiality of inspectors; reports by inspectors; annual reports by the Chief Inspector; and reserve powers. Schedule 1 of the *Nursery Education and Grant Maintained Schools Act 1996* will cease to have effect (Clause 109(2)).

Clause 110 requires LEAs and nursery education providers and their employees to have regard to the Code of Practice on special educational needs (issued under section 313 of the *Education Act 1996*). The Secretary of State will publish a document explaining how the practical guidance in the Code of Practice applies in certain circumstances.

Clause 111 extends the provisions in section 548(3) of the *Education Act 1996* (which prohibit the use of corporal punishment) to pupils for whom nursery education is provided under the Bill by LEAs and those receiving financial assistance from LEAs.

The Explanatory and Financial Memorandum to the Bill notes that the establishment of Early Years Development Partnerships and the drawing up of plans should build on existing good practice. The duty to secure nursery education will have financial implications for LEAs and the "additional burdens on LEAs will be taken into account in the annual review of local authority spending." With regard to the effect of the provisions on public service manpower, it states: "The expansion of nursery education is likely to lead to an increase in teaching and administrative support for nursery providers, some of which will be in the public education system." The inspection of private and voluntary providers of nursery education is not expected to create any new burdens on these businesses. "The Bill restates the provisions in the *Nursery Education and Grant Maintained Schools Act 1996* and does not therefore require a new compliance cost assessment."

VI Partnership Arrangements in Wales

Background

Before the *Further and Higher Education Act 1992* LEAs ran most further education colleges and schools. Under the Act, further education colleges became independent further education corporations. Colleges traditionally have concentrated on vocational courses and school sixth forms on academic courses. However, increasingly colleges are providing A level courses and schools are providing GNVQs. In its report, *Further Education in Wales*,[231] the Welsh Affairs Committee called for a coherent strategy for education for 16 to 19 year olds, and recommended that steps be taken to allow the FEFCW to fund co-operative ventures between colleges and schools. The report noted that a number of partnership arrangements exist already. Swansea College, for example, is involved in partnership with schools in the East Side initiative. Coleg Glan Hafren is collaborating with eight local schools in a project known as that Cardiff West Collegium. The college provides vocational education in the schools for 16 to 18 year olds. However, the FEFCW was advised that it was not legally entitled to fund full-time education in schools. The project therefore continued on a pilot basis with Welsh Office funding. The FEFCW suggested that the law should be changed to allow the Council to fund education in schools. The Government responded to the report in July 1997. It said that the Government would seek to introduce an amendment to the 1992 Act to facilitate the development of productive links between FE institutions and schools.[232]

The White Paper, *Building Excellent Schools Together*, stressed the importance of developing "inter-organisational links to generate new ideas and to promote a stronger sense of confidence among pupils and students that they can succeed" and said that new attention would be given to overcoming obstacles to effective collaboration between schools and colleges.

The Bill: Clauses 112 and 113 and Schedule 27

These provisions amend the *Further and Higher Education Act 1992* to allow Welsh further education institutions to provide full-time and part-time education for persons over 16 but under 19, at one or more schools maintained by LEAs in Wales under a partnership arrangement. The FEFCW is empowered to give financial support for the purposes of any partnership arrangements made in Wales.

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[231] *Further Education in Wales*, Second Report of the Welsh Affairs Committee , Session 1996-97, HC Paper 64, March 1997

[232] *The Government's Response to the Second Report of the Welsh Affairs Committee Session 1996-97, Further Education in Wales*, Cm 3708, July 1997, paragraph 26

Commenting on the Bill, the Minister for Education in Wales, Peter Hain said that these provisions will allow educational opportunities to be provided for disaffected young people who would otherwise miss out on educational opportunities.[233]

[233] Welsh Office press release, 4 December 1997

VII Miscellaneous

The funding authorities

Clause 114 provides for the dissolution of the Funding Agency for Schools on a date to be specified by the Secretary of State by order. All assets and liabilities of the Agency will be transferred to the Secretary of State. The Funding Agency for Schools has responsibilities for funding grant maintained schools in England. Under the proposed new framework for schools the Agency will no longer be needed.

