

## **CHILDREN'S WELLBEING AND SCHOOLS BILL**

### **EUROPEAN CONVENTION ON HUMAN RIGHTS SUPPLEMENTARY MEMORANDUM**

#### **Introduction**

1. This memorandum supplements the memorandum dated 17 December 2024 and the revised memorandum dated 19 March 2025 prepared by the Department for Education, which addressed issues under the European Convention on Human Rights ("ECHR") in relation to the Children's Wellbeing and Schools Bill.
2. This supplementary memorandum addresses the issues under the ECHR that arise in relation to Government amendments tabled on 7 January 2026 for Lords Report stage. It has been prepared by the Department for Education.
3. All other amendments laid by the Government at Report stage do not alter the ECHR analysis given in the memorandums dated 17 December 2024 and 19 March 2025.

#### **ECHR Analysis**

##### **New clause to be inserted before Clause 10: Temporary Accommodation**

4. This measure will place a new duty on local housing authorities in England to notify specified bodies (educational institutions, GP practices and health visiting services) when a child is placed in temporary accommodation. Consent will be required before a notification can be made. No new duties will be placed on notified bodies, but the intention is that they will be able to take account of the child's housing situation when providing services to a child in temporary accommodation.

#### *Article 8*

5. This amendment involves the sharing of the personal data of a child, so Article 8 is engaged. This requires the consent of the parents when the child is living with their parents, or the consent of the child if they are 16 or 17, living independently of their parents and making their own application for homelessness assistance.
6. Where the measure requires the consent of the parent the personal data of a child may be shared without their consent meaning their Article 8 rights are infringed.
7. We think that infringement is necessary for the protection of public health and morals and the measure is proportionate to achieving that aim for the following reasons.
8. The purpose of the measure is to enable relevant organisations to better protect vulnerable children who are homeless and placed in temporary accommodation. The sole purpose of the measure is to promote the welfare of children who are

placed in temporary accommodation and is limited only to the sharing of information on this aspect of the child's housing situation rather than any wider personal information. The child's address will not need to be provided as a result of this measure. The notified body is not placed under any new duties as a result of receiving this information – therefore the consequences for the child are limited. The intention is simply that such bodies will be able to provide appropriate services to the child with full knowledge of their housing situation.

9. There is an additional safeguard in that where an older child aged 16/17 (younger children cannot be applicants) is living independently of their parents and makes an application themselves their consent will be required rather than that of their parent.
10. The Department notes in particular that, where personal data is concerned, the requirement for the bodies sharing and receiving the data to comply with relevant data protection legislation will act as a significant safeguard. The notified bodies specified, such as schools and GPs, are very experienced in handling this sort of data and doing so in compliance with data protection legislation.
11. In certain situations, an assessment is made of a child's ability to make decisions for themselves by professionals assessing their "Gillick" competence (for example when consenting to medical treatment). It is not possible for housing officers to administer this test in the context of an application for homelessness assistance. The child would be unlikely to be present at the making of the application which would typically take place during the school day. Requiring them to be present (to consent to the sharing) would mean in many cases the information could not be shared, undermining the objectives of the measure which are of benefit to the child. Housing officers are not trained to make assessments of a child's competence and to require them to become trained would create a significant new burden on local housing authorities which is not merited in these circumstances. The aim of this measure is to promote effective cooperation and information sharing between public bodies so that they can act effectively in the best interests of the child.
12. A parent might decline consent to inform the relevant bodies that the child is in temporary accommodation when providing consent would have been in the child's best interests. In this case the child themselves is free to inform their school/GP etc. of that information if they choose to.
13. The aim of this measure is to ensure that notified bodies such as schools and GPs can fully take account of a child's housing situation when providing services. As an example, if a child starts being regularly late for school and the school are aware they have been placed in temporary accommodation some distance away, they can take that into account when deciding how to deal with the lateness.
14. This sharing of information is designed to enable positive impacts through unlocking support which could be provided to children. Evidence demonstrates a number of negative health and educational outcomes linked to children living in temporary accommodation. Over 169,000 children live in temporary accommodation as of March 2025. Between April 2019 and March

2024, 78% of child deaths associated with temporary accommodation were of children under the age of one. Living in temporary accommodation can impact mental health and wellbeing and/or physical health, especially when combined with poor housing conditions (e.g. damp and mould, excess cold, overcrowding, safety issues) and housing insecurity. Changing addresses can (a) disrupt health visiting support and assessment of need, (b) disrupt access to routine and specialist health services, (c) impact receipt of NHS appointment invites and waiting list positions, and (d) impact school attendance due to increased travel time. It is intended that sharing of information that a child is living in temporary accommodation will help notified bodies to assist in limiting some of the negative outcomes mentioned above.

