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## ABSTRACT

This publication is a record of the Parliamentary debate on adult education that accompanied the publication and eventual passage of the Further and Higher Education Act in Britain in March 1992, with a commentary on the development of major issues as the legislation proceeded. Chapter 1 provides a summary of the main measures of the act and identifies sections of particular importance for adult educators. Chapter 2 presents extracts of debate in both houses regarding the importance of adult learning. Where it is helpful, a brief editorial comment has been inserted to place the quoted extract in context. Chapter 3 contains extracts from ministerial replies to amendments made during the passage of the bill, together with clarifying editorial comment. The material is presented to give an indication of the policy intent behind the legislation and to illustrate ways in which the act might be implemented. These topics are considered: statutory duties, the Further Education Funding Council (FEFC) sector, FEFC operation and funding, the local education authority sector, quality, special needs, institutions in the FEFC sector, and other issues--Open College Networks, Welsh, literary tuition, prison education, and trade union education. (YLB)

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# Adult Learners and the Further and Higher Education Act 1992

A Review of the Debate

Bob Powell

*Editor*



National Institute of Adult Continuing Education

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This publication has been prepared by Bob Powell, a freelance educational consultant.

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# FOREWORD

The publication of the 1991 White Paper *Education and Training for the 21st Century* led to the most informed debate on the place of adult learning in Britain's post-school education and training system. Many of the issues debated were reflected in NIACE's original response to the White Paper, its initial response to the publication of the Bill, and in *Adult Learners and the FHE Bill 1991*.

There was, throughout the year, sustained press interest in the impact the legislation might have on adult learners, and once the Bill was presented in Parliament, debate touched on a whole range of concerns.

NIACE commissioned Bob Powell to sift through Hansard and prepare a readily useable record of the Parliamentary debate, as a practical document for educators of adults, wherever they work.

I am grateful to him for the thoroughness and efficiency with which he completed the task. With its companion publication *Securing Adult Learning*, I hope that this document will be of use to people concerned with adult learning as they prepare to maximise benefits to adult learners in the implementation of the legislation.

ALAN TUCKETT  
*Director, NIACE*

# SUMMARY OF THE MAIN MEASURES OF THE ACT

## 1.1 Overview

The Further and Higher Education Act (1992) will lead to a significant reorganisation of post-school education in England and Wales. It will do this by:

- removing from Local Education Authorities the statutory duty to secure sufficient full-time education for those in the 16–19 age group
- removing from Local Education Authorities the statutory duty to secure adequate facilities for the provision of certain aspects of further education for part-time students over the age of 16, and full-time students over the age of 19. The areas of the curriculum so affected are detailed in Schedule 2 to the Act as:
  - (a) courses leading to vocational qualifications recognised by the Secretary of State
  - (b) courses leading to GCSE, A-level and AS-level qualifications
  - (c) recognised courses providing access to higher education
  - (d) courses preparing students for other courses which fall into categories (a) to (c)
  - (e) courses for basic literacy in English
  - (f) ESOL courses
  - (g) courses to teach basic principles of mathematics
  - (h) in Wales, courses for proficiency or literacy in Welsh
  - (j) courses designed to teach independent living and communication skills to those having learning difficulties
- establishing Further Education Funding Councils for England and for Wales, which will be statutorily responsible for the provision outlined above
- disestablishing the Polytechnics and Colleges Funding Council and the Universities Funding Council, and replacing them with Higher Education Funding Councils in England and in Wales
- removing most existing further education and sixth-form colleges from Local Authority control and giving them independent corporate status
- dividing public sector funding of further and higher education between three kinds of funding agency: the FEFCs; the HEFCs; and the LEAs
- allocating institutions to the funding agencies, in three new sectors, as follows:
  - Higher Education Sector, to include HE corporations which have over 55% of their work in higher education

- Further Education Sector, to include FE colleges with over 15% of their work delivered on a full-time, sandwich, block-release or part-time day release basis; sixth-form colleges; other FE corporations created by the Secretary of State at the request of the FEFCs; and legally distinct institutions or organisations designated by the Secretary of State
- Local Authority Sector, to include maintained institutions outside the above definitions.

## **1.2 Key sections for adult educators**

A large number of Sections in the Act will impact upon those involved in the education and training of adults, especially those personnel working in institutions which will transfer to the FEFC sector and become corporate bodies. The sections identified below are of particular significance:

- S.3* defines the primary duties of the FEFCs in respect of part-time education and provision of full-time education for those over the age of 18. This Section links to Schedule 2, which identifies the curriculum areas where the FEFC will be responsible for securing adequate provision
- S.4* imposes a duty on FEFCs to 'have regard to' the needs of those with learning difficulties, and empowers the FEFCs to purchase provision outside the FE Sector
- S.5* defines the kinds of institutions and activities which the FEFCs will be able to fund
- S.6* provides for institutions outside the FE Sector to apply, through the governing body of an institution within the Sector, for FEFC funding in respect of Schedule 2 provision which is not provided – or provided inadequately – in any locality
- S.9* imposes a duty on the FEFCs to establish Quality Assessment Committees to assure quality in the institutions within the FE Sector
- S.11* modifies the LEAs' statutory duties for further education, and empowers LEAs to provide FE where they do not have a duty to do so
- S.12* permits schools to provide further education, and to charge for such provision; further regulations will define the extent to which further education students can learn alongside pupils of compulsory school age
- S.15* requires the Secretary of State to specify which institutions will become FE corporations, and thus eligible for direct FEFC funding
- S.16* provides for the Secretary of State to extend the list of specified institutions at the request of the FEFCs

- S.28 allows the Secretary of State to designate other institutions to enter the FE sector and so become eligible to receive direct financial support from the FEFCs: such institutions must be voluntary aided schools, assisted (but not maintained) by an LEA, or eligible for grant aid
- S.34 relates to powers which enable the transfer to FE corporations of Local Authority property which has previously been used for the provision of further education
- S.50 empowers the Secretary of State to require FE Sector institutions to publish certain types of information, including details of student achievement and progression
- S.52 empowers the FEFCs to direct that specific provision be made by a particular institution for an individual student
- S.54 imposes a duty on a range of agencies to provide information to the FEFCs
- S.55 relates to the assessment of quality in LEA-maintained institutions other than schools
- S.83 empowers FEFCs to arrange for efficiency studies within the FE Sector
- S.85 empowers Local Authorities to create Governing Bodies for their further education institutions, and to delegate powers to them.

The full text of these and other Sections is to be found in *The Further and Higher Education Act (1992)*, obtainable from HMSO (ISBN 0 105413 92 5), price £10.60.

## PARLIAMENTARY VIEWS ON THE IMPORTANCE OF ADULT LEARNING

The introduction of the Further and Higher Education Bill into the House of Lords on 4 November 1991 provided an opportunity for members of both Houses of Parliament to comment, in general terms, on the significance of adult learning in England and Wales. The following sections present extracts of debate in both chambers at various stages during the Bill's passage. Clearly, comments are inclined to focus on the particular matter which is under consideration at any given moment: contributions at Committee and Report Stages and at Third Reading, when debate is structured around specific amendments to the proposals in the Bill, are likely to be more detailed than speeches during a Second Reading Debate, which examines the thrust of Government policy in general terms. Where it is helpful, a brief editorial comment has been inserted to place the quoted extract in context.

### 2.1 The importance of learning

Harry Barnes MP, speaking in the Second Reading debate, indicated that there are a number of central aims behind the provision of education. First amongst these is that of 'individual self-fulfilment', which:

*'Enables individuals to move into and out of vocational and non-vocational education, for example, to pick up what is beneficial to them at different stages of life. Education is a continuing process, and students and teachers should see themselves as studying together ... Secondly, education should supply skills that the population in general can use if we are to become a modern, technologically advanced society, with the social requirements that go with that. Specific skills may be involved in some instances, but they should operate, and be controlled, within the general pattern of developing a bright population, who are given an opportunity to study the subjects that grab them. [...] My third point about the importance of further and higher education relates to the skills that can be developed to allow democratic participation in society. Education is not just for individuals; it does not simply mean that someone is producing something that is economically worth while for the rest of us. It is important because of its collective, participatory, sharing nature.'* (Harry Barnes [Lab]; 11.2.92; cols 947-8; see also Standing Committee F, 18.2.92, cols 31-34)

The point about self-fulfilment was also picked out by Liberal Democrat spokesperson Michael Carr:

*'Adult non-vocational education is not only about self-employment or about the possibility of further qualifications; it is also about self-fulfilment, about the meeting of personal needs that fall within the broad definition of education. [...] For many elderly people, women and individuals living alone, the so-called leisure classes provide an opportunity for self-fulfilment.'* (Michael Carr [Lib Dem]; 11.2.92; col 865)

Conservative MP Geoffrey Dickens, echoing this sentiment, also drew attention to the socialising effect of participation in community education, which he saw as 'terribly important in terms of building people's self-esteem and giving them a social life outside their home.' (Geoffrey Dickens [Con]; 3.3.92; col 246)

*'[Adult education classes] consist generally of part-time day or evening classes essentially for adults. Their objective is to be a civilising influence in the community. Such classes are ... indeed most important. [...] The courses have as much to do with social coherence as anything else. Many of the classes ... provide not only formal instruction but a means whereby people can get to know each other. In many parts of the country that can be difficult, in particular for people of advanced years. Classes ... provide a focus for the exchange of ideas and in various ways enhance students' skills and abilities.'* (Lord Crook; 21.11.91; col 1100)

In Committee, Government speakers acknowledged that:

*'Education is not simply some sort of annexe to the economic production line. Clearly, the role of education is to enlarge personal opportunity, to enable more people to have the fullest possible opportunities in life and to make their contributions to the community.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 19.2.92; col 126)

## 2.2 The 'vocational'/'leisure' divide

Much debate on the Bill centred around the proposed split of the curriculum into those aspects which will be funded by the Further Education Funding Councils, and those which will remain the statutory duty of Local Education Authorities (identified in general terms as a distinction between 'vocational' and 'leisure' education). Several speakers called into question the rationale behind such a distinction:

*'Noble Lords may be surprised at the vocational consequences for many individuals who have taken courses which appear to be totally non-vocational. I can give examples of people who have come to Morley College [where I am Chair of Governors]. They take an art class. They have never had a job previously. They have no confidence in themselves and they found that they were good at something and that gave them the confidence to go out and get a job. Even flower arranging at adult colleges - people jeer at it; it is in no way typical of what goes on at the*

*present time – can be vocational. One can set up a florist's shop and do it very well. One after another the so-called leisure activities can have vocational application or achieve vocational developments. It is surprising to find what subjects prove to be a good base for unexpected careers. Recently I was told that computer people were particularly good if they had studied modern languages. I do not know why; but that was a serious finding. I do not believe that anyone ever anticipated that that would be so. I also understand that many businesses have found philosophy graduates exceptionally good for training for management positions. That shows what nonsense it is to make those clear-cut divisions [between 'vocational' and 'leisure' provision].*' (Baroness Seear; 21.11.91; cols 1037-8)

*'One of the warmest of my recollections goes back 30-odd years to a young woman student in an adult education extra-mural class just outside London. She was working as a clerk with very few skills. She then wanted to go further. She had no understanding or backing from her family, but she secured an adult education scholarship to Cambridge. She went to Newnham, graduated, did a teacher training course, went out to teach in Tanzania for some years and then came back and taught here. Did she receive vocational education or leisure education in that adult education class? It was education which gave her a better opportunity of employment, but which also enriched her life. Surely that is the object of education.'* (Lord Hatch of Lusby; 21.11.91; col 1093)

*'Education is not necessarily about having a vocation or goal to fight for. Often it will be; someone will have a job in mind such as accountancy and will fight for the necessary qualifications. At other times, there should be opportunities for people to pursue the subjects that interest them. Associated with that is the idea that adult education is for studying for qualifications and is distinct from the non-vocational area. However, many people who do valuable work in liberal studies and study a subject for its own interest will begin to use that subject. [...] There is also a tendency to believe that vocational education is somehow superior to and can be separated from non-vocational education. That is a big mistake. We build upon a false dichotomy.'* (Harry Barnes [Lab]; Standing Committee F; 19.2.92; col 156)

Lady David, speaking from the Opposition Benches during Lord Committee stage, drew attention to the work of Open College Networks in offering accreditation to students following courses falling within both the FEFC and LEA sectors, and in so doing identified the wide range of activity which constitutes adult learning:

*'There will be a greater need than ever for new forms of guidance and new mechanisms for progression of students within and across all parts of the [FE] sector. Open College Networks have developed independent organisations facilitating those processes and fostering practical methods of accrediting prior learning and credit accumulation and*

*transfer appropriate to the ways in which many adults participate in learning activity. The role of such organisations should be recognised and encouraged ... Because the OCN system ascribes a level and method of assessment to any course (employer-based, academic, vocational, informal) in any mode of delivery (one day or one year, day or evening, full- or part-time, taught course or distance learning) it has the potential to over-arch all kinds of learning and the current confusing plethora of qualifications, Thus, OCNs may accredit programmes as different as child minding, flower arranging, computing, theatre design, sport leadership, access to engineering or hairdressing.'* (Lady David; 10.12.91; cols 614-5)

From the Government benches, one speaker drew attention to a programme of learning having value even if it does not lead to certification:

*'Although certificates are undoubtedly desirable, the fact that not everyone receives one on completion of a course does not mean that either the student or the course was unsatisfactory. In many cases – particularly in the case of short courses for adults that are designed to improve the quality of life through general education or leisure pursuits – certificates would be inappropriate. The absence of a certificate does not mean that a student has not benefited from the course that he has attended or that he has been wasting his time.'* (James Pawsey [Con]; 3.3.93; col 211)

### 2.3 Towards a learning society

Speakers from all sides spoke in favour of a continuum of educational opportunity, and the need for a system of education and training which encouraged the development of a learning culture: 'adult education is ... central to the creation of a learning society, to the notion of lifelong education, which is something we all wish to create.' (Baroness Blackstone; 14.1.92; col 122)

The Earl of Stockton, himself Chair of a TEC Board, advocated a:

*'Seamless system ... premised on the necessity to create an expansion of 16-plus provision that will enable the citizens of the United Kingdom to pursue further and higher academic and vocational education and professional education and development in a flexible manner throughout their lives. There should be no impediment for a young person who leaves school at 16 and gets a job on a building site as an electrician's mate from progressing via training schemes with appropriate national vocational qualifications, through an FE college, further work experience, a BTEC diploma or similar recognised qualifications to a polytechnic or university and coming out with a master's degree in electrical engineering, without a single A-level and without at any point having attended a higher education institution on a full-time basis. We have in Britain a fine tradition of such routes, going back to night schools and the mechanics institutes and more recently*

*such pioneering organisations as Birkbeck College, London ... and especially the Open University, which has taken the tradition of offering a second chance for higher education to those who may have missed it the first time around and has extended it to anyone irrespective of their academic qualifications. However, those paths to a degree or other qualification are extremely demanding both on the time and initiative of the students compared to those taking the more conventional route. The most important part of a truly seamless system is that proper accreditation be given for all forms of training, education and even personal and professional development to allow the maximum scope for individual progression through the credit accumulation and transfer scheme to properly validated qualifications.'* (The Earl of Stockton; 21.11.91; cols 1102-3)

Speakers from the Opposition benches drew attention to the fact that:

