

# SCHOOLS BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Schools Bill [HL] as introduced in the House of Lords on 11 May 2022 (HL Bill 1).

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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# Overview of the Bill

- 1 The Schools Bill (“the Bill”) includes measures that:
  - Introduce a power permitting the Secretary of State to make regulations prescribing ‘academy standards’. These regulations will set out the requirements on academy proprietors which will be capable of applying consistently across all academy trusts.
  - Provide the Secretary of State with a suite of intervention powers in relation to academy proprietors’ operation of their academies.
  - Ensure local authorities transfer land to site trustees if they provide a new alternative site for a Church academy.
  - Provide protections for pupils taking part in daily acts of collective worship and religious education provision in academy schools with a religious designation.
  - Provide a regulation-making duty and power regarding the governance of academies which are already, or will be in the future, designated as academies with a religious character.
  - Set out a duty for the Secretary of State to designate an academy school as a grammar school and set out in statute that the only way to remove a grammar school’s selective admission arrangements is following a parental ballot process.
  - Introduce additional circumstances in which the Secretary of State may convert maintained schools into academies and extend the circumstances in which they may issue an Academy Order for the purpose of converting a maintained school to an academy.
  - Place a duty on the Secretary of State to determine funding for all mainstream schools through a single, directly applied national funding formula.
  - Ensure policies to promote regular school attendance are written, publicised, and followed. This measure also extends the Secretary of State’s power to make regulations about leave of absence.
  - Introduce the local authority registration of children of compulsory school age who are not educated full-time at schools and a duty on parents and certain providers of out-of-school education to provide local authorities with information for the register. This measure introduces monetary sanctions for education providers who do not comply and enables the Secretary of State to issue statutory guidance. The measure also enables changes to the school attendance order regime in England.
  - Expand the category of institutions subject to the regulatory regime relating to independent schools, in Chapter 1 of Part 4 of the Education and Skills Act 2008, to capture more institutions providing all or the majority of a child’s education but which are not regulated at present.
  - Introduce a power for the Secretary of State to impose relevant restrictions where a material change to an independent educational institution’s registration details is implemented without prior approval from the Secretary of State. Also, what constitutes a material change, and the basis upon which applications for the approval of a material change are to be considered, are altered.. In addition, the Secretary of

State will be given the power to set standards to reject proprietors on the basis that they are not fit and proper, both where there is a material change consisting in a change of proprietor and on other occasions such as where there is an application to register an independent educational institution.

- Change the basis upon which a court determines a statutory appeal against certain decisions to remove an independent educational institution from the register of independent educational institutions, from a full-merits review to a judicial review basis.
- Enable the Secretary of State to suspend the registration of an independent educational institution where there are breaches of the independent educational institution standards and there may be a risk of harm to students attending that institution. In addition, in such circumstances, the Secretary of State would be able to require a proprietor to stop providing boarding accommodation to students.
- Enhance powers to investigate and act against criminal offences by schools, notably against those operating illegal unregistered schools.
- Enable increasing data sharing between Ofsted and other inspectorates to remove barriers to efficiency.
- Strengthen the remit of the Teaching Regulation Agency to handle teacher misconduct and the prohibition of teachers from the profession, by expanding the scope of those who can face these proceedings and enabling referrals to be considered regardless of where the referral comes from.

## Policy background

- 2 The Schools Bill underpins the aims set out in the *Opportunity for All: Strong schools with great teachers for your child* White Paper and its ambitions to improve the education system.
- 3 The Bill includes measures that build on the recommendations of various consultations including the *Children Not in School* consultation, the *Regulating independent educational institutions* consultation, the *Fair school funding for all: completing our reforms to the National Funding Formula* consultation, the *Teacher Misconduct: regulating the teaching profession* consultation and the *School attendance: improving consistency of support* consultation.

## The Opportunity for All: Strong schools with great teachers for your child white paper

- 4 Many children and young people still move onto the next phase of education or employment without the fundamental standards in literacy and numeracy. Many of these children and young people are from the most vulnerable and disadvantaged groups.
- 5 The Department for Education's 'Opportunity for All: Strong schools with great teachers for your child' White Paper ('the Schools White Paper') sets out the Government's long-term vision to improve the school system, including ambitions for literacy and numeracy levels in

schools. The White Paper was published on 28 March 2022.<sup>1</sup>

- 6 The Government's ambitions for literacy and numeracy are that by 2030:
  - a. 90% of primary school children will achieve the expected standard in reading, writing and maths, and the percentage of children meeting the expected standard in the worst performing areas will have increase by a third.
  - b. In secondary schools, the national GCSE average in both English language and maths increases from 4.5 to 5.
- 7 The Schools White Paper outlined four objectives to achieve these ambitions:
  - a. To provide an excellent teacher for every child;
  - b. To provide high standards of curriculum, behaviour and attendance;
  - c. To provide targeted support for every child who needs it;
  - d. To create a stronger and fairer school system.
- 8 The Bill is intended to support the aims of the Schools White Paper through legislation, where it is required.

## Children not in school consultation

- 9 The Government aims to support the right of parents to elect to educate their child at home. Many parents who educate their children at home provide a high-quality education and do so in the best interests of their child.
- 10 Local authorities have expressed concerns that not all children educated at home are being educated properly or having their needs met. With evidence suggesting increasing numbers of children are being home educated for reasons other than a commitment to home education, particularly throughout the Covid-19 pandemic, there is a greater need for local authorities to be able to identify these children to ensure that suitable education is being provided.
- 11 Between April and June 2019, the Department for Education's Children Not in School consultation sought views on proposals for creating a local authority register of children not attending school and a duty on local authorities to provide support to home-educating families.
- 12 The consultation response, published on 3 February 2022, provided a response to these views, and reasserted the Department for Education's commitment to a form of local authority administered register for children not in school.<sup>2</sup>
- 13 The consultation response outlined the Department for Education's intentions to implement at the earliest opportunity a duty on:
  - a. local authorities to:
    - i. keep a register of all eligible children of compulsory school age in their area who are not registered pupils at a state or independent school.

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<sup>1</sup> 'Opportunity for All: Strong schools with great teachers for your child' 28 March 2022  
<https://www.gov.uk/government/publications/opportunity-for-all-strong-schools-with-great-teachers-for-your-child>

<sup>2</sup> 'Children Not in School Government response to consultation' 3 February 2022  
<https://www.gov.uk/government/consultations/children-not-in-school>

- ii. provide support to home educating families where it is requested.
  - b. parents of eligible children to supply information to populate such a register.
  - c. certain providers of out of school settings to supply information on relevant children when requested.
- 14 The Bill is intended to take forward the proposals outlined in the consultation.

## Regulating Independent Educational Institutions consultation

- 15 The Department for Education has consulted on a number of related proposals for legislation which would affect independent schools and also some education settings which are neither state funded nor currently registered with the Department as independent schools, although they are attended full-time by children of compulsory school age. This includes some faith groups as well as many other settings.
- 16 The consultation was first published on 14 February 2020 but was suspended on 7 May 2020 due to the Covid-19 pandemic. It was relaunched on 13 October 2020 and closed on 27 November 2020.
- 17 A commitment to consult on proposals, outlined below, was included in a statement by the then Parliamentary Under-Secretary of State for the School System, Lord Agnew of Oulton, in March 2018.
- 18 In summary, the proposals were:
- a. Expanding on the categories of full-time institutions that will be regulated in the same way that independent schools are currently regulated and defining “full-time”.
  - b. Changing the basis for how some appeals against de-registration enforcement action, under the Education and Skills Act 2008, are determined by the court.
  - c. Revision of the system for making changes to the registered details of independent educational institutions.
- 19 Following consideration of responses to this consultation, the Department committed to take forward the proposals when a suitable legislative opportunity arose. This commitment was made on 6 May 2022.<sup>3</sup> The Bill is intended to take forward the proposals outlined in the consultation.

## Fair school funding for all: completing our reforms to the National Funding Formula consultation

- 20 The Government aims to allocate funding on a consistent basis of schools’ and pupils’ needs and characteristics.
- 21 The Department has consulted with stakeholders in the education sector throughout the process of designing and implementing a “soft” schools national funding formula (NFF) in 2018-19 and transitioning to a “direct” NFF.

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<sup>3</sup> ‘Regulating independent educational institutions Government response to consultation’, 6 May 2022  
<https://www.gov.uk/government/consultations/regulating-independent-educational-institutions>

- 22 Between July and September 2021, the Department's *Fair school funding for all: completing our reforms to the National Funding Formula* consultation sought views on proposals to move to a "direct" NFF. This means that the Department would determine funding allocations for schools directly through a single national formula, without adjustment through local authority funding formulae. The consultation also sought views on the approach to completing proposed reforms to the NFF and how most effectively to transition away from schools' funding allocations being determined by local formulae.
- 23 The consultation response, published on 28 March 2022, committed to introducing legislation to implement a direct NFF for mainstream state-funded schools in England.<sup>4</sup>
- 24 The Department also committed to go back to the sector in Spring 2022 for further views on detailed proposals regarding the direct NFF's implementation.
- 25 The Bill is intended to introduce a directly applied national funding formula as outlined in consultations.

## Teacher Misconduct: regulating the teaching profession consultation

- 26 The Department has consulted on proposed changes to the teacher misconduct regulatory regime. The arrangements for regulating the teaching profession are intended to safeguard pupils and students and uphold high standards of teacher conduct.
- 27 The consultation, *Teacher Misconduct: regulating the teaching profession*, was first published on 1 February 2022 and closed on 14 March 2022.
- 28 In summary, the proposals were:
  - a. To broaden the scope of the teacher misconduct regime to include persons who commit misconduct when not employed as a teacher, but who have previously carried out teaching work in a relevant setting.
  - b. To broaden the scope of the teacher misconduct regime to include a wider range of relevant education settings, including post-16 and online providers.
  - c. To enable the Secretary of State to consider referrals of serious teacher misconduct regardless of how the matter comes to their attention.
- 29 Following consideration of the responses to the consultation, the Department committed to take forward those proposals when a suitable legislative opportunity arose. This commitment was made on 29 April 2022.<sup>5</sup> The Bill is intended to take forward the proposals outlined in the consultation.

## School attendance: improving consistency of support consultation

- 30 Following concerns from parents, schools and local authorities on the inconsistency of school attendance support and management provided by schools and local authorities to families

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<sup>4</sup> 'Fair school funding for all: completing our reforms to the National Funding Formula Government response to consultation', 28 March 2022, <https://www.gov.uk/government/consultations/fair-school-funding-for-all-completing-our-reforms-to-the-national-funding-formula-full-publication-update-history>

<sup>5</sup> 'Teacher misconduct: regulating the teaching profession Government response to consultation', 29 April 2022, <https://www.gov.uk/government/consultations/teacher-misconduct-regulating-the-teaching-profession>

across England, the Department consulted on a number of proposals for legislation to address this.

- 31 The consultation, *School attendance: improving consistency of support*, was first published on 25 January 2022 and closed on 28 February 2022.
- 32 In summary, the proposals were:
  - a. To require schools to have an attendance policy and have regard to statutory guidance on the expectations of schools, academy proprietors and governing bodies of maintained schools on attendance management and improvement.
  - b. To introduce guidance on the expectations of local authority attendance services.
  - c. To create a clearer, more consistent national framework for the use of attendance legal intervention, including a new regulatory framework for issuing fixed penalty notices for absence.
  - d. To bring the rules for granting leave of absence in academies in line with other state funded schools.
- 33 Following consideration of responses to this consultation, the Department committed to take forward these proposals when a suitable legislative opportunity arose. This commitment was made 6 May 2022.<sup>6</sup> The Bill is intended to take forward the proposals outlined in the consultation.

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<sup>6</sup> 'School attendance: improving consistency of support Government response to consultation', 6 May 2022  
<https://www.gov.uk/government/publications/school-attendance-consultation-response>

## Legal background

34 The following significant legislation is referenced by the Bill. Explanation on how previous legislation is referenced, if required, is given in the commentary on provisions in the Bill:

- [Academies Act 2010](#)
- [Children Act 1989](#)
- [Childcare Act 2006](#)
- [Childcare Act 2016](#)
- [Children and Families Act 2014](#)
- [Children and Young Persons Act 2008](#)
- [Education Act 1996](#)
- [Education Act 2002](#)
- [Education Act 2005](#)
- [Education and Inspections Act 2006](#)
- [Education and Skills Act 2008](#)
- [Police and Criminal Evidence Act 1984](#)
- [Reverter of Sites Act 1987](#)
- [School Standards and Framework Act 1998](#)
- [Schools Sites Act 1841](#)

35 The Bill also alters the contractual relationship between academy proprietors and the Secretary of State. This relationship takes the form of academy agreements which have been entered into pursuant to section 1 of the Academies Act 2010. Clauses 2, 17 and 45 of the Bill make certain provisions of those academy agreements void where corresponding provision is being made in the Bill.

## Territorial extent and application

- 36 Clause 67 sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill once enacted would form part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.
- 37 All provisions of the Bill extend to England and Wales and apply only in England except as set out in paragraph 38 below.
- 38 The power in clause 66(2) to make provision consequential on this Act may be exercised in respect of an enactment that applies in both England and Wales.
- 39 The following provisions of the Bill make amendments to provisions which apply in both England and Wales:
  - a. Clause 28 amends sections 104 and 109 of the School Standards and Framework Act 1998.
  - b. Paragraphs 3, 4, 6, 8, 9, 10, 11 and 13 of Schedule 3 make consequential amendments to the School Standards and Framework Act 1998.
  - c. Paragraph 2 of Schedule 4 makes consequential amendments to the Education Act 1996.
- 40 These amendments preserve the provisions as they apply in Wales where a provision is to be amended or repealed in England only.
- 41 See Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

# Commentary on provisions of Bill

## Part 1: Academies

42 The clauses in this part make changes that affect academies and academy proprietors. This includes changes to the regulatory framework, through introducing statutory academy trust standards and new powers to intervene in failing academy proprietors. This part makes provision relating to matters affecting faith-based academies, including in relation to governance arrangements and the teaching of religious education and collective worship. There are provisions relating to the transfer of land when an academy moves to a new site, affecting local authorities and some charitable land trusts. Provisions are also included to designate academy grammar schools and set out the process for removing a grammar academy's selective status. This part also introduces the power for a local authority to apply to the Secretary of State for an Academy Order to convert some, or all, of its maintained schools into academies.

## Academies regulation

### Clause 1: Academy standards

- 43 This clause gives the Secretary of State the power by regulations to set standards for academies or for types of academies. It gives examples of the sort of standards which may be set in those regulations and the mechanisms through which the Secretary of State would be able to use statutory measures to respond to non-compliance with the standards.
- 44 Subsection (1) would empower the Secretary of State to set standards for academies and it would allow these standards to be differentiated according to the type of academy, such as a mainstream or special academy, an alternative provision academy or a 16-19 academy.
- 45 Subsection (2) provides examples of the sort of standards which may be set.
- 46 Subsection (3) would require the proprietor of an academy to meet any standards applicable to the academy, subject to clause 2(3).
- 47 Subsection (4) would allow a standard to refer to, and to be met in accordance with, whether a proprietor of an academy has had regard to guidance issued, or a document published, by the Secretary of State.
- 48 Subsection (5) would allow a standard to be set ensuring that the proprietor of an academy (being either an individual or a body of persons) must be a fit and proper person (or persons) to be involved in the running of an academy, in the opinion of the Secretary of State. Where a proprietor is a body of persons, it would also allow a standard to be set requiring prior notification to the Secretary of State before such a person, or member of that body took up their role
- 49 Subsection (6)(a) would ensure that a standard may not be set in relation to the provisions in this Bill which concern the designation of academy grammar schools and about the procedure for determining selective admission arrangements. Subsection (6)(b) contains similar provision in relation to an academy that has a religious character by prohibiting the academy standards from making provision about arrangements for collective worship and about the provision of religious education at that academy. In addition, subsection (6)(c) would prevent the setting of academy standards in relation to an academy with a religious character where the standard is about the provision to be contained in an academy proprietor's articles of association and that provision is about securing the character of the academy by reflecting the

tenets of its designated religion or religious denomination, or those that secure that an academy is conducted in accordance with any trust deed affecting the academy.

- 50 Subsection (7) would empower the Secretary of State to confer functions on a person for the purposes of assessing and monitoring compliance with an academy standard.
- 51 Subsection (8) signposts to clauses 5 to 19 providing for the consequences when an academy standard is not met.

## Clause 2: Academy standards: relationship with contractual agreements

- 52 This clause provides the mechanism through which the academy standards would supersede any corresponding provisions in academy agreements or master agreements made between an academy proprietor and the Secretary of State.
- 53 Subsection (1) would ensure that clauses in an academy agreement and master agreement (whether an existing or future agreement) that purport to impose a requirement on the proprietor of an academy that corresponds to a standards requirement would be void.
- 54 Subsection (2) would define what ‘corresponds’ to a standards requirement. It means that a requirement in an academy agreement or master agreement that relates to the same subject matter, and that is broadly equivalent in nature and application, to a standards requirement corresponds to it and would be void.
- 55 Subsection (3) would allow a standards requirement to be subject to an alternative requirement set out in an academy agreement or master agreement, if regulations so provide,
- 56 Subsection (4) would prevent an alternative requirement that is set out in an academy agreement or master agreement from being voided because it corresponds to a standards requirement, if the alternative requirement is prescribed in regulations.
- 57 Subsection (5) would apply to all academy agreements and to all master agreements entered into before the clause takes effect. It would modify those agreements, where necessary, so that clause 1 applies to them.
- 58 Subsection (6) would prevent this clause from applying to a secure 16 to 19 academy as that type of institution would be defined in section 1B of the Academies Act 2020.
- 59 Subsection (7) would define ‘requirement’ as including a prohibition, or a restriction, and it would define a ‘standards requirement’ as an academy standard set under clause 1(3).