## **New clauses to be inserted after Clause 29: Expanded Free School Meals and Information Sharing**

### Expanded Free School Meals

15. This clause amends section 512ZB of the Education Act 1996 by inserting new subsection (4D). This will expand the current eligibility criteria for free school meals ("FSM") so that pupils who are: (a) themselves in receipt of, or are from a family in receipt of, Universal Credit, (b) who request a FSM and (c) do not fall within section 512ZB(4), will be eligible ("expanded FSM"). As with the current threshold for FSM ("targeted FSM") and universal infant free school meals, the duty to provide expanded FSM to eligible pupils will only apply to state funded schools.

### *Article 14*

16. The duty to provide expanded FSM will only apply to state funded schools. Consequently, pupils who meet the financial eligibility criteria and attend fee paying independent schools will not have a right to expanded FSM. Equally, those who on account of their immigration status are not eligible for Universal Credit will not be eligible. To the extent that there will be any difference in treatment (or failure to treat children with a particular status differently), the policy is justified and reflects the fact that all children are entitled to a state-funded suitable education, and to attendant benefits such as FSM. In addition, local authorities retain a discretion to fund free school lunches for children who do not meet the eligibility criteria for expanded FSM.

### Information sharing

17. This clause expands the information sharing powers in section 110 of the Education Act 2005 by allowing information to be shared by other government departments to check and identify those who are eligible for targeted FSM, expanded FSM and those who are eligible for FSM outside of the legislative scheme or are intended beneficiaries of financial assistance given to local authorities and schools under section 14 of the Education Act 2002. In addition, the amendment creates a legislative lawful basis for the processing and communication of FSM eligibility checks to schools and parents directly, which will allow them to use the Department's eligibility checking service directly. This

communication will include the legislative or other basis in which the child is eligible for FSM or financial assistance.

#### *Article 8*

18. This measure will engage Article 8 as the information being shared to check eligibility and process applications for FSM and financial assistance will include personal data.
19. The Department considers that, to the extent that there is any interference with Article 8, it is necessary, proportionate and justified for the purpose of tackling child poverty. The information being shared and processed will be limited to that necessary for the purpose of checking eligibility and will also be subject to relevant data protection legislation.

#### **Clauses 31-36: Children Not In School**

20. The Department is proposing an amendment to Clause 31, which will enable the Secretary of State (and Welsh Ministers) to pilot mandatory meetings in certain Local Authorities (to be determined by regulations). The school would not be allowed to delete the name of any child of compulsory school age from the admissions register, where the parent wanted to remove that child for education otherwise than at school (i.e. for home education), until after a meeting between the Local Authority and parent had taken place.
21. Further to consultation, the Secretary of State will be empowered after at least two years of the pilot, to (through affirmative regulations) cease the pilot and roll out the scheme to all Local Authorities in England or just cease the scheme. Welsh Ministers will have the same powers in relation to Wales.
22. These measures are likely to lead to a slight delay in a child's name being removed from the school admissions register, during which time the child must continue to regularly attend school. If the Local Authority becomes concerned during the meeting about the likely suitability of home education but the parent still pursues home education, it will prioritise this family for follow up and consider use of the school attendance order process which could require the child to again be registered at a school.

#### *Article 2 of the First Protocol ("A2P1") together with Article 9*

23. In addition to providing that no person shall be denied the right to an education, A2P1 requires the state to "respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."
24. The Department is of the view that the proposals comply with A2P1, as the right of parents to respect for their religious and philosophical convictions is secondary to the fundamental right to education outlined in the first sentence of the Article, and these measures are intended to protect that right. The Department also considers that the proposals comply with Article 9 and are justified under Article 9(2) as being necessary for the protection of the right of the child to an education. It should be

noted that the measures will only lead to a slight delay in a child's name being removed from the register but should aid the Local Authority in identifying any necessary additional support for the family.