*'About 70 per cent of the work force receives no adult education. That is wasted potential. We should try to overcome that problem. It should be the norm for people to make use of educational institutions at different stages of their lives, just as they use building societies to buy houses and a travel agency to make holiday provisions. There should be periods when people either for general interest or through a desire to obtain a particular qualification use the adult education provision. A variety of provisions need to be made to achieve that. They should be drawn together.'* (Harry Barnes [Lab]; Standing Committee F; 19.2.92; col 156)

## **2.4 Adult education as a bridge back into learning**

As many adult educators recognise, one of the values of general provision is that it provides a bridge back into learning for those who have not followed education or training programmes for some time. This point was picked up by a number of speakers:

*'Adult education is a crucial part of overall education, and it should be encouraged. I know of many people who, as a result of adult education services, have found new opportunities in life. Many people have discovered quite late in life that they have the ability to benefit from further education as a result of their introduction to education through adult education. [...] We must not allow [adult] colleges which are doing FE work which is comparable to that done by FE colleges to be regarded as second-class citizens.'* (John Bowis [Con]; 3.3.92; cols 213; 215)

*'Those so-called leisure activities are very often the point from which people who have had no experience of further education take off. Having started with what looks to many people like an irrelevant subject they then discover that they can learn, what they are capable of learning, and then go on to study many other subjects. But it had never occurred to them before they took further education courses that they*

were capable of doing so, or indeed would wish to study.' (Baroness Seear; 9.12.91; col 466)

'Frequently those classes bring out the unexpected talents that many of us find we possess when put to the test.' (Lord Crook; 21.11.91; col 1100)

'We need people of all ages to discover their capacity to learn and to become qualified. However, for many people that is a stony path and they tiptoe along it, particularly in the early stages. They often start unconvinced that they can ever qualify. Yet the experience of learning gives them a confidence and a courage to move on. [...] Our experience is that some of the people who embark cautiously on adult education are looking for a new direction in life or wanting to turn a corner. There are, for example, ex-prisoners; people who have a handicapped person in the family for whom they must care; older people wishing to find a new purpose for their declining years; and people who have suffered a disorientating loss. Such people need to be given encouragement to start on adult education without later having to jump an entirely artificial barrier [between "vocational" and "leisure" provision].' (The Lord Bishop of Guildford; 21.11.91; col 1039)

Important, too, is the localised nature of provision, and the support facilities which are provided alongside formal tuition:

'[the Humberside adult education service] provides a valuable service, siphoning people into education who would otherwise drop out or would not be attracted to it, because it provides education where they live – in the village hall, and schools in the locality, in villages and towns, in the main using the facilities of secondary schools.' (Austin Mitchell [Lab]; 11.2.92; cols 877)

'The area [Manor estate, Sheffield] has an unemployment rate in excess of 25 per cent and there is much dependency and poverty, but over the past five years, following the massive run-down of industry in the area, it has become a centre of excellence. It has also become a centre for access because the facilities – the high quality creche and nursery – are provided. It is such a success that the people who come through the door – females to start with, but now males – are looking for a second chance. One person who started with no qualifications will probably go to Sheffield University next year. That is what adult education can do. It improves quality of life and shows that retraining can take place even though at first it is non-vocational. People can then move to vocational training and that will help to remove the divide in the system.' (Richara Caborn [Lab]; Standing Committee F; 19.2.92; col 159)

'That bridge is not a figment of the imagination, it is real. Someone who has been employed for many years in, for example, engineering or the docks and knows no other skill, who then sustains the blow of redundancy or ill-health, must learn to cope emotionally. Non-vocational courses can create the bridge to other qualifications.'

*They can also boost the confidence of someone who has sustained a blow such as unemployment. That is a common occurrence in my constituency. More and more people are using such courses as a bridge. [...] Further education is beneficial, not simply because it provides training and the opportunity for alternative employment; it is also therapeutic for people who are demoralised.'* (Joe Benton [Lab]; Standing Committee F; Fifth Sitting; 20.2.92; col 209)

## **2.5 The significance of adult education to disadvantaged groups**

A number of parliamentarians drew attention to the value of adult education provision to specific groups in the community:

*'The great value of adult education to the community is undoubted. It is ... particularly important for those adults who did not have opportunities for post-school education – opportunities which are now available to many more young people than was true 25 or 30 years ago. Surely we should all do all we can to encourage older people to return to study, to embrace the values of self improvement, to continue to be curious and to want to learn well into old age. Adult education is particularly important for unemployed people. For some of them it is important as a way of keeping sane. For others, it is important as a method in the longer term of improving their qualifications and thereby their chance of obtaining a job. It is particularly important for the growing population of elderly and retired people in this country, many of whom may be bored, lonely, or both. It provides an opportunity for older people to keep in touch with other people, including younger members of the community, in a positive way. Indeed, it is vital to the quality of their lives and their own self images.'* (Baroness Blackstone; 14.1.92; col 122)

*'I should like to point out the tremendous importance of adult education in this country, particularly for older people, pensioners and the unemployed. The opportunity it offers for people in unfortunate situations to get out of the home one morning or one evening a week, to escape from the kitchen, from the TV or loneliness, is important. That is the social therapy of many courses run throughout the country. There is also the creative therapy; that is, the ability that it gives to people to discover talents and abilities which they perhaps never knew they had. A combination of social and creative therapy is of tremendous importance.'* (Lord Ritchie of Dundee; 14.1.92; cols 124-5)

*'So-called leisure courses ... are very important to working-class people. For instance, many women go to car-maintenance classes. Without such classes it would be unsafe for them to run a car. Many pensioners get great enjoyment from these classes. They are kept young, active and alert in mind and body, and as a result the state saves a good deal of money in the health service and in other ways. If adult education*

*classes become so expensive that people on low incomes cannot afford them, or if they have to close down because local education authorities are squeezed by a reduction in the amount they get from the business rate, a serious blow will be dealt to women and older people.'* (Mildred Gordon [Lab]; 11.2.92; cols 893-4)

*'There is a great need for the type of adult education which is provided in Croydon, which has a multiracial society. Many need extra help in English and other types of subject. The adult education service does a lot of good in such circumstances.'* (Humfrey Malins [Con]; 11.2.92; col 921)

Provision targeted at disadvantaged people could, it was claimed, have long-term financial benefits for the economy:

*'It is not simply a matter of social responsibility to old age pensioners and a responsibility to care for their quality of life. [...] It would alleviate pressure on the medical and welfare services ... if adequate adult education were provided ... Adult education taps a pool of skill and ability which could serve our economic needs.'* (Edward O'Hara [Lab]; Standing Committee F; 19.2.92; cols 161-2)

## 2.6 The importance of community schools

A number of MPs from areas where the main delivery mechanism for adult education is through community schools or colleges sought to introduce amendments which would allow such institutions direct access to FEFC funds. In introducing proposals, these speakers drew attention to the rationale for such provision, in many instances focusing on the cost-effective use of premises:

*'Community colleges are an extremely intelligent way of using resources because the physical structure of the school, much of the equipment and the facilities in it are used by adults when they otherwise would be used by no-one. For that reason, quite often they are part-funded in those facilities, not just by local education authorities but by district councils as well, so that people living locally can use, for instance, the gymnasium or the sports hall or the swimming pool when it would otherwise be put to no use at all. In other words, the whole surrounding community benefits, and the taxpayer, both national and local government, gets better value for his investment in the premises concerned. [...] So the community colleges, which probably make the best single use of the capital investment in them, provide further education and adult education as well as their primary function of secondary education. This means that the children at the school for secondary education can have a wider spectrum of syllabus opportunity, since some of the same staff who teach less popular disciplines to the children can be retained because they are also teaching adults in the adult education function of it.'* (Sir Robin Maxwell-Hyslop [Con]; 11.2.92; cols 860-1)

*'The community college structure within the pattern of our education makes the best possible use of the resources, not just the resources of buildings, but of the equipment, of the facilities and of the staff.'* (Sir Robin Maxwell-Hyslop [Con]; 3.3.92; col 249)

Other speakers drew attention to the benefits for school teachers and pupils to have adults attending classes alongside their children:

*'The idea of using the time for educating children also in a supplementary manner for educating adults is not one on which we should turn our backs. It is a very sensible idea. There may be considerable benefit to children if they have parents, or the friends of parents, with them in the classroom. It will enhance the teacher's control because the teacher will be able to see that the parents, who have considerably greater control over a child than any teacher ever will (or should have) are seen to be teaching and learning as well. It can only enhance the position of the teacher and also the respect which children have for their teacher.'* (Lord Addington; 16.1.92; col 351)

More generally, proponents of community schools and colleges spoke of the school as the centre of community life:

*'The community colleges offer a range of opportunities for adults to return to and continue with their education. They also provide a focal point for many other community activities. [...] The community schools and colleges contribute more to the communities in which they are located than merely provision of educational opportunities.'* (Michael Carr [Lib Dem]; 3.3.92; col 241)

The Minister of State went some way to acknowledging the force of these arguments without committing the Government to supporting the community school model specifically within the legislation:

*'I recognise the very considerable service provided by community colleges to adult education. I am wholly committed to open and flexible learning, and I accept that community colleges provide a type of open and flexible learning which is especially suitable to rural communities.'* (Tim Eggar [Con; Minister of State]; 3.3.92; col 255)

## **2.7 Long-term residential colleges: a strong tradition**

The Government had indicated in the May 1991 White Paper that LTRCs would be included within the FEFC sector. This led a number of speakers to question the continued viability of these institutions within the sector, and drew from Government Ministers a range of comments on the unique position which such colleges occupy. It should be noted that the DES concluded a review of LTRCs during 1991.

*'All seven of these colleges provide a high quality of full and part-time residential education for adults who have had little opportunity to pursue study or training since leaving school at the minimum school*

*leaving age and for whom a residential learning environment is necessary in order for them to realise their personal and intellectual potential. Furthermore, the colleges are involved in research work, and through this research they contribute in both an academic and a practical way to the process of teaching and learning in the education system. [...] The long-term residential colleges have a national and international role as part of the system of adult learning in the United Kingdom. It would be sad if we were to allow their contribution to disappear ... It would seem that although the contribution of these colleges is small in relation to the total area of responsibility of the Further Education Funding Council's remit, nevertheless it is significant in terms of the work they do.'* (Baroness Lockwood; 9.12.91; cols 573-4)

*'The fact that the colleges are long-term and residential is of great importance. In providing studies of a high academic standard, they perform at least two functions. First, they stretch the ability of students who usually obtain a qualification of university standard. I am thinking in terms of a diploma in economics, public administration or related subjects. As the courses usually last two years, they call for sustained effort of a high order. A successful conclusion gives immense personal satisfaction to the student concerned. Secondly, the qualification is usually accepted by universities as an indication that the student can proceed to a degree course. I hope I am not placing undue importance on the matter of linkage to university courses. I am simply saying that the courses are of a high academic standard and they call for great concentration, diligence and effort on the part of the individual concerned. Those qualities have great relevance to the educational process.'* (Lord Dormand of Easington; 9.12.91; col 574)

*'There is no doubt that, per head, residential colleges are expensive. That has always been challenged on the grounds that the work could be done part-time, through evening courses and so on. A full-time residential college provides a quite different experience. Speaking from the Hillcroft experience, I know that only women with great determination to make up for their absence of previous education are prepared to undergo a full year of intensive study. The failure and drop out rate is very low. If one considers the jobs of former Hillcroft students, there is no question that they make a great contribution after they leave. By definition they are exceptional women. It costs more, but the return is infinitely worthwhile.'* (Baroness Seear; 9.12.91; col 575)

*'Residential colleges are a precious resource in this country's educational provision. They deserve to be treated with great care. All the residential colleges provide so-called long courses for students as well as short courses. [...] The variety in the length of the programmes and the opportunity to move from one to another has been an advantage and provided an important element of choice. Some of the colleges have, for some time, given students who wish to progress to higher education the opportunity to complete two-year programmes. Several students*

*have been able to go directly into the second year of undergraduate studies, while others have progressed immediately to postgraduate work. [...] Many students who arrive at residential colleges have neither the confidence nor the background to know what they want to do when they finish their course. Those courses are different from what is generally known as access course provision. Generally, students who take an access course intend to progress to further education. Many have specific institutions in mind. That is not often the case for students who take courses at the long-term residential colleges. We could meaningfully describe their courses as access courses only if we referred to them as courses for "access to life" or "access to enhanced life chances". They provide access to fuller and more rewarding citizenship. At those residential colleges, students develop their knowledge and study skills and critical abilities. When they realise what they have been able to accomplish, they progress.'* (Andrew Smith [Lab]; Standing Committee F; Sixth Sitting; 20.2.92; col 230)

*'The justification for long-term colleges was the idea that many people, through no fault of their own, had somehow lost out in the formal education system and that it was desirable for society to provide a residential experience to get them back into the education system. Having been attracted back into the system, many people stayed in education, went on to higher education, or made their careers in lecturing and teaching. In the context of an inflexible educational system that did not, until the late 1970s, accept the concept of locally based access courses, the long-term residential courses undoubtedly had a role. I say that without equivocation.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; Sixth Sitting; 20.2.92; col 239)

## INDICATIONS OF POLICY INTENT

This section contains extracts from Ministerial replies to amendments advanced during the passage of the Bill, together with clarifying editorial comment. The material is presented to give an indication of the policy intent behind the legislation, and to act as a signpost to ways in which the Act might be implemented. Each set of quotes should be read alongside the relevant Section of the Act, and/or the information contained on significant measures in the first section of this paper. For ease of cross-reference, all references have been updated to accord with the relevant Section in the FHE Act: a Bill is subdivided into 'clauses' which are re-numbered as amendments are accepted and the Bill is reprinted for future stages. With this exception, text inside inverted commas is a verbatim transcript from Hansard: date and column references are given for readers wishing to refer to the full record of debate.