## Clause 3: Academies: power to apply or disapply education legislation Schedule 1: Application of maintained school legislation to academies

- 60 This clause would allow the Secretary of State to apply existing provisions in primary legislation that relate to other educational institutions to an academy, and to stop provisions which relate both to academies and other educational institutions from applying to an academy. It would also allow such application or disapplication to be made, subject to prescribed modifications.
- 61 Subsection (1)(a) would enable the Secretary of State to make regulations that would apply any relevant provision relating to another educational institution to an academy, with or without prescribed modifications.
- 62 Subsection (1)(b) would, in the case of any relevant provision applying to both another educational institution and to an academy, enable the Secretary of State to cease that enactment applying to an academy or to apply it to an academy, with modifications. The clause would allow for variations according to categories of academy.

- 63 Subsection (2) would enable regulations made under subsection (1) to amend, repeal or revoke any relevant provision. ‘Relevant provision’ is defined in sub-section (5) as meaning provision contained in either subordinate legislation made before this Bill becomes an Act, in an Act passed before this Act, in an Act passed later in the same session of Parliament as this Act, or in Schedule 1 to this Bill.
- 64 Subsection (3) would protect the status of an academy that is designated as a grammar school by prohibiting regulations made under subsection (1) from making provision about that designation and about the procedure for determining selective admission arrangements. It would protect the status of an academy that has a religious character by prohibiting regulations made under subsection (1) from making provision about arrangements for collective worship and about the provision of religious education at that academy. In addition, it would prohibit regulations made under subsection (1) from making provision about the content of an academy proprietor’s articles of association, or a scheme of delegation, where those provisions are for the purpose of securing the religious character of an academy or ensuring the academy is conducted in accordance with its trust deed.
- 65 Subsection (4) would introduce Schedule 1 which apply certain provisions about educational institutions to Academies or, in other cases, which would disapply Academies from such provisions.
- 66 Subsection (5) would define ‘educational institution’ as a school, an independent educational institution, a provider of further education or certain providers of early years provision, irrespective of whether the institution also provides other forms of education or care. Subsection (5) would also define ‘relevant enactment’ as an enactment made before the Schools Bill becomes an Act, and any Act made during the same session of Parliament in which the Schools Bill became an Act.
- 67 Schedule 1 is introduced by clause 3(4).

#### Clause 4: Academies: guidance

- 68 This clause would require the proprietor of an academy to have regard to any guidance issued by the Secretary of State that relates to the academy standards, to the proprietor’s functions under any legislation, to the proprietor’s obligations under an academy agreement or master agreement and to any obligations under their articles of association.

#### **Part 1: Extension of Existing Provisions to Academies**

- 69 Part 1 concerns the application of existing legislation relating to maintained schools to Academies and to alternative provision Academies.
- 70 Paragraph 1 explains that paragraphs 2 to 18 would amend the Education Act 1996.
- 71 Paragraph 2 would amend section 449 of the Education Act 1996, in the context of the activities for which maintained school governing bodies can charge, so that a new term of ‘relevant school’ would be inserted and defined as a maintained school, an academy school and an alternative provision academy.
- 72 Paragraph 3 would amend sections 450 and 451 of the Education Act 1996 so that the prohibition of charges for admission to, and the provision of education at, maintained schools is applied to ‘relevant schools’, which includes an academy and an alternative provision academy.
- 73 Paragraph 4 would introduce a new section 451A of the Education Act 1996 which prohibits charges for attendance at an academy or alternative provision academy, except where charges are permitted through regulations.

- 74 Paragraph 5 would amend section 452 of the Education Act 1996 so that the method set out in the Education Act 1996 for determining whether charges may be made for educational activities, for connected travelling time and for residential trips that span school hours and non-school hours would apply to 'relevant schools' instead of to maintained schools. This would mean that the method applies to a maintained school, to an academy and to an alternative provision academy.
- 75 Paragraph 6 would amend section 453 of the Education Act 1996, which currently applies to a maintained school so that the prohibition on charging for prescribed examinations, and the ability to recover wasted examination fees, would be applied instead to 'relevant school'.
- 76 Paragraph 7 would amend section 454 of the Education Act 1996 so that the prohibition on charging for incidental expenses at a maintained school instead applies to a 'relevant school'. This would mean that it would apply to a maintained school, to an academy and to an alternative provision academy.
- 77 Paragraph 8 would amend section 455 of the Education Act 1996 so that the power to charge for the provision of education if not prohibited, for public examinations if not prohibited, for transport if not prohibited and for board and lodging on residential trips is extended to 'a relevant school'. This would mean that it would apply to a maintained school, to an academy and to an alternative provision academy. It also includes any charge for attendance at an academy school which is prescribed in regulations as a permitted charge.
- 78 Paragraph 9 would amend section 456 of the Education Act 1996 so that the power to charge for optional extras, that is costs relating to books, accommodation and non-teaching staff, would be regulated in the same way at an academy as it is already at a maintained school.
- 79 Paragraph 10 would amend section 457 of the Education Act 1996 so that the duty applying to the governing body of a maintained school to have a charges and remissions policy, requirements about what such a policy must include and the requirement to not make a charge unless such a policy is in place is also applied to 'a relevant school'. This would mean that it would apply to a maintained school, to an academy and to an alternative provision academy.
- 80 Paragraphs 11 would amend the heading of section 458 of the Education Act 1996 to make it clear that the section relates to maintained schools.
- 81 Paragraph 12 would amend section 459 of the Education Act 1996 so that any regulations which may apply a duty to provide information about such matters as school hours and charging policies would apply to 'a relevant school'. This would mean that it would apply to a maintained school, to an academy and to an alternative provision academy.
- 82 Paragraph 13 would amend section 460 of the Education Act so that the power of a maintained school to request voluntary contributions for school activities would apply to 'a relevant school'. This would mean that it would apply to a maintained school, to an academy and to an alternative provision academy.
- 83 Paragraph 14 would amend section 461 of the Education Act 1996 so that certain debts due to a maintained school that are recoverable as civil debts would also be recoverable as civil debts by 'a relevant school'. This would mean it would apply to a maintained school, to an academy and to an alternative provision academy.
- 84 Paragraph 15 would introduce a new 461A of the Education Act 1996 to allow the Secretary of State to extend by regulations any provisions in Chapter 3 of Part 6 of that Act, (which would concern charges in connection with education at a maintained school an academy school or an alternative provision academy), to a 16 to 19 academy, with or without modifications.

- 85 Paragraph 16 would make necessary amendments section 462 (interpretation of Chapter) of the Education Act 1996 so that the term 'appropriate body' encompasses the governing body of a maintained school or an academy proprietor and makes other amendments consequent on that.
- 86 Paragraphs 17 and 18 would amend the heading of Chapter 3 of Part 6 of the Education Act 1996 and makes a minor consequential amendment to section 569 of the Education Act 1996.
- 87 Paragraph 19 would omit section 1(9) of the Academies Act 2010 to remove the requirement that academy arrangements prohibit charging for admission, attendance or education. This is because the same prohibition would be continued, but through paragraphs 1 to 18 of Schedule 1.
- 88 Paragraph 20 explains that Chapter 2 of Part 9 of the Education Act 1996 would be amended by paragraphs 21 to 25.
- 89 Paragraph 21 would amend section 512 of the Education Act 1996 so that the power of a local authority to provide milk, meals and other refreshments to any pupils registered at a school maintained by it and their duty to provide lunches free of charge in certain cases is extended to the proprietor of an academy school or alternative provision academy both for pupils who are on the roll of the academy and for people who are not on its roll but receive education there.
- 90 Paragraph 22 extends local authority powers to charge in section 512ZA of the Education Act 1996 to academy proprietors.
- 91 Paragraph 23 would amend section 512ZB of the Education Act 1996 so that where a local authority or an academy proprietor provides milk, meals, lunches other refreshments to pupils eligible for free school meals at a maintained school, an academy or an alternative provision academy respectively, the duty to charge only at cost and to charge the same amount per pupil applies.
- 92 Paragraph 24 would omit section 512B of the Education Act 1996 to remove the requirement that academy arrangements must meet the same school lunches obligations as those applying to a maintained school. This is because the same requirements would be continued, but through paragraphs 20 to 26 of Schedule 1.
- 93 Paragraph 25 would make a minor consequential amendment to the heading of Chapter 2 of Part 9 of the Education Act 1996.
- 94 Paragraph 26 would amend section 114A of the School Standards and Framework Act 1998 so that the requirements that may be prescribed for the provision of food and drink at a school or elsewhere by a local authority or by a governing body may be extended to the proprietor of an academy school or an alternative provision academy.

*Provision of information and participation in international surveys*

- 95 Paragraph 27 explains that Chapter 4 of Part 9 of the Education Act 1996 would be amended by paragraphs 28 and 29.
- 96 Paragraph 28 would amend section 538 of the Education Act 1996 so that the requirement on a governing body of a maintained school to provide to the Secretary of State such information as they may require is extended to the proprietor of an academy.
- 97 Paragraph 29 would amend section 538A of the Education Act 1996 so that the power of the Secretary of State to direct a maintained school to participate in international surveys is extended in scope to include the proprietor of an academy that is not a special academy.

- 98 Paragraph 30 explains that Part 2 of the Children and Young Persons Act 2008 would be amended by paragraphs 31 and 32.
- 99 Paragraph 31 would amend section 20 of the Children and Young Persons Act 2008 so that the statutory duty of a governing body of a maintained school to designate a member of staff to ‘promote’ the educational achievement of those pupils who are, or who have recently been, looked after by a local authority would be extended to the proprietor of an academy. Paragraph 31 would also make minor consequential amendments to section 20.
- 100 Paragraph 32 would amend section 20A of the Children and Young Persons Act 2008 to extend to an academy proprietor the statutory requirement for there to be a person designated as responsible for pupils who have ceased to be looked after by a local authority because of certain family court orders. Paragraph 32 would also make minor consequential amendments to section 20A.
- 101 Paragraph 33 would revoke section 2E of the Academies Act 2010, which requires academy arrangements to contain provision about having a staff member for looked after children. That requirement would be set by paragraphs 31 and 32.

## **Part 2: Exclusion of Academies from Existing Legislation**

- 102 Paragraphs 34 explains that paragraphs 35 and 36 would amend the Education Act 2002.
- 103 Paragraph 35 would amend section 133 of the Education Act 2002 making clear that regulations imposing a requirement for certain work only to be undertaken by a qualified teacher does not extend to an academy.
- 104 Paragraph 36 would amend section 175 of the Education Act 2002 so that the duty on the proprietor of a 16 to 19 academy to exercise their functions with regard to children’s safeguarding and welfare no longer applies.

### *Independent educational institutions*

- 105 Paragraph 37 explains that Chapter 1 of Part 4 of the Education and Skills Act 2008 would be amended by paragraphs 38 to 42.
- 106 Paragraph 38(1) would amend the Education and Skills Act 2008 to insert a new section 93B that would apply specific provisions of that Chapter to Academies. These specific provisions relate to the introductory matters, to the registration of independent schools, to the prohibition of certain people from being involved in the management of an independent educational institution and to interpretation.
- 107 Paragraph 38(2) would disapply in relation to Academies all references in the Chapter to independent educational institutions, except those listed under paragraph 38(1).
- 108 Paragraph 38(3) explains that provision in relation to the regulation of Academies, and in relation to the Secretary of State’s enforcement (intervention) powers, is set out in Part 1 of this Bill.
- 109 Paragraph 39 would introduce a new section 100A to the Education and Skills Act 2008 providing that the Secretary of State must register an academy as an independent school upon its conversion to academy status or, there is no conversion date, whenever academy arrangements first take effect. It would also empower the Secretary of State to de-register an academy if academy arrangements are no longer in place. Paragraph 40 would amend section 108 of the Education and Skills Act 2008 to remove the Chief Inspector’s duty to inspect an academy against the independent school standards at prescribed intervals.

110 Paragraph 41 would amend section 111 of the Education and Skills Act 2008 so that the provisions as to fees which may be charged for an inspection by Ofsted no longer refer to an academy.

111 Paragraph 42 would omit sections 6(5) and (6) of the Academies Act 2010 so that there is no reference to the independent school standards being met on the conversion date, as those standards are disapplied in relation to an academy school or alternative provision academy by this Bill.

## **Academy proprietors: Secretary of State's intervention powers**

### **Clause 5: Powers to give compliance directions**

112 This clause would create a new power for the Secretary of State to issue compliance directions requiring academy proprietors to take specific actions or not to take specific actions to ensure compliance with certain statutory duties.

113 Subsection 1 sets out when a compliance direction may be issued. Subsection 1(a) provides that compliance directions may be issued when a proprietor has breached or is likely to breach any duty prescribed in regulations or an academy agreement or master agreement. Subsection 1(part b) provides that compliance directions may also be issued when a proprietor has acted or is proposing to act unreasonably in relation to the performance of these duties.

114 Subsection (5) relates to non-compliance with the faith governance regulations, which the Secretary of State must or may make under clause 19 or 20. Where the Secretary of State proposes to give or withdraw a compliance direction to an academy trust for failure to comply with a duty under those faith governance regulations, subsection (5) requires the Secretary of State to consult the relevant religious body for each academy school with a religious character in the academy trust before giving or withdrawing the direction. This engagement could be used in practice to identify where a particular trust has agreed alternative governance arrangements. For example, there may be cases where an academy trust has different governance arrangements, approved by their religious body, to those that may be set out in regulations, for example where a trust deed requires different governance arrangements to those required under the regulations, and the relevant religious body may make the Secretary of State aware.

115 Subsection 7 cross-refers to the provision in clause 8 enabling the Secretary of State to terminate the academy agreement or master agreement where a proprietor fails to comply with a compliance direction.

### **Clause 6: Powers to give notice to improve**

116 This clause provides a power to the Secretary of State to give a statutory notice to improve to an academy proprietor.

117 Subsection 1 provides that a notice to improve may be given to a proprietor if it is in breach of a statutory duty, or due to weaknesses in its governance procedures or in the management of the academies within its care.

118 Subsection 2 requires the Secretary of State to specify in a written notice the weaknesses identified and to provide a date by which those weaknesses must be addressed. Subsection 4 provides that the Secretary of State must give the proprietor an opportunity to make representations before the notice takes effect.

119 Subsection 5 is a power to make regulations providing for certain financial restrictions to automatically apply whilst a proprietor is subject to a Notice to Improve. These restrictions

may require the proprietor to obtain the Secretary of State's consent for transactions, agreements, payments or financial decisions of a prescribed description.

120 Subsection 6 provides that the Notice to Improve may also specify further transactions, agreements, payments, or other financial decisions of specified descriptions for which the proprietor must seek consent in addition to those provided for in the regulations.

121 Subsection 10 (a) provides that if a proprietor which is subject to a Notice to Improve shows to the Secretary of State's satisfaction that the weaknesses identified in the notice have been addressed, then the Notice to Improve no longer has effect. Subsection 10 (b) also requires that the Secretary of State notify the proprietor in writing that the Notice to Improve has been satisfied, and where the Notice to Improve has been published, must also publish a confirmation that the Notice to Improve has been satisfied.

## Clause 7: Powers to appoint or require appointment of directors and Schedule 2:

### Academy proprietors: Interim Trustees

122 This clause allows the Secretary of State to direct proprietors to appoint additional individual directors to academy boards, and to appoint a board of interim trustees.

123 Subsection 1 provides that the Secretary of State may exercise their powers to appoint or require the appointment of directors when a proprietor has failed to satisfy a Notice to Improve in the required time, when there has been a serious breakdown in the proprietor's governance procedures or in the management of academies in its care, or when the safety of pupils or staff at an academy in its care is threatened.

124 Subsections 2 (a) and (b) provide that the Secretary of State may direct a proprietor to, by a specified date, appoint a specific individual as a director or to appoint a director with specified skills or experience. Subsection 2(c) provides that the Secretary of State may serve an interim trustee notice which replaces the board with an interim trustee board.

125 Subsection 3 provides that additional directors or interim trustees appointed under this power may be remunerated for their services. Subsection 3(c) provides that directors appointed by this power can only be removed with the approval of the Secretary of State. Subsection 4 refers to Schedule 2 which provides further detail on the appointment, removal and remuneration of interim trustees.

126 Subsection 5 refers to the consequences of non-compliance with a direction under this section.

127 Schedule 2 contains detailed provision on the appointment, removal and remuneration of interim trustees and the duration of the interim trustee period.

## Academy agreements and master arrangements: termination

### Clause 8: Termination of Academy agreement with seven years' notice

128 Clause 8 provides that either the proprietor or Secretary of State may terminate the Academy agreement by giving seven years' notice.

### Clause 9: Termination of Academy agreement where Academy is failing

129 Subsection 1 provides that the Secretary of State may terminate an academy agreement if special measures are required to be taken in relation to the academy, or if the academy requires significant improvement.

130 Subsection 3 requires the Secretary of State to give the proprietor the opportunity to make representations prior to termination of the academy agreement.

## Clause 10: Termination of Academy agreement in cases of insolvency

131 Subsection 1 provides that a proprietor may terminate an academy agreement if the cost of managing the academy for the following year would make the proprietor insolvent.

132 Subsection 2 provides that regulations may provide a procedure for proprietors to follow when terminating or proposing to terminate an agreement

## Clause 11: Termination of master agreement on change of control or insolvency event

133 This clause enables the Secretary of State to terminate a master agreement in the event of a change of control of the proprietor or of an insolvency event occurring.

## Clause 12: Termination of Academy agreement or master agreement after failure to address concerns

134 This clause provides that the Secretary of State may terminate the master agreement or an academy agreement if the proprietor has failed to address concerns the Secretary of State has identified through earlier interventions.

135 Subsection 2 enables termination by the Secretary of State if the proprietor has failed to comply with a direction or satisfy a Notice to Improve.

136 Subsection 3 enables termination by the Secretary of State if the proprietor has failed to comply with the consent requirements under a Notice to Improve, for the proprietor to gain consent for specified decisions.

137 Subsection 4 enables termination by the Secretary of State if the proprietor has failed to comply with a direction to appoint a director or directors under clause 8.