Clause 115 provides for the repeal of section 21 of the *Education Act 1996* which empowers the Secretary of State to establish the Schools Funding Council for Wales. (The Secretary of State has not exercised his powers under that section.)

The Explanatory and Financial Memorandum to the Bill states that the provisions are unlikely to have a significant effect on either local or central government expenditure:

"The savings which result from the closure of the Agency are not likely to be significant and will be offset in part by the liabilities of the Agency on dissolution which transfer to the Secretary of State. There will also be modest pressure on LEAs when the Funding Agency for Schools is dissolved and LEAs take over responsibility for administering capital funding for foundation schools. Funding for former grant maintained schools in the new schools framework would be contained within the Government's published spending plans."

On public service manpower it states:

"The closure of the Funding Agency for Schools will not affect central government manpower needs. There will be reductions in public service manpower as a result of the closure of the Agency but some of the staff may find alternative employment in the public sector. There may also be a small increase in manpower in those LEA areas where a significant number of schools have opted for grant maintained status. The staffing implications for individual LEAs will depend upon the extent to which there is an increased responsibility for school funding, planning of school places (particularly in areas where the agency has a shared or sole responsibility for planning) and school admissions in the new schools framework."

School inspections

Clause 116 gives Her Majesty's Chief Inspector of Schools the power to publish in any manner, including by electronic means, reports produced by members of the inspectorate. The Clause also confers qualified privilege for the purposes of the law of defamation on any such publication.

Education Assets Board

Clause 117 changes the name of the Education Assets Board to the Education Transfer Council. The Education Assets Board was established under the *Education Reform Act 1988*, section 197, to resolve difficulties in the apportionment of assets to grant maintained schools and to further education corporations.

Appendix I[234] Key Stage I classes with more than 30 pupils

Numbers of Key Stage I classes taught by one teacher with 31 or more pupils in maintained primary schools in each local education authority area in England*

January 1996	*Number*
Corporation of London	n/a
Camden	4
Greenwich	15
Hackney	13
Hammersmith	10
Islington	14
Kensington and Chelsea	2
Lambeth	12
Lewisham	18
Southwark	22
Tower Hamlets	11
Wandsworth	35
Westminster	7
Barking	23
Barnet	23
Bexley	123
Brent	24
Bromley	159
Croydon	109
Ealing	78
Enfield	113
Haringey	18
Harrow	60
Havering	76
Hillingdon	43
Hounslow	72
Kingston upon Thames	100
Merton	58
Newham	23
Redbridge	99
Richmond upon Thames	44
Sutton	32
Waltham Forest	32
Birmingham	329
Coventry	109
Dudley	88
Sandwell	130
Solihull	117
Walsall	73
Wolverhampton	96
Knowsley	49
Liverpool	139
St. Helens	64
Sefton	137
Wirral	72
Bolton	143
Bury	88
Manchester	93
Oldham	105
Rochdale	93
Salford	89
Stockport	95
Tameside	131
Trafford	95
Wigan	131
Barnsley	70
Doncaster	108
Rotherham	45
Sheffield	97
Bradford	165
Calderdale	76
Kirklees	134
Leeds	264
Wakefield	82
Gateshead	22
Newcastle upon Tyne	79
North Tyneside	69
South Tyneside	40
Sunderland	39
Isles of Scilly	0
Avon	312
Bedfordshire	174
Berkshire	151
Buckinghamshire	220
Cambridgeshire	164
Cheshire	308
Cleveland	92
Cornwall	135
Cumbria	138
Derbyshire	363
Devon	233
Dorset	253
Durham	181
East Sussex	277
Essex	311
Gloucestershire	157
Hampshire	532
Hereford and Worcester	137
Hertfordshire	261
Humberside	272
Isle of Wight	28
Kent	461
Lancashire	610
Leicestershire	184
Lincolnshire	126
Norfolk	127
North Yorkshire	142
Northamptonshire	149
Northumberland	121
Nottinghamshire	197
Oxfordshire	72
Shropshire	111
Somerset	132
Staffordshire	374
Suffolk	93
Surrey	213
Warwickshire	214
West Sussex	123
Wiltshire	126
England	13,502

n/a = not applicable.
* Figures include reception classes.

[234] HC Deb 20.05.97 cc27-29W

Appendix II

Maintained primary and secondary schools by denomination and category.