### 3.1 Statutory duties

#### 3.1.1 'Sufficiency' and 'adequacy' of provision

Members of the opposition in both Houses sought to clarify the extent of statutory duties placed on FEFCs and LEAs, and in particular to tease out any difference in interpretation between the FEFCs' duty to secure 'sufficient' full-time FE for those below the age of 19 (Section 2); the FEFCs' duty to ensure that 'adequate' facilities in respect of Schedule 2 work are provided 'at such places, are of such character and are so equipped as to meet ... reasonable need' (Section 3); and the duty on LEAs to secure 'adequate' facilities without reference to location, character or equipment (Section 11). This debate, opened by Lady David, drew the following responses from Ministers:

*'The assumption in law is that people upon whom duties are placed will discharge them responsibly. In respect of Section 11, LEAs will discharge their duties [to secure adequate facilities for FE] on the basis of informed decisions taken in the light of local circumstances. There is recourse to the Secretary of State in the event of an LEA acting unreasonably or in default of its duty. It is in this way that LEAs are accountable under law for the decisions they make. [...] In the Government's view it is for each LEA, provided it acts reasonably, to decide how to fulfil the duties imposed on it. I believe that targets for enrolments are for LEAs themselves to set in response to local needs and circumstances. Similarly, it must be for LEAs to determine the range and type of*

facilities required for further education.' (Lord Cavendish of Furness [for the Government]; 16.12.91; col 1176)

'We could debate at some length the meaning of the words "sufficient" and "adequate" but my understanding is that for the purposes of the duties on local education authorities it has always been accepted that the term "sufficient" in Section 8 of the 1944 Act imposed a stronger power than the term "adequate" in Section 41.' (Lord Belstead [for the Government]; 14.1.92; col 161)

'We are not free to decide how we should define ["adequacy" in respect of Section 6(5)]. In considering what is meant by the word we need to look back at Section 3 and the duty on the funding councils to secure the provision of adequate facilities for further education. [In] discharging that duty a council must "secure that facilities are provided at such places, are of such character and are so equipped as to meet reasonable need". In determining what is adequate provision under Section 6(5) [indirect bids to the FEFC via a college in the sector] the further education sector college must have regard to this duty which is laid upon the council under Section 3. [...] To define inadequate provision in terms of quality will have quite a strange effect. It might mean that an FE college would be asked to forward to the funding council an application for funding of new courses on the grounds that identical existing courses were of poor quality. That is unlikely to be a very good basis for decisions on funding. The way forward would surely be to tackle the poor quality provision first and give it a chance to improve. [...] We believe that FE colleges should have the formal role of determining adequacy, in which process it would need to confer with colleges making applications to it and the LEA as necessary.' (Lord Belstead [for the Government]; 14.1.92; col 230)

'What constitutes the adequacy of facilities [under Section 11] is for the LEA to determine. There are statutory procedures for challenging LEA decisions about the adequacy of provision and, in the event of such a challenge, it would be for the Secretary of State to determine whether the LEA was in default of its duty. ... We are introducing a new statutory duty upon the funding councils [Section 3] whereas we are maintaining an existing statutory duty which has existed for over 40 years upon the local education authorities .... [Moreover] the councils' duty encompasses the whole country and it is therefore reasonable to set out in a little more detail how it is to be carried out. Local education authorities are already aware that their duty is to provide a local service to suit local people. [Therefore the Government cannot support an amendment which would gloss "adequacy" in Section 11 in the same way as it is glossed in

Section 3].’ (Lord Belstead [for the Government]; 14.1.92; col 247)

*‘I do not want to make too much of the difference between those two terms. Any dictionary will tell us that “sufficient” means, among other things, “adequate”, and “adequate” means, among other things, “sufficient”. As I explained ... it has been generally accepted for the purposes of the duty on LEAs under Section 8 of the 1944 Act that the term [“sufficient”] imposed a somewhat stronger duty than the term “adequate” in Section 41 ... The Government’s view is that the existing duties taken from the 1944 Act are correct, and we do not want to alter the wording ... One of the reasons that I say that is that of course Section 2 contains the principle of meeting the reasonable needs of all persons to whom the duty extends. Sections 3 and 11 do not go quite so far, but, in my opinion, we should not get too concerned about this matter. There is still a firm duty in Sections 3 and 11 to secure an adequate service, and adequate means fit for the purpose or, as I have said, sufficient.’ (Lord Belstead [for the Government]; 3.2.92; col 12)*

*‘We sought, by using “sufficient” and “adequate”, to replicate the position that already exists in the Education Act 1944. Section 2 places on the funding councils a duty to provide “sufficient” facilities for the full-time education of those aged 16 to 18. That reflects the wording of Section 8 of the Education Act 1944. Sections 3 and 6 relate to the duty placed on the funding councils, and Section 11 relates to the duty remaining with LEAs to secure provision of “adequate” facilities for certain aspects of further education. That use of the word “adequate” reflects the wording of the duty imposed on LEAs under Section 41 of the Education Act 1944. We have deliberately sought to replicate the existing words so as not to send unintended messages about the extent of provision and the duties that rest on the different parties. [...] I simply refer to the Concise Oxford Dictionary, in which “adequate” is defined as “proportionate (to the requirements); sufficient, satisfactory”; and “sufficient” is defined as “sufficing, adequate esp. in amount or number to the need”. That suggests to me that the safest refuge is to replicate the wording that has already been used and understood. If we changed the wording, people would, with justice, ask why we had done so. We have sought, to the best of our drafting ability, to keep the status quo within the new provisions. [...] I can go no further than that in my explanation. I am told that the larger-range Oxford dictionaries – I do not have them with me – do not depart from the interchangeability of the definitions of the words.’ (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; cols 224-5)*

### 3.1.2 Duties in respect of those with special educational need

Ministers outlined in general terms the statutory duties relating to provision for those with special educational need as follows:

*'The Government are committed to promoting the availability of further education for students with disabilities. Sections 4 and 11 of the Bill reflect that commitment. Those Sections require the further education funding councils and local education authorities in discharging their functions to have regard to the requirements of students with learning difficulties. That means that the Bill applies to the funding councils the same duty as applies now to local education authorities and continues that duty on authorities where they are responsible for making the provision. It thus maintains the existing statutory framework within which provision is made for students with learning difficulties. [...] Section 4 empowers the further education funding councils to arrange placements in independent specialist colleges which cater for students with learning difficulties, where they consider that is appropriate. Section 5 backs that up by giving the councils power to pay any fees charged for such placements. Those provisions reflect the current practice of the local education authorities, which arrange further education provision for students with learning difficulties outside their own institutions if they consider that suitable provision for those students is not available in the institutions they maintain. I should make it clear that there is no existing statutory duty covering those arrangements; they are made entirely at the discretion of individual authorities. Section 4 ensures that that option is available also to the further education funding councils in discharging their responsibilities towards students with learning difficulties in the new further education sector. [...] The Bill, as drafted, is sufficient to ensure that students with learning difficulties will continue to have access to the specialist provision available outside the further education sector. It will be for the councils to determine whether independent sector provision should be arranged in the light of the circumstances of the individual case.'* (Lord Cavendish of Furness [for the Government]; 10.12.91; cols 635-6)

Section 4 of the Act requires FEFCs to 'have regard to the requirements of persons having learning difficulties'. When asked to clarify the significance of this phrase, Ministers responded as follows:

*'The primary duty towards students with learning difficulties is not the "have regard" provision of Section 4, but the duty to secure educational provision contained in Sections 2 and 3. [...] That duty applies to all students, whether or not they have disabilities. The duty is perfectly clear and is enforceable, if necessary, through the courts. What Section 4 then provides is*

*additional duties towards students with learning difficulties. Section 4 requires the funding councils, in discharging the primary duty to secure educational provision in Sections 2 and 3, specifically to have regard to the needs of students with learning difficulties, and to use placements in the independent specialist colleges where appropriate. For students with learning difficulties Section 4 thus provides a reinforcement of the primary duty to secure educational provision in Sections 2 and 3. Section 4 does not need to contain a duty stronger than "have regard", because the duty to secure educational provision is elsewhere.'* (Lord Cavendish of Furness [for the Government]; 3.2.92; cols 16-17)

*'Where adults are concerned, it is essential that councils are able to judge how their resources are best employed to meet the needs of all students including those with learning difficulties. I understand the argument that some adults with learning difficulties may take longer to reach a given standard of achievement than other adults, but the Bill does not put an age limit on the entitlement to further education. The statutory duties apply to adults of all ages. It is important that they should do so without any artificial cut-off ... It is important and worth repeating that the duty in the Bill in relation to students with learning difficulties contains no upper age limit. [...] The duty towards students with learning difficulties in Section 4 will ensure that students are able to remain in full-time further education beyond 18, if that is what they want and if the further education funding council judges it to be appropriate. But I repeat that it is essential that judgement can be made. We cannot tie the funding councils to an open-ended commitment to provide for adults on demand.'* (Lord Cavendish of Furness [for the Government]; 9.12.91; col 556)

### 3.1.3 Rationale for Schedule 2

Much debate focused on the split of the curriculum between those aspects falling within the statutory duties of the FEFCs, and those aspects remaining the statutory duty of LEAs. This split is presented in Schedule 2, which, during the passage of the Bill, was amended to include an additional set of courses which fall within the remit of the FEFC: 'a course to teach independent living and communication skills to persons having learning difficulties which prepares them for entry to another course falling within paragraphs (d) to (h) above'. In response to a series of amendments designed to overthrow such a curriculum split, Ministers indicated the rationale behind Government proposals:

*'Further education for adults has always been statutorily part of further education, and there is nothing new about that. It was so in 1944 and in the Education Reform Act 1988. I should like to*

*assure ... that the Bill continues in full the duty to provide further education for adults. We do not believe that the division of this duty between the funding councils on the one hand and the local education authorities on the other will be in any way unworkable. The councils' duty will relate to courses that need to be secured at national level, while the local education authorities will be responsible for courses of a more local character.'* (Lord Belstead [for the Government]; 21.11.91; col 1121)

*'Schedule 2, as drafted, sets out those kinds of course which the Government believe need to be secured at national level by the funding councils. However, we must allow for the possibility that Schedule 2 might need to be modified at some stage in order to reflect changes in the types and categories of further education and the way they are described. We do not believe that it should be necessary to have to undertake fresh primary legislation in order to make such a modification. [Hence clause 3(6), which empowers the Secretary of State to amend Schedule 2.]'* (Lord Belstead [Government spokesperson]; 10.12.91; col 609)

*'Schedule 2 lays down our priorities at national level. Other priorities are properly the responsibility of local education authorities and are covered under the duties that remain with them.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; 19.2.92; col 162)

*'[The Bill] will make FE councils and colleges responsible for a tree of progression for adults – a tree that can take them from basic skills and English as a second language up to higher level qualifications and entry to higher education. The Bill's purpose is to ensure that such a progression is available to adults at a national level, not just at the whim of individual local education authorities. That is exactly what Schedule 2 is all about.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; col 222)

*'We have said clearly that Schedule 2 sets out those areas that we believe should be available to adults throughout the country and that it is the responsibility of the Government, through the funding council, to provide money to ensure that such courses are so available. There are other courses and other priorities that we think are best decided and delivered at a local level. In the Bill we place a duty on local education authorities to provide other courses, but how those are delivered and the nature of the courses is a matter for local decision. However, the Schedule 2 provisions, which are funded directly by the national funding council's through the Government, should be available and accessible to all adults, wherever they live. Schedule 2 encapsulates the courses which the Government consider to be a matter of national economic and educational priority. We will*

*ensure that those courses are universally available. That is the basis on which we identified the courses specified in Schedule 2. We accept that there are many other courses and educational opportunities that local communities want and we think it best that the priorities should be decided by local education authorities.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; col 223)

*'Schedule 2 sets out, for the first time, a list of the courses which we want to see available all over the country and for which we propose national funding. Access to those courses should not depend on where a person lives, as often happens at the present. Therefore, we are making the FEFCs responsible for securing adequate provision of those courses. The courses are not, as some people claim, solely vocational. They go a long way beyond that and include academic, access and basic skills courses, courses for those who need to improve their English and courses for the disabled ... Schedule 2 describes our national priorities. They are national, because we shall provide national funding for them and we wish to guarantee access to such courses to everyone who can benefit from them.'* (Kenneth Clarke [Con; Secretary of State]; 3.3.92; col 200)

## **3.2 The FEFC sector**

### **3.2.1 Incorporation**

Section 15 of the Act lays down the criteria for automatic inclusion into the FEFC sector. Based on a percentage of students attending on a full-time, sandwich, block release or day release basis, this means that no LEA-maintained adult education institute or service will satisfy the requirements for automatic inclusion. Asked to explain the rationale behind this, Ministers replied:

*'The purpose of setting that criterion is to ensure that all the colleges concerned will feel more comfortable in the funding council's sector than remaining with the local education authorities. After examination of the statistical record we adopted the criterion as a proxy for undertaking the kind of further education for which the funding councils will be responsible.'* (Lord Belstead [Government spokesperson]; 10.12.91; col 718)

### **3.2.2 Post-hoc incorporation**

Ministers indicated that LEA-maintained institutions which fall outside the criteria for automatic inclusion within the FEFC sector can nonetheless approach the relevant FEFC for incorporation: under Section 16(3) of the Act the FEFCs are able to propose post-hoc incorporation of LEA-maintained institutions to the Secretary of State, who is in turn empowered to incorporate such an institution.

*'Colleges which fall outside the criteria [for automatic incorporation] in the Bill can explore the possibility of incorporation with the funding councils. Section 16(3) is deliberately drafted in order to allow the councils to propose to the Secretary of State that an institution that makes further education provision of any kind should be included in the new sector. Therefore, the appropriate way forward is for colleges to make application to the councils which will be able to consider the applications sympathetically and with expertise.'* (Lord Belstead [Government spokesperson]; 10.12.91; cols 719)

*'I can give assurance that the Secretaries of State for both Education and for Wales will ask the funding councils for England and Wales to consider any applications under Section 16 as one of the first tasks that they undertake.'* (Lord Belstead [for the Government]; 3.2.92; col 54)

*'Section 16 already allows other institutions which do not meet the automatic criteria to be included in the sector. In other words, it provides a safeguard. If an institution is not covered by the criteria for transfer, and if it concludes that its interests would be best served by joining the new sector, it will be possible for it to apply directly to the funding councils to recommend its inclusion. [The Secretary of State] will ask the councils to consider all such applications as a matter of priority. Before making applications to the funding councils, colleges would obviously want to consider whether inclusion in the new sector is right for them. The adult colleges make provision which falls to the duty of the funding councils but the majority of their provision falls to the duty of the local education authority. They may therefore feel most comfortable staying with their maintaining LEAs. It is right that such colleges should think in an informed way about the sector which they feel is the right one for them. They should not have incorporation, as it were, thrust upon them by the Secretary of State.'* (Lord Belstead [for the Government]; 16.1.92; col 373)

*'Richmond [Adult & Community] college is not included automatically in the Bill's provisions, which govern the funding of FE colleges by the new funding council. But should the college wish, it can apply to be funded directly by the FE funding council. The means is through incorporation under Section 16, a provision expressly designed to cover cases such as Richmond college. Section 16 would not be in the Bill had we not expected colleges like Richmond to want the option of taking advantage of it. It would not be there if we did not expect the funding council to be willing to propose to the Secretary of State that such colleges should be funded as part of the new sector. I see no reason why the Secretary of State would turn down such a proposal from the funding council. However ... the decision is for Richmond college alone.'* (Tim Eggar [Con; Minister of State]; 11.2.92; col 903)

### 3.2.3 Designation

Section 28 empowers the Secretary of State to designate bodies falling into certain classes as eligible to receive funds from the FEFC direct. LEA-maintained institutions are not included within this measure, although LEA-assisted bodies (other than schools) are. Initially, 'the institutions to be designated as eligible to receive funding from the funding councils will be voluntary aided sixth form colleges and certain other bodies, including the long-term residential colleges for adults, four adult colleges in London which have a regional role and the Workers' Educational Association' (Lord Belstead [for the Government]; 21.11.91; col 1026). The 'four adult colleges in London' were identified as 'the City Lit, Morley, Mary Ward and the Working Mens' College. I emphasise again that the future of those institutions within the new sector is secure. The Government recognise that they have a regional role in providing courses of all kinds to adults, not just those courses in Schedule 2. The council for England will be able to fund them in respect of all their provision and we do not look to them to make big changes' (Lord Belstead [for the Government]; 14.1.92; col 180).