138 Subsection 5 enables termination by the Secretary of State if an interim trustee period has ended and the proprietor has not addressed the concerns which led to the appointment of the interim trustee board.

139 Subsection 6 provides that the Secretary must give the proprietor an opportunity to make representations before terminating the academy agreement or master agreement

## Clause 13: Termination of Academy agreement or master agreement following warning notice

140 Subsection 1 provides that the Secretary of State may terminate an academy agreement or master agreement with a proprietor if a termination warning notice has been issued and the proprietor has failed to meet the requirements of that notice.

141 Subsection 2 provides that a termination warning notice is a notice issued by the Secretary of the State to the proprietor, requiring the proprietor to take a specified action by a specified date, and respond to the Secretary of State either by making representations or agreeing to that action by a specified date.

## Clause 14: Termination warning notices: Academy agreements

142 This clause sets the circumstances in which the Secretary of State may issue a termination warning notice in relation to an academy agreement.

143 Subsection 2 provides that the Secretary of State may issue a termination warning notice if the proprietor has breached a provision of the academy agreement or master agreement.

144 Subsection 3 provides that the Secretary of State may issue a termination warning if the proprietor has failed to comply with a requirement imposed in association with a Notice to Improve.

145 Subsection 4 provides that the Secretary of State may issue a termination warning notice if they are satisfied there is a serious breakdown in governance or if safety of pupils or staff is threatened.

146 Subsection 5 provides that the Secretary may issue a termination warning notice if they consider the standards of performance are unacceptably low and sets out the factors which must inform this consideration. Subsection 6 provides that the Secretary of State may issue a termination warning notice if the academy is coasting, and the Secretary of State has notified the proprietor that the academy is coasting. Coasting is defined in the regulations made under section 60B(3) of the Education and Inspections Act 2006.

147 Subsection 7 applies to 16-19 academies and provides that the Secretary of State may issue a termination warning notice where the Chief Inspector has inspected the academy and considers that the quality of education or training it provides is not adequate.

148 Subsection 8 applies to academies with boarding provision and provides that the Secretary of State may issue a termination warning notice either where the Chief Inspector has notified them of a welfare failure in the provision or the proprietor is failing to meet one of the national minimum standards applying to boarding schools.

### Clause 15: Termination warning notices: master agreements

149 Subsection 1 provides that the Secretary of State may issue a proprietor with a termination warning notice in relation to the master agreement if the proprietor has breached a provision in the master agreement, or if they are satisfied there is a serious breakdown in governance procedures, or if the safety of pupils or staff is threatened at an academy in the proprietor's care.

### Clause 16: Termination of Academy agreement after termination of master agreement

150 This clause provides that when the Secretary of State terminates a master agreement with a proprietor, all academy agreements with that proprietor are terminated on the same date.

### Clause 17: Termination: contractual and other rights

151 Subsection 1 provides that termination rights in academy agreements or master agreements are void.

152 Subsection 2 provides a list of exceptions to subsection 1. A termination right in an academy agreement is not affected if it can only be exercised where planning consents have not been obtained or leases of land not entered into within the timelines of the agreement; where the Secretary of State considers that the pupil numbers are too low for the academy to be financially viable, or when the academy has not yet opened.

153 Subsection 5 provides that academy Agreements and master agreements are modified to give full effect to clauses 8-16.

### Clause 18: Termination: consequential amendments

154 This clause repeals sections 2A to 2D of the Academies Act 2010 which deal with termination of funding agreements.

## Academy schools with a religious character

### Clause 19: Requirement to make regulations about governance

155 This clause requires the Secretary of State to specify in regulations provisions that a relevant academy proprietor must include in its articles of association in certain circumstances. This

provision mirrors, as far as possible, provisions for voluntary aided maintained schools in section 19(4) of the Education Act 2002.

156 Subsections (2) and (3) provide the definition of a relevant academy proprietor and relevant academy school for this section. For example, in practice, this would include a single academy trust with one academy that, prior to conversion to an academy, was a voluntary aided maintained school with a religious character. It would also include a multi academy trust, which, for example, has four schools and two or more of those schools are of any type listed in subsection (3).

157 Subsection (4) specifies the provisions the Secretary of State must make in regulations under this clause.

158 Subsection (4)(a) requires that a majority of directors are appointed for the purposes listed.

159 Subsection (4)(b) ensures that a majority of members are appointed by, or represent the interests, of the relevant religious body/bodies. A 'relevant religious body' is defined in clause 31(1). Therefore, in practice, for an academy school which has a Roman Catholic designation, this could include members appointed by the bishop of the Roman Catholic Diocese in which the school is situated.

## Clause 20: Power to make regulations about governance

160 Subsection (1) gives the Secretary of State a regulation making power to specify provisions that must be contained in the articles of association or schemes of delegation of a relevant academy proprietor.

161 Subsection (2) provides the definition of a relevant academy proprietor for this section. In practice, it means an academy trust with one or more academy schools with a religious character.

162 Subsection (3) includes some examples of what may be specified in the regulations.

163 Subsection (4) provides that the purpose of the regulations must be either to secure as far as practicable that: the religious character of the academy reflects the tenets of the relevant religion or religious denomination; or the academy is conducted in accordance with any trust deed affecting the academy. In relation to this second purpose, some academies with a religious designation have a trust deed which is made between those that hold (own) the land and buildings of the school, and the academy proprietor's board of directors. A trust deed stipulates the principles and legal conditions under which the institution was established and should be run, including in relation to the religious character of the school.

164 Subsection (5) sets out the Secretary of State's consultation obligations for the regulations. It means that the Secretary of State must consult persons they consider appropriate before making the first set of regulations. The same consultation requirement applies to any subsequent regulations made under this clause unless the Secretary of State considers the changes made by those regulations are minor or technical.

165 Subsection (6) defines what a 'scheme of delegation' is for the purposes of this section.

## Clause 21: Worship

166 This clause relates to collective worship in academy schools with a religious character. This clause mirrors as far as possible provisions for maintained schools designated with a religious character in sections 70 and 71 and paragraphs 1, 2 and 5 of Schedule 20 of the School Standards and Framework Act 1998.

- 167 Subsection (1) states that each pupil at an academy school with a religious character must take part in an act of collective worship each school day.
- 168 Subsection (2) sets out the role of the proprietor and the principal of the academy school with a religious character in ensuring that subsection (1) is complied with.
- 169 Subsection (3) states that the collective worship must be practised in accordance with any trust deed relating to the academy school or, if there is no such provision in a trust deed, practised in accordance with the practices and tenets of the school's religion or denomination.
- 170 Subsection (4) sets out how provision of collective worship required under subsection (1) may be arranged.
- 171 Subsection (5) provides that the arrangements for collective worship should be made by the academy proprietor after consulting the principal of the academy school.
- 172 Subsection (6) specifies that collective worship required under subsection (1) must take place on the premises of the academy school.
- 173 Subsection (7) provides that, on a special occasion, an act of collective worship required under subsection (1) may take place somewhere other than the school premises if the proprietor, after consultation with the principal, thinks it is appropriate to do so. In practice, this could include a place of worship, such as, for Christian academy schools, a Church.

## Clause 22: Religious education

- 174 This clause relates to religious education in academy schools with a religious character. It sets out some overarching provisions that apply to all academy schools with a religious character. Further requirements for religious education in different types of academy school with a religious character are set out in clauses 23 and 24.
- 175 Subsection (1) specifies the role of the proprietor and the principal of an academy school with a religious character in ensuring that religious education is provided to all pupils.
- 176 Subsection (2) provides that the religious education required under subsection (1) is to be under the control of the proprietor unless provisions in clauses 23 or 24 require otherwise.
- 177 Subsection (3) provides that where a school's trust deed gives a bishop or other ecclesiastical or denominational authority the authority to decide whether the school's religious education is in accordance with the provisions of the trust deed, they must follow the provisions of the trust deed in making that decision. An ecclesiastical or denominational authority could be, for example, a bishop. This subsection mirrors, as far as possible, provisions for maintained schools designated with a religious character in section 399(1) of the Education Act 1996.

## Clause 23: Religious education: former foundation or voluntary controlled schools

- 178 This clause mirrors, as far as possible, provisions for foundation or voluntary controlled maintained schools designated with a religious character, principally in paragraphs 1 and 3 of Schedule 19 to the School Standards and Framework Act 1998.
- 179 Subsection (1) states that this clause relates to the provision of religious education in academy schools which converted from a foundation or voluntary controlled school with a religious character. The exception is if such an academy has been redesignated with a different religious character since becoming an academy (see clause 31(1) for the definition of 'redesignated').
- 180 Subsections (2) and (3) specify the arrangements for religious education in these academy schools.

181 The reference to 'agreed syllabus' in subsection (2) is a document drawn up by a local authority appointed Standing Advisory Council on Religious Education which details the religious education content to be taught.

#### Clause 24: Religious education: other Academies

182 The clause mirrors, as far as possible, provisions for other maintained schools designated with a religious character, principally in paragraphs 1 and 4 of Schedule 19 to the School Standards and Framework Act 1998.

183 Subsection (1) sets out the academy schools with a religious character that this clause applies to.

184 Subsections (2) and (3) specify the arrangements for religious education in these academy schools. Such schools will nearly always provide their religious education in accordance with any provisions of a trust deed relating to the school or, where provision for religious education is not made by such a trust deed, in accordance with the tenets of the religious or religious denomination specified in the order that designates the school as having a religious character. Exceptionally, where a parent asks to withdraw their pupil from this type of religious education, the school would either make arrangements to provide religious education in accordance with the agreed syllabus itself or would ask the local authority to do so. An agreed syllabus is a document drawn up by a local authority appointed Standing Advisory Council on Religious Education which details the religious education content to be taught.

185 Subsection (4) states that there is no obligation on the academy proprietor to provide religious education in accordance with the agreed syllabus for parents that wish their child to have it and the local authority must provide it where the academy proprietor is not willing to provide it.

186 Subsection (5) specifies at what times religious education under subsection (3) must be provided in the school.

#### Clause 25: Special arrangements for worship and religious education

187 This clause relates to the withdrawal of pupils from religious education and collective worship and the provision of alternative religious education and worship if requested. The clause mirrors as far as possible provisions for maintained schools designated with a religious character, principally in section 71 of the School Standards and Framework Act 1998.

188 Subsections (1) and (2) specify the circumstances in which a pupil in an academy school with a religious character may be wholly or partially excused from collective worship.

189 Subsection (3) specifies that a parent of a pupil at an academy school with a religious character may request that the pupil be wholly or partly excused from religious education, and that the pupil would be excused as requested until the request is withdrawn.

190 Subsections (4) and (5) specify the conditions under which a pupil excused from religious education may be withdrawn from the school for the purposes of receiving religious education through alternative arrangements.

191 Subsections (6) and (7) set out the obligations on academy proprietors to make arrangements, if requested, permitting boarding pupils to receive religious education or attend worship outside of school hours or on days exclusively set for religious observance. In practice, for Jewish pupils, this could include attending the Jewish Sabbath from dusk on Friday to Saturday.

192 Subsection (8) provides that proprietors must make arrangements to facilitate religious education or collective worship under subsection (6) or (7) on the school premises but they are not required to meet the associated costs from their own budget.

193 Subsection (9) provides a definition of “sixth-form pupil” for this section.

## Clause 26: Inspection of arrangements for worship and religious education

194 This clause provides for the inspection of collective worship and denominational education in academy schools with a religious character. This inspection is separate and different to a school’s wider inspection. In this clause, there are various references to “prescribed”, which means prescribed by regulations to be made by the Secretary of State. This clause mirrors, as far as possible, provisions for maintained schools with a religious character, principally in sections 47 to 49 of the Education Act 2005.

195 Subsection (1) states that the proprietor of an academy school with a religious character must ensure that the content of collective worship and any denominational education is inspected.

196 Subsection (2) specifies that an inspection must be undertaken by a person chosen by the proprietor after the proprietor has consulted someone of a prescribed description. Regulations might provide, for example, that the proprietor must consult the relevant religious body for the academy school.

197 Subsection (3) requires inspections to be carried out at prescribed intervals.

198 Subsection (4) sets out the responsibilities of the person conducting the inspection of the academy school which are to report on the content of the collective worship and the quality of the denominational education. They may also report on the spiritual, moral, social and cultural development of pupils at the school.

199 Subsection (5) is self-explanatory.

200 Subsection (6) states that the inspection must take place within a prescribed period.

201 Subsections (7) and (8) set out the arrangements for preparing and sending a report of the inspection to an academy proprietor.

202 Subsection (9) sets out the obligation upon the proprietor to inform parents of pupils of the overall assessment set out in the inspection report.

203 Subsection (10) provides the definition of “denominational education” and “prescribed” under this section. The definition of “denominational education” means that religious education in an academy school with a religious character would need to be inspected unless it is provided by the school in accordance with any agreed syllabus adopted by the local authority. Collective worship in an academy with a religious character would always need to be inspected.

## Clause 27: Governance, worship and religious education: contractual provisions

204 This clause specifies that a provision in an academy agreement or master agreement is void if it is inconsistent with clauses 19 to 26 (namely provision relating to governance, collective worship, religious education, special arrangements for worship and religious education, and inspection of arrangements for worship and denominational education).

## Academies: other

### Clause 28: Academy grammar schools

- 205 This clause extends some of the existing arrangements that apply to maintained grammar schools, to academy schools which were maintained grammar schools prior to converting to academy status. In doing so, the clause provides the Secretary of State with the power to designate these selective academies as grammar schools. It also provides that selection may only be removed, and the designation revoked if a majority of eligible parents vote to remove selection in a ballot.
- 206 Subsection (1) states that subsections (2) to (5) amend Chapter 2 of Part 3 of the School Standards and Framework Act (SSFA) 1998 - the legislation that gives the Secretary of State the power to designate maintained grammar schools and prescribes the only means by which a grammar school's selective admission arrangements can be removed.
- 207 Subsection (2) amends section 104 of the SSFA, to include academies. Section 104 sets out the power of the Secretary of State to designate grammar schools.
- a. Subsection (2)(a) amends section 104(1) of the SSFA to state that the Secretary of State must, in England, designate a maintained school as a grammar school where they are satisfied that it had selective admission arrangements at the beginning of the 1997–98 school year. In practice, this would not alter the status of the maintained grammar schools already designated, nor permit new maintained grammar schools to open, but clarifies that there is a duty on the Secretary of State to designate schools with the specified characteristics, aligning subsection (2)(a) with (2)(b).
  - b. Subsection (2)(b) would insert new subsections (1A) and (1B). Subsection (1A) recites the current SSFA wording in relation to Wales, ensuring that the law relating to designating grammar schools in Wales remains unchanged. Subsection (1B) requires the Secretary of State to designate an academy school as a grammar school where the school – at the point of its conversion into an academy school - was a maintained school which was designated as a grammar school under Section 104(1). This regularises the status, in law, of the 143 academy schools that were formerly maintained grammar schools. It also provides a mechanism for the 20 maintained grammar schools which have yet to convert to academy status to remain designated as grammar schools when they convert under the Academies Act 2010.
  - c. Subsection (2)(c) seeks to extend section 104(4) of the SSFA to include academy grammar schools. In doing so, it has the effect of prescribing that selective admission arrangements can only be removed in England, in accordance with the procedures in sections 105 to 108 of the SSFA<sup>7</sup>.
  - d. Subsections (2)(d) and (2)(e) amend section 104(5)(a) and 104(6) of the SSFA, respectively. These amendments are consequential to the amendment made to section 104(1) to ensure that these sub-sections would correctly cross-reference the sections relating to maintained school grammar designation in England and Wales.

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<sup>7</sup> Section 105 states that selection can be removed by a ballot of eligible parents. Regulations – the Education (Grammar School Ballots) Regulations 1998 – set out the process for petitioning to remove selection and for calling for and conducting ballots. These regulations will be amended to include academy schools designated as grammar schools. Section 106 sets out which parents are eligible to sign a petition calling for a ballot or to vote in a ballot. The effects of sections 107 and 108 are set out in subsequent paragraphs of this explanatory note.

- e. Subsection 2(f) amends section 104(7) of the SSFA to add the definition of “academy school” for the purposes of Chapter 2 of Part 3 of the SSFA (“selection of pupils”). It defines an “academy school” as a school falling within section 1A(1) of the Academies Act 2010, which means any academy that is not a special academy, an alternative provision academy, or a 16-19 academy.

208 Subsection (3) amends section 107 of the SSFA which sets out restrictions on expenditure relating to petitions and ballots for the removal of selection. It adds “the proprietor of an academy”<sup>8</sup> to the list of persons to whom the restrictions set out in this section of the SSFA apply. The amendments mean that an academy proprietor cannot spend the publicly funded school’s budget on the publication of materials or any activities that seek to influence eligible parents in deciding whether or not to request a ballot to remove selection, nor to influence the outcome of a ballot. This is in line with requirements on governing bodies and local authorities in relation to maintained grammar schools.

209 Subsection (4) amends section 108 of the SSFA which requires that, where a simple majority of parents vote in a ballot to remove selection at a grammar school or schools, the admissions authority for the school(s) must remove the selective admission arrangements:

- a. it inserts a new subsection (2A)(a) which reiterates the current position and states that maintained grammar schools are required to amend their admission arrangements in accordance with sections 88C-88K and sections 89 and 90 of the SSFA (the processes for determining and varying admission arrangements for maintained schools within England and Wales);
- b. it inserts a new subsection (2A)(b) to require academy grammar schools to amend their admission arrangements in accordance with a provision of any enactment, or of an academy agreement or master agreement, that applies to an academy school and has the same or a similar effect as sections 88C to 88K. Sections 89 and 90 apply only to maintained schools in Wales and so do not apply to academy schools.

210 Subsection (5) amends section 109 of the SSFA to remove the ability of a governing body of a maintained grammar school to end selective admission arrangements via a prescribed alteration. The change applies only in England.

211 Subsection (6) amends section 18 of the Education and Inspections Act 2006 so that, in England, no prescribed alteration may have the effect of removing a maintained grammar school’s selective admission arrangements.

