

Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Memorandum
to the
Education
Committee of
the House of
Commons



Department for Education

**Post-legislative assessments
of the Education and
Inspections Act 2006,
Childcare Act 2006 and
Children and Adoption
Act 2006**

**Memorandum to the Education Committee
of the House of Commons**

Presented to Parliament
by the Secretary of State for Education
by Command of Her Majesty

December 2011

© Crown copyright 2011

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at www.education.gov.uk/help/contacts.

This publication is available for download at www.official-documents.gov.uk

This document is also available from our website at **www.education.gov/publications**.

ISBN: 9780101820424

Printed in the UK by The Stationery Office Limited

on behalf of the Controller of Her Majesty's Stationery Office

ID P002458405 12/11

Printed on paper containing 75% recycled fibre content minimum.

Contents

Chapter 1: Education and Inspections Act 2006	3
Chapter 2: Childcare Act 2006	44
Chapter 3: Children and Adoption Act 2006	65
Annex A: Non-statutory documents relating to section 6 of the Education and Inspections Act 2006	76
Annex B: Figures on the use of processes on the establishment of new schools under Part 2 of the Education and Inspections Act 2006	77
Annex C: Consultation, funding and commencement of the Childcare Act 2006	79
Annex D: Commencement dates of each section of the Childcare Act 2006	83

Chapter 1:

Education and Inspections

Act 2006

Introduction

1. Chapter 1 of this memorandum provides a preliminary assessment of the Education and Inspections Act 2006 (referred to as “the Act” in this Chapter).
2. The Act is wide-ranging, divided into ten parts. The objectives, implementation, secondary legislation, legal issues, other reviews and a preliminary assessment of each main part is set out below. All references should be assumed to apply to England only, except where stated otherwise.

Overall objectives and structure of the Education and Inspections Act 2006

3. The Act received Royal Assent on 8 November 2006 and has wide-ranging objectives: implementing proposals in the 2005 White Paper *Higher Standards, Better Schools for All* (Cm 6677); placing duties on local authorities arising from the Green Paper *Youth Matters* (Cm 6629); providing for curriculum entitlements in line with the White Paper *14-19 Education and Skills* (Cm 6476); and bringing together the remits of various public service inspectorates into a new Office for Standards in Education, Children’s Services and Skills.
4. The Act is divided into ten parts:
 - i) education functions of local authorities
 - ii) establishment, discontinuance or alteration of schools
 - iii) further provisions about maintained schools
 - iv) schools causing concern: England
 - v) curriculum and entitlements
 - vi) school travel and school food
 - vii) discipline, behaviour and exclusion
 - viii) inspections
 - ix) miscellaneous
 - x) general

- 4 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Part 1: Education functions of local authorities (sections 1 to 6)

Objectives

5. Part 1 of the Act places a general duty on local authorities to promote high standards in education and exercise their functions with a view to promoting the fulfilment by every child of their education potential and ensuring fair access to educational opportunity. It requires local authorities, when exercising their powers in relation to the provision of schools, to do so with a view to securing diversity and increasing opportunities for parental choice, and requires local authorities to respond to parental representations in relation to this. The legislation also requires local authorities to put arrangements in place to identify children not receiving education.
6. This Part of the Act also requires local authorities to appoint school improvement partners (SIP) to each maintained school to provide challenge and support to schools. It also requires local authorities to promote the well-being of 13-19 year olds by securing access to sufficient educational and recreational leisure-time activities and facilities for young people.

Implementation

7. The sections of the Act were brought into operation as below:

Section	Date of coming into force
1-3	25 May 2007
4	27 February 2007
5	8 February 2007 – 1 April 2008 (in respect of phases of maintained schools)
6	8 January 2007

Secondary legislation

8. The following secondary legislation and statutory guidance has been issued in relation to this Part.

Section	Title of statutory instrument/ statutory guidance	Description
3	<p>Statutory guidance: Duty to respond to parental representations about the provision of schools: a guide for local authorities (March 2008)</p> <p>Guidance was withdrawn in July 2011.</p>	<p>Covered how local authorities should carry out their duty under section 14A of the Education Act 1996 (which section 3 of the Act inserted) to consider parental representations about the exercise of their functions in relation to the provision of primary and secondary education.</p> <p>As part of the Government's drive to reduce unnecessary burdens, this guidance was withdrawn.</p>
4	<p>Revised statutory guidance for local authorities in England to identify children not receiving a suitable education (January 2009)</p>	<p>Covers how local authorities should carry out their duty under section 436A of the Education Act 1996 (which section 4 of the Act inserted) to put into place arrangements for identifying children missing education in their area. This includes having a named person to be responsible for those children and establishing a co-ordinated centralised system to track and share information.</p>
5	<p>The Education (School Improvement Partner) (England) Regulations 2007 (SI 2007/25)</p> <p>Came into force on 8 February 2007.</p>	<p>These regulations provide for school improvement partners, appointed to schools before section 5 of the Act came into force, to be treated as though they were appointed under, and for the purposes of, that section.</p>
6	<p>Statutory Guidance: Section 507B of the Education Act 1996 (March 2008)</p> <p>There has also been a range of policy and non-statutory guidance documents which relate to this general duty which are listed at Annex A.</p>	<p>Issued to local authorities in England, covering how they should carry out their duty under section 507B of the Education Act 1996 (which section 6 of the Act inserted) to secure access for young people to sufficient educational and recreational leisure-time activities and facilities (commonly known as "positive activities"), so far as is reasonably practicable.</p>

6 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Legal issues

9. The following specific legal issues should be noted in relation to this Part of the Act:
 - a. Section 1: Section 13A of the Education Act 1996, as introduced by section 1 of the Act, was again re-enacted, with amendments, by paragraphs 1 and 3 of Schedule 2 to the Apprenticeships, Skills, Children and Learning (ASCL) Act 2009. The purpose was to ensure that local authorities exercise their functions (so far as they are capable of being so exercised) in relation to the provision of education and training for persons under the age of 20 and persons aged 20 to 25 subject to a learning difficulty assessment so as to promote high standards, fulfilment of potential and (in England) fair access to opportunity for education and training.
 - b. Section 2: Reference was made to section 14(3A) of the Education Act 1996, introduced by section 2 of the Act, in the judgment of *NUT v Lewisham* [2009] EWHC 359 (Admin), but there was no specific argument that centred around the wording of the provision.

Other post-legislation reviews

10. Since the Act was passed, there have been a number of reviews relating to the provisions in this Part.

Section 5

- a. *National Strategies and DCSF internal review of SIPs* (2009)
- b. *The New Relationship with Schools evaluation*, York Consulting Ltd (August 2008)
- c. *Evaluation of the Special SIP pilot*, Cambridge University (2006)
- d. *Evaluation of the Primary SIP pilot*, York Consulting Ltd (2006)
- e. *New Relationship with Schools: evaluation of trial local authorities and schools*, National Foundation for Educational Research (November 2005)

Section 6

- a. *Myplace evaluation interim report* (September 2010)
- b. *Empowering young people pilots evaluation* (February 2010)
- c. *Empowering young people pilots interim evaluation: Phase 1 case studies and baseline survey* (October 2008)
- d. *DCSF Information and Signposting Project: sharing the learning* (December 2009)
- e. *Attitudinal barriers to engaging young people in positive activities – literature and communications review* (August 2009)
- f. *Positive Activities – qualitative research with young people* (August 2009) and *Positive Activities – qualitative research with parents* (August 2009)
- g. *Children's Services: the market for provision of positive activities for young people*, DfES (August 2009)

- h. *Tired of Hanging Around: using sport and leisure activities to prevent anti-social behaviour by young people*, Audit Commission (January 2009)
- i. *Youth Opportunity Fund and Youth Capital Fund: evaluation findings from initial case study visits* (July 2007) and *Outcomes of the Youth Opportunity Fund/Youth Capital Fund* (August 2008)
- j. *Positive activities for young people national evaluation* (August 2006)

Preliminary assessment

11. Part 1 of the Act contained a mixture of “target” and specific duties on local authorities. In relation to target duties to promote high educational standards, fulfilment of potential, increase school diversity and parental choice there is little evidence that the duties in themselves have had a significant impact. Although there is evidence that local authorities are responding to their duty to increase opportunity for parental choice, with 97.2% of parents receiving an offer of a place at one of their preferred schools in 2011 (up from 95.6% in 2008), there is significant variability across the country. Although diversity in the provision of schools has increased, progress has been slow and falls short of the aspirations in the original 2005 White Paper.
12. Since the Act, the Academies Act 2010 and the proposals in the November 2010 Schools White Paper *The Importance of Teaching*, have led to a significant increase in the establishment of more autonomous schools and greater diversity.
13. We do not collect information centrally on how successful parental representations have been but the local authority duty in this regard could be said to have been superseded by the Academies Act 2010 and the policies of the current Government, which facilitate parents establishing their own schools (Free Schools) as opposed to having a power to make representations about LA provision of primary and secondary schools.
14. The legislation allows local authorities to make arrangements to identify children missing education. It is difficult to know how successful the legislation has been as children missing education are, by their very nature, difficult to identify and the Department does not collect data from LAs.
15. The legislation did meet its objective of ensuring a SIP was appointed to each maintained school and evidence does show they have played a role in helping some schools to evaluate their performance and make decisions about improvement priorities. The 2010 Schools White Paper set out a new approach to school improvement, which would be less prescriptive and tailored to the needs of individual schools. The duty to appoint SIPs is repealed in the Education Act 2011.
16. The duty to secure positive leisure-time activities for young people has not unduly constrained local authorities’ freedom to determine the right levels of resourcing for these activities, but has, to some extent, ensured that alternative providers are considered and the views of young people ascertained.

Part 2: Establishment, discontinuance or alteration of schools (sections 7 to 32)

Objectives

17. Part 2 of the Act re-enacts much of the law relating to school organisation for England, including setting out a clearer statutory process for proposing changes (including closures, alterations and new schools) to maintained schools. It also extended the existing school competition requirement for secondary schools to include primary and special schools and introduced a new statutory procedure for schools to become foundation schools. A key change was to abolish school organisation committees and move school organisation decisions to the relevant local authority.

Implementation

18. The sections of the Act were brought into operation as below:

Section	Date of coming into force
7-17	25 May 2007
18(1)-(3)	1 April 2007
18(4)-(5)	25 May 2007
19-20	25 May 2007
21-24	1 April 2007
25(1)-(4) and (8)	25 May 2007
25(5)-(7)	1 April 2007
26	1 April 2007
27(1)-(6) and (8)	1 April 2007
27(7)	25 May 2007
28-30	25 May 2007
31-32	1 April 2007

Secondary legislation

19. The following secondary legislation and statutory guidance has been issued in relation to this Part.

Section	Title of statutory instrument/ statutory guidance	Description
7, 8, 9, 10, 11, 13, 15, 16 and 31	The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (SI 2007/1288) Came into force 25 May 2007.	To prescribe various matters relating to proposals for the establishment and discontinuance of schools pursuant to the provisions contained in Part 2 of the Act.
15 and 16	Designation of Rural Primary Schools (England) Order 2009 (SI 2009/3346) Came into force 21 December 2009.	Designates those primary schools in England which are rural primary schools for the purpose of section 15(7)(b) of the Act.
18, 19, 21, 22, 23, 24 and 31	The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) Came into force 25 May 2007.	To prescribe various matters relating to prescribed alterations to maintained schools pursuant to the provisions contained in Part 2 of the Act.
31	The School Organisation (Transitional Provisions) (England) Regulations 2007 (SI 2007/1355) Came into force 25 May 2007.	To set transitional provisions relating to the coming into force of Part 2 of the Act.
7, 9, 10, 15, 16, 18, 19, 21 to 24, and 31	The School Organisation and Governance (Amendment) (England) Regulations 2007 (SI 2007/3464) Came into force 21 January 2008.	To make various amendments to regulations relating to school organisation and school governance.
7, 10, 11, 15, 16, 19, 21 and Schedule 2	The School Organisation and Governance (Amendment) (England) Regulations 2009 (SI 2009/1556) Came into force 1 September 2009.	To make various amendments to regulations relating to school organisation and school governance.

10 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Section	Title of statutory instrument/ statutory guidance	Description
8	The School Organisation (Establishment and Discontinuance of Schools) (England) (Amendment) Regulations 2009 (SI 2009/2984) Came into force 16 December 2009.	Replaces references to the “APA” (that is the Annual Performance Assessment) rating with references to a performance rating.
265 ASCL Act 2009	The ASCL Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (SI 2010/1941) Came into force 1 September 2010.	This Order makes consequential amendments to school organisation legislation necessary as a consequence of the dissolution of the Learning and Skills Council (LSC) and establishment of the Young People’s Learning Agency (YPLA) and further duties placed on local authorities. References to the LSC have been removed and either omitted or, where appropriate, replaced with a reference to the YPLA.
25, 26 and 27	The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 (SI 2007/3475) Came into force 21 January 2008.	Prescribes the process for publishing, deciding and implementing proposals to (a) remove the school’s foundation or (b) alter the instrument of government in such a way that the foundation governors will cease to constitute the majority of governors.

Legal issues

20. There are no specific legal issues to be noted in relation to this Part of the Act.

Other post-legislation reviews

21. Since the Act was passed, there have been no major reviews relating to the provisions in this Part.

Preliminary assessment

22. Part 2 of the Act has been successful in establishing a local decision making process – with the local authority (along with the Schools Adjudicator) as the recognised decision maker. The new school competition process has not been

as successful as originally envisaged with few proposals from parents and others to establish new schools.

23. Figures on the use of these processes to establish new schools are in Annex B. These show that the legislation has achieved its aim to some extent in relation to new schools. 80% of competitions for new schools have resulted in greater diversity of provision and schools with greater autonomy (foundation, voluntary aided and Academies) than local authority community schools. However, there have been a significant number of requests for exemptions from competitions, but the majority of these have been for replacement new schools, rather than entirely new, and in circumstances where a competition would not be appropriate (e.g. establishing a new primary school to replace an amalgamating infant and junior school). The 2010 Schools White Paper proposed changes to the processes for establishing new schools to streamline them and the Education Act 2011 reinforces the role of local authorities as commissioners and requires that an Academy, with its associated freedoms, is considered first where local authorities propose establishing new schools under the relevant legislation.

Part 3: Further provisions about maintained schools (sections 33 to 58)

Objectives

24. Part 3 of the Act covers: school admissions; requirements on governing bodies of maintained schools; requirements for an advisory parent council at certain schools (“Trust schools”); and various other matters.
25. The objectives of the main measures in this Part are to:
 - a. reform admissions arrangements by: requiring the Admissions Code to be followed; extending the role of admission forums; requiring local authorities to provide advice in choosing a school; prohibiting interviews as part of the admission process; making adjudicator imposed changes to admission arrangements binding for a period of years; improving arrangements for the admission of looked after children; and providing greater flexibility to use pupil banding in admissions.
 - b. bring greater consistency to schools having regard to the wider Every Child Matters outcomes by placing requirements on governing bodies of maintained schools to promote pupil well-being and community cohesion, have regard to the local authority’s children and young people’s plan and to parental views in carrying out their functions.
 - c. set out arrangements for “Trust Schools” where an external partner can appoint the majority of governors to the school, and there is a requirement to establish an advisory parent council.
26. There are other matters covered in this Part, including a new definition of capital expenditure to reflect standard accounting practices and concepts (section 35); protection of public investment on the disposal or change of use of land at maintained schools (section 36); staffing at faith schools (section 37); allowing sixth form pupils to be excused from attendance at religious worship at their request (section 55); allowing charging for music tuition during school hours in prescribed circumstances (section 56); removal of the Secretary of State’s power to direct revisions to local authority schemes for financing schools and the requirement for him to approve local authority revisions (section 57); and repeal of the legislation underpinning the Code of Practice on LEA-School Relations (section 58).

