

NATIONAL SOCIETY/LBMW GUIDANCE

EDUCATION ACT 2011

*This paper is intended to draw the attention of Diocesan Boards of Education, Schools, Academies and other bodies to the main provisions of the **Education Act 2011** and to the ways in which it amends existing law and practice.*

It focuses mainly on those ss of the Act of special interest to Church of England Schools but makes some comment on every s. It is of course for general information only. Detailed issues will need detailed guidance either from specific papers published by the Society or on LBMW's website or via the National Society Legal Advice Scheme. Dioceses, schools and academies must take specific legal advice on specific issues and projects as and when these become live issues for them.

*We draw attention to the fact that very little of the Act has yet been commenced. At the time of writing only the following ss have been commenced: **33** (repeal of duty to appoint SIPs); parts of **40 and 42** (allowing the SoS to make Regulations to exempt some schools from inspection. However these schools are not yet so exempt!); **41** (details of matters to be covered in the OFSTED chief inspector's report); **58** (academy orders – LA powers); **75** (direct payments re SEN etc); **76** (student loans interest rates); **77** (limit on student fees). The following ss will be commenced on January 15th 2012: **6** (repeal of duty to enter into behaviour and attendance partnership); **30 and 31** (repeal of diploma entitlement); **47** (payments in respect of dismissal); **48** (determination of permitted charges); **61** (charges at boarding academies). **S44** (schools causing concern – powers of SoS) has also been commenced. The DfE intends to commence all sections abolishing arm's length bodies by the end of the current financial year and the remainder by the start of the 2012 academic year.*

Hence many matters of importance to dioceses (eg procedures for the establishment of new schools, land directions, VC converter employment arrangements) are not yet commenced and the provisions and procedures of previous legislation still apply.

*Very little of the Act has effect in Wales. There is a list (Annex A) in the Act itself but the only new provisions in respect of Wales appear to be: **13** (which imposes reporting restrictions when a teacher has been accused by a pupil of a criminal offence) applies to Wales as to England; **76** (interest rates on student loans) gives Welsh Ministers the same powers as the SoS in England. Otherwise the changes brought about by this Act do not apply to Wales, though in some instances Welsh "legislative consent" has been provided because of modifications required in consequence of the changes brought about in England.*

BACKGROUND

1. The **Education Act 2011** is founded on the principles and proposals set out in the DfE White Paper *The Importance of Teaching* of November 2010. Hence it includes measures to increase the authority of teachers and gives them a measure of protection against publicity in the pre-charge period if a pupil makes an allegation of a criminal offence.

2. Various duties on schools and Local Authorities are removed to give them greater freedom in deciding how to fulfil their functions. The Academies programme is extended also with an eye to more schools having the autonomy that academy conversion brings. These general aims must however be set against the strong tendency towards DfE control of detail (eg via Academy Funding Agreements) and towards Secretary of State powers of intervention and direction, which are extended in various ways in this Act.
3. Various arm's length bodies are abolished and those of their functions that are retained are brought within the DfE. Since this includes the YPLA, the SoS becomes the Principal Regulator for academy companies and voluntary and foundation school governing bodies in their charitable capacities. This distances (though it does not completely remove) the Charity Commission from any role in respect of these bodies and removes an important balancing factor in such matters (for example) as the handling of trustees' land. We view this development with some disquiet and advise that DBEs and other bodies take very great care in ensuring that such matters are handled so that the rights of trustees and any private value they may have in the land are fully protected.
4. In general therefore we do not see this Act as truly increasing the autonomy and freedom of schools and academies. The *Education and Inspections Act 2006* envisaged the creation of large numbers foundation schools. This did not happen. It seems somewhat more likely that this new Act and the *Academies Act 2010* will lead to a major increase in the numbers of academies and Free Schools. The role of the LA becomes increasingly focussed on the strategic level with its support roles increasingly fulfilled by schools and academies themselves and its intervention roles supplanted by those of the SoS. We continue to see DfE ambivalence in respect of accountability (how are autonomous academies called to account by their Members and by DBEs?) and to press for increased diocesan intervention powers in respect of both schools and academies. DBEs will certainly have to be alert to standards issues in their schools and develop ways of addressing them.
5. Much detail in the Act was discussed with the Church of England and other major providers and close links were maintained with the DfE at both Ministerial and Official level during the Bill's progress through parliament. This was of particular importance in respect of land and employment issues and at various points in the legislative process at which attempts were made by secularists to amend the Bill so as to have a deleterious effect on schools and academies with a religious character. The government was robust in respect of these amendments and made some important statements of its commitment to the place of worship in all schools and to its continued partnership with religious bodies in the provision of education.

