

Schools Bill [HL]

[AS AMENDED ON REPORT]

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[AS AMENDED ON REPORT]

A

B I L L

TO

Make provision for the regulation of Academies; about school and local education funding; about the attendance of children at school; about the regulation of independent educational institutions; about teacher misconduct; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

ACADEMIES

Academy schools with a religious character

1 Regulations about directors and members of certain Academy proprietors

- (1) The Secretary of State must make regulations requiring the articles of association of a relevant Academy proprietor to contain the provision required by this section. 5
- (2) In this section “relevant Academy proprietor” means a company limited by guarantee where—
 - (a) the company is the proprietor of one Academy school and that school is a relevant Academy school, or 10
 - (b) the company is the proprietor of two or more Academy schools and at least half of those schools are relevant Academy schools.
- (3) In this section “relevant Academy school” means an Academy school with a religious character which— 15
 - (a) was converted from a voluntary aided school with a religious character,
 - (b) was converted from a foundation or voluntary controlled school with a religious character and has been redesignated,
 - (c) was converted from a school which did not have a religious character, or 20
 - (d) was not converted from a previous school.

- (4) The provision that is required by this section is provision securing that—
- (a) a majority of the directors of the relevant Academy proprietor are persons appointed for the purposes of securing so far as practicable that—
 - (i) the character of each relevant Academy school in the proprietor’s care reflects the tenets of its designated religion or religious denomination, and 5
 - (ii) each relevant Academy school in the proprietor’s care is conducted in accordance with any trust deed relating to the school, and 10
 - (b) a majority of members of the proprietor are persons appointed by, or representing the interests of—
 - (i) in a case referred to in subsection (2)(a), the relevant religious body for the relevant Academy school in the proprietor’s care, 15
 - (ii) in a case referred to in subsection (2)(b) where the relevant Academy schools in the proprietor’s care have the same relevant religious body, that body, or
 - (iii) in any other case referred to in subsection (2)(b), the relevant religious bodies for the relevant Academy schools in the proprietor’s care taken together. 20

2 General regulations about the governance of Academy schools with a religious character

- (1) The Secretary of State must make regulations in relation to Academy schools with a religious character for one or both of the following purposes—
- (a) securing, so far as practicable, that the character of each such Academy school in a relevant Academy proprietor’s care reflects the tenets of its designated religion or religious denomination; 25
 - (b) securing, so far as practicable, that each such Academy school in a relevant Academy proprietor’s care is conducted in accordance with any trust deed relating to the school. 30
- (2) The regulations must specify provision that must be contained in—
- (a) the articles of association of a relevant Academy proprietor, or
 - (b) a scheme of delegation made by a relevant Academy proprietor.
- (3) In this section “relevant Academy proprietor” means a company limited by guarantee which is the proprietor of one or more Academy schools with a religious character. 35
- (4) The provision specified in regulations under subsection (2)(a) may include, for example, provision as to—
- (a) the powers of a relevant Academy proprietor;
 - (b) the objects of a relevant Academy proprietor and the giving of undertakings to uphold those objects; 40
 - (c) the membership of a relevant Academy proprietor, including—

- (i) the minimum number or proportion of members appointed by, or to represent the interests of, the relevant religious body for an Academy school with a religious character in the proprietor’s care,
 - (ii) appointment and removal of members; 5
 - (d) directors of a relevant Academy proprietor, including—
 - (i) the minimum number or proportion of directors appointed by, or to represent the interests of, the relevant religious body for an Academy school with a religious character in the proprietor’s care; 10
 - (ii) appointment and removal of directors;
 - (e) the chair and vice-chair of the board of directors of a relevant Academy proprietor and any connection they must have with the religion or religious denomination of an Academy school with a religious character in its care; 15
 - (f) consulting or obtaining the consent of the relevant religious body for an Academy school with a religious character in the relevant Academy proprietor’s care before the making of appointments (including staff appointments);
 - (g) alteration of the articles of association; 20
 - (h) the making of or alteration of rules or byelaws;
 - (i) the composition of any committee of the board of directors of the proprietor;
 - (j) responsibilities or matters which may or must be delegated to any such committee or any employee of the proprietor or other person. 25
- (5) The Secretary of State must consult such persons as the Secretary of State considers appropriate—
- (a) before making the first regulations under this section, and
 - (b) before making other regulations under this section, unless the Secretary of State considers that the changes made by the regulations are minor or technical. 30
- (6) In this section the “scheme of delegation” of a relevant Academy proprietor is a scheme setting out responsibilities or matters to be delegated by the proprietor to a committee of the board of directors, an employee or another person. 35

3 Worship

- (1) Each pupil in attendance at an Academy school with a religious character must on each school day take part in an act of collective worship.
- (2) The proprietor of an Academy school must exercise its functions with a view to securing, and its principal must secure, that subsection (1) is complied with. 40
- (3) The collective worship required under subsection (1) must be—

-
- (a) in accordance with the provisions of any trust deed relating to the Academy school, or
- (b) where provision for that purpose is not made by any such trust deed, in accordance with the tenets and practices of the school’s designated religion or religious denomination. 5
- (4) The arrangements for the collective worship required under subsection (1) may, in respect of each school day, provide for –
- (a) a single act of worship for all pupils, or
- (b) separate acts of worship for pupils in different age groups or in different school groups. 10
- “School group” means any group in which pupils are taught or take part in other school activities.
- (5) The arrangements for the collective worship required under subsection (1) are to be made by the proprietor after consulting the principal of the Academy school. 15
- (6) The collective worship required under subsection (1) must take place on the premises of the Academy school.
- (7) But if the proprietor is of the opinion that any act of collective worship in the Academy school required under subsection (1) should, on a special occasion, take place other than on the school premises, the proprietor may, after consulting the principal, make such arrangements as the proprietor thinks appropriate. 20

4 Religious education

- (1) The proprietor of an Academy school with a religious character must exercise its functions with a view to securing, and its principal must secure, that religious education is provided to all pupils at the school in accordance with sections 5 and 6. 25
- (2) The religious education required under this section is to be under the control of the proprietor, subject to sections 5 and 6.
- (3) Where a trust deed relating to an Academy school with a religious character makes provision for a bishop or other ecclesiastical or denominational authority to have power to decide whether the religious education given in the school which purports to be in accordance with the provisions of the trust deed does or does not accord with those provisions, that question is to be determined in accordance with the provisions of the trust deed. 30 35

5 Religious education: former foundation or voluntary controlled schools

- (1) This section applies to an Academy school which was converted from a foundation or voluntary controlled school with a religious character, other than one which has been redesignated.
- (2) The religious education required under section 4 must be provided to any pupils in accordance with – 40

- (a) arrangements under subsection (3), and
 - (b) subject to any such arrangements, an agreed syllabus adopted for the school or those pupils.
- (3) If the parents of any pupils at an Academy school to which this section applies request that the pupils receive religious education— 5
- (a) in accordance with any provision made for that purpose by a trust deed relating to the school, or
 - (b) where provision for that purpose is not made by such a deed, in accordance with the tenets of the school’s designated religion or religious denomination, 10
- the proprietor must (unless satisfied that because of any special circumstances it would be unreasonable to do so) make arrangements for securing that religious education is so provided to those pupils in the school during not more than two periods in each week.

6 Religious education: other Academies 15

- (1) This section applies to an Academy school with a religious character which—
- (a) was converted from a voluntary aided school with a religious character,
 - (b) was converted from a foundation or voluntary controlled school with a religious character and has been redesignated,
 - (c) was converted from a school which did not have a religious character, or 20
 - (d) was not converted from a previous school.
- (2) The religious education required under section 4 must be provided in accordance with—
- (a) any provision made for that purpose by a trust deed relating to the school, 25
 - (b) where provision for that purpose is not made by such a deed, the tenets of the school’s designated religion or religious denomination, or
 - (c) any arrangements under subsection (3). 30
- (3) If the parents of any pupils at an Academy school to which this section applies—
- (a) desire those pupils to receive religious education in accordance with an agreed syllabus adopted by the local authority in whose area the school is situated, and 35
 - (b) cannot with reasonable convenience cause the pupils to attend a school at which that syllabus is in use,
- the proprietor must (unless satisfied that because of any special circumstances it would be unreasonable to do so) make arrangements for religious education in accordance with that syllabus to be provided to those pupils in the school. 40
- (4) Any arrangements under subsection (3) are to be made by the proprietor unless the local authority in whose area the school is situated are satisfied

that the proprietor is unwilling to make them, in which case they must be made by the authority.

- (5) Religious education under any arrangements under subsection (3) must be provided during the times set apart for the provision of religious education in the school. 5

7 Special arrangements for worship and religious education

- (1) If the parent of a pupil at an Academy school with a religious character, other than a sixth-form pupil, requests that the pupil be wholly or partly excused from collective worship arranged under section 3, the pupil is to be so excused until the request is withdrawn. 10

- (2) If a sixth-form pupil at an Academy school with a religious character requests to be wholly or partly excused from collective worship arranged under section 3, the pupil is to be so excused until the request is withdrawn.

- (3) If the parent of a pupil at an Academy school with a religious character requests that the pupil be wholly or partly excused from religious education required to be provided under section 4, the pupil is to be so excused until the request is withdrawn. 15

- (4) Where in accordance with subsection (3) a pupil at an Academy school has been wholly or partly excused from receiving religious education and the proprietor of the school is satisfied that— 20

(a) the parent desires the pupil to receive religious education of a kind which is not provided in the school during the periods of time during which the pupil is excused,

(b) the pupil cannot with reasonable convenience be sent to another Academy school or maintained school where religious education of the kind desired by the parent is provided, and 25

(c) arrangements have been made for the pupil to receive religious education of that kind during school hours elsewhere,

the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling the pupil to receive religious education in accordance with the arrangements. 30

- (5) A pupil may not be withdrawn from an Academy school under subsection (4) unless the proprietor is satisfied that the arrangements there mentioned are such as will not interfere with the attendance of the pupil at the school on any day except at the beginning or end of a school session (or if there is only one, the school session) on the day. 35

- (6) If the parent of a pupil who is a boarder at an Academy school with a religious character, other than a sixth-form pupil, requests that the pupil be permitted—

(a) to receive religious education in accordance with the tenets of a particular religion or religious denomination outside school hours, or 40

(b) to attend worship in accordance with such tenets on Sundays or other days exclusively set apart for religious observance by the religious body to which the parent belongs,

the proprietor of the school must make arrangements for giving the pupil reasonable opportunities for doing so.

- (7) If a sixth-form pupil who is a boarder at an Academy school with a religious character requests to be permitted –
- (a) to receive religious education in accordance with the tenets of a particular religion or religious denomination outside school hours, or 5
 - (b) to attend worship in accordance with such tenets on Sundays or other days exclusively set apart for religious observance by the religious body to which the pupil belongs,
- the proprietor of the school must make arrangements for giving the pupil reasonable opportunities for doing so. 10
- (8) Arrangements under subsection (6) or (7) may provide for making facilities for such education or worship available on the school premises, but any expenditure entailed by the arrangements may not be met from the proprietor’s budget. 15
- (9) In this section “sixth-form pupil” means any pupil who –
- (a) has ceased to be of compulsory school age, and
 - (b) is receiving education suitable to the requirements of pupils over compulsory school age.

8 Inspection of arrangements for worship and religious education 20

- (1) The proprietor of an Academy school with a religious character must secure the inspection of –
- (a) the content of the school’s collective worship arranged under section 3, and
 - (b) any denominational education provided to pupils. 25
- (2) An inspection under this section is to be conducted by a person chosen by the proprietor after consultation with any person of a description prescribed for the purposes of this subsection in relation to the Academy school’s designated religion or religious denomination.
- (3) Inspections under this section must be carried out at such intervals as may be prescribed. 30
- (4) It is the general duty of a person conducting an inspection under this section –
- (a) to report on the content of the school’s collective worship, and
 - (b) to report on the quality of the denominational education provided by the school for any pupils to whom denominational education is provided by the school, 35
- and they may report on the spiritual, moral, social and cultural development of pupils at the school.
- (5) A person conducting an inspection under this section may do so with the assistance of such other persons chosen by them as they consider fit and proper for carrying out the inspection. 40

- (6) An inspection under this section must be carried out within such period as may be prescribed.
- (7) When an inspection under this section has been completed, the person who conducted it must, before the end of such period as may be prescribed, prepare a written report to the proprietor of the Academy school. 5
- (8) The person conducting the inspection must, without delay, send the report to the proprietor of the Academy school.
- (9) The proprietor must take such steps as are reasonably practicable, within such period following receipt of the report as may be prescribed, to secure that every parent of a pupil at the school is informed of the overall assessment contained in the report of— 10
- (a) the content of the school’s collective worship, and
- (b) the quality of the denominational education provided by the school.
- (10) In this section “denominational education” means religious education which— 15
- (a) is required to be provided under section 4, and
- (b) is not provided in accordance with an agreed syllabus adopted for the school or for any pupils at the school.

9 Governance, worship and religious education: contractual provisions

A provision of an Academy agreement or master agreement (including an agreement entered into before this section comes into force) is void so far as it is inconsistent with any provision made by or under sections 1 to 8. 20

Academies: other

10 Academy grammar schools

- (1) Chapter 2 of Part 3 of the School Standards and Framework Act 1998 (selection of pupils) is amended as set out in subsections (2) to (5). 25
- (2) In section 104 (designation of grammar schools)—
- (a) in subsection (1)—
- (i) after “maintained school” insert “in England”;
- (ii) for “may” substitute “must”;
- (b) after subsection (1) insert— 30
- “(1A) Where the Secretary of State is satisfied that a maintained school in Wales had selective admission arrangements at the beginning of the 1997-98 school year, the Secretary of State may by order designate the school as a grammar school for the purposes of this Chapter. 35
- (1B) The Secretary of State must by order designate an Academy school as a grammar school for the purposes of this Chapter where the school, immediately before its conversion into an

- Academy school, was a school which was designated as a grammar school under subsection (1).”;
- (c) in subsection (4), after “maintained school” insert “or an Academy school”;
 - (d) in subsection (5)(a), after “subsection (1)” insert “or (1A)”;
 - (e) in subsection (6), in the words after paragraph (b), after “subsection (1)” insert “or (1A)”;
 - (f) in subsection (7), after “Chapter” insert “ –
“Academy school” means a school falling within section 1A(1) of the Academies Act 2010;”.
- (3) In section 107 (restriction on publication of material etc relating to ballots) –
- (a) in subsection (1), for “An authority or body” substitute “A person”;
 - (b) in subsection (2) –
 - (i) omit the “and” after paragraph (a);
 - (ii) after paragraph (b) insert “, and
the proprietor of an Academy.”;
 - (c) in subsection (3) –
 - (i) in the words before paragraph (a), for “an authority or body” substitute “a person”;
 - (ii) in paragraph (b), for “authority or body” substitute “person to whom this section applies”;
 - (iii) in paragraph (c), for “authority or body” substitute “person to whom this section applies”;
 - (d) in subsection (5) –
 - (i) omit the “or” after paragraph (a);
 - (ii) after paragraph (b) insert “; or
in relation to the proprietor of an Academy, is a reference to expenditure out of money provided to the Academy –
 - (i) by the Secretary of State in pursuance of Academy arrangements (within the meaning of section 1 of the Academies Act 2010), or
 - (ii) by virtue of section 22 of the Schools Act 2022 (administration of locally determined supplementary funding).”
- (4) In section 108 (implementation of decision that schools should cease to have selective admission arrangements) –
- (a) in subsection (2), omit “(in accordance with sections 88C to 88K or, as the case may be, 89 and 90)”;

- (b) after subsection (2) insert –
- “(2A) In subsection (2), the reference to admission arrangements being revised means those arrangements being revised in accordance with –
- (a) in the case of a maintained school, sections 88C to 88K or, as the case may be, 89 and 90; 5
 - (b) in the case of an Academy school, a provision of any enactment, or of an Academy agreement or master agreement, that applies to an Academy school and has the same or a similar effect as sections 88C to 88K. 10
- (2B) In subsection (2A), “Academy agreement” and “master agreement” have the same meanings as in Part 1 of the Schools Act 2022 (see section 16 of that Act).”
- (5) In section 109 (proposals by governing body of grammar school to end selective admission arrangements) – 15
- (a) in subsection (1), after “grammar school” insert “in Wales”;
 - (b) in subsection (3)(a), after “school” insert “in Wales”;
 - (c) in the heading, after “school” insert “in Wales”.
- (6) In section 18 of the Education and Inspections Act 2006 (alterations that may be made under section 19) – 20
- (a) in subsection (4), after paragraph (b) insert –
 - “(ba) any change to the admission arrangements of a grammar school in England, whereby the school would no longer have selective admission arrangements;”;
 - (b) in subsection (5), for “(4)(e)” substitute “(4) – 25
 - “grammar school” and “selective admission arrangements” have the same meanings as in Chapter 2 of Part 3 of SSFA 1998 (see section 104 of that Act);”.
- (7) In the Academies Act 2010 –
- (a) in section 1A (Academy schools), after subsection (1) insert – 30
 - “(1A) Subsection (1)(c) does not apply in relation to a school that is designated as a grammar school under section 104(1B) of SSFA 1998 (designation of Academy schools with pre-existing selective admissions as grammar schools).”;
 - (b) in section 6 (effect of Academy order), in subsection (3) – 35
 - (i) after “selective school” insert “by virtue of section 100 of SSFA 1998”;
 - (ii) at the end insert “(See also section 1A(1A).)”;
 - (c) in section 6, in subsection (4) –
 - (i) after “selective school” insert “by virtue of section 100 of SSFA 40 1998”;
 - (ii) omit paragraph (b) and the “or” immediately preceding it.