212 Subsection (7) amends section 1A of the Academies Act 2010 to prescribe that section 1A(1)(c) of the Act – the requirement that academy schools provide education for pupils of different abilities – does not apply to academy schools designated as grammar schools under section 104(1) of the SSFA. It makes two further amendments consequential to this change. It amends section 6(3) of the Academies Act to clarify that the requirement to provide for pupils of different abilities does not apply to partially selective academies<sup>9</sup>. It also amends section 6(4)

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<sup>8</sup> “Academy” has the meaning in section 579 of the Education Act 1996: “an educational institution to which Academy arrangements relate”. This includes academy schools – including special schools – alternative provision academies and 16-19 academies. See sections 1A, 1B and 1C of the Academies Act 2010.

<sup>9</sup> This provision would ensure there is no change to these schools’ current selective status as academies. There are a small number of partially selective schools, with “pre-existing arrangements” whose admission arrangements, at the beginning of the 1997-98 school year made provision for a proportion of their intakes to be selected by ability or by aptitude. Section

of the Academies Act to repeal subsection (b) which states that section 1A(1)(c) does not apply to academy schools that were formerly maintained schools designated as grammar schools under section 104(1) of the SSFA.

213 Subsection (8) voids the provisions in academy agreements or master agreements governing the removal of the selective admission arrangements of an academy grammar school so that it is clear that the legislation takes precedence over any conflicting obligations in academy agreements.

### Clause 29: Local authorities: power to apply for an Academy order

214 The purpose of these provisions is to introduce powers for the Secretary of State to issue academy orders to maintained schools following a request that they do so from the relevant Local Authority.

215 Section 3A “Application for academy order by local authority” would be inserted after section 3 of the Academies Act 2010. This section would allow a Local Authority in England to apply to the Secretary of State for an Academy Order to be made in respect of any of its maintained schools, and includes the consultation requirements that a Local Authority must undertake, and the parties that must consent.

216 This clause would also make consequential amendments to other provisions of the Academies Act insofar as they relate to conversion following an application under section 3A.

### Clause 30: Transfer of land by local authorities

217 This clause inserts a new paragraph (9A - *Compulsory transfer to trustees*) into Schedule 1 to the Academies Act 2010. Schedule 1 makes provision for the transfer of land in relation to academies. Part 1 of the Schedule concerns land held by a local authority.

218 The new paragraph inserted by the clause relates to new premises provided by a local authority for an academy school for which site trustees already hold existing premises. For example, the premises of a Church of England school may be held on a charitable trust linked to the parish or diocese. (Not all site trustees are connected with a particular faith or denomination.) An individual landowner may have donated the existing land long ago for specific purposes – i.e. for use as a church school in the example already given; and the trustees may hold the land on a special trust which requires it to be used for those purposes. (Such trustees should not be confused with academy trust companies that hold land as corporate property, to which the clause would not apply.)

219 Subsection (1) of the clause inserts the new paragraph 9A into Part 1 of Schedule 1. Paragraph 9A has the following effects.

- i. *Sub-paragraph (1)* sets out the circumstances in which the new arrangements apply.
- ii. The four conditions (Conditions A-D) set out in *sub-paragraphs (2)-(5)* must all be met.
  - a. Condition A (*sub-paragraph (2)*) is that the local authority are providing premises for an academy. Typically, a local authority may do so where it has been locally agreed that it is advantageous for an academy to relocate to a new site – for example, in order that the academy can expand or because its current buildings are no longer suitable –

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100 of the School Standards and Framework Act 1998 permits them to continue to select in this way providing there is no change in the proportion or pupils selected in this way or the basis of their selective arrangements. Sections 6(3) and 6(4) of the Academies Act 2010 permit such schools to retain these arrangements on conversion to academy status and their funding agreement contracts set out their permitted proportion and basis of selection.

*These Explanatory Notes relate to the Schools Bill [HL] as introduced in the House of Lords on 11 May 2022 (HL Bill 1)*

- and the local authority are willing to provide new premises on that site.
- b. Condition B (*sub-paragraph (3)*) is that the premises being provided are alternative premises for the academy or for an academy, sixth form college, or maintained school the academy is to replace – e.g. as a result of a merger of institutions.
  - c. Condition C (*sub-paragraph (4)*) is that the existing premises are held by site trustees.
  - d. Condition D (*sub-paragraph (5)*) is that the site trustees are prepared to pay the local authority the proceeds of sale of the existing premises in exchange for the new premises. The sum paid should be just when compared with the value of the interest the local authority are transferring but should not exceed the total of the proceeds of sale, plus any interest on those proceeds. Alternatively, the trustees may transfer their interest in the existing premises to the local authority if the authority agree. Because the paragraph only applies where conditions A-D are all met, trustees could decide to retain the current site in order to use it for other charitable purposes. But, if they were to do so, the local authority would no longer be under the duty to transfer the new site.
- iii. Where all four conditions are met, *sub-paragraph (6)* requires the local authority to transfer their interest (which will usually be a freehold) in the new premises to the trustees. The intended effect is that a local authority receives either cash or land in exchange for transferring the new premises, and the trustees do not have to surrender their interest in their existing land without receiving the new premises in return. This ensures that the existing charitable trust and its specific charitable purposes are preserved, as the trustees would continue to hold land for the academy school or one that is replacing existing institutions.
  - iv. *Sub-paragraph (7)* requires the local authority to pay the trustees' costs in connection with the transfer – e.g. legal or other professional fees. The costs must be reasonable.
  - v. *Sub-paragraphs (8)-(10)* contain provisions for either the local authority or the trustees to refer matters relating to the transfer to the schools adjudicator in the event that they cannot reach agreement. These matters include issues such as the extent of premises to be transferred by the authority to the trustees; the amount to be paid by the trustees from proceeds of sale or any interest accrued on those proceeds; and the identity of trustees. *Sub-paragraph (10)* places the local authority and trustees under a duty to provide any information the adjudicator requests in connection with the transfer.
  - vi. *Sub-paragraph (11)* relates to sites provided under the School Sites Act 1841. Section 2 of that Act enables a landowner to provide a site for a school or other educational purposes under a statutory charitable trust. It also provides that, if the land ceases to be used for the school (or the other purposes), it would revert to the donor or heirs by operation of law – though section 1 of the Reverter of Sites Act 1987 has now replaced statutory reverter with a statutory trust of the net proceeds of sale of the land for the donor or heirs. Section 14 of the 1841 Act allows such a site to be sold or exchanged and any money arising from such a sale or exchange to be applied in the purchase of a new site for the school (without triggering reverter). *Sub-paragraph (11)* provides that payment by trustees of any proceeds of sale to the local authority under *sub-paragraph (5)(a)* is to be treated as a sum applied in the purchase of a site for the school under section 14 of the 1841 Act. The intention is to avoid statutory reverter or a statutory trust arising under the Reverter of Sites Act 1987.
  - vii. *Sub-paragraph (12)* makes clear that the land the local authority must transfer to the trustees exclude playing fields.

220 Subsections (2) to (4) make consequential amendments to the School Standards and Framework Act 1998 (“SSFA”).

- a. Subsections (2) and (3) of the clause amend Section 25 of and Schedule 5 to the SSFA, which make provision for the appointment and role of schools adjudicators. They insert a reference to the new paragraph 9A, in order to extend the adjudicators’ role to cover the function of resolving disputes over these statutory transfers.
- b. Paragraph 5 of Schedule 22 to the SSFA includes a requirement that if trustees of a closing school hold land acquired or enhanced in value at public expense – by, for instance, a local authority or the Secretary of State – they must apply to the Secretary of State for a decision on what should happen to the land once the school has closed. If closure is to enable the school’s merger with another institution to form a new academy, new paragraph 9A may apply if the local authority are providing new premises for that academy and the trustees have already agreed that the land they hold will be sold and proceeds given in exchange for a transfer to them of the new premises. If so, the requirement in paragraph 5 of Schedule 22 to the SSFA for the trustees to apply to the Secretary of State for a decision on what should happen to the land of the closing school is not needed. Subsection (4) therefore disapplies paragraph 5 of Schedule 22 if paragraph 9A applies (but not otherwise).

## Interpretation and regulations

### Clause 31: Interpretation of Part 1

221 This clause provides for the interpretation of terms used within this Part. Where no definition is provided, a word or expression has the same meaning as in the Education Act 1996, except where the context requires another meaning.

### Clause 32: Part 1: regulations

222 This clause makes provision for the exercise of regulation-making powers in Part 1.

223 Regulations must be made by statutory instrument and may make consequential, supplemental, incidental, transitional or saving provision and different provision for different purposes.

224 Any statutory instrument containing regulations under section 1(1), section 4, or section 5(1)(a) must be made following the draft affirmative procedure. This includes a statutory instrument that also contains other provisions.

225 All other regulations are to be made by statutory instrument following the negative procedure.

## Part 2: School and local education funding: England

226 The clauses in this part provide for a new framework for school funding which partially replaces the current funding framework for maintained schools found in Chapter IV of Part 2 of the School Standards and Framework Act 1998 (SSFA 1998) so far as it applies in England. In the new framework the Secretary of State largely determines funding which is received by schools through a national funding formula, while local authorities retain responsibilities for other education expenditure.

### National formula allocations

#### Clause 33: Nationally determined funding for schools in England

227 Subsection (1) places a duty on the Secretary of State to determine the national formula allocation, for each funding period, for each school to which the clause applies. The “national formula allocation” is defined in subsection (2) as the amount calculated for a school in accordance with the national funding formula determined by the Secretary of State. In effect, the allocation is the core revenue funding each school receives for education provision for 5-to-16-year-olds, for a given funding period.

228 Subsection (3) provides that nationally-determined funding for schools in England would apply to both mainstream academy and maintained schools. The Secretary of State is able to expand the scope of this policy by regulations. The formula may be extended to other prescribed kinds of academies (not including 16 to 19 academies) and maintained schools. In addition, non-maintained special schools can be brought in scope by Regulations.

229 Subsection (4) provides that the Secretary of State must use the same formula to fund mainstream academy and maintained schools for their corresponding funding periods. The reference to the corresponding funding period reflects the fact that maintained schools are funded on a financial year basis (April to March), while academies are funded on an academic year basis (September to August). Subsection (5) allows for the Secretary of State to use a different formula for non-mainstream maintained schools non-mainstream academies, and non-maintained schools falling within subsection 3(c), (d) and (e) and for different funding periods.

230 The Secretary of State is required, in advance of the given funding period, to publish the formula used to determine funding as specified in subsection (6) and make information about the formula available to those listed in subsection (7). This applies to a school’s “national formula allocation” determined by the Secretary of State under subsection (2) and any other allocation calculated on an alternative basis, under regulations made by the Secretary of State (under subsection 8) in accordance with the requirements of subsection (10).

231 Subsection (8) provides for a power to make regulations authorising the Secretary of State to replace the calculation for determining the national formula allocation mentioned in subsection (2) with a different method for a prescribed school or schools under this section where there are exceptional circumstances which make the use of a different method appropriate. Before making regulations under subsection (8) the Secretary of State must consult relevant persons in accordance with subsection (9). This reflects the fact that a small number of schools are currently funded outside the national funding formula, owing to historic bespoke funding agreements with the Department, or, in the case of the school situated on the Isles of Scilly, particular exceptional costs.

#### Clause 34: Administration of nationally determined funding

232 This clause places a requirement on the Secretary of State to pay, as appropriate, the proprietor of the academy, the local authority responsible for a maintained school, or the

proprietor of a non-maintained special school, the amount determined through the national funding formula under clause 33, as provided under subsection (1). Where the Secretary of State pays the local authority for their maintained schools, the local authority is required to make that funding available to their maintained schools for the funding period, as provided for in section 50(1) of the Schools Standards and Framework Act 1998 (SSFA 1998). The requirement to pay and make funding available also applies to funding adjustments under clause 40, which provides for national to local budget reallocations, and clause 41, which provides for local authorities to make adjustments on the basis of excluded pupils, and clause 42 which provides for local authorities to deduct expenditure from the core budgets of maintained schools in prescribed cases, as outlined in subsection (2).

233 Nationally determined funding under clause 33 is to be paid under the Secretary of State's power to provide financial assistance in section 14 of the Education Act 2002 or another enactment authorising the payment. Subsection (3) makes it clear that subsection (1) does not prejudice the Secretary of State's ability to set conditions on which this financial assistance is given under section 16 of the Education Act 2002.

## Locally determined expenditure

### Clause 35: Locally determined education budgets in England

234 This clause provides for local authorities to have a locally-determined education budget for meeting their local education expenditure for a relevant period. Subsection (1) provides that this locally-determined education budget is formed of both locally-determined supplementary funding under clause 36 and other locally-determined education funding under clause 38.

235 Subsection (2) provides that the locally-determined education budget can include funding provided by a grant made under section 14 of the Education Act 2002 (the Secretary of State's general funding power) or any other enactment, where the conditions of that grant require it to be used for the purpose of this clause. Subsection (3) makes it clear that subsection (2) does not prejudice the Secretary of State's ability to impose terms on this financial assistance under section 16 of the Education Act 2002, or any similar provision.

### Clause 36: Locally determined supplementary funding for local schools

236 This clause would enable the Secretary of State, by way of regulations, to provide that each local authority must determine the locally-determined supplementary allocation (if any) for each of their local schools (including local academies) for each funding period. The Regulations could provide for the local authority to make supplementary funding allocations to mainstream academies and maintained schools, and other schools brought in scope through clause 33(3), where the Secretary of State judges that those decisions are best taken at a local level.

237 Subsection (2) provides that such allocations are to be made in accordance with regulations and subsection (3) gives a non-exhaustive list of what may be specified in the regulations. These largely reflect the existing provision within section 47 of the SSFA 1998. This includes specifying the factors or criteria which local authorities are to account for, or disregard, when determining an amount. These regulations may provide for a process of local consultation. Subsection (3)(g) contains a provision which allows for local authorities to request approval from the Secretary of State or schools forum, or other such prescribed person, to disapply the regulations applied in this section. Under section 47A of the SSFA 1998 each local authority are required to establish a schools forum to advise, amongst other things, on prescribed matters relating to school funding.

238 Subsection (4) provides for the notification of any locally-determined supplementary funding to the Secretary of State and to the relevant school, and the manner and timing of such notification.

239 Subsection (5) provides for references to determination in this section, to also refer to redetermination. This reflects subsection (2)(dd) of section 47 of the SSFA 1998 which allows for redetermination after the initial determination for the funding period.

### Clause 37: Administration of locally determined supplementary funding

240 This clause provides that the local authority must make available the locally-determined supplementary funding for a funding period to proprietors of academies (that meet the requirements of section 1A(1) of the Academies Act 2010 or of a prescribed kind) and non-maintained special schools.

241 Subsection (3) makes it clear that locally-determined supplementary funding provided by local authorities to their maintained schools forms part of the adjusted core budget as part of their obligations under section 50(1) of the SSFA 1998. This is also subject to funding adjustments under clause 42, which provides for local authorities to continue to be able to deduct funding from maintained schools' budgets.

242 Subsection (4) provides for regulations to make provision for local authorities to apply terms and conditions on how the locally determined supplementary allocations are to be spent by schools in receipt of this funding.

### Clause 38: Other locally determined education expenditure

243 This clause places a duty on local authorities to determine and administer other locally-determined education expenditure of a prescribed class or description in respect of a relevant period, that is, funding in addition to the locally-determined supplementary funding under clause 36 that will also be determined by the local authority. This is intended to broadly replace the part of the schools budget which is not the individual schools budget defined in section 45A of the SSFA 1998. "Relevant period" means the year ending with 31 March or another period as prescribed in regulations (clause 46(1)).

244 Subsection (2) enables the Secretary of State to make regulations which govern locally-determined expenditure, and subsection (3) provides a non-exhaustive list of what may be included in the regulations. As above, these are similar to the existing provision within section 47 of the SSFA 1998. This is required to enable the Secretary of State to make provision for local authorities to determine and administer funding for high needs, early years provision and for central services that local authorities provide in relation to schools, for example in relation to admissions. Subsection (3)(i) contains a provision which allows for local authorities to request approval from the Secretary of State or schools forum, or other such prescribed person, to disapply the regulations which outline any of the limits or conditions that have been applied to the local authority's locally-determined education expenditure (by regulations made under subsection (3)(h)).

245 Subsection (4) provides for interpretation of 'in respect of the relevant period' and that references to determination in this section, to also refer to redetermination. Subsection (4) provides for interpretation of 'in respect of the relevant period' and that references to determination in this section, to also refer to redetermination. This reflects subsection (2)(dd) of section 47 of the SSFA 1998 which allows for redetermination after the initial determination for the funding period.

## Other sources of funding for education expenditure

### Clause 39: Other funding for education expenditure

246 This provision makes it clear that the Secretary of State may provide other funding to schools through the powers conferred under Part 2 of the Education Act 2002, or another enactment. This Part provides a new framework for the funding that forms local authorities' schools budget under the SSFA 1998, which is provided for by Dedicated Schools Grant. This is the core revenue funding each school receives for education provision for 5 to 16 year-olds; high needs funding that supports provision for pupils and students with SEND, from their early years to age 25, and alternative provision for pre-16 pupils who, because of exclusion, illness, or other reasons, cannot receive their education in mainstream schools; early years funding to support local authorities deliver early years entitlements and other childcare duties; and central services funding which supports local authorities deliver services on behalf of maintained schools and academies.

247 In addition to the funding under this Part, the Secretary of State will continue to provide other funding for education under Part 2 of the Education Act 2002. Examples of other funding provided includes funding for the purposes of 16-19 provision and the Pupil Premium Grant.

## Budget adjustments

### Clause 40: Reallocation of funding to locally determined education expenditure

248 This clause provides for the Secretary of State to make regulations enabling local authorities in England to apply to the Secretary of State so as to make a national-to-local budget reallocation.

