

EDUCATION AND INSPECTIONS ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 3: Further Provisions about Maintained Schools

Section 33: Requirements as to foundations

147. *Subsection (1)* of this section inserts new sections 23A and 23B into the 1998 Act. These new sections provide for the foundations of certain foundation and foundation special schools, and the charity trustees of those foundations, to have specified characteristics and gives the Secretary of State power in certain circumstances (to be specified in regulations) to remove and appoint charity trustees.
148. New section 23A(1) provides for section 23A to apply to foundation and foundation special schools where one or more of three conditions is met.
149. The first condition, set out in *subsection (2)* of the new section 23A, is that the school was established as a foundation or foundation special school pursuant to proposals implemented under the Act.
150. The second condition, set out in *subsection (3)* of the new section 23A, is that the school acquired its foundation, or became a school whose instrument of government provides for the majority of governors to be foundation governors pursuant to proposals implemented under the Act.
151. The third condition, set out in *subsection (4)*, is that the school has changed category from voluntary aided to foundation school pursuant to proposals implemented under the Act. References in this explanatory note to “foundations” and “charity trustees” are to the foundations and charity trustees of the schools to which the new section 23A applies only.
152. Section 23A(5) provides that a foundation must be incorporated and must also be a charity (as defined in the Charities Act 1993). It also provides that a foundation must have as its purposes, or as one of its purposes, the charitable purpose of the advancement of education. Section 23A(6) requires the foundation to promote community cohesion in carrying out its functions in relation to the school.
153. Section 23A(7) provides that where local authorities are members of, or are to appoint persons to be members of, foundations, the voting rights exercisable by those members must not exceed 20% of the total voting rights. Section 23A(8) similarly provides that where local authorities are to appoint charity trustees, the number of trustees appointed by them, and the voting rights exercisable by such trustees, must not exceed 20% (of the total number of trustees or the voting rights respectively).
154. Section 23A(9) enables regulations to prescribe people who are to be disqualified from acting as trustees. Section 23A(10) defines the terms used in sections 23A and 23B.
155. New section 23B(1) provides for regulations enabling the Secretary of State to make directions, in prescribed cases, to remove any charity trustee of a foundation or

foundation special school to which section 23A applies, even if the person is not otherwise disqualified; and to appoint a charity trustee to such a school.

156. Section 23B(2) enables regulations to make provision about the effect of a direction under *subsection (1)*, and, in particular, enables the regulations to provide for such a direction to have the same effect as an order of the Charity Commission for the removal or appointment of a trustee made under section 18 of the Charities Act 1993. Section 23B(3) goes on to provide that nothing in this section affects any powers of the Charity Commission.
157. *Subsection (2)* of the section is a transitional provision which provides that any reference in section 23B to the Charity Commission for England and Wales should be read as a reference to the Charity Commissioners for England and Wales until section 1A(1) of the Charities Act 1993 comes into force. The Charities Act 2006 provides for the establishment of the Charity Commission as a body corporate, and inserts into the 1993 Act the new section 1A that is referred to.

Section 34: Parents councils for certain foundation or foundation special schools

158. This section inserts a new section 23A after section 23 of the 2002 Act.
159. The new section requires the governing body of foundation schools in England with a foundation which appoint the majority of governors to the school's governing body to establish a parent council. The majority of members of the Council must be parents of registered pupils at the school (parent members). Persons other than parent members may only be members of a parent council where the parent members consent to them being members and appoint them as such in accordance with the regulations. The purpose of the parent council is to advise the governing body on matters relating to the conduct of the school, and the governing body's exercise of their powers to provide community facilities etc (under section 27 of the 2002 Act).
160. Regulations may set out more detail about the membership (including election/appointment arrangements; eligibility and duration of membership and the meetings and proceedings of parent councils), and may confer functions on the governing bodies of the schools to which the section applies. The governing body in exercising their functions under the section must have regard to any guidance issued by the Secretary of State.

Section 35: Funding of voluntary aided schools: meaning of 'capital expenditure'

161. Paragraph 3 of Schedule 3 to the 1998 Act imposes a duty on the governing body of a voluntary aided school to meet all capital expenditure in relation to the school premises.
162. [Section 35](#) amends the definition of capital expenditure in respect of a voluntary aided school that applies for the purposes of Schedule 3 to the 1998 Act as it applies to England.
163. The current definition of "capital expenditure" is set out in Article 13 of the [Regulatory Reform \(Voluntary Aided Schools Liabilities and Funding\) \(England\) Order 2002 \(SI 2002/906\)](#). The Order contains a list of expenditure that is to be treated as capital expenditure.
164. [Section 35](#) provides that "capital expenditure" in respect of voluntary aided schools shall be expenditure which is capitalised in accordance with proper accounting practices. This approach will as far as possible take standard accounting practices and concepts as its starting point, thereby avoiding the need for an exhaustive list in the legislation. This reflects the approach taken in section 16 of the Local Government Act 2003, which defines capital expenditure in relation to a local education authority.