It became clear during debate that in order to be eligible for designation an institution, service or organisation must first have a legally distinct identity: LEA-maintained institutions/services are not legally distinct from the Local Authority. Ministers explication of the Section was as follows:

*'These colleges and adult education centres [maintained by LEAs] are absolutely admirable. [...] Nonetheless, they do not have any status in law separate from the local education authority which maintains them. That is why we have provided in the Bill for institutions maintained by LEAs to enter the new sector through incorporation under Sections 15 and 16. Designation is appropriate only for institutions which already have their own status in law, such as the City Lit. [...] One advantage of incorporation is that the governors of colleges are not personally liable for debts incurred by the colleges during their term of office. That would otherwise be so even after their governorship ceases. In the case of corporations it is they themselves and not members of the governing body of the FE colleges which acquire rights and incur liabilities. That should make clear why designation under Section 28 is not the right way forward for colleges maintained by LEAs even if they had governing bodies.'* (Lord Belstead [for the Government]; 3.2.92; cols 53-4)

*'Section 28, the designation route, is designed deliberately for institutions that already have independent legal status. The designation route is appropriate to and designed especially for them. The incorporation route [under Section 16] is appropriate for those institutions that do not have independent legal status at*

*present. There are parallel routes which, if pursued, have exactly the same end effect. [...] The designation route is not appropriate for institutions that do not have independent legal status. For example, if ... Richmond [Adult & Community] college were to be designated, the net effect would be that the management and governors would be liable rather than the college ... If that is what they want, they should choose the incorporation route. [...] If adult education institutions want to have a direct funding relationship with the FEFC, they can apply through the incorporation route and can obtain funding from the LEA. If, however, they wish to remain within the maintained sector and within the LEA they can apply through their FE college for funding from the FEFC [under Section 6(5): see 3.3.6 below]. [...] If all community organisations and adult education institutions – some 5000 – had automatic application to the FEFC there would inevitably be a lack of local flexibility and responsiveness, which is needed for the proper provision of courses across the country.’ (Tim Eggar [Con; Minister of State]; Standing Committee F; 25.2.92; cols 346-7)*

### **3.2.4 The Workers’ Educational Association**

The Workers’ Educational Association is amongst those bodies which will be designated as eligible to receive FEFC funding under Section 28. Responding to queries relating to future arrangements for WEA funding, Ministers indicated:

*‘From April 1993 the further education funding council for England is to take over that part of the WEA’s funding now handled by the DES. That part already transferred to local authorities will remain with them. In Wales, funding will transfer to the council for Wales. There is therefore no question of the Government’s proposals reducing the WEA’s public subsidy. I can give ... an assurance that the funding council will be able to fund all aspects of the WEA’s work, not just those courses listed in Schedule 2.’ (Lord Belstead [for the Government]; 21.11.91; cols 1124-5; see also assurance given by Tim Eggar; Standing Committee F; 20.2.92; col 233)*

*‘The resources that are currently committed to the WEA in Wales as a result of the commitment given by the Welsh Office will be transferred to the relevant funding council – incidentally, the same applies to England – which will have responsibility for that element of WEA funding. The remaining element of WEA funding, which is already being devolved to the LEAs [in England, currently passed on to LEAs via ESG] will stay with the LEAs. [...] There are particular problems in certain LEAs ... which have decided, for reasons that are not clear to me but which are obviously clear to them, not to pass on the element of funding that*

*the Government made available for the WEA.' (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; col 224)*

### 3.2.5 Long-term residential colleges

As with the WEA, LTRCs will become designated institutions under Section 28. Members of both Houses – many of whom have personal connections with LTRCs – pressed Ministers concerning the future funding of LTRCs; the ability of LTRCs to continue provision of their distinctive courses; and the future security of the bursary scheme which grant-aids students attending LTRCs. Ministers, who also took the opportunity to outline the results of a DES review of LTRCs concluded in 1991, responded as follows:

*'I believe that the Bill poses no threat to the colleges. The colleges will be funded by the funding councils. The Government are aware of the distinctive characteristics of the colleges and will be making that clear in guidance to the funding councils. The colleges have an important part to play in providing access to education for disadvantaged adults.'* (Lord Belstead [for the Government]; 21.11.91; col 1124)

*'The long-term residential colleges should make the best use of their specialist strengths. That is why the colleges have been asked to concentrate on assisting the access to higher education of disadvantaged students who are most in need of residential education. The colleges have also been asked to provide courses in which the residential element generally lasts no more than one year and a greater number of short courses in order to increase the number of students who benefit from their facilities. [...] It is open to funding councils to consider any requests from long-term residential colleges to increase their student numbers. [...] We shall be making clear in guidance to the funding councils that the distinctive characteristics of these institutions must be taken fully into account.'* (Lord Belstead [Government spokesperson]; 9.12.91; cols 578-9)

*'They were reviewed earlier this year by the DES and, in the light of that review, the Ministers at the department recognised the unique place that those colleges hold in providing residential education for adults who have missed out during their school years. They decided that it would be appropriate for the colleges to enter automatically the FE sector through the mechanism of Section 28. This would enable their needs for capital funding, for example, to be considered alongside those of other colleges. Similar decisions were reached in respect of Coleg Harlech in Wales. The Government firmly believe that the long-term residential colleges have an important role to play in the new sector. [...] We shall be making clear in guidance to the funding councils that the distinctive character of those institutions must be*

*taken fully into account.'* (Lord Belstead [Government spokesperson]; 12.12.91; col 988)

*'When looking at the results of the review, my colleagues in the department believed that there was some scope for sharpening the focus of the colleges' work. After all, things have changed as the years have gone by. There are now many routes into education for adults. There are many opportunities to undertake study in vocational or academic areas and if necessary in basic skills before that. Entry to higher education for adults has become easier. Ministers therefore believed that the long-term residential colleges needed to make the best use of their specialist strengths. That is why the colleges were asked to concentrate on assisting access to higher education for students most in need of residential education. The colleges were also asked to provide courses in which the residential element generally lasts no more than a year and a greater number of short courses so as to increase the number of students who benefit from their facilities. ... This should all be seen as a vote of confidence in the long-term residential colleges. The Government firmly believe that they have an important role to play in the new sector. ... We shall make it clear in guidance to the funding councils that the distinctive characteristics of those institutions are to be taken fully into account. ... The Government remain firmly of the view that the business of the long-term residential colleges ... should be the provision of courses aimed at people with no or few formal qualifications. Consequently, we have some difficulty with Ruskin's proposals for a one-year course at a level equivalent to the second year of its existing course, with progression routes from other forms of further education and for diplomas which rely on a high entry standard. On the other hand, it will be for Ruskin to negotiate with the FEFC for England over its role in the new sector. It will also be open to the college to apply to the HEFC for funding certain courses. In short, the Bill allows Ruskin and indeed other colleges a considerable degree of flexibility.'* (Lord Belstead [for the Government]; 14.1.92; cols 178-9)

*'Coleg Harlech will be funded by the funding council for Wales. That famous institution is a long-term residential college and a source of much pride. We are ... anxious ... that its future should remain bright. Like the English colleges, Coleg Harlech will be free to negotiate over student numbers, in its case with the Welsh funding council. I understand that the Welsh Office has asked the college to plan on the basis that student numbers will be held at around 140 full-time equivalent students. However, that figure is not set in stone. Demand may burgeon in future and there may be more places. The college, if it so wishes, may also apply to the higher education funding council for support for its higher*

education provision.' (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 19.2.92; col 107)

*'The bursary scheme will continue. That is a clear commitment that I am keen to repeat. We are considering whether the administration of the scheme could be simplified, as that would be in the interests of the colleges. Bursaries will continue to be available for one-year courses, on which we want the LTRCs to concentrate. There is no absolute limit on the number or cost of bursaries, and the LTRCs, such as the one in Wales, will be able to make representations to the funding councils about the scheme and the number of places in the college.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; col 223)

*'The hon. Gentleman asked whether residential colleges could apply to the higher education funding council. Yes, they will be able to do that, but only for courses that fall within the statutory definition of higher education. [...] The colleges will continue to be funded by the FEFC for the Schedule 2 courses. Northern College is the best example of a college that has developed non-Schedule 2 courses with the support of the local Dearn Valley local education authorities. Those types of short courses will continue to be funded by the LEAs, and there is no reason why they should not be. As a general policy, we expect colleges to run courses, especially long courses, that fall within Schedule 2. That is, I think, what the long-term residential colleges intend to do.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; col 241)

### 3.2.6 Voluntary bodies

Although not included in the list of agencies to be awarded designation in the first instance, a number of voluntary organisations active in the education and training of adults might wish to explore ways of attracting FEFC funds for elements of their work which accord with the remit of the Funding Councils. In debate, Ministers drew attention to two perceived anxieties which might be held by voluntary organisations:

*'One is that voluntary bodies can no longer expect to look to LEAs for the funding of provision which will in future fall to the councils' duty. Of course, the LEA continues to have the power to fund provision outside its duty, but I nonetheless understand this worry. The second anxiety is logistical. Those bodies making national or regional provision might find it more straightforward to relate to the funding council than to local FE colleges. I believe these worries can be met. First, voluntary bodies will be able to consider whether Section 6(5) is useful to them [see 3.3.6 below]. Under that Section they can ask FE colleges to forward to the funding councils in their behalf an application for support.'*

*Secondly, it is open to voluntary bodies to approach the funding councils direct to explore the possibility of designation, where Section 6(5) is not an appropriate channel of funding for them. [...] I am confirmed in my view that [the NFWI, the PPA and NACRO], and any other voluntary bodies, should themselves explore the question of designation carefully with the funding councils, if they have worries about the future of the Schedule 2 provision which they make. This is particularly the case where bodies have close funding relationships with government departments or with TECs. Designation may not be right in all cases.' (Lord Belstead [Government spokesperson]; 12.12.91; col 917)*

### **3.3 FEFC: Operation and funding**

#### **3.3.1 Expertise in respect of those with special educational need**

On an number of occasions amendments were tabled which, if accepted, would have required the Act to stipulate a requirement on the FEFCs to have in membership representatives of particular interests (including adult education). While the Government consistently opposed such amendments, Ministers indicated that with regard to special educational needs there would be a requirement for the FEFCs to have access to expert opinion:

*'Previous speakers attached importance [to] the availability of expertise on the education of students with disabilities to the new funding councils. Here the Government's intention is to make it a condition of grant that the funding councils should obtain such specialist advice where it was not available internally. That condition of grant will be applied to both the further education and higher education funding councils. The powers to attach conditions to the grants paid to the funding councils are contained in Sections 7 and 64. [...] The condition of grant would ... run through all the activities of the funding councils. It will apply to their quality assessment function. It will require them either to maintain an internal source of specialist advice or to seek that advice externally, for the purposes of discharging all their functions, including their responsibility for quality assessment.'* (Lord Cavendish of Furness [for the Government]; 14.1.92; cols 157,160)

*'We shall make it a condition of the grant to the funding councils that they should seek specialist advice on the education of students with learning difficulties, where necessary. That important undertaking provides clear evidence of the Government's commitment to maintaining and, where possible, improving access to further education for students with learning difficulties. [...] The condition of grant will require specialist*

*advice on the education of students with learning difficulties to be generally available, where relevant, at all levels of the FEFCs' activities.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; Fourth Sitting; 19.2.92; cols 144, 146)

### 3.3.2 Operation

Clearly many of the decisions relating to the operation of the FEFCs will be made by the Councils themselves. The following quotations pull together Ministerial observations which might influence the way the Funding Councils go about their business:

*'It is expected that in fulfilling their responsibilities the new councils will liaise closely with training and enterprise councils, local education authorities and other bodies which have responsibility for complementary provision of services. That function is likely to be carried out at a regional rather than national level.'* (Lord Belstead [for the Government]; 21.11.91; cols 1123-4)

*'I am sure that the councils will publish details of the principles and procedures to be applied in determining the grant to individual institutions ...'* (Lord Belstead [Government spokesperson]; 10.12.91; col 696)

*'Paragraph (8) of the Schedule [Schedule 1] is designed to allow the councils to establish committees and sub-committees for any appropriate purpose ... They may well want a committee on the education of adults, but I think that it would be wrong to decide for the councils, through legislation, which committees need to be set up now. I think that is something that councils themselves are best placed to judge.'* (Lord Belstead [Government spokesperson]; 12.12.91; cols 987-8: the debate related to HEFCs, but the schedule is equally applicable to FEFCs)

*'Under Section 3(2) the councils have a duty to secure facilities which are in such places, of such character and so equipped as to meet reasonable need. In the discharge by LEAs and councils of their duties, and by further education colleges of their responsibilities, they will have to take into account the continuing accessibility of provision to local communities. One test of adequacy is that provision can be reached by the population it is meant to serve. The regional advisory committees will, moreover, have an important role in advising the funding council for England on significant local issues. They will have the job of seeing that local people are properly served. In addition, Section 6(5) provides that adult colleges and centres which remain under the control of the LEA should be able to apply to FE colleges within the new sector for funds to support that part of their work*

*which falls within the funding councils' remit. The FE college will forward the application to the funding council if facilities for the kind of courses in question would not otherwise be adequate in the locality. If the FE college does not forward the application, its decision will be subject to review by the Secretary of State on the usual Education Act grounds of unreasonableness or failure to perform a duty. The purpose of these safeguards is to ensure that Schedule 2 provision ... continues to be accessible to local people. It is not to secure the survival of individual institutions.'* (Lord Belstead [for the Government]; 14.1.92; col 195)

*'It is the Government's intention that provision for adults should certainly not be duplicated under the new structure of duties. The relevant parts of the Bill where this is set out are Sections 3(5) and 11(7), which were drafted with precisely that intention in mind. Both the funding councils and the LEAs will be required to have regard to provision made by institutions outside their respective sectors under Sections 3 and 11. They therefore have a duty to be aware of and to take into account any such provision. The funding councils and LEAs may well wish to consult one another in the fulfilment of the duty. They may also wish to employ other methods such as gathering information directly from the institutions concerned. However, if I may say so on behalf of the Government, I see no need to prescribe the methods in legislation when it is quite clear from a reading of Sections 3(5) and 11(7) that there is a firm intention that provision for adults should not be duplicated under the new structure of duties.'* (Lord Belstead [for the Government]; 14.1.92; col 197)

*'It will be open to the new councils to fund bodies such as the FEU, which focuses particularly on curriculum development, and the FE Staff College, which provides staff development. The Secretary of State could offer guidance to the councils on the provision to be made in those particular areas.'* (Lord Belstead [Government spokesperson]; 10.12.91; col 661)

*'The system proposed in the Bill, for which the Secretary of State will be fully accountable to Parliament, will be responsive to the range and diversity of further education. Further education and sixth form colleges will respond to student demand, and funding will flow to them in proportion to the extent of local demand. I emphasise that the Government intend further education funding councils to have maximum freedom in the conduct of their own affairs. They will be free to set up their own internal structures and to establish their own operational methods.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 19.2.92; col 96)

*'The responsibility for such decisions [the top-slicing of FEFC funds to promote a comprehensive programme of childcare for*

*FE colleges] will rest with the FEFC which, if it desires to do such a thing, could probably arrange it under the terms of Section 5(1). However ... such provision is a matter for each college, which will allocate funding in response to local demand. Some FE colleges have decided that childcare is not appropriate, while others have decided that it is and have applied funds to meet the perceived need. I expect that, in practice, the further education funding council would decide that colleges should respond individually to their local circumstances.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; 19.2.92; col 164)

*'In England, the funding councils will be able to take account of advice from regional advisory committees on needs, demand and accessibility. The Welsh funding council will be well placed to gather necessary information using, where appropriate, its powers under Section 54 to obtain information from various local bodies, including the governing bodies of the colleges, and from local education authorities when the information is not freely available.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 20.2.92; col 187)

*'The councils must decide how to ensure that adequate facilities are available in rural areas. They must also decide how to make the best use of their resources. To take such decisions, they will need to take account of the needs of each area, with the benefit, in England, of advice from the regional committees. They will also take account of the type of institution for which they will be making provision, the nature of the study that that institution will provide, and whether alternatives are available.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 20.2.92; col 184)

### **3.3.3 Regional advisory committees in England**

The Act requires the English FEFC to establish regional advisory committees 'to advise the council on such matters relating to the facilities for the population of the region (a) for further education, or (b) for full-time education (other than further education) suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years, as the councils may from time to time require'. The following Ministerial comments relate to the functions or membership of those committees, whose number and geographic remit will be determined by the Secretary of State:

*'I unhesitatingly reaffirm the importance the Government attach to the regional structure of the council and to the role of the regional committees. Those committees will be the council's main source of advice on local needs. Their members will be appointed by the Secretary of State in recognition of the important role that*

*they will be expected to play.' (Lord Belstead [for the Government]; 21.11.91; col 136)*

*'The distribution of students across England and the variety of factors that determine how regional boundaries are drawn up are bound to change as the years go by. [...] The Government wish to leave open the option to alter the size and number of regions to suit the future needs of the sector. [...] It would also be a mistake to set in concrete ... how the regional committees are composed when what is needed is a process of careful consideration, taking account of all the relevant factors and in particular the views of the funding council itself. By providing for the Secretary of State to determine the regions, we shall ensure that the council's wishes are respected and that the wider interests of the government of the day are taken into account.'* (Lord Belstead [Government spokesperson]; 9.12.91; col 485)

*'In practice I envisage that the regional committees will liaise closely with local education authorities and with the training and enterprise councils about educational provision and the needs of students and employers in their regions.'* (Lord Belstead [Government spokesperson]; 9.12.91; col 490)

Following enactment, the DES has issued a consultative document suggesting that the FEFC regions in England should follow the boundaries used by the Department of the Environment: such an arrangement would mean that each LEA falls within an identifiable region.