- (8) A provision of an Academy agreement or master agreement (including an agreement entered into before this section comes into force) is void so far as it –
- (a) relates to the procedures for altering the admission arrangements of an Academy grammar school so that the school no longer has selective admission arrangements, or 5
 - (b) purports to permit an Academy school to have selective admission arrangements in a case where the school’s arrangements have been altered in accordance with sections 104 to 108 of the School Standards and Framework Act 1998. 10

11 Local authorities: power to apply for an Academy order

- (1) The Academies Act 2010 is amended as follows.
- (2) After section 3 insert –

“3A Application for Academy order by local authority

- (1) A local authority in England may apply to the Secretary of State for an Academy order to be made in respect of any of its maintained schools. 15
- (2) Before making an application under this section, the local authority must consult –
- (a) the governing body of the school that is the subject of the application, and 20
 - (b) in a case where the school is a foundation or voluntary school that has a foundation, the foundation.
- (3) The local authority may make an application under this section in respect of a foundation or voluntary school that has a foundation only with the consent of – 25
- (a) the trustees of the school,
 - (b) the person or persons by whom the foundation governors are appointed, and
 - (c) in the case of a school which has a religious character, the appropriate religious body. 30
- (4) Expressions used in subsections (2) and (3) and SSFA 1998 have the same meaning as in that Act.”
- (3) In section 3 (application for Academy order), in the heading, at the end insert “by governing body”. 35

12 Schools with a religious character: power of certain bodies to apply for an Academy order

In the Academies Act 2010, after section 3A (as inserted by section 11) insert—

“3B Application for Academy order by certain bodies for schools with a religious character

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(1) Any of the following may apply to the Secretary of State for an Academy order to be made in respect of a voluntary or foundation school with a religious character—

- (a) the trustees of the school;
- (b) the person or persons by whom the foundation governors are appointed;
- (c) the appropriate religious body.

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(2) Before making an application in respect of a school under this section, the applicant must consult—

- (a) the governing body, and
- (b) the local authority.

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(3) A person may make an application under this section only with the consent of all of the other persons mentioned in paragraphs (a) to (c) of subsection (1) that exist in relation to the school.

(4) Expressions used in subsection (1) and SSFA 1998 have the same meaning as in that Act.”

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13 Sections 11 and 12: consequential amendments to the Academies Act 2010

Schedule 1 contains amendments to the Academies Act 2010 which are consequential on sections 11 and 12.

14 Transfer of land by local authorities

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(1) In Schedule 1 to the Academies Act 2010 (Academies: land), after paragraph 9 insert—

“Compulsory transfer to trustees

9A (1) This paragraph applies where Conditions A to D are met.

(2) Condition A is that a local authority make premises (“the new premises”) available to be used by an Academy school.

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(3) Condition B is that the new premises are made available as an alternative to premises (“the existing premises”) which have previously been used by—

- (a) the Academy school, or
- (b) a maintained school, Academy or sixth form college that has been or is to be discontinued and that the Academy school replaces.

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-
- (4) Condition C is that the existing premises are held on trust by a person or persons (“the trustees”) for the purposes of (as the case may be)–
- (a) the Academy school, or
 - (b) the discontinued maintained school, Academy or sixth form college. 5
- (5) Condition D is that the trustees–
- (a) having sold the existing premises, pay to the local authority a sum that–
 - (i) is just, having regard to the value of the local authority’s interest in the new premises, but 10
 - (ii) does not exceed the total of the proceeds of sale and any interest that has accrued to the trustees on those proceeds, or
 - (b) if the local authority agree to accept the trustees’ interest in the existing premises, transfer that interest to the local authority. 15
- (6) The local authority must transfer their interest in the new premises to the trustees to be held by them on trust for the purposes of the Academy school. 20
- (7) The local authority must pay to the trustees to whom the transfer is made their reasonable costs in connection with the transfer.
- (8) Any question relating to the duty in sub-paragraph (6) may, if not agreed by the local authority and the trustees, be referred by the local authority or the trustees to the adjudicator (see section 25 of SSFA 1998). 25
- (9) The questions referred to in sub-paragraph (8) include in particular–
- (a) the extent of the premises an interest in which is to be transferred by the local authority,
 - (b) whether a sum proposed by any person to be paid by the trustees as specified in sub-paragraph (5)(a) is just having regard to the value of the local authority’s interest in the new premises, 30
 - (c) the amount of any interest that has accrued to the trustees on proceeds of sale as referred to in sub-paragraph (5)(a)(ii), and 35
 - (d) the identity of the trustees to or by whom a payment or transfer should be made.
- (10) The local authority and the trustees respectively must provide to the adjudicator any information the adjudicator may request from them for the purpose of exercising the functions the adjudicator has by virtue of this paragraph. 40
- (11) Any sum paid to the local authority as referred to in sub-paragraph (5)(a) is to be treated for the purposes of section 14 of the School Sites Act 1841 (which relates to the sale or exchange of land held 45

on trust for the purposes of a school) as a sum applied in the purchase of a site for the school, Academy or sixth form college referred to in sub-paragraph (3)(a) or (b).

(12) In this paragraph, references to premises do not include playing fields.”

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(2) In section 25 of the School Standards and Framework Act 1998 (adjudicators), in subsection (2), after “2006” insert “or paragraph 9A of Schedule 1 to the Academies Act 2010”.

(3) In Schedule 5 to that Act (adjudicators), in paragraph 5(1), after “2006” insert “or paragraph 9A of Schedule 1 to the Academies Act 2010”.

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(4) In Part 2 of Schedule 22 to that Act (maintained schools: disposals on discontinuance), in paragraph 5, after sub-paragraph (1A) insert –

“(1B) This paragraph also does not apply where the school mentioned in sub-paragraph (1)(a) is (with or without other schools) to be replaced by an Academy school in circumstances where paragraph 9A(1) of Schedule 1 to the Academies Act 2010 applies.”

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15 Secure 16 to 19 Academies

(1) The Academies Act 2010 is amended as follows.

(2) In section 2 (payments under Academy agreements), after subsection (2) insert –

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“(2A) Subsection (2) applies to an Academy agreement in respect of a secure 16 to 19 Academy as though the references to 7 years were references to 2 years.”

(3) In section 9 (impact: new and expanded educational institutions), in subsection (1), after paragraph (b) (and on a new line) insert –

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“except where the institution, if the arrangements are entered into, is to be a secure 16 to 19 Academy.”

(4) In section 10 (consultation: new and expanded educational institutions) –

(a) after subsection (2) insert –

“(2A) But where the educational institution, if the arrangements are entered into, is to be a secure 16 to 19 Academy –

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(a) the person is not required to carry out a consultation on that question, and

(b) they must instead carry out a consultation on the question of how they should cooperate with potential local partners in connection with the establishment and carrying on of the Academy.

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(2B) “Potential local partners” in subsection (2A)(b) means –

- (a) public authorities (within the meaning of section 6 of the Human Rights Act 1998), and
 - (b) so far as not falling within paragraph (a), proprietors of educational institutions,
with whom the person carrying out the consultation thinks it appropriate to cooperate.”; 5
- (b) in subsection (3), for “The consultation” substitute “A consultation under this section”.

Interpretation and regulations

16 Interpretation of Part 1 10

(1) In this Part –

- “Academy agreement” means an agreement within section 1(3) of the Academies Act 2010 which makes provision about the carrying on of one particular Academy;
- “Academy grammar school” means an Academy that is designated as a grammar school under section 104 of the School Standards and Framework Act 1998; 15
an Academy is “in the care” of a person if that person is the proprietor of the Academy;
- “agreed syllabus” has the meaning given by section 375(2) of the Education Act 1996; 20
- “designated”: the “designated” religion or religious denomination of a school with a religious character is the religion or religious denomination specified in the religious designation order made in relation to the school (and if there is more than one, both or all of them); 25
- “master agreement” means an agreement between the Secretary of State and any other person which makes provision about the carrying on of more than one Academy established or maintained by that person;
- “prescribed” means prescribed by regulations made by the Secretary of State; 30
- “pupil”, in relation to an Academy school, means a registered pupil at the school;
- “redesignated”: an Academy school which has been converted from a foundation or voluntary controlled school with a religious character is “redesignated” if, after conversion, it is the subject of a further religious designation order; 35
- “relevant religious body”, in relation to an Academy school with a religious character, means –
 - (a) if the school’s designated religion or religious denomination is “Church of England”, the Diocesan Board of Education for the diocese of the Church of England in which the school is situated; 40

- (b) if the school’s designated religion or religious denomination is “Roman Catholic”, the bishop of the Roman Catholic diocese in which the school is situated;
- (c) in any other case, the religious body specified in the Academy agreement for the school as having functions in relation to the school; 5

an Academy school has a “religious character” if it is –

- (a) an Academy school which has been designated as having a religious character by a religious designation order made by virtue of section 124B(1) of the Schools Standards and Framework Act 1998, or 10
- (b) an Academy school which, by virtue of section 6(7) and (8) of the Academies Act 2010, is treated as designated by a religious designation order as an independent school with a religious character; 15

a school of any description other than an Academy school has a “religious character” if it has been designated as having such a character by a religious designation order;

“religious designation order” means an order made by the Secretary of State under section 69(3) of the School Standards and Framework Act 1998; 20

“selective admissions arrangements” has the same meaning as in Chapter 2 of Part 3 of the School Standards and Framework Act 1998 (see section 104 of that Act);

“trust deed”, in relation to an Academy school with a religious character, includes any instrument (other than the articles or memorandum of association) regulating – 25

- (a) the constitution of the school’s proprietor, or
- (b) the maintenance, management or conduct of the school.

- (2) Other words and expressions used in this Part have the same meanings as in the Education Act 1996, unless the context otherwise requires. 30

17 Part 1: regulations

- (1) A power to make regulations under this Part includes power to make –
 - (a) consequential, supplementary, incidental, transitional or saving provision; 35
 - (b) different provision for different purposes.
- (2) Regulations under this Part are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 2

SCHOOL AND LOCAL EDUCATION FUNDING: ENGLAND

National formula allocations

18 Nationally determined funding for schools in England

- (1) The Secretary of State must, for each funding period, determine the national formula allocation for each school to which this section applies. 5
- (2) The “national formula allocation”, for a school, means the amount calculated for that school in accordance with the formula determined by the Secretary of State for the funding period in question.
- (3) This section applies to— 10
 - (a) Academy schools which meet the requirements of section 1A(1) of the Academies Act 2010,
 - (b) community, foundation and voluntary schools (within the meaning of the School Standards and Framework Act 1998) in England,
 - (c) other Academies (other than 16 to 19 Academies) of a prescribed kind, 15
 - (d) other maintained schools in England of a prescribed kind, and
 - (e) if regulations so provide, non-maintained special schools in England.
- (4) The same formula must be determined by the Secretary of State for all schools within subsection (3)(a) or (b) for corresponding funding periods. For the purposes of this Part, funding periods “correspond” if they begin in (or at the start of) the same relevant period. 20
- (5) Otherwise, the Secretary of State may determine different formulae—
 - (a) for different descriptions of school;
 - (b) for different funding periods.
- (6) The Secretary of State must publish a formula determined under subsection (2) before any funding period to which it relates. 25
- (7) The Secretary of State must make information about a formula determined under subsection (2) available—
 - (a) where the formula applies to an Academy, to the proprietor,
 - (b) where it applies to a maintained school, to— 30
 - (i) the governing body, and
 - (ii) the local authority, and
 - (c) where it applies to a non-maintained special school, to the proprietor, before the funding period of the school for which it applies.
- (8) If the Secretary of State considers that there are exceptional circumstances which make it appropriate for the Secretary of State to calculate the national formula allocation for a prescribed school to which this section applies, for a funding period, on a basis determined by the Secretary of State (instead of 35

- in accordance with subsection (2)), regulations may authorise the Secretary of State to do so.
- (9) Before making regulations under subsection (8) in relation to a school, the Secretary of State must consult—
- (a) in the case of an Academy, the proprietor; 5
 - (b) in the case of a maintained school—
 - (i) the governing body, and
 - (ii) the local authority;
 - (c) in the case of a non-maintained special school, the proprietor.
- (10) Subsections (6) and (7) apply in relation to the basis of a calculation determined by virtue of regulations under subsection (8) as they apply in relation to a formula determined under subsection (2). 10

19 Administration of nationally determined funding

- (1) The Secretary of State must pay (whether under section 14 of the Education Act 2002 or another enactment authorising the payment) the national formula allocation determined under section 18 for a funding period— 15
- (a) in the case of an Academy, to the proprietor either under an Academy agreement and in the circumstances mentioned in section 1(3)(b) of the Academies Act 2010 or as Academy financial assistance within section 1(4) of that Act; 20
 - (b) in the case of a maintained school, to the local authority (and see section 50(1) of the School Standards and Framework Act 1998 for the local authority’s obligation to make that amount available to be spent by the school’s governing body as part of the school’s adjusted core budget); 25
 - (c) in the case of a non-maintained special school, to the proprietor.
- (2) This section is subject to sections 25, 26 and 27 (which permit adjustments to be made to national formula allocations in certain circumstances).
- (3) Subsection (1) is without prejudice to section 16 of the Education Act 2002 (which enables financial assistance under section 14 of that Act to be given on terms determined by the Secretary of State) or any similar provision. 30

Locally determined expenditure

20 Locally determined education budgets in England

- (1) For the purposes of this Part, the “locally determined education budget” of a local authority in England, for a relevant period, is the amount appropriated by the authority for meeting— 35
- (a) the authority’s expenditure under section 21 (locally determined supplementary allocations for local schools) for funding periods of schools which begin in (or at the start of) the relevant period;

- (b) the authority’s expenditure under section 23 (other locally determined education expenditure) in respect of the relevant period.
- (2) A local authority’s locally determined education budget includes the amount of any grant which is appropriated by the local authority, for meeting any of the expenditure mentioned in subsection (1), in accordance with a condition which—
- (a) is imposed under section 16 of the Education Act 2002 (terms on which assistance under section 14 of that Act is given) or any other enactment, and
- (b) requires that the grant be applied as part of the authority’s locally determined education budget for the relevant period.
- (3) Subsection (2) is without prejudice to the power under section 16 of the Education Act 2002, or any similar provision, to impose further terms (including further terms about how the grant may be applied) on the giving of such financial assistance.

21 Locally determined supplementary funding for local schools

- (1) If regulations so provide, each local authority in England must determine the locally determined supplementary allocation for each of their local schools for each funding period.
- (2) The “locally determined supplementary allocation” for a school means the amount (if any) calculated for that school (in addition to its national formula allocation), for the funding period in question, in accordance with regulations.
- (3) Regulations under subsection (2) may (amongst other things)—
- (a) specify factors or criteria which a local authority are to take into account in determining an amount;
- (b) specify factors or criteria which a local authority are to disregard in determining an amount;
- (c) specify other requirements with which a local authority are to comply in determining an amount;
- (d) make provision to ensure that the calculations made by a local authority under subsection (2) require the authority to treat all schools in respect of which they make a calculation on an equivalent basis for corresponding funding periods;
- (e) make provision about the treatment of new schools or closing schools;
- (f) make provision about consultation to be carried out by a local authority in connection with determining an amount;
- (g) authorise a local authority in prescribed cases and to a prescribed extent to determine an amount in accordance with arrangements approved by the authority’s schools forum, the Secretary of State or a prescribed person, in accordance with the regulations (instead of in accordance with the arrangements provided for in the regulations themselves);
- (h) provide that an amount is subject to either or both of the following—

- (i) such limit or limits (however framed) as may be prescribed or determined in accordance with the regulations;
 - (ii) such other conditions as may be prescribed or so determined;
 - (i) make provision enabling any limit or condition that would otherwise apply by virtue of paragraph (h) to be varied or excluded, on the application of the authority, by the authority's schools forum, the Secretary of State or another prescribed person; 5
 - (j) make provision about the circumstances in which a local authority are authorised or required to redetermine an amount;
 - (k) specify a time by which a local authority's determination of an amount is to take place. 10
- (4) Regulations may –
- (a) require local authorities to give the Secretary of State notice of any determinations made by them under this section;
 - (b) require local authorities to give notice of a locally determined funding allocation – 15
 - (i) in the case of an Academy, to the proprietor,
 - (ii) in the case of a maintained school, to the governing body, and
 - (iii) in the case of a non-maintained special school, to the proprietor;
 - (c) make provision about the form, manner and timing of a notice under paragraph (a) or (b). 20
- (5) For the purposes of this section, a reference to the determination of an amount includes a reference to a redetermination of the amount.

22 Administration of locally determined supplementary funding

- (1) The locally determined supplementary allocation for a funding period, for a school to which section 18(3)(a), (c) or (e) applies, must be administered by the local authority so that it is made available to be spent by the proprietor of the school. 25
- (2) Subsection (1) is subject to section 27 (which permits deductions to be made from locally determined supplementary allocations). 30
- (3) In the case of a maintained school, see section 50(1) of the School Standards and Framework Act 1998 for the local authority's obligation to make the locally determined supplementary allocation (after any deduction under section 27) available to be spent by the school's governing body as part of the school's adjusted core budget. 35
- (4) If regulations so provide, the local authority may, in accordance with the regulations, make the locally determined supplementary allocations available to be spent under subsection (1), or as mentioned in subsection (3), subject to such terms and conditions (including repayment conditions) as the local authority consider appropriate. 40

23 Other locally determined education expenditure

- (1) This section applies to education expenditure of a prescribed class or description, of a local authority in England, in respect of a relevant period.
- (2) The local authority must determine and administer the expenditure in accordance with regulations. 5
- (3) Regulations under subsection (2) may (amongst other things) –
 - (a) specify factors or criteria which a local authority are to take into account in determining any expenditure;
 - (b) specify factors or criteria which a local authority are to disregard in determining any expenditure; 10
 - (c) specify other requirements with which a local authority are to comply in determining any expenditure;
 - (d) provide that, where the expenditure takes the form of financial assistance to another person, the local authority may, in accordance with the regulations, make the financial assistance subject to such terms and conditions (including repayment conditions) as the local authority consider appropriate; 15
 - (e) make provision about the treatment of new schools or closing schools;
 - (f) make provision about consultation to be carried out by a local authority in connection with determining any expenditure; 20
 - (g) authorise an authority, in prescribed cases and to a prescribed extent, to determine any expenditure in accordance with arrangements approved by the Secretary of State, a schools forum or a prescribed person, in accordance with the regulations (instead of in accordance with arrangements provided for in the regulations themselves); 25
 - (h) provide, in relation to any prescribed class or description of expenditure, that the expenditure in respect of the relevant period is subject to either or both of the following –
 - (i) such limit or limits (however framed) as may be prescribed or determined in accordance with the regulations; 30
 - (ii) such other conditions as may be prescribed or so determined;
 - (i) make provision enabling any limit or condition that would otherwise apply by virtue of paragraph (h) to be varied or excluded, on the application of the authority, by the authority's schools forum, the Secretary of State or another prescribed person; 35
 - (j) require a local authority to provide prescribed persons with prescribed information relating to their determination of any expenditure;
 - (k) make provision about the circumstances in which a local authority are authorised or required to redetermine any expenditure;
 - (l) specify a time by which a local authority's determination of any expenditure is to take place; 40
 - (m) require a local authority to notify a prescribed person of a determination made by them under this section, and make provision about the form, manner and timing of the notification.
- (4) For the purposes of this section – 45

- (a) a reference to the determination of an amount includes a reference to a redetermination of the amount;
- (b) expenditure “in respect of a relevant period” includes expenditure in respect of a school for a funding period that begins in (or at the start of) that relevant period.