165. There is power to provide that specified kinds of expenditure are (or are not) to be treated as capital expenditure for individual schools (by direction) or more generally (by regulations).
166. This section is intended to ensure that the definition of capital expenditure reflects modern accounting practice and that optimal procurement arrangements are available to voluntary aided schools.

Section 36: Disposal and changes of use of land

167. This section introduces Schedule 4 which inserts a new Part A1 into Schedule 22 to the 1998 Act and amends section 77 of that Act. These provisions are both concerned with the disposal, and change of use, of land by maintained schools. The modifications to Schedule 22, which relates to foundation, voluntary and foundation special schools, separate the procedures in England for the disposal of playing field land and non-playing field land.

Schedule 4: Disposals and changes of use of land

168. **Part 1** of Schedule 4 introduces changes in respect of the procedure for the disposal of non-playing field land which has been provided at public expense in England.
169. Schedule 22 to the 1998 Act outlines the procedure to be followed by the governing body, trustees or foundation body of a foundation, voluntary or foundation special school when disposing of certain land that had been acquired or enhanced using certain public funds. The Schedule currently requires the Secretary of State's consent to the disposal of any such land by a governing body of a foundation, voluntary or foundation special school, by a foundation body, or (in some cases) by the trustees of a foundation or foundation special school. Paragraph 3 of Schedule 22 also requires the trustees of a foundation, voluntary or foundation special school, in cases not requiring the Secretary of State's consent, to inform the local education authority that maintains the school in question of the disposal and, depending on the status of the land, to agree a payment to the authority out of the proceeds of disposal or to undertake to use the proceeds of disposal for the purposes of that or another school.
170. The new provisions inserted by Schedule 4 now provide that when the governing body or the trustees of a foundation, voluntary or foundation special school, or a foundation body, intend to dispose of publicly funded non-playing field land they must notify the local education authority of their intention to do so and of the use to which they intend to put the publicly funded proceeds of disposal. The authority may object to such a disposal, or to the intended use of the publicly funded proceeds of disposal. It may also claim some or all of the publicly funded proceeds of disposal. Any objection to the disposal, or to the use of the publicly funded proceeds of disposal, or any claim to some or all of such proceeds by the authority which is not agreed with the school, is to be determined by the adjudicator.
171. It will no longer be necessary for governing bodies, foundation bodies or trustees in England to apply to the Secretary of State for consent to dispose of such non-playing field land.
172. For the first time, Schedule 22 will include land that has been acquired or enhanced by grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 to the 1998 Act, where notice has been given that such land is to fall within the disposal provisions. The rights of trustees over land which they have provided are protected.
173. The Secretary of State currently has power under paragraph 4 of Schedule 22 to the 1998 Act to require certain land that had been provided using public funds and that is no longer required for the purposes of a foundation, voluntary or foundation special school to be used for a new school or as the site to which an existing school is to be

transferred. This power is extended, in relation to England, by paragraphs A23 to A26 of Schedule 22. The categories of land which may be subject to the power are widened; as are the purposes for which the land is required. A local education authority may apply for land to be transferred to it for the purposes of any school or institution which is (or is to be) maintained by the authority or which they have the power to assist; for the purposes of the exercise of any of the authority's functions; or for the provision of children's services by or on behalf of the local authority which is that authority in the exercise of certain of their functions as described in section 135(1)(a), (c), (d) or (e). The power to determine whether or not to agree to such a transfer is transferred from the Secretary of State to the adjudicator.