249 Subsection (2) provides that this reallocation involves the Secretary of State adding an amount to the local authority's locally-determined education budget (in clause 35) and making a corresponding reduction from the national formula allocation determined under clause 33, in respect of all or some of the schools in a local authority's local area. The adjustment to the schools' national funding allocations can take place in the same relevant period as the reallocated amount is added to the locally-determined education budget, or the following relevant period. This is in place of the current "block transfer" mechanism, whereby local authorities are able, within specified limits, to top-slice their mainstream schools funding and transfer this to other elements of their education budgets (typically, to their high needs budgets) by way of reliance on conditions in the Dedicated Schools Grant.

250 Subsection (3) provides interpretation of the term "corresponding reduction", such that the reduction which applies to a school's national formula allocation (if the reduction applies only to one school), or the aggregate of the reductions to the national formula allocations (if the reduction applies to a number of schools) is equal to the sum of the reallocated amount, added to the locally determined education budget.

251 Subsection (4) provides a non-exhaustive list of what may be included in the regulations. This includes a requirement on a local authority to consult their schools forum before making an application; the criteria to be considered by the Secretary of State when determining such an application; the expenditure upon which local authorities must use any reallocated amount; how an application is to be made; and the circumstances in which the amount to be reallocated can be modified by the Secretary of State. The regulations may also make provision which allows for applications for 'multi-year' national-to-local budget reallocations to be considered.

252 Subsection (5) makes it clear that subsection (4)(c) does not prejudice the Secretary of State's ability to set conditions on which this financial assistance is given under section 16 of the Education Act 2002.

## Clause 41: Excluded pupils: budget adjustments

- 253 This clause provides that regulations may require adjustments to be made by a local authority to the national formula allocation under clause 33 in respect of pupils who have been excluded or a pupil excluded from another school has been admitted to that school. This replaces section 47(2)(c) of the SSFA 1998 which already confers a regulation-making power that enables local authorities to make such adjustments to the budgets of maintained schools.
- 254 Subsection (1) provides that regulations may make provision for a budget deduction to be made in respect of pupil who is permanently excluded from a maintained school or an academy to which clause 33 applies. In the case of an academy, a budget deduction is an amount paid to the local authority from the national formula allocation for that school. In the case of a maintained school, there already exists a financial relationship between the school and the local authority, so a budget adjustment is the amount deducted by the local authority.
- 255 Subsection (3) provides that the budget deduction is to be treated as having been appropriated by the authority for meeting their expenditure under clause 38, and forms part of the locally-determined education budget for that funding period.
- 256 Subsection (4) provides that regulations may make provision for a budget addition to be made in respect of a pupil who was previously been permanently excluded from a maintained school or academy, who is admitted into a local school.
- 257 Subsection (5) to subsection (7) define budget addition and explain how this is to be treated. The budget addition is to be paid by the local authority in whose area the local school is located. Budget additions must be a form of prescribed description of expenditure under clause 38, and so are met from the local education budget. In the case of an academy or a non-maintained special school, this budget addition is paid by the given local authority and, if clause 33 applies to the academy or non-maintained special school, it is to be treated as if it were part of the national formula allocation for the funding period in question by the Secretary of State under clause 34(1). In the case of a maintained school, this funding is to be made available by the given local authority and, if clause 33 applies to this school, it is considered part of the national formula allocation for the funding period in question by the Secretary of State under clause 34(1).
- 258 Section 494 of the Education Act 1996 provides for recoupment of amounts by local authorities in cases where a pupil is excluded from a school in one local authority area and subsequently provided with education in another local authority area.

## Clause 42: Pooled education expenditure deductions from maintained schools' core budgets

- 259 This clause provides for the Secretary of State to make regulations to authorise local authorities to deduct expenditure from the core budgets of maintained schools. This allows for local authorities to continue to be able to deduct funding from the schools' core budgets, in accordance with regulations, for centrally provided services to maintained schools.
- 260 Subsection (2)(a) provides that for a maintained school to whom clause 33 applies, the school's 'core budget' is the aggregate of: its national formula allocation, as determined in clause 33 (minus any deductions made by the Secretary of State, as a result of applications by the authority, under clause 40 and any adjustment under clause 41), any locally-determined supplementary funding, as determined in clause 36, amounts of prescribed locally-determined funding under clause 38 as well as any relevant sixth form grant. Subsection 2(b) provides the schools' core budget for any other maintained school means the aggregate of prescribed

funding provided through other locally-determined funding provided under clause 38 and any relevant sixth form grant.

- 261 Under subsection (3)(a) regulations may provide that deductions under clause 42 can only be made if authorised by the authority's schools forum, the Secretary of State or another prescribed person. Subsection (3)(b) enables limits or conditions to be imposed through the regulations, and subsection 3(c) enables such limits or conditions to be varied or excluded subject to the approval of the schools forum, the Secretary of State, or another prescribed person. Subsection 3(d) provides that regulations may make provision about how the determination of the budget, and redetermination of schools' core budgets, should take place.
- 262 Subsection (4) provides interpretation of this clause that the relevant period includes expenditure which begins in, or at the start of, that relevant period.
- 263 A "sixth form grant" is defined in subsection (5) as the grant paid to a local authority by the Secretary of State under section 14 of the Education Act 2002 in respect of sixth form pupils (which has the meaning given in section 342(5B) of the Education Act 1996).

## Funding: other

### Clause 43: Provisions of information to the Secretary of State

- 264 This clause provides that a local authority, the governing body of a maintained school, or the proprietor of an academy or non-maintained special school must provide reports, returns and information to the Secretary of State as and when required, in order for the Secretary of State to exercise their functions under this Part. Such information may include: pupil numbers, particularly in cases of new and growing schools where funding does not fully rely on data collected from the October census; information on school reorganisations such as planned school closures and mergers; planned school expansions to meet basic need; and information on whether a school operates across split sites, to underpin split sites funding.

### Clause 44 and Schedule 3: Part 2: consequential amendments

- 265 Clause 44 and Schedule 3 makes amendments to section 494 Education Act 1996 that provides for recoupment amounts between local authorities in cases where a pupil is excluded from a school in one local authority area and subsequently provided with education in another area. The amendments provide for this clause to apply for recoupment when a pupil is excluded from, or subsequently admitted to, both a maintained schools or academies.
- 266 Clause 44 and Schedule 3 amend Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (SSFA 1998) which provides for the funding of maintained schools in England and Wales. These amendments ensure that the approach to schools funding in Wales remains as provided for under the SSFA 1998, and makes amendments to those funding provisions that would continue to apply in England.
- 267 Paragraph 3 inserts section 45ZA to provide that each school maintained by a local authority in Wales continues to be allocated a budget share, as determined by that local authority. Paragraphs 4 and 6 amend section 45A and section 47 respectively to apply to Wales only. Paragraph 8 retains the existing advisory role of schools forums for Wales in section 47A, and paragraph 9 retains the current scheme for managing local budgets, including surpluses and deficits, and local authorities financial schemes (section 48). Paragraphs 10, 11 and 13 retain references to "budget shares", "non-schools education budget" and "schools budget" in sections 49-51 for schools and local authorities in Wales.
- 268 Paragraph 2 of Schedule 3 removes references to "budget shares" for maintained schools in section 45. It also adds to section 45 that the education function of a local authority is to

include the duties imposed under section 7(1) of the Childcare Act 2006 and section 2 of the Childcare Act 2016 in England, removed from section 45A (under Paragraph 4(5) of Schedule 3) which now only applies to Wales.

- 269 Paragraph 5 of Schedule 3 repeals section 45AA that gives the power to require local authorities in England to determine schools budgets.
- 270 Paragraph 7 of Schedule 3 repeals section 47ZA which regulates for free early years provision outside of maintained schools in England, as this provision would be dealt with under clause 38.
- 271 Paragraph 8 of Schedule 3 amends section 47A in the SSFA 1998 which provides that each local authority must establish a schools forum and provides their role in the school funding system. Paragraph 8 adds subsection (2A) to provide that the purpose of schools forums in England for both maintained schools and academies would align with the new legislation, while retaining the old legislation for schools forums in Wales.
- 272 Paragraphs 9 to 16 of Schedule 3 amend sections 48 to 51, section 71, section 107, section 143 and schedules 15 and 19 of the SSFA 1998, to align with the terminology used in the new legislation in relation to maintained schools in England.
- 273 Lastly, Clause 44 and Schedule 3 also amend the Education Act 2002. Paragraphs 18-21 amend sections 37, 39, 51A and 135C to align with the terminology used in the new legislation in relation to maintained schools in England.

### Clause 45: Funding of Academies: contractual provisions

- 274 This clause provides the mechanism through which the allocation of funding as determined in this part will supersede any corresponding provisions in a contractual agreement between an academy proprietor and the Secretary of State. This will ensure that those clauses in existing academy agreements or academy framework agreements ('agreements') are voided if they are inconsistent with this part and are read with such additions, omissions or modifications as are needed to take account of, or give full effect to, this part.

## Interpretation and regulations

### Clause 46: Interpretation of Part 2

- 275 This clause provides interpretation for this part.
- 276 Subsection (1) provides definitions for key terms in this part. Subsection (1) provides the definition for "education expenditure" as the expenditure of local authorities under their education function, including those duties outlined under section 7(1) of the Childcare Act 2006 and section 2 of the Childcare Act 2016, as specified in subsection (4). "National formula allocation" means the amount calculated for a school in accordance with the formula determined by the Secretary of State for the funding period in question, as defined in clause 33(2).
- 277 Subsection (1) provides the definition for "academy agreement" as an agreement within section 1(3) of the Academies Act 2010, and the definition of a "master agreement" as an agreement between the Secretary of State or any other person that makes provision about the carrying on of more than one academy established or maintained by that person.
- 278 Subsection (1) provides the definition of a "local authority" in relation to a maintained school as the authority by which the school is maintained. A "local school" for a local authority means the following: a school maintained by that local authority and funded under section 1; an academy located within the authority's area and funded under section 1; and a non-

maintained special school located within the authority's area and funded under section 1. A "maintained school" means a community, foundation or voluntary school; community or foundation special school; maintained nursery school; or pupil referral unit. The definition of a "non-maintained special school" is a school approved under section 342 of the Education Act 1996. Subsection (1) also provides the definition of a "closing school" as that used in section 5(4) of the Education Act 2005 and a "new school" as including a school for which there is a temporary governing body under section 34 of the Education Act 2002 Subsection (1) also provides the definition of the "funding period" for a school as the year ending 31 March or another prescribed period. "Corresponding funding periods" are those that begin in (or at the same time as) the same financial year, in accordance with clause 33(4). A "relevant period" is the year ending 31 March or other period prescribed.

279 Subsection (2) outlines that the words and expressions used in this Part have the same meaning as in the Education Act 1996, unless the context otherwise requires.

280 Subsection (3) provides that a reference to or including maintained school or a particular type of maintained school is to be read as including a proposed school, which on implementation of proposals under any enactment will be a maintained school, a school maintained by a local authority or that kind of maintained school, and which has a temporary governing body.

281 Subsection (4) provides for early years functions from section 7(1) of the Childcare Act 2006 (duty to secure prescribed early years provision free of charge) and section 2 of the Childcare Act 2016 (duties in connection with Secretary of States duty to secure 30 hours free Childcare for working parents) to be included as part of the education functions of a local authority in England.

282 Subsection (5) outlines that section 581 of the Education Act 1996 applies to this Part in regard to the Isles of Scilly, in that the Isles of Scilly is to be treated as a local authority in the context of this Part.

### Clause 47: Part 2: regulations

176 This clause sets out miscellaneous provision relating to the regulations which may be made under clauses 33 to 47. Subsection (1) provides that a power to make regulations under this part includes the power to make provision requiring LAs to have regard to advice given by their schools forum, in relation to prescribed matters or before taking prescribed decisions. Regulations may make different provision for different circumstances with the exception of providing a definition of financial year other than the year ending with 31 March under clause 47(1).

177 Subsection (3) makes it clear that regulations under this part are to be made by statutory instrument and subsection (4) provides that the first time regulations are enacted under clause 33 (3)(c)(d) and (e), and clause 40 the affirmative procedure will apply, but subsequent regulations under this power will be made using the negative resolution procedure.

## Part 3: School Attendance

283 The clauses in this part set up a requirement for local authorities to have a registration system for children not in school and to provide support to home educators. The process for School Attendance Orders in England has been updated to improve efficacy.

284 It adds to the legal framework for the provision of school attendance support and management by schools and local authorities. It requires them to have regard to relevant guidance issued by the Secretary of State, allows the Secretary of State to prescribe the

circumstances in which the issuing of a fixed penalty notice must be considered, and extends the regulation of the granting of leaves of absence to cover all types of schools that are academies.

## Children not in school

### Clause 48: Registration

285 Clause 48 inserts after section 436A of the Education Act 1996, new sections 436B to 436H and a new Schedule 31A, which cover: a duty on local authorities to register children not in school; the contents and maintenance of those registers; a duty on parents (which includes carers or legal guardians by virtue of section 576 of the Education Act 1996) of children within scope of the duty to register to provide information to a local authority for inclusion on their register; a duty on persons that a local authority reasonably believes to be providing out-of-school education above a prescribed amount of time, to children within the scope of the register, to supply certain information on request to a local authority (including sanctions for failing to provide requested information); a duty on local authorities to provide support to parents of children on the register; provision about use of information on the register; and provision for the Secretary of State to issue statutory guidance.

286 Section 436B(1) would impose a duty on a local authority to maintain a register of eligible children. Section 436B(2) to (5) sets out that a child is eligible if they are of compulsory school age, living in the authority's area, and are either not registered at a "relevant school" (defined in subsection (7)), or they are registered as a pupil at a relevant school but it has been agreed by that school's proprietor that they can be absent for some or all of the time and receive some or all of their education otherwise than at a relevant school. This would include, for instance children who are flexi-schooled or who attend alternative provision otherwise than at a relevant school while remaining registered at such a school. Subsection (6) sets out that regulations may be used to clarify whether a child registered as a pupil at a relevant school is in scope or not, and if so the cases when they are or are not eligible for registration on a local authority's Children not in School register.

287 Section 436C(1) sets out the information that must be contained in a register. This includes in subsection (1)(c) details of how the child is being educated, which would be set out in regulations, but is likely to include for instance details of out-of-school education providers being used. Subsection (1)(d) also gives scope for further information to be prescribed for inclusion, as set out in regulations. Section 436C(2) allows a local authority to also include any additional information they consider appropriate within the register that has not been stipulated in legislation.

288 Section 436C(3) sets out that regulations may be used to specify how a local authority must maintain and publish their register, the form it should take, and how local authorities should publicise how their registers operate in order for parents to know what they are required to do and the timelines they are to work to.

289 Section 436D(1) requires parents of eligible children to inform the local authority of specified information – child's name, date of birth, home address, name and home address of each parent of the child, any details of the means by which the child is being educated that are set out in regulations, and such other information as may be prescribed – once that child has become eligible so their details can be included in the register. Subsection (2) sets out that parents whose children are already registered with their local authority must provide specified information to their local authority on request. Parents of an eligible child must inform the local authority of any changes to information that is required for the register, such

as changes to the home address of the child, and when the child ceases to be eligible, for example if they move outside of the local authority area.

- 290 Section 436D(3) and (4) sets out the 15 day timeframe that parents have to comply with in providing relevant information to the local authority. Subsection (4)(b) allows local authorities to give more time to parents to provide information requested by the local authority beyond 15 days, should they consider it appropriate to do so. When a local authority requests information from the parent as set out in subsection (2)(a) or (b), the timeframe must be specified in the request.
- 291 Section 436D(5) provides that this requirement of parents to provide information to their local authority does not apply when the children are receiving full-time education by a combination of attendance at a relevant school, arrangements made under section 19 of the Education Act 1996 by the local authority and/or similar arrangements made by a relevant school. In practice, this would cover those children for registration who have been placed in alternative provision (otherwise than at a relevant school) full-time, or where they are placed in alternative provision for part of the time and receive the remainder of their education at a relevant school.
- 292 Section 436E creates a system for local authorities to require certain persons to provide information. Subsection (1) means that the system applies to any person that a local authority in England reasonably believes is a provider of out-of-school education to an eligible child, without a parent being present, for more than a prescribed amount of time. Subsection (2) defines “out-of-school education” and “prescribed amount of time”. The eligible child in question could be a specific child that the local authority knows about, but this also covers a situation where a local authority reasonably believes that there is an eligible child receiving out-of-school education even if it does not know who that child is.
- 293 Section 436E(3) sets out that a local authority may by notice require the person it believes to be a provider of out-of-school education, within scope, to confirm whether they are providing education to children eligible for registration; and, if they are, to provide any information they hold on a specific child or any eligible child to the local authority that is required for inclusion on the register under section 436C(1)(a) and (b) – i.e. the child’s name, date of birth, home address, and the name and home address of each parent of the child. This would assist in ensuring register information is accurate and help identify children eligible for registration who have not been identified.
- 294 Section 436E(4) provides that a notice is deemed served if it is sent or left at the place where the out-of-school education is provided.
- 295 Section 436E(5) sets out that those in receipt of a notice are to respond to the request for information within 15 days, beginning with the day on which the notice is served.
- 296 Section 436E(6) sets out that regulations may provide exceptions so that some out-of-school providers are to be exempt from the duty to provide information. Such providers may include, for example, informal groups of home educating parents or museums that offer extensive educational programmes to children.
- 297 Section 436E(7) and (8) enables a local authority to impose a monetary penalty (of an amount to be set out in regulations) on a person that has failed to provide the correct required information.
- 298 Section 436F(1) requires local authorities to provide prescribed information from their registers to the Secretary of State (in practice the Department for Education), as directed by the Secretary of State.