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Other sources of funding for education expenditure

24 Other funding for education expenditure

This Part is without prejudice to the generality of any power to provide financial assistance under Part 2 of the Education Act 2002 (financial assistance for education and children etc) or any other enactment.

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Budget adjustments

25 Reallocation of funding to locally determined education expenditure

- (1) Regulations may make provision for the Secretary of State, on the application of a local authority in England, to make a national-to-local budget reallocation.
- (2) A “national-to-local budget reallocation” occurs where the Secretary of State –
 - (a) adds an amount (“the reallocated amount”) to the local authority’s locally determined education budget for a relevant period (“the initial relevant period”), in the form of a grant payable to the local authority subject to a condition imposed under section 16 of the Education Act 2002 (terms on which financial assistance under section 14 of that Act is given) which requires the grant to be applied as part of that budget under section 23 above, and
 - (b) in accordance with regulations, makes a corresponding reduction in the national formula allocation for one or more of the local authority’s local schools, or for all or a particular description of those schools, in respect of either –
 - (i) funding periods beginning in (or at the start of) the initial relevant period, or
 - (ii) funding periods beginning in (or at the start of) the next relevant period.
- (3) In this section “corresponding reduction” means a reduction which –
 - (a) in a case where the reduction is to the national formula allocation for one school, reduces the amount of that allocation by an amount equal to the reallocated amount, and
 - (b) in a case where the reduction is to the national formula allocation for more than one school, reduces the aggregate of those allocations by a total amount equal to the reallocated amount.
- (4) Regulations under subsection (1) may (amongst other things) make provision –
 - (a) about the circumstances and manner in which, and time (before the initial relevant period) at which, an application may be made;

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- (b) about the circumstances in which a single application may be made in respect of national-to-local budget allocations adding amounts to the local authority’s locally determined budget for successive relevant periods;
 - (c) about the expenditure that may be met under section 23 from the amount added to the locally determined education budget as a result of a national-to-local budget reallocation; 5
 - (d) requiring a local authority to consult their schools forum before making an application, and about the timing and manner of the consultation;
 - (e) about the information to be provided with an application; 10
 - (f) about how and when an application is to be determined;
 - (g) about the criteria to be considered by the Secretary of State when determining an application;
 - (h) about the circumstances in which the Secretary of State may grant or refuse an application, including the circumstances in which the Secretary of State may, when granting the application, modify the amount of the national-to-local budget reallocation or the local schools to which it relates; 15
 - (i) about notification of the Secretary of State’s decision on an application;
 - (j) for the local authority’s local schools, their schools forum or any other prescribed persons to be consulted by the Secretary of State before an application is determined; 20
 - (k) about the treatment of new schools or closing schools.
- (5) Subsections (2)(a) and (4)(c) are without prejudice to the power under section 16 of the Education Act 2002 to impose further terms on the giving of financial assistance under section 14 of that Act. 25

26 Excluded pupils: budget adjustments

- (1) Regulations may make provision for a budget deduction to be made in respect of a pupil who is permanently excluded from an Academy or maintained school to which section 18 applies. 30
- (2) In this section “budget deduction” means –
- (a) in the case of an Academy, an amount paid by the proprietor of the Academy to the local authority for the area in which the Academy is located out of the national formula allocation for the Academy for the funding period in which the exclusion takes effect; 35
 - (b) in the case of a maintained school, an amount deducted by the local authority from the national formula allocation for the school for that funding period.
- (3) An amount paid to or deducted by a local authority as a result of a budget deduction is to be treated as having been appropriated by the authority for meeting the authority’s expenditure under section 23 in respect of the corresponding relevant period (and, accordingly, forms part of the authority’s locally determined education budget under section 20 for that relevant period). 40

- “The corresponding relevant period” means the relevant period in which that funding period begins (or which begins at the same time as that funding period).
- (4) Regulations may make provision for a budget addition to be made in respect of a pupil admitted to an Academy, maintained school or non-maintained special school in England having been excluded from an Academy or maintained school to which section 18 applies. 5
- (5) In this section “budget addition” means –
- (a) in the case of a pupil admitted to an Academy, an amount paid by the local authority in whose area the Academy is located to the proprietor of the Academy; 10
 - (b) in the case of a pupil admitted to a maintained school, an additional amount made available by the local authority to be spent by the governing body of the school;
 - (c) in the case of a pupil admitted to a non-maintained special school, an amount paid by the local authority in whose area that school is located to the proprietor of the school. 15
- (6) Budget additions made by a local authority must be a prescribed description of expenditure under section 23 (and so met from the locally determined education budget). 20
- (7) But a budget addition is to be treated –
- (a) in the case of an Academy to which section 18 applies, as if it were part of the national formula allocation for the funding period in question paid by the Secretary of State to the proprietor of the Academy under section 19(1)(a); 25
 - (b) in the case of a maintained school to which section 18 applies, as if it were an amount paid to the local authority by the Secretary of State under section 19(1)(b) (and hence made available by the local authority to be spent by the governing body of the school as mentioned there);
 - (c) in the case of a non-maintained special school to which section 18 applies, as if it were an amount paid to the proprietor of the school by the Secretary of State under section 19(1)(c). 30
- (8) Regulations may prescribe the time when the permanent exclusion of a pupil is to be regarded as taking effect for the purposes of this section.
- 27 Pooled education expenditure deductions from maintained schools’ core budgets 35**
- (1) Regulations may authorise local authorities in England, in prescribed cases, to deduct such prescribed education expenditure of the authority, in respect of a relevant period, as the authority determine in accordance with regulations, from the aggregate core budgets of the schools they maintain (or any description of those schools) for funding periods which begin in (or at the start of) that relevant period. 40
- (2) The “core budget” for a funding period –

- (a) for a maintained school to which section 18 applies, means the aggregate of—
- (i) the national formula allocation for the school for that period (after any reduction under section 25 and any adjustment under section 26), 5
 - (ii) any locally determined supplementary allocation for the school for that period,
 - (iii) amounts of a prescribed description which are administered by the local authority under section 23 so as to be made available to the governing body of the school for that period, and 10
 - (iv) any allocation of sixth form grant for that school for that period;
- (b) for any other maintained school, means the aggregate of—
- (i) amounts of a prescribed description which are administered by the local authority under section 23 so as to be made available to the governing body of the school for that period, and 15
 - (ii) any allocation of sixth form grant for that school for that period.
- (3) Regulations under subsection (1) may—
- (a) provide that expenditure may only be deducted if the deduction is authorised, on the application of the authority, by the authority’s schools forum, the Secretary of State or another prescribed person; 20
 - (b) provide, in relation to a prescribed class or description of prescribed expenditure, that such expenditure may only be deducted subject to either or both of the following— 25
 - (i) such limit or limits (however framed) as may be prescribed or determined in accordance with the regulations, and
 - (ii) such other conditions as may be prescribed or so determined;
 - (c) enable any limit or condition that would otherwise apply by virtue of paragraph (b) to be varied or excluded on the application of the authority by the authority’s schools forum, the Secretary of State or another prescribed person; 30
 - (d) provide for how the proportion of the total deduction attributable to each affected maintained school is to be determined, and how such a school’s core budget is to be redetermined to take account of that proportion of the deduction. 35
- (4) For the purposes of this section expenditure of a local authority “in respect of a relevant period” includes expenditure in respect of a school for a funding period that begins in (or at the start of) that relevant period.
- (5) In this section “sixth form grant” means a grant of that name paid to a local authority by the Secretary of State under section 14 of the Education Act 2002 in respect of sixth form pupils (within the meaning of section 342(5B) of the Education Act 1996). 40

*Funding: other***28 Provision of information to the Secretary of State**

- (1) A person to whom this section applies must—
- (a) make such reports and returns to the Secretary of State, and
 - (b) give such information to the Secretary of State,
- as the Secretary of State may require, at the times the Secretary of State may require, for the purposes of the exercise of the Secretary of State’s functions under this Part. 5
- (2) This section applies to—
- (a) the proprietor of an Academy; 10
 - (b) the governing body of a maintained school in England;
 - (c) the proprietor of a non-maintained special school in England;
 - (d) a local authority in England.

29 Part 2: consequential amendments

Schedule 2 makes consequential amendments relating to this Part. 15

30 Funding of Academies: contractual provisions

An Academy agreement or master agreement (including an agreement entered into before this section comes into force)—

- (a) is void so far as it is inconsistent with any provision made by or under this Part, and 20
- (b) is to be read with such modifications as are necessary to take account of, or to give full effect to, any such provision.

*Interpretation and regulations***31 Interpretation of Part 2**

- (1) In this Part— 25
- “Academy agreement” means an agreement within section 1(3) of the Academies Act 2010 which makes provision about the carrying on of one particular Academy;
 - “closing school” has the meaning given by section 5(4) of the Education Act 2005; 30
 - “education expenditure” means expenditure incurred by a local authority in connection with the performance of their education functions (and see subsection (4));
 - “funding period”, in relation to a school, means the year ending with 31 March or such other period as may be prescribed, and “corresponding funding periods” is to be construed in accordance with section 18(4); 35
 - “governing body”—

- (a) in relation to a new school for which there is a temporary governing body constituted under section 34 of the Education Act 2002, means that temporary governing body;
- (b) in relation to a pupil referral unit, means the management committee for the unit (in spite of paragraph 1 of Schedule 1 to the Education Act 1996); 5
- “local authority”, in relation to a maintained school, means the authority by which the school is maintained;
- “local school”, in relation to a local authority, means—
- (a) an Academy to which section 18 applies located in their area, 10
- (b) a school maintained by them to which that section applies, or
- (c) a non-maintained special school to which that section applies located in their area;
- “locally determined education budget” has the meaning given by section 20(1); 15
- “maintained school” means—
- (a) a community, foundation or voluntary school (within the meaning of the School Standards and Framework Act 1998),
- (b) a community or foundation special school (within the meaning of that Act), 20
- (c) a maintained nursery school (as defined by section 22(9) of that Act), or
- (d) a pupil referral unit;
- “master agreement” means an agreement between the Secretary of State and any other person which makes provision about the carrying on of more than one Academy established or maintained by that person; 25
- “national formula allocation” has the meaning given by section 18(2);
- “new school” includes a school for which there is a temporary governing body constituted under section 34 of the Education Act 2002;
- “non-maintained special school” means a school that is approved under section 342 of the Education Act 1996; 30
- “prescribed” means prescribed by regulations;
- “regulations” means regulations made by the Secretary of State;
- “relevant period” means the year ending with 31 March or such other period as may be prescribed (but see section 32(2)). 35
- (2) Other words and expressions used in this Part have the same meanings as in the Education Act 1996, unless the context otherwise requires.
- (3) In this Part a reference (however expressed) to or including a maintained school or a particular kind of maintained school is to be read as including a proposed school— 40
- (a) which on implementation of proposals under any enactment will be a maintained school or that kind of maintained school (as the case may be), and
- (b) which has a temporary governing body.

- (4) For the purposes of this Part, the following are to be treated as education functions of a local authority in England—
- (a) the duty imposed by section 7(1) of the Childcare Act 2006 (duty to secure prescribed early years provision free of charge);
 - (b) a duty under section 2 of the Childcare Act 2016 (duties in connection with Secretary of State’s duty to secure 30 hours free childcare for working parents). 5
- (5) Section 581 of the Education Act 1996 (application of that Act to the Isles of Scilly) applies in relation to this Part as it applies in relation to that Act.

32 Part 2: regulations 10

- (1) A power to make regulations under any provision of this Part includes power to make—
- (a) provision requiring a local authority to have regard to advice given by their schools forum, or requiring a local authority to consult their schools forum, in relation to prescribed matters or before taking prescribed decisions; 15
 - (b) consequential, supplementary, incidental, transitional or saving provision;
 - (c) different provision for different purposes.
- (2) But subsection (1)(c) does not apply in relation to the power to prescribe a period for the purposes of the definition of “relevant period” in section 31(1). 20
- (3) Regulations under this Part are to be made by statutory instrument.
- (4) A statutory instrument containing any of the following (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament— 25
- (a) regulations under section 18(3)(c), (d) or (e);
 - (b) the first regulations under section 25.
- (5) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament. 30

PART 3

SCHOOL ATTENDANCE

Children not in school

33 Registration

- (1) The Education Act 1996 is amended as follows. 35

- (2) After section 436A insert—

“Children not in school

436B Duty to register children not in school

- (1) A local authority in England must maintain a register of children who are eligible to be registered by the authority under this section. 5
- (2) A child is eligible to be registered by a local authority under this section if Conditions A to C are met.
- (3) Condition A is that the child is in the authority’s area.
- (4) Condition B is that the child is of compulsory school age.
- (5) Condition C is that— 10
- (a) the child is not a registered pupil at a relevant school, or
 - (b) the child is a registered pupil at a relevant school but the proprietor of the school has arranged or agreed that— 15
 - (i) the child will receive education otherwise than at that or any other relevant school, and
 - (ii) the child will be absent for some or all of the time when the child would normally be expected to attend the relevant school.
- (6) Regulations may make provision— 20
- (a) for cases where a child is to be regarded as falling or not falling within subsection (5)(b);
 - (b) for cases where a child falling within subsection (5)(b) is not to be regarded as eligible for registration.
- (7) In this section “relevant school” means— 25
- (a) a school maintained by a local authority,
 - (b) a non-maintained special school (within the meaning given by section 337A),
 - (c) an Academy school or alternative provision Academy, or
 - (d) a school not falling within paragraph (c) that is registered under section 95 of the Education and Skills Act 2008 (register of independent educational institutions). 30

436C Content and maintenance of registers

- (1) A register under section 436B must contain the following information in respect of a child registered in it— 35
- (a) the child’s name, date of birth and home address,
 - (b) the name and home address of each parent of the child, and
 - (c) such details of the means by which the child is being educated as may be prescribed.

- (2) A register under section 436B must also contain such information about, or in connection with, the following matters in respect of a child registered in it as may be prescribed, to the extent that the local authority have the information or can reasonably obtain it—
- (a) the child’s protected characteristics (within the meaning of the Equality Act 2010); 5
 - (b) whether the child has any special educational needs, including whether the local authority maintain an EHC plan for the child;
 - (c) any actions that have been taken by a local authority following, or in connection with, enquiries made by a local authority under section 47 of the Children Act 1989 (local authority’s duty to investigate); 10
 - (d) whether the child is a child in need for the purposes of Part 3 of the Children Act 1989 (see section 17(10) of that Act) and, if so, any actions that a local authority have taken in relation to the child under that Part and any services that a local authority have provided to the child in the exercise of functions conferred on them by section 17 of that Act; 15
 - (e) whether the child is looked after by a local authority (within the meaning of section 22 of the Children Act 1989); 20
 - (f) the reasons why the child meets Condition C in section 436B, including any information provided by a parent of the child as to those reasons or, in a case where a parent has not provided that information, the fact that they have not done so;
 - (g) whether, under arrangements made under section 436A, the child has been identified as a child who is of compulsory school age but who is not a registered pupil at a school and is not receiving suitable education otherwise than at a school; 25
 - (h) the school or type of school (if any) that the child attends or has attended in the past; 30
 - (i) whether support is being provided in relation to the child under section 436G and, if so, the nature of the support being provided;
 - (j) any actions that have been taken by a local authority in relation to the child under sections 436I to 436P (school attendance orders); 35
 - (k) any other information about the child’s characteristics, circumstances, needs or interactions with a local authority or educational institutions that the Secretary of State thinks should be included in the register for the purposes of promoting or safeguarding the education, safety or welfare of children. 40
- (3) A register under section 436B may also contain any other information the local authority consider appropriate.
- (4) Regulations may, in relation to a register under section 436B, make provision about— 45

- (a) how a local authority must maintain the register, including provision relating to—
 - (i) how the register is to be kept up-to-date;
 - (ii) the making of changes to the register;
 - (b) the form of the register; 5
 - (c) access to and publication of the register;
 - (d) registration forms;
 - (e) publicising the register and duties of persons in relation to the register.
- (5) No information from a register under section 436B may be published, 10
or made accessible to the public, in a form—
- (a) which includes the name or address of a child who is eligible to be registered under that section or of a parent of such a child, or
 - (b) from which the identity of such a child or parent can be deduced, whether from the information itself or from that information taken together with any other published information. 15

436D Provision of information to local authorities: parents

- (1) A parent of a child who becomes eligible to be registered by a local authority in England under section 436B must— 20
- (a) inform the local authority that the child is eligible for registration, and
 - (b) provide the authority with any of the information referred to in section 436C(1)(a) and (b) that the parent has. 25
- (2) A parent of a child who is registered by a local authority in England under section 436B must—
- (a) provide the authority, on request, with any of the information referred to in section 436C(1)(a) to (c) that the parent has,
 - (b) inform the authority of a change to any of the information required to be included in the register under section 436C(1)(a) to (c) of which the parent is aware, and 30
 - (c) inform the authority if the child ceases to be eligible to be registered by that authority under section 436B.
- (3) A person must comply with a duty under subsection (1) or (2) within the relevant period. 35
- (4) In subsection (3) “relevant period” means—
- (a) in the case of the duty in subsection (1)(a) or (b), the period of 15 days beginning with the date on which the child becomes eligible for registration by the local authority; 40
 - (b) in the case of the duty in subsection (2)(a), such period of not less than 15 days as the local authority specify in the request;

- (c) in the case of the duty in subsection (2)(b), the period of 15 days beginning with the date on which the parent becomes aware of the change;
 - (d) in the case of the duty in subsection (2)(c), the period of 15 days beginning with the date on which the child ceases to be eligible to be registered by the local authority under section 436B. 5
- (5) The duties in subsections (1) and (2) do not apply where the child is receiving full-time education by any one or more of the following means – 10
- (a) arrangements made by the local authority under section 19;
 - (b) arrangements made by the proprietor of a relevant school at which the child is a registered pupil;
 - (c) attendance at a relevant school.
- (6) In this section “relevant school” has the same meaning as in section 436B. 15

436E Provision of information to local authorities: education providers

- (1) This section applies where a local authority in England reasonably believe that –
- (a) a person is providing out-of-school education to a child for more than the prescribed amount of time without any parent of the child being present, and 20
 - (b) the child is, or is eligible to be, registered by the authority under section 436B.
- (2) In subsection (1)(a) – 25
- (a) “out-of-school education” means any programme or course of education, or any other kind of structured education, that is provided otherwise than as part of the education provided by a relevant school (within the meaning of section 436B);
 - (b) “prescribed amount of time” means an amount of time prescribed – 30
 - (i) by reference to a number of hours in, or a proportion of, a week or other period;
 - (ii) by reference to a proportion of the time a child spends receiving education; 35
 - (iii) in any other way.
- (3) The authority may by notice require the person –
- (a) to confirm whether or not the person is providing education to a child as specified in subsection (1), and
 - (b) if the person is doing so, to provide the authority with any of the information referred to in section 436C(1)(a) or (b) that the person has in relation to any child to whom they are providing such education. 40

- (4) A notice under subsection (3) is served if it is sent to or left at the place where the out-of-school education is provided (as well as in the circumstances referred to in section 572(1)).
- (5) The person on whom a notice under subsection (3) is served must comply with the requirement in the notice within the period of 15 days beginning with the day on which it is served. 5
- (6) Regulations may provide for exceptions to the duty in subsection (5).
- (7) Where a local authority in England are satisfied that a person on whom a notice under subsection (3) is served has –
 - (a) failed to comply with their duty under subsection (5), or 10
 - (b) provided incorrect information in response to the notice, the authority may require the person to pay a monetary penalty to the authority in accordance with Schedule 31A.
- (8) The amount of the monetary penalty is to be the prescribed amount.

