

CHILDREN, SCHOOLS AND FAMILIES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Children and Schools

Children with special educational needs etc

Section 1: School inspections: pupils with disabilities or special educational needs

22. This section amends section 5 of the Education Act 2005 (duty to inspect certain schools in England at prescribed intervals). The effect of the amendment is to require the Chief Inspector to consider the needs of children with disabilities or special educational needs in reporting on how well a mainstream school (as defined) meets the needs of its pupils.

Section 2: Right of appeal against determination by local authority not to amend statement

23. This section provides a new right of appeal to the First-tier Tribunal (Special Educational Needs and Disability) for parents in circumstances where, following a review of a statement of special educational needs (SEN), a local authority in England decides not to make any changes to the statement. Section 328 of the the EA 1996 imposes requirements in relation to reviews. It provides that all statements must be reviewed within the period of 12 months beginning either with the date on which the statement was made or with the date of the previous review. This means that all of the stages of the review including the local authority's decision on whether to amend a statement must be completed within the 12 month period.
24. Part 4 of the EA 1996 provides for local authorities to make provision for children with SEN, including the drawing up of SEN statements where they are considered to be appropriate. The statement describes the special educational provision that an individual child will receive. Statements must be reviewed annually but can also be reviewed at other times. Parents have the right of appeal to the Tribunal in certain circumstances.
25. **Section 2** inserts a new section after section 328 of the EA 1996 to introduce a right for parents to appeal in situations where, following a review, the local authority has not made any changes to a statement and the parents want changes which were suggested in the report on the review submitted by the head teacher to be made, or want other changes to be made. The local authority must inform the parents in writing if it decides not to amend the statement and must also inform them of their right to appeal to the Tribunal.
26. The appeal may be in relation to:
- a) the description of the local authority's assessment of the child's special educational needs in the unamended statement;
 - b) the special education provision in the unamended statement and the name of a school specified in it; or

- c) the fact that no school is named in the unamended statement.

Exceptional provision for ill or excluded children etc

Section 3: Exceptional provision of education in short stay schools or elsewhere

27. Section 19 of the EA 1996 imposes a duty on local authorities to make arrangements for securing suitable education for children who, because of exclusion from school, illness or for any other reason, may not receive such education if the arrangements are not made for them. Thus an authority has a duty to arrange education for every child of compulsory school age who, for some reason, cannot attend a mainstream or special school.
28. *Subsection (2)* of section 3 inserts a new subsection (1A) into section 19. This provides that in relation to England the duty to make arrangements for the provision of education under section 19(1) does not apply in the case of a child who will cease to be of compulsory school age within the next six weeks (ie a child in the final weeks of year 11 at school) and who does not have any further public examinations or assessments for public qualifications to complete. This amendment ensures that the duty to make arrangements for the provision of education does not apply in the case of a pupil who has effectively come to the end of his or her compulsory schooling by completing any public examinations etc taken at the end of that stage of a child's education (but who is technically still in the final weeks of compulsory schooling). This reflects the practice in maintained schools where equivalent pupils at a school are excused from attending after the completion of their public examinations etc.
29. *Subsections (3) and (4)* of the section replace the existing subsection (3A) of section 19 of the EA 1996 with new subsections (3A) and (3AA) and amend subsection (3B) of the section. The existing subsection (3A) requires local authorities in England to arrange suitable full-time education for excluded pupils. The amendments extend the requirement to arrange full-time education to all children in England who qualify under section 19(1). The existing provisions allow for regulations to prescribe exceptions from the duty to provide full-time education. There will continue to be exceptions but these will appear in the primary legislation rather than in subordinate legislation.
30. The new subsection (3A) (as inserted by section 3) requires a local authority in England to make arrangements for the provision of full-time education for children who fall under section 19(1) but allows for part-time education to be arranged in the case of a child falling within the new subsection (3AA). That subsection applies to children for whom the local authority considers that, for reasons which relate to their physical or mental health, it would not be in the child's best interests for full-time education to be provided. Where part-time education is considered appropriate it must be education arranged on such part time basis as the authority considers to be in the child's best interests. The new subsection (3A)(1)(b) will govern the local authority's decision only as to the amount of provision to arrange for any child. The nature and type of any provision will still be governed by the requirement of 'suitability' in subsection (1) and (6) of section 19.
31. Examples of the types of situation in which it is envisaged a child might fall within the exception to full-time provision might be children with chronic illness, or disability after an accident or some other reason connected to their welfare.
32. Subsection (3B) of section 19 is amended by the section so as to alter the existing power to make regulations which determine the day from which education must be provided for a child in England, to include all arrangements under section 19(1) rather than just under subsection (3A) as previously. The current intention is to replicate the provisions of the existing regulations which provide for the duty to have effect from the 6th day.