England and Wales: January 1996

Primary Schools

Category:	County	Voluntary Aided	Voluntary Controlled	Special Agreement	Grant Maintained	Total	Denominations (Per Cent)
Denomination:							
Non-denominational	13,124	0	0	0	281	13,405	66.5%
Church of England/Wales	0	1,904	2,764	1	106	4,775	23.7%
Roman Catholic	0	1,797	1	1	55	1,854	9.2%
Methodist	0	2	26	0	0	28	0.1%
Jewish	0	17	0	0	2	19	0.1%
Others	0	33	43	0	4	80	0.4%
All Schools	13,124	3,753	2,834	2	448	20,161	100.0%
Category (Per cent)	65.1%	18.6%	14.1%	0.0%	2.2%	100.0%	

Secondary Schools

Category:	County	Voluntary Aided	Voluntary Controlled	Special Agreement	Grant Maintained	Total	Denominations (Per Cent)
Denomination:							
Non-denominational	2,634	0	0	0	429	3,063	80.1%
Church of England/Wales	0	86	72	8	39	205	5.4%
Roman Catholic	0	257	0	30	89	376	9.8%
Methodist	0	0	0	0	0	0	0.0%
Jewish	0	1	0	1	2	4	0.1%
Others	0	27	64	0	83	174	4.6%
All Schools	2,634	371	136	39	642	3,822	100.0%
Category (Per cent)	68.9%	9.7%	3.6%	1.0%	16.8%	100.0%	

Sources:

Statistics of Education Schools in England 1996 Table 24.

Statistics of Education and Training in Wales: Schools 1997. Tables 3.5 and 4.5

Research Paper 97/136

Appendix III

Selective maintained secondary schools by parliamentary constituency[235]

Grammar Schools

Mr. Blunkett: To ask the Secretary of State for Education and Employment if she will list (a) the grammar schools in England, grouping them by parliamentary constituency and (b) the percentage of secondary school age children attending grammar schools in each parliamentary constituency. [5898]

Mr. Robin Squire *[holding answer 2 December 1996]:* The following table lists for each parliamentary constituency in England the maintained secondary schools which classified themselves as selective in the 1996 performance tables. The Department does not have a comprehensive list of maintained secondary schools for each parliamentary constituency.