Implementation

27. The sections of the Act were brought into operation as below:

Section	Date of coming into force
33(1) in part	1 April 2007
33(1) remainder and 33(2)	25 May 2007
34	25 May 2007
35(1) for certain purposes	1 April 2007
35(1) for remaining purposes	25 May 2007
35(2)	25 May 2007
35(3) in part	1 April 2007
35(3) remainder	25 May 2007
36	25 May 2007
37	1 September 2008
38(1) for certain purposes	25 May 2007
38(1) for remaining purposes	1 September 2007
38(2)	25 May 2007
39	27 February 2007
40	12 December 2006
41-42	27 February 2007
43	8 January 2007
44	27 February 2007
45	8 January 2007
46	Repealed
47	27 February 2007
48-52	8 January 2007
53	27 February 2007
54 (save for 54(3) (a))	8 January 2007
54 (3) (a)	25 May 2007
55 (1) to (7)	1 September 2007
55 (8) and (9)	25 June 2007
56	25 May 2007
57	8 February 2007
58	8 January 2007

14 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Secondary legislation

28. The following secondary legislation and statutory guidance has been issued in relation to this Part.

Section	Title of statutory instrument/ statutory guidance	Description
33 (made under 23A, 23B and 138 of the School Standards and Framework Act (SSFA) 1998)	The School Organisation (Requirements as to Foundations) (England) Regulations 2007 (SI 2007/1287) Came into force 25 May 2007.	To set out the requirements to be met in relation to the foundations of foundation and foundation special schools to which section 23A of the SSFA 1998 applies. For these purposes, a foundation is a foundation established otherwise than under SSFA 1998: it is not a “foundation body” as defined in section 21 of SSFA 1998. They also provide for the Secretary of State to have certain powers in relation to the charity trustees of such foundations
34 (made under 23A Education Act 2002)	The School Governance (Parent Council) (England) Regulations 2007 (SI 2007/1330) Came into force 25 May 2007.	To set out the arrangements for the composition, role and support of the parent council required for ‘qualifying’ foundation schools.
34	“Setting up a parent council” resource pack (September 2007)	Section 3 of the guidance covers statutory parent councils.
35	The Capital Expenditure in Respect of Voluntary Aided Schools (England) Regulations 2007 (SI 2007/1322) Came into force 25 May 2007.	These regulations are made under paragraph 9A(3) of Schedule 3 to SSFA 1998 (inserted by section 35 of the Act) and provide that any expenditure incurred by an appropriate body or any promoters in respect of a new voluntary aided school shall not be treated as capital expenditure if it is an amount which is less than £2,000.

Section	Title of statutory instrument/ statutory guidance	Description
37	<p>The Education and Inspections Act 2006 (Commencement No. 7 and Transitional Provisions) Order 2008 (SI2008/1971)</p> <p>Came into force 1 September 2008.</p> <p>Changes made to supporting Departmental guidance 'Guidance on Managing staff employment in schools' (November 2009)</p>	<p>Section 37 made two amendments to the SSFA 1998. It repealed section 58(4) to remove the restriction that prevented head teachers of voluntary controlled and foundation schools with a religious character from also being appointed as reserved teachers, i.e. someone who is appointed specifically to teach religious education in accordance with the tenets of the relevant faith at the school. It also amended section 60 to permit voluntary aided schools with a religious character to apply religious criteria in connection with the employment of members of staff other than teachers.</p>
55 (made under section 71(7) SSFA 1998 as substituted by this section)	<p>Education (Special Educational Needs) (England) (Consolidation) (Amendment) Regulations 2007 (SI 2007/1860)</p> <p>Came into force 1 September 2007.</p>	<p>To amend the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 by substituting a new regulation 5A allowing a sixth form pupil to withdraw from religious worship at a special school if the pupil so wishes.</p>
56 (made under section 451(3) EA 1996 as substituted by this section)	<p>The Charges for Music Tuition (England) Regulations 2007 (SI 2007/2239)</p> <p>Came into force 1 September 2007.</p>	<p>These regulations prescribe the circumstances in which a charge may be made for tuition in singing or in playing a musical instrument given during school hours.</p>

Legal issues

29. Once section 37 came into force, schools wishing to take religious criteria into account in the appointment of non-teaching staff were permitted to do so as long as any appointment made on religious grounds was supported by a genuine occupational requirement in accordance with the Employment Equality (Religion and Belief) Regulations 2003, subsequently replaced by the Equality Act 2010 (which implements the EU Employment Anti-Discrimination Directive).

16 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

- 30. In addition, it enabled head teachers at foundation and voluntary controlled schools with a religious character to be 'reserved teachers'; that is teachers who are appointed specifically to teach religious education in accordance with the tenets of the school's designated religion.
- 31. The Department has been in receipt of representations, and in correspondence with, secular and humanist bodies, and religious organisations, about the proper application of these provisions and their interaction and general compatibility with EU law.

Other post-legislation reviews

- 32. In relation to section 38, which contains the duty on governing bodies to promote community cohesion, *Community Cohesion and Prevent: How have schools responded?* Ipsos MORI (2011), London: Department for Education.
- 33. A review of music education, carried out by Darren Henley, Managing Director of Classic FM, was published in February 2011, along with the Government's response to the review's recommendations: <http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00011-2011> and <http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00012-2011>.

Preliminary assessment

- 34. Parent councils are statutorily required in foundation schools with a governing body controlled by the foundation under section 34 of the Act, and the Department recommended that other schools also establish them as a means of gathering parental views. Anecdotal evidence suggests that where they are used they provide an effective forum for parental views to be discussed and put forward, where necessary, to the governing body.
- 35. Section 35 allowed the simplification of guidance on capital expenditure to the voluntary aided (VA) sector in the Department's "Blue Book". Responsibility for management of capital funding for the VA sector was given to Partnerships for Schools in 2007. We are not aware of any practical or accounting difficulties being reported by the sector with the revised definition. There has been no impact reported on the claims or payment of VA capital funding.
- 36. The provisions in section 36 relating to the classification of VA land enhanced by capital grant as publicly funded have never been used. Since the provisions were commenced, none of the 33 land transfer cases referred to the adjudicator have been as a result of the disposal provisions of the Act. This may be seen as a successful outcome, because the provisions of the Act, and supporting non-statutory guidance, emphasised that agreements should be reached locally, with reference to the adjudicator as a last resort.
- 37. VA schools and foundation schools have made applications to dispose of school playing field land under this provision, but these have not been separately recorded, but an estimate is that of the 49 approvals for disposal of playing field land since 2007, about a third will have resulted from the provisions of section 36 of the Act.

38. Section 38 introduced new requirements on governing bodies to promote community cohesion. The review of how schools have responded showed that almost all schools (89%) say their understanding of community cohesion is better since the introduction of the statutory duty with over half (57%) saying it is a lot better. Most schools (88%) also say that they are doing more to promote cohesion, although only 42% say they are doing a lot more. Awareness and understanding of the cohesion duty are similarly high among faith and non-faith schools. There are also few differences in the extent to which faith and non-faith schools recognise a role for schools in preventing extremism.
39. As part of the revision of the Ofsted inspection regime, proposed in the Education Act 2011, inspectors will no longer assess how schools fulfil the duty to promote community cohesion as a separate judgment. However, Ofsted will ensure that inspections give due weight to schools' activities in support of UK democratic values and that any concerns that schools are failing in this regard are reflected in inspection reports.
40. The power in section 17 of the Children Act 2004 for the Secretary of State to require by regulations a local education authority in England to produce a children and young people's plan was amended by section 194(3) of the Apprenticeships, Skills, Children and Learning Act 2009 so that the requirement to produce the plan lay with the local Children's Trust Board. Section 21(9) of the Education Act 2002 was amended to apply to such plans. In England, the regulations requiring the production of a children and young people's plan by the Children's Trust Board were revoked in October 2010 following concerns that the requirements were unduly prescriptive and bureaucratic. So there is no longer any duty to produce such statutory plans to which the governing bodies of maintained schools must have regard.
41. Since sections 39-54 of the Act on admissions came into force, the Department has published the School Admissions Code, which reiterates the above requirements as statutory guidance. Its mandatory provisions must be followed by admissions authorities (governing bodies, local authorities, Academy Trusts) through statute or funding agreements. The compliance of local policies is reported upon annually by local authorities to the Chief Adjudicator, who then reports to the Secretary of State on the national picture. To date, the reports explain that the vast majority of policies are compliant, with exceptions tending to stem from misinterpretation. To address this, the Department consulted from 27 May to 19 August 2011 on a shorter, less ambiguous Code, intended to affect pupil intake from September 2013 onwards. The Education Act 2011 changes the legislation.

18 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

42. In relation to vulnerable children (sections 48, 50 and 51), the Department has anecdotal evidence that the provisions around directions are broadly working. The Department received fewer enquiries from local authorities about schools refusing to admit looked after children. Information from the Office for the Schools Adjudicator (OSA) shows that since the legislation came into force there have been 74 cases referred to them of which: 39 were approved; 15 were not approved; 13 were withdrawn/not properly made and seven were deemed to be out of the jurisdiction of the OSA. The number of cases received by the OSA has been going down in recent years. We do not know whether the decline in numbers is because admission authorities are not forcing local authorities to direct or are not appealing against directions.
43. We do not hold any evidence of uptake of the right offered by section 55 for sixth-formers to opt out of collective worship.
44. Overall, section 56 has contributed to an increase from 8 per cent of all children learning musical instruments in 2005 to around 17 per cent in 2011 (based on local authority projections).
45. The removal of the requirement for the Secretary of State to approve LA revisions to schemes for financing schools and the right of a school to appeal to the Secretary of State against the LA's withdrawal of delegation, under section 57, have been positive in terms of reducing bureaucracy and micro-management. The removal of the power of the Secretary of State to issue directed revisions of LA schemes, however, has prevented national policies on school financial management from being implemented quickly, where there is a particular benefit to schools, or consistently. The Education Act 2011 reintroduces the power to issue directed revisions.
46. Section 58 was introduced to address the Code of Practice on LEA-School Relations which was first issued in 1999 and revised in 2001. Since then, there had been a number of significant developments, most notably at the time, the New Relationship with Schools. At the time, the Government and key stakeholders agreed that the Code had served its original purpose and there was no need for it in the new policy context.

Part 4: Schools causing concern (sections 59 to 73)

Objectives

47. Part 4 of the Act gives local authorities, and the Secretary of State, powers to tackle failing and underperforming schools more quickly and effectively. It re-enacted (with modifications) many provisions set out in the School Standards and Framework Act 1998 but in respect of England only. It creates a new power to force failing and underperforming schools to federate or take another partner for school improvement, and amended the formal warning notice legislation. The objectives of Part 4 were to secure:
- a. more prompt and decisive action by local authorities in relation to schools in categories of concern, making existing duties more specific, and to extend the duty where school progress is inadequate, in line with statutory guidance provided by the Secretary of State.
 - b. an additional mechanism for authorities to support a school following an adverse inspection by requiring that school to take a partner for the purposes of securing advisory services for school improvement.
 - c. a change to the definition of the circumstances when an authority may give a warning notice to the governing body of a maintained school to cover those schools where an authority deems that pupils' progress in relation to their prior attainment is unacceptably low, in line with statutory guidance.

Implementation

48. Part 4 of the Act was commenced on 1 April 2007.

Secondary legislation

49. The School Governance (Transition from an Interim Executive Board) England Regulations 2010 (SI 2010/1918) were made under paragraph 19 of Schedule 6 to the Act. Statutory guidance *Schools causing concern* (May 2008) was issued to local authorities under section 72 of the Act. This was updated and reissued on 27 July 2011.

Legal issues

50. There have been subsequent amendments to this Part of the Act as follows:
- a. Sections 59, 60, 63, 64, 66, 67, 68 and 69 were amended by the ASCL Act 2009. This was as a result of the abolition of the LSC (amendments to section 68) and the introduction of a new warning notice given by a local authority where the governing body has failed to comply or failed to secure compliance by the head teacher with teachers pay and conditions (new section 60A). The amendments also extended the Secretary of State's powers to appoint additional governors and to constitute the governing body as an Interim Executive Board (IEB) in all circumstances where a school is eligible for intervention, not just where the school required significant improvement or special measures, as was the case before. These changes were brought into force on 12 January 2010.

20 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

- b. The ASCL Act 2009 not only inserted new sections 60A, but also inserted new sections 69A and 69B which has given the Secretary of State new powers of direction where there are reasonable grounds for a warning notice to be given. In the case of a performance standards and safety warning notice the Secretary of State can now direct a local authority to “consider” giving a warning notice, and in respect of a teachers pay and conditions warning notice, the Secretary of State can direct a local authority to “give” a warning notice following a direction for the local authority to consider giving one. These new sections were also brought into effect on 12 January 2010.
51. There have been no further legal issues relating to Part 4 although section 69 was further amended by the Academies Act 2010 by inserting a new subsection (4) which removes the requirement for the Secretary of State to consult before constituting the governing body of a school as an IEB where an Academy order has effect in respect of a school. This was commenced on 29 July 2010.

Other post-legislation reviews

52. Since the Act was passed, there have been a number of reviews relating to the provisions in this Part.
- a. *Local Authorities and School Improvement: the Use of Statutory Powers* Keating, A, Marshall, H and Rudd, P. (LGA Research Report). (2009). Slough: NFER.
 - b. *Sustaining Improvement: the journey from special measures*. Ofsted (2008).
 - c. *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2009/10: Schools causing concern – the journey from failure to success*. Ofsted (2010).
 - d. *Zero tolerance of failure and New Labour approaches to school improvement in England*, Oxford Review of Education, 34 (6), 651-664, Sammons, P (2008).

Preliminary assessment

53. Early evidence following implementation of the Act shows that local authority powers to intervene where schools are causing concern were not being used as frequently as would be expected and that warning notices, in particular, were not being used in line with legislation.¹
54. Low use of warning notices as a means of intervention has continued: from 1 April 2007 to 23 February 2011 Ofsted was notified that 119 warning notices had been issued to 116 maintained schools by 63 local authorities.
55. Some local authorities have acted where schools are in an Ofsted category (significant improvement or special measures) to appoint additional governors, suspend delegated authority of a school's budget or require the school to enter into partnership arrangements. IEBs are being used as a method of intervention in

¹ In July 2008 the DCSF issued a consultation document *Delivering the Children's Plan: Proposals for Revisions to Legislation for Schools Causing Concern*. The consultation document said that, since EIA 2006 was implemented in April 2007, there was evidence that local authorities were not using warning notices in line with the statutory guidance. The evidence included cases of long-standing low attainment with apparent absence of local authority intervention.

schools causing concern. As at May 2011, there were 138 Approved IEBs in place across both primary and secondary sectors in England.

56. Concerns about the effectiveness of these provisions prompted the last Government to propose Clause 22 of the Children, Schools and Families Bill 2010 (as introduced to Parliament), to extend the intervention powers of the Secretary of State, in particular to direct a local authority to “give” a performance standards and safety warning notice where it has previously been directed to “consider” giving one but decided not to. It was also proposed that where a performance standards and safety warning notice had been given following a direction from the Secretary of State, the right of a school to make representations to Ofsted against the notice was removed. These provisions did not survive “wash-up”.
57. In the 2010 Schools White Paper, the Government accepted the argument that these intervention powers needed strengthening, which section 44 of the Education Act 2011 does in a similar way to the CSF Bill but without removing due process.

Part 5: Curriculum and entitlement (sections 74 to 75)

Objectives

58. Part 5 of the Act introduced two new entitlements to the key stage 4 curriculum, for pupils aged between 14 and 16. The first offered key stage 4 pupils an entitlement to study science programmes that lead to at least two science GCSEs. This was intended to ensure a broad science curriculum and increase numbers of pupils studying science post-16. The second entitlement gave key stage 4 pupils the option to follow a course of study leading to a Diploma.
59. Section 75 introduced new entitlements for young people who are over compulsory school age, but have not yet had their 19th birthday. Those offered the entitlement were to follow a course of study in English, maths and ICT and a course of study leading to a Diploma.

Implementation

Section	Date of coming into force
74(1)-(3) and (5)	Not commenced
74(4)	1 April 2007
75	Not commenced, repealed on 1 April 2010

Secondary legislation and legal issues

60. The following secondary legislation and statutory guidance has been issued in relation to this Part.

Section	Title of statutory instrument/statutory guidance	Description
74(4) (made under section 85(3A)(b) of Education Act 2002)	The Education (National Curriculum) (Science at Key Stage 4) (England) Order 2007 (SI 2007/2241) Came into force 1 September 2007.	Section 85 of the Education Act 2002 entitles a pupil in the fourth key stage to follow a course of study in science which leads to a qualification or set of qualifications from those approved under section 98 of the Learning and Skills Act 2000 and specified by the Secretary of State. The purpose of the regulation is to specify two sets of qualifications for that purpose.

