MEMORANDUM OF DELEGATED POWERS

Introduction

1. The Education and Skills Bill was brought from the House of Commons on May 13, 2008. This Memorandum sets out the delegated powers sought under the Bill. It explains in each case the purpose of the power; the reason why delegated legislation is appropriate; and the nature and reason for the parliamentary procedures that apply. A summary of the delegated powers is attached at Annex A. In addition, a number of policy statements, indicative regulations and draft directions have been published alongside this Memo to further illustrate the use of the delegated powers contained in the Bill.

2. The Bill takes forward the proposals outlined in the *Raising Expectations: Staying in Education and Training – From Policy to Legislation* (November 2007) and seeks to meet the ambition, set out in *World Class Skills: Implementing the Leitch Review* (July 2007), of achieving world class skills by 2020. To support this aim it also contains provisions relating to support for young people, careers education, apprenticeships, school transport, co-operation as regards 14-19 education and training, school admissions, behaviour and attendance at maintained schools, external qualifications and membership of schools forums. In addition, the Bill will make provision for the rationalisation of the registration and inspection of institutions in the independent sector, non-maintained special schools (NMSS) and of the inspection of initial teacher education.

Overview of Bill
(a) PART 1 – DUTY TO PARTICIPATE IN EDUCATION OR TRAINING

(i) Introduces a new duty to participate in education and training for young people above compulsory school age but under 18. This can be fulfilled either through full-time education or training, training through a contract of apprenticeship, or, if in full-time occupation, participating in sufficient relevant education or training.

(ii) Requires local education authorities to:

- ensure their functions are exercised so as to promote young people’s effective participation;
- identify those young people in their areas to whom the Part applies but who are not participating;

(iii) Gives employers duties to enable young people to participate; and defines how the duties will be enforced.

(iv) Extends the provisions concerning parenting contracts and orders to enable them to be used when young people are not participating.

(v) Outlines the process and arrangements for ensuring all young people fulfil the duty to participate.

(b) PART 2 – SUPPORT FOR PARTICIPATION IN EDUCATION OR TRAINING: YOUNG ADULTS WITH LEARNING DIFFICULTIES AND YOUNG PEOPLE IN ENGLAND

Defines local education authorities’ and schools’ duties in supporting all young adults aged 20-24 with learning difficulties and young people to engage in suitable education or training.

(c) PART 3 – ADULT SKILLS
(i) Introduces a new duty on the LSC to secure provision of proper facilities for adult education at certain levels and gives eligible adults a right to expect free tuition. Adults between the ages of 19 - 25 doing other specified courses will also be given the right to expect free tuition.

(ii) Provides for assessments to be made as to the effectiveness of education or training.

(d) PART 4 – REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND

(i) Introduces the definition of an independent educational institution; to extend the legislative regime for independent schools to independent providers of part-time education.

(ii) Allows for the transfer of responsibility for the registration and monitoring of independent educational institutions from the Secretary of State (exercised through the Department for Children, Schools and Families) to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (the ‘Chief Inspector’), provides a power for provisions in this Part to be applied to independent post-16 colleges, and makes a number of changes to the legislation which governs the regulation and inspection of independent schools and to the inspection fee arrangements for independent schools;

(iii) Transfers the function of approving non-maintained special schools (NMSS) from the Secretary of State to the Chief Inspector. Amends section 347 of the Education Act 1996 to remove in England the category of independent schools approved for the placement of children with SEN, and the requirement for a person exercising functions under Part 4 of the Education Act 1996 to seek consent to place a pupil with a statement of special educational needs in an independent school in England that is not so approved.

(d) PART 5 – MISCELLANEOUS AND GENERAL

(i) Enables young people to apply for a place in the sixth form of a school and to appeal against refusals
to admit.

(ii) Inserts new sections into the School Standards and Framework Act 1998, making new provision about admission arrangements in England in three main areas:

- Removes the requirement for consultation from primary legislation and enables us to set out in secondary legislation a more flexible and adaptable consultation process;
- places a duty on local authorities to produce a report to the Schools Adjudicator on admissions arrangements in their area; and
- extends the role of the Schools Adjudicator.

(iii) Provides a power for the Governing body of a maintained school to require a pupil to attend off site provision in order to improve their behaviour.

(iv) Alters the powers and remit of the Qualifications and Curriculum Authority in England and Northern Ireland, and the Welsh Ministers’ functions in relation to external qualifications.

(v) Provides that the period of notice given to providers of initial teacher training prior to an inspection by the Office for Standards in Education, Children’s Services and Skills (Ofsted) will be at the discretion of the Chief Inspector.

(vi) Allows for mandatory representation of non schools bodies on Schools Forums.

**Territorial Coverage**

3. This Bill extends to England and Wales. The main provisions in Part 1 and 2 concern England only. Clauses 72 to 76 relate to England, Wales and Scotland. References to Wales in Part 4 are to enable
the current legislative regime to continue. There are Framework Powers for Wales related to the regulation and inspection of schools for pupils below compulsory school age, the regulation and registration of part-time independent schools and the inspection of non-maintained nursery schools, and a number of provisions in Part 5 cover Wales. Clause 141 and 143 relate to the remit of the Qualifications and Curriculum Authority in Northern Ireland.

Rationale and Overview of Delegated Powers

4. The Education and Skills Bill contains a range of powers to make delegated legislation. In considering whether matters should be specified on the face of the Bill or left to delegated legislation the Departments for Children, Schools and Families and Innovation, Universities and Skills have taken account of the following considerations:

1. The overall legislative framework and the substantive policy provisions must be presented clearly on the face of the Bill. The Bill sets the overall framework with secondary legislation used for subordinate provisions.

2. Within the overall framework, the provisions of the Bill support effective implementation of policy and contain sufficient flexibility to respond to changing circumstances and future development of education and training provision for young people and adults.

3. A power to make regulations or prescribe details should be clearly linked with the primary provisions to which it relates. This results in secondary legislation in many clauses, but provides greater clarity of intention than seeking more general powers.
4. Where the Bill re-enacts existing delegated powers or transfers responsibility for them to another body and the current arrangements are fulfilling the Government’s policy objectives, the approach to the powers and the level of parliamentary scrutiny has been carried forward.

5. Operational, administrative and technical details are not normally set out in primary legislation. It is the Government’s intention to reduce the extent to which primary legislation prescribes processes in detail. Where there is a need for administrative and technical details to be spelt out in legislation, use of secondary legislation ensures appropriate flexibility and additional opportunities to consult on matters of detail and ensures that the key powers and duties in primary legislation are not unduly obscured by this detail.

Parliamentary Scrutiny

5. All powers of the Secretary of State and the Welsh Ministers to make orders or regulations under the Bill are exercisable by Statutory Instrument. In the case of commencement orders under clause 154, no parliamentary procedure is provided for, in line with normal practice.

6. In the majority of other cases, powers to make Statutory Instruments are to be subject to negative resolution procedures, except clause 3(5) (see paragraph 9), clause 5(1) (see paragraph 12), clause 49 (see paragraph 31), clause 71 (which inserts sections 4A to 4C and Schedule 1A into the Learning and
The delegated powers contained within this Bill include the following powers to amend primary legislation:

- A power subject to the affirmative procedure at clause 3(5). See paragraph 9.
- A power subject to the affirmative procedure at clause 71 (inserted paragraph 9 of Schedule 1A to the Learning and Skills Act 2000). See paragraph 53.
- A power subject to the affirmative procedure at clause 71 (inserted section 4B(6) of the Learning and Skills Act 2000). See paragraph 56.
- A power subject to the negative procedure at clause 77(3). See paragraph 59 to 62.
- A power subject to the affirmative procedure at clause 151. See paragraph 107.

PART 1 – DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

7. Part 1 of the Bill sets out the legal duties and powers relating to the policy to raise the participation age in England. It is the Government’s intention that the participation age will be increased in two stages, to 17 years in 2013 and 18 years in 2015, and the Bill requires the provisions to be commenced accordingly (clause 154). This timetable has been set out in order to enable appropriate provision of education and training, packages of support, and any necessary delivery structures to be in place before the legal duties are commenced. It makes sure that the expectations of the young people first affected (entering year 7 in September 2008) can be set early; and that the system gears
up well in advance so that young people get a significantly different experience from the very start of secondary school.

8. Part 1 provides for a number of delegated powers through which the implementation and administrative details will be defined. The exact content of the delegated powers will be further developed prior to implementation in order to ensure they are consistent with, and complementary to, the systems and circumstances that are present on commencement and to allow for consultation. We have set out the intentions here and have also made available detailed policy statements.

**CHAPTER 1 - YOUNG PERSONS**

9. Clause 1 provides that a young person will no longer be subject to the duty to participate if they attain a level 3 qualification. Clause 3(2) provides that level 3 is the level of attainment which in the Secretary of State’s opinion is demonstrated by GCE A-level in two subjects. Clause 3(5) allows this subsection to be amended by order. This power is needed in order to allow the description of the level of achievement a young person must obtain to be altered at a future date in response to any development in the qualification system which would mean the clause no longer had its intended effect. It is not anticipated that any amendments will be made in the foreseeable future. It is recognised that an amendment to subsection (2) could result in altering to some extent the nature and effect of the basic duty to participate. Therefore it is proposed that this power is subject to the affirmative resolution procedure.