174. [Paragraph 5](#) of Schedule 22 requires the trustees of a foundation or foundation special school to apply to the Secretary of State on discontinuance for a determination as to what should happen to certain land acquired at public expense. At present, this process does not apply to the trustees of voluntary schools which means that, on discontinuance, the land may not be immediately available for use by another school. Schedule 4 brings voluntary schools within the scope of this provision. It also extends the type of land captured. Such land now includes, for example, land acquired, but not enhanced by, grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 to the 1998 Act.
175. [Part 2](#) of Schedule 4 amends section 77 of the 1998 Act.
176. Section 77 of the 1998 Act requires a local authority in England, and in certain circumstances, the governing body of a maintained school or a foundation body, to obtain the Secretary of State's consent before disposing of school playing fields. Schedule 22 to the 1998 Act currently requires the governing body of a foundation, voluntary or foundation special school, or a foundation body, to obtain the Secretary of State's consent before disposing of any land, including playing fields.
177. The requirement to obtain the Secretary of State's consent before disposing of any non-playing field land is being removed by Part 1 of Schedule 4. In order to ensure that protection is afforded to all school playing fields provided at public expense, Part 2 of Schedule 4 amends section 77 to include all disposals of school playing fields by the governing body, foundation body or trustees of a foundation, voluntary or foundation special school. In the case of trustees the land must have been provided at public expense and the rights of trustees over their own land are protected. The restrictions in section 77(3) on changes of use of playing field land are also extended so that, in addition to local authorities, they also apply to governing bodies of maintained schools and foundation bodies and, where the land was provided at public expense, the trustees of foundation, voluntary or foundation special schools.
178. [Part 3](#) of Schedule 4 details a number of consequential amendments to other provisions of the 1998 Act.

Section 37: Staff at foundation or voluntary schools with religious character

179. *Subsection (1)* amends section 58 of the 1998 Act to enable head teachers at foundation and voluntary controlled schools with religious character to be 'reserved teachers', that is teachers who are appointed specifically to teach religious education in accordance with the tenets of the school's designated religion.
180. *Subsection (2)* amends section 60 of the 1998 Act. Paragraph (a) makes amendments consequential on the amendment to section 58 made by subsection (1). Paragraph (b) excludes the application to England of section 60(6) of that Act, which prevents a voluntary aided school with a religious character from applying religious criteria in connection with the employment of members of staff other than teachers. The appointment of these members of staff will however be subject to the provisions of the [Employment Equality \(Religion or Belief\) Regulations 2003 \(S.I. 2003/1660\)](#). Those regulations will have the effect of preventing the governing body from discriminating

on religious grounds in the appointment of non-teaching staff, except in a case where being of a particular religion or religious denomination is a genuine occupational requirement.

Section 38: General duties of governing body of maintained school

181. *Subsection (1)* of this section amends section 21 of the 2002 Act (general responsibility for conduct of school) to impose four new duties on the governing body of maintained schools.
182. The first of these duties, provided by the new *subsection (5)(a)* of section 21, requires the governing body of a maintained school in England and Wales to promote the well-being of pupils at the school when discharging their functions relating to the conduct of the school.
183. Well-being is defined (in the new *subsection (8)(a)* of section 21) in relation to pupils at a school in England, as relating to the matters mentioned in section 10(2) of the Children Act 2004. For pupils at a schools in Wales, well-being is defined (in the new *subsection (8)(b)* of section 21) as relating to the matters mentioned in section 25(2) of the Children Act 2004. In both sections 10(2) and 25(2) of the Children Act 2004 the matters are:
 - (a) physical and mental health and emotional well-being;
 - (b) protection from harm and neglect;
 - (c) education, training and recreation;
 - (d) the contribution made by them to society;
 - (e) social and economic well-being
184. The second of these duties, provided by the new *subsection (5)(b)* of section 21, requires the governing body of a maintained school in England to promote community cohesion when discharging their functions relating to the conduct of the school.
185. The third duty, provided by the new *subsection (6)* of section 21, requires the governing body of a maintained school in England and Wales to have regard to any relevant Children and Young People's Plan ("CYPP") in exercising their functions in relation to the conduct of the school.
186. A relevant CYPP is defined (in the new *subsection (9)(a)* of section 21) in relation to a school in England, as a plan published by the local education authority under section 17 of the Children Act 2004 or, in relation to a local education authority that is exempt from the requirements in that section, a similar plan setting out the authority's strategic plan for their delivery of children's services. The Children and Young People's Plan Regulations (England) 2005 exempt local authorities that are classified as 'excellent' under Comprehensive Performance Assessment from the requirement to produce a statutory plan. A relevant CYPP is defined (in *subsection (9)(b)*) in relation to a school in Wales, as a plan published by the local education authority under section 26 of the Children Act 2004 or, in relation to a local education authority that is exempt from the requirements in that section, a similar plan setting out the authority's strategic plan for their delivery of children's services. This subsection will apply the duty to schools in authorities that choose to produce a CYPP even though they are not required to do so.
187. The new *subsection (7)* of section 21 of the 2002 Act requires governing bodies of maintained schools in England, in the discharge of their functions, to have regard to any views expressed by parents of registered pupils. It will be for individual schools to determine how and when to seek the views of parents. Under the new inspection framework introduced in September 2005 all schools will have to demonstrate that they have listened to and taken into account parental views. This subsection does not apply to governing bodies of maintained schools in Wales.