Other post-legislation reviews

61. Since the Act was passed, there have been a number of reviews relating to the provisions in section 74 of this Part:
 - a. *Does offering more science at school increase the supply of scientists? The impact of offering Triple Science at GCSE on subsequent educational choices and outcomes*, Broeke, S. (Royal Holloway, University of London: Discussion Papers in Economics 10/01, 2010)
 - b. *Success in Science*, Ofsted (2011)
 - c. *Educating the next generation of scientists*, NAO, Department for Education (2010)

Preliminary assessment

62. The statutory entitlement has not made the impact originally expected. Whilst there have been significant increases in the number of pupils taking triple science (from 6% of pupils in state-funded schools in 2006 to 20% in 2011), there has also been a decline in the number of pupils taking both GCSE science and GCSE additional science, which fell from approximately 350,000 pupils in 2008 to 250,000 pupils in 2011. In addition to the migration to GCSE triple science, this decrease can also be partly attributed to an increase in pupils studying vocational science level 2 qualifications. These qualifications, along with science GCSEs, counted towards achievement of national indicators under the previous Government and were reported in school performance tables as "2+ Science GCSEs".
63. There has been an increase in the number of students studying science A levels. The numbers studying physics A level has increased since 2006 following eight successive years of decline (from 23,657 in 2006 to 29,216 in 2011). Numbers taking chemistry (34,534 to 43,256) and biology (46,624 to 54,734) A level have also increased. It is difficult to assess how much of this is down to the introduction of the statutory entitlement rather than, for instance, the overall drive to increase numbers taking triple science GCSE.
64. For the Diploma entitlement, the policy intention was that it would come into effect from 2013. In July 2009, data suggested that most local authorities were on target to meet the entitlement. The Education Act 2011 repeals the entitlement to enable local authorities, schools and colleges to offer courses that reflect local capacity and demand.

Part 6: School travel and school food (sections 76 to 87)

Objectives

65. Part 6 of the Act introduced a duty on local authorities to promote the use of sustainable modes of travel and extended the rights for free home to school travel to include additional provision for children from low income families. It enabled local authorities to offer pilot travel schemes and included a duty that local authorities had to have regard to religion and belief when considering their travel functions.
66. The Act extended the power to make nutritional standards for school lunches provided on the school premises of maintained schools and to registered pupils at any place other than a school. It also removed the duty on local authorities and governing bodies to charge pupils (except those eligible for free school meals) for food and drink provided for them and replaced it with a power to charge for such provision. The aim was to improve the diets and health of English schoolchildren and to enable those local authorities and governing bodies that would like to provide pupils with some or all refreshments free of charge to be able to do so.
67. The Act amended duties in relation to sixth form transport by extending, and in some cases transferring, certain powers of the Secretary of State to the Learning and Skills Council. These amendments have all since been amended or repealed. Sections 509AA – 509AC now apply to England only, and the powers have been returned to the Secretary of State.

Implementation

68. The sections of the Act were brought into operation as below:

Section	Date of coming into force
76	1 April 2007
77(1) inserting sections 508B(11) and 508D in EA 1996	1 April 2007
77(1) for remaining purposes	1 September 2007
77(2) for certain purposes	1 September 2007
77(2) for remaining purposes	1 September 2008
78, 79 and 80	1 April 2007
81	Not commenced, repealed with effect from 1 April 2010
82	1 September 2007
83	1 April 2007
84 for certain purposes	1 April 2007
84 for certain purposes	1 September 2007
85 for certain purposes	1 April 2007

Section	Date of coming into force
85 for certain purposes	1 September 2007
86 and 87	8 November 2006

69. Section 81 relates to transport for adult learners. It was considered unnecessary to commence at the time as there was subsequent (to the bill passing) agreement that the current transport provisions would be maintained in relation to England. Section 81 was repealed by the ASCL Act 2009.

Secondary legislation

Section	Title of statutory instrument/ statutory guidance	Description
76 (made in part under section 508A EA 1996 inserted by this section)	The Education (School Information) (England) (Amendment) Regulations 2007 (SI 2007/1365) Came into force 1 June 2007.	To prescribe the manner and time that the details of a sustainable travel strategy had to be published. Revoked by SI 2008/3093 10 February 2009.
76 (duty imposed by section 508A(7) EA 1996)	<i>Home to School Travel and Transport Guidance</i> (2007)	Local authority duties and powers relating to sustainable school travel, and the provisions of school travel arrangements for children and young people.
77 and 78 and Schedule 9 (made under section 508B(11) EA 1996 inserted by section 77, and Schedule 35C EA 1996 inserted by Schedule 9 and given effect by section 78(2))	School Travel (Pupils with Dual Registration) (England) Regulations 2007 (SI 2007/1367) Came into force on 1 June 2007 (in relation to modification of application of Schedule 35C EA 1996) and 1 September 2007 (in relation to modification of application of 508B EA 1996).	These regulations prescribe the travel duties of the local authority for children registered at two qualifying schools and children in this situation and with no fixed abode.

26 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Section	Title of statutory instrument/ statutory guidance	Description
79	The School Travel (Piloting of Schemes) (England) Regulations 2007 (SI 2007/1366) Came into force 1 June 2007.	To make provision for the piloting of the school travel scheme provisions.
86 (made under section 114A SSFA 1998 inserted by this section)	The Education (Nutritional Standards and Requirements for School Food) (England) Regulations 2007 (SI 2007/2359) Came into force 10 September 2007. The Education (Nutritional Standards and Requirements for School Food) (England) (Amendment) Regulations 2008 (SI 2008/1800) Came into force on 1 September 2008. The Education (Nutritional Standards and Requirements for School Food) (England) (Amendment) Regulations 2011 (SI 2011/1190) Came into force on 1 September 2011.	The 2007 regulations prescribe food-based and nutrient-based standards for food that is provided for school lunches, and food-based standards for food that is provided otherwise than as part of a school lunch up to 6 pm. They limit the drinks that can be provided and require that drinking water must be provided free of charge to pupils on school premises. The 2007 regulations were amended by the 2008 regulations which inserted a definition of low-fat milk into the 2007 regulations, substituted new requirements for fruit juice, enabled the energy and nutrient figures of an average school lunch to be calculated for a group of schools, inserted a method for calculating the energy and nutrient figures and substituted a new table of energy and nutrient figures and amounts. The 2011 regulations amend the nutritional standards to allow boarding schools to provide pupils with confectionary, snacks, cakes and biscuits which do not comply with the relevant standards if they are provided as part of an evening meal.

70. In addition, the School Information (England) Regulations 2008 (SI 2008/3093), which came into force on 10 February 2009, require local authorities to publish annually, in their composite prospectus, a summary of the sustainable modes of travel strategy; the travel arrangements for eligible children and other children under section 508B and section 508C (inserted by section 77 of the Education and

Inspections Act 2006); and where a school travel scheme exists, the details of that scheme.

Legal issues

71. The only legal issue associated with this Part of the Act arose from a criticism from the JCSI (Joint Committee on Statutory Instruments) on the definition of fruit juice in the 2007 School Food Regulations, which was subsequently amended.

Other post-legislative reviews

School Transport

72. It was intended that the school travel scheme pathfinder authorities would commence their pilots in September 2009 and run initially until the end of July 2012. Independent consultants evaluated the 23 bids received and concluded that they did not fully meet the required criteria. Following consultation with the Local Government Association, it was decided not to run the pilots. All local authorities were notified in April 2008 of the decision not to commence with the scheme.
73. All local authorities met the objective to adopt a more strategic approach to transport arrangements by publishing sustainable modes of travel strategies on their websites. An independent evaluation by MVA Consultancy in 2008 reviewed a representative sample of the strategies, concluding that overall the quality was good.
74. The Department conducted an evaluation of the take-up of extended rights to free travel on the first anniversary of each phase of commencement of the duty. The response rate to the evaluation was poor, resulting in a data set that was not robust and making it difficult to draw reliable conclusions. The extended rights to free travel for pupils from low income families continue to be phased in, with full take up (30% of entitled children) expected by 2015.

School Food

75. The following reviews have been conducted in relation to school food:
 - a. *School lunch and learning behaviour in primary schools: an intervention study*, School Food Trust, 2008
 - b. *School lunch and learning behaviour in secondary schools: an intervention study*, School Food Trust, 2009
 - c. *Primary school food survey 2009*, School Food Trust, February 2010
 - d. *Food in schools – Progress in implementing the new school food standards*, Ofsted, June 2010

Preliminary assessment

School Transport

76. Overall, the Act has enabled pupils from low income families to state a preference for a wider choice of school and has had the effect of increasing the number of children entitled to free home to school transport.

28 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

77. Anecdotal evidence suggests that few parents view the sustainable modes of travel strategies or summaries. Section 81 was repealed without ever having been commenced.

School Food

78. Research carried out by the School Food Trust has shown that the standards are having a positive impact. A study carried out in a nationally representative sample of primary schools in 2009, showed that the food provided, selected and eaten at lunchtime is healthier than in 2005, before the introduction of the new standards. A similar study in secondary schools is currently underway. Further research by the Trust has shown that making improvements to the food provided at lunchtime, and to the dining room environment in primary and secondary schools has a positive impact on pupils' behaviour and concentration in lessons after lunch.
79. A thematic report carried out by Ofsted showed that generally good progress has been made towards meeting the standards for school food especially given that the nutrient-based standards for secondary school lunches did not come into force until September 2009 and the inspections took place between September 2009 and January 2010.
80. The legislation enabled two local authorities to take part in a pilot, supported by matched funding from the Government, to provide free school meals to all primary school pupils. The Government is now proposing to amend sections 512ZA and 533 of the Education Act 1996 further, through the Education Act 2011, by removing the duty on local authorities and governing bodies to charge every person the same price for the same quantity of the same item. This will enable them to provide free or reduced price meals to particular groups of pupils without needing to apply for an order.

Transport for persons of sixth form age

81. Local authorities have a duty to publish an annual transport policy statement specifying the arrangements they will make to help students of sixth form age access education or training. Those arrangements could include providing transport to and from college, or financial support to help with transport costs. Annual guidance supports local authorities to meet this duty.
82. Anecdotal evidence suggests that local authorities find the guidance a useful tool. In particular we understand that officers have found the guidance helpful in clarifying the breadth of the duty and confirming that the provision of support is a statutory duty.
83. From April 2010, as a result of changes made by the Apprenticeships, Skills, Children and Learning Act 2009, the responsible body for the production of guidance reverted to the Secretary of State for Education under section 509AB(5) of the Education Act 1996.
84. It continues to be government policy for local authorities to have regard to guidance in this area. In the context of reducing bureaucratic burdens on local authorities, the Department will be making available online, shorter, focussed guidance.

Part 7: Discipline, behaviour and exclusions (sections 88 to 111)

Objectives

85. This Part of the Act gave legislative effect to the then Government's commitment to "introduce a clear and unambiguous legal right for teachers to discipline pupils, including re-affirmation of the right to restrain pupils using reasonable force, backed by an expectation that every school has a clear set of rules and sanctions" as set out in the 2005 White Paper *Higher Standards, Better Schools for All*. It proposed how the Government intended to implement the recommendations in *Learning Behaviour: The Report of the Practitioners' Group on School Behaviour and Discipline*, chaired by Sir Alan Steer and published in October 2005.

Implementation

86. The sections of the Act were brought into operation as below:

Section	Date of coming into force
88-96	1 April 2007
97-108	1 September 2007
109(1)-(7) & (9)-(11)	8 November 2006
109(8)	1 September 2007
110	1 September 2007
111	8 November 2006

Secondary legislation

87. The following secondary legislation has been issued in relation to this Part of the Act.

Section	Title of statutory instrument	Description
92	The Education (Excluded Days of Detention) (England) Regulations (SI 2007/1304) Came into force on 4 June 2007.	To specify what days may not be permitted days of detention.
98 and 99 (amended s20 and s24, and inserted 22A into the Anti-Social Behaviour Act 2003)	The Education (Parenting Contracts and Parenting Orders) England Regulations (SI 2007/1869) Came into force on 1 September 2007.	These regulations make provision in relation to parenting orders and contracts under Part 2 of the Anti-social Behaviour Act 2003 as amended by this Act.

30 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Section	Title of statutory instrument	Description
100 and 104	The Education (Provision of Full-Time Education for Excluded Pupil) England Regulations 2007 (SI 2007/1870) Came into force 1 September 2007.	These regulations among other things provide that the duty on governing bodies and local authorities under sections 100 and 101 apply from the sixth day of exclusion; make exceptions to that duty and make provision regarding the notice to be given to parents under section 104.
102	The Education (Reintegration Interview) (England) Regulations (SI 2007/1868) Came into force on 1 September 2007.	These regulations prescribe the circumstances in which a head teacher must request the parents of an excluded pupil age to attend a reintegration interview and the procedure to be followed in arranging the interview.
105 and 106	The Education (Penalty Notices) Regulations (SI 2007/1867) Came into force on 1 September 2007.	Among other things these regulations prescribe the details for the operation of the penalty notice scheme.

Statutory Guidance

88. *School Discipline and Pupil Behaviour Policies – Guidance for Schools* was published in March 2007. Guidance on *The Use of Force to Control or Restrain Pupils* was published in November 2007. Behaviour guidance has been substantially revised (see below). *Improving behaviour and attendance: guidance on exclusions from schools and pupil referral units* was published in September 2007 and revised in September 2008. Revised statutory guidance *Education-related Parenting Contracts, Parenting Orders and Penalty Notices 2007* has also been published.

Legal issues

89. There are no legal issues of which the Department is aware.

Other post-legislative reviews

90. The following reviews have been conducted:
- Customer Voice Research: Behaviour and discipline powers in schools*, DfE 2010
 - Learning Behaviour: Lessons Learned – a review of behaviour standards and practices in our schools*, Sir Alan Steer, April 2009
 - Evaluation of the use of education-related Parenting Contracts*, TNS, 2008
 - Investigation into the use of Parental Responsibility Measures for Attendance and Behaviour*, York Consulting, May 2010

91. The Department also publishes² data on the use of the parental responsibility measures.

Preliminary assessment

92. These provisions did set out clearly in legislation teachers' broad legal powers to discipline pupils. We have no data on usage or impact because the Department does not collect such data or information.
93. However, while behaviour in schools is generally good, there remain significant problems with the behaviour of some pupils in some schools. In order to address this, the Education Act 2011 reforms discipline and behaviour powers, including removing the requirement in England to give 24 hours written notice of detention. The Government has also recently published a suite of revised behaviour guidance³ which includes guidance on discipline and use of force.
94. This Part also built on provisions in the Anti-social Behaviour Act 2003 to support and compel parents to take responsibility for their children's behaviour in school. We collect data on the use of parenting contracts, parenting orders and penalty notices from local authorities annually. The data shows that local authorities and schools continue to use the measures to address poor behaviour in schools. Nearly 13,000 parenting contracts have been agreed with parents; 129 penalty notices have been issued where excluded pupils have been found in a public place during school time; and one behaviour parenting order has been granted.

2 Available at:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/parents/a0010302/parental-responsibility-data>

3 Available at: <http://www.education.gov.uk/schools/pupilsupport/behaviour> including: Behaviour and Discipline in Schools: Guidance for Governing Bodies and Guide for heads and school staff on behaviour and discipline.

Part 8: Inspections (sections 112 to 159)

Objectives

95. Part 8 of the Act covers inspections and relates to the establishing of the Office for Standards in Education, Children's Services and Skills (Ofsted) as a single inspectorate. This followed a decision to bring together within Ofsted the inspection functions of Her Majesty's Chief Inspector of Schools, the Adult Learning Inspectorate, the children's social care role of the Commission for Social Care Inspection (CSCI), and the children and the inspection functions of the Children and Family Court Advisory and Support Service (Cafcass).
96. This Part of the Act is divided into seven chapters. Chapter 1 establishes the Office as a body corporate, as well as the role and arrangements for appointing Her Majesty's Chief Inspector of Education, Children's Services and Skills. It includes the role of the Office and requirements relating to the performance of functions of both the Office and the Chief Inspector. This chapter makes provision for the role of the Children's Rights Director as one of Ofsted's staff. It also sets the requirements for the Chief Inspector to report to the Secretary of State, including making an annual report.
97. Chapter 2 transfers to the new Chief Inspector the functions of the former Chief Inspector of Schools in England.
98. Chapters 3–6 make provision for Ofsted to undertake inspections for areas that transferred from other inspectorates, along with specific duties associated with requirements to inspect. It includes provisions which abolished the Adult Learning Inspectorate. Specific provisions relating to sectors which the new Ofsted took on as part of the changes include:
 - requiring the Chief Inspector to publish a framework which set out the common principles of inspection for the further education sector;
 - transferring to Ofsted responsibility for the inspection of children's social care functions from CSCI, integrating these with Ofsted's existing local authority inspection functions;
 - transferring the responsibility for the inspection of Cafcass to Ofsted from Her Majesty's Inspectorate of Court Administration (HMICA);
 - making further provisions relating to functions of the Chief Inspector covering inspection of secure training centres, adoption and fostering functions and the transfer of certain functions from CSCI; and
 - making provisions, contained in Schedule 13 regarding authorisation of interaction between the Chief Inspector and other authorities, e.g. HM Chief Inspector of Prisons and HM Chief Inspector of Constabulary.
99. Chapter 7 covers miscellaneous and supplementary provisions, including transitional provisions, relating to inspection and the creation of the new inspectorate. Section 154 introduced a new duty on the Chief Inspector, relating

to inspection under section 5 of the Education Act 2005, to report on schools' contribution to community cohesion.