### **Clause 43: Powers of Entry and Investigation etc.**

25. The Department is proposing an amendment to Clause 43 to partially remove the restriction contained at section 127D(7) on His Majesty's Chief Inspector of Education, Children's Services, and Skills ("HMCI" or the "Chief Inspector") accessing material of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 ("PACE"). The amendment will enable HMCI to inspect, copy and seize certain categories of material specified in section 9(2) of PACE when acting under the authority of a warrant issued under proposed section 127C of the Education and Skills Act 2008 ("the 2008 Act") and where such material is relevant to the investigation of a "relevant offence" under the 2008 Act.
26. The additional categories of material that HMCI will be permitted to inspect, copy and seize by virtue of this amendment are broadly: personal records as set out in section 11(1)(a) and 12 of PACE, which includes documents containing information about the physical or mental health of an identifiable individual; and material falling within section 14(2) of PACE, namely material in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation (or for the purpose of any paid or unpaid office) and holds it subject to an express or implied undertaking to hold it in confidence or a restriction on disclosure/an obligation of secrecy under another enactment.
27. The Department has retained the restriction on HMCI inspecting, copying and seizing legally privileged material, journalistic material and human tissue or tissue fluid which are the other categories of material captured through section 9(2) of PACE and therefore the restriction at section 127D(7).

### **Article 6**

28. Article 6 may be engaged to the extent that preventing HMCI from exercising its powers in respect of such documents could amount to an obstruction offence under proposed section 127F of the 2008 Act. It is possible that the documents HMCI would now be permitted to access are ones that an individual subject to the powers/investigation are more likely to want to protect and withhold or at least be nervous about sharing given their nature. However, we anticipate that the existence and production of a warrant minimises the risk of obstruction and therefore the chance of a criminal offence being committed. As noted at paragraph 27, the Department has retained the restriction on HMCI inspecting, copying and seizing legally privileged material.
29. Whilst it is possible that the additional categories of material now accessible to HMCI may contain incriminating information and be used to support a prosecution, the Department does not consider that 'privilege against self-incrimination' will arise in this context as such a privilege does not extend to material which may be obtained through recourse to compulsory powers (such as a warrant), but which exist independent of the will of the suspect. It is pre-existing material that the

Department expects to be captured by this amendment and only where such material is relevant to the investigation of a relevant offence.

30. To the extent that Article 6 is engaged by this amendment, Article 6 is a limited right and the Department considers that there are appropriate procedural safeguards in place including: judicial oversight through the warrant obtaining process in proposed section 127C of the 2008 Act; the requirement that HMCI has reasonable cause to believe that a relevant offence is being or has been committed on the premises, or that evidence may be found on or accessed from the premises, before being able to exercise its relevant powers (a justice of the peace would also need to be satisfied this reasonable cause requirement is met before issuing a warrant); and the fact that the burden of proof for a relevant offence will rest with the Crown.
31. Where a person is accused of being guilty of the offence of obstruction, that person will have the right to a fair and impartial trial. The Secretary of State is also required to consent to prosecutions in this area, and a court also has the discretion to exclude unfair evidence under section 78 of PACE.

#### *Article 8*

32. This amendment will engage Article 8 as HMCI will be permitted to inspect, copy and seize additional categories of document that are realistically more sensitive, most notably documents acquired or created in the course of the setting's business and held under a duty of confidence, including documents that contain information relating to the health of an identifiable individual. This expansion, together with the powers being exercisable on any premises (including dwellings and mixed-use properties), will involve an interference with Article 8 rights. Please refer to paragraph's 219-223 of the department's ECHR Memorandum dated 19 March 2025 for analysis relating to HMCI's powers of entry and investigation more broadly.
33. There are adequate safeguards to protect against arbitrary interference or abuse, most notably: independent judicial oversight through the warrant obtaining process in proposed section 127C of the 2008 Act; and the 'reasonable cause' requirement referenced at paragraph 30. Any such material accessed by HMCI will also need to relate to the relevant offences being investigated.
34. The Department has ensured that the scope of the amendment (the partial removal of the current restriction at section 127D(7)) is appropriately narrow and targeted at the categories of document most likely to be relevant to the investigation of a relevant offence. In practice, this is expected to capture documents such as (but not exclusively) pupil admission documents, financial records for the setting and Education, Health and Care Plans which are particularly pertinent to investigating the offence of conducting an unregistered independent educational institution (under section 96 of the 2008 Act). As noted at paragraph 27, the Department has retained the restriction on HMCI inspecting, copying and seizing legally privileged material and journalistic material.
35. The Department is assured that HMCI will have due regard to the relevant PACE Code of Practice when exercising these powers under warrant and that it's