436F Use of information in the register 15

- (1) A local authority in England must, if the Secretary of State so directs, provide the Secretary of State with information of a prescribed description from their register under section 436B (whether that is information relating to an individual child or aggregated information).
- (2) A local authority in England may provide information from their register under section 436B which relates to a child to a prescribed person if the authority consider it appropriate to do so for the purposes of promoting or safeguarding the education, safety or welfare of –
 - (a) the child, or 20
 - (b) any other person under the age of 18. 25
- (3) Where a local authority in England become aware that a child registered in their register under section 436B will move, or has moved, to the area of another local authority in England, the local authority –
 - (a) must provide the other local authority with the information referred to in section 436C(1)(a) to (c), 30
 - (b) must provide the other local authority with any information relating to the child that is prescribed under section 436C(2) that they have, and
 - (c) may provide the other local authority with any other information contained in the register under section 436C(3). 35

436G Support

- (1) If a parent of a child registered by a local authority in England under section 436B so requests, the local authority must provide, or secure the provision of, support to promote the education of the child.

- (2) The support to be provided is whatever the local authority think fit having regard to the parent’s request.
- (3) The support may for example include—
- (a) advice about education of the child,
 - (b) information about sources of assistance for the education of the child, 5
 - (c) provision of facilities, services or assistance (including financial assistance), and
 - (d) access to non-educational services or benefits.
- (4) The duty in subsection (1) does not apply where— 10
- (a) the child is a registered pupil at a relevant school (within the meaning of section 436B), or
 - (b) the local authority are required to make arrangements for the education of the child under section 19 of this Act or section 42 of the Children and Families Act 2014. 15

436H Guidance

- (1) The Secretary of State may give guidance to local authorities in England in respect of their functions under sections 436B to 436G.
- (2) A local authority in England must have regard to the guidance.”
- (3) In section 569(2A) (regulations subject to affirmative procedure), for “regulations under section 550ZA(3)(f) or 550ZC(7) may” substitute “— 20
- (a) the first regulations under 436C(1)(c), (2) or (4),
 - (b) the first regulations under section 436F(1),
 - (c) regulations under section 436F(2),
 - (d) regulations under section 550ZA(3)(f), or 25
 - (e) regulations under section 550ZC(7),
- may”.
- (4) After Schedule 31 insert—

“SCHEDULE 31A

Section 436E

FAILURE TO PROVIDE INFORMATION UNDER SECTION 436E: MONETARY PENALTIES 30

Warning notice

- 1 (1) Where a local authority in England propose to require a person to pay a monetary penalty under section 436E(7), the authority must give the person a notice of what is proposed (a “warning notice”).
- (2) The warning notice must include information as to— 35
- (a) the grounds for the proposal to require payment of the monetary penalty,
 - (b) the amount of the penalty, and

- (c) the person’s right to make representations.

Representations

- 2 The person to whom the warning notice is given may make written representations to the local authority in relation to the proposed requirement to pay a monetary penalty – 5
- (a) within the period of 14 days beginning with the day on which the notice is given, or
 - (b) if within that period the person gives written notice of their intention to make representations, within the period of 28 days beginning with that day. 10

Imposition of penalty

- 3 (1) Where a person has made representations in response to a warning notice, or the time for doing so has elapsed, the local authority must decide whether to require the person to pay the monetary penalty.
- (2) The local authority may not require the person to pay a monetary penalty if they are no longer satisfied as mentioned in section 436E(7). 15
- (3) If the local authority decide not to require the person to pay the penalty, they must inform the person of that fact.

Penalty notice

- 4 (1) A requirement to pay a monetary penalty is imposed by a notice given to the person by the local authority (a “penalty notice”). 20
- (2) A penalty notice must include information as to –
- (a) the grounds for requiring payment of the monetary penalty,
 - (b) the amount of the penalty, 25
 - (c) how payment may be made,
 - (d) the period within which payment is to be made (which must be at least 28 days beginning with the day on which the notice is given),
 - (e) the consequences of late payment (see paragraph 5), and 30
 - (f) rights of appeal.
- (3) A penalty notice may be withdrawn at any time by the local authority that gave it.

Consequences of late payment

- 5 If the person to whom a penalty notice is given fails to pay the monetary penalty within the period specified in the notice, the amount of the penalty is increased by the prescribed percentage. 35

Appeals

- 6 (1) A person to whom a penalty notice is given may appeal to the First-tier Tribunal on any of the grounds mentioned in sub-paragraph (2).
- (2) The grounds are that— 5
- (a) the decision to require payment of the penalty was based on an error of fact;
 - (b) the decision was wrong in law;
 - (c) the decision was unreasonable.
- (3) On an appeal under this paragraph the First-tier Tribunal may— 10
- (a) quash the penalty notice,
 - (b) confirm the penalty notice, or
 - (c) vary the penalty notice by reducing the amount of the monetary penalty.
- (4) Where an appeal under this paragraph is made, the requirement to pay the monetary penalty is suspended pending the final determination or withdrawal of the appeal. 15

Enforcement

- 7 If a person does not pay the whole or any part of a monetary penalty which the person is required to pay under this Schedule within the time specified in the penalty notice, the penalty or part of the penalty is recoverable as if it were payable under an order of the county court.” 20

34 School attendance orders

- (1) The Education Act 1996 is amended as follows. 25
- (2) After section 436H (as inserted by section 33) insert—
- “School attendance orders: England*

436I Preliminary notice for school attendance order

- (1) A local authority in England must serve a notice under this subsection on a person in relation to a child if it appears to them that— 30
- (a) the person is a parent of the child, and
 - (b) any of Conditions A to C is met.
- (2) A notice under subsection (1) is a notice requiring the person on whom it is served to satisfy the local authority within the period specified in the notice that the child to whom the notice relates is receiving suitable education. 35
- (3) Condition A is that—

- (a) the child is a child in the local authority’s area,
 - (b) the child is of compulsory school age, and
 - (c) the child is not receiving suitable education, either by regular attendance at school or otherwise.
- (4) Condition B is that— 5
- (a) the child is, or may be, eligible to be registered by the local authority under section 436B,
 - (b) the authority have asked the person for information for the purpose of ascertaining—
 - (i) whether the child is or should be registered by the authority, or 10
 - (ii) whether the person is in fact a parent of the child, and
 - (c) the person has not provided that information within the period of 15 days beginning with the day on which the request was made or has provided incorrect information. 15
- (5) Condition C is that the person is under a duty to provide information to the local authority under section 436D(1)(b) or (2)(a) in relation to the child and—
- (a) has not provided the information, or
 - (b) has provided incorrect information. 20
- (6) A notice under subsection (1)—
- (a) must be served within the period of three days beginning with the day on which it appears to the local authority as specified in subsection (1)(a) and (b), and
 - (b) may not specify a period of less than ten days. 25
- (7) In exercising their functions under this section a local authority must have regard to any guidance given by the Secretary of State.

436J School attendance orders

- (1) A local authority in England must serve an order under this section on a person if— 30
- (a) the authority have served a notice on the person under section 436I,
 - (b) the person fails to satisfy the local authority, within the period specified in the notice, that—
 - (i) the child is receiving suitable education, or 35
 - (ii) the person is not a parent of the child, and
 - (c) in the opinion of the authority it is expedient that the child should attend school.
- (2) An order under this section (a “school attendance order”) is an order requiring the person to cause the child to become a registered pupil at a school named in the order. 40

-
- (3) A school attendance order under this section—
- (a) must be served within the period of three days beginning with the day on which the authority determine which school is to be named in the order, and
 - (b) must be in the prescribed form. 5
- (4) A school attendance order under this section continues in force (subject to any amendment made by the local authority) for so long as the child is of compulsory school age, unless—
- (a) it is revoked by the authority, or
 - (b) a direction is made in respect of it under section 436Q(6) or 447(5). 10
- (5) Where a maintained school is named in a school attendance order under this section—
- (a) the local authority must within the period of three days referred to in subsection (3)(a) inform the governing body and the head teacher, and
 - (b) the governing body and the local authority must admit the child to the school. 15
- (6) Where an Academy school or alternative provision Academy is named in a school attendance order under this section—
- (a) the local authority must within the period of three days referred to in subsection (3)(a) inform the proprietor and the principal, and
 - (b) the proprietor must admit the child to the school. 20
- (7) Subsections (5) and (6) do not affect any power to exclude from a school a pupil who is already a registered pupil there. 25

436K School attendance order for child with EHC plan

- (1) Subsections (2) and (3) apply where a local authority are required to serve a school attendance order under section 436J in respect of a child for whom they maintain an EHC plan. 30
- (2) Where the EHC plan specifies the name of a school, that school must be named in the order.
- (3) Where the EHC plan does not specify the name of a school—
- (a) the authority must amend the plan so that it specifies the name of a school, and
 - (b) that school must then be named in the order. 35
- (4) An amendment to an EHC plan required to be made under subsection (3)(a) shall be treated as if it were an amendment made following a review under section 44 of the Children and Families Act 2014, and that section and regulations made under it apply accordingly. 40
- (5) Where—

- (a) a school attendance order is in force in respect of a child for whom the local authority maintain an EHC plan, and
- (b) the name of the school specified in the plan is changed, the local authority must amend the order accordingly.

436L School nomination notice for school attendance order 5

- (1) Before a local authority serve a school attendance order under section 436J on a person in respect of a child, other than a child for whom they maintain an EHC plan, the authority must serve a notice on the person under this section (a “school nomination notice”).
- (2) A school nomination notice is a notice in writing – 10
 - (a) informing the person of the local authority’s intention to serve the order,
 - (b) specifying the school which the authority intend to name in the order and, if they think fit, one or more other schools which they regard as suitable alternatives, and 15
 - (c) stating the effect of subsections (3) to (6).

For periods within which the school nomination notice must be served, see section 436N(5) and (6).

- (3) If the school nomination notice specifies one or more alternative schools and the person selects one of them within the period of 10 days beginning with the day on which the notice is served, the school selected by the person must be named in the order. 20
- (4) If –
 - (a) within the period mentioned in subsection (3) the person – 25
 - (i) applies for the child to be admitted to a school which is an Academy school or alternative provision Academy and notifies the local authority which served the notice of the application, or
 - (ii) applies for the child to be admitted to a school maintained by a local authority and, where that authority are not the local authority which served the notice, notifies the latter authority of the application, and 30

(b) the child is offered a place at the school as a result of the application, 35
that school must be named in the school attendance order.

- (5) If –
 - (a) within the period mentioned in subsection (3) the person applies to the local authority by whom the notice was served for education to be provided at a school which is not a school maintained by a local authority, an Academy school or alternative provision Academy, and 40

- (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 517,
that school must be named in the school attendance order. 5
- (6) If, within the period mentioned in subsection (3)–
- (a) the person–
- (i) applies for the child to be admitted to a school which is not maintained by a local authority, an Academy school or an alternative provision Academy and in respect of which no application is made under subsection (5), and 10
- (ii) notifies the local authority by whom the notice was served of the application,
- (b) the child is offered a place at the school as a result of the application, and 15
- (c) the school is suitable to the child’s age, ability and aptitude and to any special educational needs the child may have,
that school must be named in the school attendance order.
- 436M School nomination notice: restrictions 20**
- (1) A local authority may not specify a school in a school nomination notice if the child is permanently excluded from it.
- (2) A local authority may not specify a maintained school or Academy school in a school nomination notice if the admission of the child would, because of the need to take measures to avoid failing to comply with any duty applicable to the school in relation to class sizes, prejudice the provision of efficient education or the efficient use of resources. 25
- (3) A local authority may not specify a maintained school or Academy school in a school nomination notice if, were the child concerned admitted to the school in accordance with a school attendance order resulting from the notice, the number of pupils at the school in the child’s age group would exceed the relevant number. 30
- (4) The relevant number is–
- (a) in the case of a maintained school, the number determined in accordance with section 88C or 89 of the School Standards and Framework Act 1998 as the number of pupils in the child’s age group which it is intended to admit to the school in the school year in which the child would be admitted, or 35
- (b) in the case of an Academy school, the number determined in accordance with any Academy arrangements or enactment as the number of such pupils. 40

- (5) Subsection (3) does not prevent a local authority from specifying a maintained school where they are responsible for determining the arrangements for the admission of pupils to the school.
- (6) Subsection (3) also does not prevent a local authority from specifying a maintained school or Academy school if—
 - (a) in the opinion of the authority the school is a reasonable distance from the home of the child, and
 - (b) there is no maintained school or Academy school in their area which—
 - (i) the authority could specify (apart from subsection (3)), and
 - (ii) is in the opinion of the authority a reasonable distance from the home of the child.

436N School nomination notice: procedure

- (1) Before deciding to specify a maintained school, Academy school or alternative provision Academy in a school nomination notice a local authority must consult—
 - (a) in the case of a maintained school—
 - (i) the governing body, and
 - (ii) if another local authority are responsible for determining the arrangements for the admission of pupils to the school, that authority, or
 - (b) in the case of an Academy school or alternative provision Academy, the proprietor.
- (2) Where a local authority decide to specify a maintained school, Academy school or alternative provision Academy in a school nomination notice they must, before serving the notice, serve notice in writing of their decision on—
 - (a) in the case of a maintained school—
 - (i) the governing body,
 - (ii) the head teacher, and
 - (iii) if another local authority are responsible for determining the arrangements for the admission of pupils to the school, that authority, or
 - (b) in the case of an Academy school or alternative provision Academy—
 - (i) the proprietor, and
 - (ii) the principal.
- (3) A notice under subsection (2) must be served before the end of the period of 15 days beginning with the expiry of the period referred to in section 436I(6)(a).
- (4) A person on whom a notice is served under subsection (2)(a)(i) or (iii) or (b)(i) may, within the period of 10 days beginning with the day on

which the notice is received, apply to the Secretary of State for a direction under this section and, if they do so, must inform the local authority which served the notice.

- (5) If the local authority which served a notice under subsection (2) are not informed of an application under subsection (4) within the period referred to in that subsection, they must serve the school nomination notice within the next period of 10 days. 5
- (6) Where the Secretary of State gives a direction under this section—
- (a) the school or schools to be specified in the school nomination notice are to be determined in accordance with the direction, and 10
 - (b) the school nomination notice must be served before the end of the period of three days beginning with the day after that on which the direction is given.

436O Amendment of school attendance order 15

- (1) This section applies where a school attendance order under section 436J is in force in respect of a child, other than a child for whom the local authority maintain an EHC plan.
- (2) If at any time—
- (a) the person on whom the order is served applies for the child to be admitted to a school— 20
 - (i) which is maintained by a local authority, an Academy school or an alternative provision Academy, and
 - (ii) which is different from the school named in the order,
 - (b) the child is offered a place at the school as a result of the application, and 25
 - (c) the person requests the local authority by which the order was served to amend it by substituting that school for the one currently named,
- the authority must comply with the request. 30
- (3) If at any time—
- (a) the person on whom the order is served applies to the authority for education to be provided for the child at a school—
 - (i) which is not a school maintained by a local authority, an Academy school or an alternative provision Academy, and 35
 - (ii) which is different from the school named in the order,
 - (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid by them under section 517, and 40
 - (c) the person requests the authority to amend the order by substituting that school for the one currently named,

the authority must comply with the request.

- (4) If at any time –
- (a) the person on whom the order is served applies for the child to be admitted to a school –
 - (i) which is not maintained by a local authority, an Academy school or an alternative provision Academy, 5
 - (ii) which is different from the school named in the order, and
 - (iii) in respect of which no application is made under subsection (3), 10
 - (b) as a result of the application, the child is offered a place at the school, being a school which is suitable to the child’s age, ability and aptitude and to any special educational needs the child may have, and
 - (c) the person requests the authority to amend the order by substituting that school for the one currently named, 15
- the authority must comply with the request.