KEY PROVISIONS AFFECTING CHURCH OF ENGLAND SCHOOLS

6. This list is not intended to be exhaustive and DfEs and others are encouraged to read the whole of this paper to ensure that they are aware of all elements in this legislation that may be of interest to them.;

7. However the following provisions likely to be more frequently used by dioceses are drawn especially to readers' attention:
- **S13 Reporting Restrictions when criminal allegations are made against school staff.** DBEs must use great care in ensuring that these reporting restrictions are not breached, for example in any reports made by DDEs to DBEs.
 - **S18 Abolition of the School Support Staff Negotiating Body.** DBEs must advise schools and academies with great care in establishing local rates of pay for these posts and ensure that the DBE itself cannot be alleged to have established de facto parameters for equal pay claims.
 - **S34 Abolition of Admissions Forums.** DBEs should note that these are no longer legally required. Some LAs may we presume seek to retain voluntary versions but these would have no statutory powers.
 - **S36 References to the Adjudicator.** DBEs (or anyone else) may refer LA admissions procedures and those of other admissions authorities to the adjudicator.
 - **S37 and Schedule 11 Establishment of new schools.** These will (in association with the Education and Inspections Act 2006) form the basic legislation for this purpose in future. The details are spelt out in loco. There are significant changes offering fresh opportunities for church school provision.
 - **S38 GB membership.** There will we presume be work for DBEs in this area in due course. However new Regulations must first be established.
 - **S44 Closure of schools by direction of the SoS.** This power will clearly affect dioceses where there are any relevant schools. Dioceses need to take pre-emptive action where possible and follow nationally agreed guidelines where closure is proposed.
 - **S49 and Schedule 12.** Note that dioceses may propose to the SoS the establishment of 6th form colleges. This is no longer an LA decision.
 - **Ss53 and 54 Academies.** Note the new 16-19 academies and alternative provision academies, both of which are open to proposals from dioceses.
 - **S55 Consultation before an academy order.** Note that dioceses must be consulted by the SoS. This links with **s44**.
 - **S62 Academy employment issues.** This enforces "as is" in respect of employment for VC converters but enables the SoS to dispense with it. There is an important note outlining the normal circumstances in which this will be used.
 - **S63 and Schedule 14 Land.** This is an extremely important s, giving the SoS further powers of direction over school and academy land in order to ensure that it continues in educational use and to protect public investment. Dioceses and trustees must ensure that their rights and private value are also protected and must note the agreements reached with the SoS over the operation of this legislation.
 - **S66 Abolition of the YPLA.** Note the effect of this on the charitable regulation of academy companies and voluntary and foundation school GBs.

THE CONTENTS OF THE ACT

In this section a brief description of each Part of the Act is followed by indications of the issues which seem particularly to affect Church of England schools, or where fundamental and major changes have been made to previously existing law and practice. Every s receives at least passing comment. As usual, the Act proceeds by amendment of previous Acts. Readers should note therefore that (unless specific mention is made of the contrary) the Education Act 1996, the Schools Standards and Framework Act 1998 and the Education and Inspections Act 2006 still remain fundamental, as does the Education Act 2005 in respect of inspections. All of these (and other legislation) are modified by the present Act however and detailed advice will be needed on the effects of these modifications in the various areas covered.

PART 1: EARLY YEARS PROVISION

This Part contains only one Section, **S1**. This revises the *Children's Act 2006* such as to require free early years provision for two year olds from disadvantaged backgrounds. However it also enables Regulations to be made that will allow the SoS to introduce new criteria such that early years provision for three and four year olds will not necessarily be free. In practice the outcome is likely to be that available public money will be targeted on two to four year olds from disadvantaged backgrounds.