10. Clause 3(1) allows for the Secretary of State to prescribe the external qualifications or description of a qualification that is to be considered to be a level 3 qualification for the purposes of
this Part. Prescribed qualifications would, for example, include Advanced Diplomas. This power allows for the Secretary of State to make clear which qualifications are considered level 3 qualifications; with reference to assessments made by the Qualifications and Curriculum Authority (QCA).

11. Clause 4(2) provides a power to make regulations to clarify that particular types of non-school based education and training are, or are not, to be counted as being full time for the purposes of the duty to participate in education or training. This power is needed to ensure that young people and other interested parties are left in no doubt as to whether a particular type of provision is, or is not, counted within the duty. The intention is to prescribe that education or training at establishments other than schools must be for at least 16 hours a week to count as full time for the purposes of the duty, as set out in the Raising Expectations: Staying in Education and Training Post-16 Green Paper (March 2007) and the From policy to legislation document (November 2007). There is no intention to prescribe a minimum number of hours for home education. The details have been left to secondary legislation so that alterations can be made in response to future developments in education and training, for example changes to the size of learning programmes. Changes would not materially affect the duty to participate, and it is therefore proposed that these regulations should be subject to the negative procedure.

12. Clause 5 defines full-time occupation. Subsection (1) provides that a person is in full time occupation if they work for at least 20 hours per week under an employment contract or in any other way prescribed by regulations, which may include self-employment, voluntary work and work as an office holder. Such a provision is appropriate for secondary legislation, by affirmative procedure, in order to allow for consultation with the voluntary sector and any other stakeholders in the period before implementation.

13. Clause 5(5) provides a power to make regulations to prescribe the circumstances under which a person is, or is not, to be treated as working for at least 20 hours a week in cases where the number
of hours varies from week to week. For example, if a person regularly works 15 hours one week and 25 the next, regulations could make provision that such a person is to be treated as working 20 hours per week. If a person’s working hours vary significantly from week to week, regulations could make provision that such a person is not to be treated as working 20 hours per week even if as a result of the variation in their hours they sometimes work 20 hours in a week. This has not been specified on the face of the Bill as it relates to a level of operational, administrative and technical detail which would obscure the main point of the provision. We propose that the negative resolution procedure would deliver the required level of Parliamentary scrutiny.

14. Clauses 7(1) and (3) provide a power for the Secretary of State to prescribe in regulations the date when a ‘relevant period’ (the time period within which a young person in full-time occupation must complete a specified amount of relevant training or education) ends. A relevant period starts when a person becomes subject to the duty to participate under clause 2 and is not participating in accordance with subsection (1)(a) (full time education or training) or subsection (1)(b) (contract of apprenticeship). A relevant period ends if the young person starts participating in full-time education or training, or commences a contract of apprenticeship (or when the duty no longer applies to him/her), or at a date to be prescribed in regulations.

15. Regulations made under clause 8 will allow clarification of the amount of relevant training or education which may be treated as ‘sufficient’. This will be at least 280 hours of guided learning when the relevant period is a year. Regulations will define the minimum number of guided learning hours required in the case of any other relevant period. In particular subsection (4) provides that they will clarify whether a course is deemed sufficient when it spans either the start or the end of the period over which the young person is subject to the duty to participate. Regulations will also set out how to calculate the number of hours deemed to be sufficient for periods of less than a year, for example where a young person has changed from full-time to part-time education part way through a year, or where a young person will turn 18 before the end of the year. The scope of the regulations is limited on the face of the Bill to cover only such matters. These regulations are required in order to
cover the circumstances when young people are moving between the different ways of fulfilling the duty and coming into the jurisdiction between dates prescribed under clause 7 (3). Regulations under this section relate to operational matters and will necessarily be of a degree of detail that would be inappropriate in primary legislation and would normally subject to the negative procedure. This will enable them to be changed in response to changes in the qualifications available to young people, for example.

CHAPTER 3 – EMPLOYERS

16. Clause 22(2) provides for the amount of the financial penalty that a local education authority may require an employer to pay, where they have employed a young person who is subject to the duty to participate and who has not made appropriate arrangements for training or education, to be determined in accordance with regulations. The employer will not be issued with a penalty notice if they can demonstrate that they have taken all reasonable steps to ascertain that the young person has made the appropriate arrangements.

17. Similarly, clause 28(3) provides for the amount of financial penalty the local education authority may issue to an employer, where they have failed to comply with an enforcement notice or have failed to give effect to a required variation in the terms and conditions of employment, to be determined in accordance with regulations. The purpose of enforcement against employers (including the possibility of issuing a financial penalty) is to ensure young people are able to participate and to safeguard their right to be released from work to participate in education or training.

18. It is necessary to specify the amount of such financial penalties in secondary legislation in
order to allow it to be altered in response to changing costs without having to amend primary legislation. It is proposed that the negative procedure is appropriate in these circumstances.

**CHAPTER 4 – PARENTING CONTRACTS AND PARENTING ORDERS**

19. Clause 38(2) provides a power for the Secretary of State to make further provision in regulations about the exercise by local education authorities of their functions in relation to parenting contracts and parenting orders. It is proposed these regulations are subject to the negative resolution procedure as this power is precisely analogous to that found in section 22A (1) of the Anti-social Behaviour Act 2003.

**CHAPTER 5 – ATTENDANCE NOTICES**

20. Clause 40(6) allows for regulations to prescribe the details of the contract of apprenticeship that must be specified in an attendance notice, where applicable. Subsection (7) provides for the Secretary of State to make regulations to prescribe the requirements, relating to the description of education or training, which may be specified in the attendance notice. Subsection (8) allows for regulations to require other prescribed matters to be stated in an attendance notice. These powers will enable detailed requirements for the attendance notices to be set out in regulations in order to reflect the practical arrangements that are necessary for different kinds of provision. These matters relate to a level of operational detail that is more appropriate to be covered in secondary legislation. It is proposed that the negative resolution procedure will provide an appropriate level of parliamentary scrutiny.
21. Clause 42 provides a power for the Secretary of State to prescribe in regulations how an attendance panel, which must be established by the local education authority, is to be constituted, such as who and how many members may sit on the panel. The functions of the attendance panel are set out on the face of the Bill in clause 42(2). The primary legislation also contains important safeguards relating to the composition of the panel and regulations made under this power must require the local education authority to secure that any person who chairs the panel is not a member of the authority.

22. The regulations may also make provision for the local education authority to pay an allowance to members of the panel. Regulations made in this regard may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (c. 70) (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an attendance panel. This means that what is currently in place for allowances to members of local authorities and other bodies can be applied with appropriate modifications.

23. Setting out how the panel is to be constituted in secondary, rather than primary legislation will enable appropriate consultation to take place with local education authorities, families and other interested parties prior to implementation. This will help to ensure that the constitution of the attendance panel meets the needs of all those involved in the process. It will also mean that the requirements can be changed in response to changing circumstances. Detailed administrative arrangements such as these are generally made through regulations subject to the negative resolution procedure, and we propose that should be the case here.

24. Clause 43(3) provides a power to set in regulations the arrangements in relation to appeals to attendance panels against attendance notices. The matters which an appeal may concern are defined in
primary legislation. The regulations may prescribe the procedure on appeals and the powers of the attendance panel in relation to appeals. It is expected that this would include taking advice from the local education authority’s information and guidance service provider (the Connexions service) and other services and professionals working with the young person, and obtaining information about the young person and their family circumstances. The attendance panel will also have powers to confirm and dismiss attendance notices and to make recommendations to the local education authority on the action that might be needed to meet the needs of the young person. We consider it appropriate that this provision is set out in secondary legislation subject to negative resolution procedure as these are matters of administrative detail which will need to be relatively flexible in order to enable them to be altered in response to changing circumstances.

25. Clauses 44(5) allows regulations to set out those matters specified in an attendance notice which may be varied by the local education authority issuing the notice. This allows for a degree of flexibility in certain areas that will enable minor variations to the attendance notice to be made, without having either to return to the panel, or to get the written consent of the individual concerned, every time. The areas that can be changed in this way will be prescribed in the attendance notice itself and will include details such as the time of the course, or the name of the individual to whom the young person must report.

26. Clause 44(6) provides a power to make regulations to allow for other matters specified in an attendance notice to be varied only with the written consent of the person to whom the notice is given, or with the consent of the attendance panel. These regulations will cover more significant matters such as, for example, the description of education or training that it is suggested the young person attends. Clause 44(6)(b) provides a power to specify the procedure that the attendance panel should follow in relation to giving consent Regulations under clause 44 relate to administrative detail and as such have been left to secondary legislation subject to the negative resolution procedure.

27. Clause 46(6) provides a power to secure in regulations that, before the panel makes a
recommendation to the local authority that the proceedings should be instituted, the young person has an opportunity to make representations to the panel. Clause 46(6) also provides a power to specify the procedure that the attendance panel should follow in relation to making a recommendation to the local authority.