approach will be set out in a public document, as it is now i.e. its 'Unregistered School Inspection Handbook'. HMCI, or more accurately his Ofsted inspectors, have been conducting investigations for many years and are familiar with dealing with sensitive information appropriately. In exercising the powers, HMCI will also be required to act in a manner that is compatible with convention rights pursuant to section 6 of the Human Rights Act 1998. As noted at paragraph 31, the Secretary of State is also required to consent to prosecutions in this area, and a court has the discretion to exclude unfair evidence under section 78 of PACE.

36. The Department considers that the powers granted through this amendment are justified and necessary for the protection of children from risk of harm and for investigating (and ultimately assisting in the successful prosecution of) relevant offences that pose such a risk to the safety and wellbeing of children.
37. The Department considers that any interference with Article 8 rights is appropriately balanced, with safeguards to ensure that any interference will be proportionate in pursuit of the legitimate aims.

#### **New clause to be inserted after Clause 50: Inspection of Academy proprietors**

38. This measure will provide a new statutory regime for the Chief Inspector to inspect proprietors of Academies in England. This measure will also enable the Secretary of State to intervene and, subject to issuing a termination warning notice, ultimately terminate funding agreements of Academy proprietors which are not performing to an acceptable standard.

#### *Article 34*

39. Academy proprietors are currently all independent charitable companies that are funded by central government, perform public functions and are amenable to judicial review. They are a "hybrid public authority" for the purposes of s 6 of the Human Rights Act 1998 ("HRA 1998"). For the same reasons as set out in paragraph 223 of the Department's ECHR memorandum dated 17 December 2024, the Department considers it unlikely that Academy proprietors would be considered a victim for the purposes of the ECHR and the HRA 1998. However, in view of the unsettled nature of the law on this point we have provided justifications for any potential ECHR infringements against Academy proprietors as well as individuals.

#### *Article 6*

40. This measure will introduce a new offence where a person intentionally obstructs the Chief Inspector in relation to the inspection of an Academy proprietor. A person guilty of the offence will be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
41. The Department considers that Article 6 is engaged. However, Article 6 is a limited right, and the measure provision ensures the relevant procedural safeguards are met.

42. A person accused of being guilty of the offence will have the right to a fair and impartial trial in the criminal courts of England and Wales and will have the opportunity to make any case known and will have the usual rights of appeal to any conviction.
43. The offence will not be applied retrospectively.
44. The Department considers that the offence is necessary to ensure the Chief Inspector is not obstructed from entering premises or inspecting or copying records and documents that are necessary to conduct effective lawful inspection of Academy proprietors. The Department considers that these powers pursue the legitimate aim of ensuring Academy proprietors are held accountable for their performance, improving opportunities for all children and young persons by addressing accountability gaps in the education system. High quality, user-focused education provision is important for children's and young persons' wellbeing and success in the future, and this measure is intended to ensure that all children and young persons are educated in an education system that is well-managed, delivering for its pupils, students and staff and supports positive education outcomes in the community.
45. The Department considers the offence and its punishment to be proportionate and is consistent with the existing offence and punishment relating to the intentional obstruction of the Chief Inspector in exercising his school inspection functions.

#### *Article 7*

46. With regards to the new criminal offence and its punishment (see paragraph 40 above), the Department considers Article 7 is engaged.
47. Article 7(1) is an absolute right and in creating a new offence, any person charged and convicted will go through the criminal justice system, which is compliant with Article 7 rights. Paragraphs 44 to 45 above also apply.

#### *Article 8*

##### Powers of entry

48. This measure will introduce new powers ensuring the Chief Inspector can access certain premises used by or in connection with Academy proprietors and their Academies.
49. It is very unlikely that there will be any domestic premises falling within scope of the powers of entry and, even if there are any, Ofsted have confirmed that they have no intention of exercising the powers to enter domestic premises. These powers of entry mirror those already available to the Chief Inspector in relation to school inspections and the Chief Inspector does not use those powers to enter domestic premises.
50. In the very unlikely event that there is any interference with an individual's rights under Article 8, the Department considers that interference is justified and

proportionate under Article 8(2) for being in accordance with the law and necessary in a democratic society.

