



# Education Act 2002

## 2002 CHAPTER 32

### PART 1

#### PROVISION FOR NEW LEGAL FRAMEWORKS

#### CHAPTER 1

##### POWERS TO FACILITATE INNOVATION

### 1 Purpose and interpretation of Chapter 1

- (1) The purpose of this Chapter is to facilitate the implementation by qualifying bodies of innovative projects that may—
  - (a) in the opinion of the Secretary of State, contribute to the raising of the educational standards achieved by children in England, or
  - (b) in the opinion of the National Assembly for Wales, contribute to the raising of the educational standards achieved by children in Wales.
- (2) In forming an opinion as to whether a project may contribute to the raising of the educational standards achieved by children in England or Wales, the Secretary of State or the National Assembly for Wales shall—
  - (a) have regard to the need for the curriculum for any school affected by the project to be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of children and of society, and
  - (b) consider the likely effect of the project on all the children who may be affected by it.
- (3) In this Chapter—

“the Chief Inspector” means—

  - (a) in relation to England, Her Majesty’s Chief Inspector of Schools in England, and

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- (b) in relation to Wales, Her Majesty’s Chief Inspector of Education and Training in Wales;
  - “children” means persons under the age of nineteen;
  - “education legislation” means—
    - (a) the Education Acts (as defined by section 578 of the Education Act 1996 (c. 56)),
    - (b) the Learning and Skills Act 2000 (c. 21), and
    - (c) any subordinate legislation made under any of those Acts;
  - “qualifying body” means—
    - (a) a local education authority,
    - (b) an Education Action Forum,
    - (c) the governing body of a qualifying school, or
    - (d) the proprietor of any special school that is not maintained by a local education authority but is for the time being approved by the Secretary of State or the National Assembly for Wales under section 342 of the Education Act 1996;
  - “qualifying school” means—
    - (a) a community, foundation or voluntary school or a community or foundation special school,
    - (b) a maintained nursery school,
    - (c) a city technology college,
    - (d) a city college for the technology of the arts, or
    - (e) an Academy;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

#### Commencement Information

- II** [S. 1](#) partly in force; [s. 1](#) not in force at Royal Assent, see [s. 216](#); [s. 1](#) in force (except for the words "(b) a maintained nursery school" in the list of qualifying schools in [s. 1\(3\)](#)) for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [Sch.](#))

## 2 Power to suspend statutory requirements etc.

- (1) On the application of one or more qualifying bodies (“the applicant”), the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may for the purpose of this Chapter by order make provision—
  - (a) conferring on the applicant exemption from any requirement imposed by education legislation;
  - (b) relaxing any such requirement in its application to the applicant;
  - (c) enabling the applicant to exercise any function conferred by education legislation on any other qualifying body (either concurrently with or in place of that other body);
  - (d) making such modifications of any provision of education legislation, in its application to the applicant or any other qualifying body, as are in the opinion of the Secretary of State or the Assembly consequential on any provision made by virtue of any of paragraphs (a) to (c).

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- (2) An order under this section shall have effect during a period specified in the order which, subject to section 3(2), must not exceed three years.
- (3) Before making an order under this section, the Secretary of State or the National Assembly shall, if he or it considers it appropriate to do so, consult the Chief Inspector.
- (4) No order under this section which relates to sections 119 to 129 may be made by the National Assembly for Wales without the consent of the Secretary of State.
- (5) The Secretary of State or the National Assembly for Wales shall refuse an application for an order under this section if it appears to the Secretary of State or the Assembly that the proposed order would be likely to have a detrimental effect on the education of children with special educational needs.
- (6) The Secretary of State or the National Assembly for Wales may from time to time give guidance as to the matters which the Secretary of State or the Assembly will take into account in determining whether to grant applications for orders under this section.
- (7) No order under this section, except an amending or revoking order made by virtue of section 3, may be made after the end of the period of four years beginning with the commencement date.
- (8) In subsection (7) “the commencement date” means—
  - (a) in relation to an order made by the Secretary of State, the day on which this section comes into force in relation to England, and
  - (b) in relation to an order made by the National Assembly for Wales, the day on which this section comes into force in relation to Wales.
- (9) The effect of an order under this section is to be disregarded in determining for the purposes of section 1 of the Regulatory Reform Act 2001 (c. 6) (power by order to make provision reforming law which imposes burdens) whether any provision of an Act falls within subsection (4)(b) of that section (provisions amended by subordinate legislation within previous two years).