100. Section 155 makes provision for regulations to be made requiring local authorities to pay the Chief Inspector an annual fee in respect of relevant functions, e.g. children's homes.

Implementation

101. All sections of Part 8 have been implemented and the provisions have met the policy intentions. The expanded inspectorate with its revised governance arrangements came into effect in April 2007. Full details of implementation of the legislation are set out in the table below.

Section	Date of coming into force
112(1) to (3)	12 December 2006
112(4) for certain purposes	12 December 2006
112(4) to the extent not already in force	1 April 2007
113 to 115	1 April 2007
116(1)(a) and (b)	12 December 2006
116(1)(c) and (2)	1 April 2007
117	12 December 2006
118 to 153	1 April 2007
154	1 September 2008
155 for purposes of making subordinate legislation	8 November 2006
155 for remaining purposes	1 April 2007
156	30 June 2008
157	1 April 2007
158 for certain purposes	12 December 2006
158 for remaining purposes	1 April 2007
159	12 December 2006

34 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Secondary legislation

102. The following secondary legislation and statutory guidance has been published in relation to this Part of the Act.

Section	Title of statutory instrument/ statutory guidance	Description
114	<p>Inspectors of Education, Children's Services and Skills Order 2007 (SI 2007/1119)</p> <p>Inspectors of Education, Children's Services and Skills (No 2) Order 2007 (SI 2007/1352)</p> <p>Inspectors of Education, Children's Services and Skills (No 3) Order 2007 (SI 2007/1682)</p> <p>Inspectors of Education, Children's Services and Skills (No 4) Order 2007 (SI 2007/2144)</p> <p>Inspectors of Education, Children's Services and Skills (No 5) Order 2007 (SI 2007/2918)</p> <p>Inspectors of Education, Children's Services and Skills (No 6) Order 2007 (SI 2007/3228)</p> <p>Inspectors of Education, Children's Services and Skills Order 2008 (SI 2008/681)</p> <p>Inspectors of Education, Children's Services and Skills (No 2) Order 2008 (SI 2008/1484)</p> <p>Inspectors of Education, Children's Services and Skills (No 3) Order 2008 (SI 2008/1784)</p> <p>Inspectors of Education, Children's Services and Skills (No 4) Order 2008 (SI 2008/2563)</p>	<p>These are Orders in Council made by Her Majesty appointing persons as Her Majesty's Inspectors of Education, Children's Services and Skills</p>

Section	Title of statutory instrument/ statutory guidance	Description
	<p>Inspectors of Education, Children's Services and Skills (No 5) Order 2008 (SI 2008/3126)</p> <p>Inspectors of Education, Children's Services and Skills Order 2009 (SI 2009/882)</p> <p>Inspectors of Education, Children's Services and Skills (No 2) Order 2009 (SI 2009/1740)</p> <p>Inspectors of Education, Children's Services and Skills (No 3) Order 2009 (SI 2009/2750)</p> <p>Inspectors of Education, Children's Services and Skills (No 4) Order 2009 (SI 2009/3007)</p> <p>Inspectors of Education, Children's Services and Skills Order 2010 (SI 2010/235)</p> <p>Inspectors of Education, Children's Services and Skills (No 2) Order 2010 (SI 2010/769)</p> <p>Inspectors of Education, Children's Services and Skills (No 3) Order 2010 (SI 2010/1550)</p> <p>Inspectors of Education, Children's Services and Skills (No 4) Order 2010 (SI 2010/1832)</p> <p>Inspectors of Education, Children's Services and Skills (No 5) Order 2010 (SI 2010/2683)</p> <p>Various dates for coming into force.</p>	

36 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Section	Title of statutory instrument/ statutory guidance	Description
120	Office for Standards in Education, Children's Services and Skills (Children's Rights Director) Regulations 2007 (SI 2007/460) Came into force 1 April 2007.	These Regulations prescribe the functions of the Children's Rights Director (CRD) to advise and assist the Chief Inspector (CI) (when the CI performs functions at section 120(3)), to have regard to (i) the need to safeguard and promote the rights and welfare of children; and (ii) the views expressed by relevant persons about activities within her remit. The CRD must perform these functions, in particular, by ascertaining the views of children (and their parents where necessary) about those activities and reporting such views to the CI. The CRD must also inform the CI of any matters in relation to the rights and welfare of children that the CRD considers significant.
123, 127 and 130	The Education and Inspections Act 2006 (Prescribed Education and Training etc) Regulations 2007 (SI 2007/464) Came into force 1 April 2007.	These regulations prescribe further areas of provision which are added to the scope of inspection: education and training for 16-18 year olds provided other than in further education institutions; funded dance and drama provision; further education teacher training; information, advice and guidance for adults. They also set out requirements following certain inspections of the Chief Inspector for the publication of reports of the inspection: the bodies to whom copies of the reports should be sent and the timescale for doing so; and sets out similar requirements for action plans, in response to the reports, by the bodies inspected. The regulations apply to inspections of further education and training by the Chief Inspector.

Section	Title of statutory instrument/ statutory guidance	Description
137	Education and Inspections Act 2006 (Inspection of Local Authorities) Regulations 2007 (SI 2007/462) Came into force 1 April 2007.	These regulations prescribe for the purposes of section 137 how and when a local authority must publish an inspection report and a written statement of proposed action following an inspection by the Chief Inspector.
147 and 155	<p>Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) Regulations 2007 (SI 2007/694) Came into force 1 April 2007.</p> <p>Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) (Amendment) Regulations 2009 (SI 2009/2724) Came into force on 2 November 2009.</p> <p>Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) (Amendment) Regulations 2010 (SI 2010/617) Came into force 1 April 2010.</p> <p>Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) (Amendment) Regulations 2011 (SI 2011/553) Came into force 1 April 2011.</p>	<p>These regulations prescribe the fees that are to be paid to the Chief Inspector and provide for the frequency of inspection in relation to each of the establishments, agencies and local authority adoption and fostering functions.</p> <p>The 2009, 2010 and 2011 amending regulations reduce or cap the annual fees that are to be paid to the Chief Inspector in respect of certain establishments, agencies, and local authority adoption functions.</p>

Legal issues

103. Section 148 of the Act was amended by section 4 of the Children and Young Persons Act 2008, to ensure that providers of Social Work Practices can come fully within the scope of the Chief Inspector's remit under the Care Standards Act 2000, once they are treated as "agencies" for the purposes of that Act. This amendment came into force on 1 April 2011 in relation to England.
104. Section 159 of the Act was amended to include, at subsection (1), definitions of "the Chief Executive", "the Council" and "the YPLA".
105. There has been no litigation in respect of this Part of the Act as far as the Department is aware. In regard to Chapter 3 provisions in Part 8, City College, Birmingham did seek to move a judicial review in 2009 but this only reached the application hearing stage.

Other reviews

106. The House of Commons Education Committee conducted an inquiry into Ofsted and its work in the summer of 2010 and published its report on *The role and performance of Ofsted* in April 2011. This included matters relating to the breadth of the inspectorate's remit and therefore covered areas which are relevant to the provisions in this Part of the Act. The Government response to that review was published on 28 June 2011.
107. In 2010 Dr John Dunford was commissioned to undertake an independent review of the Children's Commissioner and the Office that supports the statutory role. The Review considered the role of the Children's Rights Director in Ofsted and recommended that the role should be merged with the functions of the Office of the Children's Commissioner. The Government accepted the recommendations in principle and a consultation is currently taking place on proposals for the setting up of a new office which will bring together these roles.
108. On 27 July 2010, the Minister of State for Schools and the Minister of State for Further Education, Skills and Lifelong Learning, wrote to the Chief Inspector informing her that, pending the introduction of legislation to exempt outstanding colleges from inspection, the Secretary of State was specifying that the interval for the inspection of FE institutions which are currently assessed by Ofsted to be outstanding is to be every eight years. In January 2011, the Minister of State for Further Education, Skills and Lifelong Learning wrote a further letter to the Chief Inspector to state that private training organisations, currently rated as outstanding, should also be inspected every eight years.
109. As part of the Government's commitment to reduce inspection burdens on local authorities, it announced its intention to repeal section 138, relating to the annual rating of local authority children's services by Ofsted, at the earliest legislative opportunity.
110. The duty on the Chief Inspector in Section 154 to report on community cohesion, which came into effect in September 2008, has subsequently become part of a wider review of school inspection coverage. Changes proposed to school inspection were announced in the 2010 School White Paper. These changes are taken forward in the Education Act 2011. The intention is to revise the statutory

reporting areas for school inspection, so that in future inspection focuses on four core areas: pupil achievement, the quality of teaching, leadership and management and pupil behaviour and safety. In its report on the role and performance of Ofsted, the Education Select Committee welcomed the proposed move to a slimmer framework.

Preliminary assessment

111. The provisions in Part 8 of the Act have delivered the policy intention of creating a single inspectorate for education, children's services and skills. They have enabled the establishment of strengthened governance arrangements for the new inspectorate.
112. The transfer of functions of the Adult Learning Inspectorate to Ofsted has been broadly successful. The inspectorate has driven better outcomes for the FE sector and helped providers to focus on areas for improvement through action plans. Ofsted has held a review of the Common Inspection Framework and, following that review, published a new framework in September 2009. The Common Inspection Framework is again being reviewed to focus more strongly on teaching and learning and outcomes for students. 14-19 Area Reviews were conducted in a number of local authority areas, but the powers have not been exercised since 2005, reflecting a move to reduce the burden of inspection.
113. Sections 135 to 142 fit with the Government's overall aim to streamline inspection processes and reduce burdens. They are flexible enough to enable Ofsted to adapt to changing circumstances, for example the Government's commitment to deliver an even more streamlined and proportionate system for the inspection of local authority children's services by May 2012.
114. In relation to Chapter 5 of Part 8, the changes that Ofsted made to this inspection function did not arise directly from the legislative provisions, but the new approach has been an important catalyst in improving Cafcass's performance.
115. By increasing the number of inspections and reporting quickly on their findings, Ofsted has provided a comprehensive and up to date picture of performance. The introduction of an inspection framework that is closer to that used in children's services fits with the Government's overall aim to streamline inspection approaches. The powers granted by the Act are flexible enough to enable Ofsted to adapt to changing circumstances. They have, for example, allowed a shift in the focus of inspection work to take account of Cafcass's work to embed the programme of transformation for which the Government provided additional funding in 2010-11.

Part 9: Miscellaneous (sections 160 to 177)

Objectives

116. Part 9 of the Act covers miscellaneous provisions and only the substantive sections are commented upon in this assessment. A fuller description of the effect of sections 160 to 177 can be found in the explanatory notes⁴ accompanying the Act.
117. Section 160 introduced a new power for the Chief Inspector to investigate complaints by parents about schools. Section 165 set out the circumstances in which staff at FE institutions may use reasonable force, reducing the risk of a legal challenge. Sections 169 to 172 relate to prohibiting or restricting unsuitable persons from taking part in the management of independent schools and dealing with offences committed in connection with such schools. In response to a recommendation from the Education and Skills Select Committee in 2006 to strengthen the role of special educational needs co-ordinators (SENCOs) in schools, section 173 requires governing bodies of mainstream maintained schools to appoint a SENCO and to ensure they have prescribed qualifications.

Implementation

118. The sections of the Act were brought into operation as below:

Section	Date of coming into force
160	28 March 2007
161	8 November 2006
162-163	8 January 2007
164	28 March 2007
165-166	1 April 2007
167	1 September 2007
168	8 January 2007
169-171	Not commenced in relation to England
172-174	8 January 2007
175	30 June 2008
176	This section came into force on 1 April 2007 but was repealed by ASCL Act 2009 (paras 56 and 69 of Schedule 1 and Part 1 of Schedule 2) with effect from 1 April 2010
177	8 January 2007

Secondary legislation

119. The following secondary legislation and statutory guidance has been published in relation to this Part of the Act.

Section	Title of statutory instrument/ statutory guidance	Description
160 (made under section 11A EA 2005 inserted by this section)	<p>The Education (Investigation of Parents' Complaints) (England) Regulations 2007 (SI 2007/1089)</p> <p>Came into force on 27 April 2007.</p> <p>Education (School Inspection etc) (England) (Amendment) Regulations 2008 (SI 2008/1723)</p> <p>Came into force on 1 September 2008.</p>	<p>These set out a number of matters relating to the handling by Ofsted of parental complaints.</p> <p>These amend two sets of Regulations. First, they amend the Education (School Inspection) (England) Regulations 2005 so as to prescribe the cases where a school may charge for a copy of an inspection report. Second, they amend the 2007 Regulations above so as to provide for a complaint about the contribution made by the school to community cohesion to be a qualifying complaint for the purposes of section 11A(2) Education Act 2002.</p>
162	<p>The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (SI 2010/1158)</p> <p>Came into force on 5 May 2010.</p> <p>The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010 (SI 2010/1172)</p> <p>Came into force on 5 May 2010.</p>	<p>This order repeals the definitions of "local education authority" and of "children's services authority in England" in EA 1996 and the Children Act 2004 respectively and amends the definition of "local authority" in EA 1996 and in the Children Act 2004.</p> <p>This order substitutes "local authority" for "local education authority" in one local act and partially repeals a number of local acts. It also amends education and non-education subordinate legislation, substituting "local authority" for "local education authority" and "children's services authority" and makes other consequential or connected amendments.</p>

42 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Section	Title of statutory instrument/ statutory guidance	Description
164	The Education (Information About Children in Alternative Provision) (England) Regulations 2007 (SI 2007/1065) Came into force on 30 April 2007.	These regulations make provision concerning the supply of data about children receiving local authority funded education mainstream schools.
166	The Collaboration Arrangements (Maintained Schools and Further Education Bodies) (England) Regulations 2007 (SI 2007/1321) Came into force on 25 May 2007.	The arrangements provided for in the regulations are based on the principle of allowing governing bodies and joint committees freedom to determine their own ways of working, within an agreed framework of common understanding that safeguards the interests of everyone concerned.
167	Statutory Guidance: Working Together: Listening to the voices of children and young people (May 2008)	This section extends coverage to maintained nursery schools. The guidance is under section 176 Education Act 2002.
173 (regulations made under section 317(3B) inserted by this section)	The Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945) Came into force 1 September 2009. The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009/1387) Came into force 1 September 2009.	Require SENCOs to be qualified teachers and governing bodies to determine the role of the SENCO in school management and monitor the SENCO's effectiveness. Require all SENCOs new to the role to have gained an approved qualification within three years of appointment.

Legal issues

120. Section 165 mirrors section 93 of the Act for schools at Part 7 and was intended to give staff at FE institutions the same power to use reasonable force against a college-enrolled student or school pupil attending a course at the institution.
121. Sections 169 to 171 have not been commenced in relation to England. They were overtaken and have been replicated by powers in the Education and Skill Act 2008

(sections 128-131 and 134-136). It is likely that Ministers will achieve their policy aims through commencing the relevant sections of the Education and Skills Act 2008, rather than these sections of the Education and Inspections Act 2006. Regulations are currently being prepared to prescribe the grounds for making a direction to prohibit or restrict unsuitable persons from taking part in the management of independent schools.

122. In relation to regulations under section 173, the Merits Committee drew the attention of the House to:
- a. the 2008 regulations on the basis that the regulations had been made despite responses from governor interests to a consultation that they imposed new burdens on governing bodies; and
 - b. the 2009 regulations on the basis that the Department had not consulted on whether the training should be mandatory for all SENCOs, not just those new to the role.

Other post-legislation reviews

123. In relation to section 161, the Secretary of State is required to prepare an annual report on the orders made by him in that academic year under the "Power to Innovate" and to lay a copy of the report before each House of Parliament.

Preliminary assessment

124. Given the nature of these provisions, there is no significant assessment as to their impact. However, the Secretary of State for Children, Schools and Families used section 163 to commission three specific reports from the Chief Schools Adjudicator. In relation to section 173 on SENCOs, the Department has funded over 6,500 training places and an evaluation is underway. The SEN and Disability Green Paper, published in March 2011, announced that the Department will continue funding new SENCO training in 2011/12.

Chapter 2:

Childcare Act 2006

Introduction

125. Chapter 2 of this memorandum provides a preliminary assessment of the Childcare Act 2006 (referred to as “the Act” in this Chapter).
126. The Childcare Bill was introduced in the House of Commons on 8 November 2005 and in the House of Lords on 9 March 2006. The Act received Royal Assent on 11 July 2006. The objectives, implementation, secondary legislation, legal issues, other reviews and a preliminary assessment of each main part of the Act are set out below. All references should be assumed to apply to England only, except where stated otherwise. Childcare matters in Wales have been devolved to the National Assembly, and are therefore not the responsibility of the Secretary of State. We have not given consideration to the parts of the Act that apply to Wales in this assessment.