51. The powers are prescribed in law and provide adequate safeguards against arbitrary use, and the Department considers the powers to be proportionate. The powers will be set out in primary legislation and are formulated with sufficient clarity to enable the Chief Inspector to know how they may be exercised. The Chief Inspector will only be able to use the powers to enter premises used by Academy proprietors, their Academies, and any person providing education to a pupil or student by virtue of arrangements made by an Academy proprietor (alternative provision) for the specific purpose of conducting an effective lawful inspection of an Academy proprietor. The Chief Inspector's (and other inspectors') use of these powers will be subject to judicial review. The Chief Inspector and other inspectors acting under the Chief Inspector's authorisation will have to operate the powers in accordance with the ECHR, as they will be subject to the duty to act in a compatible manner under section 6 of the HRA 1998. In doing so, they will need to consider whether it is necessary to enter the premises to effectively perform their inspection functions, including considering whether there are other, less intrusive, methods of obtaining any necessary information, records, or documents.
52. The Department considers that the powers are necessary in a democratic society. There is an inherent public interest in the state exercising a supervisory jurisdiction over publicly funded educational institutions in order to protect pupils, raise educational standards and ensure that the public is receiving value for money.
53. The Chief Inspector is the appropriate person to have and exercise these powers. The Chief Inspector has the statutory functions in section 118 of the Education and Inspection Act 2006, which include keeping the Secretary of State informed about the quality of activities within the Chief Inspector's remit, improvements in the quality of such activities, and the efficient and effective use of resources in the carrying on of such activities and services.
54. This measure is necessary in the public interest to support the Secretary of State's ambition for improving educational standards. Trust inspection will support all trusts to improve, by providing an independent assessment of each trust's strengths and weaknesses. It will identify the strongest trusts that are best placed to grow, enable the sharing of best practice, and identify where intervention is needed to secure improvement. The new powers are also essential to strengthen the legislative framework regulating the Academies system. Currently, powers to take action are largely limited to where an Academy proprietor is not delivering for the Academies within it. This also means that cases of Academy proprietor failure can become protracted, risking the provision of education and costing significant amounts of public funds. The Department does not currently have powers to remove a good Academy from a failing proprietor, so the performance of these Academies is at risk of decline the longer an Academy proprietor remains in a concerning state.
55. The Department considers that these powers pursue the legitimate aim of ensuring Academy proprietors are held accountable for their performance, improving

opportunities for all children by addressing accountability gaps in the school system. High quality education provision is important for children's wellbeing and success in the future, and this measure is intended to ensure that all children are educated in an education system that is well-governed, delivering for its students and staff and supports positive education outcomes in the community.

Powers to inspect documents, records and computers etc.

56. This measure creates new powers for the Chief Inspector to inspect, copy, and take away documents and records relevant to the discharge of the Chief Inspector's Academy proprietor inspection functions, and to access, inspect, and check the operation of any computer and associated apparatus or material which the Chief Inspector considers is or has been used in connection with such documents or records.
57. These powers largely mirror those already available to the Chief Inspector in relation to inspections of schools under Part 1 of the Education Act 2005 and of further education institutions under Chapter 3 of Part 8 of the Education and Inspection Act 2006.
58. Although these powers will enable the Chief Inspector to inspect, copy, and take away documents and records held by people on domestic premises and to access, inspect, and check the operation of a person's personal computer and associated apparatus or material, it is not intended that the Chief Inspector will require access to domestic premises to obtain access to those documents, records or computers. Instead, the Chief Inspector has the power to require a person to present such documents, records, or computers to the Chief Inspector on Academy proprietor or Academy premises. Further, the Chief Inspector's powers are restricted to only enable the Chief Inspector to inspect, copy and take away any documents or records, including those kept on a computer, which HMCI considers relevant to the discharge of his Academy proprietor inspection functions.
59. To the extent that these powers enable the Chief Inspector to obtain access to, and inspect and check the operation of, a person's personal computer or any associated apparatus or material, the Department accepts that these powers of entry may interfere with an individual's Article 8 rights when exercised. However, the Department considers that any interference is justified and proportionate under Article 8(2) for being in accordance with the law and necessary in a democratic society:
  - a. broadly for the reasons given at paragraphs 51 to 55 above,
  - b. because the Chief Inspector's power is restricted to only enable the Chief Inspector (and inspectors) to inspect, copy and take away any documents or records kept on a computer which the Chief Inspector considers relevant to the discharge of his Academy proprietor inspection functions, and
  - c. because where any information obtained by the Chief Inspector (or inspectors) contain any personal data, the information being processed will be

limited to that necessary for the purpose of inspecting Academy proprietors and will be subject to relevant data protection legislation.