### **3.3.4 Protecting the FE quantum**

A consequence of the Act will be a recalculation of the SSA relating to further and adult education, with a proportion of the current budget being withdrawn from LEAs and passed on to the FEFC. This 'FE quantum' will, Ministers argued, provide a secure budget for FEFC-related further education:

*'The funding of the new further education sector through the new further education funding councils will effectively ring-fence for further education those funds which fall within the scope of the funding councils and will ensure that those funds do not leak out into other parts of the service.'* (Lord Belstead [for the Government]; 21.11.91; col 1121)

*'At present, LEAs do not ring-fence the amount that they spend on FE. Many LEAs underspend against their SSA, and some overspend. However, the money going to the further education funding council will be ring-fenced. LEAs will not be able to claw back funds for other reasons at short notice ... The FEFC funding money will be made available to the funding council by the Government. That money will be spent on the FE sector, and on*

*Schedule 2 in particular. [...] It is clear that the regime negotiated between the FEFC and the colleges will take account of many different factors. The chief executive will shortly begin discussions with colleges as a preliminary to developing a formula for allocations. However, the amount of money that is made available to the FEFC will of course be based on the present standard spending assessment. Thereafter, when that money has gone to the FEFC, it will be ring-fenced, as does not happen under the present system. The FEFC will then have to take account of the different funding needs of the FE colleges, sixth-form colleges and tertiary colleges in the new sector.' (Tim Eggar [Con; Minister of State]; Standing Committee F; 18.2.92; col. 76)*

*'On the funds that will go to the funding councils, we do not intend to set up a new, independent sector for further education and then starve it of funds. [...] The White Paper made it clear that colleges will receive extra funding for extra students and that remains our intention.' (Tim Eggar [Con; Minister of State]; Standing Committee F; 25.2.92; col 263)*

Some elements of public money currently spent on college-based provision – for example, WRFE budgets – will however remain separate:

*'It is indeed our intention that the funding councils should take over responsibility for funding all Schedule 2 courses that are currently the responsibility of LEAs. Colleges also currently receive funds from government and from a variety of other sources, but it is not our intention that the funding councils should take over responsibility for that matter too. The other sources account for a relatively small proportion of colleges' overall funding. [...] The work-related further education funds are provided by the TECs and will continue to enhance the relevance of FE provision for work. It is in recognition of the important role of work-related further education funding through the TECs that the Secretary of State has said that there should be TEC representatives on each regional committee and one TEC representative on each college governing body.' (Lord Belstead [Government spokesperson]; 10.12.91; col 674)*

### 3.3.5 FEFC funding regime

How the funds available to the FEFCs will be dispersed is a matter for decision by the Funding Councils. An early circular issued by the English Education Unit in February 1992 (when the Bill was still going through Parliament) indicated that 'there will be a financial memorandum governing the funding arrangements between the Council and the DES. Once its terms have been agreed, it will be possible for the Council to consult the sector on a draft of the model

memorandum to govern arrangements between the Council and individual colleges'. The same circular suggested that for the first year of its operation, the Council would be likely to 'establish and maintain adequate baseline budgets for all institutions and to introduce the demand-led elements of funding proposed in the White Paper. The aim will be to introduce a more policy-sensitive funding system for 1994/95' (see FEFCU Circular 92/01, paras 48-49).

Indications from Ministers concerning the funding remit and regime of the FEFCs have included confirmation – also given in respect of WEA and LTRCs – that the Councils will be able to fund work which falls within the LEAs' statutory remit:

*'Under Section 5(1) the funding councils may fund governing bodies of institutions in the FE sector for the provision of facilities for all types of further education, not just those which the councils have a duty to provide, and for the carrying on of any activities which the governing bodies consider necessary or desirable to be provided in connection with this provision of facilities.'* (Lord Belstead [for the Government]; 14.1.92; col 192)

In general terms, Ministers would seem to expect the FEFC sector to be funded on a bidding process similar to that which has operated in the higher education sector in recent years:

*'We fully recognise that in practice it is likely that the councils will follow the approach adopted by the UFC and the PCFC and will decide to adopt a funding formula for distributing at any rate part of the grant made available to them. However, it would not be right to impose on them a straitjacket that would entail the requirement that all forms of financial support should be allocated on the basis of a formula.'* (Lord Belstead [Government spokesperson]; 10.12.91; col 671)

As to the 'weighting' in any formula whereby part-time students are concerted into full-time equivalents:

*'Schedule 3 has nothing to do with the funding of further education; it is about the tests of being able to get into incorporation under Sections 15 and 16. It will be for the funding councils to decide how to fund the institutions in their sector. They will not have to use the weightings in that Schedule which the Department of Education are using only for its statistical purposes.'* (Lord Belstead [Government spokesperson]; 9.12.91; col 579)

### 3.3.6 Indirect bidding to FEFC under Section 6(5)

One of the most prominent themes in debate related to the prohibition of LEA-maintained institutions and services from direct application to FEFC for funds, and the operation of proposed mechanisms whereby

such bodies can make application only via the governing body of an institution already within the Sector (Section 6[5] refers). Ministers returned to this point time and time again, often using the same words. The following extracts from debate seek to give the essence of the procedure to be followed, and available 'safeguards'. References are also given to other Ministerial responses covering the same ground:

*'Under Section 6(5) adult colleges and centres maintained by LEAs can ask the FE colleges to forward to the funding councils an application for funding for Schedule 2 provision. The FE colleges must forward that application where the provision in question would otherwise be inadequate in the locality. That is a strong provision. Incidentally, it would be backed up by the Secretary of State's powers under the Education Act 1944 if the forwarding college did not do its stuff and forward the application provided that it ought to do so.'* (Lord Belstead [Government spokesperson]; 9.12.91; col 582)

*'The further education colleges must forward their [adult colleges'] applications to the councils where the provision in question would not otherwise be adequate in the area. The whole purpose of Section 6(5) is to enable community providers to have their Schedule 2 work considered by a funding council. We have not merely stated that as an intention; a number of safeguards have been provided to ensure that it happens. If the procedures are to work effectively, a clear framework will of course be needed. We do not want complications, inefficiency or delay for ... that would threaten essential provision in some places. The Government will assist by giving guidance on the procedures for Schedule 2 applications. A circular letter issued recently by my FEFC unit includes the initial guidance for institutions on Section 6(5), and we shall follow it up with further guidance on procedures as soon as possible. [...] The FEFC will lay down a timetable which will allow plenty of time for the Section 6(5) procedures to work. Local education authorities – and through them, their institutions or services – will be given notice of when applications should be made. The colleges will be asked to prepare for the applications by making sure that they are well acquainted with all the existing Schedule 2 provision in their areas. [...] The council will not tolerate further education colleges ignoring the provisions of Section 6(5) and failing to put forward well-judged applications for services that are accessible either because they are in rural areas or because they merely happen to be convenient in urban areas and people wish to pursue them. Where a bid is not put forward, the provider – the college or the service – will approach the council. In England it will approach its regional office which ... will seek to resolve the conflict. [...] There is one overriding protection in the Bill to which the council will have regard when deciding what to do. The council has a*

*statutory duty to ensure that adequate provision is made in different parts of the country. [...] I do not believe that the procedures that I have described are overly complicated or will cause delay. If for some reason they do not work and if the community provider is still unsatisfied, it is open for the [adult education] college to appeal to the Secretary of State on the ground that the further education college or the council has acted unreasonably or has failed in its statutory duty. [...] A service would not have to go to the nearest further education college. If there were a county-wide service, it would go to one within the county but a [adult education] college would not have to go to the nearest FE college if it feared that the FE college might regard the adult college as a rival. It must go through a further education college in the locality to get the college to hand on the application to the funding council if the college is satisfied that there is a legitimate claim.' (Kenneth Clarke [Con; Secretary of State]; 3.3.92; cols 204-5)*

*'It is not open, as the Bill is drafted, for the FE college to impose a view as to whether there is adequacy or inadequacy for the course being applied for. The FE college which is the channel has to take an objective view, not its own view. If it does not take an objective view, and can be found not to have taken an objective view, as I have said, the Secretary of State could come down like a ton of bricks under the provisions of the Education Act 1944 on the grounds that the FE college, acting as a channel, had been unreasonable or had failed to perform its duty. An application for support might come from an adult college or centre, a school or a voluntary body. It is the specific purpose of Section 6(5) that all such institutions or bodies which make Schedule 2 provision should have the opportunity to get it considered for funding by the funding councils. ... An adult education institution or centre ... provides an important local focus and facility and exerts an important influence. Therefore it is important that people should be able to get to the institution. There is no question of such an important provision which is made outside the council's sector being disregarded. I remind noble Lords that one of the grounds on which the provision of adequate facilities for further education must be based is that councils must discharge their duty so as to secure that facilities are provided at such places that will meet reasonable needs. That means that in the discharge by the funding councils of their duties, where the FE colleges act as a channel of their responsibilities, they will have to take into account the continuing accessibility to local communities of an adult education centre or institute. The funding councils would have to consider carefully whether their duty was fulfilled through FE colleges' proposals. In addition, we should not forget the regional advisory councils which will stand ready to advise the funding council in England on important local issues. They will want to*

*ensure that issues which matter to local people are properly considered. Their task will be to reflect concerns to the funding council. That advice will be important to the council in making decisions on the provision it will fund and in deciding upon the conditions to be attached to the locations where provision will be made.'* (Lord Belstead [for the Government]; 14.1.92; col 217)

*'We should not forget that the regional committees will give advice to the council for England on any issue of local concern. The councils, and in England the regional committees, will of course be aware of any dispute. It will be open to the participants to bring it to their notice. The advice of the committee would be important for the council in making its decisions on funding. Moreover, the determination by an FE college of the adequacy of Schedule 2 provision in its locality must be based on good knowledge and experience. That means that it will need to confer with local adult colleges making applications to it and, as necessary, the LEA. We would certainly expect it to do so.'* (Lord Belstead [for the Government]; 14.1.92; col 232)

*'When one is talking about the larger adult education centres or institutions – if I may chance my arm – it is almost certain that they will find that a great deal of their Schedule 2 provision will be funded by the new funding councils. They will have to go through the [Section 6(5)] mechanisms ... The likelihood is that the larger adult education centres and institutions will be successful in reaching into the new FEFC sector. At any rate, we shall have to see.'* (Lord Belstead [for the Government]; 16.1.92; cols 374-5)

[for reiteration of the twofold safeguard of recourse to the FEFC and the Secretary of State, see Lord Belstead, 12.12.91, col 918; Kenneth Clarke [Secretary of State] at Commons Second Reading Debate; 11.2.92, cols 840-1 and Lord Belstead [for the Government] at Lords Third Reading Debate; 3.2.92; cols 30-31]

*'The Secretary of State will seek to deal expeditiously with such complaints [as may arise over Section 6(5) bids]. If it is not possible to resolve the matter before the funding council announces its annual allocation ... it will be possible to hold back the small sums involved for later distribution.'* (Tim Eggar [Con; Minister of State]; 3.3.92; col 256)

[see also Lords, 10.12.91, cols 675-678 for earlier Government responses on similar lines]

*'The timing for colleges applying under Section 6(5) will be the same as for colleges within the new sector. The council will lay down a timetable for applications and ensure that there is plenty of time for those applications to pass through the sponsoring FE college and, where necessary, for an appeals procedure. There is no reason why that cannot be dealt with in the normal annual*

*timetable for determining public expenditure, and we shall take steps to make it absolutely certain that those timing requirements are made widely known not just to LEAs but to community providers.' (Tim Eggar [Con; Minister of State]; 11.2.92; col 904)*

### 3.4 The LEA sector

#### 3.4.1 Continued funding for LEAs

When the Government first published its proposals in the May 1991 White Paper, the policy intent was that further education courses falling outside the FEFC remit should 'so far as possible be supported only through fees', although there was a recognition that 'there can be a case for local authorities subsidising this work, especially in disadvantaged areas, since it can have a valuable social function' (see *Education and Training for the 21st Century*, vol 2, chapter 3). The Secretary of State subsequently announced that Local Authorities would retain an element of SSA with which to fulfil their statutory duties for further education. Ministers repeated this assurance throughout the passage of the Bill, and also gave some indication as to the level of support to be provided:

*'The Government have given a firm commitment that the resources attributable to courses for which LEAs have a duty will remain inside the local authority standard spending assessment procedure. A survey of LEAs has been undertaken to help establish the expenditure position, and there will be no good reason for local authorities to raise fees or to close classes. The Bill will in no way reduce funding of further education for adults.'* (Lord Belstead [for the Government]; 21.11.91; cols 1121-2)

*'I give an assurance that in setting the overall level of revenue support grants for each financial year the Government will continue to take into account the level of LEA spending on further education just as the Government do now. I have to say, however, that the Government must also retain discretion to take account of the overall level of spending on local authority services every year which the nation can afford. However it will be, as now, for local education authorities to determine the level of their expenditure on further education within the limits implied by annual RSG settlements and taking account of their clear statutory duty to secure the provision of adequate facilities for further education. [...] It is a fundamental principle of our system of local government finance that revenue support grant is paid as a block without special protection for any particular service or part of a service. The principle is that local authorities make their own decisions about priorities in the light of local needs and circumstances, and they stand accountable to their electorates for the decisions they take. This principle would be completely*

*breached if we legislated for special rules to apply to the payment of rate support grant for further education only.'* (Lord Belstead [for the Government]; 14.1.92; cols 130-1)

*'As for the funding that goes to LEAs, the Government have made it clear that we will ensure that the same amount of money in real terms will be available in the new financial year as in the last financial year of the old regime. The survey [of LEA expenditure] is intended to find out, with the help and co-operation of the vast majority of LEAs, what the split in funding should be. Local education authorities need reassurance that the survey is being carried out and that we shall ensure that the funding split is appropriate. The final decision will be a matter for SSA allocations for the relevant financial year. [ . ] We shall allocate moneys to LEAs and the funding council based on the results of the questionnaire and the follow-up survey. We have given that undertaking and we have given assurances on the aggregate split between LEAs and the further education funding council ... The details of that split will require proper discussion and evaluation.'* (Tim Eggar [Con; Minister of State]; Standing Committee F; 18.2.92; col 16)

*'We have made it clear and even given an absolute commitment that the duties of the LEAs will be taken fully into account through the revenue support grant funding system. The same amount of money in real terms will be available to them in the financial year 1993 -94 as in 1992-93. The split will be made at national level as a result of the responses and the survey, and will be followed up by the additional work that is currently taking place to verify and explain discrepancies between individual LEA returns. [...] The allocation mechanism, which is bound to be discussed with local authority associations, will revert to the SSAs. The present SSA allocation system for adult education is based on population. We do not envisage any insuperable allocation problems so long as we can get a firm handle on the national figures which, in turn, have to be aggregated. [...] We do not know the exact split between Schedule 2 and non-Schedule 2 work. Nor do we know that those LEAs that have spent a large amount on non-Schedule 2 work necessarily will have spent very little on Schedule 2 work. It is impossible to be categorical ... We have not yet got the firm figures. [...] Those LEAs whose spending has been above average will have spent more money than they have received from the Government. That choice is up to them. They will have taken money from other sources - such as highways expenditure - and devoted it to adult education. That is how they could spend more than average, given the probably fair assumption that the average is more or less the level of the adult education SSA. Their circumstances will not change if the allocation mechanism means that they do not get as much as they*

*spend at the moment. They will have to decide whether to raid other parts of their budgets so that more money can be put into adult education. [...] I accept that some LEAs have, for very good reasons, overspent on their adult education SSA. However, I think that they would be the first to say that they have overspent across the board as a matter of policy, rather than overspent specifically on non-Schedule 2 provision. That is why we are looking forward to the results of the study ...' (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; cols 226-7)*

Findings of the DES survey of LEA expenditure were made public in April 1992.