Overall objectives and structure of the Childcare Act 2006

127. In England, the Childcare Act 2006 was intended to help implement the aims set out in Choice for Parents, the Best Start for Children: A Ten Year Strategy for Childcare (“the Ten Year Strategy”) published by the then Government on 2 December 2004. The document set out the Government’s plans for the future of childcare.
128. The Act imposes a range of general obligations on English local authorities (LAs) to support improved outcomes for younger children in particular and in relation to childcare. The obligations are designed to ensure that LAs take an active strategic role in managing the provision of childcare within their areas. The Act also effects a wholesale reform of the system of regulation and inspection of childcare in England.
129. The Act imposes three new duties of particular importance on local authorities:
 - a. improving the outcomes for all young children and reducing inequalities between them;
 - b. securing sufficient childcare for working parents; and
 - c. providing a better parental information service.

130. The Act is divided into four Parts:

Part 1: General functions of local authority: England

131. This Part sets out the duties placed upon local authorities in three main areas: improving the outcomes for young children; securing sufficient childcare; and providing information to parents. These duties reflect the growing strategic role that local authorities have in planning, commissioning and delivering services for children and families. The duties in this Part allow local authorities the flexibility to implement delivery in ways that best suit their particular circumstances, and allow future development without the need to alter the underpinning legislation.
132. It requires local authorities in England to improve well-being for young children, and defines “well-being” according to the five outcomes identified in the Green Paper Every Child Matters (September 2003): being healthy; staying safe; enjoying and achieving; making a positive contribution; and, achieving economic well-being. It requires early childhood services (identified as early years provision, health services, social services and employment services) to be provided in an integrated manner. It further provides for the NHS and Jobcentre Plus to work in partnership with local authorities to deliver these early childhood services in an accessible and integrated way.
133. Local authorities are also required to secure sufficient childcare for working parents and those making the transition to work. This is accompanied by duties to: regularly assess demand for, and availability of, local childcare provision; and support local childcare providers with information, advice and training. Local authorities are generally able to charge for childcare which they provide, but they are required to secure a prescribed amount of early years provision that is provided free of charge.
134. This Part also places a duty on local authorities to set up and run a service for parents and prospective parents, providing information on services, facilities and publications which may benefit them, or children or young people, including providing advice and assistance with childcare.

Part 2: General functions of local authority: Wales

135. This Part has not been considered in this assessment as childcare matters are devolved to the National Assembly.

Part 3: Regulation of provision of childcare in England

136. Part 3 of the Act puts in place legislative provisions to implement the proposals to reform regulation and inspection of childcare which were set out in the Ten Year Strategy. The Strategy set out the following proposals:
- a. to introduce a new legal framework for the integrated regulation and inspection of early education and childcare services.
 - b. to create a single framework for high quality integrated education and care which underpins the learning and development of children from birth to five.
 - c. to review the scope of regulation to make sure that different types of settings are subject to appropriate standards.

46 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

137. Chapters 2 – 5 of Part 3 cover the registration, inspection and regulation of the provision of childcare as defined by Section 18.
138. Chapter 2 of Part 3 covers the registration of, and requirements to be met by, early years providers. Early years provision is defined in Section 20 as provision of childcare for a young child. A child is regarded as “a young child” until 1 September following their fifth birthday. Chapter 2 sets out who will be required to be registered as an early years childminder (that is, someone who operates on domestic premises), or other early years provider. Chapter 2 goes on to put in place measures for the registration and inspection by Ofsted and the regulation of early years providers. It further makes provision for the establishment of the Early Years Foundation Stage (EYFS) for the purpose of promoting the well-being of young children who are receiving early years provision (Section 39).
139. Chapter 3 of Part 3 covers the registration, inspection and regulation requirements for childcare for children from 1 September following their fifth birthday up to the age of eight.
140. Chapter 4 of Part 3 covers the process of voluntary registration and the regulation of those persons who register voluntarily. Voluntary registration is available to all those who are not required to be registered (other than certain providers based in schools), but who look after children below an age to be prescribed in regulations, providing that they meet the registration requirements. Providers who are exempted from compulsory registration by subordinate legislation are among those who may be able to register voluntarily.
141. Chapter 5 of Part 3 includes provisions which apply to all registered childcare providers. It includes provisions relating to the cancellation and suspension of registration, disqualification from registration and removal from the registers. It also includes provisions dealing with inspectors’ rights of entry and powers and duties in relation to provision of information about providers. Provision is also made relating to offences and criminal proceedings. There are other miscellaneous provisions including provisions relating to: fees for registration; co-operation between local authorities and the Chief Inspector; combining registration certificates; communication of notices; the definition of school; and, employees of childcare providers.

Part 4: Miscellaneous and general

142. Part 4 of the Act makes provision for the collection of information relating to certain children for whom childcare is provided. It also amends paragraph 4 of Schedule 9A to the Children Act 1989 which deals with disqualification for registration under that Act. It also makes general provision about subordinate legislation, interpretation and commencement.
143. The Act applies to England only, apart from Part 2 which applies to Wales only, and certain provisions of Part 4 which apply to both England and Wales.

Implementation

144. The Act received Royal Assent on 11 July 2006. In Annex C, there is a list of consultation exercises conducted prior to the commencement of certain sections and funding associated with certain sections. In Annex D, there is a list of commencement dates for the sections of the Act.
145. Section 14 was not commenced, and was repealed by section 157 of, and paragraph 109 of Schedule 14 to, the Education and Inspections Act 2006 with effect from 1 April 2007.

Secondary legislation

146. The following table sets out policy areas and associated secondary legislation and statutory guidance.

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Improving outcomes	Statutory Guidance covering sections 1-4: Raising Standards Improving outcomes (Department for Children Schools and Families, April 2008)	Sets out for local authorities, health services and employment services how they should fulfil duties placed on them through Sections 1 to 4 of the Act.
Improving outcomes	Statutory Guidance Sure Start Children's Centres Statutory Guidance (Department for Children Schools and Families, October 2010)	Sets out how local authorities and relevant partners should fulfil Sure Start duties that were inserted in the Act by the Apprenticeship, Skills, Children and Learning Act 2009

48 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Improving wellbeing of young children	The Local Authority Targets (Well-Being of Young Children) Regulations 2007 (SI 2007/1415)	<p>These regulations set out the process to be followed by the Secretary of State in setting targets under Section 1(3) of the Act with regard to the duty to improve well-being and reduce inequalities.</p> <p>They provide that targets are to be set no more frequently than once in a calendar year, and by reference to one or more of the 13 assessment scales set out in the Qualifications and Curriculum Authority's (QCA's) Foundation Stage Profile Handbook.</p> <p>They also provide that the Secretary of State must inform a local authority at least two months in advance of the date by which he is proposing to set a target; and give at least one month for any representations in respect of the target to be submitted. Prior to setting targets, the Secretary of State must have regard to any targets proposed by a local authority and any representations made in relation to such targets.</p> <p>The regulations require the Secretary of State to give an account of his reasons if he proposes to set a target which differs from a local authority's proposal; and provide for an opportunity for further representations to be submitted to the Secretary of State.</p>

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Securing sufficient childcare	Securing Sufficient Childcare Guidance (Department for Children Schools and Families, July 2007)	The statutory guidance (with the exception of Chapter 5) relates to Sections 6, 7, 8 and 13 of the Act and sets out for local authorities how they can identify gaps in childcare provision and establish plans to meet the needs of parents.
Securing sufficient childcare	Statutory Guidance Securing Sufficient Childcare (Department for Children Schools and Families, March 2010)	The statutory guidance sets out for local authorities how the duty under Section 6 should be implemented. It also describes the process for conducting sufficiency assessments and provides contextual information.
Childcare sufficiency assessments	Childcare Sufficiency Assessments: Guidance for Local Authorities (Department for Children Schools and Families, February 2007)	The guidance for local authorities sets the framework for the duty on them under Section 11 of the Act to carry out assessments of the sufficiency of childcare and clarifies what is required to fulfil that duty.
Childcare sufficiency assessments	The Childcare Act 2006 (Childcare Assessments) Regulations 2007 (SI 2007/463)	The regulations prescribe the criteria which local authorities must apply for the completion of an assessment of the sufficiency of childcare. These include: the age ranges of children; the geographical areas; and the format and availability of the assessment document.
Information for parents	The Childcare Act 2006 (Provision of Information to Parents (England) Regulations 2007). (SI 2007/3490) Statutory Guidance – Duty to provide information, advice and assistance: Guidance for local authorities Childcare Act 2006 (Department for Children Schools and Families), February 2008).	The regulations prescribe information which must be provided by local authorities to parents and prospective parents. The statutory guidance sets out for local authorities how the duty under Section 12 should be implemented.

50 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Securing early years provision	<p>The Local Authority (Duty to secure Early Years Provision Free of Charge) Regulations 2008 (SI 2008/1724)</p> <p>The Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2010 (SI 2009/301)</p> <p>Statutory Guidance Code of Practice for Local Authorities on Delivery of Free Early Years Provision for 3 & 4 year olds (DCSF March 2010)</p>	<p>The regulations prescribe the type and amount of free early education and the age of children to benefit from free early education. The free entitlement increased from 12 ½ hours a week for 38 weeks of the year to 15 hours a week from September 2010.</p> <p>The statutory guidance sets out for local authorities how the duty under section 7 should be implemented and came into force in September 2010.</p>
Supporting childcare providers	The Childcare Providers (Information, Advice and Training) Regulations 2007 (SI 2007/1797)	These regulations set out the matters on which a local authority is required to secure the provision of information, advice and training to persons providing, or intending to provide, childcare; and also describe the circumstances in which an authority is required to secure additional support through the provision of information, advice and training to such childcare providers.
Collecting information about children	The Childcare (Provision of Information About Young Children) (England) Regulations 2009 (SI 2009/1554)	The regulations prescribe individual child information that early years providers can be required to give the Secretary of State and their local authority; and prescribe the persons and categories of persons who can collect and exchange information about children receiving early years provision. They also prescribe the information which must be provided, if requested, to the Secretary of State, and to their local authority – a prescribed person under regulation 5 for the purposes of section 99(2) (b) of the Childcare Act 2006.

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Ofsted registration – childcare for children aged 0 to 5.	Childcare (Early Years Register) Regulations 2008 (SI 2008/974)	These regulations set out what is required of childcare providers in order for them to be registered by Ofsted on the Early Years Register (EYR), including what information applicants will have to provide on application.
Ofsted registration – for childcare for children aged 5 to 17	Childcare (General Childcare Register) Regulations 2008 (SI 2008/975)	These regulations set out what is required of childcare providers in order for them to be registered by Ofsted on the compulsory or voluntary parts of the General Childcare Register (GCR), including what information applicants will have to provide on application, and the ongoing requirements they will continue to have to meet to remain registered.
Ofsted registration – for childcare for children aged 5 to 17	Childcare (General Childcare Register) (Amendment) Regulations 2008 (SI 2009/1545)	These regulations enable childminders to leave assistants on the premises, align complaints requirements with the EYR, and remove the requirement for Criminal Records Bureau (CRB) checks of household members for nannies
Ofsted registration of childcare – enforcement	Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 (SI 2008/976)	These make provisions which are common to registration in both the EYR and the GCR. They include provisions about the Chief Inspector’s powers to suspend registration and a right of appeal against suspension, provisions about disclosure of information about childcare providers and other persons, and provisions about the information which must be included in registration certificates.

52 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Childcare exemptions	Childcare (Exemptions from Registration) Order 2008 (SI 2008/979)	This order specifies circumstances in which the provision of childcare does not require registration in the early years register or the compulsory part of the GCR.
Childcare exemptions	Childcare (Exemptions from Registration) (Amendment) Order 2008 (SI 2010/744)	This order adds an additional exemption for childminding where this is provided for a child (i) a child or children in the course of a friendship with the parents of that child or children; and (ii) the provision is not made in exchange for payment
Safeguarding	Childcare (Disqualification) Regulations 2009 (and replaced previous Regulations) (SI 2009/1547)	These regulations set out the offences, orders and determinations that disqualify someone from registration as childcare providers and childminders on the EYR or GCR, and sets out the circumstances in which disqualification may be waived by Her Majesty's Chief Inspectorate of Schools (HMCI).
Registration and inspection	Childcare (Inspections) Regulations 2008 (SI 2008/1729). Amended by SI 2009/1508	These regulations prescribe the intervals between inspections for early years inspections. For both early years and later years inspections they make arrangements for inspections of independent schools by an approved body, notification to parents of inspections and providing them with copies of reports. The regulations were amended in 2009 to correct drafting mistake around intervals for early years inspection so that it is clear that the first inspection must be done by end of July 2012.

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Fees policy	Childcare (Fees) Regulations 2008 (SI 2008/1804). Amended by SI 2009/1507 and SI 2010/307	<p>The Regulations set the registration and annual inspection fees payable by providers on the EYR and the GCR (both the compulsory and voluntary parts).</p> <p>Amendments in 2009 and 2010 to increase the early years application and annual fees.</p>
Safeguarding and welfare	Early Years Foundation Stage (Welfare Requirements) Regulations 2007 (SI 2007/1771)	<p>These Regulations:</p> <ul style="list-style-type: none"> ● give the welfare requirements in the EYFS statutory force ● state that the HMCI must have regard to them when exercising functions ● prohibit corporal punishment ● require a provider to notify Ofsted of certain events ● provide for the issuing of a welfare requirements notice by Ofsted ● make failure to comply with: the prohibition of corporal punishment, the provision of information, and compliance with welfare requirements notice of criminal offences.

54 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Safeguarding & welfare	Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2007 (SI 2008/1953)	<p>These Regulations:</p> <ul style="list-style-type: none"> ● substitute the May 2008 version of the EYFS document ● provide a “grace period” re qualifications for other childcare on domestic premises ● specify transitional arrangement for independent schools re qualifications (applied until Sept 2009) ● make other modifications for independent schools so that instructors can count as a qualified teacher, and so that in reception class the 1:13 ratio is to be read as 1:30 (to bring parity with maintained schools) ● make minor amendments to the schedule of information to be provided to Ofsted ● amend some requirements so that they only apply to registered providers (and therefore not exempt schools) <p>The Regulations were amended by SI 2009/549 which inserted a new requirement to provide information to Ofsted about becoming disqualified.</p>

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Learning and development	Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (SI 2007/1772 Amended by SI 2008/1952) The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2008	<p>This Order specifies that the learning and development requirements in the EYFS document have legal effect.</p> <p>It makes provision about assessment arrangements (e.g through moderation by local authorities of Early Years Foundation Stage Profile (EYFSP) results)</p> <p>The 2008 amendment substitutes the May 2008 version of the EYFS document.</p>
Learning and development – EYFS	Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 (SI 2008/1743)	The Regulations set out the grounds on which an early years provider or the parents of an individual child can apply for an exemption from parts of the learning and development requirements in the EYFS.
Ofsted inspection of children's centres	The Children's Centres (Inspections) Regulations 2010 (SI 2010/1173)	The Regulations set out which matters are required to be covered in Ofsted's children's centre inspection reports, and what need not be covered.

56 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Policy Area	Title of Statutory Instrument/ Statutory Guidance	Description
Supply and disclosure of information	Childcare (Supply and Disclosure of Information) (England) Regulations 2007 (SI 2007/722. Amended by SI 2008/961)	<p>These regulations relate to the supply and disclosure of information by Ofsted. It is information which:</p> <ul style="list-style-type: none"> ● must be supplied to HM Revenue and Customs (HMRC). ● must be supplied to LAs ● may be made available to parents to help them choose childcare or protect children from harm or neglect ● must be provided to police and child protection agencies ● must be given to other prescribed persons ● must be made available to parents on request
Learning development and welfare	The Statutory Framework for the Early Years Foundation Stage Framework (EYFS)	The EYFS sets out the legal requirements relating to learning and development (the early learning goals; the educational programmes; and the assessment arrangements) and the legal requirements relating to welfare (safeguarding and promoting children's welfare; suitable people; suitable premises, environment and equipment; organisation; and documentation).

Legal issues

147. There has been no litigation on any provisions in the Act, and no comment from Parliamentary Committees, as far as the Department is aware.

Other post-legislative reviews

148. Since the Act received Royal Assent in July 2006, there have been two reviews of various aspects of its provisions: The Department for Communities and Local

Government (DCLG) 2011 review of statutory duties⁵ and, in 2010, Dame Clare Tickell, Chief Executive of Action for Children, was asked to review the Early Years Foundation Stage. Dame Clare gathered views from a wide range of individuals and organisations, and examined the latest evidence about young children's development. (See the preliminary assessment of the effect of the Act below for further details.)