## *Article 9*

### Power to terminate funding agreements

60. This measure will introduce a new power for the Secretary of State, subject to issuing a termination warning notice, to terminate any or all of an Academy proprietor's funding agreements entered into with the Secretary of State under section 1 of the Academies Act 2010 ("AA 2010") where the Chief Inspector reports, following an inspection under the new regime, that an Academy proprietor, or those responsible for leading, managing or governing the Academy proprietor, are not performing to an acceptable standard.
61. As well as applying these powers to any new funding agreements between the Secretary of State and Academy proprietors, this measure will also have retrospective effect by applying these powers to all funding agreements existing prior to the commencement of the new power.
62. The Department considers that it is unlikely that an individual's rights under Article 9 will be interfered with where the Secretary of State exercises their power to terminate a funding agreement relating to an Academies which are designated by the Secretary of State as having a religious character. It is expected that this power will only be used where such Academies operated by an underperforming Academy proprietor can be transferred to a new Academy proprietor to continue operating that Academy with its religious character, or other arrangements are made to secure the ongoing education of pupils and students in affected Academies.
63. To the extent that there is any interference, the Department considers that interference is justified and proportionate under Article 9(2) for being subject only to such limitations as are prescribed by law and being necessary in a democratic society in the interests of public safety, public health, and the rights and freedoms of others.
64. The powers will be prescribed in law and provide adequate safeguards against arbitrary use, and the Department considered the powers to be proportionate. The Secretary of State will be required to issue a termination warning notice before exercising the power to terminate, which will either give the Academy proprietor the opportunity to make representations, or will require the Academy proprietor to undertake specific actions by a specified date. An Academy proprietor's response to a termination warning notice may prevent termination. The Secretary of State's use of these powers will be subject to judicial review. The Secretary of State will have to operate the powers in accordance with the ECHR, as they will be subject to the duty to act in a compatible manner under section 6 of the HRA 1998.
65. Broadly for the reasons given in paragraphs 52 to 55 above, the Department considers that any interference with Article 9 resulting from the termination of

a funding agreement relating to an Academy with a religious character is necessary in a democratic society in the interests of public safety, public health, and the rights and freedoms of others and is proportionate.

#### *Article 14*

66. This measure and the powers which will be introduced by them will apply equally to all Academy proprietors and we do not envisage that there will be any difference in treatment between individuals in analogous circumstances within the meaning of Article 14. To the extent that there will be any differences in treatment (in relation to which the Department reserves its position), the Department will ensure that any uses of the power is made consistently with Article 14, when read together with Articles 6, 7, 8 or 9, and Articles 1 and 2 of Protocol 1.

67. The aim of the new Academy proprietor inspection regime is to assess the performance of Academy proprietors and to enable the Secretary of State to take action to improve the performance of an underperforming Academy proprietor, or to replace that Academy proprietor with a new one where sufficient improvement in performance cannot be achieved. The regime will apply to all Academy proprietors equally, and any disparate effects on people of any particular sex, race, colour, language, religion, or other such characteristic will be indirect and unlikely to be substantial. The Department considers that any unintended differences in the degree of protection of rights and freedoms will likely be justified and reasonable in light of the importance of the policy aim.

#### *Article 1 of Protocol 1 ("A1P1")*

##### Powers of entry and powers to inspect documents, records and computers etc...

68. With regards to the Chief Inspector's powers of entry (see paragraph 48 above), and powers to inspect documents and records (see paragraph 56 above), the Department considers that A1P1 may be engaged. However, to the extent that there is any interference, the Department considers that interference is justified and proportionate for being in the public interest and subject to the conditions provided for by law.

69. For the reasons given at paragraph 51 above, the Department considers that the powers will be in accordance with the law and provide adequate safeguards against arbitrary use and are proportionate. Additionally, the Chief Inspector and inspectors will only be able to inspect, copy and take away documents and records (including any stored on computers) which are necessary for the Chief Inspector to perform his lawful functions of inspecting the performance of an Academy proprietor.

