

LEARNING AND SKILLS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I - the Learning and Skills Council for England

Sections 1 to 29 and Schedules 1 to 3

34. These sections and Schedules make provision for the establishment of the LSC, its functions, the establishment of local councils and other committees, and powers of the Secretary of State in relation to the LSC.

Section 1 and Schedule 1: the LSC

35. **Section 1 and Schedule 1** provide for the establishment of a new corporate body, the LSC. In making appointments to the LSC, the Secretary of State must have regard to the desirability of appointing people with experience relevant to the LSC's functions. The *LSC Prospectus* has stated that, in performing this duty, the Secretary of State intends to have regard to people with current or recent business experience. The LSC's functions are to be carried out only in relation to England.
36. **Schedule 1** makes provision about members of the LSC which will include the chief executive, the appointment and employment of staff and about procedural matters, including the LSC's accounts. It makes provision for the Secretary of State to remove any member from office on the grounds of persistent non-attendance, inability or unfitness for office. The LSC is permitted to set up committees and to delegate functions. The Schedule sets out provisions for disclosure of members' interests. The LSC will not be an agent of the Crown and its staff will not be civil servants.

Sections 2 to 4: the main duties of the LSC

37. **Section 2** sets out the duty of the LSC to secure the provision of 'proper' facilities for the education and training of people from the age of 16 up to the age of 19. Facilities are 'proper' if they are of sufficient quantity and adequate quality to meet the reasonable needs of young people. **Section 3** sets out the duty of the LSC to secure the provision of 'reasonable' facilities for the education and training of people of age 19 and over. Facilities are 'reasonable' if they are of a quality and quantity which the LSC can reasonably be expected to provide taking account of the resources available to it. The effect of the wording of sections 2 and 3 on the exercise of these two duties is that the LSC will give priority to meeting the learning and skills needs of the younger age group. The duties do not extend to the provision of higher education which is the responsibility of the Higher Education Funding Council.
38. In performing the duties in respect of both age groups the Council must take into account a number of factors, including the education and training required in different sectors of employment. The Government has recognised that National Training Organisations (NTOs) have particular expertise and expect that the NTOs will advise the LSC in this area. The Council will also bear in mind that other bodies, both statutory and private bodies, also provide education and training and therefore that it might reasonably expect

education and training to be secured by other bodies without drawing on the Council's resources.

39. The LSC must make the best use of its resources, and in particular, avoid provision that might give rise to disproportionate expenditure. Disproportionate expenditure is that which, although not necessarily wasteful, is too much or too little in view of the LSC's overall functions and expenditure. Sections 2(4) and 3(4) specify that provision is not to be considered as giving rise to disproportionate expenditure simply because that provision is more expensive than comparable provision (for example provision for people with disabilities in a specialist institution may be more expensive than provision for people with disabilities in a mainstream FE institution).
40. Unlike the duties of the FEFC under the 1992 Act, no distinction is drawn between full- and part-time education in the education and training provision which the LSC must secure for the two age groups. Nor is there a limitation on the education which may be secured by reference to a particular type of course. The LSC will secure provision of education and training in school sixth forms (through funding LEAs, see section 7), in FE colleges and in work-based training on the premises of employers, and with private training providers and voluntary organisations.
41. The reference to 'organised leisure-time occupation', which is included in the definition of further education in section 2 of the Education Act 1996, covers a wide range of organised activities offering opportunities for non-formal types of learning and of learning which does not lead to a qualification.
42. **Section 4** sets out the LSC's duty to promote participation of individuals and employers in post-16 education and training and to encourage employers to get involved in its support and delivery. The LSC prospectus gives an outline of the broad range of activities that it may undertake. For example, there will be advertising and marketing activities, research into the benefits of learning and dissemination of the results of that research. Other functions of the LSC will also support this duty, such as its planning and funding of information, advice and guidance services to adults in connection with learning opportunities, its promotion of individual learning accounts and its support for the Investors in People standard.

Sections 5 and 6: provision of financial resources

43. **Section 5** sets out the powers of the LSC to give funding to other persons for the purpose of fulfilling its duties and exercising its powers. Under section 5 the LSC will have the power to pay persons who provide or are proposing to provide post-16 education and training, and to pay persons who may not be providers themselves but who supply services which support the delivery of post-16 education and training by providers. A person may be any natural or legal person and would include FE colleges, schools and private training providers, whether incorporated or unincorporated, and individuals. The LSC may also make direct grants to students. Payments may include money intended for awards to students which is distributed by institutions, for example, the Access Funds.
44. The LSC's powers under section 5 can be used to pay persons for activities including:
 - the start-up costs to persons proposing to provide post-16 education or training, including the establishment of an institution in the FE sector;
 - a limited range of higher education provision of a vocational and professional nature;
 - secondary education for those of compulsory school age provided by FE and HE institutions (see also section 142);
 - research and development activities related to education and training generally;

*These notes refer to the Learning and Skills Act 2000
(c.21) which received Royal Assent on 28 July 2000*

- the provision of work experience and links between the education world and employers (see also section 8);
 - information, advice and guidance to people on learning opportunities and related issues, including employment.
45. In paying persons for anything which the LSC is empowered to do, the LSC may:
- use its own financial resources, for example, the grant provided by the Secretary of State (see section 27);
 - assist in the transfer of financial resources from one person to another;
 - do either of these jointly with other persons or assist in the transfer of financial resources from other persons who are acting jointly.
46. If the LSC makes its own financial resources available to persons it may attach conditions to those payments. **Section 6** provides that such conditions may require:
- that the LSC must have access to the education and training provider's accounts and records, including computer records; or another person specified by the Council (such as an accountant or the National Audit Office) must be able to have such access;
 - that the post-16 education and training provider must give the LSC such information as it requires for the purpose of exercising any of its duties and powers;
 - that persons providing post-16 education and training must set fees, make awards and recover costs from other persons in accordance with criteria established by the LSC;
 - that the post-16 education and training provider must publish statements in respect of its facilities for disabled people (section 30 of the Disability Discrimination Act 1995 provided a similar power to the FEFC in respect of institutions in the FE sector);
 - that resources provided be repaid to the Council, with interest, if any of the conditions attached to the provision of the resources are not complied with;
 - that the provider of post-16 education and training must make provision of a type specified in an assessment of learning difficulties made under section 140.

Section 7: school sixth form funding

47. Between June and October 1999, the Government consulted on two options in relation to recurrent LEA maintained school sixth form funding, as outlined in the consultation paper *Learning to Succeed: school sixth form funding*.
48. Following the consultation, the Government concluded that the LSC should fund LEAs for their sixth form provision. LEAs would continue to allocate funds to schools in their area, and would retain their power to provide additional funding to schools if they so wish. Following further consultation begun in January 2000, it was announced in May that these changes would be introduced from 2002-03. There will be further consultation in the autumn of 2000 on the details of how the changes will be implemented. The Government committed itself in the 1999 consultation paper to maintaining school sixth forms' funding levels in real terms (where pupil numbers do not fall). The later announcements confirmed that this guarantee will operate on a baseline year of 2000-01. There are no plans to change the capital funding system in relation to schools sixth forms.
49. **Section 7** secures the LSC's power to fund LEAs in respect of their school sixth form provision, including (by virtue of regulations under section 46 of the School

Standards and Framework Act 1998) that made in non-maintained special schools and independent schools approved for the requirements of pupils with special educational needs. This is for recurrent funding not capital expenditure which by virtue of the regulations under section 46 of the 1998 Act is excluded from the local schools budget. No new primary legislation is required to facilitate the implementation of the new mechanisms for the distribution of recurrent funding from LEAs to school sixth forms; the necessary provisions are in the 1998 Act and regulations made under that Act.

Sections 8 to 11: other main powers of the LSC

50. **Section 8** gives the LSC powers to secure provision of work experience for those in their last two years of compulsory schooling and those in education up to the age of 19; and to provide for 'education business links' between, on the one hand, the world of work and, on the other, all pupils of compulsory school age, young people in education or training up to the age of 19 and teachers. The Secretary of State intends that the LSC will have a key role in ensuring that local partners (such as Education Business Partnerships) work closely together to provide opportunities of a high quality for young people which meet the needs of schools and the business community.
51. In **section 9** the LSC is given the power to assess the quality of the provision it funds, and take judgements about quality into account in deciding which providers it will continue to fund. This will form part of the LSC's quality improvement strategy. The intention is that the LSC secures value for money and that learners are offered provision of a high quality. Findings from the two inspectorates, OFSTED and ALI, may inform these judgments, but their input will not provide regular, comprehensive information on all providers. Therefore, it is intended that the LSC will take steps to investigate on its own behalf the quality of the provision it funds, through for example, visiting providers, putting arrangements in place for investigating complaints and acting on those which are well-founded. It will also have clear published performance indicators and benchmarks against which to measure quality of provision. The LSC may also draw up a list of accredited provision which meets certain quality thresholds, and cease to fund provision which does not.
52. **Section 9** also provides for the LSC, when making resources available to individual students, to calculate the amount made available by reference to fees and charges and also to other expenses associated with education and training such as transport or childcare.
53. **Section 10** provides for the role of the LSC in relation to Individual Learning Accounts (for details of the nature of the scheme known as Individual Learning Accounts and how this Act provides for the scheme see sections 104 to 109). The LSC is given the power to be involved in the promotion of Individual Learning Accounts and to be involved in the administration of qualifying arrangements under section 105. It is also given power to enter into arrangements with the Secretary of State to make grants, to specify the kinds of learning provision which qualify for the grants and to approve providers so as to make them eligible to offer learning provision which qualifies.
54. **Section 11** provides a power for the LSC to appoint up to two additional governors to the governing body of an institution in the FE sector which mainly serves the population of England. It may wish to use this power, for example, where it considers there might be mismanagement or potential mismanagement by the governing body, or where there are signs that the educational provision at the institution is failing.

Sections 12 to 18: other functions of the LSC

55. **Section 12** sets out the role of the LSC in relation to research and the provision of information, advice and guidance.
56. The LSC will be under a duty to report to the Secretary of State on such matters as he may require and will have the power to offer such information and advice to the

Secretary of State as it thinks fit. In practice, this is likely to include information about progress towards the Government's National Learning Targets connected with post-16 learning (and advice on the setting of future targets); analysis of the learning and skills performance of England in comparison with other countries; a description of the LSC's learning and skills strategy, based on an analysis of local skills needs; and information on the quality and quantity of provision available locally to meet learning needs.

57. The section also gives the LSC the power to secure the provision of facilities for providing information, advice and guidance about education, training and connected matters, including employment. The intention of the Secretary of State is that the LSC, through its local councils, will fund the provision of information, advice and guidance services to adults, while services for 13-19 year olds will be arranged through the Connexions Service (see sections 114 to 122).
58. The section also gives the LSC power to provide information to any person designated by the Secretary of State. This will, for instance, enable the LSC to provide the Qualifications and Curriculum Authority (QCA) with information to assist with the establishment and maintenance of the framework of qualifications and monitoring of the standards of qualifications.
59. **Section 13** requires the LSC to pay particular regard to the needs of people with learning difficulties when performing its duties to secure facilities for education and training under sections 2 and 3, when providing resources for education and training under section 5(1)(a) to (d) and (g) and when exercising its powers to secure facilities for work experience under section 8. In particular, the LSC must have regard to a report of an assessment of a person's needs made under section 140. Learning difficulties are defined at section 13(5). This definition is derived from provisions for further education in section 4 of the Further and Higher Education Act 1992 which is repealed by this Act.
60. **Section 13** also describes the LSC's main responsibilities regarding the funding of boarding accommodation for those with learning difficulties. For those between the ages of 16 and 19, the LSC must provide boarding accommodation where it is satisfied that it cannot make arrangements for individuals which are sufficient in quantity and adequate in quality unless it also secures boarding accommodation. For those between the ages of 19 and 25, the LSC must provide boarding accommodation where it is satisfied that it cannot secure the provision of reasonable facilities for individuals unless it also secures boarding accommodation. For those over the age of 25, the LSC has a power to make such arrangements if it is satisfied that provision for individual learners would not otherwise be reasonable. Those provisions should be read alongside the LSC's main duties at clauses 2 and 3.
61. **Section 14** requires the LSC to have due regard to the need to promote equality of opportunity between people from different racial groups, between men and women, and between people with a disability and people without. It must make an annual report on what arrangements it has made during the year, how effective they were and its plans for the following year. It must send a copy of the report to the Secretary of State. The Government has outlined, in pages 31-33 of the *LSC Prospectus*, some of the practical steps which it expects the LSC to take with regard to this duty.
62. **Sections 15 and 16** set out the planning the LSC is required to undertake. Two separate types of plan will be prepared: an annual business plan and a three-year rolling strategic (corporate) plan. Its annual business plan must include any measures the LSC intends to take to meet objectives the Secretary of State may set, and its financial plans for the year. The LSC's three-year plan will set out its strategy for the future development of activities and provision funded by the LSC. This will include its strategy for workforce development.
63. **Section 17** provides for the LSC to have regard to any information received from a body designated by the Secretary of State. This might include, for instance, the Qualifications and Curriculum Authority (QCA) which holds information on the nature

and availability of accredited provision in particular areas and on issues of financial propriety connected with this provision. This information is likely to be relevant to the activities of the LSC.