188. *Subsection (2)* of this section amends section 28 of the 2002 Act (limit on power to provide community facilities etc.) to require governing bodies to take into account the CYPP (new subsections (4A) and (4B) of section 28) and the views of parents (new subsection (4C)), in each case in providing extended services for the wider community.

Section 39: General restriction on selection by ability

189. This section, which applies to both England and Wales, re-enacts the prohibition on selection on the basis of a pupil's ability in any maintained school, subject to the exceptions referred to in section 99(2) of the 1998 Act.
190. *Subsection (4)* repeals section 99(1) of the 1998 Act (which is re-enacted by *subsection (1)* of the section) and amends section 99(2) of the 1998 Act so that the permitted forms of selection under that section become permitted forms of selection for the purposes of *subsection (1)* of the section.

Section 40: Code for school admissions

191. This section makes provision for both England and Wales.
192. It modifies sections 84 and 85 of the 1998 Act to strengthen the status of the school admissions code of practice. At present this is referred to in section 84(1) as a code of practice containing practical guidance and section 84(2) provides that it may contain guidelines. Relevant bodies, such as governing bodies of maintained schools, are required 'to have regard to' the code.
193. *Subsections (2) to (4)* amend section 84(1) to (3) to strengthen the force of the code by requiring relevant bodies to act in accordance with it, and to provide that it may impose requirements and may include guidelines
194. *Subsection (2)* also amends section 84(1) so that admission forums are included within the list of bodies to whose functions the code applies.
195. *Subsection (6)* inserts a definition of 'admission forum' into section 84(6).
196. *Subsection (9)* enables the requirement to consult on a draft of the code, imposed by section 85(2) of the 1998 Act, to be satisfied by consultation undertaken before the Act receives Royal Assent.

Section 41: Role of admission forums

197. This section relates to the functions of admission forums in England. It amends Chapter 1 of Part 3 of the 1998 Act to extend the role of admission forums.
198. *Subsection (3)* amends section 85A to give admission forums the power to prepare and publish reports on matters connected with admissions to maintained schools in their area. It also enables them to request from the local education authority, neighbouring authorities, and governing bodies, any information they require to fulfil this function and places a duty on those bodies to comply with such a request.
199. *Subsection (4)* enables regulations to be made in relation to the preparation and publication of reports.
200. *Subsection (5)* enables regulations to be made modifying any provision of Chapter 1 of Part 3 of the 1998 Act in its application to a joint admission forum.
201. *Subsection (6)* enables regulations to be made with respect to the expenses of an admission forum. These expenses will usually be defrayed by the local education authority. The regulations may set out any exceptions to this.
202. *Subsection (7)* substitutes a new *subsection (10)* in section 89 of the 1998 Act. The effect of the amendment is to broaden the existing definition of 'appropriate body' to

include admission forums in England. In consequence of this amendment, admission forums must be:

- a) notified by admission authorities of their admission arrangements following determination;
- b) notified by an admission authority of any referral it has made to the adjudicator for a variation of its admission arrangements; and
- c) notified by the relevant admission authority of the effect of any adjudicator's determination following such a referral.

203. *Subsection (8)* amends section 90(1) and inserts a new *subsection (11)* in section 90. The effect of the amendment is to allow an admission forum in England to refer an objection about the admission arrangements of any maintained school in its area to the adjudicator.

Section 42: Support for parental preferences

204. This section applies only to England. It amends section 86 of the 1998 Act to insert a new *subsection (1A)* to require local education authorities to provide advice and assistance to parents of children living in the area of the authority to help them in the formulation of their preference on a school for their child.

205. Advice and assistance includes providing parents with good, easy to understand information and advice about the schools in their area, and neighbouring areas where applicable, in a form that fits the needs of the parent. This might include how the admission arrangements work and the level of priority their child will have for a place, whether their child will be entitled to school transport and how that will work if the child does not live within walking distance of the school, and whether the school has any special features that may of interest to the parent.

206. Advice and assistance may also include the development of a cadre of Choice Advisers to provide practical support to parents most likely to need extra help to make a fully informed choice of secondary school for their child. The Government is investing £12m to support local authorities to do this by 2008.