Constituency	*Name of school*
Altrincham, Sale	Altrincham Grammar School for Girls
Altrinham and Sale	Altrincham Boys' GM School
Ashford	Highworth Grammar School for Girls
Ashford	The Norton Knatchbull School
Aylesbury	Aylesbury High School
Aylesbury	Sir Henry Floyd Grammar School
Aylesbury	Aylesbury Grammar School
Barnet	Queen Elizabeth's Boys' School
Batley and Spen	Heckmondwike Grammar School
Beaconsfield	Beaconsfield High School
Beaconsfield	Burnham Grammar School
Bexleyheath	Bexley Grammar School
Bexleyheath	Townley Road Grammar School for Girls
Birkenhead	St. Anselm's College
Birmingham Hall Green	King Edward VI Camp Hill Girls' School
Birmingham Hall Green	King Edward VI Camp Hill School (Boys)
Birmingham Northfield	King Edward VI Five Ways School
Birmingham Perry-Barr	Handsworth Grammar School
Birmingham Small Heath	King Edward VI Aston School
Birmingham Small Heath	King Edward VI Handsworth School
Bournemouth East	Bournemouth School
Bournemouth East	Bournemouth School for Girls (GM)
Bridgwater	Brymore School
Bristol West	Cotham Grammar School
Bristol West	Fairfield Grammar School
Buckinghamshire	The Royal Latin School
Cambridgeshire SE LEA	The King's School
Canterbury	Barton Court Grammar School
Canterbury	Simon Langton Grammar School for Boys
Canterbury	Simon Langton Girls' School
Carshalton and Wallington	Wallington Boys County Grammar School
Carshalton and Wallington	Wallington High School for Girls
Carshalton and Wallington	Wilson's School
Chelmsford	Chelmsford County High School for Girls
Chelmsford	King Edward VI Grammar School
Cheltenham	Pate's Grammar School
Chesham and Amersham	Chesham High School
Chesham and Amersham	Dr. Challoner's High School
Chesham and Amersham	Dr. Challoner's Grammar School
Colchester North	Colchester Royal Grammar School
Colchester North	Royal Grammar School
Colchester South and Maldon	Colchester County High School for Girls
Dartford	Dartford Grammar School
Dartford	Dartford Grammar School for Girls
Dartford	The Grammar School for Girls Wilmington
Dartford	Wilmington Grammar School for Boys
Davyhulme	Sale Grammar School
Davyhulme	Urmston Grammar School
Dorset South	Budmouth Technology College
Dover	Dover Grammar School for Boys
Dover	Dover Grammar School for Girls
Edgbaston	King Edward VI School
Edmonton	The Latymer School
Faversham	Queen Elizabeth's Grammar School
Faversham	Highsted School
Faversham	Borden Grammar School
Finchley	St. Michael's Catholic Grammar School
Folkestone and Hythe	The Folkestone School for Girls
Folkestone and Hythe	The Harvey Grammar School
Gainsborough and Horncastle	Caistor Grammar School
Gainsborough and Horncastle	Horncastle Queen Elizabeth's Grammar School
Gainsborough and Horncastle	Gainsborough Queen Elizabeth's High School
Gloucester	High School for Girls
Gloucester	Ribston Hall High School
Gloucester	The Crypt School
Gloucester	Sir Thomas Rich's School
Grantham	Carre's Grammar School
Grantham	Kesteven and Grantham Girl's School
Grantham	Kesteven and Sleaford High School
Gravesham	Gravesend Grammar School for Boys
Gravesham	Gravesend Grammar School for Girls
Halifax	Crossley Heath School
Halifax	The North Halifax Grammar School
Hendon South	The Henrietta Barnett School
Holland with Boston	Boston Grammar School
Holland with Boston	Boston High School for Girls
Honiton	Colyton Grammar School
Honiton	Torquay Boys' Grammar School
Ilford North	Ilford County High School
Kent Mid	Chatham Girls' Grammar School
Kent Mid	Chatham Boys' Grammar School
Kent Mid	Fort Pitt Grammar School
Kingston upon Thames	Tiffin School
Kingston upon Thames	The Tiffin Girls' School
Lancaster	Lancaster Girls' Grammar School
Lancaster	Lancaster Royal Grammar School
Lindsey East	Alford Queen Elizabeth's GM Grammar School
Lindsey East	Skegness Grammar School
Maidstone	Oakwood Park Grammar School
Maidstone	Invicta Grammar School for Girls
Maidstone	Maidstone Grammar School
Maidstone	Maidstone Grammar School for Girls
Medway	The Rochester Girls' Grammar School
Medway	Sir Joseph Williamson's Mathematical School
Mid Kent	Rainham Mark Grammar School'
Old Bexley and Sidcup	Bexley-Erith Technical High School for Boys
Old Bexley and Sidcup	Chislehurst and Sidcup Grammar School
Orpington	Newstead Wood School for Girls
Orpington	St. Olave's and St. Saviour's Grammar School
Plymouth Drake	Devonport High School for Boys
Plymouth Drake	Devonport High School for Girls
Plymouth Drake	Plymouth High School for Girls
Poole	Parkstone Grammar School (Girls)
Poole	Poole Grammar School
Reading East	Reading School
Reading East	Kendrick Girls' Grammar School
Ribble Valley	Clitheroe Royal Grammar School
Rossendale and Davewen	Bacup and Rawtenstall Grammar School
Rugby and Kenilworth	Lawrence Sheriff School
Rugby and Kenilworth	Rugby High School for Girls

[235] Maintained Secondary Schools which classified themselves as selective in the 1996 performance tables. HC Deb 3 December 1996 cc 605-7W