64. **Section 18** gives the LSC additional general powers which it may exercise to enable it to perform its other functions. The powers enabling the LSC, with the Secretary of State's agreement, to form or participate in companies may be used to facilitate appropriate partnership-working at the local and national levels for local workforce development, regeneration and economic development objectives. Section 18 also enables the Secretary of State to confer by order additional functions relevant to education or training in England on the LSC. (Section 8(4) of the Further and Higher Education Act 1992 contains a similar power in respect of the FEFC.)

Sections 19 and 20 and Schedule 2: local councils

65. **Section 19** and **Schedule 2** provide for the establishment of local learning and skills councils for each area specified by the Secretary of State. The Secretary of State has already announced that he is specifying 47 such local areas. His intentions, and the boundaries of those areas, are set out in the *LSC Prospectus*. **Section 20** provides that the local LSC's duties and powers will be those of the national LSC which it chooses to delegate. It also provides for local LSCs to perform duties and exercise functions outside their local area. This may be necessary, for example, to allow a single local LSC to contract with and fund a learning provider operating throughout England, or fund an institution which attracts students from outside its local area.
66. The Secretary of State has set out in the *LSC Prospectus* those activities which he expects the local LSCs to engage in. They include:
- planning to meet the National Learning Targets locally;
 - ensuring that all local young people, including those with disabilities and learning difficulties, have access to learning of high quality to meet their individual needs;
 - encouraging adults to engage in learning;
 - identifying and meeting local needs;
 - working to improve the quality of local provision;
 - promoting excellence, widening participation and promoting equal opportunities;
 - deploying locally-managed development budgets to meet learning, skills and workforce development needs and using discretionary expenditure to provide support for activities such as:
 - workforce development;
 - adult and community learning;
 - education-business links;
 - promoting equality of opportunity in learning and information;
 - information, advice and guidance to adults on learning opportunities.
67. **Schedule 2** makes provision about members and staff of local LSCs, and about delegation of functions.

Sections 21 to 24: guidance to local councils and their plans

68. **Sections 21 and 22** set out details of the planning arrangements the LSC and local councils must put in place. The LSC must prepare guidance and local LSCs must prepare and publish plans. In preparing a plan, a local LSC must consult any relevant

Regional Development Agency (including the London Development Agency), local authorities (including local education authorities) within its area and any other body which the Secretary of State specifies. The Secretary of State will, in practice, specify Local Learning Partnerships under this provision, and may specify other bodies such as the Connexions Service. Local LSCs must have regard to the RDAs' regional economic strategies and include in their plans a statement setting out how their learning and skills responsibilities will contribute to local economic regeneration activities. They must also have regard to the local authorities' strategies for the promotion of economic, social and environmental well-being provided for in the Local Government Act 2000.

Sections 25 to 29 and Schedule 3: miscellaneous

69. **Section 25** allows the Secretary of State to give directions to the LSC, with which the LSC must comply. Directions may not relate to the funding of activities carried on by individuals or individual bodies. This is to ensure that the LSC has sole responsibility for individual funding decisions without influence from the Secretary of State. The Secretary of State currently has a similar power to give directions to the FEFCE (see section 56 of the Further and Higher Education Act 1992.) The Secretary of State will be able to intervene if he considers that the LSC has failed to discharge a statutory duty or has acted or is proposing to act unreasonably in the exercise of its functions.
70. **Section 26** introduces **Schedule 3** which requires the LSC to set up a young people's learning committee and an adult learning committee (as well as giving the LSC the power to establish such other committees as it thinks fit). These two committees will advise the LSC on the learning needs, respectively, of young people (up to the age of 19) and of adults. Schedule 3 specifies the remit of the young people's and adult learning committees and contains general provisions about committees of the LSC.
71. **Section 27** gives the Secretary of State the power to fund the LSC by making grants, which may be subject to conditions including conditions on the funding of others by the LSC. Those conditions may not relate to the funding of particular individuals or of individual bodies. **Section 28** requires the LSC to report annually on its activities. The report will include a financial report. The Secretary of State will present the report to Parliament. **Section 29** defines the LSC's financial year.

Part II - National Council for Education and Training for Wales (Cetw)

Sections 30 to 49 and Schedules 4 and 5

72. These sections and Schedules make provision for the establishment of the CETW, its functions, the establishment of committees, and powers of the National Assembly in relation to the CETW.

Section 30 and Schedule 4: the CETW

73. **Section 30** and **Schedule 4** provide for the establishment of a new corporate body, the National Council for Education and Training for Wales (CETW). The CETW will be an Assembly Sponsored Public Body and its members will be appointed by the National Assembly for Wales. In making these appointments, the National Assembly will seek to appoint people with experience relevant to the CETW's functions, including people with current or recent business experience. The CETW's functions are to be carried out only in relation to Wales.
74. **Schedule 4** makes provision about members and staff of the CETW; procedural matters, including the CETW's accounts and provision for the National Assembly to remove any member from office on the grounds of persistent non-attendance, inability or unfitness for office. The Schedule sets out provisions for disclosure of members' interests. The CETW will not be an agent of the Crown and its staff will not be civil servants.

Sections 31 to 33: the CETW's main duties

75. **Section 31** sets out the duty of the CETW to secure the provision of 'proper' facilities for the education and training of people from 16 up to the age of 19. Facilities are 'proper' if they are of sufficient quantity and adequate quality to meet the reasonable needs of young people. The CETW must make best use of its resources and, in particular, avoid provision that might give rise to disproportionate expenditure. Provision is not to be considered as giving rise to disproportionate expenditure solely because it is more expensive than comparable provision, for example, special provision for people with learning difficulties. **Section 32** sets out the duty of the CETW to secure the provision of 'reasonable' facilities for the education and training of people 19 and over. Facilities are 'reasonable' if they are of a quality and quantity which the CETW can reasonably be expected to provide taking account of the resources available to it. The effect of wording of sections 31 and 32 on the exercise of these two duties is that the CETW will give priority to meeting the learning and skills needs of the younger age group. The duties do not extend to the provision of higher education which is the responsibility of the Higher Education Funding Council for Wales.
76. In performing the duties in respect of both age groups the Council must take into account a number of factors, including the education and training required in different sectors of employment. It must also bear in mind that other bodies, both statutory and private, also provide education and training and therefore that it might reasonably expect education and training to be secured by other bodies without drawing on the Council's resources. The Council must also make best use of its resources and in particular avoid provision which might give rise to disproportionate expenditure (for explanation of "disproportionate expenditure" see the explanation of the equivalent provision for the LSC in sections 2 and 3).
77. Unlike the duties of the FEFCW under the Further and Higher Education Act 1992, no distinction is drawn between full- and part-time education in the education and training provision which the CETW must secure for the two age groups. Nor is there a limitation on the education which may be secured by reference to a particular type of course. The CETW will secure provision of education and training in school sixth forms (through funding LEAs from 2001-02, see section 36), in FE colleges, and in work-based training on the premises of employers, and with private training providers and voluntary organisations. The reference to 'organised leisure-time occupation', which is included in the definition of further education in section 2 of the Education Act 1996, covers a wide range of organised activities offering opportunities for non-formal types of learning and which do not necessarily lead to a qualification.
78. **Section 33** sets out the CETW's duty to promote participation of individuals in post-16 education and training and to encourage employers to become involved in its support and delivery.

Sections 34 to 39: the CETW's main powers

79. **Sections 34 and 35** set out the funding powers of the CETW. They are similar to sections 5 and 6 which relate to the LSC (see paragraphs 43 to 46 of these Notes). The CETW may disburse funding itself or arrange for others to do so. Under section 34(3) the CETW may allocate resources by reference to fees or charges payable by the person participating in education or by reference to other matters connected with that provision of education (such as transport or childcare). Section 35 enables the CETW to impose conditions on the funding it provides, including access to accounts and documents, and information from persons in connection with the discharge of its functions. The section also allows the CETW to require providers of post-16 education and training to charge fees, make awards and recovers sums of money against specified criteria. The conditions set by the CETW can relate to provision made by providers with respect to people with disabilities.

80. **Section 36** provides for the CETW to have the same role in respect of funding of school sixth form provision in Wales as the LSC will have in England (see section 7).
81. **Section 37** provides for the CETW to assess the quality of the provision it funds, and to take judgements about quality into account in deciding which providers it continues to fund. The intention is that the CETW secures value for money, and that learners are offered provision of a high quality. Findings from the Inspectorate, Estyn, will inform these judgements, but this input will not provide regular, comprehensive information on all providers. Therefore, it is intended that the CETW will take steps to investigate on its own behalf the quality of provision it funds, through for example, visiting providers, putting arrangements in place for investigating complaints and acting on those which are well-founded, and having clear published performance indicators and benchmarks against which to measure the quality of provision. The CETW may also draw up a list of accredited provision which meets certain quality thresholds, and cease to fund provision which does not.
82. **Section 38** provides for the role of the CETW in relation to Individual Learning Accounts (see also sections 104 to 109). The CETW is given the power to be involved in the promotion of Individual Learning Accounts and to be involved in the administration of qualifying arrangements under section 105. It is also given power to enter into arrangements with the National Assembly to make grants, to specify the kinds of learning provision which qualify for the grants and to approve providers to make them eligible to offer learning provision which qualifies.
83. **Section 39** provides a power for the CETW to appoint up to two additional governors to the governing body of an institution in the FE sector which mainly serves the population of Wales. It may wish to use this power, for example, where it considers there might be mismanagement or potential mismanagement by the governing body, or where there are signs that the educational provision at the institution is failing.

Sections 40 to 44: the CETW's other functions

84. **Section 40** sets out the role of the CETW in relation to information provision and research. The CETW has a power to carry out research and to provide the National Assembly with information regarding any of its functions as it sees fit. The section also gives the CETW two duties - to provide the National Assembly with information or advice on request, and to establish systems for collecting information to help inform the quality of its decisions about post-16 education and training.
85. The section also gives the CETW a power to secure the provision of facilities for providing information, advice and guidance about education, training and connected matters, including employment.
86. **Section 41** requires the CETW to pay particular regard to the needs of people with learning difficulties when performing its duties to secure facilities for education and training under sections 31 and 32, when providing resources for education and training under section 34(1)(a) to (d), and when exercising its power to secure facilities for work experience under section 34(1)(g). In particular, the CETW must have regard to a report of an assessment of a person's needs made under section 140. Learning difficulties are defined at section 41(5). This definition is derived from provisions for further education in section 4 of the Further and Higher Education Act 1992 which is repealed by this Act.
87. **Section 41** also describes the CETW's main responsibilities regarding the funding of boarding accommodation for those with learning difficulties. For those between the ages of 16 and 19, the CETW must provide boarding accommodation where it is satisfied that it cannot make arrangements for an individual which are sufficient in quantity and adequate in quality unless it also secures boarding accommodation. For those between the ages of 19 and 25, the LSC must provide boarding accommodation where it is satisfied that it cannot secure the provision of reasonable facilities for individuals unless it also secures boarding accommodation. For those over the age of

25, the CETW has a power to make such arrangements if it is satisfied that without it, provision for an individual learner would not otherwise be reasonable. Those provisions should be read alongside the CETW's main duties at clauses 31 and 32.