70. Member states are afforded a wide margin of appreciation in relation to A1P1 and the Department considers that any interference with an individual's rights through the Chief Inspector using the powers to enter premises can be justified on the grounds that the public interest in developing a high quality education system outweighs the rights of Academy proprietors, Academies and other persons

providing education to pupils and students under arrangements made by an Academy proprietor (alternative provision).

71. For the reasons given at paragraphs 52 to 55 above, the Department considers that the public interest requirement would be satisfied in this case and that these measures pursue the legitimate aim of ensuring Academy proprietors are held accountable for their performance and improving opportunities for all children and young persons by addressing accountability gaps in the education system.

#### Power to terminate funding agreements

72. This measure will introduce new powers for the Secretary of State, subject to issuing a termination warning notice, to terminate an Academy proprietor's funding agreements where the Chief Inspector reports following an inspection under the new Academy proprietor inspection regime being introduced by this measure that an Academy proprietor, or those responsible for leading, managing and governing an Academy proprietor, are not performing to an adequate standard.
73. Broadly for the reasons given at paragraphs 52 to 55 above, to the extent that there is any interference with A1P1, the Department considers that interference is justified and proportionate for being in the public interest and subject to the conditions provided for by law.
74. The power will enable the Secretary of State to unilaterally amend all funding agreements which, in itself, may amount to an interference with the peaceful enjoyment of property (a contract) for the purposes of A1P1. The effect of these unilateral amendments will also potentially engage A1P1 because they will expand the circumstances in which the Secretary of State may terminate funding agreements. Existing funding agreements give Academy proprietors an enforceable right to funding from the Secretary of State provided that they abide by the terms of the agreement (and any primary legislation applicable to Academies). The Department considers that this right to future income is a likely a possession within the meaning of A1P1.
75. An Academy proprietor's entitlement to funding will still derive from its entry into a funding agreement. However, the Secretary of State's existing right to terminate the funding agreement will be extended to include circumstances in which the proprietor, or those responsible for leading, managing and governing an Academy proprietor, are deemed to not be performing to an adequate standard (as a result of an inspection by the Chief Inspector under the proposed new Academy proprietor inspection regime).
76. The power, in unilaterally and potentially retrospectively interfering with an Academy proprietor's contractual rights, will likely have the effect of controlling the use of Academy proprietor's property. In order for an interference with property to be justified, it must be provided for by law, serve the public/general interest and be proportionate. Although A1P1 contains no explicit procedural requirements, it has been construed to mean that persons affected by a measure interfering with their "possessions" must be afforded a reasonable opportunity to put their case to the responsible authorities for the purpose of effectively challenging those measures,

pleading, as the case might be, illegality or arbitrary and unreasonable conduct and that these guarantees are inherent in the principle of lawfulness (*Lekić v. Slovenia* [GC], § 95).

77. The Secretary of State's use of these powers will be subject to judicial review. The Secretary of State will have to operate the powers in accordance with the ECHR, as they will be subject to the duty to act in a compatible manner under section 6 of the HRA 1998.
78. When considering proportionality, it is relevant to consider the type of interference. The European Court of Human Rights ("ECtHR") has acknowledged that governments have sovereign powers to amend or even terminate a contract concluded with private individuals. The ECtHR will generally afford States a margin of appreciation when deciding proportionality, but the extent of the margin will depend on the circumstances of the case. In this case, the Government is proposing termination provisions which apply only in circumstances of inadequate performance, which are essential elements of the regulation of Academy proprietors, which are primarily funded through the public purse.
79. The Government has inserted additional retrospective termination provisions into funding agreements previously, including provision in sections 2A to 2D of the AA 2010 allowing the Secretary of State to terminate funding agreements (subject to certain requirements) where, broadly, the Chief Inspector reports that an Academy is in a category of concern, or is "coasting" Pursuant to section 2D of the AA 2010, the termination powers in sections 2A and 2B have retrospective effect by applying to all funding agreements entered into between the Secretary of State and Academy proprietors prior to those powers coming into force.

#### *A2P1*

80. With regards to the new power which this measure will introduce for the Secretary of State to terminate an Academy proprietor's funding agreements (see paragraph 58), the Department is of the opinion that A2P1 will not be infringed. Although the Secretary of State will have the power to terminate an Academy proprietor's funding agreements, this power will only be used where Academies are operated by an underperforming Academy proprietor and can be transferred to a new Academy proprietor, or other arrangements are made to secure the ongoing education of pupils and students in affected.