PART 2: DISCIPLINE

S2 extends the list of items (including items listed in the school rules) for which pupils may be searched. Reasonable force may be used in the search if it is for the listed items, but not for those simply listed in the school rules. The search may (if there is good reason) be carried out by a member of staff of the opposite sex to the pupil and without a second member of staff being present to observe. Confiscated articles may in general be returned, retained or disposed of and files on electronic equipment may be examined and erased if there seems good reason to do so.

S3 provides similar powers in FE institutions.

S4 provides for the establishment of new review panels to hear appeals in respect of exclusions. The membership of these will be set out in Regulations of which no draft is yet available. This will presumably remove such appeals further from the school concerned. The panel may require an exclusion to be reconsidered by the school but cannot direct re-admission as such. This is a radical change to the present appeals procedure. No change in Wales.

S5 repeals the requirement for a school to give at least 24 hours notice of detention. No change in Wales.

S6 repeals behaviour and attendance partnerships. We presume that these have proved ineffectual and little used.

PART 3: THE SCHOOL WORKFORCE

S7 abolishes the General Teaching Council for England and **s8** transfers its core functions to the SoS. The SoS will now consider cases of unprofessional conduct and maintain the records and the list of those barred from teaching. A new Schedule 11A is inserted into the Education Act 2002 requiring the SoS to make Regulations governing these procedures.

S9 transfers to the SoS arrangements relating to induction periods for teachers. These are largely unchanged from existing GTCE legislation but there is no appeal from SoS decisions.

S10 makes transitional provisions and **s11** consequential amendments.

S12 provides for a transfer scheme so that GTCE staff and property may pass to the DfE.

S13 then moves on to put in place reporting restrictions in respect of allegations of a criminal nature made against staff by pupils in the pre-charge phase. Publishing such information becomes a criminal offence and it will be necessary for schools to be most cautious about keeping information about such matters strictly confidential. This is especially so in schools and academies where they are the actual employer. Note however that maintained schools of all kinds (but not academies) can continue to expect support and advice from their LA over such matters under the LA's duty to maintain and via such services as they buy back from it.

S14 abolishes the Training and Development Agency for Schools.

S15 transfers its core functions to the SoS and to Welsh Ministers.

S16 lists consequential amendments and **S17** transfers staff and assets.

S18 abolishes the School Support Staff Negotiating Body leaving the terms and conditions of these a purely local matter. Academy companies and VA/Foundation GBs are advised to exercise great care in establishing such terms and conditions, especially if (as in Multi-Academy Companies and perhaps in Federations) there could be equal pay consequences across the group.

S19 ensures that the effects on staffing of the suspension of a school's delegated budget are the same in England as they are in Wales. Since 2006 they have been different.

PART 4: QUALIFICATIONS AND THE CURRICULUM

S20 gives the SoS power to direct the GBs of maintained schools to participate in international educational surveys. Academies are not included here because this requirement is inserted into their Funding Agreements. This is a good example of how a change of this sort in the maintained school sector requires legislation whereas it may be imposed in the academies sector by Ministerial fiat.

SS21, 22 and 23 reform Ofqual in England, providing for new arrangements for the appointment of the chief executive (The Chief Regulator) and the chair. **22** inserts a new standards objective to require Ofqual to ensure that regulated qualifications indicate a consistent level of attainment as measured against relevant non-UK or non-Ofqual qualifications. This is presumably intended to address criticisms about the "dumbing down" of examination standards. Ofqual is also given powers to impose monetary penalties on examination bodies if the conditions of recognition are breached. There are independent appeal arrangements.

S24 gives Welsh Ministers comparable powers to those of Ofqual. Hence this aim of ensuring comparability and consistency of standards is also attainable legally in Wales, as is the imposition of penalties.

S25 abolishes the Qualifications and Curriculum Development Agency.

S26 and **Schedule 8** makes consequential amendments to other legislation and allows the SoS to amend subordinate legislation to match. So for example the requirement for SACREs to send reports to the QCDA is abolished. A further consequence is that arrangements for the disapplication of the National Curriculum in respect of individual schools are modified and more centralised with the SoS.