88. **Section 42** requires the CETW to have due regard to the need to promote equality of opportunity between people from different racial groups, between men and women, and between people with a disability and people without. It must make an annual report on what arrangements for this it has made during the year, how effective they were and its plans for the following year. It must send a copy of the report to the National Assembly.
89. **Sections 43 and 44** set out the planning the CETW is required to undertake. Two separate types of plan will be prepared: an annual business plan and a three-year rolling strategic (corporate) plan. Its annual business plan must include any measures the CETW intends to take to meet objectives the National Assembly may set, and its financial plans for the year. The CETW's three-year plan will set out its strategy for the future development of activities and provision funded by the CETW. This will include its strategy for workforce development. The National Assembly must approve any plans it receives or require the CETW to make specified alterations to them. The CETW is under a duty to make the alterations required. The Council must publish the plans as approved or modified at such time and in such manner as the National Assembly thinks fit. The CETW may also make and publish such other plans as it thinks fit, but these must not conflict with the plans approved by the National Assembly.
90. **Section 45** provides for the CETW to have regard to any information received from a body designated by the National Assembly. This might include, for instance, Awdurdod Cymhwysterau, Cwricwlwm ac Asesu Cymru (ACCAC, the Qualifications and Curriculum Authority for Wales) which holds information on the nature and availability of accredited provision in particular areas and on issues of financial propriety connected with this provision. This information is likely to be relevant to the activities of the CETW.
91. **Section 46** gives the CETW additional general powers which it may exercise to enable it to perform its other functions. The provisions in this section are similar to those in section 18. The CETW may not borrow or lend money, or subscribe for or otherwise acquire shares or securities of a company without the consent of the National Assembly. The section also enables the National Assembly to confer, by order, additional functions relevant to education or training in Wales on the CETW.

Sections 47 to 51 and Schedule 5: miscellaneous

92. **Section 47** gives the National Assembly a general power to give directions to the CETW, with which the CETW has a duty to comply. Directions may not relate to the funding of activities carried on by individuals or individual bodies. The National Assembly currently has a similar power to give directions to the FEFCW (see section 56 of the Further and Higher Education Act 1992). The National Assembly will be able to intervene if it considers that the CETW has failed to discharge a statutory duty or has acted or is proposing to act unreasonably in the exercise of its functions.
93. **Section 48** introduces **Schedule 5** which enables the CETW to establish a regional committee for each region of Wales and such other committees as it thinks fit. These provisions differ from the approach in England where the LSC is under a duty to establish local learning and skills councils. Unlike the provisions relating to local learning and skills councils in England there are no provisions for guidance, planning and consultation specified in the Schedule for regional committees in Wales. If the CETW exercises its power to establish regional committees Schedule 5 provides only that a regional committee must perform with regard to its area such of the Council's functions as the Council specifies subject to the approval of the National Assembly or must advise the Council on matters relevant to education and training in its area which the Council specifies. Schedule 5 also contains general provisions about the membership and administration of committees of the CETW.

94. **Sections 49 to 51** relate to financial and reporting matters. **Section 49** gives the National Assembly the power to fund the CETW by making grants, which may be subject to conditions including conditions on the funding of others by the CETW. Those conditions may not relate to the funding of activities carried on by particular individuals or of individual bodies. **Section 50** requires the CETW to report annually on its activities to the National Assembly. The report will include a financial report. **Section 51** defines the CETW's financial year.

Part III - Inspections in England

Chapter I: Sections 52 to 59 and Schedule 6: the Adult Learning Inspectorate

95. **Section 52 and Schedule 6** provide for the establishment of the new Non-Departmental Public Body - the Adult Learning Inspectorate (ALI). ALI will have nine members appointed by the Secretary of State. The Secretary of State will appoint one member as chairman and another as chief officer, and the latter will be known as the Chief Inspector of Adult Learning. The Chairman and the Chief Inspector of Adult Learning cannot be the same person. This section also allows the Secretary of State to make grants to the ALI with such conditions as he sees fit.
96. **Schedule 6** makes provision about members and staff of the Inspectorate and about administrative matters, including salaries, pensions and accounts. It permits the Secretary of State to remove any member from office on the grounds of persistent non-attendance, inability or unfitness for office. The Inspectorate is permitted to set up committees and to delegate functions to the Chairman, the chief officer or to committees. Committees may include persons who are not members of the Inspectorate. The Schedule also sets out provisions as to members' interests and their conduct if a conflict of interest should arise. The Inspectorate will not be an agent of the Crown and its staff will not be civil servants.
97. **Section 53** sets out the Inspectorate's remit to inspect further education for people aged 19 and over funded by the LSC or an LEA; training provided wholly or partly on employers' premises for people aged over 16, which is wholly or partly funded by the LSC; and training funded (through the Employment Service) under the Employment and Training Act 1973. There is a regulation-making power to enable other education and training to be prescribed as being within the remit. The regulations may bring training of and for further education teachers and lecturers within ALI's remit.
98. **Section 54** places a duty upon the Inspectorate to keep the Secretary of State informed about the quality, standards and value for money of the provision of education and training which are within its remit. It also places a duty upon the Chief Inspector of Adult Learning to conduct inspections both at intervals and on the request of the Secretary of State. The Secretary of State may specify other functions for the Chief Inspector or the Inspectorate in connection with their remit and both the Chief Inspector and the Inspectorate are required to have regard to specified aspects of Government policy.
99. **Section 55** provides that where an inspection is required by the Secretary of State, the Chief Inspector of Adult Learning must make a written report to the Secretary of State where requested to do so. The report must state whether the quality of provision is adequate to meet the reasonable needs of those receiving it. The Chief Inspector must send copies of any such inspection report to various listed parties and make arrangements for publication.
100. **Section 56** confers on the Inspectorate powers to give advice to the Secretary of State and to inspect and make reports upon provision within its remit. It also provides the Inspectorate with a power to inspect other training on request, for instance, that which is funded wholly by an employer. In such circumstances, the Inspectorate may charge for the cost of an inspection.

101. **Section 57** provides that the Chief Inspector will have a reasonable right of access to the premises of the providers being inspected, including access to electronic information held on computers. This right will, in general, be exercised by inspectors fulfilling the functions of the Chief Inspector, as a result of paragraph 5 of Schedule 1 to the School Inspections Act 1996. The inspectors will also be able to take copies of any records and documents relating to the education and training provision being inspected. Obstruction of an inspector in these circumstances will be an offence, and anyone found guilty is liable to a fine up to a maximum of level 4 on the standard scale, which is currently £2,500.
102. **Section 58** requires a provider of education or training to prepare an action plan following the publication of an inspection report, indicating the actions, and the timing of the actions, he proposes in the light of the findings within the report. There is a regulation-making power to govern publication and dissemination of the plans.
103. **Section 59** imposes a duty on the Inspectorate to produce an annual report on its activities which the Secretary of State must lay before Parliament. It also permits the Inspectorate to make reports on education or training within its remit at other times.

Chapter II: Her Majesty's Chief Inspector of Schools in England

104. **Sections 60 and 61** extend the existing powers and functions of HMCI to enable him to inspect, advise and report on education in the FE sector for pupils of compulsory school age; further education provided in the FE sector for those aged 16 and over but under 19 which is funded by the LSC; and further education provided by LEAs for persons under the age of 19. There is a regulation-making power to enable other educational provision to be prescribed as within the remit.
105. **Section 62** provides a duty on HMCI to secure the inspection of institutions within the FE sector, except where the education provided at the institution is solely within the remit of ALI, at such intervals as may be specified by the Secretary of State. There are provisions for publication of the reports of these inspections which are analogous to those applying to ALI (see section 55).
106. **Sections 65 to 67** make provision for area inspections. The Secretary of State will have a power to direct HMCI to conduct an inspection in a specified area of England and to report on the quality, standards, availability and value for money of all education and training for people aged over 16 but under 19 within that area. Where the LSC or an LEA has provided resources for provision which is being examined in an area inspection, the inspection may extend to include the way in which the LSC or LEA has provided these resources and whether they provide value for money. There is also a power for HMCI to undertake such area inspections on its own initiative. When asked by HMCI, the Chief Inspector of Adult Learning must undertake part of the area inspection and, similarly, must give advice on education and training within his remit. Those conducting area inspections must have regard to the Common Inspection Framework (see section 69). There will be a duty on providers of education and training and any local authority in the area to provide relevant information to the Inspectors when reasonably requested to do so.
107. Under **section 66** there will be a duty on HMCI to prepare and publish a report of an area inspection, and within that report to record the views of ALI which are relevant to its remit.
108. **Section 67** makes provision for the Secretary of State to have a power to require that the LSC and relevant LEAs must produce plans following an area inspection which set out the action they will take in response to a report within a particular time. In writing an action plan, the LSC and any relevant LEA must consult such parties as the Secretary of State requires them to. Action plans must be published by the LSC and LEAs in a manner prescribed by the Secretary of State.

109. **Section 68** provides a general power for HMCI to advise the Secretary of State on issues within the new remit and gives HMCI the power to inspect and report on any education and training within that remit.

Chapter III: the common inspection framework and joint inspections

110. **Sections 69 to 70** make provision for the development of a common inspection framework for the inspection of provision of education and training within the two inspectorates' remits.
111. The framework will be prepared in draft by HMCI and ALI and will comprise a description of the principles and the arrangements by which inspections under this Part of the Act will be conducted. They must publish the draft, and consult the Secretary of State, the LSC and other appropriate persons, providing at least three months for comments.
112. After taking account of responses, HMCI and ALI will revise the draft. If at any time in this process they are unable to agree on any matter, they may refer this to the Secretary of State for advice. In the event of further disagreement, the Secretary of State may direct HMCI and ALI, who will comply with the direction. The framework will be published and brought into effect on such date as the Secretary of State may direct. The first framework will be agreed and published in good time before the full functions of ALI and the new functions of HMCI are brought into effect in April 2001.
113. **Section 71** provides for regulations to be made about joint inspections (institutions where the remit of the two inspectorates overlap), which will be under the direction of HMCI. The regulations may provide for the circumstances in which inspection must or may be carried out; the plan of inspection; and for a single report. There are further provisions for action plans after the publication of an inspection report.
114. **Section 72** gives qualified privilege to reports under this Part. This means that, unless a plaintiff can establish that a comment made in the report was made maliciously, there will be no liability in tort for the contents of the report.

Part IV - Inspections in Wales

Sections 73 to 88

115. **Section 73** provides for Her Majesty's Chief Inspector of Schools in Wales to be renamed Her Majesty's Chief Inspector of Education and Training in Wales (Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru), and for HM Inspectors of Schools in Wales to be renamed Her Majesty's Inspectors of Education and Training in Wales (Arolgwyr Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru).
116. **Section 75** extends the existing remit of Her Majesty's Chief Inspector of Schools in Wales (Estyn) to enable her to inspect post-16 education and training provision funded by the CETW or an LEA, or where the CETW or LEA are contemplating giving the provider financial support. The National Assembly may add other types of education and training to the remit of Estyn by making regulations.
117. **Section 76** sets out the function of the Chief Inspector for Wales to inform the National Assembly of the quality of provision, standards achieved and whether the financial resources made available to providers of education and training are being managed efficiently and in a way which provides value for money. When requested by the National Assembly, the Chief Inspector must arrange for the inspection of provision in her remit, give advice to the National Assembly and report the results of inspections. In relation to this function, the Chief Inspector must have regard to such aspects of the National Assembly's policy as it may specify. The National Assembly also has the power to extend the Chief Inspector's remit.