Section 43: Duty of governing body to implement decisions relating to admissions

207. *Subsection (1)* inserts *subsection (1A)* in section 88 of the 1998 Act which requires community and voluntary controlled schools in England to comply with any decision to admit a child made by their local authority (if it is the school's admission authority as provided for by section 88 of the 1998 Act).

208. It also inserts *subsection (1B)* in section 88 of the 1998 Act, which provides that the duty to comply with a local education authority's decision to admit does not affect the governing body's right to appeal to an independent appeal panel against the admission of any child who has been twice permanently excluded, nor the requirement for the local education authority to seek governing body consent to the introduction of pupil banding to the school's admission arrangements.

209. *Subsection (3)* inserts in section 89C of the 1998 Act a new subsection (3A) which requires the governing body of any maintained school to comply with a determination by the local education authority that a child should be admitted in accordance with application of the area's co-ordinated admissions scheme.

Section 44: Prohibition on interviews

210. This section applies to both England and Wales and inserts section 88A after section 88 of the 1998 Act to prohibit interviewing as part of the admission process in any maintained school.

211. *Subsection (2)* disappplies subsection (1) in relation to interviews which are intended to assess suitability for a boarding place at a school with boarding accommodation.
212. *Subsection (3)* makes it clear that this section does not prevent schools with permissible selective admission arrangements from conducting assessments to ascertain an applicant's aptitude.

Section 45: Admission arrangements for schools with religious character: consultation and objections

213. This section requires foundation and voluntary aided schools, designated by order as having a religious character, to consult a named body or person to be prescribed by regulations, about their proposed admission arrangements.

Section 46: Restriction on alteration of admission arrangements

214. This section, which relates only to admission arrangements for maintained schools in England, modifies sections 89 and 90 of the 1998 Act. It adds a *subsection (1ZA)* to section 89, cross-referencing it to two sections that have been added: sections 89D and 90A.
215. *Subsection (1)* provides that section 89 of the 1998 Act (which requires the admission authority to decide the admission arrangements for each school year) has effect subject to the new provisions in sections 89D and 90A.
216. *Subsection (2)* inserts section 89D. This provision relates to approval of proposals to establish new schools or to expand existing schools. Although the admission arrangements are one of the factors considered by decision-makers in determining whether to approve a proposal, the present system would enable schools to change the arrangements the year after approval of a proposal. The section enables regulations to be made which have the effect of 'freezing' approved admission arrangements for a prescribed period, so that those considered and approved by decision-makers remain in place for a reasonable period.
217. Regulations will set out in more detail the period for which admission arrangements must remain unchanged, and the circumstances in which admission authorities may apply to the adjudicator for variations of those arrangements within the prescribed period.
218. *Subsection (3)* inserts section 90A. At present, section 90(8) of the 1998 Act makes an adjudicator's determination of an objection binding on parties to the objection for the school year to which the admission arrangements relate. This can result in admission criteria, which the adjudicator has determined are unfair, being reinstated the following year. This, in turn, can lead to repeats of earlier objections to the adjudicator. The new section 90A has the effect that determinations by the adjudicator will generally remain effective for a prescribed number of school years or lesser period as determined by the adjudicator. The new section also includes a regulation-making power in *subsection (6)*. This will enable regulations to prescribe circumstances in which admission authorities may apply to the adjudicator to vary arrangements which they would otherwise be prevented from altering by the new section.

Section 47: Objections to admission arrangements

219. This section, which relates to admission arrangements for maintained schools in England and Wales, modifies section 90 of the 1998 Act. Section 90 makes provision for objections to such admission arrangements to be referred to the adjudicator (in relation to England) and the National Assembly (in relation to Wales). (The functions of the Secretary of State in relation to Wales were transferred to the [National Assembly by the Transfer of Functions Order \(SI 1999/672\)](#)).