### 3.4.2 Capital funding

*'Capital funding for LEA-maintained institutions, including those which do Schedule 2 work, will come from LEAs, and we shall expect LEAs to bid for capital allocations as they do at present.'* (Tim Eggar [Con; Minister of State]; 3.3.92; col 255)

### 3.4.3 Transfer of AE premises

A major issue of concern on publication of the White Paper related to the possible transfer, to newly incorporated colleges, of premises and facilities dedicated to education for adults 'if a college is denied access ... or if such a facility falls out of public use' (see White Paper, vol 2, chapter 7). During debate Ministers went to some lengths to explain that the relevant measure (Section 34) was one of last resort:

*'The purpose of the Section is to ensure that facilities continue to be available for the provision of further education courses in instances where a local education authority decides to take them out of use but the governing body of a local further education institution believes that they are still needed by local people. Under the Bill, the Secretary of State will have a power to make available by order a local authority's land or property for use by an institution in the FE sector where it has been used for the provision of further education and where the LEA has ceased or intends to cease to use it for that purpose. Section 34 is intended to make plain that this is a device of last resort. There are a number of safeguards that make clear that it is not possible for a further education college arbitrarily to secure the property of a local authority ... First, the property in question must cease to be used for further education. Thus, if an LEA goes on providing FE in the property, the question of transfer cannot arise at all. Secondly, the FE sector institution must be unable to secure access to the property by agreement with the LEA. Thus if the LEA concedes a lease on the property on reasonable terms, or guarantees access under a contract, there is again no question of transfer. Thirdly, it must be necessary or desirable for the FE*

*sector institution to have the use of the property. Thus it must contain facilities needed for FE sector purposes (for example, dedicated facilities for a course listed in Schedule 2), and the FE sector institution must itself lack adequate facilities, or not be able to provide them for the area in which the property is located. Fourthly, applications must be made within three years of 1 April 1993. Fifthly, the Secretary of State must consult the FEFC, the local authority and the Education Assets Board before making an order transferring the property, or giving the FE sector institution rights to use it. The clause is necessary because LEAs will no longer have a statutory duty to secure the provision of further education of the sort listed in Schedule 2 to the Bill. We want to guard against the situation where a local authority decides to take out of use a facility dedicated to that sort of further education – for example, a centre for basic skills funded through ESG. If the facility is still needed for the people in the area, the local FE college should be able to secure its continued use. We hope that such matters will be settled by agreement locally. But in cases where no agreement can be reached, it will be necessary for the Secretary of State to retain the powers of last resort set out in this clause.’ (Lord Cavendish of Furness [for the Government]; 12.12.91; cols 928-9)*

#### **3.4.4 Family education/infill in schools**

The Bill when first published included a clause which seemingly prohibited the attendance of adults in school classes where the majority of pupils are of compulsory school age. This was picked up by a number of Opposition speakers, who pointed out the deleterious effect such measures would have on family education and on the current practice – particularly in ‘community schools’ – of adults infilling into GCSE classes. In initially defending the proposal, Ministers argued that:

*‘According to my reading of the Bill, there is nothing to prevent adults and part-time post-16 year-old students from being taught separately from registered pupils in both primary and secondary schools in spare classrooms during the day or outside school hours. Nor is there anything to prevent adults and children from being together in family or parent education classes which are provided by adult education centres run by LEAs on school premises.’ (Lord Belstead [Government spokesperson]; 10.12.91; col 712)*

*‘Our aim is to protect pupils below compulsory school age from possible risk. I hope that I do not need to spell out today what those risks are. At one end of the spectrum there is the risk of distraction and at the other end the risk of child abuse in all its forms. ... The intentions of the provisions in the Bill are to avoid that happening. Perhaps I may explain that the clause concerns*

*the provision of further education by the governors of a school. It has no effect on activities which are not further education. There is nothing in the clause to prevent adults and children from coming together for informal activities which, with regard to adults, do not constitute further education. [...] I have also heard ... about the desirability of parents of children from ethnic minorities among others being able to come to school with their children, to assist them, for example, with interpretation. Again, there is nothing in the clause to prevent that continuing, nor does the clause have any effect on provision being made by others – for example, by a further education college or adult education institute – on school premises. [...] I do not believe that there are grounds for the anxieties expressed regarding the position of family or parent education or the ability of parents to come into classes to help their children or the teacher. However, I must agree that the clause as drafted would prevent post-16- year-olds from joining GCSE classes in schools unless the majority of the pupils were over compulsory school age. [...] I accept that it would not make sense to prevent post-16s from joining GCSE or other public examination classes in schools. That is already happening and appears to be generally regarded as desirable. ... We will consider the clause further with a view to bringing forward an amendment to enable, among other things, post-16-year-olds to join classes in schools for courses leading to public examinations.’ (Lord Cavendish of Furness [for the Government]; 16.1.92; cols 362-5)*

As a consequence, the Government introduced an amendment whereby the Education (No 2) Act (1986) was rewritten to permit school governing bodies to provide further education, but that they should secure that ‘such education is not provided at any time in a room where pupils are at that time being taught except in such circumstances as may be prescribed’ (see Section 12[3]). In speaking to this amendment, Ministers confirmed that regulations will be issued which permit infill:

*‘It is the Secretary of State who would make the regulations which give effect to our commitment to allow adults and part-timers to be educated alongside pupils at sixth-form level and in classes where courses leading to public examinations are taught. We shall also consider the extent to which other provision ... may need to be covered by regulations. I remain of the view that many of the examples of family education given during our debates on the issue will not fall foul of Section 12 for reasons which we have covered. However, we shall consult further in order to consider the extent to which, in regulations, such provisions may need to be reflected alongside courses leading to public examination and sixth forms. I give the ... assurance that we have looked at this matter. I repeat categorically that there will be consultation.’ (Lord Cavendish of Furness [for the Government]; 3.2.92; col 47)*

### 3.4.5 Short-term residential colleges

In response to a point raised in debate, Ministers confirmed that the status of short-term residential colleges will be unaffected by the Bill except in so far as those which are constituted as legally separate bodies will be eligible to apply for designation should they so wish:

*'The short-term residential colleges will either continue under the auspices of their local education authority or, if they offer the kind of provision that would come under Schedule 2, they may apply for funding by the councils under Section 6(5). [...] Many are directly run by local education authorities and the position on their funding is not different from that of non-residential adult colleges. Incidentally, this is an area in which we are not changing the situation. Let us not forget that the Secretary of State has given an important undertaking – important so far as short-term colleges are concerned – over the funding of adult education for the future. Other short-term colleges are run by voluntary bodies, or trusts and some are university centres. Where short-term residential colleges are run by voluntary bodies, it will be open to them, as at present, to seek support from LEAs for the provision they make which falls within the LEAs' remit. As I said, Section 6(5) of the Bill is available to them if they seek support for any provision which may previously have been supported by LEAs but which will in future fall within the remit of the funding councils. It will also be open to the voluntary bodies to explore direct with the funding councils the possibility of designation under Section 28 where they believe that Section 6(5) is not appropriate to them. So the Bill will not alter the position of the short-term residential colleges.'* (Lord Belstead [for the Government]; 14.1.92; cols 177-8, 179)

## 3.5 Quality

### 3.5.1 Arrangements for the FEFC sector

Section 9 of the Act requires the FEFCs to establish Quality Assessment Committees which will advise the Councils on provision to be made for assessing the quality of education provided in institutions within the sector and 'such other functions as may be conferred on the committee by the council'. As a result of debate and Government amendments the majority of members of the QACs shall have 'experience of, and to have shown capacity in, the provision of further education' and 'shall not be members of the council': in this way the Government satisfied Opposition arguments that the Quality Assessment Committees should be independent. It is likely that 'the assessment staff will largely be former members of Her Majesty's Inspectorate' (Tim Eggar [Con; Minister of State]; 11.2.92; col 902). In Wales, Her Majesty's Chief Inspector of Schools will, if asked by

the Welsh FEFC to do so, undertake quality assessment functions on behalf of the Council.

As with the funding regime to be established by the Councils, decisions on how the FEFCs will execute their quality assessment role will be determined by the Councils. Nonetheless, Ministerial contributions to debate on the Bill indicated that the Government intends the Councils will operate in two ways: by an audit of colleges' own quality assurance systems, and through its own assessments of quality:

*'The Government attach great importance to systems which will ensure the quality of education and training by the further education corporations. The corporations must have effective monitoring systems. However, neither the instrument nor the articles of government need contain specific provisions relating to quality assurance arrangements. That will happen anyway. Section 5 provides for the funding councils to determine the terms and conditions on which they provide financial support to institutions. The Secretary of State will require the councils to draw up financial memoranda with the corporations, outlining the conditions under which funding would be provided to them. The Secretary of State will expect the financial memoranda to contain provisions relating to quality assurance ...'* (Lord Cavendish of Furness [for the Government]; 12.12.91; col 901)

*'In the FE sector, we expect the funding councils to operate, as HMI does now, by commissioning subject surveys across the whole sector rather than general inspections of each institution.'* (Baroness Blatch [leading for the Government] during the Lords Committee Stage of the Education (Schools) Bill; 24.2.92; col 49 – quoted by Derek Fatchett [Lab]; Standing Committee F; 25.2.92; col 253)

*'At the moment there are only 10 to 15 general inspections of further education institutions a year. HMI has operated in its evaluation of FE institutions in a similar way to that of the PCFC. The HMI subject surveys under the present system have enabled annual comparisons to be made between institutions. Most inspections of FE institutions are carried out on subject-by-subject basis. Quality assessment and inspection of FE institutions follows two broad routes – a general inspection at regular intervals, or the route for which HMI has opted over recent years, across-subject evaluation. When the Government opted for a once-every-four-years inspection for schools, it was necessary to re-evaluate the case for general inspections of institutions. [...] We considered that option [for the FE sector], but there are considerable differences between FE institutions and schools. Some institutions are much larger than sixth-form colleges and specialist institutions. They provide a wider range of*

*courses, cater for a more disparate group of students and have more teaching staff, many of whom are part-time. That means that the general inspection option is much more complicated. That is a practical consideration. Furthermore, as the quality assessment system will form the basis on which the FEFC will decide the allocation of funds, it will be helpful for the FEFC to have a comparison. No one is suggesting that it would be practical to have an annual general inspection of every institution. The best way to get comparability is on a subject-by-subject basis. It is our desire and expectation that the FEFC will so structure its inspection of individual subject areas that over a four-year period all areas of a college will have been inspected. That means that, effectively, a general inspection will be carried out every four years, although it will be done on a rolling year-by-year basis. The quality assessment system will combine the advantages of a general inspection, which we sought for schools on a four-yearly cycle, with the advantages of comparability across institutions, because that will be done on a subject-by-subject basis. Of course, the caveat remains that the responsibility rests with the FEFC, which will want to devise its own mechanism. I have outlined the ministerial guidance ...' (Tim Eggar [Con; Minister of State]; Standing Committee F; 25.2.92; cols 255-6)*

The special provisions for Wales were made on the grounds of cost-effectiveness:

*'It is important in Wales that the administrative arrangements for inspection should be as flexible and as cost effective as possible and the sector welcomes that. [The Secretary of State] intends to give the funding council for Wales the option of obtaining quality assessment information from HMCI as a possible way to minimise its operating costs. It will be for the council to decide, in practice, how it wishes to carry out quality assessment. It may decide to follow the English route or, given the circumstances in Wales, to pass the job back to HMCI. That is a sensible way forward for Wales.' (Tim Eggar [Con; Minister of State]; Standing Committee F; 25.2.92; cols 254-5)*

It should be noted that the FEFCs' quality assessment function relates to the entire activity of an institution within the sector, and is not confined to work funded by the FEFCs themselves:

*'In addition, the funding councils and their quality assessment committees will themselves have a duty to secure that provision is made to assess the quality of all the education provided in institutions within the FE sector, which may include education which falls within the duty of the LEA and is funded by the LEA. Precisely how the councils and committees assess quality will be a matter for them. They may wish to involve LEAs in so far as particular courses are funded by them. As for the LEAs, they will*

*be free to set conditions which will no doubt include conditions on quality and standards for any financial support they give, or propose to give, to institutions within the sector.'* (Lord Belstead [for the Government]; 14.1.92; col 251-2)

### 3.5.2 Arrangements for the HEFC sector

On a number of occasions Ministers have indicated that Government thinking on the operation of the new FE system is informed by the experiences of the PCFC sector (comprising polytechnics and colleges removed from LEA control under the Education Reform Act). Since that sector has already begun to adopt specific approaches to quality audit and quality assessment, the following comments are included to illustrate practice which might be transferred to the FEFC sector:

In respect of quality audit – ‘by which is meant scrutiny of institutions’ own internal systems’:

*‘We are talking about process, the quality of teaching and learning, its management and organisation and accommodation and equipment; and we are talking about output. There will be statistical indicators in these matters.’* (Lord Belstead [Government spokesperson]; 16.12.91; col 1080)