436P Revocation of school attendance order on request

- (1) This section applies where a school attendance order made by a local authority under section 436J is in force in respect of a child. 20
- (2) The person on whom the order is served may at any time apply to the local authority requesting that it be revoked on the grounds that –
- (a) arrangements have been made for the child to receive suitable education otherwise than at a school, or
 - (b) the person is not a parent of the child. 25
- (3) The authority must comply with a request under subsection (2)(a) or (b) unless they are of the opinion that (as the case may be) –
- (a) arrangements have not been made for the child to receive suitable education otherwise than at a school, or
 - (b) the person is a parent of the child. 30
- (4) If a person is aggrieved by a refusal of the local authority to comply with a request under subsection (2)(a) –
- (a) the person may refer the question to the Secretary of State, and
 - (b) the Secretary of State is to give such direction determining the question as the Secretary of State thinks appropriate. 35
- (5) Where the child is one for whom the local authority maintain an EHC plan –
- (a) if the name of a school or other institution is specified in the EHC plan, subsection (2)(a) does not apply;
 - (b) if the name of a school or other institution is not specified in the EHC plan, a direction under subsection (4)(b) may require the authority to make such amendments in the plan as the 40

Secretary of State considers necessary or expedient in consequence of the determination.”

- (3) In section 572 (service of notices and other documents), at the end insert—
- “(4) This section does not preclude any notice or order under sections 436I to 436P (which relate to school attendance orders) from being served by any other effective method.” 5
- (4) In Schedule 1 (pupil referral units), before paragraph 14 (but after the heading “School attendance orders”) insert—
- “13A (1) Where a pupil referral unit is named in a school attendance order made by a local authority in England under section 436J— 10
- (a) the local authority must within the period of three days referred to in section 436J(3)(a) inform the teacher in charge of the unit, and
- (b) if another local authority are responsible for determining the arrangements for the admission of pupils in the unit, that authority must admit the child to the unit, 15
- but paragraph (b) above does not affect any power to exclude from a unit a pupil who is already a registered pupil there.
- (2) Section 436L(4) does not apply in relation to a pupil referral unit.
- (3) A local authority in England— 20
- (a) must, before deciding to specify a particular pupil referral unit in a school nomination notice under section 436L where another local authority are responsible for the admission of pupils to the unit, consult that authority, and
- (b) if they decide to specify the unit in the notice, must serve notice in writing of their decision on that authority. 25
- (4) Section 436N(3) to (6) apply where notice is served on a local authority under sub-paragraph (3) above as they apply where notice is served under section 436N(2).
- (5) The parent of a child in respect of whom a school attendance order under section 436J is in force may not under section 436O request the local authority to amend the order by substituting a pupil referral unit for the school named in the order. 30
- (6) Where a child is a registered pupil at both a pupil referral unit in England and at a school other than such a unit, the references in section 444 to the school at which the child is a registered pupil are to be read as references to the unit.” 35

35 Failure to comply with school attendance order

- (1) The Education Act 1996 is amended as follows.

(2) After section 436P (as inserted by section 34) insert—

“436Q Offence of failure to comply with school attendance order

- (1) If a person on whom a school attendance order under section 436J is served fails to comply with the requirements of the order, the person is guilty of an offence. 5
- (2) Subsection (1) does not apply if the person proves—
 - (a) that they are causing the child to receive suitable education otherwise than at a school, or
 - (b) that they are not a parent of the child.
- (3) The reference in subsection (1) to failure to comply with the requirements of a school attendance order includes causing a child to cease to be registered at the school named in the school attendance order. 10
- (4) Subsection (3) does not apply in circumstances where—
 - (a) the school has, pursuant to section 436K or 436O, ceased to be the school named in the school attendance order, or 15
 - (b) the school attendance order has been revoked pursuant to section 436P.
- (5) A person who—
 - (a) fails to comply with the requirements of a school attendance order under section 436J by not causing a child to become a registered pupil at the school named in the order, and 20
 - (b) is convicted of an offence under this section in respect of the failure,may be found guilty of an offence under this section again if the failure continues. 25
- (6) If, in proceedings for an offence under this section, the person is acquitted, the court may direct that the school attendance order cease to be in force.
- (7) A direction under subsection (6) does not affect the duty of the local authority to take further action under section 436J if at any time the authority are of the opinion that, having regard to any change of circumstances, it is expedient to do so. 30
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to a term of imprisonment not exceeding 51 weeks, or to both. 35
- (9) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (8) to 51 weeks is to be read as a reference to three months.”

36 School attendance orders: consequential amendments

Schedule 3 contains consequential amendments relating to sections 34 and 35.

*Attendance by registered pupils***37 School attendance: general duties on local authorities**

5

In Chapter 2 of Part 6 of the Education Act 1996 (school attendance), after section 443 insert –

“School attendance: registered pupils, offences etc

443A School attendance: general duties on local authorities in England

- (1) A local authority in England must exercise their functions with a view to – 10
- (a) promoting regular attendance by registered pupils at schools in the local authority’s area, and
 - (b) reducing the number and duration of absences of registered pupils from schools in that area. 15
- (2) In exercising their functions, a local authority in England must have regard to any guidance issued from time to time by the Secretary of State in relation to school attendance.”

38 School attendance policies

In Chapter 2 of Part 6 of the Education Act 1996 (school attendance), after section 443A (as inserted by section 37) insert – 20

“443B School attendance policies

- (1) The proprietor of a school in England must ensure –
- (a) that policies designed to promote regular attendance by registered pupils are pursued at the school, and 25
 - (b) that those policies are set out in a written document (an “attendance policy”).
- (2) An attendance policy must in particular include details of –
- (a) the practical procedures to be followed at the school in relation to attendance, 30
 - (b) the measures in place at the school to promote regular attendance by its registered pupils,
 - (c) the responsibilities of particular members of staff in relation to attendance,
 - (d) the action to be taken by staff if a registered pupil fails to attend the school regularly, and 35

- (e) if relevant, the school’s strategy for addressing any specific concerns identified in relation to attendance.
- (3) The proprietor must ensure –
 - (a) that the attendance policy and its contents are generally made known within the school and to parents of registered pupils at the school, and 5
 - (b) that steps are taken at least once in every school year to bring the attendance policy to the attention of all those parents and pupils and all persons who work at the school (whether or not for payment). 10
- (4) In complying with the duties under this section, the proprietor must have regard to any guidance issued from time to time by the Secretary of State in relation to school attendance.”

39 Penalty notices: regulations

- (1) In section 444B of the Education Act 1996 (penalty notices: attendance), after subsection (1) insert – 15
 - “(1A) Without prejudice to the generality of subsection (1), regulations under subsection (1) may make provision in relation to England –
 - (a) as to the circumstances in which authorised officers must consider giving a penalty notice; 20
 - (b) for or in connection with co-ordination arrangements between local authorities and neighbouring local authorities (where appropriate), the police and authorised officers.”
- (2) In section 106(1) of the Education and Inspections Act 2006 (penalty notices: excluded pupils) – 25
 - (a) after paragraph (g) insert –
 - “(ga) provision as to the circumstances in which authorised officers must consider giving a penalty notice;”;
 - (b) after paragraph (j) insert –
 - “(ja) provision for or in connection with co-ordination arrangements between local authorities and neighbouring local authorities (where appropriate), the police and authorised officers;”.

40 Academies: regulations as to granting of leave of absence

- (1) Section 551 of the Education Act 1996 (regulations as to duration of school day etc) is amended as follows. 35
- (2) In subsection (1), for “to which this section applies” substitute “mentioned in subsection (2)”.
- (3) In subsection (2), omit “to which this section applies”.

- (4) After subsection (2) insert –
- “(3) Regulations may also make provision with respect to the granting of leave of absence from any schools which are Academies not already falling within subsection (2)(c).”

PART 4

5

INDEPENDENT EDUCATIONAL INSTITUTIONS

Regulation of independent educational institutions

41 Expanding the scope of regulation

- (1) Section 92 of the Education and Skills Act 2008 (independent educational institutions) is amended as follows. 10
- (2) For subsection (1) substitute –
- “(1) For the purposes of this Chapter, an institution is an independent educational institution if –
- (a) it provides full-time education for –
- (i) at least five children of compulsory school age, or 15
- (ii) at least one child of compulsory school age who is looked after by a local authority or who has special educational needs, and
- (b) it is not an excepted institution.
- (1A) For the purposes of this section, an institution provides full-time 20 education for a child if the child could be expected to receive all or a majority of their education at the institution.
- (1B) In determining that matter, the following factors are to be taken into account –
- (a) the number of hours per week for which children at the 25 institution are expected to attend;
- (b) the number of weeks in an academic year for which children are expected to attend;
- (c) the time of day at which children are expected to attend.
- (1C) Regulations may – 30
- (a) amend subsection (1B) so as to add or remove factors;
- (b) make provision about how the factors mentioned there are to be taken into account in determining whether a child could be expected to receive all or a majority of their education at an institution.” 35
- (3) Omit subsections (2) and (3).

- (4) Before subsection (4) insert—
- “(3A) For the purposes of this section, education is provided at an institution—
- (a) where the institution provides instruction or guidance on any matter, and 5
 - (b) regardless of whether or by whom the children are supervised when attending the institution.”
- (5) In subsection (4)—
- (a) after the definition of “an academic year” insert—
 - ““excepted institution”: the following are excepted institutions— 10
 - (a) an institution that provides only early years provision;
 - (b) a school maintained by a local authority;
 - (c) a school approved under section 342 of the Education Act 1996 (approval of non-maintained special schools);
 - (d) a hospital (within the meaning of section 275 of the National Health Service Act 2006) that is not an independent school; 15
 - (e) a 16 to 19 Academy;
 - (f) an institution that is within the further education sector or the wider higher education sector; 20
 - (g) a secure college, secure training centre or young offender institution;
 - (h) an institution of a description specified in regulations;
 - “special educational needs”: a child has special educational needs if— 25
 - (a) an EHC plan, or
 - (b) an individual development plan under section 10 of the Additional Learning Needs and Educational Tribunal (Wales) Act 2018 (anaw 2),
- is maintained for the child; 30
- references to a child who is looked after by a local authority are to be read—
- (a) in relation to a local authority in England, in accordance with section 22 of the Children Act 1989;
 - (b) in relation to a local authority in Wales, in accordance with section 74 of the Social Services and Well-being (Wales) Act 2014 (anaw 4).”; 35
- (b) omit the definition of “specified”.

42 Section 41: consequential and related amendments

- (1) The Education and Skills Act 2008 is amended as follows. 40
- (2) Omit section 93A (application of Chapter to alternative provision Academies that are not independent educational institutions).

-
- (3) In section 98(3) (information to be included in registration application), omit paragraph (a).
- (4) In section 132 (power to apply provisions of Chapter 1 of Part 4 to independent post-16 colleges) –
- (a) in subsection (2)(a)(ii), for “student” substitute “person”, and 5
 - (b) in subsection (4)(b)(i), for “a student” substitute “provided with education and training”.
- (5) In section 138 (interpretation of Chapter 1 of Part 4) –
- (a) in subsection (1), for the definition of “student” substitute –
 - ““student”, in relation to an independent educational institution, 10
 - means a person for whom education is provided at the institution, other than –
 - (a) a person who has attained the age of 19 and for whom further education is provided, or
 - (b) a person for whom part-time education suitable to the 15
 - requirements of persons of any age over compulsory school age is provided;”;
 - (b) after subsection (1) insert –
 - “(1A) For the purposes of section 94(1)(a) and subsection (1) of this 20
 - section, education is provided at an institution –
 - (a) where the institution provides instruction or guidance on any matter, and
 - (b) regardless of whether or by whom the students are supervised when attending the institution.”
- (6) In section 166 (orders and regulations), in subsection (2) (instruments subject to affirmative procedure), after paragraph (e) insert – 25
- “(ea) regulations under section 92(1C),
 - (eb) regulations under paragraph (h) of the definition of “excepted institution” in section 92(4),”.
- 43 Education and childcare behaviour orders** 30
- (1) The Education and Skills Act 2008 is amended as set out in subsections (2) and (3).
- (2) In section 96 (unregistered independent educational institutions: offence), at the end insert –
- “(5) Schedule A1 makes provision enabling a court to make an education and childcare behaviour order where a person is convicted of an 35
 - offence under this section.”

(3) Before Schedule 1 insert –

“SCHEDULE A1

Section 96

EDUCATION AND CHILDCARE BEHAVIOUR ORDERS

Making an education and childcare behaviour order

- 1 (1) Where a person (the “defendant”) is convicted of an offence under section 96 (conducting an unregistered independent educational institution) after the coming into force of this Schedule, the prosecution may apply for an education and childcare behaviour order. 5
- (2) On an application under sub-paragraph (1), the court may make an education and childcare behaviour order if it thinks it is appropriate to do so for the purpose of protecting children from the risk of harm arising from the defendant conducting an unregistered independent educational institution or otherwise providing children with education, childcare, instruction or supervision. 10 15
- (3) An education and childcare behaviour order is an order which, for the purpose mentioned in sub-paragraph (2) –
- (a) requires the defendant to do anything specified in the order, or
- (b) prohibits the defendant from doing anything specified in the order. 20
- (4) The court may make an education and childcare behaviour order in respect of the defendant only if it is made in addition to –
- (a) a sentence imposed in respect of the offence under section 96, or 25
- (b) an order discharging the offender conditionally.
- (5) If, following an application by the prosecution for an education and childcare behaviour order, the court decides not to make such an order, it must state in open court its reasons for that decision.

Duration of education and childcare behaviour order 30

- 2 (1) An education and childcare behaviour order takes effect on the day on which it is made.
- (2) An education and childcare behaviour order must specify the period for which it has effect, which must be a fixed period of at least six months and not more than three years. 35
- (3) Where a court makes an education and childcare behaviour order in respect of a defendant who is already subject to such an order, the earlier order ceases to have effect.

Application for variation or discharge of education and childcare behaviour order

- 3 (1) The defendant may apply to the appropriate court for an order varying or discharging an education and childcare behaviour order.
- (2) On an application under this paragraph, the court may by order vary or discharge the education and childcare behaviour order. 5
- (3) A defendant may not make an application under this paragraph—
- (a) before the end of the period of three months beginning with the day on which the order was made, or
- (b) before the end of the period of three months beginning with the day on which any previous application under this paragraph was refused. 10
- (4) In this paragraph, the “appropriate court” means—
- (a) the court that made the order, or
- (b) a magistrates’ court for the area in which the defendant lives.

Offence of breaching education and childcare behaviour order 15

- 4 (1) A person who breaches an education and childcare behaviour order is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine (or to both). 20
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in sub-paragraph (2), substitute “six months”.
- (4) Where a person is convicted of an offence under this paragraph, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.” 25
- (4) In section 379 of the Sentencing Act 2020, in the table in subsection (1), after the entry for the Serious Crime Act 2007 insert—
- “Education and Skills Act 2008 30
- | | | |
|-------------|-----------------------------------------|---------------------------------------------------------------------------|
| Schedule A1 | education and childcare behaviour order | offence of conducting an unregistered independent education institution”. |
|-------------|-----------------------------------------|---------------------------------------------------------------------------|

44 Application of provisions applying to schools to independent educational institutions 35

- (1) The Education and Skills Act 2008 is amended as follows.

- (2) After section 137 insert –

“137A Application of provisions applying to schools to independent educational institutions

- (1) Regulations may provide for any relevant provision to apply in relation to an independent educational institution (or an independent educational institution of a prescribed description) which is not an independent school as it applies in England in relation to an independent school, subject to such modifications as may be prescribed. 5
- (2) In subsection (1) “relevant provision” means –
- (a) provision made by an Act passed before, or later in the same session of Parliament as, the Schools Act 2022, 10
 - (b) provision made by Part 3 of the Schools Act 2022 (school attendance), and
 - (c) provision made by subordinate legislation (within the meaning of the Interpretation Act 1978) before the end of the session of Parliament in which the Schools Act 2022 is passed.” 15
- (3) In section 166 (orders and regulations), in subsection (2) –
- (a) omit the “or” at the end of paragraph (g), and
 - (b) after that paragraph insert –
- “(ga) regulations under section 137A, or”. 20

Independent educational institution standards

45 Independent educational institution standards

- (1) Section 94 of the Education and Skills Act 2008 is amended as follows.
- (2) In subsection (1)(c), after “of” insert “, and attendance by,”.
- (3) After subsection (1) insert – 25
- “(1A) A standard within subsection (1)(d) (suitability of proprietors of independent educational institutions) may be prescribed by reference –
- (a) in the case of a proprietor which is a body of persons –
- (i) to whether persons having general control and management of, or legal responsibility and accountability for, the proprietor are, in the opinion of the Secretary of State, fit and proper persons to be involved in the running of an independent educational institution; 30
 - (ii) to whether the Secretary of State is notified before a new person becomes involved in the general control and management of, or assumes legal responsibility and accountability for, the proprietor; 35
- (b) in the case of a proprietor which is an individual, to whether that individual is, in the opinion of the Secretary of State, a fit 40

and proper person to be involved in the running of an independent educational institution.”

(4) After subsection (3) insert—

“(3A) A standard may be prescribed by reference to whether or not the proprietor of an independent educational institution has regard to guidance issued, or a document published, by the Secretary of State from time to time.” 5

46 Failure to meet standards: suspension of registration

(1) Chapter 1 of Part 4 of the Education and Skills Act 2008 (regulation and inspection of independent educational institutions in England) is amended as follows. 10

(2) After section 118 insert—

“118A Suspension of registration

(1) The Secretary of State may suspend the registration of an independent educational institution if, having taken into account relevant evidence— 15

- (a) the Secretary of State is satisfied that one or more of the independent educational institution standards is or are not being met in relation to the institution, and
- (b) the Secretary of State has reasonable cause to believe that, as a result, one or more students at the institution will or may be exposed to the risk of harm (within the meaning of section 31 of the Children Act 1989). 20

(2) In subsection (1) “relevant evidence” means—

- (a) the report of an inspection carried out by the Chief Inspector or an independent inspectorate, or 25
- (b) any other evidence in respect of the institution.