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

220. In relation to England, section 90(3) allows regulations to be made prescribing cases in which the adjudicator must refer objections to the Secretary of State. The Department has no current intention to provide for any objections to be referred to the Secretary of State.
221. *Subsection (2)* inserts new *subsections (5A), (5B) and (5C)* into section 90.
222. *Subsection (5A)* gives the adjudicator or the Secretary of State (in relation to England) or the National Assembly (in relation to Wales) powers to consider any aspect of a school's admission arrangements, on referral of an objection to a school's admission arrangements.
223. *Subsections (5B) and (5C)* set out the requirement for the adjudicator or Secretary of State (in relation to England) or the National Assembly (in relation to Wales) to publish a report in relation to any decision on referred admission arrangements. The report must include the decision on the objection, any decision on whether any changes should be made to the admission arrangements and the reason(s) for the decisions. The report may specify the modifications to be made to the admission arrangements.
224. *Subsection (4)* substitutes a new section 90(8). It provides that the decisions of the adjudicator or Secretary of State (in relation to England) or the National Assembly (in relation to Wales) mentioned in new *subsection (5B)(a) and (b)* are binding on the admission authority and on persons by whom an objection may be made under section 90(1) or 90(2). It also requires any changes required by the adjudicator or Secretary of State (in relation to England) or the National Assembly (in relation to Wales) to be implemented by the admission authority.
225. *Subsection (5)(a)* inserts a new paragraph (ba) after section 90(9)(b). It enables regulations to be made requiring the admission authority of a maintained school in England to provide prescribed information requested by the adjudicator to assist in consideration of an objection referred to him about the school's admission arrangements.
226. *Subsection (5)(b)* makes minor amendments to section 90(9) of the 1998 Act to refer to the 'report' required by *subsection (5B)* rather than the 'decision' under the repealed section 90(7).
227. *Subsection (6)* repeals *subsection (10)* of section 90 of the 1998 Act. The effect of this is that the adjudicator is no longer required to refer to the Secretary of State objections concerned with admissions criteria relating to a person's religion or religious denomination.

Section 48: Looked after children to whom section 87(2) of SSFA 1998 applies

228. This section amends section 95 of the 1998 Act and inserts a new section 95A in that Act.
229. ***Section 95(2)*** currently requires a local education authority to make arrangements allowing the governing body of a community or voluntary controlled school for whom the local education authority are the admission authority to appeal against a decision by the authority to admit to the school a child who has been permanently excluded from two or more schools. *Subsection (1)* amends section 95 so that this requirement will no longer apply in relation to a decision by a local education authority in England to admit a child who is looked after by a local authority in England. The reason for this amendment is that new section 95A makes provision for references in such cases to be made to the adjudicator.
230. *Subsection (2)* inserts new section 95A. This section requires local education authorities to notify the governing body of a community or voluntary controlled school that a decision has been made to admit a looked after child who has been permanently excluded from two or more schools. On receipt of the notification, the governing body

has seven days to refer the matter to the adjudicator. Such a reference can only be made where the admission of the child would cause serious prejudice to the provision of efficient education or the efficient use of resources. If the adjudicator agrees that serious prejudice would be caused, the decision to admit the child to the school ceases to have effect but the adjudicator may, with the agreement of the local authority that looks after the child, determine that another school should admit the child. The adjudicator cannot name another school if the child has been permanently excluded from the school or if the admission of the child to the school would cause serious prejudice. The new section also confers power to make regulations as to the consultation which must be carried out by the adjudicator and the information which must be provided by the admission authority.

Section 49: Procedure for giving direction under section 96 of SSFA 1998

231. This section amends section 97 of the 1998 Act.
232. Section 96 of that Act enables local authorities to direct the governing bodies of schools for which they are not the admission authority to admit a child where the child has been refused admission to or excluded from every school within a reasonable travelling distance. Section 97 provides that, on receipt of a notice of a decision to direct, the governing body may refer the matter to the Secretary of State or, in relation to Wales, the National Assembly. The Secretary of State (or the National Assembly) is then able to determine which school should admit the child. This section amends section 97 so that, in relation to England, such references will in future be made to the adjudicator rather than the Secretary of State.

Section 50: Direction to admit looked after child to specified school

233. This section inserts new sections 97A and 97B into the 1998 Act and amends sections 84, 89 and 143 of that Act.
234. *Subsection (1)* inserts new sections 97A and 97B. Section 97A enables local authorities in England, in relation to a child looked after by them, to direct an admission authority to admit the child to a school in England. (This does not apply where the local authority are the admission authority for the school as it is unnecessary to provide a power for a local authority to direct admission in such a case.) A local authority cannot direct admission to a school from which the child has been permanently excluded.
235. Section 97B requires the local authority to consult the admission authority they are proposing to direct and gives the admission authority seven days to respond. If the admission authority does not agree to admit the child but the local authority decide to give a direction, the local authority must serve a notice of their decision to direct on the admission authority, the head teacher and, in certain circumstances, on the local authority who maintain the school and the governing body (where it is not the admission authority). On receipt of such a notice the admission authority and, in certain circumstances, the governing body (where it is not the admission authority) have the power to refer the matter to the adjudicator within seven days. Such a referral may only be made on the grounds that the admission of the child would cause serious prejudice to the provision of efficient education or the efficient use of resources.
236. If the adjudicator is satisfied that the child's admission would have this effect then the local authority may not give the direction but the adjudicator may determine that another school in England should admit the child. Before determining another school, the adjudicator must have the agreement of the local authority that looks after the child. The adjudicator cannot determine a school if the child has been permanently excluded from the school or if the admission of the child to the school would cause serious prejudice. If the local authority who look after the child are the admission authority for the school determined by the adjudicator, they must admit the child. Otherwise, the local authority must specify that school in their direction under section 97A (which must be in writing).