28. Clause 47(4) provides the power for the Secretary of State to make regulations about penalty notices to be issued in the event that the young person fails to comply with an attendance order. The regulations relate to the form and content of penalty notices, their amount and the procedures for them to be issued and paid. The scope of these regulations, which are to be subject to the negative resolution procedure, is limited on the face of the Bill to the operation and administrative details of issuing a penalty notice. This is a model similar to that which is already in operation, also subject to the negative procedure, in the case of penalty notices issued in relation to the parents of children of compulsory school under powers contained in sections 444A of the Education Act 1996 and section 105(1) of the Education and Inspections Act 2006.

29. Regulations made under clause 47(4) may also make provision for penalties of different amounts to be payable in different cases or circumstances – for example, if it is not the first penalty notice the young person has received. It is necessary to prescribe the amount of the penalty in regulations in order to provide the flexibility to increase the amount over time to respond to changing costs. The provisions relate to the operational arrangements and so are not specified on the face of the Bill. This is again similar to the model which is in operation in the case of penalty notices issued in relation to the parents of children of compulsory school age. We therefore consider the negative procedure to be appropriate.

30. Clause 48(3) provides a power to make regulations to prescribe appeal arrangements against penalty notices, including the procedure on such appeals; and the powers of the attendance panel in relation to such appeals. It is considered that these regulations should also be subject to negative
resolution procedures for the reasons set out in paragraph 25 in relation to appeals against attendance notices. The powers and procedures would be similar to those in relation to appeals against attendance notices.

CHAPTER 6 – MISCELLANEOUS

31. Clause 49 allows for regulations to provide for who is to be treated as the employer in relation to different ways of working prescribed under clause 5. They may also provide for any of the provisions in Part 1 to apply with modification in relation to any of these ways of working. In addition, these regulations may provide for any provision within Part 1 to apply with modification where the young person works under agency arrangements. The Government’s intention is for the rules and duties in relation to employment and employers to apply in the same way to all types of full time occupation falling within clause 5(1)(b). The specific circumstances of different types of occupation may require us to modify the provisions in order for them to have the same effect in practice. An example of such a case would be to ensure that any hours of work carried out by a person undertaking voluntary work are treated in the same way as hours worked under a contract of employment. We want to create a framework that is able to respond to emerging issues and future developments in the type of work young people undertake. Given that these regulations impose Chapter 3 duties on people who would not otherwise be regarded as employers, they are to be subject to the affirmative resolution procedure. In addition, regulations under clauses 50 and 51 will make modifications to Chapter 1 to ensure that full time occupation will include employment in Government departments and other Crown employment, in the House of Commons and House of Lords, and in the armed forces. For example, the definition of normal working hours will need to be modified. These are technical matters appropriate for secondary legislation to be made by negative procedure.
32. Clause 52 defines, with reference to the appropriate sections within Part 1, the circumstances when a financial penalty is payable. Regulations may be made under subsection (2) to specify the purposes for which such sums received by the local education authority may be used. It is intended that the prescribed purpose will be the processing, issuing and administering of penalty notices. Where they are not used for these specified purposes the monies must be paid to the Secretary of State in accordance with regulations made under this subsection. As these regulations relate to operational details it is proposed that they are subject to negative resolution procedures.

33. Clause 53(2) allows regulations to provide for a person to be or not to be resident in England for the purposes of any provision of this Part. This is necessary in order to deal with a range of rare cases where, for example, a young person has two homes, one of which is in England and one elsewhere. It is proposed that these regulations are subject to the negative procedure.

PART 2 – SUPPORT FOR PARTICIPATION IN EDUCATION OR TRAINING: YOUNG ADULTS WITH LEARNING DIFFICULTIES AND YOUNG PEOPLE IN ENGLAND

34. Clause 55 provides a power for the Secretary of State to give directions to a local education authority relating to the exercise of its duty to make available to young persons and relevant young adults for whom it is responsible such services as it considers appropriate to encourage, enable or assist the effective participation of those persons in education or training. The duty will provide for the establishment of the Connexions service as a service delivered by, or on behalf of, local education authorities. This gives effect to the commitment set out in Youth Matters: Next Steps (March 2006) to transfer the responsibility for delivering the Connexions service from the Secretary of State to local education authorities. A direction under this section may be varied or revoked by a later direction. Local education authorities are under a duty in clause 54 (4) to comply with any direction given.

35. It is a key part of the proposal that local education authorities should have the statutory functions in relation to the provision of the Connexions service, that the Secretary of State is able to ensure that the Connexions service is provided in compliance with specified service requirements.
This will ensure a level of minimum specification for young people receiving the service and will also retain the concept, through retention of the current national brand, of a service with common core features which young people recognise as belonging to the brand. In order to retain these features of a national service it is proposed that the Secretary of State should be able to set such specifications through directions.

36. It is the intention that directions may be given where common operating principles across different local education authority areas are important for the effective functioning of the Connexions service such as in the operation of the Client Caseload Information System (CCIS) – see Para 37, or where the service interacts with other service providers which have set operating procedures. For example, the national Connexions Direct service to young people, which will be provided pursuant to the Secretary of State’s power in clause 59, depends on local education authorities supplying information on their local services.

37. As set out on the face of the Bill a direction made using this power may:

- specify the services to be made available to young persons and relevant young adults (for example, services for young people who are not in education, employment or training);

- specify the descriptions of individuals who may be involved, in ways specified in the direction, in providing Connexions services. This may include specifying minimum qualifications for Connexions personal advisers;
• require the local education authority to secure that they or their Connexions providers co-operate with the provider of the national Connexions services (Connexions Direct) (provided under Clause 59) and with any person exercising functions or providing services which relate to social security such as Jobcentre Plus and other bodies helping the Connexions client group find suitable employment, education or training;

• make provision about the use of the Connexions brand and other names and symbols in connection with the provision of the Connexions service;

• impose requirements as to record keeping and the provision of information to local education authorities and Connexions providers in connection with service provision.

38. The provision for directions to be given about record keeping and information provision are to enable the continued functionality of the CCIS. This is an operational system, currently maintained by Connexions providers, which provides the most complete picture of young people ‘NEET’ (not in employment, education or training) and their characteristics and other young people and relevant young adults for whom the Connexions provider is providing support. The Department for Children, Schools and Families publishes a CCIS specification annually, which sets out the requirements that must be followed to ensure that data is collected by Connexions providers consistently and in accordance with the Data Protection Act 1998. Meeting this specification was a condition of receipt of the Connexions Grant for Connexions Partnerships.

39. As part of the proposals to raise the participation age the operation of CCIS will take on added significance, as information held on this system will be key to enabling local education authorities to discharge their statutory responsibilities under Part 1 of the Bill as well as those relating to the
provision of the Connexions service. Provisions to specify the operation of CCIS by local education authorities will therefore be included in the directions made under clause **55(1)(e)**. Without such specifications CCIS could develop locally in ways that makes the sharing of information between authorities and between Connexions service providers impossible, putting at risk the effective delivery of support services to young people.

40. The clause makes clear that directions may be given requiring a local education authority to exercise its functions under clause 54(1) in such a way that the person providing services pursuant to the exercise of that function (whether the authority or any other person) is a person who also exercises such other functions or provides such services, as are specified in the direction. The clause makes clear that the other functions that may be specified in such a direction need not relate to education or training and may be functions relating to social security. The intention behind this part of the clause is to give the Secretary of State the power to direct local education authorities in such a way so as to ensure that the same person providing Connexions services also carries out social security functions pursuant to relevant powers in social security legislation. Importantly the power cannot confer new functions on local education authorities.

41. Through arrangements made with the Secretary of State, Connexions service providers currently conduct work focused interviews within the meaning of section 2 and 2AA of the Social Security Administration Act 1992 for 16 and 17 year olds with the focus on training or educational opportunities and enabling participation in education or training. The intention is to use this power to ensure that this will continue. It is the intention that the power will also be used in the future in relation to functions within the Welfare Reform Act 2007 such as:

- work focused interviews within the meaning of section 12 that Act;
• work related activity within the meaning of section 13 of that Act; and

• action plans within the meaning of section 14 of that Act, with the emphasis on education and training with the aim of helping the person into employment or keeping him in employment.

42. These provisions are covered in directions in order to set out operational aspects in sufficient detail to ensure that the services provided to young people are of a consistent high quality and allow for neighbouring local education authorities to work together. These provisions are all currently mandatory requirements on Connexions Partnerships and those local education authorities with whom the Secretary of State has made arrangements for the delivery of the service.

43. The Government judges that directions of this nature are not legislative, but administrative in character and therefore do not need to be scrutinised by Parliament every time they are given. In line with the Local Government White Paper ‘Strong and Prosperous Communities’ (October 2006) Central Government will consult local authorities before adding to or amending these directions. The use of directions rather than regulations enables the Secretary of State to be more responsive to developments affecting local authorities and young people.

PART 3 – ADULT SKILLS

44. Clause 71 inserts new sections 4A to 4C and a new Schedule 1A into the Learning and Skills Act 2000. Central to these provisions are the levels of qualifications set out in Schedule 1A. Paragraph 3(1) provides a power to specify in regulations external qualifications, or a description of external qualification, for the purposes of paragraphs 1 and 2. The broad categories of qualifications set out in those paragraphs are level 1 literacy, entry level 3 numeracy, vocational qualifications at
level 2 and qualifications at level 3.