118. **Section 77** provides that the Chief Inspector for Wales must secure inspections at intervals as may be specified by the National Assembly and must provide a written report on the quality of provision inspected, the standards achieved by those receiving post-16 education and training and whether the financial resources that are available to the provider are managed efficiently. The report must be made available within the period prescribed by the National Assembly and copied to: the National Assembly; the CETW; any local education authority providing funds for the education or training inspected and; the provider of the education or training. In addition, the Chief Inspector may copy the report to any other person she thinks appropriate.
119. **Section 78** provides a general power for the Chief Inspector for Wales to advise the National Assembly on issues within her extended remit. It also empowers the Chief Inspector to inspect and report on any post-16 education and training on her own initiative. Where she does so, she must provide a copy of any report to: the National Assembly; the CETW; any local education authority providing funds for the education or training which was inspected; and the provider of the education or training. Section 78 also enables the Chief Inspector, in response to a request from a provider, to inspect and publish a report on post -16 education and training which is not funded by the Council or by an LEA.
120. **Section 79** provides that the Chief Inspector for Wales will have a reasonable right of access to the premises of the providers being inspected, including access to electronic information held on computers. The Chief Inspector will also be able to take copies of any records and documents relating to the provision being inspected. Obstruction of the Chief Inspector will be an offence, and anyone found guilty is liable to a fine as described in subsection (7).
121. **Section 80** requires a provider of education or training to prepare an action plan following the publication of an inspection report, indicating the actions and the timing of actions the provider proposes in the light of the findings within the report. There is a regulation-making power for the National Assembly to govern publication and dissemination of the plans. Where the inspection is an inspection of provision not funded by the Council or an LEA, but is carried out at the request of a provider, the requirement for an action plan does not apply. If the inspection is an area inspection, section 84 applies.
122. **Section 81** enables the Chief Inspector for Wales, if requested by the National Assembly, to inspect education, training or advisory services provided by the Careers Services companies in Wales.
123. **Section 82** enables the Chief Inspector for Wales, at the request of the Secretary of State or the Adult Learning Inspectorate in England, to inspect and report on education and training provision in Wales made in accordance with arrangements made under section 2 of the Employment and Training Act 1973. This will include, for example, education and training provision made under the New Deal.
124. **Section 83** makes provision for area inspections. The National Assembly has a power to ask the Chief Inspector to conduct an inspection in specified area of Wales. The Chief Inspector also has a power to undertake such inspections on her own initiative. The CETW, any LEA and providers in the area, must give the Chief Inspector relevant information when reasonably requested to do so, and the Chief Inspector has a duty to issue reports on the area inspections made. The area inspection may be extended to consider the manner in which financial resources have been applied by the CETW or an LEA and whether value for money has been attained. The National Assembly may make further provision in relation to the provision of information.
125. **Section 84** empowers the National Assembly to direct the CETW or a local education authority to prepare a written statement of the action it proposes to take in light of an area inspection report published by the Chief Inspector. The statement must set out by when the action proposed is to be taken. In preparing the statement, the CETW or LEA

must consult such persons as the National Assembly may direct. The statement must be published at a specified time and in a specified manner and copied to such persons as are prescribed by the Assembly.

126. **Section 85** provides for the National Assembly to direct the Chief Inspector for Wales to conduct all-Wales surveys or surveys of specified areas in Wales, on matters relating to policy concerned with post-16 education and training, or comparative studies outside Wales. The Chief Inspector will have a power to conduct such surveys without being directed to by the National Assembly.
127. **Section 86** makes provision for the Chief Inspector for Wales to prepare and present an annual report to the National Assembly. It also enables the Chief Inspector to prepare and publish such other reports on post-16 education and training provision as the Chief Inspector considers appropriate.
128. **Section 87** requires the Chief Inspector for Wales to prepare a plan for each financial year and submit the plan to the National Assembly, before the beginning of the financial year to which it relates. The plan must contain estimates of expenditure to secure that the functions of the Chief Inspector are discharged effectively, and estimates of income which may be applied towards meeting the expenses of the Chief Inspector. The plan must also contain proposals for the management of funds made available by the Assembly. Schedule 9 amends section 104 of the Government of Wales Act 1998 to require the National Assembly, before deciding on the funding it will provide to the Chief Inspector in the forthcoming financial year, to take into account her estimates of her funding requirements and expected income for that year.
129. The Chief Inspector's annual plan must be approved by the National Assembly. Once it is approved, the Assembly must also determine the amount of funding it is to provide in accordance with the plan. However, before approval is given the National Assembly may require the Chief Inspector to modify the plan. Once the National Assembly's approval has been given, the Chief Inspector has the power to publish the plan in whatever form she thinks fit.
130. **Section 88** gives the same qualified privilege to reports under Part IV as section 72 gives to reports under Part III.

Part V - Miscellaneous and General

Sections 89 to 91: dissolution of the FEFC for England and the FEFC for Wales

131. **Section 89** provides for the dissolution of the Further Education Funding Council for England (FEFCE). On the day of its dissolution, its assets, rights and liabilities will transfer to the LSC.
132. Some of the assets of the FEFCE are used for its inspection work and they may be required by ALI or OFSTED. **Section 90** therefore provides for transfer schemes by which the Secretary of State may transfer property, rights and liabilities from the FEFCE to himself or to OFSTED or ALI in advance of the dissolution date. All remaining property, rights and liabilities of the FEFCE which are not already transferred by such a scheme will then transfer on the date of dissolution to the LSC by virtue of the provisions of section 89.
133. **Section 91** provides for the dissolution of the Further Education Funding Council for Wales (FEFCW). On dissolution, the FEFCW's assets, rights and liabilities will transfer to the CETW.

Sections 92 and 93: other transfers

134. **Section 92(1)** allows the Secretary of State to make a scheme transferring his property, rights or liabilities to the LSC, OFSTED or ALI. He may transfer property and rights by means of such a scheme at any time, but there is a time limit on the transfer

of his liabilities. Liabilities may only be transferred by this sort of scheme within three years of the date of the dissolution of the FEFCE. The Secretary of State may use schemes under **section 92(1)** to deal with property, rights and liabilities which have been returned to him by Training and Enterprise Councils (TECs), Chambers of Commerce, Training and Enterprise (CCTEs) and the Training Standards Council (TSC) under the contractual terms of their licence agreement with him. **Section 93(1)** enables the National Assembly for Wales to make similar transfer schemes to deal with the property, rights and liabilities which have been returned to it by the four TECs in Wales.

135. The Secretary of State may also make schemes under **section 92(2)** which transfer property rights and liabilities between any of the LSC, OFSTED and ALI. The Secretary of State can thus adjust their property, rights and liabilities in line with their new functions under this Act. The three year time limit applies to any transfer under section 92(2). There is no equivalent to section 92(2) in Wales.
136. **Section 92(3)** allows the Secretary of State to make schemes for the *direct* transfer of property, rights and liabilities from a TEC, a CCTE or the TSC to the LSC, OFSTED or ALI. In this way, it is not necessary for the TEC, CCTE or TSC property, rights or liabilities to be given first to the Secretary of State and then transferred using a scheme under section 92(1). But a scheme under section 92(3) cannot be made unless the transferor (that is, the TEC or CCTE in question or the TSC) consents to it. Again the three year time limit applies to any transfer under section 92(3). **Section 93(2)** makes similar provision for Wales enabling direct transfers from the four TECs in Wales.

Sections 94 to 95: transfers: further provision

137. **Section 94** provides that the transfers made under sections 89 or 91 and the schemes made under sections 90, 92 or 93 do not give rise to liability to stamp duty. Therefore, no stamp duty will be chargeable on transfers arising from the dissolution of the FEFCEs or on a transfer scheme made by the Secretary of State or the National Assembly.
138. The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) will preserve the terms and conditions of employment and associated rights of many of the individuals who will move to the new organisations. **Section 95** will provide similar protection to individuals, such as those in the FEFCE or in TECs, who transfer under the express provisions of the Act or schemes made under this Act to the LSC, ALI or OFSTED, even where TUPE does not strictly apply. This approach is in line with Cabinet Office guidance on transfers in the public sector, which was issued in January 2000. Where rights and liabilities under a contract of employment are transferred by the dissolution of the FEFCEs, or by a transfer scheme made by the Secretary of State or the National Assembly, those rights and liabilities are protected.

Sections 96 to 103: external qualifications

139. **Sections 96 to 103** provide for the approval of external qualifications by the Secretary of State for public funding purposes. An external qualification is a qualification externally awarded or authenticated. (These provisions do not cover courses which lead to more informal certificates or provision which is not certificated in any way - the funding for which will be for the LSC and CETW to determine, together with the DfEE and the National Assembly.) The approvals mechanism and the criteria for approval will be secured administratively by the Secretary of State and the National Assembly or by a body designated by him or it for this purpose - such as the LSC and CETW. Approval can be granted for a particular qualification or particular classes of qualification.
140. **Section 96** provides for the approval of external qualifications for those under the age of 19. The effect will be that where a course leads to an external qualification, relevant institutions can only offer programmes of study relating to, and public funding can only be used for, approved qualifications. This will ensure, for example, that the requirements of the National Curriculum are met. Section 96 replaces sections 400 and

401 of the Education Act 1996 which deal respectively with compulsory school age pupils and those over compulsory school age but under 19. Section 96 also replaces their intended successor provision, section 37(1) of the Education Act 1997 as it would have related to these age groups. Neither section 401 nor section 37(1) have ever been brought into force. As under section 400 of the Education Act 1996, section 96, 101 and 102 allow LEAs and governing bodies to be required to comply.

141. **Section 97** provides for the approval of qualifications for those aged 19 or over. To ensure that the LSC, CETW and other providers can exercise their discretion and make the wider range of provision which is more appropriate to adult learning, this measure does not take the same approach as section 96. Instead, it places a requirement on the LSC, CETW and LEAs to ensure that public funding is only used to make payments for fees and charges in respect of external qualifications which are approved. The requirement for compliance can be enforced, under section 101(1)(c) and 102(2)(c), in respect of LEAs. Section 97 replaces paragraph (a) of Schedule 2 to the Further and Higher Education Act 1992 and its intended successor provision at section 37(1) of the Education Act 1997.
142. The provision for approval of qualifications, and sections 96(4) and 97(3) in particular allow for the development in due course of:
- for all age groups, group awards which recognise achievement in several qualifications or a combination of qualifications and other activity;
 - for those aged 19 or over, a unitised system of external qualifications (in which qualifications are broken down into small discrete blocks each of which is certificated).
143. **Section 103** gives the QCA power to develop tests, prescribed in regulations, aimed at those beyond compulsory school age and extends its powers to include both the setting and administering of tests for these students. The powers will apply whether these are tests in their own right or whether they form part of qualifications offered by awarding bodies. The equivalent body in Wales, ACCAC, will have its powers similarly extended. The section has been introduced to allow, for example, the possibility of the QCA or ACCAC developing and administering the new National Literacy and Numeracy Tests for adults (a recommendation in *Improving literacy and numeracy - a fresh start*, the report of the working group chaired by Sir Claus Moser, February 1999).

Sections 104 to 109: Individual Learning Accounts

144. **Sections 104 to 109** make enabling provision for new ways of giving financial support for education and training. Overall the scheme is known and promoted as “Individual Learning Accounts” (ILAs). The Act however makes separate provision for ‘qualifying accounts’ (section 104) and ‘qualifying arrangements’ (section 105), and thus an ILA may either take the form of qualifying arrangements under section 105 or the form of a qualifying account under section 104. Provision for qualifying arrangements allows for the setting out of the conditions which have to be met for people to qualify for financial assistance. This forms the basis for the initial national implementation of ILAs from September 2000. A dedicated account, similar to a bank account, formed the basis of the proposals for ILAs set out in the Green paper, *The Learning Age* and the White Paper *Learning to Succeed*. However, extensive market research conducted as the policy was developed concluded that an administrative model was preferable for most people to a dedicated bank account model. Nevertheless, provision for ‘qualifying accounts’ allows for the option of developing a dedicated bank account model in the future.
145. A related measure providing tax relief for employees who are holders of ILAs is contained in section 200E to 200J of the Income and Corporation Taxes Act 1988 inserted by section 58 of the Finance Act 2000. The Finance Act ensures that employees are to be exempt from tax on any employer contributions made to learning activity by employees which is eligible for ILA incentives either on the basis that the employee

is a party to qualifying arrangements or on the basis that the employee is the holder of a qualifying account.

146. **Section 104** gives details of the conditions to be specified by the Secretary of State in regulations which will have to be met for an account to be a qualifying account. These conditions may relate to:
- the name by which qualifying accounts may be known;
 - the types of individuals who may hold an account;
 - the institutions with which an account may be held;
 - the type of account and how it is held (e.g. to exclude joint accounts);
 - an individual not being allowed simultaneously to hold more than one qualifying account.
147. Regulations as to institutions with which an account can be held may themselves set out the description of institutions or may allow the Secretary of State to specify the institutions. Regulations may also require that institutions with which an account may be held be approved by the Secretary of State.
148. **Section 104** extends to England, Wales, Scotland and Northern Ireland because it is concerned with financial services which are reserved matters under the devolution settlements (see section 155(1)). Section 104 also makes provision for its regulation-making powers to be exercised directly by the Scottish Ministers for learning accounts in respect of Scotland. The Government intends the Scottish Ministers to have these powers as they will be responsible for all other ILA legislation. Making provision directly in this Act accelerates a process which would in normal circumstances (via an executive devolution order under section 63 of the Scotland Act 1998) take at least six months. This will allow ILAs to be made available to the same timetable across the UK.
149. **Section 105** provides for qualifying arrangements which will allow individuals simply to register with a central provider in order to qualify for financial assistance. Under this model, ILAs will be similar to a membership scheme offering account holders access to discounts on learning and information on the different courses available. By registering with the central provider, an individual will be able to claim these benefits. In this way, it is up to individuals themselves how they pay for their element of the cost of learning.
150. The section gives details of the conditions to be specified by the Secretary of State (in regulations) which will have to be met for arrangements to qualify. These conditions may relate to:
- the types of individual who may enter into qualifying arrangements;
 - the bodies with which arrangements can be made;
 - the nature of the arrangements;
 - arrangements to ensure that people are not simultaneously party to qualifying arrangements in more than one part of the UK. This will help control the distribution of the incentives linked to ILAs.
151. The section also allows the regulations themselves to describe the bodies with which qualifying arrangements can be made, or for the Secretary of State to specify the bodies. Regulations may also require that bodies with which a person can be a party to qualifying arrangements are approved by the Secretary of State.
152. **Section 105** covers England and Wales only. Scottish Ministers have prepared their own legislation (the Education and Training (Scotland) Act 2000) for all elements of the ILA provisions, except section 104.