Constituency	*Name of school*
Salisbury	Bishop Wordsworth's Grammar School
Salisbury	South Wiltshire Grammar School for Girls
Shropshire North	Adams' Grammar School
Shropshire North	Newport Girls' High School
Skipton and Ripon	Ennysted's Grammar School
Skipton and Ripon	Ripon Grammar School
Skipton and Ripon	Skipton Girls' High School
Slough	Herschel Grammar School
Slough	Langley Grammar School
Slough	Slough Grammar School
Slough	St. Bernard's Convent School
South Hampshire	Churston Grammar School
Southend East	Southend High School for Girls
Southend West	Southend High School for Boys
Southend West	Westcliff High School for Boys
Southend West	Westcliffe High School for Girls
Stamford with Spalding	Bourne Grammar School
Stamford with Spalding	Spalding Grammar School
Stamford with Spalding	Spalding High School
Stratford upon Avon	Alcester Grammar School
Stratford upon Avon	King Edward VI Grammar School
Stratford upon Avon	Stratford upon Avon Grammar School for Girls
Stretford	Stretford Grammar School
Stroud	Marling School
Stroud	Stroud High School
Sutton and Cheam	Nonsuch High School for Girls
Sutton and Cheam	Sutton Grammar School for Boys
Sutton Coldfield	Sutton Coldfield Girl's School
Sutton Coldfield	Bishop Vesey's Grammar School
Thanet South	Chatham House Grammar School for Boys
Thanet South	Dane Court Grammar School
Thanet South	Sir Roger Manwood's School
Thanet South	Clarendon House Girls' Grammar School
Tonbridge and Malling	Tonbridge Grammar School for Girls
Tonbridge and Malling	Weald of Kent Grammar School
Tonbridge and Malling	The Judd School
Torbay	Torquay Grammar School for Girls
Tunbridge Wells	Cranbrook School
Tunbridge Wells	The Skinners' School
Tunbridge Wells	Tunbridge Wells Girls' Grammar School
Tunbridge Wells	Tunbridge Wells Grammar School for Boys
Walsall South	Queen Mary's Grammar School
Walsall South	Queen Mary's High School
Wanstead and Woodford	Woodford County High School
Wirral South	Wirral Grammar School for Boys
Wirral South	Wirral County Grammar School (girls)
Wirral West	Calday Grange Grammar School
Wirral West	Upton Hall Convent School
Wirral West	West Kirby Grammar School for Girls
Wolverhampton South West	Wolverhampton Girl's High School
Wycombe	John Hampden Grammar School
Wycombe	Sir William Borlase's Grammar School
Wycombe	Wycombe High School

* Maintained secondary schools which classified themselves as selective in the 1996 performance tables.

Appendix IV: Abbreviations used in this paper

ACE	Advisory Centre for Education
AMA	Association of Metropolitan Authorities
APS	Assisted Places Scheme
ASB	Aggregated Schools Budget
ATL	Association of Teachers and Lecturers
CASE	Campaign for State Education
CCT	Compulsory Competitive Tendering
CEO	Chief Education Officer
DfEE	Department for Education & Employment
EAZ	Education Action Zone
EDP	Education Development Plan
ELAS	Education Law Association
EU	European Union
FAS	Funding Agency for Schools
FEFCW	Further Education Funding Council for Wales
GEST	Grants for Education Support & Training
GNVQ	General National Vocational Qualification
GSB	General Schools Budget
KS	Key Stage
LEA	Local Education Authority
LGA	Local Government Association
LMS	Local Management of Schools
NAHT	National Association of Head Teachers
NASUWT	National Association of Schoolmasters Union of Women Teachers
NGC	National Governors Council
NUT	National Union of Teachers
OFSTED	Office for Standards in Education
PSB	Potential Schools Budget
QCA	Qualifications and Curriculum Authority
SCAA	School Curriculum and Assessment Authority
SEO	Society of Education Officers
SHA	Secondary Heads Association
SSA	Standard Spending Assessment
TEC	Training & Enterprise Council
TES	Times Educational Supplement

Recent Research Papers on related subjects include:

97/70	Education (Schools) Bill [Bill 4 of Session 1997/87]	29.05.97
96/101	The Education Bill [Bill 8 of Session 1996/97]	06.11.96
96/8	Nursery Education and Grant-Maintained Schools Bill [Bill 41 of 1995/96]	18.01.96

Related Reference Sheets:

92/10	Education Bill [Bill 71 of Session 1992/93]	05.11.92
91/9	Education (Schools) Bill [Bill 7 of Session 1991/92]	15.11.91
87/6	Education Reform Bill [Bill 53 of Session 1987/88]	24.11.87