45. It is the intention that a specified level 1 literacy qualification will be the level 1 Certificate in Adult Literacy and that a specified entry level 3 numeracy qualification will be the entry level 3 Certificate in Adult Numeracy. These qualifications represent the level of attainment in literacy and numeracy which, in the opinion of the Secretary of State, is the minimum required in each respect by persons aged 19 and over in order to be able to operate effectively in every day life. At level 2, the intention is that the duties in sections 4A and 4B(1) will apply to qualifications such as a level 2 National Vocational Qualification and other Vocationally Related Qualifications at level 2 of 325 guided learning hours or more (on the basis that this would represent the level of attainment in terms of breadth and depth which, in the opinion of the Secretary of State, is demonstrated by five GCSEs at Grade C or above). It is the intention to ensure that adults gain qualifications which represent attainment of intermediate skills that prepare them for work. The mechanism for specifying qualifications at this level is explained further below.

46. Paragraph 2 of the Schedule applies to specified qualifications at level 3 and is relevant only for the free tuition duty at s.4B(3). The intention is to include both academic and vocational qualifications because, at this level, the aim is to assist individuals to obtain access to higher education or improved career opportunities. It is the intention that the free tuition duty will apply to qualifications such as two or more A-Levels, one or more A-Level double award, Level 3 NVQs, Level 3 Diplomas, the International Baccalaureate and the Access to Higher Education Certificate / Diploma. These qualifications are those that currently attract free funding under administrative arrangements at level 3.

47. Paragraph 3(2) of the Schedule includes the power to specify qualifications by reference to an assessment made by the Learning and Skills Council (LSC) of the level of attainment demonstrated by a qualification and the regulations may confer a discretion on the LSC for this purpose. It is proposed to exercise this power to require that the LSC must assess which qualifications are at the
level of attainment specified in paragraphs 6 and 7 of Schedule 1A and to publish lists of these qualifications on their website. These will be lists of the level 2 and level 3 qualifications which are relevant for the purposes of these duties.

48. Sections 4A(3)(b), 4B(2)(b) and 4B(4)(b) provide that learners will fall within the scope of the new duties to be imposed on the LSC if they do not have a qualification at that level or one which appears to the LSC to be at a comparable or higher level. New section 4C(1) includes a power for the Secretary of State to specify circumstances in which, despite having a qualification, a person is to be treated for the purposes of sections 4A and 4B as not having that qualification. The intention is to enable learners who already have a level 1 literacy or entry level 3 numeracy qualification, or one at a comparable or higher level, but have since lost the skills associated with it, to take a course to obtain the qualification again. It is expected that regulations will be made under section 4C(4) (which includes express power to sub-delegate) to confer a discretion on providers as to which test, assessment or tool they wish to use to assess the skill level of learners for these purposes. It will also be possible to provide for circumstances in which a person who has a particular skill, but not the qualification relating to it, is nevertheless to be treated as having that qualification.

49. Sections 4A(3)(c), 4B(2)(c) and 4B(4)(c) provide powers for the Secretary of State to make regulations to prescribe other conditions that must be met. Section 4C(2) provides that such conditions may, in particular, relate to the possession, or lack, of a qualification specified in the regulations or the completion of, or failure to complete, a course for a specified qualification. It is envisaged that this power may be exercised in order to exclude from the scope of the duty individuals who repeatedly embark on, but fail to complete, courses of study.

50. It is the policy intention that the cost of course fees will be covered by the new section 4B for all specified qualifications. However, the costs of the examination will only be covered for certain qualifications, namely those at level 1 literacy and entry level 3 numeracy. The Secretary of State has
the power under subsection 4B(8)(b) to specify in regulations which fees relating to matters, such as examinations or preliminary tests, are “tuition fees” for the purposes of section 4B.

51. There is an order-making power at subsection 4B(7) to allow the Secretary of State to specify a body as responsible for paying tuition fees. The LSC is the primary funding body and it is envisaged that tuition will be free if fees are payable only by the LSC. However, it is considered appropriate to include this power to cater for any exceptional circumstances should another body be liable for the payment of tuition fees on behalf of an individual. Its inclusion in the Bill is merely a safety net.

52. It is proposed that the above delegated powers will be subject to the negative resolution procedure because these powers are not unusual or wide ranging, and therefore do not require affirmative procedure.

53. Paragraph 9 of Schedule 1A provides a power for the Secretary of State to amend Part 1 of the Schedule so as to add or remove a category of qualification. The policy intention behind this is to allow, for example, for vocational qualifications at level 2 no longer to be within scope of the sections if, for example, the Secretary of State, taking account of skills levels and demand at the time, considered that there was no longer a particular need for this to be a priority area. Paragraph 9 also confers power to amend Part 2 of the Schedule by order so as to substitute a different qualification for the benchmark qualification for the time being mentioned in paragraph 6 or 7. This power might be used if a different qualification was considered a more appropriate reference point for the level of attainment concerned. There is in addition a power to make consequential amendments.

54. Amendments to Schedule 1A could have significant implications for learners. In particular, an amendment of paragraph 1 or 2 will affect the basis on which the power to specify qualifications for
the purposes of that paragraph operates and therefore the basis on which sections 4A and 4B operate. It is therefore considered appropriate that the powers to amend the Schedule should be subject to affirmative procedure.

55. It is possible (in theory at least) that paragraphs 1 and 2 of Schedule 1A could be amended in a way which might result in hybridity (given that qualifications are awarded by bodies which have private interests). So subsection (7) of the clause inserts a new subsection (2D) into section 152 of the 2000 Act, so as to dis-apply the special procedure in the Lords for hybrid instruments. Provision of this kind has become fairly common.

56. New section 4B(6) includes a power to amend sections 4B(2)(a) and 4B(4)(a) by order to enable different ages to be inserted. The effect of section 4B(4) is that individuals who have attained the age of 19 but who have not yet attained the age of 25 and who satisfy the criteria at paragraph (b) and (c) will not have to pay tuition fees for their first specified level 3 qualification. The power to amend the age range has been included to allow different age groups to be given financial help (particularly if, as a result of these provisions, there is no longer a need for such help for the current age group). It is considered appropriate for amendments of section 4B(2) and (4) to be subject to the affirmative procedure.

PART 4 – REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND

CHAPTER 1 - INDEPENDENT EDUCATIONAL INSTITUTIONS IN ENGLAND
Clause 77 (3) provides a power to allow the Secretary of State to exempt certain settings from the new definition of an independent educational institution and to provide that time spent on certain activities is not to count as education for the purposes of this definition. The purpose of this power is to ensure that settings which are subject to alternative monitoring arrangements are exempted from the new definition of an independent educational institution. The new definition is only intended to capture settings which are the main provider of a child’s education and which otherwise would not be subject to any regulatory or monitoring framework.

The Government propose that the new regulations will exclude: temporary provision which would otherwise fall within the definition, e.g. some summer schools; and, where necessary, home tutorial services organised by a local education authority or home education supervised or delivered by parents. These matters have been left to secondary legislation so changes can be made in reaction to future developments in provision without having to amend primary legislation.

Clause 77(3) also provides a power to amend the number of weeks per year in which education must be provided to meet the definition of ‘part time’. Again, the power to amend has been left to secondary legislation so that changes can be made in reaction to future changes in a diverse sector without having to amend primary legislation. The clause currently sets this at 28 weeks which is a level which equates to more than half a school year. It is our view that this is a reasonable level but future changes in the delivery of education may mean that 28 weeks would not be a reasonable proportion of the school year to set as a threshold. It is proposed that the negative resolution procedure will provide the appropriate level of Parliamentary scrutiny for these regulations as they relate to operational details and their scope is clearly defined on the face of the Bill.

Clause 79(1) requires the Secretary of State to prescribe standards for independent educational
institutions. Clause 79(2) allows standards to be prescribed in relation to particular institutions or institutions of a particular description. The purpose of this is to allow for the standards relating to curriculum in particular to be varied in relation to institutions providing part time education, for example, to allow for the fact such institutions will not be able to offer full time education. The intention is for the standards set out in section 157 of the Education Act 2002 to be retained; and to be supplemented with a new standard covering the quality of management and leadership. The aim of this new standard is to ensure that independent educational institutions have good quality leadership that enables the institution to meet the standards for registration. Failures to meet many of the standards often result from poor management and leadership and we consider it to be particularly important that mechanisms are in place to sustain any improvements which may be required following an inspection. As is the case for the existing standards established under the Education Act 2002, it is felt that the specific requirements should be prescribed under secondary legislation to allow flexibility to amend the standards without having to amend an Act of Parliament. This does not include amending the list of standards itself, only the detail of the specific requirements of each standard.

61. We anticipate that the new standard will require regulations which provide that:

- independent educational institutions have clear and strategic leadership to enable it to meet the required standards;

- management systems to ensure that mechanisms are in place to make and sustain improvements where standards are not met.