Preliminary assessment

149. The Childcare Act helped to lay the foundations for raising standards and for further policy development in early years and childcare, and the majority of its provisions remain relevant now.
150. Since enactment, there has been significant progress in both health and education outcomes for young children. The infant mortality rate in England in 2009 was the lowest ever recorded, with reductions broadly shared across all social groups and linked in part to improved standards of living and social circumstances, and better health and maternity care. The quality of early education and childcare services, as measured by Ofsted, has steadily improved. Evidence about children's development at the age of five as measured by the Early Years Foundation Stage Profile (EYFSP) – formerly the Foundation Stage Profile – also indicates an upward trend. The most recent figures show that in 2010, an additional 30,000 children achieved a good level of development in the EYFSP results, as a result of the increase from 52 per cent of 5 year olds achieving that level in 2009 to 56 per cent in 2010.
151. Some amendments have been made to the Act. The only substantial one was the insertion, by the Apprenticeships, Skills, Children and Learning Act 2009, of Sections relating to Sure Start Children's Centres (new Sections 5A – G, and 98A – G). Further minor and consequential amendments and repeals have been made to some Sections, but the Act remains largely as it was enacted.
152. Amendments to Section 7 of the Act are in the Education Act 2011. These are intended to enable the Government to extend an entitlement to free early education to all disadvantaged two year olds. The Government has also recently announced plans to consult on strengthening the requirements on local authorities to account for the delivery of their childcare sufficiency duty under Section 6; and the repeal of Section 11 of the Act, which is considered prescriptive and burdensome.

Part 1 – General functions of local authority: England

153. The duties in this part of the Act have been considered as part of the Department for Communities and Local Government's review of statutory duties on local authorities.
154. Sections 1 to 5 concern improving the well-being of young children. In April 2008, the then Department for Children Schools and Families – along with the Department of Health and the Department for Work and Pensions – issued

⁵ Available at: www.communities.gov.uk/localgovernment/decentralisation/tacklingburdens/reviewstatutoryduties/

58 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Statutory Guidance entitled *Raising Standards-Improving Outcomes*. This set out how local authorities, health services and employment services should fulfil duties placed on them by Sections 1 to 4 of the Act. This statutory guidance remains current, although the Department for Education recognises that some of it is now out of date. The Department is currently considering the future of this Guidance.

155. Sections 5A to 5G (inserted by the Apprenticeships, Skills, Children and Learning Act 2009) concern Sure Start Children's Centres. Statutory guidance was issued in March 2010 (and reissued in February 2011) setting out how local authorities and their partners should fulfil Sure Start duties inserted into the 2006 Act by the 2009 legislation. The Department is currently revising this statutory guidance and expects to consult on a revised version in autumn 2011.
156. Sure Start Children's Centres form part of the landscape that is delivering the improvements in outcomes for young children.
157. Section 6 concerns securing sufficient childcare for working parents. The Department regularly surveys parents' perceptions of the availability of childcare; and the shape and features of the childcare sector. The latest parents survey for which information is available relates to 2009, and is the first to be published since the duty to secure sufficient childcare came into force.
158. These early indicators provide a mixed picture nationally:
 - a. The Childcare and Early Years Survey of Parents showed a slight increase in the percentage of parents who thought that the availability of childcare places had improved, from 40% in 2008 to 42% in 2009 (although it is important to note that the 2007 survey had found that 44% of parents felt there were enough places);
 - b. The Childcare and Early Years Providers Survey has reported increases in nearly all types of provision (there was a small decrease in childminding). However, the position in the 30% most deprived areas is more mixed. Between 2006 and 2010, childcare places in these areas have increased at half the rate of the rise across all of the country; and since 2006, the percentage of childcare providers in the most disadvantaged areas has not significantly changed.
 - c. The Government is keen to improve the way in which local authorities account for the delivery of their duty under Section 6. In its strategy paper, *Families in the Foundation Years*, published in July 2011, the Government announced plans to bring forward proposals that local authorities should report annually on their section 6 sufficiency duty, and particularly how they are supporting families of children with disabilities to access childcare. The Government will consult on the details of this proposal as part of a consultation in autumn 2011 on arrangements to streamline departmental guidance to local authorities.
159. Section 7 concerns securing of prescribed early years provision free of charge. Currently children are entitled to free early years provision from the term following their third birthday up until they reach compulsory school age – the term following their fifth birthday. The entitlement to free early education in 2008, when section 7 came into force, was 12.5 hours per week over 38 weeks of the

year. This was increased in September 2010 to 15 hours per week for 38 weeks a year, and can now be delivered more flexibly.

160. Alongside good health, high quality early education is one of the most important determinants of every child's life chances. Research has shown that children who have attended a high quality pre-school do better in reading and maths at age six, than those who have not, and that this positive impact is still visible at eleven. There is also clear evidence that the free entitlement has been popular with parents, and take-up is still increasing. The Department's January 2011 Statistical First Release showed that 95% of all three and four year olds benefit from some free early education provision as reflected in the Section 7 duty. This is made up of 93% of three year olds (an increase from 92% in 2009), and 98% of four year olds. Demographic changes mean that 38,000 more children are accessing the free entitlement than in 2009. Furthermore, already 86% of those accessing the free entitlement are doing so for 13 hours or more a week.
161. While participation levels rates have improved, they remain lower among disadvantaged families, and the Government is taking a range of action to enhance children's access to free early education and improve take-up.
162. A key part of this strategy is to extend free early education to all disadvantaged two year olds. The Government is introducing legislation through the current Education Bill which will enable it to create this new entitlement. This measure is intended to support children from families on low incomes. The intention is that the qualifying criteria should be based principally on indicators of economic disadvantage. The introduction of a two year old entitlement should also help children make the transition into the existing free entitlement and so increase take-up at age three and four.
163. Section 11 concerns the assessment of childcare provision. The Office for Public Management conducted a review of 40 of the first sufficiency assessments in 2008. It examined whether LAs had completed their Childcare Sufficiency Assessments (CSAs) in a way which satisfied the statutory duties placed on them by the Act.
164. A report – Reviewing Childcare Sufficiency Assessments – was published in May 2008. It concluded that the completion of the Assessments was challenging and recommended that the Department take action to: compile a list of data sources to help them best map current and future childcare demand; identify and publish good practice; and, organise workshops to enable LAs to discuss the challenges and solutions of assessing childcare.
165. In response to these recommendations, the Government provided funding to the then Government Offices in each Region to appoint and manage nine Childcare Regional Network (CRN) Co-ordinators. CRN facilitators organised meetings which enabled local authorities to develop and share good practice to enable effective delivery of their childcare duties under the Act. Some of the Networks have continued to operate despite the closure of the Government Offices in 2010.
166. The Government is committed to proposing to be less prescriptive in how local authorities (LAs) assess childcare sufficiency in their area. It has recently

60 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

- announced plans to consult on strengthening the requirements on local authorities to account for the delivery of their childcare sufficiency duty annually under section 6; and therefore to repeal section 11 of the Act and associated secondary legislation, which is considered prescriptive and burdensome, and currently places a duty on LAs to publish a formal assessment every three years.
167. Section 12 deals with the provision of information, advice and assistance to parents. The Department has conducted two surveys in relation to the operation of the Section 12 duty:
- a. Family Information Service Survey 2010: assessment of Family Information Service performance against the information duty in the Childcare Act 2006;
 - b. Families Information Services: Evaluation of services provided (2009).
168. The 2010 survey found that 66% of local authority family information service managers reported they were fully meeting the requirements of the duty, an increase of 16 percentage points over the equivalent findings of the 2009 evaluation.
169. Section 13 looks at the provision of information, advice and training to providers. The childcare market has proved generally resilient during the economic downturn and departmental and other studies suggest there has been a modest increase in childcare provision since this section of the Act came into force.
170. Local authority Sure Start Children's Centres exercise an influence well beyond the centre itself, including through: highly skilled graduate teachers who exercise a strong leadership role; and the establishment of childminder networks. The Department has awarded grants to national voluntary and community organisations to help providers improve their offer for children, support the expansion of the free entitlement to disadvantaged two year olds, and identify the business skill needs of providers and collate best practice in the sector.
171. Section 14 concerns inspection and due to changes in the responsibilities of the inspectorate, this Section of the Act was repealed and replaced with a provision that achieved the same objective.
172. Section 15 concerns the powers of the Secretary of State to secure proper performance. The use of the Secretary of State's intervention powers has not been triggered to date by specific concerns around local authorities' performance of their duties under Part 1 of the 2006 Act.
173. To date, the Department has only used statutory powers where there is evidence from the independent inspectorate that a local authority is 'inadequate' in some respect. It is developing new arrangements to improve local accountability, including through: new requirements on local authorities to report data about their spending on early years services; and, in future, for children's centres through payment by results, trials of which began in 2011.
174. Section 17 concerns charges for early years provision at maintained schools. It inserted a regulation-making power into section 451(2A) of the Education Act 1996. Section 451 prohibits maintained schools charging for education provided

during school hours for pupils. However, regulations under section 451(2A) can lift this prohibition on charging where the education is early years provision for a pupil below compulsory school age and is additional to the hours which must be made available free pursuant to the duty under section 7. Such regulations have not been made to date, but the Government now intends to do so, subject to the passage of the current Education Bill.

Part 3 – Regulation of the provision of childcare in England

175. Sections 33 to 39 and 52 to 58 concern the registration of childcare provision. The Act has largely achieved its objective of streamlining the regulatory landscape by setting clear standards for childcare (based on the needs of children of different ages), with more stringent requirements for provision caring for children aged from birth to age 5 under the remit of a single regulatory body, Ofsted.
176. Arrangements have though posed difficulties for some providers caring for children across the age range, because they are required to meet the standards of different registers – for example, in terms of the differences between complaints handling procedures and in the rules governing the use of childminder assistants on both registers.
177. There has been some concern that regulatory arrangements for older children (aged six and seven), and for voluntarily registered providers (such as nannies), could potentially mislead parents because they might believe that all registered provision has to meet the same requirements. For example, while all providers caring for children aged 0-5 are inspected within a three year period, only 10% of providers on the General Childcare Register (GCR) (that sets out regulatory arrangements for children aged six and seven and for voluntarily registered providers) are inspected. These follow the publication in April 2011 of an Education Select Committee Report which recommended that the Government improve the voluntary part of the General Childcare Register. As a result of this the Government is considering the future of the Register.
178. Regulations for disqualifying individuals from being registered as childcare providers, or being employed in a childcare setting, are designed to prevent people with convictions for serious offences against children or adults from caring for children. We are currently reviewing the disqualification regime in the light of changes being made to the Vetting and Barring Scheme.
179. If a registered person is not fully complying in some minor way with the requirements of the Early Years Register (EYR) and the Early Years Foundation Stage (EYFS), or the General Childcare Register (GCR), Ofsted can use an escalating tariff approach to ensure compliance.
180. Ofsted has powers to ensure that providers keep to the requirements and conditions of their registration. These include: writing to the provider telling them what action they must take to meet requirements; and issuing a welfare requirements notice setting out what the provider must do, and by when, to meet the welfare requirements.
181. The ‘escalating tariff’ approach has proved a success. Almost all providers put matters right once they know about concerns or complaints.

62 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

182. Sections 49 and 50 concern inspections of those providers on the Early Years Register (EYR). Ofsted inspect providers on the EYR once in a three year cycle. It prioritises inspections and/or inspects settings more frequently where: the last inspection concluded that the quality was judged to be inadequate; or there have been complaints about the quality of provision that required action from Ofsted.
183. Ofsted is required to report on: the contribution of the early years provision to the well-being of the children for whom it is provided; the quality and standards of the provision; how far the provision meets the needs of the range of children for whom it is provided; and the quality of the leadership and management in connection with the provision. Provision is graded using a scale of: Grade 1 outstanding; Grade 2 good; Grade 3 satisfactory; Grade 4 inadequate.
184. Under sections 60 and 61, Ofsted has a power, but not a duty, to inspect those only registered on the GCR. Overall, 10% of registered settings each year are inspected.
185. During 2010-11, Ofsted investigated 8,750 concerns and complaints about individual providers. In 4,997 cases registration requirements were found to be satisfied, whilst 1,638 cases were referred to other agencies including local authorities and the police. The regulatory system is considered to have worked effectively to deal with complaints raised by parents and others.
186. Sections 39-48 concern The Early Years Foundation Stage (EYFS). The statutory framework was introduced in 2008 to ensure consistently high-quality provision in all pre-school settings. It sets standards for learning, development and care to guide good quality practice. Since its introduction, the EYFS has played a crucial role in improving outcomes for children.
187. In 2010, Ministers asked Dame Clare Tickell, Chief Executive of Action for Children, to review the EYFS. Dame Clare gathered views from a wide range of individuals and organisations, and examined evidence about young children's development. She also looked at ways to reduce the administrative burden for providers, without compromising quality and standards. Dame Clare's findings were published on 30 March 2011. Further details can be found at: www.education.gov.uk/tickellreview
188. The Tickell Review, while largely supportive of the EYFS, acknowledged that there were issues with the current framework and made a series of recommendations. Particular matters raised by the review included:
 - a. whether the EYFS should apply to the independent sector;
 - b. making the EYFS more accessible for parents and with a greater emphasis on the role of parents/carers as partners in their children's education;
 - c. more needing to be done to raise awareness of child protection in EY settings; and
 - d. too much paperwork (e.g. risk assessments).

189. The Government set out its response to Dame Clare's recommendations in the "Supporting Families in the Foundation Years" document⁶. A consultation on a revised EYFS framework ran between July and September 2011. The Government aims to introduce a revised framework in September 2012.
190. Children's wellbeing is measured by the Early Years Foundation Stage Profile (EYFSP) results. The EYFSP is an observational assessment by teachers. The most recent figures (for 2010) show an increase from 52% in 2009 to 56% in the proportion of five year olds achieving a good level of development (see the note below). Similarly, the gap between the 20% lowest achieving children and the rest narrowed from 34% in 2009 to 33% in 2010.
191. The Early Years Foundation Stage Profile, (formerly the Foundation Stage Profile) was introduced in 2003, and is carried out by the reception class teacher when the child is five. It covers six different areas of learning: Personal, Social and Emotional Development (PSED); Communicating, Language and Literacy (CLL); Mathematical Development (MD); Knowledge and Understanding of the World; Creative Development (CD) and Physical Development (PD).

Conclusion

192. The Childcare Act 2006 was the first piece of legislation to focus specifically on early years and childcare provision. It introduced a number of new duties for local authorities in England, and established a single integrated education and care framework and new legal frameworks for regulation and inspection. It has been implemented successfully, and the only substantial amendment has been the insertion, by legislation in 2009, of sections giving legislative recognition to Sure Start Children's Centres.
193. Overall, the impact of the Act has been mixed. There has been significant progress in both health and education outcomes for young children: infant mortality rates in 2009 were the lowest ever recorded; and the quality of early education and childcare, as measured by Ofsted, has steadily improved, as have the proportion and numbers of children achieving a good level of development at age five. The Government's independent review of the Early Years Foundation Stage (EYFS) concluded that the framework has had a positive overall impact on children, supported increased professionalism, and helped raise standards. In addition, the free early education entitlement for three and four year olds continues to be popular with parents, with take-up close to universal; and, a large majority are already taking advantage of the increased hours introduced by the Government in 2010.
194. By contrast, there remains more to do in terms of narrowing the gap between the lowest achieving young children and their peers, and in increasing take up of the free entitlement by the most disadvantaged. Departmental studies suggest that the Act's childcare sufficiency and sufficiency assessment duties have had limited impact in terms of strengthening the wider childcare market. Parental perceptions of the availability of childcare have increased only marginally. While the number of providers judged good or outstanding by Ofsted is increasing, there remains considerable scope to improve the quality of early years provision across the sector.

⁶ Available at: www.education.gov.uk/home/childrenandyoungpeople/earlylearningandchildcare/early/a00192398/supporting-families-in-the-foundation-years

64 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

195. As the Government develops its new approach to services for under 5s and their families (set out in its July 2011 Families in the Foundation Years policy statement⁷), it has concluded that there has been a lack of clarity about the objectives of foundation years policy, and too much emphasis on central guidance and prescription to the detriment of local authorities and providers.
196. The Government wants to look increasingly to the skills, expertise and leadership of those best placed to know what works. It has consulted on proposals to make the EYFS simpler and easier for practitioners to work together. It will also consult, later in 2011, on revisions to the code of practice on the free entitlement to early education to increase flexibility for parents, support wider efforts to drive up the quality of provision and reduce bureaucracy. As noted earlier, the Government is also considering the future of the General Childcare Register.
197. The Government is further committed to addressing the social and economic differences between families by refocusing the work of children's centres around engaging with the most disadvantaged, and extending free early education to the most disadvantaged two year olds.