153. **Section 106** secures provision for qualifying arrangements in respect of ILAs for Northern Ireland. Under the devolution settlement, the Northern Ireland Assembly would normally prepare its own legislation for qualifying arrangements, just as the Scottish Ministers have done. Making provision for Northern Ireland directly in the Act ensures that ILAs can be made available to the same timetable across the UK. Subsections (5) and (6) of section 107 and section 109 make provision for Northern Ireland for the same reason.
154. **Section 107** gives the Secretary of State, or a person designated by him, the power to enter into arrangements with a body which itself is a party to qualifying arrangements under section 105. This body, the central provider, will supply the administrative support for the national system of ILAs. The section enables the Secretary of State to make payments to the central provider. It also allows the Secretary of State to make arrangements for other bodies, which — under the provisions of section 10 — could include the LSC, to manage the contract with the central provider on the Secretary of State's behalf. In Wales, such arrangements will be made by the National Assembly for Wales. In Northern Ireland, they will be made by the Department of Higher and Further Education, Training and Employment.
155. **Section 108** covers England and Wales only. The section sets out the regulation-making powers of the Secretary of State (or, in Wales, the National Assembly by virtue of section 150) to authorise grants for the training and education of individuals who are: party to qualifying arrangements, hold qualifying accounts or who are both party to qualifying arrangements and hold qualifying accounts. Regulations can provide that grants can be paid to persons providing education and training, and it is envisaged that, relying on this power, grants will be paid to the provider who will then deliver discounts on the cost of eligible learning activities. Regulations may provide for conditions to be satisfied for discounts to be paid. These conditions may relate to:
- the types of learning activity;
 - the individual's employment status or whether the individual is in receipt of certain types of benefits;
 - the way in which qualifying arrangements are carried out.
156. The conditions relating to the types of learning activity which may qualify for grants may include a condition that it be of a type specified or offered by providers approved by either the Secretary of State or the National Assembly, or a body designated by him or by the National Assembly.
157. Regulations may also provide:
- that the amount of grant to be available for particular types of learning activity and that the conditions attached to the grant may be determined by the Secretary of State or the National Assembly;
 - that another body may pay these grants on behalf of the Secretary of State or the National Assembly.
158. **Section 109** makes equivalent provision (to that in section 108 for England and Wales) for regulations to set out grant-making powers in respect of learning accounts for Northern Ireland.

Sections 110 to 113: sixth-form education

159. **Section 110** makes two changes to the definition of secondary education in section 2 of the Education Act 1996. The first change (in new subsection (2A)) extends the definition of "secondary education" so as to include full-time education provided at an LEA-maintained institution where the institution is principally concerned with the provision of full-time education suitable to the requirement of persons over compulsory

school age and under the age of 19. The second change (in new subsection (2B)) clarifies the position where a person in full-time education is receiving his education partly at the school and partly at another institution under arrangements made by the school.

160. As a result of the first change, a secondary school may be either:
- an institution for providing the type of education currently set out in section 2(2) of the Education Act 1996, as before; or
 - an institution providing full-time education suitable for 16 to 18 year olds, without pupils of compulsory school age.
161. Consequently, LEAs may establish and maintain secondary schools that provide full-time education for 16 to 19 year olds without providing education for children of compulsory school age - as they could prior to April 1993. With the coming into force of provisions in the Further and Higher Education Act 1992, those schools were moved into the further education sector through incorporation or designation and the powers of LEAs amended to remove their ability to establish and maintain such schools.
162. **Section 110(3)** provides, however, that any existing institutions providing only full-time education for 16 to 19 year olds which would become schools when subsection (1) comes into force are not to be treated as schools unless they are properly established as schools under section 28 or 31 of the School Standards and Framework Act 1998 (which involves the publication of statutory proposals. From the coming into force of subsections (4) and (5), which will be at a later date than the commencement of the remainder of this section, the LEA will not have the power to continue to maintain any existing institutions for 16 to 19 year olds which are not properly established maintained schools in the categories defined by the Schools Standards and Framework Act 1998.
163. With the second change, this section also provides for the definition of secondary education in the Education Act 1996 to be extended to include provision made under collaborative arrangements between schools and FE or HE institutions. The current definition may prevent the development of such collaboration by stipulating that secondary education for those over compulsory school age is necessarily made “at a” school. **Section 142** provides for FE and HE corporations to be able to provide secondary education under such collaborative arrangements and requires them to consult relevant LEAs before doing so.
164. Section 16 of the Further and Higher Education Act 1992 allows the Secretary of State or the National Assembly to incorporate into the FE sector LEA-maintained 16 to 19 institutions. Section 51 of that Act provides for publication of proposals for incorporation and drafts of orders incorporating institutions. **Section 111** simplifies the powers in section 16, removes obsolete material and amends section 51 of the 1992 Act so that the LSC or the CETW cannot publish proposals to incorporate an institution maintained by an LEA nor can the Secretary of State or the National Assembly publish a draft order incorporating such an institution without the consent of the LEA and the governing body. However by virtue of section 110(5) this restriction does not apply if the institution has not been properly established as a school.
165. Section 28 of the Further and Higher Education Act 1992 allows the Secretary of State or the National Assembly to designate voluntary-aided schools so that they become institutions in the FE sector. **Section 112** amends section 28 of the 1992 Act so that the Secretary of State or the National Assembly may only designate voluntary-aided schools for 16 to 19 year olds with the consent of the governing body and the LEA.
166. **Section 113** introduces **Schedule 7** which is about inadequate sixth forms. (The Schedule is discussed at paragraphs 219 to 232 below.) Section 113 also provides for the Secretary of State’s and the National Assembly’s powers of intervention (in sections 496 and 497 of the Education Act 1996) to apply in respect of the powers and duties which Schedule 7 secures for local education authorities, school organisation committees and schools’ governing bodies.

Sections 114 to 122: support for 13 to 19 year olds

167. These sections create a framework which will allow the establishment in England of the Connexions Service, a comprehensive new service to support and encourage young people to continue in, return to and participate effectively in education and training. The Connexions Service will be established by bringing together a range of providers of existing services for young people at the local level to create an integrated and coherent service to provide information, advice and guidance. It is intended that the Service will be delivered through Connexions Partnerships, based on the same areas as those covered by local Learning and Skills Councils, who will be responsible for strategic planning and funding, and Local Management Committees, who will be responsible for local delivery.
168. The Connexions Service is intended to be a universal service for all young people aged 13 to 19, but it will give particular attention to young people who are disengaged or at risk of becoming disengaged from education or training. The Connexions Service will also perform for this age group the duty of the Secretary of State to provide careers services to school and college students set out in section 8 and 9 of the Employment and Training Act 1973.
169. These sections give effect to proposals set out in the *Learning to Succeed* White Paper (Cm 4392) (June 1999) and the Social Exclusion Unit's *Bridging the Gap* report (Cm 4405) (July 1999).
170. **Section 114** gives the Secretary of State a new power to secure the provision of support for all 13 to 19 year olds for the purpose of encouraging and enabling young people to stay on and participate effectively in education or training. He may do this by directing LEAs to provide services, or by making arrangements with a range of statutory or non-statutory bodies (including local authorities). The section gives the Secretary of State a broad power to fund any of those bodies. The new service provided under these arrangements will be the Connexions Service. It is intended that the Connexions Service will develop a network of professional personal advisers to help young people gain the greatest personal benefit from education and training. The section is broad enough to provide for the service to address both the direct and indirect factors which affect young people's effective participation in learning. The Secretary of State intends to use these new powers to integrate and build on the existing range of services currently provided at the local level by careers service companies, youth service and other statutory and voluntary services for young people.
171. **Section 115** places the Secretary of State under a duty to consult the persons and bodies listed in subsection (1) and any voluntary sector and other bodies as he thinks appropriate (e.g. non-maintained special schools) before he makes arrangements for the provision of services for young people in a local area. The statutory persons and bodies consulted will be under a duty to collaborate with the Secretary of State and with Connexions Service providers to support and assist the provision of services in their area. They must also co-ordinate their own activities with the provision of the Connexions Service. Such duties will not require those persons or bodies to take action which would significantly interfere with the efficient or effective exercise of their own functions.
172. LEAs will play a major role in the provision of the Connexions Service. **Section 116** gives them the necessary powers to do so. They must comply with directions to provide or secure services and have a power to make more extensive provision or provision other than that agreed in arrangements made or directions given under section 114 and to make provision outside their area.
173. **Section 117**, together with **sections 119 and 120**, will give effect to a specific proposal in the *Learning to Succeed* White Paper and the Social Exclusion Unit's *Bridging the Gap* Report. The Report recommended (at paragraph 10.5):

“the development of a comprehensive record system, which ensures that no young person becomes ‘missing’ and prompt action is taken if they cease to be involved in education or training.

Section 117 sets out the duties on maintained schools and LSC funded providers to provide relevant information. Information, other than the name and address of any pupil or student and a parent of any pupil or student, cannot be provided if the young person (or in the case of an under-16 year old, their parent) has instructed the institution not to disclose that information. These institutions must also give youth service providers reasonable access to pupils and students. The records compiled from the information provided under this section, together with that obtained under sections 119 and 120, will help ensure continuity of service for young people who move to another area. Access to personal data held in the national register would be strictly controlled, in compliance with the data protection regime.

174. **Section 118** and **section 122** introduce provision for the inspection of the Connexions Service. These sections place a duty on OFSTED to inspect and provide advice on the Connexions Service, as requested by the Secretary of State. In addition, OFSTED has an independent power to inspect service providers and to advise the Secretary of State on the Connexions Service. Inspections may be general or in relation to specific matters; they may relate to a single provider or type of provider working within the Connexions Service; they may relate to a specific geographic area; and they may cover the management of resources.
175. These sections also give OFSTED, when carrying out inspections, the necessary right of access to the premises and records of Connexions Service providers and make it a criminal offence for anyone wilfully to obstruct an inspection. The sections also provide OFSTED with the power to report on and publish their findings.
176. **Section 119** enables the Secretary of State to supply information to any person for the purposes of the provision of the Connexions Service. Specifically, it also enables disclosure of social security information. In order to identify 13-19 year olds, it may be necessary to use information held by the Secretary of State for Social Security (for example, the Child Benefit database). In this way the Connexions Service can have accurate and comprehensive records. Only a child’s name, date of birth and address and the name (and address, if different) of his or her parent or guardian will be disclosed - and only to civil servants or persons working for the Connexions Service. Anyone who misuses this information is liable to prosecution and if found guilty, would be subject to a fine up to a maximum of level 4 on the standard scale, which is currently £2,500.
177. **Section 120** will empower those persons and bodies listed in subsection (2) to supply relevant information about young people to the Secretary of State or to persons providing the new service under **section 114**, for the purposes of that service.

Sections 123 to 129: youth provision in Wales

178. **Section 123** will give the National Assembly new powers to direct a local authority in Wales to provide youth support services for all 11 to 25 year olds; to secure the provision of youth support services from others; and to participate in the provision of youth support services with others. This section defines “youth support services” as services which, in the opinion of the National Assembly, encourage, enable or assist young people to stay on and participate in education or training; to take advantage of employment opportunities; or to participate effectively and responsibly in the life of their communities. A direction to a local authority may include provision for financial assistance, whether or not on conditions, and a local authority may be required to take account of any guidance issued by the National Assembly. A direction may also require a local authority to take account of any guidelines issued by the National Assembly. A direction may relate to a particular class of young people; may make different provision for particular groups within the age range 11 to 25 years and can be revoked or changed

by a later direction from the National Assembly. The section is broad enough to provide for the services to address both the direct or indirect factors which affect young people's effective participation in learning, their take-up of opportunities for work, and their positive contribution to the life of the communities. The National Assembly intends to use these new powers to add impetus to its Strategy for Children and Young People, and other targeted youth strategies, while building on the existing range of services for young people currently provided by local authorities, other statutory bodies and voluntary sector bodies.