- 299 Section 436F(2) authorises local authorities to provide information from their registers to persons (to be set out in regulations) if it is for the purposes of promoting or safeguarding the education, safety or welfare of the child, or any other person under the age of 18.
- 300 Section 436F(3) requires local authorities in England to share specified information from their registers with other local authorities in England, should they become aware that a child included on their register will move, or has moved, to another local authority area.
- 301 Section 436G(1) requires a local authority to provide, or secure provision of, support to promote the education of children that are included in their register, if requested by the parent of a child on the register.
- 302 Section 436G(2) gives discretion to the local authority to decide what they feel is most appropriate in regard to meeting the parent's request for support. They must consider what the parent has asked for, but the local authority can decide to offer a different kind of support instead.
- 303 Section 436G(3) gives examples of the support that a local authority may wish to consider and offer to children eligible for registration and parents, which could include signposting parents to resources, information or curriculum material online (such as those from Oak National Academy) or offering discounted meeting spaces. A local authority does not have to provide all or any of these and could choose to provide or arrange support in a form not listed.
- 304 Section 436G(4) provides that the local authority offer of support does not have to apply to children registered at a relevant school (which would include flexi-schooled children and those who are in alternative provision arranged by their school) or those that are (or ought to be) subject to an arrangement for the education of the child under section 19 of the Education Act 1996 and / or section 42 of Children and Families Act 2014 (i.e. those who have been placed by the local authority in alternative provision or have an education, health and care plan).
- 305 Section 436H gives the Secretary State the power to give statutory guidance to local authorities in England, on the operation of any of the above powers and duties; and requires local authorities in England to have regard to this guidance. This would largely set out the administrative expectations of local authorities related to the Children Not in School measures.
- 306 Subsection (3) of clause 48 amends section 569 of the 1996 Act details various procedural aspects of regulation made under the Act. Section 569(2A) lists the regulations that are subject to the affirmative procedure, this amendment adds to that list so that the first sets of regulations made under new section 436E(1)(a) or (6) must be approved using the affirmative procedure.
- 307 Subsection (4) of clause 48 inserts a new Schedule 31A, after Schedule 31 of the Education Act 1996, which sets out details relating to the failure to provide information under section 436E (provision of information to local authorities: education providers), including the imposition of monetary penalties.
- 308 Paragraph 1 of the inserted Schedule 31A sets out that the local authority must first give a warning notice setting out the reasons for the proposed penalty, the amount of the penalty, and the person's right to make representations, (the process for which, including the timings by which representations must be made, is then detailed in paragraph 2 of the inserted Schedule 31A).
- 309 Paragraph 3 of the inserted Schedule 31A provides that if written representations have been received or the period for making representations has passed, the local authority must decide

whether the person is to pay the prescribed monetary penalty. This paragraph also sets out that the local authority must determine not to give a monetary penalty, if they are no longer satisfied that the information requested was not in fact supplied or incorrect in response to the initial notice for information served. It also provides that the local authority must inform the person that they no longer intend to impose the penalty, if they reach this decision.

310 Paragraph 4 of the inserted Schedule 31A details the formalities needed for a local authority to impose a monetary penalty. This is done by giving the person a penalty notice that sets out the information listed in paragraph 4(2). This notice can be withdrawn at any time by the local authority if it decides to do so.

311 Paragraph 5 of the inserted Schedule 31A sets out that a penalty amount would be increased by a prescribed percentage, if the penalty is not paid within the specified timeframe.

312 Paragraph 6 of the inserted Schedule 31A sets out the grounds on which a person can appeal to a First-tier Tribunal and the options available to the First-tier Tribunal on hearing an appeal. Where an appeal is made the requirement to pay the monetary penalty is also suspended until the final determination by the Tribunal (including any onward appeal to the Upper Tribunal), or until the point at which the appeal is withdrawn.

313 Paragraph 7 of the inserted Schedule 31A sets out that, in case of non-payment, the penalty would be recoverable as if the person had been ordered by the county court to pay it.

#### Clause 49: School attendance orders

314 Clause 49 inserts new sections 436I, 436J, 436K, 436L, 436M, 436N, 436O, and 436P into the Education Act 1996 following section 436H, setting out the requirements for local authorities in England to issue School Attendance Orders (including preliminary notices), choice and nomination of schools in the notice, and amendment and revocation of an Order. (The existing sections 437, 438, 439, 440 and 442 in the Act, related to School Attendance Orders, are amended by clause 51 and Schedule 4 so that they are applicable to local authorities in Wales only.)

315 Subsection (2) inserts the new section 436I. Section 436I(1) requires a local authority in England to issue a preliminary notice for a School Attendance Order to a person who appears to be the parent of a child, where they think that one or more of the following conditions (set out in section 436I(3) to (5)) are met:

- a. the child is within the local authority's area; of compulsory school age; and is not receiving a suitable education (defined in section 436A(3) of the Education Act 1996) either through regular attendance at school or otherwise.
- b. the child is, or may be, eligible to be registered by the local authority in their register of children not in school, and the local authority has requested information from the parent (or suspected parent) for the purpose of determining if the child should be registered and/or if the person really is the child's parent, but the person has either not provided that information within 15 days of the request being made, or has not provided the correct information.
- c. the person has either failed to provide the required information under section 436D(1)(b) or (c) or (2)(a) or (b), as described in paragraph 289 above, or failed to provide correct information.

316 Section 436I(2) states that the preliminary notice served in response to any of the above conditions being met must require the recipient to satisfy the local authority within a specified period that the child named in the notice is receiving a suitable education. Subsection (6) also requires the local authority to serve this notice within 3 days of any of the above conditions

appearing to be met; and requires that the recipient of the notice be given no less than 10 days in which to respond.

- 317 Section 436I(7) states that in exercising their functions in relation to issuing preliminary notices for School Attendance Orders, a local authority must also have due regard to guidance issued by the Secretary of State.
- 318 The new section 436J sets out the process for the issue of School Attendance Orders by local authorities in England.
- 319 Section 436J(1) and (2) set out that a local authority must, following a preliminary notice, issue a School Attendance Order (which requires the parent to ensure their child is registered at a school named in that order) if the recipient of the notice has failed to satisfy them within the specified period in the notice that the child is receiving a suitable education, or the person is not a parent of the child and the local authority believes attending a school would help the child to receive an efficient, full-time, suitable education. Subsection (3) states that a School Attendance Order must be served in the prescribed form within three days once the authority determines which school is to be named in the order.
- 320 Section 436J(4) requires a School Attendance Order to remain in force as long as the child named in it is of compulsory school age, unless the order is either revoked by the local authority, or a court gives a direction that the order ceases to be in force under either section 436Q(6) or 447(5) of the Education Act 1996.
- 321 Section 436J(5) sets out that where the school named in a School Attendance Order is a maintained school (other than a special school established in a hospital – see new section 447A), the local authority must inform the governing body and headteacher of the order within three days, and the governing body and headteacher must admit the child to the school. Subsection (6) sets out that if an academy school or alternative provision academy is named in a School Attendance Order then the same process must apply as with subsection (5), except the proprietor and principal must be informed instead of the governing body and headteacher.
- 322 Section 436J(7) provides that the requirements of section 436J(5) and (6) do not affect any power of a headteacher or principal to exclude from the school a pupil who is already registered there.
- 323 The new section 436K sets out the process for the issue of a School Attendance Order for a child with an education, health and care plan in England.
- 324 Section 436K(2) provides that when an education, health and care plan specifies a named school, that school must be named in the School Attendance Order.
- 325 Section 436K(3) provides that when an education, health and care plan does not specify a school, the local authority must amend the plan so that it names a school and that school must subsequently be named in the School Attendance Order.
- 326 Section 436K(4) provides that when subsection (3) applies and a school must be added to the education, health and care plan, the local authority must make that amendment as if it were being made under section 44 of the Children and Families Act 2014, which governs the review and reassessments of education, health and care plans. The rules of that section and regulations made under it apply to the process of making the amendment.
- 327 Section 436K(5) sets out that when a School Attendance Order is in force in relation to a child with an education, health and care plan and the school named in the plan is changed, the local authority must amend the Order to reflect that change of school.

- 328 Section 436L sets out that, prior to serving a School Attendance Order under section 436J, a local authority in England must serve a notice on a person (if they are the parent of a child who does not have an education, health and care plan). This notice is referred to as a “school nomination notice”.
- 329 Section 436L(2) provides that the school nomination notice must inform the person of the local authority’s intention to serve the Order and the school that they intend to name in the Order, along with one or more suitable alternative schools if they wish.
- 330 Section 436L(3) sets out that if the notice lists multiple schools, the person in receipt of the notice may choose one of them for their child to attend and notify the local authority of that choice within 10 days of receiving the notice. If they do so, the local authority must name that school in the Order.
- 331 Section 436L(4) sets out that if the person in receipt of the school nomination notice applies for their child to be admitted to an academy school or alternative provision academy within the 10 day period (set out in subsection (3)) of receiving the school nomination notice, notifying the local authority which served notice of application, and their child is offered a place at that school, that school must be named in the Order. The same applies if the school applied to is a school maintained by a local authority. If the local authority that maintains the school is not the authority that issued the notice, then the parent needs to notify the latter authority of the application.
- 332 Section 436L(5) sets out that if within 10 days as set out in subsection (3) the person applies to the local authority who served the notice for education to be provided at a school which is not maintained or an academy school or alternative provision academy, and the local authority are going to pay the fees for the child to attend under section 517, that school must be named in the Order.
- 333 Section 436L(6) states that where the person in receipt of the School Attendance Order applies, within the 10 day period set out in subsection (3), for their child to attend a school, and that is not a school maintained by a local authority, academy school or alternative provision academy, the school must be named in the School Attendance Order if that school has offered to admit the child, and is suitable to the child’s age, ability, aptitude and any special educational needs.
- 334 Section 436M sets out certain factors affecting the schools that a local authority may or may not specify in the school nomination notice.
- 335 Section 436M(1) states that a school may not be specified in a school nomination notice if the child is permanently excluded from it.
- 336 Section 436M(2), (3) and (4) provide that a maintained school or academy school may not be named in a school nomination notice if the child’s admission to that school would require steps to be taken in order to avoid breaching a legal limit on class sizes (such as the infant class size limit in section 1 of the School Standards and Framework Act 1998) and those steps would prejudice the provision of efficient education, or if the child’s admission would cause the number of pupils in their age range at the school to exceed the ‘relevant number’. This is the number previously decided as the ‘admission number’ (also called ‘published admission number’), the number of pupils that are intended to be admitted in a normal intake age group during the school year, in accordance with the School Standards and Framework Act 1998 (or, in the case of an academy school, any equivalent legislation or academy standard or funding agreement).
- 337 Section 436M(5) provides that a local authority may name a maintained school in a school

attendance order if they are responsible for its admission arrangements. They may do so even if it would cause the number of pupils in the child's age range to exceed the relevant number.

338 Section 436M(6) sets out that, even if subsection (3) would otherwise prevent a maintained school or academy school being named in a school nomination notice, it may still be named if

- i. it is a reasonable distance from the child's home, and
- ii. there is no maintained school or academy school in the area that the local authority are allowed to name that is within a reasonable distance from the child's home.

339 Section 436N(1) imposes a requirement for the local authority to consult the school leadership before naming a maintained school, academy school or alternative provision academy in a school nomination notice. In the case of a maintained school, consultation must take place with the governing body and the local authority responsible for the school's admission arrangements (unless that is the same local authority making the Order). For academy schools and alternative provision academies, the proprietor of the school must be consulted.

340 Section 436N(2) provides that the local authority must notify the relevant school leaders of their decision to name that school in the school nomination notice prior to serving it, and this includes the headteacher in the case of a maintained school and the principal for academy schools and alternative provision academies. Section 436N(3) states that that notice must be served within 15 days of the local authority's deadline for serving the Preliminary Notice.

341 Section 436N(4) sets out that a governing body, local authority, or proprietor who receives notice that their school has been chosen to be specified in a school nomination notice may, within 10 days of receiving that notice, apply to the Secretary of State for a direction about whether their school should be specified in the notice. The local authority must be informed if this application is made.

342 Section 436N(5) provides that if the local authority does not receive notice of an application to the Secretary of State within those 10 days, they must, within the next 10 days, serve the school nomination notice.

343 Section 436N(6) provides that where the Secretary of State gives a direction, the local authority must determine which school or schools to offer to the parent in accordance with that direction. They must then serve the school nomination notice on the parent, specifying the school or schools they are considering naming, within 3 days of the direction being given.

344 Section 436O sets out how a School Attendance Order may be amended, on request, when it is in force in relation to a child without an education, health and care plan.

345 Section 436O(2), (3) and (4) stipulate that the local authority must comply with a request when the person on whom the order is served applies for the child to be admitted to a:

- a. maintained school that differs from that named in the order, and the school offers the child a place. If this happens, the parent may ask the local authority to amend the School Attendance Order to name that new school in place of the previous one.
- b. school that is not maintained by the local authority that differs from that named in the Order. If the school offers a place under arrangements for fees to be paid for the education by the local authority (under section 517), the parent may ask the local authority to amend the School Attendance Order to name that new school in place of the previous one.
- c. school that is not maintained by the local authority, for which the parent does not require the local authority to pay fees, and differs from that named in the Order. If the

school applied to offers the child a place, and is suitable to the child's age, aptitude, ability, and any special educational needs, the parent may ask the local authority to amend the School Attendance Order to name that new school in place of the previous one.

- 346 Section 436P sets out the procedure for the revocation, on request, of a School Attendance Order made by a local authority in England. (An Order can also be revoked by a local authority on its own initiative under section 570 of the 1996 Act.)
- 347 Section 436P(2) sets out that, when a School Attendance Order is in force, the person concerned can apply at any time to request a revocation on the basis that either arrangements have been made so that suitable education would be provided without the child attending school or the person is not the parent of the child.
- 348 Section 436P(3) provides that the local authority must comply with a request for revocation under either ground outlined in 436P(2), unless they believe that arrangements for suitable education have not been made, or that the person is the parent of the child concerned.
- 349 Section 436P(4) sets out that a person can refer the issue to the Secretary of State should they not be satisfied with the local authority's decision not to comply with a request for revocation, to which the Secretary of State can give such a direction as they think appropriate.
- 350 Section 436P(5) provides that if a child who is subject to a School Attendance Order has an education, health and care plan then this process works differently. If the education, health and care plan names a school or other institution, the Order cannot be revoked on the basis that the parent has arranged suitable education outside school, but only on the basis that the person is not the child's parent. This is because there are procedures in other legislation for resolving disputes about the naming of an institution in an education, health and care plan. If the plan does not name a school or other institution, the process set out in section 442A(2) to (4) applies as normal and if the case is referred to the Secretary of State for decision then the Secretary of State's direction may include directions about changes to the plan.
- 351 Subsection (3) of this clause adds a subsection to section 572 of the 1996 Act. Section 572 sets out the valid ways to serve a notice or order under the Education Act 1996. The new subsection ensures that School Attendance Orders and related notices may also be served by any other effective method.
- 352 Subsection (4) amends Schedule 1 to the Education Act 1996 (pupil referral units), inserting new paragraph 13A, to set out certain ways in which the new provisions on School Attendance Orders made by local authorities in England apply differently in relation to pupil referral units. Clause 51 and Schedule 4 amend the existing paragraph 14 of the Schedule so that it applies only to School Attendance Orders made by local authorities in Wales.)

### Clause 50: Failure to comply with school attendance order

- 353 Clause 50 inserts new section 436Q into the Education Act 1996 and creates an offence for failing to comply with a School Attendance Order served by a local authority in England. (Clause 51 and Schedule 4 amend the existing section 443 of the Act to make it applicable to School Attendance Orders served by authorities in Wales only.)
- 354 Subsection (1) inserts new section 436Q, subsection (1) of which creates an offence where a person who is served with a School Attendance Order under section 436J fails to comply with that order.
- 355 Section 436Q(2) sets out two defences. In both cases the burden of proof is on the person being prosecuted. One applies where the person proves they are providing a suitable education for

the child otherwise than at school, the other applies where they prove that they are not the parent of the child named in the order.

356 Section 436Q(3) sets out that the offence is committed not only if the parent fails to have the child registered at the named school in the first place, but also where the parent causes the child named in the school attendance order to be deregistered at the school named in the order. Subsection (4) provides that the parent does not, however, commit an offence if they cause the child to be deregistered by requesting an amendment to the order under section 436K or 436O to name a different school, or by persuading the local authority to revoke the order under section 436P.

357 Section 436Q(5) sets out that where a person fails have their child registered at a school in accordance with a School Attendance Order, and is convicted of an offence under subsection (1), they may be found guilty of the same offence again if their failure to register their child at the named school continues. This reverses the effect of a Divisional Court decision in the case of *Enfield London Borough Council v Forsyth & Forsyth* [1987] 2 FLR, which held that after a parent had been found guilty of breaching a School Attendance Order then they could not be prosecuted for any further breaches of the same Order, and the local authority had to go through the process of making a new Order before prosecuting them again.

358 Section 436Q(6) sets out that if the parent is acquitted of the offence in subsection (1), the court may direct that the School Attendance Order comes to an end. Subsection (7) also clarifies that a court direction under subsection (6) does not affect a local authority's duty to serve a further School Attendance Order if section 436J requires them to do so and they believe, having regard to any change of circumstances, that a new Order would be beneficial.

359 Section 436Q(8) sets out the trial method and penalty for conviction of an offence of failing to comply with a School Attendance Order. The offence is to be tried summarily, and the penalty is a fine not exceeding level 3 on the standard scale, or imprisonment of up to 51 weeks, or both. Subsection (9) clarifies that "Imprisonment of up to 51 weeks" is taken to mean 3 months until section 281(5) of the Criminal Justice Act 2003 comes into force.

#### Clause 51 and Schedule 4: School attendance orders: consequential amendments

360 Clause 51 introduces Schedule 4, which makes consequential amendments relating to clauses 49 and 50.

361 Paragraph 1 of Schedule 4 sets out the amendments to the Children Act 1989, which bring sections 36 and 91 and Schedule 3 in line with changes related to School Attendance Orders served by local authorities in England by inserting "436J or" in relevant places. (436J is the new section in the Education Act 1996 for School Attendance Orders as outlined from paragraph 316).