S27 transfers staff, property, rights and liabilities to either Ofqual or the SoS, between whom continuing functions will be divided.

S28 relates to the duty imposed on LAs by s68 of the Education and Skills Act 2008 to provide assistance and support to young people and some young adults to enable them to remain in education or training. Specifically, the ability of the SoS to direct LAs in this matter is removed. In addition a change is made which allows data to be shared (within the limitations of the Data Protection Act) so that the progress of such young people may be monitored statistically.

S29 requires maintained schools and pupil referral units to procure independent careers guidance for pupils aged 14 and over. In general this must not be provided by teachers at the school. All this is inserted into the Education Act 1997. This change does not apply to Wales.

S30 repeals a diploma entitlement included in the Apprenticeships, Children, Skills and Learning Act 2009 which has in fact never been commenced. Somebody's erstwhile good idea binned!

S31 similarly repeals an unused diploma provision for 14-19 year olds.

PART 5: EDUCATIONAL INSTITUTIONS: OTHER PROVISIONS

S32 removes the duty of schools to provide school profiles.

S33 removes the LA's duty to appoint School Improvement Partners. This appears to us to be part of a change of approach to school standards focussing more on the school (or indeed academy) itself and on its provider with the SoS in the wings to intervene. This change of focus is of considerable importance to dioceses and other church bodies as the providers of large numbers of schools.

S34 makes changes to schools admissions, removing the requirement for Admissions Forums (less tasks for dioceses to have to undertake) and changing the powers of the adjudicator such that he can no longer require changes to be made to admissions arrangements. (But see also **s64**) The role of the School Admissions Code is reinforced.

S35 prevents schools or LAs from making a profit from school meals or milk. It however allows for some flexibility in charging as long as the overall figures balance. Free school meals and milk are not affected.

S36 modifies ss 88H and 88K of the School Standards and Framework Act 1998 to allow any person or body to refer to the adjudicator an objection about the admissions arrangements of any state funded school. Hence DBEs can refer LA policies if this seems necessary and not just the policies of their own diocesan schools.

S37 and the associated **Schedule 11** are an extremely important reworking of the arrangements for the establishment of new schools. (**Note however that it is not yet commenced as at December 2011!**) They proceed by modification of the Education and Inspections Act 2006 which is the current effective legislation for this purpose. This s was discussed closely with the National Society and its legal advisers during the legislative process and we are comfortable with the provisions as enacted. The major changes brought about by **Schedule 11** are as follows:

- **Para 2** places a new duty on LAs to seek proposals for an academy whenever they see a need for a new school. The LA then notifies the SoS of academy proposals submitted by the due date. Note that the LA does not decide which proposal to accept. That is for the SoS.
- In consequence **Para 3** amends s7 of the EIA 2006 to prevent an LA holding a school competition without the consent of the SoS. We presume that he will not normally give such consent unless there has been a prior attempt to establish an academy. In addition the LA is prevented from entering its own competition and **Para 5** amends the EIA 2006 accordingly. Dioceses need to note this big change from current procedures.
- **Para 4** allows for a competition to be aborted – not possible at the moment.
- **Paras 6 and 7** allow for other school proposals to be made outside competitions. There are two lists of these. First those arising from the amendment of s10 of the EIA – viz proposals made outside competitions but only after the consent of the SoS. Under this LAs may publish proposals for community or foundation schools and other providers may propose VC or Foundation schools. We presume that normally SoS permission would be given only if academy or school competition routes had proved unfruitful or for individual special reasons. Normally this would not be a route for dioceses to follow as these **Paras** also amend s11 of the EIA 2006 to allow for the publishing of the following proposals without the SoS having to give prior permission: LA proposals for a new primary school to replace existing infants and junior schools (ie amalgamations); any proposals (in any circumstances) to establish a new VA school; proposals to establish a new VC school resulting from an existing designated school closing or ceasing to be designated; new foundation or VC schools with a designated religious character consequent on the local reorganisation of such schools; LA proposals for a new community or foundation school where academy and competition routes have failed. Of course the finance (revenue and capital) has to be available for all of these, but provided that it is the church is able to make proposals as indicated. Hence a new church VA could be promoted to replace a closed community or foundation school without requiring (as at present) exemption from competition. Provided that the LA would close the community school or the GB close a foundation school, the change could go ahead. Note that proposals for VC or foundation schools in similar circumstances would require SoS consent.
- **Paras 6-11** adjust the approval and appeal arrangements accordingly.