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(c.40) which received Royal Assent on 8 November 2006*

237. *Subsections (2), (3) and (4)* make minor amendments relating to the provision made by *subsection (1)*.

Section 51: Directions to admit child to specified school: supplementary provisions

238. This section amends sections 94, 96, and 97B of the 1998 Act.
239. *Subsection (1)* amends section 94 of the Act so that parents do not have a right to appeal to an appeal tribunal where a local education authority make a direction under new section 97A (inserted by section 50).
240. *Subsection (2)* makes minor amendments to section 96 which are consequential on the amendments made by section 49 and *subsection (3)* of section 50.
241. *Subsection (3)* inserts a new section 97C into the 1998 Act. This is a regulation-making power. It allows for regulations to be made on the consultation that the schools adjudicator must carry out when making a determination under section 97 or the new 97B inserted by section 50. It also allows for regulations setting out the information that an admission authority must provide to the adjudicator for the purposes of making such a determination.

Section 52: Power of Assembly to make regulations about looked after children

242. This section inserts a new section 97D into the 1998 Act and amends section 89 of that Act.
243. *Subsection (1)* inserts section 97D. This provides the National Assembly for Wales with a power to make regulations about the admission of children looked after by local authorities in Wales to maintained schools in Wales. Those regulations may require admission authorities to include provisions relating to looked after children in their admission arrangements with a view to securing that these children are to be offered admission in preference to other children. The regulations can also prescribe the circumstances in which an admission authority must admit a looked after child and can disapply or modify any of the provisions of Chapter 1 of Part 3 of the 1998 Act insofar as they relate to looked after children.
244. *Subsection (2)* makes a consequential amendment to section 89(1A) of the 1998 Act so that its provisions will in future apply only in relation to maintained schools in England and children looked after by local authorities in England.

Section 53: Schools with pre-1998 arrangements for selection by ability or aptitude

245. This section amends section 100 of the SSFA 1998 so that, once a school with partially selective admission arrangements which it would not now be lawful to introduce, has reduced the proportion of intake selected (e.g. to comply with the adjudicator's determination of an objection) it may not subsequently increase that proportion.

Section 54: Pupil banding

246. This section modifies sections 101 to 103 of the 1998 Act, in order to allow for additional forms of banding. All children applying for a place at a school using banding are assessed or tested and placed into a number of ability bands, as decided by the admissions authority. Under the current law, places may then be allocated to ensure that the intake is representative of all levels of ability among applicants to the school for admission in that age group. If there are more applicants within a particular band of ability than there are places, the places within that band are then allocated on the basis of the other published oversubscription criteria, not on the ranking of test results.
247. *Subsection (1)* adds to section 101 a new *subsection (1A)* which applies only to England. It allows admission authorities of maintained schools to introduce three additional forms of banding: the first across the full ability range of children applying to any of

two or more schools in a local education authority area, the second across the full ability range of the relevant age group within the local education authority area, the third across the full ability range of the relevant age group within England. It also requires that, where (in England) the admission authority is the local education authority, it must secure the consent of the governing body before introducing such arrangements as set out in either the original *subsection (1)* of section 101 or the new *subsection (1A)*.

248. *Subsection (1)* also amends *subsections (3)* and *(4)* of section 101 so as to remove (for England) the requirement that the adoption of banding arrangements must be a “prescribed alteration” that can only be made after publication of statutory proposals.
249. *Subsection (1)* also amends *subsection (5)* of section 101. The amendments ensure that, where schools select up to 10% of their intake by reference to their aptitude in a prescribed subject under section 102(1) of the 1998 Act, such schools are able to admit up to 10% by aptitude irrespective of any banding arrangements adopted.
250. *Subsection (2)* modifies section 102(3) of the 1998 Act to ensure that its provisions (i.e. that aptitude selection is permissible when banding arrangements take place but not when any other form of selection by ability takes place) apply to all permissible forms of banding, including the new forms introduced by *subsection (1A)*.
251. *Subsection (3)* makes amendments of section 103 of the 1998 Act which are consequential on Part 2 of the Act and on the amendments of section 101.