(3) Before suspending the registration of an institution, the Secretary of State must serve the proprietor of the institution with a warning notice—

- (a) stating that the Secretary of State is proposing to suspend the registration of the institution and explaining the effect of a suspension, 30
- (b) specifying the dates on which the Secretary of State proposes to start and end the suspension,
- (c) identifying the standard or standards that are not being met, which the Secretary of State believes may result in one or more students being exposed to the risk of harm, 35
- (d) setting out the grounds for the Secretary of State’s belief that one or more students will or may be exposed to the risk of harm, and 40

- (e) specifying the period during which the proprietor may make representations about the proposed suspension (the “specified period”).
- (4) The Secretary of State must have regard to any representations made by the proprietor during the specified period in deciding whether to suspend the institution’s registration. 5
- (5) Where the Secretary of State decides not to suspend the institution’s registration, the Secretary of State must serve the proprietor of the institution with a notice informing the proprietor of the decision.
- (6) Where the Secretary of State decides to suspend the institution’s registration, the Secretary of State must serve the proprietor of the institution with a notice informing the proprietor of the decision and – 10
 - (a) specifying the date on which the suspension starts,
 - (b) specifying the date on which the suspension ends, which must be no more than 12 weeks after the suspension starts, and 15
 - (c) explaining the right of appeal conferred by section 125.
- (7) Subsections (3) to (6) do not apply where the Secretary of State considers that, in order to protect one or more students at the institution, it is necessary to suspend an institution’s registration without first seeking representations. 20
- (8) In such a case, before suspending the registration of the institution, the Secretary of State must serve the proprietor with a notice – 25
 - (a) stating that the Secretary of State has decided to suspend the registration of the institution and explaining the effect of a suspension,
 - (b) identifying the standard or standards that are not being met, which the Secretary of State believes may result in one or more students being exposed to the risk of harm,
 - (c) setting out the grounds for the Secretary of State’s belief that a student will or may be exposed to the risk of harm, 30
 - (d) specifying the date on which the suspension starts,
 - (e) specifying the date on which the suspension ends, which must be no more than 12 weeks after the suspension starts, and
 - (f) explaining the right of appeal conferred by section 125.
- (9) The suspension of an institution’s registration does not affect the continuation of the registration (but see section 118C: offence of providing education at an institution when its registration is suspended). 35
- (10) Where an institution’s registration is suspended, the Secretary of State must include an indication to that effect on the register for the period of the suspension. 40

118B Period of suspension

- (1) A suspension under section 118A –
 - (a) takes effect on the date specified in the notice of suspension under section 118A(6) or (8), and
 - (b) ends on the date specified in that notice, subject to subsections (2) to (4). 5
- (2) The Secretary of State must lift a suspension of an institution’s registration if the condition mentioned in section 118A(1)(b) is no longer met.
- (3) The Secretary of State may lift a suspension of an institution’s registration if the Secretary of State considers it appropriate to do so. 10
- (4) The Secretary of State may extend a suspension of an institution’s registration if the conditions mentioned in paragraphs (a) and (b) of section 118A(1) are still met.
- (5) Before extending a suspension of an institution’s registration, the Secretary of State must serve the proprietor of the institution with a warning notice – 15
 - (a) stating that the Secretary of State is proposing to extend the suspension,
 - (b) specifying the date on which the Secretary of State proposes to end the extension, 20
 - (c) identifying the standard or standards that are not being met, which the Secretary of State believes may result in one or more students being exposed to the risk of harm (which need not be the same standards mentioned in the notice for the previous period of suspension), 25
 - (d) setting out the grounds for the Secretary of State’s belief that a student will or may be exposed to the risk of harm (which need not be the same grounds mentioned in the notice for the previous period of suspension), and 30
 - (e) specifying the period during which the proprietor may make representations about the proposed extension (the “specified period”).
- (6) The Secretary of State must have regard to any representations made by the proprietor during the specified period in deciding whether to extend the suspension. 35
- (7) Where the Secretary of State decides not to extend the suspension, the Secretary of State must serve the proprietor of the institution with a notice informing the proprietor of the decision.
- (8) Where the Secretary of State decides to extend the suspension, the Secretary of State must serve the proprietor with a notice informing the proprietor of the decision and – 40

- (a) specifying the date on which the extension ends, which must be no more than 12 weeks after the extension starts, and
 - (b) explaining the right of appeal conferred by section 125.
- (9) Subsections (5) to (8) do not apply where the Secretary of State considers that, in order to protect one or more students at the institution, it is necessary to extend the suspension of an institution's registration without first seeking representations. 5
- (10) In such a case, before extending the suspension of an institution's registration, the Secretary of State must serve the proprietor with a notice – 10
 - (a) stating that the Secretary of State has decided to extend the suspension,
 - (b) identifying the standard or standards that are not being met, which the Secretary of State believes may result in one or more students being exposed to the risk of harm (which need not be the same standards mentioned in the notice for the previous period of suspension), 15
 - (c) setting out the grounds for the Secretary of State's belief that a student will or may be exposed to the risk of harm (which need not be the same grounds mentioned in the notice for the previous period of suspension), 20
 - (d) specifying the date on which the extension ends, which must be no more than 12 weeks after the extension starts, and
 - (e) explaining the right of appeal conferred by section 125.
- (11) Where the Secretary of State extends the suspension of an institution's registration, the suspension lasts until the date specified in the notice under subsection (8)(a) or (10)(d), unless it is lifted under subsection (2) or (3) or extended again under subsection (4). 25

118C Offence of conducting institution when its registration is suspended

- (1) The proprietor of an independent educational institution that provides education to one or more students while its registration is suspended is guilty of an offence. 30
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine (or to both). 35
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for "51 weeks" in subsection (2), substitute "six months".

118D Suspension of registration: requirement to stop providing boarding accommodation

- (1) Where the Secretary of State suspends the registration of a boarding institution, the Secretary of State may impose on the proprietor of the institution a requirement to stop providing boarding accommodation to its students (a “stop boarding requirement”). 5
- (2) A stop boarding requirement may relate to all of the boarders at the institution or boarders of a particular description.
- (3) Before imposing a stop boarding requirement on the proprietor of a boarding institution, the Secretary of State must give the proprietor notice in accordance with— 10
 - (a) subsections (4) and (8),
 - (b) subsection (9), or
 - (c) in the case of a new stop boarding requirement imposed under section 118E, that section. 15
- (4) Where the Secretary of State serves a warning notice under section 118A(3) (notice of proposed suspension of registration) on the proprietor of a boarding institution, the notice must also—
 - (a) state whether the Secretary of State is proposing to impose a stop boarding requirement, and 20
 - (b) if the Secretary of State is proposing to do so—
 - (i) explain the effect of a stop boarding requirement,
 - (ii) specify the boarders at the institution to whom the proposed requirement would relate,
 - (iii) specify the dates on which the Secretary of State proposes to start and end the requirement, and 25
 - (iv) explain that the proprietor may make representations about the proposed requirement during the period specified in the notice for representations about the proposed suspension (the “specified period”). 30
- (5) The Secretary of State must have regard to any representations made by the proprietor during the specified period in deciding whether to impose a stop boarding requirement.
- (6) Subsections (7) and (8) apply where the Secretary of State has served the proprietor of a boarding institution with a warning notice under section 118A(3) which states that the Secretary of State is proposing to impose a stop boarding requirement. 35
- (7) Where the Secretary of State decides not to impose a stop boarding requirement on the proprietor of the institution—
 - (a) in a case where the Secretary of State also decides not to suspend the institution’s registration, the Secretary of State must serve the proprietor with a notice of the decision not to impose a stop boarding requirement at the same time as the Secretary of State serves the notice under section 118A(5); 40

- (b) in a case where the Secretary of State decides to suspend the institution’s registration, the notice under section 118A(6) (notice of decision to suspend registration following warning notice) must state that the Secretary of State has decided not to impose a stop boarding requirement. 5
- (8) Where the Secretary of State decides to impose a stop boarding requirement on the proprietor of the institution, the notice under section 118A(6) (notice of decision to suspend registration following warning notice) served on the proprietor must also inform the proprietor of that decision and – 10
 - (a) specify the boarders at the institution to whom the requirement relates,
 - (b) specify the date on which the requirement starts, which may be on the same date as the suspension starts or on a later date,
 - (c) specify the date on which the requirement ends, which may be on the same date as the suspension ends or on an earlier date, and 15
 - (d) explain the right of appeal conferred by section 125.
- (9) Where the Secretary of State decides to impose a stop boarding requirement on the proprietor of a boarding institution in a case where the Secretary of State has not served the proprietor with a warning notice under section 118A(3) (see section 118A(7)), the notice under section 118A(8) (notice of decision to suspend registration in urgent cases) served on the proprietor must also – 20
 - (a) state that the Secretary of State has decided to impose a stop boarding requirement and explain the effect of a stop boarding requirement, 25
 - (b) specify the boarders at the institution to whom the requirement relates,
 - (c) specify the date on which the requirement starts, which may be on the same date as the suspension starts or on a later date, 30
 - (d) specify the date on which the requirement ends, which may be on the same date as the suspension ends or on an earlier date, and
 - (e) explain the right of appeal conferred by section 125. 35
- (10) Where a stop boarding requirement is imposed in relation to a boarding institution, the Secretary of State must include an indication to that effect on the register for the period of the requirement.
- (11) In this section and sections 118E and 118F – 40
 - “boarding institution” means an independent educational institution that provides boarding accommodation for some or all of its students;
 - references to an institution providing boarding accommodation to students include an institution arranging for accommodation to be provided to its students by another person; 45

“stop boarding requirement” has the meaning given in subsection (1).

118E Period of stop boarding requirement

- (1) A stop boarding requirement –
 - (a) takes effect – 5
 - (i) on the date specified in the notice of suspension under section 118A(6) or (8) (see section 118D(8) and (9)), or
 - (ii) in the case of a new stop boarding requirement imposed under this section, on the date specified in the notice of extension under section 118B(8) or (10) (see subsections (10) and (11)), and 10
 - (b) ends on the date specified in that notice, subject to subsections (2) to (4).
- (2) A stop boarding requirement imposed on the proprietor of a boarding institution ends if the suspension of the institution’s registration is lifted (see section 118B(2) and (3)). 15
- (3) The Secretary of State may end a stop boarding requirement early if the Secretary of State considers it appropriate to do so.
- (4) Where the Secretary of State extends the suspension of a boarding institution’s registration, the Secretary of State may – 20
 - (a) extend an existing stop boarding requirement, or
 - (b) impose a new stop boarding requirement (either where no such requirement was imposed previously, or to replace a previous requirement with one with different terms).
- (5) Before extending an existing stop boarding requirement or imposing a new one under this section, the Secretary of State must give the proprietor notice in accordance with – 25
 - (a) subsections (6) and (10), or
 - (b) subsection (11).
- (6) Where the Secretary of State serves a warning notice on the proprietor of a boarding institution under section 118B(5) (notice of proposed extension of suspension), the notice must also – 30
 - (a) state whether the Secretary of State is proposing to extend an existing stop boarding requirement or impose a new one,
 - (b) if the Secretary of State is proposing to impose a new stop boarding requirement – 35
 - (i) explain the effect of a stop boarding requirement,
 - (ii) specify the boarders at the institution to whom the proposed requirement would relate,
 - (iii) specify the dates on which the Secretary of State proposes to start and end the requirement, and 40

- (iv) explain that the proprietor may make representations about the proposed requirement during the period specified in the notice for representations about the proposed extension of the institution’s suspension (the “specified period”); 5
 - (c) if the Secretary of State is proposing to extend an existing stop boarding requirement –
 - (i) specify the date on which the Secretary of State proposes to end the extension, and
 - (ii) explain that the proprietor may make representations about the proposed extension of the stop boarding requirement during the period specified in the notice for representations about the proposed extension of the institution’s suspension (the “specified period”). 10
- (7) The Secretary of State must have regard to any representations made by the proprietor during the specified period in deciding whether to extend an existing stop boarding requirement or impose a new one. 15
- (8) Subsections (9) and (10) apply where the Secretary of State has served the proprietor of a boarding institution with a warning notice under section 118B(5) (notice of proposed extension of suspension) which states that the Secretary of State is proposing to impose or extend a stop boarding requirement. 20
- (9) Where the Secretary of State decides not to impose or extend a stop boarding requirement on the proprietor of the institution –
 - (a) in a case where the Secretary of State also decides not to extend the suspension of the institution’s registration, the Secretary of State must serve the proprietor with a notice of the decision not to impose a stop boarding requirement at the same time as the Secretary of State serves the notice under section 118B(7); 25
 - (b) in a case where the Secretary of State decides to extend the suspension of the institution’s registration, the notice under section 118B(8) (notice of decision to extend suspension following warning notice) must state that the Secretary of State has decided not to impose or extend a stop boarding requirement. 30 35
- (10) Where the Secretary of State decides to impose or extend a stop boarding requirement on the proprietor of a boarding institution, the notice under section 118B(8) (notice of decision to extend suspension following warning notice) served on the proprietor must also inform the proprietor of the decision and – 40
 - (a) in the case of a decision to impose a new stop boarding requirement –
 - (i) specify the boarders at the institution to whom the requirement relates,
 - (ii) specify the date on which the requirement starts, 45

- (iii) specify the date on which the requirement ends, which may be on the date that the suspension ends or an earlier date, and
 - (iv) explain the right of appeal conferred by section 125;
 - (b) in the case of a decision to extend a stop boarding requirement –
 - (i) specify the date on which the extension ends, which may be on the date that the suspension ends or an earlier date, and
 - (ii) explain the right of appeal conferred by section 125.
- (11) Where the Secretary of State decides to impose or extend a stop boarding requirement on the proprietor of a boarding institution in a case where the Secretary of State has not served the proprietor with a warning notice under section 118B(5) (see section 118B(9)), the notice under section 118B(10) (notice of decision to extend suspension in urgent cases) served on the proprietor must also inform the proprietor of the decision and –
- (a) in the case of a decision to impose a new stop boarding requirement –
 - (i) explain the effect of a stop boarding requirement,
 - (ii) specify the boarders at the institution to whom the requirement relates,
 - (iii) specify the date on which the requirement ends, which may be on the date that the suspension ends or an earlier date, and
 - (iv) explain the right of appeal conferred by section 125;
 - (b) in the case of a decision to extend a stop boarding requirement –
 - (i) specify the date on which the requirement ends, which may be on the date that the suspension ends or an earlier date), and
 - (ii) explain the right of appeal conferred by section 125.
- (12) Where the Secretary of State extends a stop boarding requirement under this section, the requirement lasts until the date specified in the notice under section 118B(8) or (10) (see subsections (10) and (11)), unless it ends earlier by virtue of subsection (2) or (3) or is extended again under subsection (4)(a).

118F Offence of providing boarding accommodation in breach of stop boarding requirement

- (1) The proprietor of a boarding institution that provides boarding accommodation to a student in breach of a stop boarding requirement is guilty of an offence.

-
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine (or to both).
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in subsection (2), substitute “six months.” 5
- (3) In section 125 (appeal by proprietor against other decisions of Secretary of State) –
- (a) in subsection (1) –
- (i) omit the “or” at the end of paragraph (c), and 10
- (ii) at the end insert –
- “(e) section 118A(1) (suspension of registration),
(f) section 118B(4) (extension of suspension),
(g) section 118D(1) or 118E(4)(b) (imposition of stop
boarding requirement), or 15
(h) section 118E(4)(a) (extension of stop boarding
requirement).”;
- (b) at the end insert –
- “(8) On an appeal under subsection (1)(e) or (f), the Tribunal may –
- (a) confirm the suspension, or 20
(b) direct that the suspension is to cease to have effect.
- (9) On an appeal under subsection (1)(g) or (h), the Tribunal may –
- (a) confirm the requirement, or
(b) direct that the requirement is to cease to have effect.
- (10) Tribunal Procedure Rules may make provision for the 25
suspension by the Tribunal of a decision under any of the
following provisions, whether or not the decision has already
taken effect –
- (a) section 118A(1) (suspension of registration),
(b) section 118B(4) (extension of suspension), 30
(c) section 118D(1) or 118E(4)(b) (imposition of stop
boarding requirement), or
(d) section 118E(4)(a) (extension of stop boarding
requirement).”
- 47 Deregistration decisions on grounds of standards: appeals 35**
- (1) Section 124 of the Education and Skills Act 2008 (appeal by proprietor against decision of Secretary of State to deregister) is amended as follows.

- (2) After subsection (2) insert –
- “(2A) An appeal to which subsection (2B) applies is to be determined by the Tribunal on the basis of the principles applicable on an application for judicial review.
- (2B) This subsection applies to an appeal under subsection (1)(d) in a case where the Secretary of State’s decision to remove the institution from the register was taken after –
- (a) an inspection report (the “first report”) recorded a failure by the institution to meet any independent educational institution standard,
 - (b) after receiving the first report, the Secretary of State imposed a requirement under section 114 (action plans) identifying a failure to meet any such standard,
 - (c) a second inspection report (the “second report”) recorded a failure by the institution to meet any such standard,
 - (d) after receiving the second report, the Secretary of State imposed a further requirement under section 114 identifying a failure to meet any such standard,
 - (e) a third inspection report (“the third report”), made to the Secretary of State no later than six years after the date on which the first report was made, recorded a failure by the institution to meet any such standard, and
 - (f) after receiving the third report, the Secretary of State gave the proprietor of the institution an opportunity to make written representations as to why the institution should not be removed from the register.
- (2C) In subsection (2B) “inspection report” means a report of the Chief Inspector or an independent inspectorate under –
- (a) section 103 (inspection on application for approval of material change),
 - (b) section 108 (inspection of institutions at prescribed intervals), or
 - (c) section 109 (inspection on direction of Secretary of State).
- (2D) On an appeal under subsection (1)(a), (c) or (f), or an appeal to which subsection (2B) applies, the Tribunal may either –
- (a) confirm the decision, or
 - (b) direct that the decision is of no effect.”
- (3) In subsection (3) –
- (a) in the words before paragraph (a), for “an” substitute “any other”;
 - (b) in paragraph (c), omit the words from the beginning to “(e),”.

Material change

48 Material changes to registered details

Schedule 4 makes amendments to the provisions in Chapter 1 of Part 4 of the Education and Skills Act 2008 that relate to material changes to the registered details of independent educational institutions.