362 Paragraph 2 amends the Education Act 1996 to ensure existing provisions on School Attendance Orders continue to apply in relation to local authorities in Wales, unaffected by the changes made to the process for authorities in England. Sections 437, 438, 439, 440, 442 and 443 are made applicable to local authorities in Wales only, and cross-references are updated.

363 Subparagraph (12) of paragraph 1 of this Schedule inserts a new section 447A after section 447 of the Education Act 1996, which defines "maintained school" and "school nomination notice" for the purpose of Chapter 2 of Part 6 of the Education Act 1996. Paragraph 3 sets out the amendments to the School Standards and Framework Act 1998 to ensure cross-references regarding School Attendance Order process changes for local authorities in England are updated.

364 Paragraph 4 sets out the amendments to the Sentencing Act 2020 to ensure cross-references regarding School Attendance Order process changes for local authorities in England are updated.

## Attendance by registered pupils

### Clause 52: School attendance: general duties on local authorities

365 This clause inserts new section 443A into the Education Act 1996 which sets requirements, in respect of attendance, for how local authorities exercise their existing powers.

366 Subsection (1) of inserted section 443A places a new duty on local authorities to exercise their functions so as to try to secure good school attendance by pupils.

367 Subsection (2) of inserted section 443A requires a local authority to have regard to guidance from the Secretary of State about school attendance. The Secretary of State intends to publish guidance for local authorities setting out expectations of how they should use their services to secure good attendance, including minimum components of attendance support they are expected to deliver to schools in their area.

### Clause 53: School attendance policies

368 This clause inserts new section 443B into the Education Act 1996. This would require every school in England to have an attendance policy.

369 Subsection (1) of the inserted section 443B requires the proprietor of a school (e.g. governing body of a maintained school or academy proprietor for an academy) to ensure that policies to promote regular attendance are pursued and set out in a written document (an “attendance policy”).

370 Subsection (2) sets out the components which must be included in a school’s attendance policy.

371 Subsection (3) requires the proprietor to make sure their policy is known within the school and to parents of registered pupils, bringing it to their attention at least once per year.

372 Subsection (4) requires the proprietor to have regard to any guidance issued by the Secretary of State on school attendance. The Secretary of State intends to publish guidance for schools on school attendance, including how to promote regular attendance and covering the matters listed in subsection (2).

### Clause 54: Penalty notices: regulations

373 Subsection (1) inserts a new subsection (1A) into section 444B of the Education Act 1996, and Subsection (2) inserts two new paragraphs into section 106(1) of the Education and Inspections Act 2006.

374 The effect of subsections (1) and (2) is to allow the Secretary of State to make regulations to set out the circumstances in which authorised officers must consider giving a fixed penalty notice (FPN) and make provision around arrangements for local authorities to co-ordinate between themselves, neighbouring local authorities where appropriate, the police, and authorised officers in issuing FPNs (for example provision requiring authorities to make such arrangements or provision for what happens if they fail to do so).

375 A FPN is a financial penalty that gives a person the chance to pay a fixed amount of money by a set date and may be issued to a parent by an authorised officer for non-attendance or for allowing an excluded pupil to be in a public place in the first five school days of an exclusion.

If the penalty is paid by the set time, the parent is not criminally liable for that offence and no further action is taken.

### Clause 55: Academies: regulations as the granting of leave of absence

376 This clause amends section 551 of the Education Act 1996 to extend the Secretary of State's power to regulate the granting of leaves of absence so that it would cover all types of schools that are academies. By adding all types of schools that are academies, the intention of this clause is to improve the consistency of the granting of leaves of absence in all state-funded schools. The decision on whether to grant a leave of absence would remain with the person authorised to do so by the proprietor of the school (usually the headteacher).

## Part 4: Independent Educational Institutions

### Regulation of independent educational institutions

#### Clause 56: Expanding the scope of regulation

377 Chapter 1 of Part 4 of the Education and Skills Act 2008 ("the 2008 Act") concerns the regulation and inspection of independent educational institutions. Clause 56 amends the definition of "independent educational institution" and therefore, the settings regulated under Chapter 1 of Part 4.

378 The clause amends section 92 of the 2008 Act to substitute a new definition of "independent educational institution". The clause has the following effects:

- i. A new definition of "independent educational institution" is provided and therefore, the nature of the settings to be regulated under Chapter 1 of Part 4. An independent educational institution is to be defined as any institution (a) which provides full-time education for at least five children of compulsory school age, or at least one child of compulsory school age who is looked after by a local authority or who has special educational needs and (b) which is not an excepted institution. The meanings of "excepted institution", "looked after by a local authority" and "has special educational needs" are provided in amendments to section 92(4).
- ii. The meaning of full-time education for these purposes is set out in new subsection (1A). This establishes that an institution would provide full-time education for a child if the child could be expected to get all or a majority of their education at the institution. New subsection (1B) sets out the factors that must be taken into account when determining whether a setting could be expected to provide all or a majority of a child's education. New subsection (1C) provides a regulation-making power to add to or remove factors or make provision about how the factors are to be taken into account. The regulation-making power is subject to the affirmative resolution procedure because of amendments made to section 166(2) of the 2008 Act by clause 57(6).
- iii. New section 92(3A) defines what it means to provide education for the purposes of new section 92(1). It clarifies that education is provided irrespective of the subject-matter of what is taught, and that education is also provided where an institution provides unsupervised self-guided learning and similar modes of study.
- iv. "Excepted institution" is defined in section 92(4). "Excepted institutions" are those which despite meeting the other requirements of section 92, are not to constitute "independent educational institutions". As well as the specific institutions listed, "excepted institutions" would include any institution of a description specified in

regulations. The regulation-making power here, because of amendments made by clause 57(6) to section 166(2) of the 2008 Act, would be subject to the affirmative resolution procedure.

379 In addition, section 92 of the 2008 Act currently provides for the possibility of some part-time educational institutions being regulated under Chapter 1 of Part 4 (though they are not, in fact, regulated since the relevant provisions have not been fully brought into effect). This clause removes these institutions permanently from the scope of Chapter 1 of Part 4

### Clause 57: Section 56: consequential and related amendments

380 Clause 57 contains consequential and related changes to other provisions of the 2008 Act that arise from the amendment of the definition of an “independent educational institution” made by clause 56.

### Clause 58: Application of provisions applying to schools to independent educational institutions

381 This clause inserts a new section 137A into the 2008 Act. This new section gives the Secretary of State the power to make regulations to apply enactments which apply in relation to independent schools so that these enactments apply (with or without modifications) in relation to independent educational institutions (or independent educational institutions of a prescribed description) which are not independent schools.

382 The power is limited to applying enactments made before or in the same session that the Bill becomes an Act and to applying enactments as they apply in England in relation to independent schools.

383 As a result of other amendments made by this clause to section 166 of the 2008 Act regulations made under this new power would be subject to the affirmative resolution procedure.

## Independent educational institution standards

### Clause 59: Independent educational institution standards

384 Clause 59 amends section 94 of the Education and Skills Act 2008 (“the 2008 Act”). Section 94 concerns the setting of standards, which proprietors of independent educational institutions must comply with and against which these institutions are inspected. Independent educational institutions which do not meet the relevant standards may face regulatory action, up to and including de-registration.

385 Subsection (2) broadens the scope of the standards, which may be prescribed by the Secretary of State in regulations, by permitting standards to be made relating to the attendance of students at independent educational institutions.

386 Subsection (3) expands on the power in section 94(1)(d) of the 2008 Act to prescribe standards about the suitability of proprietors of independent educational institutions. It permits the setting of standards requiring that certain persons are, in the opinion of the Secretary of State, fit and proper persons to be involved in the running of an independent educational institution. These persons are either individual proprietors or, where the proprietor is a body of persons (such as a company or a trust), any person having the general control and management of, or legal responsibility and accountability for, that body.

387 Subsection (3) also provides a power to make standards requiring that the Secretary of State is notified before a new person becomes involved in the general control and management of, or assumes legal responsibility and accountability for, a proprietor body. This is so that prior

notification can be required in order that the Secretary of State can judge whether someone is a fit and proper person before they take up a relevant role in a proprietor body.

388 Finally, subsection (4) permits the Secretary of State to prescribe standards (falling within section 94(1)(a) to (h)) which would require the proprietor of an independent educational institution to have regard to guidance issued, or a document published, by the Secretary of State.

### Clause 60: Failure to meet standards: suspension of registration

389 Clause 60(2) inserts new sections 118A to 118F into the Education and Skills Act 2008 (“the 2008 Act”). Subsection (1) of new section 118A creates a power to suspend, temporarily, the registration of an independent educational institution if (having taken into account “relevant evidence”) the Secretary of State (a) is satisfied that one or more of the independent educational institution standards (see section 94 of the 2008 Act about those standards - “the standards”) is breached in relation to it and (b) they have reasonable cause to believe that as a result of a breach or breaches of the standards, one or more students at the institution would or may be exposed to the risk of harm (within the meaning of section 31 of the Children Act 1989). Section 118A(2) defines what is “relevant evidence”.

390 Unless the Secretary of State considers that an immediate suspension is necessary to protect one or more students at an institution, the Secretary of State must, before making a decision to suspend the registration of an institution, serve a warning notice on the proprietor of the institution, (see subsection (3) of section 118A). The notice must contain the information set out in subsection (3) and new section 118A(4) requires the Secretary of State to have regard to any representations made by the proprietor during the period specified in the warning notice for making representations. Where the Secretary of State decides not to suspend an institution’s registration, having considered any representations made in response to a warning notice, the Secretary of State must serve the proprietor of the institution with a notice informing them of that decision (see section 118A(5)).

391 If instead, the Secretary of State decides to suspend the registration of an institution, having considered such representations, they must serve notice on the proprietor of this decision (see section 118A(6)), and that notice must also set out the start and end dates of the suspension and explain the proprietor’s right to appeal to the First-tier Tribunal against the decision. Paragraph(b) of section 118A(6) provides that a suspension may not last for more than 12 weeks.

392 Where a warning notice is not required because the Secretary of State considers immediate suspension is necessary to protect one or more students at an institution from the risk of harm, the Secretary of State must serve notice on the proprietor of an institution of a decision to suspend its registration as well as of a number of other matters set out in section 118A(8), including the start and end dates of the suspension and the proprietor’s right to appeal to the First-tier Tribunal against the suspension.

393 Section 118A(9) sets out that the suspension of an institution’s registration does not affect the continuation of its registration. This is to ensure that other provisions in or under the 2008 Act (or elsewhere) relating to registered independent educational institutions continue to apply in relation to an institution when its registration is suspended. For example, it would ensure that it would still be possible for the Secretary of State to serve notice on the proprietor of an affected institution, under section 114 of the 2008 Act, requiring an action plan and for the Secretary of State to request information from a proprietor under regulations made under section 123 of that Act.

- 394 Section 118A(10) requires the Secretary of State, where an institution's registration is suspended, to include an indication to that effect on the register of independent educational institutions (maintained under section 95 of the 2008 Act).
- 395 New section 118B makes provision about the period of any suspension of a registration decided upon under section 118A. Subsection (1) provides that any suspension takes effect and ends on the date specified in notice under section 118A(6) or (8) - subject to section 118B(2) to (4)
- 396 Subsection (2) requires the Secretary of State to lift a suspension of an institution's registration if they no longer have reasonable cause to believe that any student at the institution is at risk of harm because of breaches of one or more of the standards.
- 397 Subsection (3) gives the Secretary of State a power to lift the suspension of an institution's registration if the Secretary of State considers it appropriate to do so, while subsection (4) permits them to extend a suspension if the conditions for suspending it (in section 118A(1)) are still met. Subsection (5) to (10) concern the procedures for extending a suspension and are similar to those which apply to an initial suspension. Subsection (8)(a) provides that the extension of a suspension may last for no more than 12 weeks after the extension starts.
- 398 Subsection (11) make provision about the duration of an extended suspension.
- 399 New section 118C creates a new criminal offence, making the proprietor of an independent educational institution criminally liable where education is provided at an institution to one or more students whilst its registration is suspended. The offence, which is a summary offence, would be punishable by an unlimited fine and/or a term of up to six months imprisonment (or 51 weeks in the event that section 281(5) of the Criminal Justice Act 2003 is commenced).
- 400 Clause 60(3), in amending section 125 of the 2008 Act, confers a right of appeal to the First-tier Tribunal on the proprietor of an affected institution against the suspension of its registration and the extension of a suspension of its registration. An appeal would need to be made within 28 days of notice being served on a proprietor of a decision to suspend registration or to extend the suspension of a registration.
- 401 New section 118D provides the power for the Secretary of State to impose a requirement, on the proprietor of an institution that provides boarding accommodation to its students ("a boarding institution"), to stop providing boarding accommodation to its students, where the Secretary of State suspends the registration of the institution. Such a requirement is called a "stop boarding requirement".
- 402 Subsection (2) of that new section sets out that a stop boarding requirement may relate to all of the boarders at an institution or to boarders of a particular description. For example, if an institution provides boarding on two sites and the risk to students only arises in relation to one of those sites ("the first site"), where education is also provided, it is likely to be appropriate to only stop boarding at the first site.
- 403 Subsection (4) requires the Secretary of State to include, in a notice warning of a proposed suspension of registration (see section 118A(3)) served on the proprietor of a boarding institution, notification of whether they are proposing to impose a stop boarding requirement and, if one is proposed (amongst other things) the effect of a stop boarding requirement and the boarders to whom the proposed requirement would relate. Also, the subsection requires such a notice, where a stop boarding requirement is proposed, to explain that the proprietor may make representations about the proposed requirement during the same period in which representations may be made about the proposed suspension of registration. Subsection (5)

requires the Secretary of State to take into account any representations made by the proprietor, within that period, about the proposed stop boarding requirement.

- 404 In cases where the Secretary of State decides not to impose a stop boarding requirement following the service of notice warning of a proposed suspension of registration, which stated that a stop boarding requirement was being proposed, section 118D(7) requires that the proprietor is notified of that decision, either at the same time the Secretary of State gives notice under section 118A(5) that they have decided not to suspend registration or in the notice given under section 118A(6) that they have decided to suspend registration.
- 405 In cases where the Secretary of State decides to impose such a requirement (and they have served a similar warning notice of a suspension of registration under section 118A(3)), subsection (6) requires the Secretary of State to include in a notice under 118A(8) (a notice of a decision to suspend registration) the following information: which boarders the requirement relates to, the date upon which the requirement starts, the date upon which the requirement ends and that there is a right of appeal against the requirement under section 125 of the 2008 Act.
- 406 In cases where the Secretary of State has not served a warning notice of a proposed suspension of registration under section 118A(3), and has decided to suspend the registration of an institution as well as impose a stop boarding requirement in relation to it, the Secretary of State must in the notice of the decision to suspend registration (under section 118A(8)) state that they have decided to impose a stop boarding requirement and explain the effect a requirement, the boarders to whom the requirement relates, the start and end dates of the requirement and the right of appeal conferred by section 125.
- 407 Subsection (10) requires the Secretary of State, where a stop boarding requirement is imposed, to include an indication to that effect on the register of independent educational institutions.
- 408 New section 118E makes provision about the period of stop boarding requirements. Subsection (1) provides that any such requirement takes effect and ends on the date specified in notice under section 118A(6) or (8), subject to section 118B(2) to (4)
- 409 Subsection (2) of new section 118E means that a stop boarding requirement relating to a boarding institution would automatically end if the institution's suspension of registration is lifted by the Secretary of State.
- 410 In addition, subsection (3) of that section, gives the Secretary of State a power to end a stop boarding requirement before it would otherwise expire if they consider it appropriate to do so, while subsection (4) permits them to extend the duration of an existing stop boarding requirement relating to a boarding institution or impose a new stop boarding requirement (where no such requirement previously existed or to replace one) in relation to such an institution. However, this may only be done where they extend the duration of the suspension of the registration of the institution.
- 411 Subsections (5) to (11) concern the procedure to be adopted in connection with the decision-making related to extending the duration of existing stop boarding requirements or imposing new ones under subsection (4). The steps which the Secretary of State would be required to follow are broadly similar to those which they need to follow in relation to the imposition of stop boarding requirements when suspension of registration is first being considered or decided upon.
- 412 Subsection (12) of new section 118E make provision about when a stop boarding requirement relating to an institution ends, where it is has either been extended or is a new stop boarding requirement under subsection (4). Unless it is extended again, the requirement would end at

the latest on the same date that the suspension of the institution's registration ends. It would end earlier if the Secretary of State decides to end it under section 118E(3) or (where that date is earlier) on the date it was due to end – i.e. the date it was specified to end in notice given under section 118B(8) or (10).

413 New section 118F creates a new criminal offence, making the proprietor of a boarding institution criminally liable where boarding accommodation has been provided to a student in breach of a stop boarding requirement. The offence, which would be a summary offence, would be punishable by an unlimited fine and/or a term of up to six months imprisonment (or 51 weeks in the event that section 281(5) of the Criminal Justice Act 2003 is commenced).

414 Clause 60(3), in amending section 125 of the 2008 Act, confers a right of appeal on the proprietor of an affected institution, to appeal to the First-tier Tribunal against a decision to impose a stop boarding requirement (or a new one) or extend the duration of a stop boarding requirement. An appeal would need to be made by the proprietor within 28 days of notice being served by the Secretary of State on them of such a decision.

### Clause 61: Deregistration decisions on grounds of standards: appeals

415 Clause 61 amends section 124 of the Education and Skills Act 2008 (appeal by proprietor against the decision of the Secretary of State to deregister) by inserting new subsections (2A) to (2D), so as to provide a new and different basis on which certain appeals would be determined. This new sub-set of appeals must be made to the First-tier Tribunal. The effect of the amendment is that if the Secretary of State takes enforcement action against a proprietor of a registered independent educational institution in the form of a deregistration decision under section 116 of the Education and Skills Act 2008 ("the 2008 Act") and that proprietor appeals the deregistration decision and certain conditions are met, that appeal would be determined on the basis of the principles applicable on an application for a judicial review. If those conditions are not met, the proprietor may still exercise the existing right to appeal under section 124 of the 2008 Act and their appeal would be decided on a full merits basis.