*‘We need an arrangement for scrutinising internal quality control systems. [...] The responsibility for such an organisation rests properly with the institutions. The CVCP, the CDP and representatives of the HE colleges have responded quickly and positively to the Government’s invitation to come forward with proposals for a quality assurance and access organisation. It is envisaged that membership of that organisation will include lay members and outside observers and assessors. That body will perform the audit function. All institutions will be visited and reports on the existing systems in each institution will be published. All three representative bodies have accepted that an institution’s public funding might be affected by an unsatisfactory report if adverse aspects were not corrected. [...] The [quality audit unit] will promote and disseminate information about best practice, oversee the external examiner arrangements and carry on the valuable work of the CNAA regarding credit accumulation and transfer and access courses.’* (Alan Howarth [Con; Parliamentary Under-Secretary of State for Education]; Standing Committee F; 26.2.92; cols 396-402)

As to ‘quality assessment’:

*‘The assessments will need to be carried out by experts in their field. They must include full-time professional staff with suitable academic backgrounds. Assessors will be recruited initially in part from staff with responsibility for higher education in the inspectorate, of which a proportion has a background mainly in*

*the university sector. The remainder of the staff of the units will be recruited mainly from the academic world. In addition to permanent staff, the councils would be free to make arrangements for bringing in experts at particular times for particular purposes.'* Lord Belstead [Government spokesperson]; 16.12.91; cols 1080-1)

*'Under our proposals, that assessment will fall to be carried out by expert assessors employed by the funding council. They are to be located within the funding council structure because ... the councils will have a duty to ensure that public funds are spent where they can achieve the best results. If the councils are to have the information that they require to make those funding decisions, it makes sense for the assessment function to rest with them. It will make for closer understanding, and greater efficiency and economy of operation. [...] The report of the assessments of individual institutions will be published, as will annual reports by the councils on their complete range of activities. [...] The system is already in embryonic form and is developing encouragingly. Pilot assessments have already been carried out by the UFC and PCFC acting jointly in anticipation of future practice. Pilot assessments have already been carried out in universities and polytechnics with the full co-operation of the institutions concerned, who appear to be happy about it.'* (Alan Howarth [Con; Parliamentary Under-Secretary of State for Education]; Standing Committee F; 26.2.92; cols 396-402)

In the longer term:

*'The funding councils will look to their quality assessment committees to advise them on a wide range of quality issues. Once the system is up and running, in addition to the reports of assessors on their visits to institutions, the Government will look to the councils and institutions to develop a variety of statistical data which will indicate the success of institutions both against the performance of others and in relation to their own missions.'* (Lord Belstead [Government spokesperson]; 16.12.91; col 1103)

Ministers have stressed that consultation will precede any firm decisions about the operation of quality assessment and quality audit approaches:

*'My understanding is that the practice of both the UFC and the PCFC has been to consult each and every institution on major policy issues before reaching a view. In that way the voice of the smallest as well as the largest, the minority as well as the majority, is registered and considered. I think that the new funding councils would want to carry out a similar widespread consultation process with all institutions on the procedures for quality assessment.'* (Lord Belstead [Government spokesperson]; 16.12.91; col 1074)

### 3.5.3 Arrangements for the LEA Sector

Government amendments to Section 9, and a new Section 55, were introduced to restrict the duties of the FEFC Quality Assessment Committees to all institutions within the FEFC sector and to make it clear that:

*'Local education authorities will be responsible for keeping under review the quality of education in institutions that they continue to maintain. That will secure quality control where a maintained institution is indirectly assisted by the council under the arrangements in Section 6(5).'* (Lord Belstead [for the Government]; 14.1.92; cols 237-8)

*'[Section 55] gives the new office of Her Majesty's Chief Inspector the same powers of inspection in relation to [institutions – 'in particular, adult education institutes' – maintained or assisted by LEAs, other than schools] as he will have, under the Education (Schools) Bill, in relation to schools. It also gives him, in respect of such institutions, the general duty set out in the parallel provision of the Schools Bill: namely, a duty to keep the Secretary of State informed about the quality of education provided, the educational standards achieved and whether the financial resources made available to these institutions are managed efficiently. The Section also enables the Secretary of State to seek advice from HMCI on any other matters relating to further education. This would enable the Secretary of State to seek advice in the event of a complaint, for example, about the adequacy of the provision made or proposed to be made by the funding council for a student with learning difficulties. Finally, [Section 55] deals with LEAs' continuing powers of inspection of these institutions; namely, educational institutions other than schools which they maintain or assist. The Government do not propose to set up a system of registration of inspectors for the purposes on the lines of that proposed in the Schools Bill. Nonetheless, in recognition of the importance of ensuring that inspectors are qualified for the purpose, the Section sets out that inspection is to be carried out by persons appointed by the LEAs who are suitably qualified.'* (Lord Belstead [for the Government]; 16.1.92; col 443)

### 3.6 Special needs

Earlier sections of this paper have drawn attention to Ministerial explanation of statutory duties in respect of those with special educational need (see 3.1.2) and the need for the FEFCs to have access to relevant expertise (see 3.3.1). A Government amendment to Schedule 2 led to the inclusion, within the FEFC remit, of 'courses in independent living and communication skills for those with learning difficulties' (see Lords Report Stage debate; 14.1.92;

cols 202-206). The following sections highlight other matters relevant to provision for those with special educational need.

### 3.6.1 Assessment/statementing

*'There is nothing in the Bill to diminish the responsibilities of LEAs. If a pupil with a statement wishes to stay on at school beyond 16, the LEA concerned will have to honour the obligation of his statement.'* (Lord Cavendish of Furness [for the Government]; 10.12.91; col 642)

*'For the schools the 1981 Act lays down in some detail the assessment procedure that should apply. But no such requirement applies to further education. That is not because the assessment of needs is not necessary in further education: it is because a more flexible procedure is required with students at this stage in life. The Government believe that that will be true in the new further education system no less than now. At present the further education colleges assess their students' needs. There is nothing in the Bill as drafted to prevent them from continuing to do so and we are confident that they will. At present in making those assessments they seek specialist support from their LEAs. In the new structures, if that is no longer available, they will be able to seek specialist expertise from the FEFCs and from their local offices. Those assessment processes are not prescribed now, and we see no need for Parliament to regulate them in future. [...] The Bill would not in fact leave it to the colleges' goodwill to carry out the assessment. There is the explicit duty to have regard to the requirements of persons having learning difficulties. That duty cannot be discharged without first establishing what those learning difficulties are and what provision is required to meet them. The Bill rightly stops short of prescribing how the assessment should be carried out, but it would not allow further education to be provided without any regard to the needs of students with disabilities.'* (Lord Cavendish of Furness [for the Government]; 10.12.91; col 658)

*'In our previous debates about students with disabilities, some questions were also raised about the assessment of their educational needs. Assessment is of course a matter of the greatest importance, and I made it clear that we did not dispute its value to both students and lecturers but that we doubted the wisdom of prescribing it on the face of the Bill. Our conclusion is that the importance of assessing students' educational needs should be reiterated in guidance issued to the new FE system and also the LEAs to cover their continuing responsibility for some students with disabilities. That will ensure that assessment is given proper attention, without introducing undesirable inflexibility.'* (Lord Cavendish of Furness [for the Government];

14.1.92; cols 157-8; see also, on the question of statements in FE, 14.1.92; cols 211-212)

*'Students, or their families on their behalf, who wish to retain a statement [of special educational need] can be provided for in the post-16 school sector. A number of young people with statements will lose that entitlement when the sixth-form colleges transfer to the new sector. However, the realistic expectation is that that number will be small. We have committed ourselves to ensuring an important transitional provision, as the councils will be expected to take account of the information in those students' statements in determining the appropriate provision for them. That requirement will be covered in the guidance that is given to the councils. [...] We shall attach great importance to [the assessment of students' educational needs]. It will be a matter for colleges in the new sector, and the Government expect that they will be keen to maintain and develop best practice in assessing students' needs. I readily reaffirm that that will be made clear in our guidance to the councils and to local education authorities.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 19.2.92; cols 142-143)

### 3.6.2 Transport

*'Transport to educational provision is at present a responsibility of the LEAs. The Bill provides for that to continue. The responsibility is contained in Section 55 of the 1944 Act. The Bill amends Section 55 to cover the new further education arrangements. The amendment is to paragraph 5 of Schedule 8 of the Bill. In summary, the amendment extends LEAs' existing responsibility to include the new sector, and requires authorities to make no less favourable provision for transport to the colleges in the new sector compared with the arrangements they make for pupils of the same age attending the authorities' own schools. The Bill thus ensures that the existing transport responsibilities are carried over. Those responsibilities naturally extend to students with disabilities. [...] We recognise that there may be cases in which it would make sense for the transport responsibility to be met in the FEFC structure rather than by the local education authority. If so, there is nothing in the Bill to prevent that. The Bill as drafted would allow the FEFC and the colleges in the new sector to support transport. That is the effect of the powers given to the councils in Section 5 and to the colleges in Section 19. Where the FEFC decides in a particular case that provision for a student should be made in one of the independent specialist colleges, the cost of transport could similarly be borne by the FEFC. I repeat, however, that we have at present no reason to suppose that that will be necessary on a routine basis. I understand the argument that there may be cases in which the LEA is reluctant to pay for the transport to the provision which*

*the FEFC selects as educationally most appropriate. In those cases there will have to be some dialogue between the two agencies. I regard it as entirely healthy that the LEA should not let the FEFC get away with choosing educational provision without regard to the cost of the transport. In making its choice the FEFC will know that if it fails to persuade the LEA that the transport cost is justified it can be expected to dip into its own pocket. The arrangements we propose rely on checks and balances, a familiar and effective way of ensuring sensible results.'* (Lord Cavendish of Furness [speaking for the Government]; 10.12.91; cols 644-5)

*'Our previous debates also raised the question of transport for students with disabilities. Our view, which I believe is shared, is that the present law is adequate as it stands, but there may be a question over the enthusiasm with which the duties it contains are carried out. Our intention is to issue guidance to the LEAs so as to ensure that there is no doubt as to the extent of the existing duties. [Schedule 8 to the Bill is being amended] to ensure that LEAs' responsibility extends to placements made in the independent sector.'* (Lord Cavendish of Furness [for the Government]; 14.1.92; cols 157-8)

### 3.6.3 Student support

*'For further education, the power that allows the support services to be financed by the funding councils is in Section 5(5)(b). For higher education, the power is in Section 65(2)(d). The provisions cover all kinds of support and ancillary services. But they are deliberately not listed, so as not to impose any artificial constraints. There is no need to add a specific reference to support services for students with disabilities. The institutions too – in other words, the colleges – will be able to organise and fund support services of this kind under their existing powers in the case of the HE institutions and under Section 19 in the case of the FE colleges in the new sector. In Section 19, students with learning difficulties are specifically mentioned. The powers in the Bill are adequate to cover the support services.'* (Lord Belstead [for the Government]; 14.1.92; col 213)

*'Under present arrangements LEAs ensure that facilities such as sign language, interpreters or braille embossers are available. Under the new structure LEAs will retain the ability to provide the support while making educational provision. The FEFCs also will be able to provide the same support in this sphere of responsibility.'* (Lord Cavendish of Furness [for the Government]; 3.2.92; col 17)

*'[as to] the demands on families whose members have disabilities and special educational needs, much can and should be done to*

*help. I emphasise that we envisage that the new arrangements for post-16 and adult education put in place by the Bill will provide scope for providers to help and train families to develop the ability to support those members of their families who have disabilities of one kind or another.' (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 19.2.92; cols 142-143)*

### **3.6.4 Specific provision**

Under Section 52 the FEFCs are empowered to make specific directions that, in respect of full-time education for those under nineteen years of age, a particular college must make specific provision for a particular individual. This was explained by Ministers to be necessary because:

*'In some areas a college may be the sole supplier of a post-16 education or training. As a result there may be instances in which the council expects the college to meet the needs of a particular student. That may apply in the case of a young person with special educational needs. Guidance from the Secretary of State will make clear that that power is for use in exceptional circumstances only. Admissions to courses will normally be a matter for colleges.' (Lord Cavendish of Furness [for the Government]; 12.12.91; col 955)*

### **3.6.5 Higher education provision for those with SEN**

*'The Government's policy is to increase access to higher education, and that includes students with disabilities. [...] Section 65 of the Bill gives the HEFCs wide powers in relation to the funding of HE provision. That includes the power to fund the provision of specialist facilities for students with disabilities and projects to tackle the problems of physical accessibility that some of them face. Thus the Bill already provides for funding to be allocated to the new HEFCs to improve the accessibility of HE institutions for students with disabilities. That continues the discretion that is currently available to the existing funding councils. [...] The Government do not prescribe how funding should be allocated to individual institutions by these bodies. We intend that Ministers' existing arm's length relationship with the existing funding councils will continue with the new HEFCs. Nevertheless, the Government take very seriously the anxieties expressed that disability should be no bar to education. Indeed we share those anxieties. We shall consider carefully what should be said in the launch guidance to the funding councils about provision for students with learning difficulties. We intend to make clear the considerable importance which the Government attach to adequate provision being available for these students.'*

*(Lord Cavendish of Furness [for the Government]; 12.12.91; col 1000)*

*'In assessing the quality of education provided in the new sector, the HEFCs will need to consider what is provided for disabled students. [...] Provision for students with disabilities should be adequately monitored. In the past, special surveys have been used, but they have their drawbacks. The DES is considering whether more information can be built into the routine statistical returns. That will need discussion with the new funding councils. [...] Improved monitoring of the provision for students with disabilities is under active consideration.'* (Lord Cavendish of Furness [for the Government]; 16.12.91; cols 1111-2)

### 3.7 Institutions in the FEFC sector

#### 3.7.1 Governance

The White Paper announced Government proposals to change the composition of the governing bodies of incorporated colleges. While the Act does not give details of model instruments of governance, Ministers indicated during debate some of the points which will be included in forthcoming Orders from the Secretary of State:

*'Model instruments of government will be set out in regulations to be made under this Bill, and we shall be consulting on the draft regulations. Under the regulations, it will still be open to corporations to propose changes to the composition of their membership to suit their individual needs. We believe that it is important to give corporations some flexibility in their membership. [...] So far as concerns student representation, it is our intention that the model instruments of government for FE corporations will provide for the membership of the corporation to include a student representative to be elected by the students at the institution. The position in relation to student representatives on the membership of FE corporations will therefore mirror the current position with regard to student representation on FE college governing bodies.'* (Lord Cavendish of Furness [for the Government]; 16.1.92; cols 396-7)

*'The model instruments of government for FE corporations will specify that the membership must include at least one representative of the local TEC. That is one aspect of the membership which colleges will not be able to apply to change.'* (Lord Cavendish of Furness [for the Government]; 16.1.92; cols 400-401)

*'It is our intention that the model instrument of government will provide for the membership of the [FE] corporation to include up to two members representing the staff of the college. Those*

*members would be elected by the staff of the colleges and will have to be on the college staff.'* (Lord Cavendish of Furness [for the Government]; 16.1.92; col 402)

*'LEAs will no longer be responsible for those institutions [in the new sector] and will no longer provide financial support to them. There will therefore be no need for formal LEA representation on governing bodies of further education corporations. That is not to say that LEAs will lack any opportunity to make their views known. [...] There are no proposals to change the present position in relation to staff and student representatives [on FE governing bodies]. There is certainly no intention to make it difficult for students to contribute ... Further education corporations will be free to include staff and student representatives in their membership; and ... I would be amazed if they did not. [...] We intend that the membership of each further education corporation will include a person nominated by the local TEC. That is in recognition of the special relationship between the education service and the TECs by virtue of the core funding that they provide for colleges in the form of money for work-related further education. [...] It is still open to colleges to include persons with a knowledge of students with learning difficulties on governing bodies, and many already do. No changes are expected in that area.'* (Lord Cavendish of Furness [for the Government]; 12.12.91; cols 891-3)