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Powers of Chief Inspector etc

49 Powers of entry and investigation etc

- (1) Chapter 1 of Part 4 of the Education and Skills Act 2008 (independent educational institutions) is amended as follows.
- (2) Omit section 97 (unregistered independent educational institutions: inspection).
- (3) After section 127 insert –

10

“Powers of entry and investigation etc

127A Powers of entry

- (1) The Chief Inspector may enter any premises if there is reasonable cause to believe –
 - (a) that a relevant offence is being or has been committed on the premises, or
 - (b) that evidence of the commission of a relevant offence may be found on the premises.
- (2) But the Chief Inspector may only enter premises used as a dwelling if a justice of the peace has issued a warrant authorising the Chief Inspector to enter those premises.
- (3) A justice of the peace may issue a warrant under this section only if satisfied, on an application by the Chief Inspector, that the requirement in subsection (1) (reasonable cause for belief) is met, and that –
 - (a) the Chief Inspector has sought consent to enter and consent has been refused,
 - (b) consent to enter is unlikely to be given unless a warrant is produced,
 - (c) it is not practicable to communicate with any person entitled to grant entry, or
 - (d) seeking consent to enter may frustrate or seriously prejudice the purpose of entering.
- (4) A warrant under this section may authorise the Chief Inspector to enter –
 - (a) one or more sets of premises specified in the application, or
 - (b) any premises occupied or controlled by a person specified in the application.

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- (5) Before exercising a power of entry under this section, the Chief Inspector must –
- (a) produce evidence of their identity, and
 - (b) outline the purpose for which the power is exercised, if asked to do so by a person on the premises. 5
- (6) When entering premises under a warrant, the Chief Inspector must –
- (a) provide a copy of the warrant to the occupier or to any other person appearing to be in charge of the premises, or
 - (b) if neither the occupier nor any such person is present, leave a copy of the warrant in a prominent place on the premises. 10
- (7) A power of entry under this section must be exercised at a reasonable hour unless the Chief Inspector considers that the purpose of entry may be frustrated by entry at a reasonable hour.
- (8) The following provisions of the Police and Criminal Evidence Act 1984 apply to a warrant under this section as though references there to a constable were to the Chief Inspector – 15
- (a) subsections (2) to (8) of section 15 (search warrants: safeguards);
 - (b) subsections (3), (9), and (10) to (12) of section 16 (execution of warrants).
- (9) In this section and section 127B, “relevant offence” means an offence under – 20
- (a) section 96 (conducting an unregistered independent educational institution),
 - (b) section 118 (failure to comply with relevant restriction imposed by Secretary of State), 25
 - (c) section 118C (providing education at institution when registration is suspended),
 - (d) section 118F (providing boarding accommodation in breach of stop boarding requirement),
 - (e) section 121 (failure to comply with relevant restriction imposed by justice of the peace), 30
 - (f) section 127 (failure to comply with relevant restriction imposed by Tribunal), or
 - (g) paragraph 4 of Schedule A1 (breach of education and childcare behaviour order). 35

127B Powers of investigation

- (1) On entering any premises under section 127A, the Chief Inspector may –
- (a) search the premises;
 - (b) take measurements of the premises or anything found on the premises; 40

- (c) take photographs and make audio and video recordings on the premises;
 - (d) require any person on the premises to produce any document (in whatever form it is held) that is in the person’s possession or control; 5
 - (e) require any person on the premises to produce any information which is stored in electronic form and is accessible from the premises in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form); 10
 - (f) inspect or access any computer or other electronic device found on the premises which the Chief Inspector reasonably believes may be or contain evidence of the commission of a relevant offence;
 - (g) inspect and take copies of any document found on the premises (in whatever form it is held) which the Chief Inspector reasonably believes may be or contain evidence of the commission of a relevant offence; 15
 - (h) seize anything found on the premises which the Chief Inspector reasonably believes may be or contain evidence of the commission of a relevant offence; 20
 - (i) interview any person on the premises where there is reasonable cause to believe that the person can provide information relating to a relevant offence, and require the person to provide any such information; 25
 - (j) require any person on the premises to provide the Chief Inspector with whatever facilities and assistance within the person’s control are necessary to enable the Chief Inspector to exercise the powers conferred by this section.
- (2) Anything seized under subsection (1)(h) may be retained for so long as is necessary in all the circumstances. 30
- (3) Where the Chief Inspector exercises the power in subsection (1)(i) to interview a person –
- (a) if the person is aged under 18, they may not be interviewed alone without the consent of a parent; 35
 - (b) in any other case, they may be interviewed either alone or in the presence of one or more other persons;
 - (c) no answer which the person gives during the interview is admissible in evidence against the person, or the person’s spouse or civil partner, in any proceedings. 40
- (4) This section does not confer power to inspect, seize or take copies of anything of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 (legally privileged material etc).
- (5) In this section “document” means anything in which information of any description is recorded. 45

127C Power of constable to assist in exercise of powers of entry

- (1) The Chief Inspector may apply to a justice of the peace for a warrant authorising a constable to assist the Chief Inspector, using reasonable force if necessary, in the exercise of a power conferred by section 127A or 127B on premises mentioned in subsection (2). 5
- (2) The premises are –
- (a) one or more sets of premises specified in the application, or
 - (b) any premises occupied or controlled by a person specified in the application.
- (3) The justice may issue a warrant only if satisfied that the requirement in section 127A(1) (reasonable cause for belief) is met, and that – 10
- (a) the Chief Inspector has attempted to exercise a power conferred by section 127A or 127B but has been prevented from doing so,
 - (b) the Chief Inspector reasonably expects to be prevented from exercising any such power if an attempt to do so is made, or 15
 - (c) the purpose of exercising any such power may be frustrated unless the Chief Inspector, on arriving at the premises, can exercise the power immediately.
- (4) A warrant under this section must be issued to and executed by a constable. 20
- (5) Section 15 of the Police and Criminal Evidence Act 1984 (search warrants: safeguards) applies in relation to a warrant under this section as though references in subsections (2) and (4) to a constable were to the Chief Inspector. 25

127D Offences: obstruction etc

- (1) A person commits an offence if they intentionally obstruct another person in the exercise of any power under section 127A or 127B.
- (2) A person commits an offence if they intentionally fail to produce any document required under section 127B(1)(d). 30
- (3) A person commits an offence if they intentionally fail to produce any information required under paragraph (e) of section 127B(1) in the form required under that paragraph.
- (4) A person commits an offence if they –
- (a) refuse to be interviewed under paragraph (i) of section 127B(1), or 35
 - (b) intentionally fail to provide any information required during the course of an interview under that paragraph.
- (5) A person commits an offence if they intentionally fail to comply with a requirement reasonably imposed under section 127B(1)(j) (power to require assistance). 40

- (6) In proceedings for an offence under any of subsections (2) to (5), it is a defence to show that the person had a reasonable excuse—
- (a) in the case of an offence under subsection (2), for failing to produce the document;
 - (b) in the case of an offence under subsection (3), for failing to produce the information in the form required; 5
 - (c) in the case of an offence under subsection (4)(a), for refusing to be interviewed;
 - (d) in the case of an offence under subsection (4)(b), for failing to provide the information; 10
 - (e) in the case of an offence under subsection (5), for failing to comply with the requirement.
- (7) A person is taken to have shown a fact mentioned in subsection (6) if—
- (a) sufficient evidence is adduced to raise an issue with respect to it, and 15
 - (b) the contrary is not proved beyond reasonable doubt.
- (8) A person who commits an offence under this section is liable on summary conviction to a fine.”
- (4) In section 134 (proceedings for offences)— 20
- (a) the existing text becomes subsection (1);
 - (b) after that subsection insert—
- “(2) Despite anything in section 127(1) of the Magistrates’ Courts Act 1980 (limitation of time), an information or a written charge relating to an offence under this Chapter may be tried by a magistrates’ court if it is laid or issued at any time within twelve months from the time when the offence was committed.” 25

50 Independent inspectorates: reports and information sharing

- (1) In section 107 of the Education and Skills Act 2008 Act (quality assurance of independent inspectorates), in subsection (1), for “at intervals of no more than a year” substitute “on request”. 30
- (2) After that section insert—
- “107A Information sharing between the Chief Inspector and independent inspectorates**
- (1) The Chief Inspector may disclose information to an independent inspectorate for the purpose of enabling or facilitating the inspection by the inspectorate of registered independent educational institutions. 35
 - (2) Nothing in subsection (1) authorises a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by this section is to be taken into account). 40

- (3) In subsection (2), “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).”

PART 5

MISCELLANEOUS AND FINAL PROVISIONS

5

Teacher misconduct

51 Teacher misconduct

- (1) The Education Act 2002 is amended as follows.
- (2) In section 141A (teachers to whom misconduct regime applies), in subsection (1) – 10
- (a) in the words before paragraph (a), after “is” insert “or has (at any time) been”;
- (b) after paragraph (ba) insert –
- “(bb) an independent educational institution in England that is not a school, 15
- (bc) an institution in England within the further education sector,
- (bd) a special post-16 institution in England,
- (be) an independent training provider,
- (bf) an online education provider (see section 141AA).” 20
- (3) In that section, in subsection (2), after the definition of “children’s home” insert –
- ““independent educational institution” has the same meaning as in Chapter 1 of Part 4 of the Education and Skills Act 2008;
- “independent training provider” has the same meaning as in sections 1 to 4 of the Skills and Post-16 Education Act 2022 (see section 4 of that Act); 25
- “special post-16 institution” has the same meaning as in Part 3 of the Children and Families Act 2014 (see section 83 of that Act);”.
- (4) After section 141A insert – 30
- “141AA Meaning of “online education provider”**
- (1) An online education provider is an institution that meets the following conditions.
- (2) The first condition is that it is –
- (a) a company registered under the Companies Act 2006 which has its registered office for the purposes of that Act in England, 35
- or

- (b) a charity registered in accordance with section 30 of the Charities Act 2011 which has its address in England for the purposes of registration by the Charity Commission.
- (3) The second condition is that it provides education to at least one student who lives in England and who – 5
- (a) is of compulsory school age,
 - (b) is over compulsory school age but is under the age of 19, or
 - (c) is aged 19 or over and has an EHC plan that specifies that the student should be in full-time education.
- (4) The third condition is that at least one of the students mentioned in subsection (3) receives all or the majority of their education from the institution. 10
- (5) The fourth condition is that it is set up to deliver all or the majority of the education that it provides online.
- (6) The Secretary of State may by regulations amend this section so as to add a new condition or remove or change a condition for the time being specified.” 15
- (5) In section 141B (investigation of disciplinary cases by the Secretary of State) –
- (a) in subsection (1) –
 - (i) in the words before paragraph (a), for “an allegation is referred” substitute “it appears”; 20
 - (ii) in paragraph (a), for “may be” substitute “may (at any time) have been”;
 - (b) after subsection (3) insert –
 - “(3A) For the purposes of subsection (1)(a) or (b) it is irrelevant whether the conduct occurred, or the offence was committed, at a time when the person was employed or engaged to carry out teaching work or at some other time.” 25
- (6) In section 141D (supply of information following dismissal, resignation etc), in subsection (4), in the definition of “relevant employer” – 30
- (a) in paragraph (c), for “or 16 to 19 Academy” substitute “, a 16 to 19 Academy, an independent educational institution, or a special post-16 institution”;
 - (b) after paragraph (d) insert –
 - “(da) a person who employs or engages a person to teach at an institution within the further education sector, an independent training provider or an online education provider;” 35
 - (c) in paragraph (e), after “employs” insert “or engages”.
- (7) In that section, in subsection (4) – 40

- (a) after the definition of “children’s home” insert—
- ““independent educational institution” has the same meaning as in Chapter 1 of Part 4 of the Education and Skills Act 2008;
- “independent training provider” has the same meaning as in sections 1 to 4 of the Skills and Post-16 Education Act 2022 (see section 4 of that Act);”;
- (b) after the definition of “services” insert—
- ““special post-16 institution” has the same meaning as in Part 3 of the Children and Families Act 2014 (see section 83 of that Act);”.
- (8) In section 210 (orders and regulations), in subsection (3)—
- (a) in the words before paragraph (a), after “order” insert “or regulations”;
- (b) omit the “or” at the end of paragraph (e);
- (c) after paragraph (f) insert “or
- (g) section 141AA(6),”.

Final provisions

52 Transitional, saving and consequential provision

- (1) The Secretary of State may by regulations made by statutory instrument make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (2) The Secretary of State may by regulations made by statutory instrument make provision that is consequential on this Act.
- (3) The provision that may be made by regulations under subsection (2) includes provision amending, repealing or revoking provision made by or under—
- (a) an Act passed before this Act, or
- (b) an Act passed later in the same session of Parliament as this Act.
- (4) A statutory instrument containing regulations under subsection (2) that amend or repeal provision made by an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Otherwise a statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations under this section may make different provision for different purposes.

53 Extent

This Act extends to England and Wales.

54 Commencement

- (1) Sections 52 and 53, this section, and section 55 come into force on the day on which this Act is passed.
- (2) The following sections come into force at the end of the period of two months beginning with the day on which this Act is passed – 5
 - (a) section 45 (independent educational institution standards);
 - (b) section 50 (independent inspectorates: reports and information sharing).
- (3) Sections 1 and 2 come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) The other provisions of this Act come into force – 10
 - (a) for the purposes of making regulations, on the day on which this Act is passed;
 - (b) for remaining purposes, on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (5) Regulations under this section may make different provision for different purposes. 15

55 Short title

- (1) This Act may be cited as the Schools Act 2022.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. 20

SCHEDULES

SCHEDULE 1

Section 13

SECTIONS 11 AND 12: CONSEQUENTIAL AMENDMENTS TO THE ACADEMIES ACT 2010

- 1 The Academies Act 2010 is amended as follows.
- 2 (1) Section 4 (Academy orders) is amended as follows. 5
- (2) In subsection (1)(a), after "3" insert ", 3A or 3B".
- (3) In subsection (4)(c), for "that has a foundation" substitute ", all of the following that exist in relation to the school".
- (4) In subsection (5)–
- (a) in the words before paragraph (a), after "3" insert ", 3A or 3B"; 10
- (b) in paragraph (c), for "that has a foundation" substitute ", all of the following that exist in relation to the school".
- (5) Omit subsections (8) to (10).
- 3 In section 5 (consultation about conversion: schools not eligible for intervention), in subsection (1), for ", the school's governing body" substitute "as a result of an application under section 3, 3A or 3B, the applicant". 15
- 4 In section 5A (consultation about identity of Academy sponsor in certain cases), omit subsections (3) to (5).
- 5 In section 5B (duty to facilitate conversion), for subsection (1) substitute–
- “(1) Where– 20
- (a) an application under section 3A or 3B has been made for an Academy order in respect of a school, or
- (b) an Academy order under section 4(A1) or (1)(b) has effect in respect of a school,
- the governing body of the school and the local authority must take all reasonable steps to facilitate the conversion of the school into an Academy.” 25
- 6 In section 5C (power to give directions to do with conversion), for subsection (1) substitute–
- “(1) Where– 30
- (a) an application under section 3A or 3B has been made for an Academy order in respect of a school, or
- (b) an Academy order under section 4(A1) or (1)(b) has effect in respect of a school,
- the Secretary of State may direct the governing body of the school or the local authority to take specified steps for the purpose of facilitating the conversion of the school into an Academy.” 35

- 7 In section 7 (transfer of school surpluses), in subsection (1)(b), after "3" insert ", 3A or 3B".
- 8 In section 17 (interpretation), after subsection (2) insert—
- “(2A) In this Act, "the appropriate religious body", in relation to a school, means—
- 5
- (a) in the case of a Church of England or a Roman Catholic school, the appropriate diocesan authority;
- (b) in any other case, such body or person representing the specified religion or religious denomination as is prescribed under section 88F(3)(e) of SSFA 1998.
- 10
- (2B) In the case of a school in relation to which there is more than one religion or religious denomination specified, references to "the appropriate religious body" are to be read as references to both or all of the bodies concerned.
- (2C) In subsections (2A) and (2B), "specified" means specified in the order under section 69(3) of SSFA 1998 relating to the school.
- 15
- (2D) Expressions used in subsection (2A) and SSFA 1998 have the same meaning as in that Act.”

SCHEDULE 2

Section 29

CONSEQUENTIAL AMENDMENTS RELATING TO PART 2

20

Education Act 1996

- 1 (1) Section 494 of the Education Act 1996 (recoupment: excluded pupils) is amended as follows.
- (2) In subsection (1)—
- (a) after “maintained by” (in the first place it occurs) insert “, or from any Academy located in the area of,”;
- (b) after “provided with education by” insert “or in the area of”;
- (c) for “or otherwise than at school” substitute “, at an Academy located in that authority’s area, or by that authority otherwise than at school”.
- 25
- 30
- (3) In subsection (3)—
- (a) after “maintained by” (in the first place it occurs) insert “, or from any Academy located in the area of,”;
- (b) in paragraph (b)—
- (i) after “education by” insert “or in the area of”;
- (ii) for “or otherwise than at school” substitute “, at an Academy located in that authority’s area, or by that authority otherwise than at school”.
- 35

(4) After that subsection insert—

“(3A) For the purposes of this section references to an Academy do not include a 16 to 19 Academy.”