62. It is proposed that these regulations will be subject to the negative resolution procedure, in line with the existing regulations made under section 157 of the Education Act 2002 (which cover substantively similar ground).
Clause 83 provides for the Secretary of State to specify the manner in which applications for registration of an independent educational institution must be made and the information they must contain. In doing so, this power reproduces the provisions currently contained in section 160 of the Education Act 2002. The purpose of these regulations is to ensure that applications are supported by appropriate details and documentation which the registration authority will need to take into account in making the decision to register an institution. We propose that the provisions contained in regulation 5 of the Education (Provision of Information by Independent Schools) (England) Regulations 2003, as amended, should be carried forward. In addition to these provisions, we propose that institutions are also required to: set out whether they are registering as a (full time) school or a (part-time) institution under clause 77(1)(b); and in the case of institutions specially organised to make special provision for pupils with special educational needs, to declare the type of special needs provision they will cater for. In line with the existing situation these regulations would be subject to the negative resolution procedure.

Clause 91(4) provides a power to allow the Secretary of State to set in regulations criteria for the approval of independent inspectorates (i.e. inspectorates other than Ofsted) to undertake certain inspections of independent educational institutions. It also provides a power to set criteria to withdraw approval. The purpose of setting criteria is to make the approval process more transparent, so that institutions, parents and the wider public can be confident that inspectorates are competent and independent, and that they have an objective perspective on inspection and performance. The reason for setting the criteria in secondary legislation is to provide for Parliamentary scrutiny of the criteria employed in deciding which bodies can inspect independent educational institutions whilst ensuring that changes to the approval criteria can be made without having to amend an Act of Parliament. We consider that the negative procedure will provide an appropriate level of scrutiny for these regulations.
65. We propose that the new regulations will:

- set technical proficiency criteria, for example the qualifications and relevant experience required for inspectors, the inspection framework, the management of inspections and the quality assurance of inspections;
- set criteria relating to independence and objectivity;
- set criteria for the numbers of institutions to be inspected and the type of provision they cater for.

66. Clause 92(3) provides a power for the Secretary of State to give directions to Ofsted about the matters to be taken into account in preparing a report and the form and content of a report about the work of independent inspectorates. We propose that these directions will be given to HMCL in writing, and will set out the broad expectations for the extent of Ofsted’s monitoring.

67. Clause 93 provides a power to allow the Secretary of State to prescribe the intervals at which independent educational institutions will be inspected on an ongoing basis. The purpose of this power is to ensure that there are regular inspections of independent educational institutions. The reason for setting the inspection timescales in secondary legislation is to allow flexibility to amend the timescales, without having to amend an Act of Parliament. The clause requires the Chief Inspector to carry out inspections at the prescribed intervals unless an inspection has been carried out and a report provided to the Chief Inspector by an independent inspectorate. The intervals in question will be prescribed by reference to the times of inspections carried out by the Chief Inspector or independent inspectorates. The intention is for regulations to require inspections to be conducted every three years. The clause also contains a power to prescribe a period of time for an independent inspectorate to provide a copy of a report to the Chief Inspector for the purposes of determining whether or not the duty on the Chief Inspector to carry out an inspection under this section is dis-applied. These powers will be subject to the negative resolution procedure. This is consistent with the provisions relating to
the inspection of maintained (and certain other) schools, which are inspected under section 5 of the Education Act 2005 at intervals prescribed by the Secretary of State in regulations subject to the negative resolution procedure (see sections 120 and 121 of that Act).

68. Clause 97 provides a power to allow the Secretary of State to require the payment of fees at specified times and set the amount payable in relation to inspections by the Chief Inspector. The clause also provides for the regulations to be able to vary or waive the fees and to make different arrangements in relation to inspections carried out for different purposes or in different circumstances. This clause extends the power currently contained in section 164(9) of the Education Act 2002 to require payment of inspection fees. The aim of this power is to limit the burden of inspections of independent educational institutions on the public purse, and to encourage institutions to meet the required standards at the earliest opportunity so that they avoid incurring the cost of follow-up inspections. The nature and amount of fees payable is prescribed in secondary legislation so as to allow them to be amended in response to changing costs. It is proposed that the new regulations will require:

- a fee for each inspection connected with the institution’s initial application to be included on the register;
- an annual fee which will allow institutions to spread the cost of an inspection over three years;
- fees for follow-up inspections where serious failings are identified.

69. This power relates to operational details and, as such, it is proposed it should be subject to the negative resolution procedure. This is consistent with a similar power to set fees payable to the Chief Inspector contained in section 89 of the Childcare Act 2006, in connection with which regulations are subject to the negative resolution procedure (see sections 104 and 105 of the Childcare Act 2006).
70. Clause 99 provides for the Secretary of State to retain the power to prescribe the manner in which the Chief Inspector’s inspection reports are published. This power is similar to that contained in section 162A(3)(b) of the Education Act 2002. The purpose of this power is to ensure that institutions, parents and other interested parties have access to information about the standards achieved in independent educational institutions. The existing regulations will be supplemented by new requirements, as explained below. The publication criteria will be set in secondary legislation to allow flexibility to amend the requirements in response to changing circumstances.

71. It is anticipated that the Chief Inspector will publish reports following the regular three yearly inspections. In addition, reports are likely to be published in respect of inspections carried out:

- for the purposes of determining the institution’s application for registration;
- for the purposes of determining applications to approve changes to the institution’s registered details;
- at the Chief Inspector’s discretion;
- where required by the Secretary of State;
- as a follow-up to the regular cycle of inspections, where standards were not being fully met.

The regulations will set out the timescale for publication and the method by which the reports should be published, which will include electronic access. This power will be subject to the negative resolution procedure. This is consistent with the current position under the Education Act 2002 framework.

72. Clause 105 provides a power for the Chief Inspector to be able to deregister an independent
educational institution if a person who is subject to a direction, order or decision made under a particular enactment (which the Secretary of State has the power to prescribe in regulations) is the proprietor of the institution or carries out work of a certain kind (which the Secretary of State has the power to prescribe in regulations) at the institution. It is anticipated that regulations will prescribe any work in an independent educational institution, paid or unpaid, and whether or not under a contract. This will include teaching and non-teaching staff but will not include contractors who will have no contact with children. This is a regulatory sanction which effectively prohibits or restricts the employment of unsuitable persons in, or the ability of certain unsuitable persons to be proprietors of, independent educational institutions and so prevents them from working with children in these settings. The current regulatory power is contained in section 169 of the Education Act 2002. It is anticipated that the new regulations will set out the grounds for unsuitability by reference to the relevant statutory provisions. These will include barring decisions made under the Safeguarding Vulnerable Groups Act 2006 and the directions relating to unsuitable persons participating in the management of independent educational institutions contained in the Bill (see below). There will be a new right of appeal against deregistration for employing a barred person. The reason for prescribing the provisions which give rise to the grounds of unsuitability in secondary legislation is to allow flexibility to amend the grounds to take account of changes in legislation. We consider that the negative resolution procedure will provide the appropriate level of Parliamentary scrutiny.

73.  Clause 109 provides for the Secretary of State to retain the power currently contained in section 168 of the Education Act 2002 to require, in regulations, the proprietor of an independent educational institution to provide information relating to the institution. The current power allowing the Secretary of State to require information will be extended to ensure that information is also provided to the Chief Inspector. The existing power to include in the regulations sanctions for non-supply of information is to be retained, but responsibility for imposing the sanction of removal from the register will be transferred to the Chief Inspector. We propose a new right of appeal to the Care Standards Tribunal, where the sanction of removal from the register of independent educational institutions has been used.
74. The purpose of the regulations is to enable the Secretary of State to conduct the annual census of independent educational institutions, and for the Chief Inspector to receive information which is necessary and relevant in relation to his functions as registration authority. The reason for setting the information to be provided in secondary legislation is to allow flexibility to amend the information required, without having to amend an Act of Parliament. We intend that the new regulations will mirror the Education (Provision of Information by Independent Schools) (England) Regulations 2003 as amended and, consistent with the position under the Education Act 2002, they will be subject to the negative resolution procedure.

75. Clause 114 provides a power for the appropriate authority (i.e. The Chief Inspector) to make directions prohibiting or restricting the participation of unsuitable persons in the management of an independent educational institution. The purpose of this power is to prevent unsuitable people who would not otherwise be barred (e.g. under the Safeguarding Vulnerable Groups Act 2006) from being involved in the management of an independent educational institution and therefore in a position to influence the way the institution is operated. The current regulatory power is contained in section 167A of the Education Act 2002. This clause reproduces those provisions and provides that the grounds and procedure for making a direction will be prescribed by the Secretary of State in regulations together with the grounds on which a person may seek to have such a direction varied or revoked.

76. It is proposed that the new regulations will set out the criteria under which unsuitability will be assessed, the procedure for directing that a person is unsuitable and the arrangements for varying or revoking directions. The grounds which are likely to be prescribed relating to unsuitability will include:

- criminal convictions for fraud, theft or money laundering;
- offences relating to unlawful immigration and some drugs offences;
• glorification of terrorism;

• membership of a proscribed organisation;

• conducting inappropriate activities on the same premises, for example prostitution.

This power will be subject to the negative resolution procedure which is consistent with the position under the 2002 Act.

77. Clause 115(2) retains the power contained in section 167B of the Education Act 2002 for the Secretary of State to make regulations preventing the CST from entertaining an appeal where the appellant bases his case on facts which are inconsistent with a conviction, prescribing circumstances in which the Care Standards Tribunal must allow an appeal and prescribing the powers available to the Tribunal on allowing an appeal to revoke or amend a direction prohibiting participation in management of an independent educational institution. It is proposed that this power will be subject to the negative resolution procedure, to allow flexibility to amend the requirements in response to changing circumstances. This is consistent with the current position under the Education Act 2002 framework.