Section 55: Right of sixth-form pupils to be excused from attendance at religious worship

252. *Section 55* amends section 71 of the 1998 Act.
253. *Subsection (2)* substitutes a new *subsection (1)* of section 71 to provide for a sixth-form pupil attending a maintained school to be able to withdraw himself from collective worship. In the case of a non sixth form pupil, a parent may request that the pupil be excused. The subsection re-enacts the right of a parent to request that a pupil be excused from receiving religious education.
254. *Subsection (6)* inserts a new *subsection (5A)* of section 71 to place a duty on governing bodies of maintained boarding schools to make arrangements for giving pupils a reasonable opportunity to attend religious education or worship in accordance with the tenets of a particular religion. In the case of a sixth form pupil, the duty arises where the pupil makes such a request. In the case of a non sixth form pupil, the duty arises where a parent makes a request.
255. *Subsection (8)* substitutes a new *subsection (7)* of section 71 to provide for arrangements to be made in regulations allowing a sixth form pupil attending a maintained special school to withdraw from collective worship.
256. *Subsection (9)* inserts a definition of “sixth form pupil”, at new section 71(8).

Section 56: Charges for music tuition

257. *Section 56* amends sections 451 and 456 of the 1996 Act, which set out the circumstances in which charges can be made for tuition in playing a musical instrument. Under section 451 of the 1996 Act no charge may be made where the tuition is required as part of a syllabus for a prescribed public examination, or is provided as part of the implementation of the National Curriculum. However, where neither of these two circumstances applies, a charge may be made for tuition in playing a musical instrument given either to individuals or to groups of not more than four pupils. At present, no charges can be made for vocal tuition provided during school hours under any circumstances.

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

258. Section 456 of the 1996 Act states that, where charges are made for instrumental tuition, that charge can include the cost of teaching staff employed to provide that tuition.
259. *Subsection (1)* substitutes section 451(3) to introduce a regulation making power which enables regulations to be made to prescribe the circumstances under which charges can be made for singing and musical instrument tuition.

Section 57: School funding

260. This section introduces *Schedule 5* which contains provisions relating to the duties and powers of local education authorities in relation to the financing of maintained schools and the role of schools forums.
261. Section 47A of the 1998 Act as amended by the 2005 Act imposes an obligation on local education authorities to establish schools forums and provides for the constitution and function of schools forums to be set out in regulations. *Paragraph 2* amends section 47A of the 1998 Act to enable schools forums to exercise any function imposed on them by the Act (as amended here and elsewhere), and to omit the power to enable the Secretary of State or Assembly to remove a non-schools member of the forum.
262. *Section 48* of, and *Schedule 14* to, the 1998 Act place a duty on a local education authority to establish a scheme which deals with matters connected to the financing of maintained schools. All local education authorities have existing schemes. *Paragraphs 3 and 5* amend the duty to establish to one that requires a local education authority to maintain such a scheme and enables regulations to be made governing the approval of revisions to such schemes. This includes arrangements under which schools forums may approve revisions with or without modifications and the circumstances under which such revisions may be submitted to the Secretary of State or National Assembly for Wales for approval. It also removes the power of the Secretary of State or Assembly to impose a scheme on a local education authority.
263. Section 49 of the 1998 Act places a duty on local education authorities to provide the schools they maintain with a delegated budget share. *Paragraph 4* amends section 49 to enable regulations to be made that require local education authorities to give all new schools budget shares from a date determined in accordance with regulations by the schools forum or the Secretary of State or Assembly.
264. *Paragraph 6* amends *Schedule 15* to the 1998 Act which currently makes provision for the circumstances under which a local education authority may withdraw delegated budget responsibility from a maintained school and the process it must follow in doing so. The amendments remove the right of a governing body to appeal to the Secretary of State or Assembly against the withdrawal of their right to a delegated budget.

Section 58: Removal of requirement to issue code of practice as to relationships between LEAs and maintained schools in England etc

265. This section amends section 127 of the 1998 Act to remove the requirement for the Secretary of State to issue a Code of Practice on relationships between local education authorities and schools maintained by them. The Code currently provides statutory guidance for local education authorities and schools on how to work together effectively to raise standards.
266. *Section 127* will continue to apply in Wales with some amendments. *Subsection (2)(d)* of this section substitutes a new paragraph (b) in section 127(1), the effect of which (taken with the removal of section 127(6) by *subsection (6)* of this section) is that the Code of Practice in Wales may relate to the discharge of such functions exercisable by or behalf of the local education authority that the National Assembly for Wales may determine, rather than to a specified list of functions as at present.