School Standards and Framework Act 1998

- | | | |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 2 | The School Standards and Framework Act 1998 (funding of maintained schools) is amended as follows. | 5 |
| 3 | In section 45 (maintained schools to have budget shares)— | |
| | (a) omit subsection (1); | |
| | (b) omit subsection (2); | |
| | (c) after subsection (4) insert— | 10 |
| | “(5) For the purposes of this Part, the following are to be treated as education functions of a local authority in England— | |
| | (a) the duty imposed by section 7(1) of the Childcare Act 2006 (duty to secure prescribed early years provision free of charge); | 15 |
| | (b) a duty imposed under section 2 of the Childcare Act 2016 (duties in connection with Secretary of State’s duty to secure 30 hours free childcare for working parents).”; | |
| | (d) for the heading substitute “Interpretation”. | 20 |
| 4 | After section 45 insert— | |
| | “45ZA Maintained schools in Wales to have budget shares | |
| | (1) For the purposes of the financing of schools maintained by local authorities in Wales, every such school shall have, for each funding period, a budget share which is allocated to it by the authority which maintains it. | 25 |
| | (2) Sections 45A to 47 have effect for determining the amount of a school’s budget share for a funding period.” | |
| 5 | (1) Section 45A (determination of specified budgets of local authority) is amended as follows. | 30 |
| | (2) In subsection (1), after “Part,” insert “in relation to Wales,”. | |
| | (3) In subsection (2), after “Part,” insert “in relation to Wales,”. | |
| | (4) In subsection (3), after “Part,” insert “in relation to Wales,”. | |
| | (5) Omit subsections (4B) and (4C). | |
| | (6) In the heading, after “local authority” insert “in Wales”. | 35 |
| 6 | Omit section 45AA (power to require local authorities in England to determine schools budget). | |
| 7 | (1) Section 47 (determination of school’s budget share) is amended as follows. | |

- (2) Before subsection (1) insert—
- “(A1) This section applies in relation to a school maintained by a local authority in Wales.”
- (3) In subsection (1) for “a maintained” substitute “the”.
- (4) In the heading, at the end insert “: Wales”. 5
- 8 Omit section 47ZA (free of charge early years provision outside a maintained school: budgetary framework: England).
- 9 (1) Section 47A (schools forums) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) The purpose of a schools forum established by a local authority in England is— 10
- (a) to advise the authority on such matters relating to the financing of maintained schools and Academies as may be prescribed by regulations under this subsection, and
- (b) to exercise any other function that may be imposed on the schools forum by or under this Chapter or under Part 2 of the Schools Act 2022.” 15
- (3) In subsection (3), after “forum” (in the first place it occurs) insert “established by a local authority in Wales”.
- (4) In subsection (3A), after “forum” insert “established by a local authority in Wales”. 20
- 10 (1) Section 48 (local authorities’ financial schemes) is amended as follows.
- (2) In subsection (2), for paragraphs (a) and (b) substitute—
- “(aa) in the case of a scheme maintained by a local authority in England— 25
- (i) the carrying forward from one funding period to another of surpluses and deficits arising in relation to schools’ adjusted core budgets;
- (ii) amounts which may be charged against schools’ adjusted core budgets; 30
- (ab) in the case of a scheme maintained by a local authority in Wales—
- (i) the carrying forward from one funding period to another of surpluses and deficits arising in relation to schools’ budget shares; 35
- (ii) amounts which may be charged against schools’ budget shares;”.
- (3) After subsection (5) insert—
- “(6) For the purposes of this Part, “adjusted core budget” for a maintained school, for a funding period, means the core budget, within the meaning of section 27 of the Schools Act 2022 (deductions 40

- for pooled education expenditure), for that school for that period, after any deduction under that section.”
- 11 (1) Section 49 (maintained schools to have delegated budgets) is amended as follows.
- (2) In subsection (4)– 5
- (a) in paragraph (a) after “spend” insert “adjusted core budget or, as the case may be,”;
- (b) in paragraph (b) after “out of” insert “adjusted core budget or, as the case may be,”;
- (c) in the words after paragraph (d), for “non-schools education budget or schools budget” substitute “relevant education funding”. 10
- (3) In subsection (7), for paragraph (a) (but not the “and” after it) substitute –
- “(a) references to a school having a delegated budget are references to the governing body of the school being entitled to manage– 15
- (i) in the case of a school maintained by a local authority in England, its adjusted core budget, and
- (ii) in the case of a school maintained by a local authority in Wales, its budget share;”.
- (4) After that subsection insert – 20
- “(8) In this section “relevant education funding” means –
- (a) in relation to a local authority in England, the amount appropriated by the authority for meeting all education expenditure for a given relevant period by the authority of a class or description prescribed for the purposes of this section; 25
- (b) in relation to a local authority in Wales, the authority’s non-schools education budget or schools budget.
- (9) For the purposes of paragraph (a) of the definition of “relevant education funding” in subsection (8), the amount referred to includes the amount of any grant which is appropriated, for meeting the expenditure mentioned in that paragraph, in accordance with a condition which – 30
- (a) is imposed under section 16 of the Education Act 2002 (terms on which assistance under section 14 of this Act is given) or any other enactment, and 35
- (b) requires that the grant be applied as part of the authority’s relevant education funding for the relevant period in question.”
- 12 (1) Section 50 (effect of financial delegation) is amended as follows. 40
- (2) In subsection (1)–

-
- (a) in paragraph (a), for “a sum equal to the school’s budget share for the period” substitute “–
- (i) in the case of a school in England, a sum equal to the school’s adjusted core budget for the period, and 5
 - (ii) in the case of a school in Wales, a sum equal to the school’s budget share for the period;”;
- (b) in paragraph (b), for “that portion of” to the end substitute “–
- (i) in the case of a school in England, that portion of the school’s adjusted core budget for the period which has not been spent, and 10
 - (ii) in the case of a school in Wales, that portion of the school’s budget share for the period which has not been spent.”
- 13 In section 71 (exceptions and special arrangements; provision for special schools), in subsection (6), for the words from “from the school’s budget share” to the end substitute “– 15
- (a) in the case of a school in England, from the school’s adjusted core budget or otherwise by the local authority, and
 - (b) in the case of a school in Wales, from the school’s budget share or otherwise by the local authority.” 20
- 14 In section 107 (restriction on publication of material etc relating to ballots), in subsection (5)(a), for “expenditure out of the school’s budget share” substitute “–
- (i) if the school is in England, expenditure out of the school’s adjusted core budget (within the meaning of section 48(6)); 25
 - (ii) if the school is in Wales, expenditure out of the school’s budget share;”.
- 15 In section 143 (index), at the appropriate place, insert– 30
-
- “adjusted core budget (in Part 2) section 48(6)”.
-
- 16 (1) Schedule 15 (suspension of financial delegation) is amended as follows.
- (2) In paragraph 1(7), for “the school’s budget share” substitute “–
- (a) in the case of a school in England, the school’s adjusted core budget, and 35
 - (b) in the case of a school in Wales, the school’s budget share.”
- (3) In paragraph 4(1), for paragraph (b) substitute–
- “(b) the authority may permit the governing body to take such decisions as to the spending of sums to be met from–

- (i) in the case of a school in England, its adjusted core budget, and
 - (ii) in the case of a school in Wales, its budget share, as the authority consider appropriate.”
- 17 In Schedule 19 (required provision for religious education: England), in paragraph 2(3)(b) for “budget share” substitute “adjusted core budget”. 5

Education Act 2002

- 18 The Education Act 2002 is amended as follows.
- 19 In section 37 (payments in respect of dismissal etc) –
- (a) in subsection (4), for the words from “from the school’s budget share” to the end substitute “–
 - (a) in the case of a school in England, from the school’s adjusted core budget for one or more funding periods, and
 - (b) in the case of a school in Wales, from the school’s budget share for one or more funding periods, 15

except in so far as the authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met.”;
 - (b) in subsection (5), for the words from “from the school’s budget share” to the end substitute “– 20
 - (a) in the case of a school in England, from the school’s adjusted core budget for any funding period, and
 - (b) in the case of a school in Wales, from the school’s budget share for any funding period, 25

except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that budget or share.”;
 - (c) in subsection (7A) for “budget share” substitute “adjusted core budget”; 30
 - (d) in subsection (7B) for “budget share” substitute “adjusted core budget”.
- 20 In section 39 (interpretation of Chapter 1) –
- (a) in subsection (1), at the appropriate place, insert –
 - ““adjusted core budget”, for a maintained school, for a funding period, means the core budget, within the meaning of section 27 of the Schools Act 2002 (deductions for pooled education expenditure), for that school for that period, after any deduction under that section;”;
 - (b) in subsection (2)(a) for “the school’s budget share,” substitute “– 40
 - (i) in the case of a school in England, the school’s adjusted core budget, and

- (ii) in the case of a school in Wales, the school’s budget share,”.
- 21 In section 51A (exclusion of pupils: England) –
- (a) in subsection (6) for “budget share” substitute “adjusted core budget”; 5
 - (b) in subsection (7)(b) for “budget shares” substitute “adjusted core budgets”;
 - (c) in subsection (10), omit the entry for “budget share” and “funding period” and, at the appropriate places, insert –
 - ““adjusted core budget” for a maintained school, for a funding period, means the core budget, within the meaning of section 27 of the Schools Act 2022 (deductions for pooled education expenditure), for that school for that period, after any deduction under that section;” 10
 - ““funding period” has the same meaning as in Part 2 of the School Standards and Framework Act 1998;” 15
- 22 In section 135C (induction periods: supplementary) –
- (a) in subsection (2), in the words after paragraph (b), for “budget share” substitute “adjusted core budget”;
 - (b) in subsection (3) – 20
 - (i) before paragraph (a) insert –
 - “(za) “adjusted core budget” for a maintained school, for a funding period, means the core budget, within the meaning of section 27 of the Schools Act 2022 (deductions for pooled education expenditure), for that school for that period, after any deduction under that section;”;
 - (ii) in paragraph (a) for “references to a school’s budget share and” substitute “reference”; 30
 - (iii) in that paragraph for “have” substitute “has”;
 - (iv) in paragraph (b) for “budget share” substitute “adjusted core budget”.

SCHEDULE 3

Section 36

SCHOOL ATTENDANCE ORDERS: CONSEQUENTIAL AMENDMENTS

35

Children Act 1989

- 1 (1) The Children Act 1989 is amended as follows.
- (2) In section 36 (education supervision orders), in subsection (5)(a), after “section” insert “436J or”.

- (3) In section 91 (effect and duration of care orders etc), in subsection (5), after “section” insert “436J or”.
- (4) In Schedule 3 (supervision orders), in paragraph 13(2)(a)(i) and (b)(i), after “section” insert “436J or”.

Education Act 1996

5

- 2 (1) The Education Act 1996 is amended as follows.
- (2) In the italic heading before section 437, at the end insert “: Wales”.
- (3) In section 437 (school attendance orders) –
- (a) in subsection (1), after “local authority” insert “in Wales”;
 - (b) in subsection (3), omit “referred to in this Act as”; 10
 - (c) in subsection (4), (5) and (6) after “school attendance order” insert “under this section”;
 - (d) omit subsection (8);
 - (e) in the heading, at the end insert “: Wales”.
- (4) In section 438 (choice of school: child without EHC plan) – 15
- (a) in subsection (1) –
 - (i) omit “a child for whom the local authority maintain an EHC plan (in the case of a local authority in England) or”;
 - (ii) omit “(in the case of a local authority in Wales)”;
 - (b) in subsection (6)(c) (as substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2)) – 20
 - (i) omit sub-paragraph (i);
 - (ii) in sub-paragraph (ii), omit “(in the case of a local authority in Wales)”.
- (5) In section 440 (amendment of order) – 25
- (a) in subsection (1) –
 - (i) after “order” insert “under section 437”;
 - (ii) omit “a child for whom they maintain an EHC plan (in the case of a local authority in England) or”;
 - (iii) omit “in the case of a local authority in Wales”; 30
 - (b) in subsection (4)(b) (as substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018) –
 - (i) omit sub-paragraph (i);
 - (ii) in sub-paragraph (ii), omit “(in the case of a local authority in Wales)”. 35
- (6) Omit section 441 (choice of school: child with EHC plan).
- (7) In section 442 (revocation of order on request of parent) –
- (a) in subsection (1), after “order” insert “under section 437”;
 - (b) omit subsection (5);
 - (c) in subsection (6), omit “, in the case of a local authority in Wales,”. 40
- (8) Omit the italic heading before section 443.

- (9) In section 443 (offence of failure to comply with attendance order) –
- (a) in subsection (1), after the first “order” insert “under section 437”;
 - (b) in the heading, at the end insert “(Wales)”.
- (10) In sections 445(1), 446 and 447(1) and (2)(a), after “under section” insert “436Q”. 5
- (11) Before section 445 insert –
- “Offences: general”.*
- (12) After section 447 insert –
- “447A Interpretation of Chapter 2**
- In this Chapter – 10
- “maintained school” means any community, foundation or voluntary school or any community or foundation special school not established in a hospital;
- “school nomination notice” means a notice under section 436L.”
- (13) In section 580 (index), in the second column of the entry relating to “school attendance order”, for “section 437(3)” substitute “sections 436J (in relation to England) and 437(3) (in relation to Wales)”. 15
- (14) In Schedule 1 (pupil referral units), in paragraph 14 –
- (a) in sub-paragraph (1), in the opening words after “order” insert “made by a local authority in Wales under section 437”; 20
 - (b) in sub-paragraph (3), in the opening words, after “local authority” insert “in Wales”;
 - (c) in sub-paragraph (5), after “school attendance order” insert “under section 437”;
 - (d) in sub-paragraph (6) – 25
 - (i) after “pupil referral unit” insert “in Wales”;
 - (ii) for “a unit” substitute “such a unit”.

School Standards and Framework Act 1998

- 3 In section 86 of the School Standards and Framework Act 1998 (parental preferences), in subsection (8)(b), after “section” insert “436L(4), 436O(2),”. 30

Sentencing Act 2020

- 4 In section 369 of the Sentencing Act 2020 (parenting orders in respect of certain offences under the Education Act 1996), in subsections (1)(a), (2), (4) and (5)(a), for “443” substitute “436Q or 443”.

SCHEDULE 4

Section 48

INDEPENDENT EDUCATIONAL INSTITUTIONS: MATERIAL CHANGES TO REGISTERED DETAILS

Introductory

- 1 Chapter 1 of Part 4 of the Education and Skills Act 2008 (regulation and inspection of independent educational provision in England) is amended as follows. 5

Applications for approval of material change and for initial registration: power to prescribe types of special educational need

- 2 In section 98 (applications for registration), after subsection (3) insert—
 “(3A) Regulations may make provision about what constitutes a type of special educational need for the purposes of subsection (2)(g).” 10

Amendments to definition of material change

- 3 (1) Section 101 (definition of “material change”) is amended as follows.
 (2) For subsections (2) and (3) substitute—
 “(2) “A material change” means any of the following— 15
 (a) a change of proprietor;
 (b) a change of address;
 (c) a change to the age range of students;
 (d) a change to the maximum number of students;
 (e) a change to whether the institution is for male or female students or both; 20
 (f) a change to whether the institution provides accommodation for students;
 (g) a change to whether the institution is a special institution;
 (h) in the case of a special institution, a change to the type or types of special educational needs (as prescribed under section 98(3A)) for which it makes special educational provision.” 25

Applications for approval of material change: power to prescribe information etc

- 4 In section 102 (requirement to apply for approval for material change), at the end insert— 30
 “(3) Regulations may specify—
 (a) the information that must be contained in an application for approval under this section, and
 (b) the manner in which an application must be made.” 35

Amendments allowing for inspection by independent inspectorate on applications for approval of material change

- 5 (1) In section 103 (inspection and report where applications made for approval) after subsection (2) insert –
- “(2A) Where an application for approval of a material change is made under section 102, the Secretary of State may arrange for an independent inspectorate to –
- (a) inspect the institution, and
- (b) make a report to the Secretary of State on the matters that the Secretary of State must consider in determining the application (see section 104(1A) and (1B)).
- (2B) The Secretary of State may arrange for an independent inspectorate to inspect an institution under subsection (2A) only where the independent inspectorate has been approved under section 106 in relation to that institution.”
- (2) In section 104 (determination of applications for approval), in subsection (2)(a), after “Chief Inspector” insert “or an independent inspectorate”.

Amendments relating to approvals of applications for material change

- 6 (1) Section 104 (determination of applications for approval) is amended as set out in sub-paragraphs (2) to (5).
- (2) For subsection (1) substitute –
- “(1) This section applies where the proprietor of a registered independent educational institution makes an application under section 102 for approval of a material change.
- (1A) Where, at the time the Secretary of State decides the application, the Secretary of State considers that the independent educational institution standards are being met in relation to the institution, the Secretary of State must approve the change if satisfied that the standards are likely to continue to be met if the change is made.
- (1B) Where, at the time the Secretary of State decides the application, the Secretary of State considers that the independent educational institution standards are not being met in relation to the institution, the Secretary of State –
- (a) must approve the change if satisfied that the standards are likely to be met immediately if the change is made;
- (b) may approve the change if satisfied –
- (i) that the standards are likely to be met within a reasonable time of the change being made, and
- (ii) that, during the period before the standards are met, the change is likely to be beneficial overall to the education, welfare or safety of students who attend, or who might attend, the institution.”

-
- (3) In subsection (2) –
- (a) in the words before paragraph (a), for “subsection (1)” substitute “this section”;
 - (b) in paragraph (b), for “relating to the independent educational institution standards” substitute “that is relevant to the application.” 5
- (4) In subsection (3), for “subsection (1)” substitute “this section”.
- (5) In subsection (4), for “subsection (1) to refuse” substitute “this section not”.
- (6) In section 103 (inspection and report where applications made for approval) –
- (a) in subsection (2)(b), for the words from “the extent” to the end, substitute “the matters that the Secretary of State must consider in determining the application (see section 104(1A) and (1B)).”; 10
 - (b) omit subsection (3).
- (7) In section 105 (powers where institution makes unapproved material change), in subsection (1)(c)(ii) for “has been refused” substitute “the Secretary of State has decided not to approve it”. 15
- (8) In section 125 (appeal by proprietor against other decisions of Secretary of State), in subsection (1)(b), for “104(1) (refusal)” substitute “104 (decision not”.
- Amendments allowing for the imposition of relevant restrictions* 20
- 7 (1) Section 105 (power to deregister institution that makes unapproved material change) is amended as set out in sub-paragraphs (2) to (6).
- (2) In subsection (1) –
- (a) for the words before paragraph (a) substitute “This section applies where –”; 25
 - (b) in paragraph (a), for “the” substitute “an independent educational”.
- (3) After subsection (1) insert –
- “(1A) The Secretary of State may –
- (a) impose a relevant restriction on the proprietor of the institution (see section 117), or 30
 - (b) remove the institution from the register.”
- (4) In subsection (2), omit “to remove it from the register”.
- (5) In subsection (3)(a), after “124” insert “or 125”.
- (6) In the heading, for “Power to deregister” substitute “Powers in relation to”
- (7) In section 117 (“relevant restriction”), in subsection (2)(a), after “section” insert “105(1A)(a) or”. 35
- (8) In section 118 (relevant restrictions imposed by Secretary of State: supplementary) –
- (a) in subsection (1), before “116(1)(a)” insert “105(1A)(a) or”; 40
 - (b) in subsection (2), omit “not exceeding level 5 on the standard scale”.

- (9) In section 125 (appeal by proprietor against other decisions of Secretary of State), in subsection (1)(c), after “section” insert “105(1A)(a) or”.

Schools Bill [HL]

[AS AMENDED ON REPORT]

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TO

Make provision for the regulation of Academies; about school and local education funding; about the attendance of children at school; about the regulation of independent educational institutions; about teacher misconduct; and for connected purposes.

Baroness Barran

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