The National Society will be in discussion with the DfE over any guidance and Regulations with respect to these matters and will publish guidance on the establishment of new schools and academies as soon as clarity of procedure has been established.

S38 provides a new framework for GB membership bringing maintained schools closer to academies in this regard. Hence only 1 staff governor and 1 LA governor with the bulk being

made up of parents and foundation governors. No draft Regulations have yet been provided but we presume will continue to provide for foundation majorities or minorities as at present in the VC, VA and Foundation models. The National Society will be discussing details with the DfE as these emerge.

S39 enables a school in a Federation to withdraw (eg to become an academy) without automatically dissolving the federation GB as at present.

S40 provides for Regulations to exempt selected schools from inspections. Note however that these schools remain eligible for inspection and so may be subject to inspection for particular purposes or because of a change of circumstances.

S41 amends the Education Act 2005 in respect of the details of inspections. Any report must cover achievement, teaching, leadership and behaviour and must also have regard to a range of subgroups within the school's pupil population. In certain circumstances the Chief Inspector may charge. This was the focus of considerable debate as the Bill made its way through the House of Lords.

S42 makes similar changes in the inspection of FE institutions.

S43 enables boarding accommodation to be inspected even when it is not on site (eg lodgings with host families). Welsh Ministers are given similar powers. OFSTED may monitor any independent inspectorates.

S44 amends s68 of the EIA 2006 to expand the range of circumstances in which the SoS can direct the closure of a school or ensure that warning notices are issued. The Chief Inspector acts as an adjudicator if the school GB appeals against a warning notice. This is quickly said but a very significant change and carries consequences for dioceses in maintaining the standards of their schools.

S45 also in effect extends the SoS's powers of intervention under s 496 or 497 of the Education Act 1996 by removing the Local Government Ombudsman from the scene. Previously some complaints could be dealt with via the LGO and hence not by the SoS.

S46 also gives a further power to the SoS, in this case to direct the revision of an LA schools finance scheme. Amongst other purposes, this fits with the nationalisation of academy finance schemes and enables the SoS to ensure local financial congruence between maintained schools and academies.

S47 This enables LAs to recover costs in respect of the dismissal, premature retirement or resignation of staff employed for community purposes in schools. Because the GB may use its delegated budget for community purposes, it is now logical that the delegated budget may also be used for these payments, which had not hitherto been possible.

S48 relates to charges made for early years provision above the free of charge provision required by statute. It allows all associated costs to be charged on, which is not currently the case. Readers should note the comments also on **s1**.

S49 and **Schedule 12** make a number of changes in respect of FE institutions including 6th form colleges. These include protections for the trustees, their property and their purposes

where relevant. It also becomes possible for any person to make direct application to the SoS to establish a 6th form college. Dioceses should take due note of this and act accordingly where it seems good to them to do so. We have noted cases in the past where denominational post-16 provision has been resisted by LAs even where existing provision was inadequate in both quantity and standards. Power of intervention is also transferred from LAs to the SoS. This is of a piece with similar school developments in recent years. The SoS must consult the trustees and other appointing bodies when the institution has a religious character.

Ss50 and 51 relate to Pupil Referral Units, now no longer to be called "short stay schools" instead. **S50** gives each PRU a delegated budget like any other school.

Following this long PART on Educational Institutions, the Act now moves on to a further substantial section on academies. Despite the recent enactment of the Academies Act 2010 changes have been found to be required!

PART 6: ACADEMIES

S52 removes the requirement for secondary phase academies to have a subject specialism.