⁷ Available at: <http://media.education.gov.uk/assets/files/pdf/s/supporting%20families%20in%20the%20foundation%20years.pdf>

Chapter 3: Children and Adoption Act 2006

Introduction

198. Chapter 3 of this Memorandum provides a preliminary assessment of the Children and Adoption Act 2006 (referred to as “the Act” in this Chapter).

Objectives and structure of the Children and Adoption Act 2006

199. The Children and Adoption Act 2006 consists of two Parts. Part 1 (orders with respect to children in family proceedings) was part of the Government’s response to the consultation on the Green Paper *Parental Separation: Children’s Needs and Parents’ Responsibilities* (Cm 6273), published in July 2004. Part 1 amended the Children Act 1989 (“the 1989 Act”) to provide the courts with new powers to promote contact and enforce contact orders.
200. Part 2 of the Act (adoptions with a foreign element) makes provision about intercountry adoption, including providing for a statutory framework for the suspension of intercountry adoption from a country outside the British Islands where there are concerns about practices in that country in connection with the adoption of children.

Part 1: Orders with respect to children in family proceedings

Objectives

201. Section 1 inserted new sections into the 1989 Act to give courts powers to require parents to attend a relevant 'contact activity' before making a contact order. The aim was to address conflict or behavioural issues that hinder meaningful and positive arrangements for contact, and help separating parents make contact arrangements work for the best interests of their children. The activities referred to in the Act include:
- a. programmes and guidance sessions to help parents improve contact with a child
 - b. programmes to address a person's violent behaviour to support safe contact with a child
 - c. information sessions about arrangements for contact with a child, including sessions about mediation.
202. Section 1 also enabled:
- a. a court to attach conditions to orders requiring parents to undertake a contact activity
 - b. regulations to be made to allow parents to receive financial assistance in specified circumstances for undertaking contact activities, an option that was implemented by SI 2008/2940
 - c. a court to ask a Cafcass officer to monitor compliance with contact activity or conditions.
203. Sections 2-5 inserted a range of new enforcement measures into the 1989 Act to address non-compliance with contact orders. Prior to the implementation of the Act, courts had powers to enforce contact orders, including though the imposition of fines and imprisonment for contempt and the reversal of residence orders. As these types of punishments are often inappropriate because of the potential for harm to a child's welfare, the Act introduced a more diverse range of enforcement provisions along the lines of those recommended in the Children Act Sub-Committee report, *Making Contact Work*.
204. Section 2 gave courts the power to ask a Cafcass officer to monitor compliance with a contact order, and report back as required. Section 3 requires that every contact order made by a court has to be accompanied by a notice warning of the consequences of failing to comply. Section 4 inserts provision into the 1989 Act for a court to make an enforcement order that imposes an unpaid work requirement on a person who has breached a contact order. It sets out a range of factors that a court has to consider before making these orders, including the need to take into account the welfare of the child concerned. A court can ask Cafcass to monitor compliance with an enforcement order. Section 5 allows a court to award the payment of compensation from one parent to another where a breach of a contact order by the other person has resulted in financial loss.

205. Section 6 amended section 16 of the 1989 Act with the aim of making Family Assistance Orders (FAOs) more effective. A court can make an FAO to require Cafcass or a local authority to help a family overcome problems associated with separation. The requirement that FAOs be made only in exceptional circumstances was removed, and the maximum duration of these orders was extended from six to twelve months.
206. Section 7 adds a new section to the 1989 Act requiring Cafcass officers working on private family law proceedings to carry out a risk assessment if they suspect a child is at risk of harm, and to report to the court.

Implementation

207. Part 1 of the Act was brought into operation as follows:
- Children and Adoption Act 2006 (Commencement No 1) Order 2007 (SI 2007/2287) brought into force sections 6, 7 and 15(2) and Schedule 3 in so far as they relate to section 16(3) (a) of the Children Act 1989.
 - Children and Adoption Act 2006 (commencement No3) Order 2008 (SI 2008/2870) brought into force sections 1, 2 and 3, section 4 and Schedule 1, sections 5 and 8 and section 15 and Schedule 2 and 3 (in so far as not already in force).

Secondary legislation

208. The following secondary legislation has been published in relation to Part 1 of the Act:

Title of statutory instrument	Description
The Children Act 1989 (Contact Activity Directions and Conditions: Financial Assistance)(England) Regulations 2008 (SI 2008/2940)	The regulations provide for financial assistance to be paid in respect of an individual undertaking an activity which promotes contact with a child, in specified circumstances.
The Children Act 1989 (Contact Activity Directions and Conditions: Financial Assistance)(Wales) Regulations 2008 (SI 2008/2943 – W.260)	As above.
The Children Act 1989 (Contact Activity Directions and Conditions: Financial Assistance)(Revocation and Transitional Provision)(England) Regulations 2010 (SI 2010/690)	The regulations revoked SI 2008/2940 when a commitment was made to fund providers for every person ordered/ directed to attend a parenting information programme or domestic violence perpetrator programme. No such commitment was made for mediation information sessions, but individuals eligible for funding from the Legal Services Commission could attend these sessions free of charge.

Legal issues

209. There has been no litigation related to Part 1 of the Act, and no comment from Parliamentary Committees as far as the Department is aware.

Other post-legislative reviews

210. There have been no other reviews conducted on the effectiveness of Part 1 of this legislation.

Preliminary assessment

Contact activity

211. The objective to direct parents to activities that result in better quality contact arrangements is being delivered through three types of contact activity: the Separated Parent Information Programme, the Domestic Violence Perpetrator Programme, and Mediation Information and Assessment Meetings.
212. The Separated Parent Information Programme (PIP) is the first nationally available parent education programme for litigating parents in England. PIPs use a variety of means to encourage parents to focus on children's needs and perspectives. Courts have been able to make referrals to PIP since section 1 came into force in December 2008. Take up was very slow initially because of a shortage of providers, coupled with the £200 attendance charge for those ineligible for public funding. The charges were removed on 1 April 2010 and referrals have increased steadily since then, aided by a rapid growth in the provider market. The number of parents attending PIPs grew from fewer than a thousand in 2009/10 to 13,195 in 2010/11, representing 15% of the people going through family court proceedings.
213. DfE commissioned an evaluation of the programme in the first quarter of 2011. The research⁸ shows modest results in the numbers of parents who were helped to make amicable agreements in the longer-term following attendance at a PIP. However, participating in a PIP is a step forward for parents and the evaluation shows that PIPs are working well for some families with many more parents saying that they felt supported following participation in a PIP.
214. PIPs were also commissioned in Wales and have been available to the courts since December 2008. Take up has been low – fewer than 130 people attended between December 2008 and March 2011. Individuals in receipt of legal aid and undertaking a PIP are eligible for financial assistance provided by the Welsh Ministers. The continued effectiveness of providing financial assistance will be considered within the context of the Family Justice Review and the reform of legal aid.
215. The Domestic Violence Perpetrator Programme (DVPP) helps parents (in this case mainly fathers) to become more aware of the impact of their behaviour and

8 *Building bridges? An evaluation of the costs and effectiveness of the Separated Parents Information Programme (PIP)*, Liz Trinder, Caroline Bryson, Lester Coleman, Catherine Houlston, Susan Purdon, Janet Reibstein and Leanne Smith, June 2011. Department for Education (available at: <https://www.education.gov.uk/publications/eOrderingDownload/DFE-RR140.pdf>)

resolve conflicts with ex-partners without resorting to violence or abuse. The growth of this provision has been slow; at the time of compiling this Memorandum there are only 16 providers delivering from 40 locations. Anecdotal evidence suggests that courts are still learning about the referral process, but attendee numbers are likely to rise as the judiciary, solicitors and service users start to recognise the value of the service. Attendance on the programme is free for parents. The impact of these programmes has not been evaluated. The Department is working with Cafcass to explore ways of broadening this provision. In Wales, there are currently no approved providers of contact activities to address violent behaviour. Future provision is being considered as part of Welsh Ministers' Domestic Abuse Strategy.

216. Mediation Information and Assessment Meetings (MIAMs) provide an opportunity for parents to find out about mediation and other forms of dispute resolution. MIAMs are overseen by the Legal Services Commission, and there are no figures available on the number of attendees and no evaluation of impact has been undertaken. From 6 April 2011 the Ministry of Justice introduced a requirement for all parents (with certain exceptions) seeking to resolve their differences through the family courts to first attend a MIAM.

Powers to ask Cafcass to monitor compliance with contact orders and activities

217. Overall these powers have not been widely used. Feedback on the reasons for this has not been gathered from the courts, but one factor is likely to be a concern not to overburden Cafcass, particularly in the context of the sharp and sustained increase in public law cases following the Baby P case in autumn 2008. In the case of PIPs, the introduction of routine compliance monitoring would now be extremely burdensome for Cafcass to carry out given that over 13,000 people attended this programme in 2010/11, with a further increase expected in 2011/12. There are no plans to introduce such a requirement.

Enforcement

218. Figures from Her Majesty's Courts and Tribunal Service show that, although the Act brought a wider range enforcement provisions to the courts' disposal, these powers have been used very little since they came into force in December 2008. In 2009/10 and 2010/11 there were a total of 2031 applications to enforce orders in England and Wales, with only 98 enforcement orders resulting from these (see table below).

	No. applications for enforcement orders	No. of enforcement orders made
2009/10	977	45
2010/11	1054	53

70 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

219. Even less use has been made of the provision to award the payment of financial compensation from one parent to another (see table below).

	No. applications for financial compensation orders	No. orders made for financial compensation
2009/10	17	4
2010	10	3

220. The Family Justice Review Panel received submissions suggesting that there are continued problems with enforcement of court orders and their interim report highlights that many parents remain disillusioned about their prospects of achieving anything through this route. These provisions cannot therefore be considered a success, and the Government will consider further measures to bring about swift enforcement where court orders are breached in the light of the Family Justice Review Panel's final report, published on 3 November 2011.

Family Assistance Orders

221. There are no figures available for the duration of FAOs that courts have asked local authorities to carry out since this measure was implemented in October 2007. Cafcass statistics show that the facility to carry out FAOs for longer than six months has been widely used. There were 528 FAOs in 2010/11, with an average duration of 30 weeks. Cafcass do not collect qualitative information about the impact of FAOs, but anecdotal evidence suggests longer and more widely available orders are proving more beneficial to families providing that adult consent to participation has been properly secured beforehand.

Cafcass risk assessments

222. Cafcass's Section 16A risk assessments are helping to bring a strong focus on the need to safeguard children's welfare, especially in the earlier stage of cases. This provision works successfully alongside other new mechanisms such as the Practice Direction: Residence and Contact Orders: Domestic Violence and Harm (January 2009) with its focus on domestic violence, and the Revised Private Law Programme (April 2010). Cafcass's risk assessments are highlighting key significant harm concerns to the courts and are therefore making the contribution intended by the legislation.

Part 2: Adoptions with a foreign element

Objectives

223. Section 9 gave the Secretary of State a statutory power to declare by order that special restrictions apply to adoptions from countries outside the British Islands where there are public policy concerns about the process of inter-country adoption, such as concerns about child trafficking. These special restrictions amount to a suspension of the processing of adoptions from the country in question. The Secretary of State must publish a list (the 'restricted list') of those countries or territories subject to special restrictions and the reasons for declaring a country 'restricted'.
224. This provision replaced the existing common law power for the Secretary of State to suspend adoptions from a country or territory where concerns had been raised over the adoption processes. The objective was to ensure that intercountry adoption only takes place where it is in the best interests of the child and with respect for his or her fundamental rights, and that the safeguards and standards in the State of Origin are equivalent to those applied in domestic adoption in the UK.
225. As the special restrictions have effect in England, Wales and Northern Ireland, the Secretary of State must consult the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland before making the declaration.
226. Section 10 requires the Secretary of State to keep each restricted country under review to determine whether it should remain a restricted country. If the concerns relating to adoption practices in the country are addressed the restrictions must be removed. The restrictions are reviewed on a regular basis and when new evidence becomes available. There are currently four countries on the restricted country list: Cambodia, Guatemala, Nepal and Haiti. Further details can be found in the assessment section below.
227. Section 11 permits the processing of exceptional cases where the appropriate authority is satisfied that it should do so despite the special restrictions. It allowed for regulations made by the Secretary of State to set out the procedure for assessing these cases and the matters to be taken into account during the assessment.
228. Section 12 provides for the Secretary of State to make regulations specifying, in respect of a restricted country, a step normally taken by the appropriate authority in the processing of a case (but not one already provided for in legislation) and to impose extra conditions in relation to that step. Section 12 also makes it an offence to bring, or cause another person to bring, a child into the UK in contravention of those extra conditions.
229. Section 13 amended the Adoption and Children Act 2002 (c.38) ("the 2002 Act") to provide a power for the Secretary of State to charge, at cost, for services provided in relation to intercountry adoption cases. It allows the Secretary of State to determine the level of fee and to charge different fees in different types of cases,

72 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

but provides that the income from fees in any financial year must not exceed the total cost of the services provided.

230. The 2002 Act was also amended to give the Welsh Assembly the power to charge a fee in respect of applications made under the 1993 Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption ("Hague Convention"). This was brought into force by the National Assembly for Wales in April 2007, although they have not yet implemented charging.
231. Section 14(1) and (2) of the Act amended section 83 of the 2002 Act to extend the restrictions on bringing children into the UK after adoption abroad (where a person is not required to be assessed in accordance with regulations) from six months to twelve months after the adoption. This applies where the prospective adopter is habitually resident in the UK and adopts a child under an external adoption. It does not apply to adoptions made under the Hague Convention. The measure was intended to increase safeguards for children and reduce the risk of people adopting without being assessed. The exemption exists for the benefit of those living overseas who are not habitually resident in the UK, and who adopt through the procedures in that country.
232. Section 14(3) of the Act amended Schedule 8 to the Children Act 1989 to prevent an overlap of functions by local authorities where a child is brought into the country for the purposes of inter-country adoption. Previously the local authority was required to visit the child and monitor the placement under both adoption and private fostering legislation.

Implementation

233. Part 2 of the Act was brought into operation as follows:
 - a. The Children and Adoption Act 2006 (Commencement No. 1) (Wales) Order 2007 (SI 2007/733) brought into force Section 13 in so far as it relates to the processing of 1993 Hague Convention adoption cases by the National Assembly of Wales.
 - b. The Children and Adoption Act 2006 (Commencement No. 1) Order 2007 (SI 2007/2287) brought into force Sections 11(3), Section 12(1) and (7) and Section 14(3) on 2 August 2007 and Section 14(1) and (2) on 1 October 2007.
 - c. The Children and Adoption Act 2006 (Commencement No. 2) Order 2008 (SI 2008/1798) brought into force Section 9(4) on 7 July 2008; Sections 9, 11 and 12 (in so far as not already in force) and Section 10 on 1 August 2008.
 - d. The Children and Adoption Act 2006 (Commencement No. 4) Order 2010 (SI 2010/2612) brought into force Section 13 (in so far as not already in force).

Secondary legislation

234. The following secondary legislation has been published in relation to Part 2 of the Act.

Title of statutory instrument/ statutory guidance	Description
The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 (SI 2008/1807)	The regulations provide for the procedure to be followed by the relevant authority in the consideration of exceptional cases and the matters to be taken into account when making that determination. The Regulations also enable the Secretary of State to specify in the restricted list a step in relation to a country or territory in respect of which special restrictions have been declared by order. Where a step has been specified in relation to a restricted country the Regulations provide that the relevant authority must notify the prospective adopters in writing that the adoption may proceed. A person who brings a child into the United Kingdom or causes another to do so in contravention of this condition commits an offence under the Act.
The Special Restrictions on Adoptions from Abroad (Cambodia) Order 2008 (SI 2008/1808)	Came into force on 1st August 2008. The order placed on a statutory footing the suspension of adoptions from Cambodia already in place.
The Special Restrictions on Adoptions from Abroad (Guatemala) Order 2008 (SI 2008/1809)	Came into force on 1st August 2008. The order placed on a statutory footing the suspension of adoptions from Guatemala already in place.
The Special Restrictions on Adoptions from Abroad (Nepal) Order 2010 (SI 2010/951)	Came into force on 3rd May 2010. The order suspends adoptions from Nepal.
The Special Restrictions on Adoptions from Abroad (Haiti) Order 2010 (SI 2010/2265)	Came into force 15 October 2010. The order suspends adoptions from Haiti.

Legal issues

235. There has been no litigation related to Part 2 of the Act, and no comment from Parliamentary Committees as far as the Department is aware.