416 New subsection (2A) provides that the First-tier Tribunal must apply the principles applicable upon an application for judicial review if the conditions in new subsection (2B) are met. The conditions in new subsection (2B) include: three inspections reports within a six-year period recording a failure to comply with any one or more independent educational institution standard(s); the proprietor was required to provide action plans following the first two of these three inspections; and the Secretary of State has provided the proprietor with an opportunity to make written representations as to why the institution should not be removed from the register, after receiving the third inspection report.

417 New subsection (2C) explains what inspection reports are referred to under new subsection (2B). These would be provided by HMCI or another independent inspectorate and may be prepared for an application for material change, for inspections of institutions at prescribed intervals or on direction of the Secretary of State.

418 Subsection (2D) provides that if an appeal is to be determined under subsection (2B), the First-tier Tribunal can confirm the decision of the Secretary of State to remove the school from the register or direct that the decision of the Secretary of State has no effect and therefore the institution would not be removed from the register

## Material change

### Clause 62: Material changes to registered details

419 Sections 101 to 105 of the Education and Skills Act 2008 ("the 2008 Act") contain a regime that requires the prior approval of the Secretary of State for "material changes" made in relation to

independent educational institutions. However, these provisions have not been brought fully into force. As a consequence, “material changes” are still dealt with under the Education Act 2002 – see, in particular, section 162 of that Act (“the 2002 Act”).

- 420 Clause 62 introduces Schedule 5 to the Bill which makes various amendments to sections 101 to 105 of the 2008 Act, principally to expand on the categories of matters that constitute material changes for the purposes of those sections, to change how applications for material change approval can be determined by the Secretary of State, and to give the Secretary of State the power to impose a “relevant restriction” where there has been an unapproved material change.
- 421 Paragraph 2 of the Schedule provides a power which would enable regulations to be made by the Secretary of State which can require an application for registering an independent educational institution which is a special institution, to set out according to how they are categorised in regulations, the types of special educational need that the institution would cater for. The regulation-making power is subject to negative resolution procedure because of section 166(3) of the 2008 Act.
- 422 Paragraph 3 of the Schedule amends section 101 of the 2008 Act to redefine what constitutes a “material change” and therefore, the changes at an institution for which the Secretary of State’s approval would be needed. Amongst other things, it would be a material change if an institution becomes (or ceases to be) specially organised to make special educational provision for students with special educational needs and in the case of an institution specially organised to make special educational provision for students with special educational needs, if it changes the type or types of special educational needs (as prescribed in regulations made under section 98(2)(a) of the 2008 Act) for which it makes special educational provision. Under the 2002 Act, as it operates in relation to England, it is a material change simply to admit (or cease to admit) pupils with special educational needs. The definitions of “special educational provision” and “special educational needs” are to be found in sections 20 and 21 of the Children and Families Act 2014 (because of section 168(2) and (3) of the 2008 Act and section 83(7) of the Children and Families Act 2014).
- 423 Paragraph 4 of the Schedule amends section 102 of the 2008 Act to provide the Secretary of State with a regulation-making power to prescribe what information applications for approval for a material change must contain and the manner in which they must be made. The regulation-making power is subject to negative resolution procedure because of section 166(3) of the 2008 Act.
- 424 In some scenarios, before determining whether to approve a material change, the Secretary of State may need an inspection to be carried out - for example, to reach a conclusion on whether or not the independent educational institution standards are likely to be met at the institution following the material change. Paragraph 5 amends section 103 of the 2008 Act, to expressly permit any independent inspectorate approved by the Secretary of State under section 106 of the 2008 Act to carry out these inspections.
- 425 Paragraph 6 amends section 104 of the 2008 Act to change the basis upon which applications for material change approval are to be determined by the Secretary of State. It is no longer to simply be the binary position that if the Secretary of State is satisfied that the standards are likely to continue to be met, an application must be approved and otherwise, it must be rejected. New subsection (1A) of section 104 provides, consistent with the current position, that the Secretary of State must approve a material change where at the time of considering the application, they consider that the standards are being met and is satisfied that they are likely to continue being met if the change is made. Similarly, new subsection (1B) requires them to approve a material change where they consider that the standards are not being met,

but they are satisfied that they are likely to be met immediately if the change is made. This latter provision is intended to deal with a problem arising from the current language in section 104, which arguably contemplates (because of the wording “likely to continue to be met”) that there must be pre-existing compliance with the standards in order to grant approval. Making a material change may bring a non-compliant institution into compliance with the standards.

426 A more significant departure from the current approach is contained in new subsection (1B). This is because it, in addition, gives the Secretary of State the discretion to approve an application for a material change, where the standards are not met, but they are satisfied that they are likely to be met within a reasonable period of the change being made and is also satisfied that during the period before the standards are met, the change is likely to be beneficial overall to the education, welfare or safety of students who attend, or who might attend, the affected institution.

427 Paragraph 7 of the Schedule concerns material changes made without the prior approval of the Secretary of State. There is an existing power in section 105 to de-register institutions where there is an unapproved material change. Paragraph 7 confers a new power in section 105 - the power for the Secretary of State to impose a relevant restriction on the proprietor (in broad terms, a restriction on how an institution operates) where there is an unapproved material change. Section 117 of the 2008 Act gives the precise definition of “relevant restriction” (because of the amendment made by paragraph 7(7)).

428 The effect of paragraph 7(8) (which amends section 118) is that it would be a summary criminal offence for a proprietor to breach a relevant restriction imposed as a result of an unauthorised material change, punishable by an unlimited fine and/or a term of up to six months imprisonment (or 51 weeks in the event that section 281(5) of the Criminal Justice Act 2003 is commenced). Paragraph 7(9) confers similar rights of appeal on a proprietor of an institution, on whom a relevant restriction is imposed under the new power, to those available elsewhere under the 2008 Act where the Secretary of State imposes a relevant restriction.

429 The remainder of the changes brought about by this clause and schedule are not substantive.

## **Powers of Chief Inspector etc**

### **Clause 63: Powers of entry and investigation etc**

430 Clause 63 repeals section 97 of the Education and Skills Act 2008 (which contains powers for Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“HMCI” to enter and inspect premises in connection with the offence in section 96 of the 2008 Act of conducting an unregistered independent educational institution). It amends the Education and Skills Act 2008 (“the 2008 Act”) to insert new sections 127A to 127D.

431 New section 127A(1) contains new powers of entry, to include premises where HMCI has reasonable cause to believe a relevant offence under Chapter 1 of Part 4 of the 2008 Act is being or has been committed, or evidence of such an offence may be found. The relevant offences to which these measures apply are contained in new section 127A(9). These offences include those which may be brought against a person for conducting an unregistered independent educational institution (under section 96 of the 2008 Act), and/or a proprietor of a registered independent educational institution for breaching a relevant restriction (under sections 118, 121 and 127 of the 2008 Act), providing education at an institution when registration is suspended (under new section 118C of the 2008 Act), or providing boarding accommodation in breach of a stop boarding requirement (under new section 118F of the 2008 Act).

- 432 New section 127B(1) contains new powers to: search premises; take measurements, photographs, audio and video recordings; require any document or record on the premises (see new section 127B(5) for a definition of “document”); require facilities and assistance from persons on the premises; seize evidence found on the premises for so long as is necessary, (see new section 127B(2)); and interview any persons found on premises including children, subject to parental consent (see subsection (1)(a) to (f) and (h) to (j) and new section 127B(3)). The pre-existing powers in section 97 to inspect and take copies of any records or other documents are preserved in new section 127B(1)(g).
- 433 New section 127B(4) restricts evidence from being inspected or made copies of which is legally privileged or otherwise subject to special access provisions (under section 9(2) of the Police and Criminal Evidence Act 1984).
- 434 New sections 127A(2), (3), (4) and (6) make provision about warrants in connection with the investigative powers in new section 127B. Warrants would be required for HMCI to enter residential premises without consent or for a police constable to assist HMCI with a search, authorising use of reasonable force if necessary. New section 127A(8) applies certain procedural requirements in section 15 and 16 of the Police and Criminal Evidence Act 1984 in relation to a warrant issued under new section 127A and 127C. These requirements relate to the applications for warrants, their contents and execution.
- 435 New section 127D(1) makes it an offence to intentionally obstruct the exercise of any power under the new section 127A and 127B. New section 127D(2) introduces a new offence of intentionally failing to produce any document required under section 127B(1)(d). New section 127D(3) introduces a new offence of intentionally failing to produce any required electronic information under the new section 127B(1)(e). New section 127D(4) introduces a new offence of refusing to be interviewed under section 127B(1)(i) or intentionally failing to provide information required. New section 127D(5) introduces a new offence of failing to provide assistance under new section 127B(1)(j). All offences under the new section 127D are summary only and have a maximum penalty of an unlimited fine.
- 436 Clause 63 also amends section 134 of the 2008 Act to require that the information or written charge for an offence under Chapter 1 of Part 4 of the 2008 Act be laid or issued within 12 months of the time the offence was committed

### Clause 64: Independent inspectorates: reports and information sharing

- 437 Clause 64 concerns the relationship between Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“HMCI”) and the independent inspectorates which may be approved by the Secretary of State under section 106 of the Education and Skills Act 2008 (“the 2008 Act”). At present there is only one such independent inspectorate which is approved - the Independent Schools Inspectorate, a private company limited by guarantee.
- 438 Clause 64(1) amends section 107 of the 2008 Act. It grants the Secretary of State the flexibility to request a report from the HMCI on the performance of an independent inspectorate at the time of their choosing – removing the existing duty for such a report to be produced at least annually.
- 439 New section 107A(1) of the 2008 Act allows the Chief Inspector to share information with any inspectorates, approved under section 106, for the purpose of enabling or facilitating inspections of registered independent educational institutions. This permits information to be shared directly between HMCI and any such approved inspectorates. For example, the power could be used where responsibility for the inspection of an institution transfers from HMCI to an independent inspectorate (or vice versa).

440 New section 107A(2) confirms that this information-sharing is subject to data protection legislation – in particular that listed in section 3(9) of the Data Protection Act 2018.

## Part 5: Miscellaneous and Final Provisions

### Teacher misconduct

#### Clause 65: Teacher misconduct

441 The Education Act 2002 gives the Secretary of State the power to investigate an alleged case of misconduct by a teacher, and to prohibit the teacher from being able to undertake teaching work if the misconduct is proved. The Teaching Regulation Agency (TRA) operates this power on behalf of the Secretary of State.

442 Clause 65 (2)(a) amends section 141A (1) of the 2002 Act to provide that the Secretary of State can investigate a person who has at any time been employed or engaged to undertake teaching work (a teacher). This provides the Secretary of State with the power to take disciplinary action against any teacher regardless of whether they were employed as a teacher at the time of the misconduct or the referral to the TRA. Where it is some time since the individual last taught, the TRA would consider the public interest and proportionality, when determining whether to investigate the case.

443 Increasing numbers of young people aged under 19 years now receive their education in a wider range of settings, such as further education institutions, and independent educational institutions or by online education providers, and clause 65(2)(b) would list these education settings as settings that would be subject to the teacher misconduct regime. Clause 65(4) would set the conditions that must be met for a provider to be an online education provider. These conditions require the provider to have an address in England registered with either Companies House or the Charity Commission; to have at least one student in England under the age of 19; that those students receive all or the majority of their education online; and finally that the provider delivers all or the majority of its education online. As online education is a sector that is continually evolving, this clause would include a power to enable the Secretary of State to amend these conditions via regulation in the future if necessary

444 This clause would extend the scope of the teacher misconduct regime so that, in future, a prohibited teacher would not be able to teach young people under the age of 19 in any of the settings listed.

445 Clause 65(5) removes the existing requirement that, in order for the Secretary of State to be able to investigate an alleged case of teacher misconduct, a referral from a person or organisation that is external to the Department for Education must be received. This clause permits the Secretary of State to investigate a misconduct case regardless of how it comes to their attention. This means that in future, the Secretary of State would be able to consider a case of potential misconduct where a Department for Education official becomes aware during the course of their normal duties of a possible misconduct case. An example would be evidence that suggested a teacher has committed serious financial misconduct which is identified during a financial audit by the Education and Skills Funding Agency, which is part of the Department for Education.

### Final Provisions

#### Clause 66: Transitional, saving and consequential provision

446 Clause 66(1) confers on the Secretary of State the power to make consequential, supplemental, incidental, transitional or saving provision in connection with commencing any provision in

this Act. Regulations for this purpose must be made by statutory instrument following the negative procedure.

447 Clause 66(2) confers on the Secretary of State the power to make by regulations provision consequential on this Act. Such regulations may amend, repeal, or revoke any primary or secondary legislation made at any point before the end of the parliamentary session in which this Act is passed. These regulations may also make supplemental, incidental, or saving provision and may provide differently for different purposes. Regulations for this purpose must be made by statutory instrument following the draft affirmative procedure.

#### Clause 67: Extent

448 This clause states the territorial extent of the Bill, i.e. the parts of the United Kingdom in which it would become law.

#### Clause 68: Commencement

449 This clause states when the provisions in the Bill would come into effect.

#### Clause 69: Short title

450 This clause states that, once enacted, the Act may be cited as the Schools Act 2022.

## Commencement

451 Sections 1 to 4 come into force on the day on which this Act is passed. The remaining provisions would be commenced via regulations.

## Financial implications of the Bill

452 The Bill does not have any significant financial implications. There would be minor one-off costs for educational settings to consider and understand legislation and guidance and implement the necessary policy changes.

453 The costs for this Bill would be funded from within the Department for Education budget in the usual way.

454 Further information about the financial costs and benefits of the provisions in the Bill can be found in the accompanying impact assessment which has been published alongside the Bill.

## Parliamentary approval for financial costs or for charges imposed

455 This section will be completed when the Bill transfers from the House of Lords to the House of Commons.

## Compatibility with the European Convention on Human Rights

456 The Government considers that the Bill is compatible with the European Convention on Human Rights. Accordingly, a statement under section 19(1)(a) of the Human Rights Act 1998 will be made to this effect.

457 Issues arising as to the compatibility of the Bill with the Convention rights are dealt with in a separate memorandum. This has been published separately on gov.uk on 12 May 2022.<sup>10</sup>

## Environment Act 2021: section 20

458 The Secretary of State for Education is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been necessary to make.

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<sup>10</sup> 'European Convention of Human Rights Memorandum', 12 May 2022  
<https://bills.parliament.uk/publications/46426/documents/1765>

## Related documents

459 The following documents are relevant to the Schools Bill and can be read at the stated locations:

- [‘Opportunity for all: strong schools with great teachers for your child’, 28 March 2022](#)
- [‘Regulating independent educational institutions Government response to consultation’, 6 May 2022](#)
- [‘Children Not in School Government response to consultation’ 3 February 2022](#)
- [‘Fair school funding for all: completing our reforms to the National Funding Formula Government response to consultation’, 28 March 2022](#)
- [‘Teacher misconduct: regulating the teaching profession Government response to consultation’, 29 April 2022](#)
- [‘School attendance: improving consistency of support Government response to consultation’, 6 May 2022](#)
- [Academies Act 2010](#)
- [Children Act 1989](#)
- [Childcare Act 2006](#)
- [Childcare Act 2016](#)
- [Children and Families Act 2014](#)
- [Children and Young Persons Act 2008](#)
- [Education Act 1996](#)
- [Education Act 2002](#)
- [Education Act 2005](#)
- [Education and Inspections Act 2006](#)
- [Education and Skills Act 2008](#)
- [Police and Criminal Evidence Act 1984](#)
- [Reverter of Sites Act 1987](#)
- [School Standards and Framework Act 1998](#)
- [Schools Sites Act 1841](#)

## Annex A – Territorial extent and application in the United Kingdom

460 The territorial extent of this Bill is England and Wales and it applies in England only with the exception of the provision set out below.

461 The power in clause 66(2) to make provision consequential on this Act may be exercised in respect of an enactment that applies in both England and Wales. As this Act applies in England only, the effect outside England of any provision made under this section would be minor or consequential.

462 The following provisions of the Bill make amendments to provisions which apply in both England and Wales:

- i. Clause 28 amends section 104 and 109 of the School Standards and Framework Act 1998.
- ii. Paragraphs 3, 4, 6, 8, 9, 10, 11 and 13 of Schedule 3 make consequential amendments to the School Standards and Framework Act 1998.
- iii. Paragraph 2 of Schedule 4 makes consequential amendments to the Education Act 1996.

463 These amendments preserve the provisions as they apply in Wales where a provision is to be amended or repealed in England only and would therefore have no effect outside England.

464 The information provided is the view of the UK Government.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Part 1 -Academies  Clauses 1 to 32 and schedule 1 and 2	Yes	No	No	No	No	No	No
Part 2 - School and Local Education Funding  Clauses 33 to 47 and Schedule 3	Yes	No	No	No	No	No	No
Part 3 – School Attendance  Clauses 48 to 55 and schedule 4	Yes	No	No	No	No	No	No
Part 4 – Independent Education Institutions							

*These Explanatory Notes relate to the Schools Bill [HL] as introduced in the House of Lords on 11 May 2022 (HL Bill 1)*

Clauses 59 to 64 and Schedule 5	Yes	No	No	No	No	No	No
Part 5 – Miscellaneous and final provisions							
Clauses 65	Yes	No	No	No	No	No	No
Clause 66	Yes	Yes	No	No	No	No	No
Clauses 67 to 69	Yes	No	No	No	No	No	No

## Subject matter and legislative competence of devolved legislatures

465 Corresponding provision could be made by a devolved legislature on the subject matter of all provisions in the Bill.



# SCHOOLS BILL [HL]

## EXPLANATORY NOTES

These Explanatory Notes relate to the Schools Bill [HL] as introduced in the House of Lords on 11 May 2022 (HL Bill 1).

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Ordered by the House of Lords to be printed, 11 May 2022

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