Ss53 and 54 and **Schedule 13** provide for important new versions of academies – those serving young people aged 16-19 and "alternative provision academies" which provide for children of compulsory school age who (for a variety of different reasons) would not otherwise have access to suitable education. The latter are in effect re-defined Special Schools and might be an area of special concern for the church. Voluntary Special Schools do not exist and foundation Special Schools have only quite recently become possible. Hence this seems an important potential area of development for dioceses. It is likely that PRUs in the future may be able to convert into academies of this kind.

S55 is an important amendment for the churches, requiring the SoS to consult trustees and diocese before making an academy order if a school is eligible for intervention. In practice the government is committed to working closely with dioceses in such circumstances and a Memorandum of Understanding is under development. The aim is that the diocese should have the chance to raise standards before other more radical solutions are considered which might remove the school from the diocesan family as an academy. Dioceses must be pro-active with any of their schools in or likely to be in this category.

S56 provides that a person about to set up an academy (eg because the previous school is being converted because it is eligible for intervention) may conduct the necessary consultation as it would be inappropriate in these circumstances for the GB to do so.

S57 allows a school that is part of a federation to apply for conversion into an academy without the whole federated GB having to agree. It also provides for Regulations enabling the appropriate future budget share to be calculated.

S58 is principally there to make it clear that an LA may continue to finance a PFI contractor after a school has become an academy. It enables LAs clearly to provide goods and services to academies.

S59 changes property transfer schemes into transfer schemes and explicitly includes rights and liabilities in relation to staff.

S60 substitutes new SS9 and 10 for the existing ones in the Academies Act 2010. These ss relate to the establishment of "new" academies – ie those that are either not replacements for existing schools or do replace them but with an expanded age range. In these circumstances the SoS must ensure that the person entering into arrangements for the new academy conducts an appropriate consultation unless the new academy is being created as a consequence of the procedures outlined in our comments on **s37/Schedule 11** above, when the LA itself will have undertaken a prior consultation.

S61 inserts a new S10A into the Academies Act 2010 which requires the "home" LA to pay part or all of the boarding fee of pupils at a boarding academy under certain prescribed circumstances. It replicates the effect (but not the detailed wording) of S458 of the Education Act 1996 in respect of maintained boarding schools.

S62 is a very important s for the churches in the academy conversion process. It ensures that the limited employment arrangements characteristic of VC and foundation schools with a designated religious character are replicated when such schools become academies. However the s also empowers the SoS to disapply this requirement and the explanatory note at this point states that "the SoS intends to use this power if he has agreed changes to an Academy's governance arrangements such that the religious body has a majority control over the academy in the same way that it does over a VA school GB". Hence if academies move (after consultation and with the agreement of the SoS) from Model 2 to Model 1 Articles, their employment powers are also extended to match and indeed to replicate those of existing independent schools with a religious character. Note that **s62(9)** does not mean that teachers other than Reserved Teachers may not be asked to volunteer to teach RE (this is surely common in primary schools) nor that a non-Reserved Teacher may not be appointed to teach RE following advertisement and recruitment in the normal way. The Reserved Teacher role is specifically about denominational RE and the legal duty of the VC school (or VC converter academy) to provide denominational RE on request.

S63 and the associated **Schedule 14** are also of considerable importance for dioceses. Considerable discussion took place between the DfE and National Society on these land issues in order to ensure that ownership, trusteeship and private value were all respected and protected. In consequence a formal Ministerial statement was made in the House of Lords to the effect that the SoS would not normally seek to use his powers of direction over trustees' land unless (a) the trustees had already decided that the land was no longer required for the purposes of their trust (including any broader purposes there might be) and (b) the public value in any specific site was more than 50%. **S63** gives effect to **Schedule 14** which in turn provides a new Schedule 1 to the Academies Act 2010 and amends both s77 and Schedule 22 of the Schools Standards and Framework Act 1998. Detailed changes brought about by **Schedule 14** are as follows:

- **Para 1** replaces Schedule 1 of the Academies Act 2011 with a new Schedule. Dioceses and trustees need to note that the provisions of this new Schedule 1 of the AA 2010 relate to publicly owned land and to land that is publicly funded as defined in paragraph 22(3) of new Schedule 1. They do not apply to land that is privately owned and in which there is no public value. Hence in general the sites of those academies that were previously VA schools are unlikely to be covered by this Schedule, whereas it is the view of the DfE that all ex-VC sites will be so covered. However, much ex-VA academy land may come in the course of time to have some public value. The legislation is principally drafted to protect public value. Detailed investigation and advice will be required on disposal (especially in situations where academies are being closed) to ensure that private value is also being protected and

that SoS powers of direction (to enable land with public value to continue to be used for educational purposes) do not nullify the purposes of any trust nor result in loss of private value for trustees. The DfE is committed to developing with the churches the Regulations and/or guidance that will be necessary to give effect to this Schedule. These will include arrangements for the payment of compensation to trustees where their land is required by the SoS and the basis of valuations in such situations. The Schedule also enshrines the power of trustees to give two years notice to an academy to vacate their site. This is one of the reasons why normally leases (which might complicate this issue) should not be entered into for academies.

- **Paras 2-15** amend Schedule 22 to the SSFA 1998 to enable the SoS to secure public value in land held by the trustees (or the GBs) of voluntary and foundation schools and to make such land available for academies (including Free Schools). Again detailed Regulations will be required and an appropriate valuation methodology agreed. Where trustees wish to dispose of land they will need to notify the SoS (no longer the LA – though the LA may well need to be notified in addition) and cannot proceed to disposal without his agreement. The assurance given by Ministers and noted above applies to both academy and voluntary/foundation trustees' land.
- **Para 18** amends s77 of the SSFA 1998 such as to require the consent of the SoS for the disposal of playing field land (as defined in s77 – not just the school playing fields as normally understood) or where they intend to change the use of playing field land (eg build on it for school or community/recreation purposes). If the land is indeed redundant, then the SoS may direct its use for an academy subject to the payment of any relevant compensation. However of course this will not normally be the case and the assurance above stands for these transactions also.

S64 brings academy admissions arrangements clearly under the purview of the schools adjudicator. Any person or body may refer arrangements to the adjudicator (so DBEs could refer LA arrangements and the arrangements of non-church academies) as may the SoS. A decision of the adjudicator is binding on all parties.

S65 simply tidies up legislation in consequence of the changes made by this Act to the AA 2010.

PART 7: POST-16 EDUCATION AND TRAINING

S66 abolishes the Young People's Learning Agency for England. Its functions (including that of Principal Regulator for academy companies and voluntary and foundation school GBs in their charitable capacities) are transferred to the SoS to be carried out by a non-statutory agency within the DfE. Like other abolitions in this Act, this is a substantial increase in the immediate in-house powers and responsibilities of the SoS.

S67 gives effect to **Schedule 16** which is a list of consequential amendments to legislation.

S68 transfers staff, property, rights and liabilities to the SoS.

S69 Sets out the offer of apprenticeships for specified groups of young people. It gives effect to **Schedule 18** that amends the Apprenticeships, Schools, Children and Learning Act 2009, substantial parts of which have never been commenced.

S70 requires the Chief Executive of Skills Funding to make reasonable efforts to secure employer participation in this scheme.

S71 transfers responsibility for certification from the Chief Executive of Skills Funding to the SoS or his nominee.

S72 enables the SoS to direct the Chief Executive of Skills Funding to consult bodies and person that may be prescribed on the performance of his functions.

S73 amends the detailed functions of the Chief Executive of Skills Funding in various ways. It removes the requirement for local/regional strategic bodies but does not abolish those already created in London, Manchester and Birmingham.

S74 slows down the implementation (commencement) of those ss of the Education and Skills Act 2008 raising the age of participation in education or training to 18 that have not yet been commenced.

PART 8: DIRECT PAYMENTS

S75 enables an LA to pay for goods and services for persons with special educational needs or subject to learning difficulty assessment, but subject to pilot schemes made by the SoS.

PART 9: STUDENT FINANCE

S76 makes changes to the interest charges on student loans such as to keep them within EU law.

S77 enables the SoS to impose a cap on fees charged to part time students.

LBMW

16th DECEMBER 2011