Other post-legislative reviews

236. There have been no other reviews conducted on the effectiveness of Part 2 of this legislation.

Preliminary assessment

Restrictions on intercountry adoptions

237. The legislative provisions have enabled the Secretary of State to suspend intercountry adoptions from four countries where concerns have been raised over adoption procedures. The first two orders applied to Cambodia and Guatemala, countries where adoptions had already been suspended under existing common law power. The third order suspended adoptions from Nepal in response to a report published by the Hague Bureau in February 2010 following their Technical Assistance mission to Nepal. The most recent order suspended adoptions from Haiti in response to information indicating that the infrastructure in Haiti remained very weak following the earthquake in January 2010.
238. The reasons for the suspensions are documented on the 'restricted list' on the Department's website. The decisions to suspend have been based on the best available information obtained from consultation with individuals and organisations with knowledge and expertise of the country in question.

Exceptional cases policy

239. This provision is working as intended. The Department has assessed requests relating to all the countries on the restricted list, and careful scrutiny based on the information provided and the best interests of the child has resulted in a mix of approved and rejected cases. Information for prospective adopters on how to request an exception to the suspension was published at the same time the regulations came into force.

Charging

240. The delay in implementing this section was due to a commitment made during the passage of the 2006 Act to establish a 12-14 week processing time before charging was introduced. Procedures and processes were subsequently improved and most applications are now processed within 12 weeks of receipt. Those that take longer have been due to delays by third parties.
241. The provision was commenced in October 2010 and applies to applications received on or after 1 April 2011. The fee is £1,775 per application which is VAT exempt. Full and partial refunds can be made in certain circumstances. It is subject to a means test so that people on low incomes will still be able to apply, and close relatives of a child are exempt. No charges are made for outbound adoptions.
242. As charging has only been in place since the 1 April 2011 it is too early to assess whether it will have any impact on applications for intercountry adoptions, although the Department has continued to receive applications since this date. There will be no impact on outbound adoptions, adoptions by close relatives or adoptions by those on low incomes – as indicated above they will be exempt from the charge.

Extending the restrictions on bringing children into the UK

243. The extension from six to twelve months for the restriction on bringing children into the UK after adoption abroad is thought to have reduced the risk of people adopting without being properly assessed as suitable by an adoption agency in the UK. Prior to its implementation the Department was aware that some adopters were using the shorter restriction to avoid assessments and adopt outside of the UK by leaving the child abroad with another carer for six months before bringing them to the UK. The Department believes this measure is having the intended effect of increasing safeguards for children by reducing the number of people who could adopt without being assessed, but it is difficult to quantify.
244. The nature of the amendment means that it is not possible to calculate how many prospective adopters are now being assessed who previously could have avoided the assessment.

Conclusion

245. The Children and Adoption Act 2006 has been implemented successfully. The impact of the provisions relating to family proceedings has been mixed. The power for courts to direct parents to contact activities has resulted in the growth of a range of provision that is helping to support parents in retaining meaningful relationships with their children where this is safe. The Act has been less successful in its intention to create a wider range of workable enforcement powers to punish parents who breach contact orders. This issue will need to be addressed in the light of the recommendations of the Family Justice Review, published on 3 November 2011.
246. The provisions relating to adoptions with a foreign element have worked as intended to increase the safeguards for children when intercountry adoption is being considered, and to allow charging for intercountry adoption applications received on or after 1 April 2011.

Annex A:

Non-statutory documents relating to section 6 of the Education and Inspections Act 2006

- Aiming High for Young People: a ten year strategy for positive activities (July 2007)
- The Children's Plan (December 2007)
- Young People: Leading Change (February 2008)
- Aiming High for Young People: a ten year strategy for positive activities: Implementation Plans (March 2008 and October 2008)
- Youth Opportunity Fund & Youth Capital Fund Delivery Guidance (April 2008 and revised February 2009)
- Positive Activities for Young People: Creating a sense of belonging (2009)
- Transport Guidance: Supporting access to positive activities (May 2009)
- Positive Activities for Young People: Expanding Friday and Saturday Night Provision (July 2009)
- Safe. Sensible. Social. Young people, alcohol and positive activities (February 2010)
- Aiming High for young people; three years on (March 2010)
- DRAFT Quality Standards for Positive Activities (March 2010)
- Positive Activities: Good Practice Guidance (March 2010)

Annex B:

Figures on the use of processes on the establishment of new schools under Part 2 of the Education and Inspections Act 2006

Section	Figures – as at 24 June 2011
7 (Invitation for proposals for establishment of new schools) – “competitions”	<p>Out of 50 competitions decided –</p> <ul style="list-style-type: none"> ● 10 resulted in local authority community schools; ● 7 in Academies; ● 9 in foundation schools (1 was a LA promoted school); ● 17 in Trust Schools; and ● 5 in voluntary aided schools. ● 2 competitions did not realise suitable bids.
8 (Proposals relating to community or community special schools)	<p>In relation to community schools in competitions; of 18 approved applications 14 were published, of which 4 did not win their competition.</p>

Annex C:

Consultation, funding and commencement of the Childcare Act 2006

Implementation in England was preceded, and/or followed, by the following consultation and supported by the following funding streams

Part 1

Sections 1 – 4

Sections 5A to 5G and sections 98A to 98G (as inserted by the Apprenticeships, Skills, Children and Learning Act 2009)

Consultation

These Sections place duties on local authorities, health services and employment services, in relation to the organisation of, provision of services through, and the inspection of, Sure Start Children's Centres. Inspection duties are also placed on Ofsted.

11 September 2008 – 6 November 2008. Consultation on placing Sure Start on a statutory basis.

7 December 2009 – 1 February 2010. Consultation on Statutory Guidance on Sure Start duties. Sections 5A, 5C, 5D, 5E and 98C provide for the issue of such Guidance on these Sure Start duties. The Sure Start Statutory Guidance was reissued in February 2011.

Funding

Prior to April 2011, funding was provided through the Sure Start, Early Years and Childcare Grant. The Coalition Government introduced in April 2011 a new Early Intervention Grant to help local authorities meet a range of statutory duties and support and strengthen early years and childcare provision. LAs can use this funding for the purpose of fulfilling their Sure Start statutory functions. They are best placed to judge how to use the funding based on local needs and priorities.

Section 6

Consultation

7 February 2007 – 6 May 2007: Public consultation on draft Statutory Guidance on securing sufficient childcare. This relates to Sections 6, 7, 8 and 13 of the Act.

18 December 2009 – 26 February 2010: Public consultation about refreshed Statutory Guidance on securing sufficient childcare, to combine the 2007 childcare sufficiency assessments guidance and the 2008 securing sufficient childcare guidance.

Funding

Around £130m in revenue funding, and £214m in capital funding, was made available to local authorities nationally in each year between 2008-09 and 2010-11 to support free early education and childcare duties. The Childcare Quality and Access Capital Grant supported improvements and extensions to accommodation and facilities, primarily in private and voluntary providers to support the implementation of the free entitlement to early education and the Early Years Foundation Stage; but also to help LAs to deliver their other duties under the Act.

The Coalition Government introduced in April 2011 a new Early Intervention Grant to help local authorities meet a range of statutory duties and support and strengthen early years and childcare provision. LAs can use this funding for the purpose of helping to secure childcare sufficiency, and to meet their other duties under the Act. They are best placed to judge how to use the funding based on local needs and priorities.

Section 7

Consultation

15 May 2009 – 8 July 2009: First Phase: Extending the Free Early Education – Discussion on a New Code of Practice.

7 October 2009 – 8 January 2010: Second Phase: Consultation on Draft Code of Practice on the Provision of the Free Entitlement for Three and Four Year Olds.

Funding

The funding for the free entitlement is not differentiated at a national level from the rest of school funding. The Dedicated Schools Grant (DSG) funds all pupils aged 3-16 on a part-time or full time participation basis.

Local authorities receive the same unit of funding per pupil (3-16) regardless of their age. However, this is a method for calculating an LA's overall annual budget, and is not intended to direct them to spend the same amount of money per child on provision. The Department of Education does not identify an amount for early years provision. It is for local authorities to decide how much to allocate to fund this, to fulfil their statutory duties.

Section 11

Consultation

14 August 2006 – 6 November 2006: Public consultation about proposed assessment criteria and Statutory Guidance.

18 December 2009 – 26 February 2010: Public consultation about refreshed Securing Sufficient Childcare Guidance, which combined 2007 childcare sufficiency assessments guidance with the 2008 securing sufficient childcare guidance.

Section 12

Consultation

2 October 2006 – 3 January 2007: public consultation on information duties. This included seeking views from expert organisations and interviews with parents asking for their views on the kinds of information they would most like to receive and how they would like to receive it.

Funding

See references to the Early Intervention Grant above.

Section 13

Consultation

7 February 2007 to 6 April 2007 – public consultation on proposed Childcare Providers (Information, Advice and Training Regulations).

Funding

See references to the Early Intervention Grant above.

Part 2

Consultation

Consultation on guidance and the implementation of Section 27, and Sections 22 and 26, between 19 Feb 2007 and 11 May 2007. Consultation events ran between April and May 2007.

Funding

Funding to support the role of local authorities in facilitating the childcare market moved into Revenue Support Grant from 1 April 2008.

Part 3

Consultation

Before the introduction of the childcare registration arrangements on 1 September 2008, the Government consulted on the following issues.

82 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Sections 33 – 38

Childcare registration: Early Years Register, setting out the requirements for providers caring for children aged 0-5. The consultation ran from 4 April 2007 to 4 July 2007.

Sections 33, 34, 52 and 53

Exemptions from registration: These set out the categories of childcare not required to register on a compulsory basis. The consultation ran between 21 January 2007 and 23 April 2007.

Sections 39 – 48

A consultation on the draft Early Years Foundation Stage (EYFS) framework took place between 5 May and 28 July 2006.

Section 46

A consultation on exemptions from the Learning and Development requirements of the EYFS ran from December 2006 to February 2007. These will enable providers to set out the criteria in identifying a case for exemption, providers needed to clearly demonstrate that they have genuine difficulty in meeting the requirements before seeking a direction from the Secretary of State.

Sections 75 and 76

A consultation on childcare registration: childcare disqualification regulations. This set out the circumstances in which applicants (or registered childcare providers) would be disqualified from being registered to provide childcare. It ran from 13 October 2006 – 2 January 2007.

On 6 July 2010, Dame Clare Tickell, Chief Executive of Action for Children, was asked to carry out an independent review of the Early Years Foundation Stage to consider how this could be less bureaucratic and more focused on supporting children's early learning. The Review covered: the scope of regulation, learning and development requirements; the assessment of young children's development; welfare and the minimum welfare standards. (see page 34 for further detail on this Review) Following this Review, a consultation on a revised EYFS framework commenced on 6 July and ran until 30 September 2011. The Government aims to introduce a revised framework in September 2012.

Section 89

Childcare registration fee levels: Future Approach to Fees and Subsidies
The consultation ran from 21 November 2007 until 20 February 2008.

Annex D:

Commencement dates of each section of the Childcare Act 2006

Section	Date came into force
1	(for the purpose of making regulations): 20 December 2006. (for remaining purposes) 1 April 2008.
2-4	1 April 2008
5	Not in force
6	1 April 2008
7	(for the purpose of making regulations): 1 April 2008. (for remaining purposes): 1 September 2008.
8-10	1 October 2007
11	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 1 April 2007.
12	(for the purpose of making regulations): 20 December 2006. (for certain purposes): 1 May 2007. (for remaining purposes): came into force on the 1 April 2008.
13	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 1 October 2007.
14	Section 14 was not commenced, and was repealed by Section 157 and paragraph 109 of Schedule 14 to the Education and Inspections Act 2006 with effect from 1 April 2007.
15-16	1 April 2007
17	1 October 2007
18-21	20 December 2006
22-30	31 January 2008

84 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Section	Date came into force
31	Repealed by the Education and Inspections Act 2006, Subsections 157, 184, Schedule 14, paras 108, 110, Schedule 18, Part 5. Date in force: 1 April 2007: see SI 2007/935, article 5(gg), (ii).
32	(for certain purposes): 6 April 2007. (for remaining purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
33-37	(for the purpose of making an order or regulations): 1 October 2007. (for remaining purposes): 1 September 2008: article 2; for transitional provisions and savings see arts 3, 4, Schs 1, 2 thereto.
38	1 September 2008: art 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
39	20 December 2006
40	1 September 2008: for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
41-46	20 December 2006
47	1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
48	(for certain purposes): 1 October 2007: article 2(d); for transitional provisions see article 3 thereof. (for remaining purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
49-50	(for the purpose of making an order or regulations): 1 October 2007. (for remaining purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
51	1 October 2007
52-56	(for the purpose of making an order or regulations): 1 October 2007. (for remaining purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
57-58	1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.

Section	Date came into force
59-61	(for the purpose of making an order or regulations): 1 October 2007. (for remaining purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
62-63	(for the purpose of making regulations): 20 December 2006. (for certain purposes): 6 April 2007. Sub-s (1) (b): (for remaining purposes): 1 September 2008, art 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
64	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 6 April 2007.
65	1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
66	6 April 2007
67	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 6 April 2007.
68	6 April 2007
69	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 6 April 2007.
70	6 April 2007
71	20 December 2006
72-73	6 April 2007
74	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 6 April 2007.
75	20 December 2006
76	1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
77-79	6 April 2007
80	Repealed by the Education and Inspections Act 2006, Sections 157, 184, Schedule 14, paras 108, 115, Schedule 18, Part 5. Date in force: 1 April 2007: see SI 2007/935, article 5(gg), (ii).
81	Repealed by the Education and Inspections Act 2006, Sections 157, 184, Schedule 14, paras 108, 116, Schedule 18, Pt 5. Date in force: 1 April 2007: see SI 2007/935, article 5(gg), (ii).

86 Post-legislative assessments of the Education and Inspections Act 2006,
Childcare Act 2006 and Children and Adoption Act 2006

Section	Date came into force
82	came into force on the 6 April 2007
83-84	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 6 April 2007.
85-88	6 April 2007
89	20 December 2006
90	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 6 April 2007.
91	6 April 2007
92	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 1 September 2008, article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
93-94	6 April 2007
95	1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.
96	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 6 April 2007.
97	6 April 2007
98 A to G	20 December 2006
99	(for the purpose of making regulations): 20 December 2006. (for remaining purposes): 30 March 2007.
100	20 December 2006
101	31 January 2008
102	(in relation to England): 20 December 2006. (in relation to Wales): 31 January 2008.

78 Post-legislative assessments of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006

Section	Figures – as at 24 June 2011
10 (Publication of new school proposals, with consent of the Secretary of State, outside a competition) – “exemptions from competition”	<p>Out of 166 approved applications, –</p> <ul style="list-style-type: none"> ● 87 were for community schools (of which 84 were for new replacement primary schools, resulting from the amalgamation of infant and junior schools; 1 was for a brand new primary school; 2 were for new replacement schools resulting in each case from the amalgamation of a maintained nursery and primary school). ● 3 were for local authority promoted foundation schools ; ● 7 were for foundation schools (proposers other than LA); ● 44 were for voluntary aided schools; and ● 25 were for voluntary controlled schools.
11 (Publication of proposals to establish maintained schools: special cases)	<p>Out of 7 published proposals,</p> <ul style="list-style-type: none"> ● 5 were for former independent schools joining the maintained sector as VA schools; ● 1 was for a new maintained nursery; and ● 1 was for a sixth form foundation school.

We do not hold data on the number of schools established as federated schools (under section 12 of the Act) or how many schools have been established by local authorities outside their area (under section 13 of the Act).

Section	Date came into force
103	<p>Sub-section (1): (in relation to England for certain purposes): 1 April 2007.</p> <p>Sub-section (1): (for certain purposes): 6 April 2007.</p> <p>Sub-section (1): (for certain purposes): 1 October 2007.</p> <p>Sub-section (1): (in relation to England for certain purposes): 1 October 2007.</p> <p>Sub-section (1): (in relation to Wales for certain purposes): 1 April 2008.</p> <p>Sub-section (1): (for certain purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.</p> <p>Sub-section (1): (in relation to England for certain purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.</p> <p>Sub-section (2): (in relation to England for certain purposes): 1 April 2007.</p> <p>Sub-section (2): (for certain purposes): 6 April 2007.</p> <p>Sub-section (2): (in relation to England for certain purposes): 1 October 2007.</p> <p>Sub-section (2): (in relation to England for remaining purposes): 1 September 2008: article 2; for transitional provisions and savings see articles 3, 4, Schedules 1, 2 thereto.</p>
104-111	Royal Assent: 11 July 2006



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, telephone, fax and email

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/general enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,
London SW1A 2JX

Telephone orders/general enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other accredited agents

ISBN 978-0-10-182042-4



9 780101 820424