78. Clause 118(1) provides a power for the Secretary of State to make regulations that apply and modify Chapter 1 of Part 4 of the Bill to an independent 16-18 college. The nature of institutions that are included in this category are defined on the face of the Bill and will include among others independent sixth form colleges and providers of intensive courses for students preparing for examinations such as A-levels. It is envisaged that one purpose of these regulations would be to ensure the protection of the health, safety and welfare of young people aged between 16 and 18 years old who are educated in independent provision as part of the new requirement for participation in education and training.
79. Regulations made under subsection (1) of this clause could enable the Secretary of State to exclude, modify, or adapt the independent educational institution standards set out in clause 79 or any other provision of the regulatory regime set out in this Chapter of the Bill. The aim is not to adopt all of those standards but rather to select those which are appropriate for these institutions. If the power to draw down provisions of Chapter 1 of Part 4 is used and 16-18 colleges are thereby regulated, then clause 119 compels the inclusion in these regulations of a right of appeal against a decision or order made. The powers of the Secretary of State to adapt regulations do not extend to withdrawing this right of appeal. The Secretary of State is likely to wish to make regulations under this power separately from others, and possibly before the participation age is raised, if welfare issues arise in relation to this category of independent providers. In order to ensure that the regulations are made with regard to current inspection findings, and to take into account any additional demands to be placed on Ofsted, the Bill requires that any draft regulations made under this power will not be laid before Parliament unless the Secretary of State has first consulted the Chief Inspector and other such persons as he considers appropriate. Such regulations will be subject to the affirmative procedure as they would extend the power of the Secretary of State to regulate for the first time this sector of educational provision and it is therefore important that Parliament has the opportunity to scrutinise them.

80. An independent 16-18 college is defined on the face of the Bill by reference to relevant education or training which is provided for at least 16 hours a week and for at least 4 weeks during an academic year (subsection (3)(a) of clause 118). The definition will cover among others independent sixth form colleges and providers of intensive courses for students preparing for examinations such as A-levels.

81. Related regulations made under subsection (5) of clause 118 would enable the Secretary of State to define a specific institution or type of institution as not being an independent 16-18 college. They may also provide that a time spent on a specified activity or on a particular activity is, or is not, to be treated as time spent on education or training relevant under this section and may amend
subsection (3)(a) to allow a different number of hours or weeks to be substituted. It is proposed these regulations would be subject to the negative resolution procedure.

CHAPTER 2 - SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

82. Clause 127 provides for the Secretary of State to prescribe in regulations provisions relating to religious education and attendance at religious worship. The term ‘special school’ is defined in sections 6(2) and 337 of the 1996 Act. Section 337(2) establishes two categories, one of special schools maintained by local education authorities and the other of special schools which are not so maintained but are for the time being approved by the Secretary of State under section 342 (section 337(2)(b)). ‘Non-maintained special school’ is common parlance for a school falling in this latter category. Section 342 of the 1996 Act also provides a duty on the Secretary of State to make regulations for securing that, so far as practicable, every pupil attending a special school approved under the section:

1. receives religious education and attends religious worship, or

2. is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent,

83. The intention is to substitute similar regulations under clause 127 but with the inclusion of the right for sixth form pupils to withdraw from religious worship at school. A similar provision relating to maintained special schools contained within section 71(7) of the School Standards and Framework Act 1998 (c 31) was recently substituted by a similar provision with the addition of the right of a pupil of sixth-form age to withdraw from religious worship, see section 55(8) of the 2006 Act. In line with the existing legislation this provision is included in regulations and we propose that these are subject to negative resolution.

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1 As substituted by paragraph 82 of Schedule 30 to the School Standards and Framework Act 1998 (c 31).
Clause 128 inserts a new subsection 342A into the Education Act 1996 which provides a power for the Secretary of State to make regulations conferring power on a Justice of the Peace, on the application of the Chief Inspector, to make an order in an urgent case that a non-maintained special school in England should cease to be approved under section 342. In particular regulations under the inserted section may make provision corresponding, with or without modifications, to that made in clause 106(2) to (7) of the Bill (Application to justice of the peace for order), or clause 108 of this Bill (Order of justice of the peace: notification).

The regulations are required to ensure there is a statutory framework within which the Chief Inspector must work. They will ensure that an application and order can only be made in urgent cases, such as where there is a risk of significant harm to pupils. The onus will be on the Chief Inspector to ensure that he provides compelling evidence to a Justice of the Peace that an order is required. Regulations will also set out the actions the Chief Inspector must follow to ensure any order is appropriately served and that the recipient is aware of their rights of appeal, thus ensuring that the proprietor’s rights are also protected. Such a significant power – which can result effectively in the closure of a school – must be contained within primary or secondary legislation.

It is believed it is appropriate to include these provisions within secondary legislation given that regulation of non-maintained special schools approved under section 342 of the Education Act 1996 has historically been achieved through regulations. This appears appropriate given the specialised nature of such institutions and their number, and has proved effective for the purpose. Schools in the sector are also familiar with this approach.

We consider that a negative resolution procedure is sufficient in the circumstances, for the regulations do not confer a power, practically speaking, making it any more likely or straightforward to withdraw approval from a non-maintained special school than at present (currently the Secretary of State has full power to withdraw approval in an urgent case without consulting the school); the present power is conferred by regulations subject to a negative resolution procedure.

Clause 129 inserts new sections 342B and 342C into the Education Act 1996 conferring a power on the Secretary of State to make regulations which set out the framework for appealing against a decision of the Chief Inspector or an order of the Justice of the Peace. It is proposed that the
Chief Inspector, working within the regulatory framework for non-maintained special schools, by virtue of clauses 125 and 126, will be given the power to approve or refuse to approve of specific arrangements made by schools, for example the number of pupils, the type of special educational need the school caters for, the age range of pupils the school caters for etc. Currently there are no rights of appeal against such decisions made by the Secretary of State and the only recourse is to seek a judicial review of a decision. We believe this is an inappropriate and expensive mechanism for a school to have to use. The regulations conferring a right of appeal must confer a right on the proprietor to appeal to the Care Standards Tribunal against decisions of the Chief Inspector. The regulations will set out in detail those decisions against which an appeal can be made. They will set a prescribed time limit of 28 days within which an appeal should be made. This is similar to the rights enjoyed by independent schools. A decision of the Chief Inspector to withdraw approval of the school as a non-maintained special school will not have effect until this period has expired.

89. It is anticipated the regulations will also set out in detail the rights of a school to appeal against an order granted in an emergency by the Justice of the Peace on application of the Chief Inspector. The right of appeal will be to the Care Standards Tribunal. However, an order granted by a Justice of the Peace will have been granted where the Chief Inspector has proved there are serious issues (for example pupils are at risk) and a school’s approval should be removed immediately. The order by the Justice of the Peace will not therefore be suspended until an appeal is heard.

90. These provisions are included within secondary legislation, in line with the regulation of non-maintained special schools approved under section 342 of the Education Act 1996. It is proposed that the negative resolution procedure is sufficient for the rights conferred given the level of administrative detail the regulations will contain.

PART 5 – MISCELLANEOUS AND GENERAL

CHAPTER 2 – MISCELLANEOUS

91. Clause 134 inserts two new sections into the School Standards and Framework Act 1998. They concern admission arrangements to sixth forms in maintained schools. Under the 1998 Act, parents have a right to express a preference for the school at which they want their child to be educated (in other words to apply for a place at the school). Under the new section 86A, the young
person will have a separate right to express a preference for the school at which he or she wants to be educated in the sixth form. If a young person is over compulsory school age, he or she can also apply to a school under section 86A to study education other than sixth form education. So, for example, a pupil could apply for a place at a school in order to study for GCSEs.

92. Clause 135 inserts new provisions into the 1998 Act. The new section 88C provides a power for the Secretary of State to make provision in regulations about what consultation admission authorities should carry out on their admission arrangements. Regulations may make provision about who must be consulted, what is to be consulted on, and the manner of and timetable for consultation.

93. The current requirements, as set out in section 89 of the 1998 Act, lack flexibility as they require (with very limited exception) consultation to take place every year with all prescribed bodies and persons, even if admission arrangements haven’t changed since the previous year. We want to use Regulations to prescribe in detail a consultation process with much more flexibility in terms of how often it is needed when a school does not change their admission arrangements, who should be consulted and how. We believe that this will ease the burden on schools and local authorities that the current consultation process represents.

94. In addition, the people who can object to admission arrangements are currently linked in the legislation to those who are consulted. They are not in the new provisions. We have taken a power, in new section 88H(6), to prescribe certain bodies who have the power to object. The key players who can object are named on the face of the legislation (in section 88F(3)) but there may be others who become relevant in the future and who will then need to be prescribed. These powers will be subject to the negative resolution procedure, which is consistent with other Regulations on School Admissions.