179. Local authorities will have a major role in the provision of youth support services in Wales. **Section 124** gives them the necessary duties and powers to do so. They must comply with directions to provide, secure or participate in youth support services and have a power to make more extensive provision, or provision other than that made in response to directions under section 123, and to make provision outside of their area. Local authorities will be expected to co-operate with voluntary organisations.
180. **Section 125** provides that, before complying with a direction, a local authority must consult the persons or bodies listed in subsection (1). These persons or bodies must collaborate with the local authority so as to support and assist the services provided, secured or proposed, and co-ordinate their activities with other providers of youth support services. Such duties will not require these bodies to take action which would significantly interfere with the efficient or effective exercise of their own functions. Section 125 also places a local authority under a duty to consult any voluntary body, the CETW, careers services companies, organisations established for the purpose of enabling voluntary bodies to co-operate and co-ordinate their activities, anyone the local authority thinks appropriate and young people themselves.
181. **Section 126** sets out the duties on maintained schools, institutions in receipt of CETW funding and other educational institutions to provide information to youth support service providers. Information, other than the name and address of any pupil or student and a parent of any pupil or student, cannot be provided if the young person (or in the case of an under-16 year old, his or her parent) has instructed the institution not to disclose that information. These institutions must also give youth support services providers reasonable access to pupils and students.
182. **Sections 127 and 128** set out the inspection arrangements for the youth support services. **Section 127** provides for Her Majesty's Chief Inspector of Schools in Wales to advise the National Assembly on youth support services and, when requested by the National Assembly, to inspect and report on the provision of such services. **Section 128** provides that the Chief Inspector will have a reasonable right of access to the premises of the providers being inspected, including access to information held on computers. Where the Chief Inspector publishes an inspection report, the service provider is required to prepare and publish an action plan setting out what is to be done and by when. The National Assembly has powers governing the publication and dissemination of such plans. Where a local authority is involved in the provision of an inspected service which has led to an adverse report by the Chief Inspector, it has a duty to ensure that the action proposed in the plan is sufficient to remedy the weaknesses identified and is taken within the time specified. Should the National Assembly consider that a local authority is failing to perform this duty, it may give directions to a local authority which must comply with them.
183. **Section 129** defines the meaning of various terms used in sections 123 to 128 and clarifies that the powers set out in section 123 apply to Wales only.

Sections 130 to 133: city colleges and academies

184. Section 482 of the Education Act 1996 enables the Secretary of State to fund city technology colleges (CTCs) and city colleges for the technology of the arts (CCTAs) in consideration of certain undertakings on the part of the promoters. These are independent schools situated in urban areas which provide secondary education for

pupils of different abilities and have a broad curriculum with an emphasis on science or technology (CTCs) or technology in its application to the performing and creative arts (CCTAs). CTCs and CCTAs do not charge fees and are funded by central Government.

185. **Section 130** amends section 482 of the Education Act 1996 to enable the Secretary of State to fund a new type of independent school - city academies. Like CTCs and CCTAs, city academies will be independent schools in urban areas providing secondary education for pupils of different abilities, will not be fee paying and will be funded by central Government. City academies will have a wider range of curriculum specialisms than CTCs and CCTAs. The additional specialisms are:
- modern foreign languages;
 - visual arts, performing arts or media arts (or any combination of them);
 - sport;
 - further specialisms which may be added by means of a statutory instrument subject to negative resolution.
186. The Section also requires the Secretary of State, before he enters into an agreement to fund a city academy, to consult affected LEAs about the establishment of the city academy.
187. **Section 131** introduces Schedule 8. The Schedule makes provision about land in relation to city academies. The Schedule, among other things:
- provides that the Secretary of State may make a scheme to transfer land and buildings formerly used for a community school to the promoters of a city academy at no cost;
 - requires LEAs to obtain the consent of the Secretary of State before disposing of land formerly used for a community school (but no such consent is required if the land is transferred to the promoters of a city academy at no cost);
 - provides that where such land is disposed of without the Secretary of State's consent, the Secretary of State may compulsorily purchase the land and transfer it to the promoters of the city academy;
 - provides that the Secretary of State may make a scheme to transfer land back to the LEA from a city academy at no cost should the school cease to be a city academy or cease to occupy the land as a city academy;
 - specifies that certain existing legislation which will not apply to disposals for the purpose of a city academy and provides for the Secretary of State to make regulations to address technical and practical matters arising out of such land transfers.
188. **Section 132** confers a power on the Secretary of State to make an order which applies section 483(3) of the Education Act 1996 to city academies with any modifications specified in the order. Section 483(3) is concerned with the method of determining the sum relating to capital expenditure repayable by a CTC or CCTA under its funding agreement where the school discontinues or ceases to have the characteristics which made it a CTC or CCTA. The special provisions in Schedule 8 make section 483(3) potentially inappropriate for determining what a city academy should repay in respect of capital assets.
189. **Section 133** makes provision in relation to children with statements of special educational needs (SEN) and their education at CTCs, CCTAs and city academies. It ensures that LEAs have the necessary powers to provide for the needs of pupils with SEN statements where those pupils attend CTCs, CCTAs and city academies. There has been concern that the provisions of the 1996 Education Act did not allow LEAs to

make payments to those categories of schools in respect of pupils with SEN statements. This is important since the cost of making the provision detailed in pupils' statements can be considerable.

190. **Section 133** therefore allows the Secretary of State to make regulations to provide for the securing of arrangements for the educational and non-educational needs of children with statements. The regulations may, in particular, require or authorise LEAs to make payments or provide other assistance to CTCs, CCTAs and city academies in respect of such children.

Sections 134 to 136: pensions

191. **Sections 134 and 135** allow arrangements to be made to deal with pensioners and deferred pensioners of the TEC National Pension Scheme and other TEC salary related occupational pension schemes. They will enable the rights and obligations of pensioners and deferred pensioners under TEC schemes to be transferred, with the consent of the trustees of those schemes, to a new scheme or schemes within the Principal Civil Service Pension Scheme made under Section 1 of the Superannuation Act 1972.
192. **Section 136** permits the Minister for the Civil Service to contract out the administration of pensions of the LSC and any scheme set up under these new provisions.

Section 137: powers of LEAs in connection with FE provision

193. **Section 137** amends section 508 of the Education Act 1996 in line with the changes (at paragraphs 52 to 55 of Schedule 9 to this Act) to the duties of LEAs in respect of FE provision. LEAs will no longer be under a duty to provide FE but will have a power to do so in connection with local LSC plans. As a consequence, the corresponding duty on LEAs to provide services ancillary to their FE provision is amended to become a power.

Subsection 138: provision of information in Wales

194. **Section 138** enables the public bodies listed to provide information about a young person to a local authority or any other person or body involved in the provision of youth support services in Wales under sections 123 to 129.

Section 139: extension of statutory induction for school teachers to FE institutions

195. Section 19 of the Teaching and Higher Education Act 1998 enables the Secretary of State and National Assembly to make regulations requiring persons employed as newly qualified teachers at a maintained school or a special school (whether or not maintained) to complete satisfactorily an induction period of not less than three school terms at such a or, in such circumstances as may be prescribed, an independent school. This provision does not allow induction at FE institutions, including sixth form colleges. Section 19, as amended, gives the Secretary of State and the National Assembly power to make regulations setting out the circumstances in which FE institutions to offer induction if they can give teachers experience comparable to that in maintained schools. The National Assembly has not yet made any regulations in respect of induction for newly qualified teachers. Section 139 of this Act also applies sections 496 and 497 of the Education Act 1996 (power of the Secretary of State to prevent unreasonable exercise of functions etc.) to institutions offering induction (other than independent schools) and to the "appropriate bodies" which decide whether teachers have successfully completed induction.

Section 140: transition from school to post-16 learning of young people with special educational needs

196. **Section 140** places a duty on the Secretary of State (and the National Assembly) to make arrangements for an assessment of people under the age of 19 who have SEN statements drawn up by the LEA and where he believes that they are likely to

leave school to continue with post-16 education or training or enter higher education. This assessment must be made during the final year of compulsory education and will set out a person's learning needs and the provision required to meet them. The Education (Special Educational Needs) Regulations 1994 (SI 1994/1047) which set out the procedures for carrying out transitional reviews of pupils with SEN statements will be amended to enable the Secretary of State's representative to participate in these reviews and to assist in the identification of these young people.

197. This section also gives a power to the Secretary of State (and the National Assembly) to conduct an assessment of any young person who is under the age of 25 where it appears that they may have learning difficulties and where they are undertaking, or the Secretary of State is satisfied that they are likely to undertake, post-16 education or training, or to enter higher education. (A "person with learning difficulties" is defined at section 13 of this Act.) This is to enable assessments to be made where young people continuing in post-16 education or training develop learning difficulties shortly before or after leaving school and thus do not have an SEN statement. The power applies in respect of people up to age 25, to enable assessments to apply for the duration of a course. This also reflects the fact that some young people with learning difficulties may require longer to complete a course or may begin a course later than their peers.
198. This section also places a duty on LEAs to provide a copy of a young person's SEN statement, together with any supporting material, to the Secretary of State or the National Assembly. This will enable the persons he appoints to carry out his functions to conduct the assessment.
199. Under section 13, the LSC has a particular duty to have regard to the contents of these assessments and the needs of the young person assessed when discharging its functions for those under 25 years of age who have learning difficulties. Section 6(3) makes express provision for the LSC to be able to use its powers to fund an institution or provider to impose a condition requiring it to provide for students the learning and support set out in the assessment. There is a corresponding duty and a power for the CETW in sections 41 and 35(3) respectively.

Section 141: training programmes: cessation of funding

200. **Section 141** has three elements. The first element prevents TECs or CCTEs from taking any of the actions to be set out in regulations unless that action has the Secretary of State's written authority. It will also prevent TECs or CCTEs taking such action indirectly through other bodies acting on their behalf. The regulations will cover making payments, incurring expenditure or entering into transactions. The second element allows the Secretary of State, after consultation, to direct a TEC or a CCTE to transfer an asset to him or to a specified body. The third element gives the High Court express authority to make orders either to declare any contract to be void or to vary any contract or to require compensation where the TEC or the CCTE has acted without the consent of the Secretary of State. The National Assembly for Wales will exercise in respect of TECs in Wales those functions which are exercised by the Secretary of State in respect of TECs in England.

Section 142: powers of FE and HE corporations to provide secondary education

201. **Section 142** enables FE corporations to provide secondary "fourth key stage" education and secondary education for 16 to 19 year olds (without, as now, such education having to be in pursuance of arrangements with an LEA or the governing body of a school). HE corporations, which are sometimes significant providers of further education in a particular area, are given the same powers by this section. Before providing such education, an FE or HE corporation must consult such LEAs as it considers appropriate. Although FE corporations already have some powers to provide secondary education, the FEFCs may not fund this provision. The LSC and CETW, however, will be able

to fund this sort of provision (see sections 5(1)(e) and 34(1)(e)) whether by FE or HE corporations.

202. It is envisaged that young people in the following three categories may receive secondary education from an FE or HE corporation. The first, and probably the largest category is of children who are registered at a school and who will undertake some studies at a local FE or HE institution. Usually these pupils will have part of the National Curriculum disapplied, under section 363 of the Education Act 1996, to enable them to spend more time on work-related learning. The second category is young people who are not registered as pupils at a school, perhaps because the child is being educated at home, has been excluded from school or is being educated at the FE or HE institution under arrangements made by the LEA under section 19 of the Education Act 1996. The third category is young people not registered as pupils at a school and who are educated at an FE or HE institution, but not under arrangements made by the LEA. Section 18(1) (aa) of the Further and Higher Education Act 1992 would allow an FE corporation to provide education for pupils in the first two categories, but not the third. That is because it refers to education "to pupils in the fourth key stage". This expression only has meaning in the context of a school, and pupils in the second and third categories above will not be at school.
203. **Section 142** of this Act states that the such secondary education provision is for "persons who would, if they were pupils at a school, be in the fourth key stage". A similar and associated amendment is made at paragraph 30 of Schedule 9 to the Act. As a result section 142, together with the second change of the definition of secondary education in section 110, will allow for greater collaboration between schools and colleges in providing secondary education for 16 to 19 year olds.