*'[HE] corporations will be able to appoint up to two student members to their governing bodies. Students may also be co-opted to the governing bodies, but the governing bodies are not required to have student members. The instruments are enabling. To that extent the position is the same for further and higher education. In both, it will be for the corporations to determine whether students are included in their membership.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 25.2.92; col 310)

*'The Bill provides that local authority nominees, teacher nominees, general staff nominees and student nominees shall not automatically be members of a [HE] governing body, but may be co-opted as members if that is what the governing body wants. That reduction in prescription has been welcomed by the Committee of Directors of Polytechnics and the Standing Committee of Principals. My understanding from the consultations on the proposals is that the majority of governing bodies will wish to retain representatives from some or all of those sectors as co-opted members because that provides an effective means of securing views from those communities.'* (Lord Cavendish of Furness [for the Government]; 16.12.91; col 1131)

### 3.7.2 Publication of information on college activity

The Bill, when introduced, indicated that the Secretary of State would be empowered to issue Regulations requiring the publication of certain information on college activity. During debate, several members of the House of Lords argued in favour of the publication of evidence on 'value added' rather than the publication of raw examination results, and the Government introduced an amendment to satisfy this point. The relevant Section (Section 50) of the Act empowers the Secretary of State to require publication of information on FEFC-sector institutions' existing and planned provision; the 'educational achievements of their students on entry to the institution and the educational achievements of their students while at the institution'; financial resources and the effectiveness of the use made of resources; and student careers. Points raised in debate on these issues include:

*'The Government intend that this information should be published in a form which facilitates comparisons between colleges.'* (Lord Belstead [for the Government]; 21.11.91; col 1026)

*'The Government's objective is to require the publication of information which will be useful to young people, parents and employers. There is a great deal to be said for keeping that information as simple as possible, to allow the users to form their own judgements.'* (Lord Cavendish of Furness [for the Government]; 16.1.92; col 434)

*'[Section 50] allows the Secretary of State to prescribe that the published information shall include such details as the location of provision and its accessibility to students with learning difficulties. Moreover, the colleges will naturally wish to publish relevant information. It would be absurd for them to keep such information from students or potential students. It would not be in their own best interests to do so. Colleges will want information about the range of courses that they offer – including those intended for students with learning difficulties – to be widely available. Their published programmes and prospectuses will make this information available. That is already the norm. I should be disappointed to hear that colleges do not already adopt that practice, or that they had no plans to do so in future.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 20.2.92; col 187)

*'The purpose behind the particular provision in the clause [to require publication of previous educational attainment] is to get as accurate and complete a picture as possible of students' educational attainments before and during their course so that meaningful information is available on the value added by*

*institutions.’ (Lord Cavendish of Furness [for the Government]; 3.2.92; col 69)*

Ministers however emphasised that the Secretary of State would not necessarily exercise his powers to require the publication of ‘value added’ information immediately:

*‘I do not, however, want to give any commitments today as to when we might bring this requirement into effect. ... We need to look very carefully at how that might be done. We need to ensure that the information can be presented in a coherent and reasonably straightforward way. I would stress, therefore, that ... the government are not committed to requiring the publication of such information.’ (Lord Cavendish of Furness [for the Government]; 16.1.92; col 434)*

As to the publication of information on student careers:

*‘We would wish to leave open the possibility of a requirement to provide information about careers which reflects the decisions students have made once they have been away from the college for a period. Clearly, the regulations to be made under this clause will need to strike a careful and sensible balance between the need to obtain useful information on the one hand, and the need to ensure that the exercise is manageable to colleges on the other. It is certainly not our intention that colleges should be required to keep track of students over a long period of time.’ (Lord Cavendish of Furness [for the Government]; 16.1.92; col 437)*

More generally:

*‘The Government have already called upon colleges to produce some of the information ... for colleges’ own management purposes. [...] Many colleges will want such information to be published to enable them to evaluate their own performance in relation to that of similar institutions. Having said that, we are also concerned about the consequences for colleges of any immediate call for the publication of the full range of such information. Before making appropriate regulations, we shall have to be sure that colleges have systems in place – and preferably computerised systems at that – which are capable of generating the information required in a cost-effective manner.’ (Lord Cavendish of Furness [for the Government]; 16.1.92; cols 434-5)*

### 3.7.3 Charges

A relatively minor, but nonetheless potentially significant issue debated in the Lords related to the charging of fees for tuition. The principal concern was that, under Government proposals, students at newly incorporated sixth form colleges might be charged for tuition, whereas sixth-form pupils in schools remaining with the LEAs would

not. The debate brought forward some points of interest to adult educators:

*'As a matter of practice now, as the law stands, further education is free and tuition costs for young people aged 16 to 18 in full-time education are .net. As I am advised, there is nothing in the law to say that, but it has always been a matter of practice that there are no charges for tuition at the point of delivery; that further education shall have no further charges made. They are not made; they are never made. If I may go a stage further, there is no intention that the establishment of the further education funding councils should lead to any change in existing practice. Tuition for full-time education for 16 to 18-year-olds will continue to be free both in colleges of further education and in former sixth form colleges. A requirement that all full-time education should be free of charge to the student would, however, have implications for the colleges. That is where the situation that exists now becomes more difficult. Under present legislation further education colleges are not prevented from making charges to students, as I have said. For example, students on catering courses meet some charges for materials ... It must be for the further education colleges to judge, as they are able to do under existing legislation, the priorities for the funds available to them.'* (Lord Belstead [Government spokesperson]; 9.12.91; col 550; see also 14.1.92; col 171)

*'I should like to suggest two reasons why it is appropriate that part-time students should not be treated on quite the same footing as full-time pupils at a school. First, it is desirable that fee arrangements should be the same in all institutions which meet the needs of 16 to 18-year-olds, whether they are schools or institutions in the FE sector. It is not now the practice in FE colleges to charge fees to 16 to 18-year-olds who are studying on a full-time basis ... However it is common for colleges to charge fees to young people who are studying part-time. Such young people are usually in employment and their employers often meet the cost of fees. I would expect colleges to continue to charge for most part-time students after they have transferred to the new sector, although the decision will be one for the governing bodies. Secondly, under Section 12(7) schools may not apply any funds derived from their delegated budget under LMS for the purpose of educating part-time students and adults ... That means that part-timers and adults at schools will be funded by the charging of fees or by means of a subsidy from the local authority or both. [...] It will be open to local authorities and colleges in the new sector to operate schemes of fee remission for any such student for whom they feel that fees would be inappropriate.'* (Lord Belstead [Government spokesperson]; 10.12.91; cols 712-3)

*'Nothing in the Bill changes the present arrangement [regarding*

*fees for adult students with learning difficulties]. In making provision the colleges in the new FE sector and the LEAs will, as now, have discretion as to the fees they charge. They will also be able to waive or reduce fees in specific cases. The LEAs will retain the power to provide discretionary awards which may cover fees or maintenance. Those options continue.'* (Lord Cavendish of Furness [for the Government]; 3.2.92; col 17)

### 3.8 Other issues

#### 3.8.1 Open College Networks

Parliamentary debate on Open College Networks at times became confused on account of members' apparent unfamiliarity with the nature and functions of OCNs (at times mistaken for 'The Open College [of the Air]!'). Attempts to obtain amendments to overtly include an indication that OCNs could be funded direct by the FEFCs failed. Discussion on such matters included the following points:

*'There is every reason to expect that the progression of adults from informal to more formal study will continue under the Bill, whether through the Open College Networks or otherwise. [...] Many of the courses for which the OCNs provide credits will come within the Schedule 2 categories – for example, access to higher education – and therefore they would come within the scope of the funding council's duties. Of more concern to me ... is that not all the courses for which the networks offer credits are of a type which the Government believe should be secured at a national level. They will relate to courses which fall within the responsibility of the local education authorities. Some people may progress from those courses ... to others which fall within the funding council's duties, but many will not do so. Those courses are of a more local nature and will often fulfil leisure interests for adults as well as other valuable purposes. I do not think it is right to expect the funding councils to pick up the tab for the LEAs, which themselves will receive support from public funds for courses which fall within their duty. [...] The whole of the work of the OCNs can be financially supported under the provisions of the Bill. However, what the funding councils cannot do under the Bill is to fund courses or activities in local education authority adult education colleges and centres unless they are related to Schedule 2. Courses of related activities not so covered would fall to the local education authority. [...] I do not believe it would be right to expect the funding councils to subsidise other agencies which have a legitimate interest in a certain activity and have powers to fund it but choose not to give priority to that activity. To be blunt, if the local education authorities could look to the funding councils for funds in such circumstances, they would have very little incentive to carry out their own functions. Another point*

*which concerns me ... is that the OCNs, admirable though they are, do not have a status in law. Their credits are not part of a nationally recognised credit system in the same way as are NVQs and GCSEs. We recognise that they can have great – I emphasise great – local value, but that does not necessarily mean that they are a suitable subject for legislation.’ (Lord Belstead [Government spokesperson]; 10.12.91; cols 616-7)*

*‘The Open College networks are funded from a number of different sources although ... the lion’s share of the funding comes from the local authorities. The provisions of the Bill would not prevent the Open College networks from continuing to be funded for the work that they do. Indeed, in respect of education falling within Schedule 2 of the Bill, the funding councils will have powers to fund colleges in the FE sector. The relevant power is in Section 5(1). Through subsection (5) and (6) of Section 6, the funding councils are also able, through the FE colleges, to provide funding for Schedule 2 courses and for activities relating to such courses made by adult colleges and centres or by voluntary bodies. ... In practice much of the work of the Open College networks will fall within the remit of Schedule 2, covering, for example, access to higher education courses and “return to learn” courses. Some of the accredited courses of the networks will not fall within Schedule 2. While they can assist progression to courses which fall within Schedule 2, they will be informal courses which fall to the duty of the LEAs, which have clear powers to fund such provision under Section 11. In summary, the whole of the Schedule 2 work of the Open College networks can, if the OCNs wished to make the bid, be supported under Sections 5 and 6 of the Bill, whether it is provided by colleges within the new sector or by adult colleges maintained by LEAs. Other provision which assists progression and falls outside Schedule 2 can continue to be funded by the LEAs, in this case under Section 11.’ (Lord Belstead [for the Government]; 14.1.92; col 223)*

*‘I support the movement towards open college networks because they provide a method of progression that is welcome to adults in many parts of the country. I assure the hon. Gentleman that the Bill does contain powers for the LEAs to continue to fund the work of the open college networks.’ (Tim Eggar [Con; Minister of State]; Standing Committee F; 20.2.92; col 202)*

### 3.8.2 Welsh

*‘Schedule 2 provides that the funding council in Wales should have the responsibility to provide courses for proficiency or literacy in Welsh in certain contexts. [...] The Secretary of State will give guidance to the funding council for Wales to ensure that provision for teaching through the medium of Welsh is*

*maintained.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 19.2.92; col 107)

*'The further education funding council for Wales will be expected to secure Welsh medium provision where reasonable. That accords with the duty placed on the council by Section 2(3) of the Bill. My right hon. Friend the Secretary of State for Wales fully appreciates the importance of securing Welsh medium provision in further education, and he will make reference to that in his guidance to the FEFC for Wales. [...] There is no need to provide specifically for Welsh medium teaching in higher education. Such provision is already covered by the activities eligible for council funding specified in Section 65, and I expect that the guidance that my right hon. Friend the Secretary of State will give to the higher education funding council for Wales will make reference to the Welsh medium courses currently on offer and the need to safeguard them [and] if possible to build on this provision.'* (Alan Howarth [Con; Under-Secretary of State for Education]; Standing Committee F; 20.2.92; col 247)

### 3.8.3 Literacy tuition

While Schedule 2 includes, within the FEFCs' remit, 'a course for basic literacy in English' members of both Houses sought assurances that ABE support could also be provided for those enrolled on 'mainstream' programmes. Ministers tacitly accepted the point by indicating that:

*'Suitable provision should be available to students with problems of literacy who are unable to respond to more orthodox teaching methods. That encompasses dyslexia. The FEFCs' responsibilities will include securing the provision of courses for basic literacy in English. In discharging that responsibility college lecturers will be able to use a variety of practices and methods, including arrangements which are most appropriate for students who are unable to respond to orthodox teaching methods. It is part of the professional stock in trade of the lecturers to be able to deploy a variety of teaching methods to meet the variety of students' needs. That will continue and the FEFCs will be able to support resourceful teaching.'* (Lord Cavendish of Furness [speaking for the Government]; 10.12.91; col 620)

### 3.8.4 Prison education

*'Responsibility for prison education rests firmly with the Home Office under existing legislation. It is the Government's intention that the responsibility should be unaffected by the Bill ... Decisions about what education should be made available for prisoners and the responsibility for funding such education should continue to be a matter for the prison service. Section 116*

*of the 1944 Act gives local education authorities a power to make arrangements for prisoners to receive the benefit of educational facilities provided by them. The scope of that power is unaffected by the Bill. Local authorities will continue to be able to provide education for prisoners, although I confirm that they will still need to be invited to do so by the Home Office. It will also be open to the Home Office to invite colleges in the new sector to provide any such education.'* (Lord Belstead [Government spokesperson]; 9.12.91; cols 563-4)

### 3.8.5 Trade union education

*'The Department of Employment provides grants to the TUC and to non-affiliated trade unions towards the cost of training safety representatives and for other industrial relations training. The grant for the next financial year was announced recently. Obviously, I cannot say anything about future levels of that grant, as it is announced annually. [...] We have no intention of moving away from the present system. [...] I am told that the TUC is keen to retain control over training for its own appointees. I also believe that the TUC's view is that an adequate standard of training for safety representatives can be more easily maintained if its content and administration are controlled centrally by the TUC. That could not be combined with Schedule 2 provisions. [...] Nothing in the Bill would reduce existing opportunities ... Nothing stops colleges continuing to provide the type of courses that they currently provide. [...] It is true that courses leading to qualifications could come within that [Schedule 2] funding mechanism, but I stress that the courses should lead to qualifications. I recognise that many courses ... are essentially workplace-oriented courses of short duration [which] do not necessarily lead to qualifications. However, they often lead to an extremely important enhancement of an individual's understanding of safety matters. [...] I am acutely aware of the need for proper safety instruction at all levels. I accept that that involves high-level training on safety matters. Where that high-level training – often very lengthy and demanding training – leads to a qualification it would come within Schedule 2(a). [...] I envisage that in practice courses will continue to be provided and that the local education authorities or the further education funding council will provide funding. That approach is more flexible than placing everything in Schedule 2, with the implications that that has for the existing relationships. [...] The interposition of the existing trade union providers and the funding councils in courses that would not otherwise be assisted by the funding council and the creation of some sort of special provision would not be in the interests of the TUC.'* (Tim Eggar [Con: Minister of State]; Standing Committee F; 25.2.92; cols 303-5)

The period between the publication of the White Paper *Education and Training for the 21st Century* in May 1991 and the eventual passage of the Further and Higher Education Act in March 1992 saw an informed and lively Parliamentary debate on adult learning.

This publication is a record of that debate, with a commentary on the development of major issues as the legislation proceeded.

It is intended to be of use to those concerned with adult learning as they prepare to maximise benefits to adults in the implementation of the legislation.

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