95. New section 88P places a new duty on local authorities to produce a report to the Schools
Adjudicator on the school admission arrangements in their area and provides a power to allow the Secretary of State to prescribe the detail of what is to be covered in the reports and the timetable for their submission. This is administrative detail and it is more appropriate to cover these provisions in Regulations, rather than in primary legislation. These powers will be subject to the negative resolution procedure, which is consistent with other Regulations on School Admissions.

96. Clause 136 amends section 94 of the School Standards and Framework Act 1998. Section 94 gives parents the right to appeal against decisions refusing their child admission to a school. Clause 135 amends section 94 to extend the right of appeal to young people who have applied to a school under section 86A. A parent or a child may appeal against a decision not to admit the child to a school if the application was made under section 86A.

97. Section 94(5) contains a power for the Secretary of State to make regulations about the making of appeals. Clause 136(7) enables those regulations to set out how arrangements for appeals should be made where a parent and a child both appeal against a decision made in relation to a preference expressed under section 86A(1), so that no more than one appeal against the decision is proceeded with. It is expected that these regulations will set out that appeal panels should allow both the parent and child to appeal jointly and both have the opportunity to state their cases; however, if the parent and child refuse to appeal jointly, the panel should only be obliged to hear the appeal from the person who made the application, or from the person who appealed first.

98. These provisions will be included within secondary legislation, as they set out mainly administrative and practical details and requirements on which we would like to consult fully with stakeholders. It is proposed that these regulations would be subject to negative resolution, which is consistent with other school admissions regulations.

99. Clause 138(3) inserts a new section 29A into the Education Act 2002, subsection (3) of which requires the Secretary of State to make regulations requiring prescribed persons to be given prescribed specific information relating to the imposition of any requirement for a pupil to attend educational provision out of school to improve his or her behaviour, and requiring the governing body of the school to keep this requirement under review. The prescribed persons will be the pupil’s parents, or
the pupil if aged 18 or over. It is the intention that notices will be sent to them giving details of the provision such as: the name of the provider; the full address; when they should attend; the person to whom the pupil should report; and the hours. The notice will also outline the review mechanism. Notice will be modelled on notices sent to parents of excluded pupils (or pupils themselves) setting out what educational provision will be made under section 100 of the Education and Inspections Act 2006.

100. Regulations under this section may also make provision requiring the governing body to request prescribed persons to participate in the review; about the time within which the first review must be held and the intervals at which subsequent reviews must be held, and in relation to any other matter relating to the exercise of the power. It is anticipated that reviews will occur every 30 days and would take the form of a meeting between the head teacher, the governing body and the parents of the pupil, or in the case of a pupil who has attained the age of 18, the pupil to the exclusion of his or her parents. In a case where the pupil had a statement of special educational needs, the local education authority that maintains the statement would also attend. The regulations may also oblige the governing body to have regard to any guidance issued by the Secretary of State.

101. The Department does not wish the invitation to such a meeting to be the first time the parent hears of the exercise of the power, which is why the Department intends that the regulations made under new section 29A of the Education Act 2002 should include a requirement that the parent (or pupil if aged 18 or over) is informed of the practical arrangements by written notice in advance. Such a notice will also be a "notice in writing" for the purpose of section 444ZA(1B)(b) of the 1996 Act (inserted by clause 139) which has to be given to the parent of a child of compulsory school age before an offence of failing to secure regular attendance can be committed.

102. These matters have been left to secondary legislation as they relate to administrative details of the proposal. A similar approach exists currently where schools make educational provision for pupils who have been excluded for a fixed period of more than five days: the Education (Provision of Full-time Education for Excluded Pupils) (England) Regulations 2007 (SI 2007/1870) set out the information to be contained within the notice when this provision is made. Following this model, it is considered that the negative resolution procedure will provide the appropriate level of scrutiny.
103. Clause 142 concerns external qualifications and provides a power under section 26A of the Education Act 1997, for the Qualifications and Curriculum Authority to give directions to a recognised person relating to the exercise of any conditions imposed on their recognition or accreditation with a view to securing compliance with such conditions.

104. Clause 143 concerns external qualifications and provides a power under section 32A of the Education Act 1997, for the Welsh Ministers to give directions to a recognised person relating to the exercise of any conditions imposed on their recognition or accreditation with a view to securing compliance with such conditions.

105. Clause 146 amends an existing regulation making power under section 47A of the Schools Standards and Framework Act 1998 to enable regulations to require all Schools Forums to include representatives from non-schools bodies, as well as re-enacting the current requirement for regulations to provide for schools forums to include schools members. It is anticipated that existing regulations applying to England will be amended upon the coming into force of this provision in order to impose such a requirement, and in particular to require Forums to have members representing 14-19 partnerships and private, voluntary and independent early years providers.

106. The power to impose the requirement is in secondary legislation to enable the provision to sit alongside the other provisions regarding constitution, meetings, proceedings and powers of Forums, all of which are in regulations. The level of detail in the regulations is such that it is not appropriate for the provisions to sit in primary legislation (as was accepted by the Delegated Powers Committee in relation to the original regulation-making powers in the Education Act 2002). These powers restate and extend the powers already conferred by section 47A of the School Standards and Framework Act 1998 and the proposal is that the procedure currently applicable to regulations under those powers should apply. Also, existing regulations made under section 47A have been amended several times, indicating a need for flexibility. Therefore, in line with the existing regulations we propose these regulations are subject to the negative resolution procedure.
CHAPTER 3 – GENERAL

107. Clause 151 provides a power for the Secretary of State to make regulations to make any supplementary, incidental or consequential provisions, and any transitional arrangements or saving provisions that appear necessary in order to give full affect to this Act. It is proposed that the regulations will be subject to the negative resolution procedure, except to the extent that they amend or appeal any provision in the Act where they would the procedure would be affirmative.

108. Clause 154 provides for the Secretary of State or Welsh Ministers to bring the provisions in this Act into force by order. The clause includes power to make such transitory and transitional provisions and savings as the person making the order thinks fit. This will be necessary, for example, to ensure the correct cohort of young people to whom the duty in Part 1 will apply is caught. This does not include sections 125 and 133 which come into force 2 months after the Act is passed. In line with normal practice the commencement orders will not be subject to Parliamentary scrutiny.

Annex A: Summary of powers to make regulations, orders and directions under the Education and Skills Bill

<table>
<thead>
<tr>
<th>Clause Effect (R- Regulation / O- Order / D – Directions)</th>
<th>Parliamentary procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART 1 – DUTY TO PARTICIPATE IN EDUCATION OR TRAINING</td>
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<tr>
<td></td>
<td>(1) R – to prescribe the external Level 3 qualification or description of qualification (which may be reference to assessment made by the QCA)</td>
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<tr>
<td></td>
<td>(5) R – power by order to amend subsection (2) to substitute a different qualification for GCE at A Level in two subjects as a demonstration of level 3</td>
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<tr>
<td></td>
<td>(2) R – clarify that a particular description of non-school based education and training is, or is not, to be treated as full time for the purposes of the definition of appropriate full time education or training.</td>
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<td>(1) R – to prescribe any way other then under a contract of employment a person may be treated as in full time occupation for at least 20 hours per week</td>
</tr>
<tr>
<td></td>
<td>(6) R – to prescribe the circumstances under which a person is, or is not, to be treated as working for at least 20 hours a week in cases where the number of hours varies from week to week.</td>
</tr>
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<td></td>
<td>(1) R – to prescribe dates when a relevant period ends during which Part 1 applies to a person fulfilling the duty through limb (c) of clause 2(1)</td>
</tr>
<tr>
<td></td>
<td>(1) R – to allow clarification of the amount of relevant training or education which may be treated as ‘sufficient’.</td>
</tr>
<tr>
<td></td>
<td>(4) R – to apportion guided learning hours to relevant periods. In order for time to be apportioned before a person completes a course. The power also allows the regulations to provide for a person to be treated as having completed the course</td>
</tr>
<tr>
<td></td>
<td>R - to prescribe the amount of the financial penalty that a local authority may require an employer to pay where they have employed a young person who is subject to the duty to participate who has not made appropriate arrangements for training or education.</td>
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<tr>
<td></td>
<td>R - to prescribe the amount of financial penalty the local authority may issue to an employer where they have failed to comply with an enforcement notice or have failed to vary their terms and conditions of employment as requested.</td>
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<tr>
<td>38</td>
<td>R - to make provision about the exercise by local education authorities of their functions relating to parenting contracts and parenting orders.</td>
</tr>
</tbody>
</table>
| 40 | (6)–R - to prescribe details of the contract of apprenticeship to be specified in the attendance notice  
(7)–R - to prescribe the requirements relating to the description of attendant education training specified in the notice  
(8)–R - to prescribe other matters to be stated in the attendance notice | Negative |
| 42 | R – to prescribe how the ‘attendance panel’, established by the Local Authority, is to be constituted. | Negative |
| 43 | R – to make provision about appeal arrangements, including the procedure on appeals and the powers of the attendance panel in relation to appeals. | Negative |
| 44 | (5) R - allows regulations to set out those matters specified in an attendance notice to be varied by the local education authority issuing the notice.  
(6) R – to prescribe the matters specified in an attendance notice which may be varied with the consent of the person to whom the notice is given, or with the consent of the attendance panel. | Negative |
| 47 | R – to provide for range of matters in relation to penalty notices including the procedures to be followed in issuing a penalty notice in the event of the failure to comply with attendance notice. They also make provision for penalties of different amounts to be payable in different cases or circumstances. | Negative |
| 48 | R – to provide for appeal arrangements against penalty notices, including the procedure on such appeals; and the powers of the attendance panel in relation to such appeals. | Negative |
| 49 | (1) R – to provide who is to be treated as an employer for purposes of Part 1 in relation to any way of working prescribed under clause 5 and for any of the provisions in Part 1 to apply with modifications in relation to any such way of working.  
(2) R - to provide for any provision of Part 1 to apply with modification in respect of agency working where someone is employed under a contract of employment and | Affirmative |
<table>
<thead>
<tr>
<th></th>
<th>R – to provide for Chapter 1 to have effect subject to modifications in relation to Crown employment and service as a member of the Armed Forces of the Crown.</th>
<th>Negative</th>
</tr>
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<tbody>
<tr>
<td>50</td>
<td>R – to provide for Chapter 1 to have effect subject to modifications in relation to persons working as a relevant Member of the House of Commons staff</td>
<td>Negative</td>
</tr>
<tr>
<td>51</td>
<td>(2) R – to specify which functions any sums received by a local education authority may be spent on, and to the extent that they are not so spent to provide for sums to be paid to the Secretary of State</td>
<td>Negative</td>
</tr>
<tr>
<td>52</td>
<td>(5) R – to make provision as to whether a person is or is not to be treated as resident in England</td>
<td>Negative</td>
</tr>
</tbody>
</table>