Sections 143 and 144: designated institutions

204. Under the statutory regime established by the Further and Higher Education Act 1992 most institutions within the FE sector are governed by an FE corporation. In addition, other institutions may form part of the FE sector if they are designated under section 28 of that Act (as amended by this Act to allow new institutions to be designated). The categories of institution that may be designated include voluntary aided schools. The governing bodies of voluntary aided schools were unincorporated when the institutions were designated and entered the FE sector in 1993, and remained unincorporated after entering. Their position became anomalous after all governing bodies of schools in the maintained sector were incorporated as a result of section 238 of the Education Act 1993.
205. Subsections (4) to (7) of **section 143** provide for the incorporation of the governing bodies of former voluntary aided schools which are in the FE sector and any new ones that may enter the FE sector in future, removing the anomaly. Subsection (2) amends section 30 of the 1992 Act to extend to new designated institutions that may enter the FE sector in future the current provisions which preserve the established character of the institution and provide for the institution's trustees to form a majority of the governing body.
206. **Section 144** requires the trustees of such an institution to inform the LSC or the CETW if they dispose of land held by them which was acquired or enhanced in value wholly or partly by money paid by way of grant under the Education Act 1996 or the School Standards and Framework Act 1998. If the trustees dispose of the land, they must pay to the LSC or the CETW so much of the proceeds as is just. The amount may be determined by agreement with the LSC or the CETW or be determined by the Secretary of State. This provision applies only to institutions designated under section 28 of the 1992 Act after this provision comes into force.

Section 145: FE governors' liability

207. **Section 145** allows a member of a governing body of an FE corporation to apply to the courts to be relieved fully or partially from an actual or potential personal liability if the court finds that the governor has acted honestly and reasonably. The courts will have discretion according to the merits of the individual case. Liability arising from criminal acts cannot be avoided by using this section.

Sections 146 and 147: financial support for students

208. **Sections 146 and 147** amend sections 22, 23, 26 and 28 of the Teaching and Higher Education Act 1998, removing references to FE and HE students "attending" an institution in order to qualify for financial support. This allows the Secretary of State to make provision in regulations for students on open learning courses that do not have attendance requirements to receive financial support. The Secretary of State proposes to make loans and disabled students' allowances available to part-time students on open learning courses in the coming academic year 2000-01.

Section 148: sex education

209. Provisions for the general duties for the delivery of the curriculum are contained in section 351 of the Education Act 1996. Subsection (2) of **section 148** inserts new provisions into section 351 to provide that in exercising any function which may affect the provision of sex education in maintained schools (such as providing training, information or advice to teachers) every local education authority must have regard to the guidance issued by the Secretary of State under section 403(1A) of the Education Act 1996 as amended by this Act but otherwise have no duties in respect of the provision of sex education.
210. Provisions for the delivery of sex education are contained in section 403 of the Education Act 1996 which requires the LEA, the governing body and the head teacher to take such steps as are reasonably practicable to secure that, where sex education is given to pupils in a maintained school, it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life. In accordance with the changes to section 351 of the 1996 Act, section 148 removes from section 403(1) the words "the local education authority".
211. **Section 148** also inserts four new subsections into section 403 of the 1996 Act. The new section 403(1A) places a statutory duty on the Secretary of State (and in Wales, the National Assembly) to issue guidance designed to secure that when sex education is given to registered pupils at maintained schools they
- (a) learn the nature of marriage and its importance for family life and the bringing up of children,
 - (b) are protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned.
- The new section 403(1B) requires governing bodies and head teachers to have regard to the guidance in the discharge of their duties under subsection 403(1) of the Education Act 1996. The new section 403(1C) requires that the guidance must include guidance about any materials NHS bodies, defined in section 22 of the National Health Service Act 1977, produce for the purpose of sex education in schools. The new section 403(1D) states that the Secretary of State may at any time revise the guidance. Finally, the section amends section 404 of the Education Act 1996 so that a school's education policy must include a statement of the right of parents to withdraw their children from sex education.
212. The Secretary of State issued guidance to head teachers, teachers and school governors in England on 7 July 2000 (Ref: DfEE 0116/2000). That guidance is intended to fulfil the requirements of the new subsection 403(1A).

Section 150: Wales

213. Part V of this Act both confers new functions on the Secretary of State and amends existing functions for the provision of education and training and connected purposes. The majority of such provisions so far as they relate to Wales are the responsibility of the National Assembly under the terms of the devolution settlement. **Section 150** accordingly secures that where a function conferred on the Secretary of State by Part V the reference to the Secretary of State should be interpreted as a reference to the National Assembly enabling it to exercise that function in relation to Wales. Where a function is conferred by amendment to another Act and that Act has already been subject to a transfer of functions order devolving the functions of that Act to the National Assembly under the provisions of section 22 of the Government of Wales Act 1998, the earlier transfer of functions shall be regarded as having transferred the new function conferred by the amendment in this Act
214. Subsection (4) sets out exceptions to these arrangements. The references to the Secretary of State in the sections and amendments listed in subsection (4) should not be interpreted also as a reference to the National Assembly because in each case the responsibility for those provisions is not the responsibility of the National Assembly under the terms of the devolution settlement.

Section 151 and Schedule 10: transitional provisions

215. **Section 151** introduces **Schedule 10** which makes transitional provisions. Parts I and II of the Schedule contain provision relating to the period of transition before the LSC and the CETW assume their full functions from April 2001. In that period, the LSC and CETW may be established and operate without the full complement of council members. The intention is that they will be established once the Chairman and Chief Executive are appointed.
216. Parts I and II also provide the framework to facilitate the transition from the FEFCs to the LSC and the CETW. That framework includes a power for the Secretary of State and National Assembly to make an order conferring functions on the LSC or CETW which will support preparations to take on their full functions; and a power to impose a duty on the old Councils to give assistance to the LSC and CETW to carry out their full functions when they acquire them. The old Councils are specifically required do their best to secure that any functions remaining to be discharged are discharged before the LSC and the CETW take on their full functions in 2001 on the dissolution of the old Councils. The LSC and the CETW will take the place of the old Councils in any legal proceedings or any legal agreement. The LSC and CETW must also discharge duties of the old Councils after their dissolution to report on their provision for disabled students and to submit accounts.
217. Part III of Schedule 10 contains a transitional provision relating to the ALI. As with the LSC and CETW, it may become a legal entity once the first two Inspectorate members - namely, the Chairman and Chief Inspector are appointed.
218. Part IV maintain savings provision for student loans made under the Education (Student Loans) Act 1990 which was repealed by the Teaching and Higher Education Act 1998. Some students may still be receiving loans under the terms of the 1990 Act or may be eligible to receive them, perhaps because of earlier delays in their starting their courses or because of breaks in the courses. The eligibility for loans was defined by reference to courses, including in some instances courses at institutions funded by an FEFC. To maintain the savings provisions it is necessary to alter the definition of the institutions since with the dissolution of the FEFCs the institutions will receive funding from the LSC or CETW.

Explanatory Notes in relation to Schedules 1 to 6, 8 and 10 have been incorporated into the commentary on related sections. Commentary on Schedules 7 and 9 is below. There is no commentary on Schedule 11.

Schedule 7: inadequate LEA-maintained sixth form provision

219. The first part of **Schedule 7** gives the LSC and CETW powers to intervene where LEA-maintained sixth form provision, having once been identified as being of inadequate quality, has then failed to make appropriate improvements. The trigger for those powers is the publication of two consecutive adverse reports following inspections. Except in the case of a 16-19 institution, the LSC and CETW will not have powers to intervene where a school requires special measures (because it is failing or likely to fail to give its pupils an acceptable standard of education). In such cases, the provisions of sections 14 to 19 of the School Standards and Framework Act 1998 apply. These include a power for the Secretary of State or the National Assembly to direct an LEA to close a school. An “inadequate sixth form” is defined for this purpose in **paragraph 1(2)** as either failing or likely to fail to give its pupils an acceptable standard of education or having significant weaknesses in one or more areas of its activities for those pupils.
220. **Paragraphs 2 to 7** deal with school sixth forms. **Paragraph 2** places a duty on school inspectors, when stating in an inspection report that a school no longer requires special measures, to state that the school’s sixth form is inadequate where that is their judgement. **Paragraph 3** places a duty on the Chief Inspector, (and, by virtue of paragraph 5 of Schedule 1 to the School Inspections Act 1996, an inspector authorised by him), if during an area inspection under section 65 or 83 he considers that a school has an inadequate sixth form, to make a report on the school. **Paragraph 4(1)(a)** provides for a report made under paragraph 2 to trigger the LSC’s and CETW’s powers of intervention. **Paragraph 4(2)** provides for the LSC’s and CETW’s powers of intervention also to be triggered where two consecutive inspection reports state that the sixth form provision is inadequate. **Paragraph 4(1)(b)** and **paragraph 4(2)(c)** set out that, where a report of an inspection is made by a registered inspector, it will be relevant in this context only if HMCI agrees with the inspector’s judgement that the school requires special measures or the sixth form provision is inadequate.
221. **Paragraph 5** provides for the LSC’s and CETW’s powers to cease to apply where a subsequent report of an inspection states either:
- that the sixth form is no longer inadequate; or
 - that the school requires special measures (and, in the case of a report by a registered inspector, that HMCI agrees with that judgement) - where separate powers under sections 14 to 19 of the Schools Standards and Framework Act 1998 will instead apply.
222. However, the effect of **paragraph 5(3)** is that, where the LSC or CETW has already made proposals in response to the previous report, their proposals will remain in force. The latest report might, however, cause the LSC or CETW to withdraw its proposals or to make fresh proposals to the effect that their original proposals should not be implemented. It might also be a factor influencing the school organisation committee’s or adjudicator’s decision about whether to approve the original proposals.
223. **Paragraph 6** deals with inspection reports which state that a sixth form is inadequate, and with subsequent action. **Paragraph 6(2)** requires an inspector to send a copy of such a report to the Secretary of State or the National Assembly. If the inspector is a member of the Inspectorate, he must also send a copy to the school’s appropriate authority, which is usually the governing body (a similar duty will apply to registered inspectors by virtue of section 16 of the School Inspections Act 1996). **Paragraph 6(3)** requires action consistent with that taken for other school inspection reports:
- the inspector must send copies of the report to the head teacher, HM Chief Inspector, LEA (governing body if the LEA is the school’s appropriate authority), and Diocesan body or other body which appoints foundation governors where appropriate;

*These notes refer to the Learning and Skills Act 2000
(c.21) which received Royal Assent on 28 July 2000*

- the appropriate authority must send copies of the report (or summary if there is one) to parents and make copies available to the public;
 - the appropriate authority must prepare and publish a post-inspection action plan; and
 - where the governing body is the appropriate authority, the LEA must prepare a statement of the support that it will provide for the school.
224. **Paragraph 7** provides for the procedure to be followed for the corroboration by HM Chief Inspector of the judgement of a registered inspector that a sixth form is inadequate.
225. **Paragraphs 8 to 14** make provisions in respect of LEA-maintained 16-19 institutions similar to those of paragraphs 1 to 7:
- **paragraphs 8 to 11** make provision for the circumstances which trigger the LSC's and CETW's powers of intervention;
 - **paragraph 12** makes provision for the circumstances when those powers cease to apply;
 - **paragraph 13** deals with inspection reports which state that a 16-19 institution has serious weaknesses, and with subsequent action; and
 - **paragraph 14** provides for the procedure to be followed for the corroboration by HM Chief Inspector of the judgement of a registered inspector that a 16-19 institution has serious weaknesses.

By virtue of the School Inspections Act 1996, similar requirements to those in paragraphs 13 and 14 will apply where a registered inspector judges that a 16-19 institution requires special measures.