Powers of governing bodies

Section 4: Power to provide community facilities etc

33. Governing bodies of maintained schools have a power in section 27 of the Education Act 2002 (“the EA 2002”) to provide any community facilities or services which further any charitable purpose for the benefit of their pupils, families of pupils and the wider community. However, governing bodies are prevented by section 50(4) of the School Standards and Framework Act 1998 (“the SSFA 1998”) from using their delegated budgets for the provision of community facilities or services.
34. **Section 4** amends section 27 so as to require governing bodies in England to give consideration at least once in every school year to whether or not to use the power to provide these facilities, and how they might use it. The section also amends section 50 of the SSFA 1998 to allow governing bodies in England to spend their delegated budgets on the provision of those community facilities or services, subject to any specific restrictions set out in regulations.
35. **Subsection (4)** amends section 51A of the SSFA 1998 so that it no longer applies in relation to England. Section 51A enables a local authority to recover from a governing body any amounts spent by the authority as a result of a third party claim against the authority in relation to activities undertaken by a governing body pursuant to section 27 of the EA 2002. These amounts cannot be recovered directly from the governing body due to the restriction in section 50 of the SSFA 1998 on the governing body using its delegated budget for these activities but this will not be the case for schools in England after the coming into force of this section.

Sections 5 to 7- Powers of governing bodies

36. **Sections 5 to 7** extend and define powers of governing bodies of maintained schools in England so that certain designated governing bodies can be involved in the establishment of new maintained schools and Academies, and all governing bodies are able to have further involvement in existing maintained schools and Academies.
37. Governing bodies already have certain specific powers, set out in Schedule 1 to the EA 2002, in relation to the conduct of their own school and the provision of advice and assistance to other maintained schools and local authorities. They have other powers, set out elsewhere in legislation. For example, they can provide facilities and services to their own pupils and their families, and the wider community in the furtherance of any charitable purpose under section 27 of the EA 2002.

Section 5: Power to form company to establish Academy, etc

38. **Section 5** provides governing bodies in England with a power to form an “Academy Trust”. An Academy trust is a company which can enter into an agreement with the Secretary of State under which the company will establish and maintain an Academy. The section also provides governing bodies with a power to carry out necessary activities in connection with such agreements. The Secretary of State will establish a procedure for designating particular governing bodies and will only enter into such an agreement with a company formed by a designated governing body. The section also allows any governing body of a maintained school in England to be a member of an existing Academy Trust.

Section 6: Powers to assist etc proprietor of Academy and be a member of a foundation

39. **Section 6** allows all governing bodies of maintained schools in England to provide advice and assistance to the proprietors of Academies (in the same way that they can already provide advice and assistance to the governing bodies of other maintained schools). The section also allows all governing bodies of maintained schools and

maintained nursery schools in England to be members of the foundations of other maintained schools.

Section 7: Power to propose new schools

40. **Section 7** allows only governing bodies in England that are designated by the Secretary of State, or by a person authorised by the Secretary of State, to publish proposals under section 7 (in a school competition) or section 11(2) of the Education and Inspections Act 2006 (“the EIA 2006”) to establish new foundation, voluntary or foundation special schools.

Local Safeguarding Children Boards

Sections 8 and 9

41. **Sections 8 and 9** make provision for the supply of information to LSCBs. Section 8 makes provision in relation to LSCBs in England, and section 9 in relation to LSCBs in Wales.

Section 8: Supply of information requested by LSCBs in England

42. **Section 8** inserts a new section 14B into the Children Act 2004 (“the CA 2004”). New section 14B provides that, if certain conditions are met, a person or body must supply information to a LSCB in England at its request. Firstly, the information must be requested for the purpose of enabling or assisting the LSCB to perform its functions. Secondly, the person or body requested to supply the information must have functions or engage in activities such that the LSCB considers it likely to have information relevant to a function of the LSCB. This would potentially encompass, for instance, a GP who provided medical advice or treatment to a child in respect of whom a LSCB was carrying out a serious case review, or to a family member or carer of that child. It would also potentially encompass a person carrying out voluntary work that brought him or her into contact with such a child or with a family member or carer, or a minister of a church attended by such a child or by a family member or carer. Finally, one of the conditions set out in subsection (4) or subsection (5) of the new section must be met. Subsection (4) of the new section relates to the content of the information that may be requested. Subsection (5) of the new section 14B effectively enables the onward transmission to a LSCB of information that it has previously requested, under the new section, to be supplied to a third party, for instance to a Primary Care Trust, for collation and onward transmission to the LSCB. (But a LSCB may request that information be supplied to a third party for collation and onward transmission only if the third party itself is within subsection (3)). Subsection (6) of the new section provides that a LSCB may use information provided under new section 14B only for the purposes of its functions. Subsection (7) of the new section provides that a LSCB must have regard to guidance issued by the Secretary of State in exercising its functions under the new section.

Section 9: Supply of information requested by LSCBs in Wales

43. **Section 9** inserts a new section 32A into the CA 2004. This makes equivalent provision, in relation to LSCBs in Wales, to that made in relation to LSCBs in England by the new section 14B inserted by section 8.

Section 10: Review by Chief Inspector of performance of LSCBs in England

44. **Section 10** inserts a new section 15A into the CA 2004. The new section confers power on the Secretary of State to make regulations providing for the Chief Inspector to review specified functions of a LSCB in England. Subsection (3) of the new section provides that the regulations may make provision about reports to be made on completion of a review, and requiring information to be shared with the Chief Inspector for the purposes of a review.