**PART 2 - EDUCATION AND TRAINING FOR YOUNG PEOPLE AND ADULTS**

<table>
<thead>
<tr>
<th></th>
<th>D - to give directions to a local education authority relating to the exercise of its duty to make available to young persons and relevant young adults for whom it is responsible such services as it considers appropriate to encourage, enable or assist the effective participation of those persons in education or training.</th>
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<tr>
<td>55</td>
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</tbody>
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**PART 3 – ADULT SKILLS**

<table>
<thead>
<tr>
<th></th>
<th>R- To specify conditions for eligibility under the proper provision duty–R -To specify conditions for eligibility under the tuition fee payment sections</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>4A(3)(c)</td>
<td>Such conditions may, in particular, relate to the possession, or lack, of qualifications specified in the regulations or the completion of, or failure to complete a course for a specified qualification.</td>
<td>Negative</td>
</tr>
<tr>
<td>4B(2)(c) &amp; 4B(4)(c)</td>
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<td></td>
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<tr>
<td>4C(3)</td>
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<tr>
<td><strong>4B(6)(a)</strong></td>
<td>O - To amend subsection (2)(a) by substituting a different age</td>
<td>Affirmative</td>
</tr>
<tr>
<td><strong>4B(6)(b)</strong></td>
<td>O - To amend subsection (4)(a) by substituting a different age for either of the ages referred to there</td>
<td>Affirmative</td>
</tr>
<tr>
<td><strong>4B(7)</strong></td>
<td>O - To specify a body responsible for paying tuition fees such that a course is free to a person</td>
<td>Negative</td>
</tr>
<tr>
<td><strong>4C(1)(a)</strong> R - To provide circumstances in which, despite having a specified qualification, a person is to be treated for the purposes of section 4A or 4B as not having that qualification.</td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td><strong>4C(1)(b)</strong> R - To provide circumstances in which, despite not having a specified qualification, a person is to be treated for any of those purposes as having that qualification.</td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td><strong>4C(4)</strong> R - To confer a function (which may relate to the administration of an assessment and may include the exercise of a discretion) on a person specified (or of a description specified) in the regulations.</td>
<td>Negative</td>
<td></td>
</tr>
</tbody>
</table>

**Schedule Para 3**

| R - To require that the LSC must assess which qualifications are at the level of attainment specified in paragraphs 6 and 7 of Schedule 1A and to publish lists of these qualifications on their website. | Negative |

**Schedule, para 9**

| O - To amend the Schedule so as to add a category of qualification, or remove a category of qualification (including the power to remove every category of qualification to which a paragraph of Part 1 applies). | Affirmative |

**Schedule, para 9(3)**

| O - To amend the Schedule by order so as to substitute a different qualification for a qualification mentioned in paragraph 6 or 7. | Affirmative |

**Schedule, para 9(4)**

| O - To amend the Schedule to make amendments which are consequential on provision made under sub-paragraph (1) or (3). | Affirmative |

**PART–4 - REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND**

| 77 | R - to exempt certain institutions from the new definition of an independent educational institution, to provide that time spent on specified activities is or is not to be treated as time during which education has been provided, and to amend subsection (2)(a) or (b) | Negative |
so as to substitute a different number of weeks.

| 79  | R - to prescribe independent school standards. The standards set out in s157 of the Education Act 2002 will be retained and will be supplemented with a new standard to covering the quality of management and leadership of independent schools. | Negative |
| 83  | R - to retain the power currently contained in section 160 of the Education Act 2002 to specify the manner in which applications for registration of an independent educational institution must be made, and the information they must contain. | Negative |
| 91  | R - to set a criteria for the approval of inspectorates (other than Ofsted) to undertake inspections of independent schools. | Negative |
| 91  | R - to set a criteria for the approval of inspectorates (other than Ofsted) to undertake inspections of independent schools. | Negative |
| 92(3) | D - a power for the Secretary of State to give directions to Ofsted about the matters to be taken into account in preparing a report and the form and content of a report about the work of independent inspectorates. |  |
| 93  | R - to prescribe the intervals at which HMCI will secure the inspection of independent schools. | Negative |
| 97  | R - to set the amount of the fees payable in relation to inspections by HMCI and extends the power currently contained in s164(9) of the Education Act 2002 to require payment of inspection fees. | Negative |
| 99  | R - to prescribe the circumstances and the manner in which reports are published. | Negative |
| 105 | R - a power for the Chief Inspector to be able to deregister an independent educational institution in certain circumstances. | Negative |
| 109 | R - to retain the power currently contained in s168 of the Education Act 2002 to require the proprietor of an independent institution to provide particulars relating to the institution to HMCI or the Secretary of State, may in particular require information in order to determine whether the institution is a children’s home, to provide the Chief Inspector to remove from the register any institution when requirements are not complied with, and to provide that failure to comply with specified provisions is an offence. The regulations must require the Chief Inspector to notify | Negative |
the proprietor of any decision to remove the institution from the register and must provide that such decisions do not have effect during the period in which an appeal may be brought.

| 114 | R - to prescribe the grounds connected with the suitability of persons to take part in management  
(3) to prescribe the procedure for giving directions.  
(5) may prescribe the grounds on which a person subject to a direction under this section may seek to have it varied or revoked. | Negative |
| 115 | R – to provide that the Tribunal may not hear appeals if a case is inconsistent with any criminal conviction of the appellant, circumstances in which appeals must be allowed and the powers available to the Tribunal when allowing an appeal. | Negative |
| 118 | (1) R - may provide for any provision of Chapter 1 of Part 1 to apply in relation to an independent post-16 college subject to prescribed modifications.  
(5) R - may provide for specified institutions or institutions of specified descriptions are not independent post-16 colleges, and time spent on specified activities is or is not to be treated as time during which educational training is provided, and amend subsection (3)(a) to substitute a different number of hours or weeks | Affirmative, Negative |
<p>| 127 | R – to require pupils of non maintained special schools to receive religious education unless withdrawn in accordance with parents wishes and religious worship unless they (if they are of sixth form age) or their parents withdraws their attendance. | Negative |
| 128 | R – conferring power on a Justice of the Peace, on the application of the Chief Inspector, to make an order in an urgent case that a non-maintained special school in England should cease to be approved under section 342. | Negative |</p>
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</table>
| **129** | R – to make provision for an appeal against the decision of the Chief Inspector to withdraw approval  
R – to make provision for an appeal against an order of a JP in an emergency | Negative |
| **PART 5 – MISCELLANEOUS AND GENERAL** |   |   |
| **134** | R – admissions arrangements to sixth forms in maintained schools | Negative |
| **135** | R - about what consultation admission authorities should carry out on their admission arrangements. | Negative |
| Section 88H(6), | R - to prescribe certain bodies who have the power to object. | Negative |
| **Section 88P** | R - to allow the Secretary of State to prescribe the detail of what is to be covered in the reports and the timetable for their submission. | Negative |
| **Section 94(5)** | R - about the making of appeals. | Negative |
| **138** | R – Regulations detailing the procedures to be followed on the imposition of any requirement for a pupil to attend activities (at school or) out of school to improve their behaviour and the review process. | Negative |
| **143** | D – to provide for the Welsh Ministers to issue directions in relation to external qualifications, for a recognised person to comply with any conditions imposed on their recognition or accreditation. |   |
| **146** | R – must provide for Schools Forums to include schools members and may provide for schools forum to include other members and they make further provision as to the constitution. | Negative |
| **151** | R – to make any supplementary, incidental or consequential provisions.  
*to the extent that such regulations amend or appeal any provision of an Act* | Negative  
Affirmative |
| **154** | O - to bring the provisions in this Act into force, with power to make transitional provision and savings | None |