226. **Paragraphs 15 to 45 (Parts II and III of Schedule 7)** provide for the LSC and CETW to have powers, once the triggers set out above take effect, to publish proposals to change the age range of the institution in question so that it no longer provides for pupils aged 16 to 19, or to discontinue a 16-19 institution. The procedures governing the Councils' proposals are broadly those which apply under Part II of and Schedule 6 to the School Standards and Framework Act 1998 in respect of proposals made by LEAs or governing bodies to change the age range of institutions, or to discontinue institutions.
227. Under the proposals framework, the LSC and CETW must, before publishing their proposals, consult as they consider appropriate, having regard to any guidance from the Secretary of State or the National Assembly. After publication, any body or person may make objections to the proposals.
228. In England, the proposals are considered by the school organisation committee for the area, which may approve them with or without modification, or reject them. Each group on the school organisation committee has a single vote, and the voting must be unanimous for a decision to be reached. If the committee is not able to reach a unanimous decision on the proposals, they are passed to the schools adjudicator for decision. Where the school organisation committee has taken no action on proposals by the end of a period to be prescribed in regulations, the proposals must be referred to the schools adjudicator, if the LSC so requests. The decision-makers, in considering proposals, must have regard to any guidance from the Secretary of State and to the school organisation plan for the area.
229. In Wales, the proposals are considered by the National Assembly.
230. If the proposals are approved, there will be a duty upon the school providers to implement them. However, the school organisation committee or adjudicator in England and the National Assembly in Wales may modify proposals in response to a

request from the LSC or CETW, for example, to replace the date of implementation with a later one. The decision-makers may also determine that the proposals should not be implemented where it would be unreasonably difficult or inappropriate to do so, but only if the LSC or CETW publishes further proposals to that effect.

231. Detailed matters, such as the manner of publication of proposals by the LSC and the timing of various stages of the procedures, including the objection period, will be prescribed by regulations. The Secretary of State or the National Assembly for Wales may decide to amend existing regulations about school organisation:
- The Education (School Organisation Proposals) (England) Regulations 1999 (SI 1999/2113);
 - The Education (School Organisation Proposals) (Wales) Regulations 1999 (SI 1999/1671);
 - The Education (Maintained Special Schools) (England) Regulations 1999 (SI 1999/2112); and
 - The Education (Maintained Special Schools) (Wales) Regulations 1999 (SI 1999/1780).
232. Provisions relating to the establishment, composition and functions of school organisation committees in England are set out in section 26 of and Schedule 4 to the School Standards and Framework Act 1998, and in the Education (School Organisation Committees) (England) Regulations 1999. Provisions relating to the appointment and functions of schools adjudicators are set out in section 25 of and Schedule 5 to the same Act.

Schedule 9: Amendments

233. Where provisions in Schedule 9 make straight forward amendments, including amendments consequential on the provisions in the rest of the Act, no commentary is offered.
234. **Paragraph 11** amends section 1 of the Education (Fees and Awards) Act 1983. Section 1 of the Education (Fees and Awards) Act 1983 gives a power to make regulations authorising certain categories of institutions to charge higher fees for overseas students than for home students. Without this authority, an institution which charged higher fees for overseas students than for home students might be in breach of the Race Relations Act 1976. The categories of institutions set out in section 1 of the Education (Fees and Awards) Act 1983 include an institution within the FE sector and an institution which provides further education and which is “substantially dependent for its maintenance on public funds and either is specified in regulations or is of a class or description so specified”. The LSC and the CETW have powers to fund any provider of post-16 education and they may wish to provide such funding subject to a condition that fees charged to home students do not exceed a certain amount but with no conditions on fees charged to overseas students. An institution which receives funding subject to this condition need not necessarily be in the FE sector or be substantially dependent for its maintenance on public funds. Consequently, section 1 of the Education (Fees and Awards) Act 1983 is amended to include any institution which receives funding from the LSC or the CETW which is specified in or is of a class or description specified in regulations. The effect is that any institution which receives funding from the LSC or the CETW subject to the conditions described above will be able to comply with the conditions without any danger of being in breach of the Race Relations Act 1976.
235. This amendment is most likely to be relevant to institutions providing dance and drama courses. Financial assistance is currently given to these institutions directly by the Secretary of State but in the future it is intended that financial assistance for most courses should be given by the LSC and the CETW.

236. At present, the Secretary of State secures work-based training provision via TECs under section 2 of the Employment and Training Act 1973. Under section 26 of the Employment Act 1988, he has powers to ensure that individuals receiving allowances in respect of that training should not be considered employed simply by virtue of those allowances and that those allowances are not to be treated as income for tax purposes or with respect to social security benefits. In the future, the LSC and CETW will be responsible for securing work-based training provision and will have the power to pay allowances to individuals under sections 5(1)(c) and 34(1)(c). **Paragraph 14** allows the Secretary of State to make similar provision to the effect that the individuals concerned are not to be considered as employed simply by virtue of their training allowances.
237. **Paragraph 15** makes provision to bring the description of HE corporations' powers in respect of companies under the Education Reform Act 1988 into line with those of the LSC and CETW under sections 18 and 46 of this Act and those of FE corporations (see paragraph 22).

Amendments to the Further and Higher Education Act 1992

238. **Paragraph 20** repeals sections 1 to 9 of the Further and Higher Education Act 1992 which, together with Schedules 1 and 2 to that Act, refer to the establishment of the FEFCs and their functions.
239. **Paragraphs 36 and 45** provide for section 60A and Schedule 5A (inserted into the 1992 Act by the School Standards and Framework Act 1998) to cease to have effect. These provisions allowed for partnership arrangements in Wales between LEAs and the governing bodies of FE institutions for the purpose of securing secondary education for 16 to 18 year olds. These provisions will no longer be required when section 142 comes into force.
240. **Paragraph 22** amends section 19(4) to enable FE corporations to form companies. The power may not be exercised for the purpose of providing education or of conducting an educational institution: this is the responsibility of the FE corporation.
241. **Paragraphs 23 and 24** amend sections 22 and 29 of the 1992 Act to make provision for the Secretary of State or the National Assembly not only to modify (as now) but to replace or revoke any instrument of government of FE corporations or designated institutions. Provision is also made for the Secretary of State (or the National Assembly) to modify, replace or revoke articles of government for FE corporations. At present he may only direct corporations to carry out modifications to articles and may not modify them himself. This provision will enable the consolidation of colleges' original instruments and articles of government with subsequent modifications.
242. Section 44 of the Further and Higher Education Act 1992 provides that sixth form colleges in the FE sector should provide an act of collective worship at least once each week. At subsection (3), provision is made to ensure that, at institutions of a voluntary origin, this collective worship should comply with any trust deed and reflect the religious traditions and practices of the institution before it entered the sector. Section 45 of the 1992 Act provides similarly for the provision of religious education. **Paragraphs 27 and 28** correct certain technical defects in these provisions. In particular, the amended sections 44 and 45 would apply to any new 16 to 19 institutions that may enter the FE sector in future, by allowing the Secretary of State to designate an institution for the purposes of those sections. The amended sections will also apply to institutions created through the merger of existing institutions which fall within the definitions of the new subsections (2)(a) to (2)(c) of section 44.
243. The LSC and CETW have a duty under sections 2 and 32 of this Act to secure provision to meet the reasonable needs of 16 to 19 year olds, whether full-time or part-time. **Paragraph 29** amends section 52 of the 1992 Act (duty to provide for named individuals) to ensure that the Councils will, as a last resort, be able to require an FE

institution to secure provision for an individual, even where that individual's needs are for part-time provision.

244. The definition of education and training brought within the remits of ALI, HMCI for England and HMCI for Wales through the powers and duties provided by Parts III and IV of this Act encompasses education provided by LEAs. As a consequence the specific duties in section 55 of the Further and Higher Education Act 1992 for the Chief Inspectors in England and Wales to inspect LEA provision are redundant, and the amendment made by **paragraph 32** means that they cease to have effect. However LEAs will retain a duty to keep the quality of its education provision under review.
245. **Paragraph 34** replaces section 57 of the 1992 Act with revised arrangements in relation to the Secretary of State's powers of intervention in FE sector colleges. The Secretary of State may intervene if he is satisfied that there has been mismanagement at the college, if the educational provision has been assessed by HMCI or ALI as being seriously weak or to be failing, if a governing body fails to discharge a duty, or if it acts or proposes to act unreasonably in the exercise of its functions. The Secretary of State may act either on the recommendation of the LSC or on his own account. If he is satisfied that intervention is warranted, the Secretary of State may remove any or all of the governors of the college, may make appointments to any vacancies on the governing body as he sees fit and may issue directions. These powers apply to the National Assembly, the Inspectorate for Wales and the CETW.
246. **Paragraph 44(3)** amends paragraph 5 of Schedule 4 to the 1992 Act to provide that the instrument and articles of government of a FE corporation may allow delegation of functions of the corporation to the principal of the institution.

Amendment to the Employment Rights Act 1996

247. **Paragraph 50** amends the definition of further education in section 63A of the Employment Rights Act 1996 (right to time off for study or training) by removing the reference to Schedule 2 to the Further and Higher Education Act 1992 which is repealed by this Act. Schedule 2 has been used, in conjunction with the definition of further education in the Education Act 1996, as a means of identifying those persons who are ineligible for time off for study or training because they are in full-time further education. It limits the scope of the definition to courses listed in Schedule 2. Because Schedule 2 is being repealed, a new approach is necessary. It is intended that the regulations, under section 63A, (Right to Time Off for Study or Training Regulations, 1999, *SI 1999/ 986*) which define the standard of achievement and awarding bodies for the purposes of the right to time off will be amended to refer to the qualifications approved under sections 98 and 99 of this Act.

Amendments to the Education Act 1996

248. **Paragraph 53** repeals section 15 of the Education Act 1996 which imposed duties on LEAs in respect of further education (see 'Local Education Authorities' section of the Background set out at the beginning of these Notes). Duties in respect of all post-16 education and training are, as a result of the provisions of section 2 to 3 and 31 to 32 of this Act, to be exercised by the LSC and CETW. However, LEAs must have powers so that they may work with the LSC and CETW across the full range their duties in respect of post-16 education. **Paragraph 54**, therefore, gives LEAs the power to provide part-time provision for 16 to 18 year olds, including those outside their areas, in addition to their current powers to secure full-time provision for this age group and part- and full-time education for adults.
249. **Paragraph 55** inserts a new section 15B into the Education Act 1996 which gives LEAs power to provide education and training to anyone from the age of 19 onwards in their areas and beyond. In exercising this power, LEAs must have regard to the needs of persons with learning difficulties.

250. **Paragraph 57** amends section 408 of the Education Act 1996. Section 408 enables regulations to be made to require maintained schools, the LEA, governing body or headteacher to provide information on a range of matters such as the curriculum used in the school. The amendment will ensure that information can be required about the arrangements for qualifications described in section 96 of this Act and approved for use by those under 19 and the courses leading to them.

Amendment to the Education Act 1997

251. **Paragraph 72** amends section 44(3)(a) of the Education Act 1997. The effect of this will be to reduce from 18 to 16 the age at which young people, about whom a school or FE institution is proposing to disclose information to a careers adviser, are entitled to prevent the disclosure taking place, if they so wish. Currently, it is the parents of young people under the age of 18 who may prevent such disclosure. This amendment is in keeping with the similar provision in section 117 of this Act in respect of disclosure of information to persons working for or with the Connexions Service in England (see section 126 for Wales). As it is intended that Careers Service advisers will have a key role in the new Connexions Service, it is important that these provisions on disclosure of information are consistent.

Amendments to the School Standards and Framework Act 1998

252. **Paragraph 78** provides that, where a school's sixth form or a 16 to 19 institution is inspected as part of an area-wide inspection, an adverse report will trigger the same powers of intervention by the LEA and the Secretary of State or National Assembly as similar reports after other types of inspection.
253. **Paragraph 79** amends section 19(2) of the 1998 Act (which lists those bodies the Secretary of State or the National Assembly should consult before directing an LEA to close a school on special measures) by adding, in respect of schools providing post-16 education, the LSC or the CETW. This reflects the fact that the LSC and CETW will have primary duties at sections 2 and 31 of this Act in respect of education and training provision for 16 to 18 year olds.
254. **Paragraph 80** amends section 26 of the School Standards and Framework Act 1998 in order to put beyond doubt that the school organisation plan must include the LEA's intentions with regard to their provision of secondary education for children over compulsory school age. The present wording of section 26 could be construed as applying only to the duties of LEAs - which do not, and will not, extend to post-16 secondary education - and not to their powers to make such provision.
255. **Paragraph 81** adds a new section 26A to the School Standards and Framework Act 1998 so that in England the schools planning process takes account of the plans published by the local LSC. The new Section 26B makes corresponding provision for Wales. The provision is different because there are no local learning and skills councils in Wales.