#### Commencement Information

**I2** S. 2 partly in force; s. 2 not in force at Royal Assent, see s. 216; s. 2 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

### 3 Variation or revocation of orders under section 2

- (1) The power conferred on the Secretary of State and the National Assembly for Wales by section 2 includes—
  - (a) power by a further order made under that section on an application made for the purposes of that section by one or more qualifying bodies, to amend any order previously made under that section so as to extend—
    - (i) the requirements or functions in relation to which the order applies,
    - (ii) the qualifying bodies to which it applies, or
    - (iii) subject to subsection (2), the period during which it has effect, and
  - (b) power by a further order under that section, which may be made without any application from a qualifying body, to revoke any order previously made under that section.

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- (2) An order made under section 2 by virtue of subsection (1)(a)(iii) of this section may, on one occasion only, extend the period for which a previous order under that section has effect by a period of not more than three years from the end of the period originally specified in the previous order.

#### Commencement Information

**I3** S. 3 partly in force; s. 3 not in force at Royal Assent, see s. 216; s. 3 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

## 4 Applications for orders under section 2

- (1) An application for the purposes of section 2 must be in such form, and contain such information, as may be required by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (2) Before making such an application, the qualifying body shall—
- (a) in the case of an Education Action Forum, consult each local education authority by whom any participating school, as defined by section 10(6)(b) of the School Standards and Framework Act 1998 (c. 31), is maintained,
  - (b) in the case of the governing body of a school maintained by a local education authority, consult that authority, and
  - (c) in any case, consult such persons (or other persons) as appear to the qualifying body to be appropriate, having regard to any guidance given from time to time by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (3) The Secretary or State or the National Assembly for Wales may with the consent of the applicant include in an order under section 2 provisions different from those requested in the application.

#### Commencement Information

**I4** S. 4 partly in force; s. 4 not in force at Royal Assent, see s. 216; s. 4 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

## 5 Annual report

- (1) Where the Secretary of State has made any order under section 2 in any academic year, he shall—
- (a) prepare a report on all the orders made by him under that section in that academic year, and
  - (b) lay a copy of the report before each House of Parliament.
- (2) Where the National Assembly for Wales has made any order under section 2 in any academic year, the Assembly shall prepare and publish a report on all the orders made by the Assembly under that section in that academic year.
- (3) In this section “academic year” means a period beginning with 1st August and ending with the next 31st July.

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### Commencement Information

- I5** S. 5 partly in force; s. 5 not in force at Royal Assent, see s. 216; s. 5 in force for E. at 1.10.2002 by (S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.))

PROSPECTIVE

## CHAPTER 2

### EXEMPTIONS RELATED TO SCHOOL PERFORMANCE

#### 6 Interpretation of Chapter 2

- (1) For the purposes of this Chapter a maintained school is a “qualifying school” at any time if it is a school of a prescribed description which satisfies prescribed criteria relating to one or more of the following—
  - (a) the performance of the school,
  - (b) the quality of the leadership in the school, and
  - (c) the quality of the management of the school.
- (2) The criteria prescribed for the purposes of subsection (1) may include criteria referring to the opinion of the Chief Inspector, the Secretary of State or the National Assembly for Wales.
- (3) For the purposes of this Chapter a school teacher is “employed” at a school if he works at the school under a contract falling within paragraphs (b), (c) and (d) of section 122(3).
- (4) In this Chapter—
  - “the Chief Inspector” has the meaning given by section 1(3);
  - “curriculum provision” means—
    - (a) in relation to a maintained school maintained by a [<sup>F1</sup>local authority] in England, any provision of the National Curriculum for England, and
    - (b) in relation to a maintained school maintained by a [<sup>F1</sup>local authority] in Wales, any [<sup>F2</sup>provision of the National Curriculum for Wales][<sup>F2</sup>requirement imposed under or by virtue of Part 2 of the Curriculum and Assessment (Wales) Act 2021];
  - “maintained school” means a community, foundation or voluntary school or a community or foundation special school;
  - “pay and conditions provision” means any provision of an order under section 122;
  - “school teacher” has the same meaning as in section 122.

### Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), [art. 1, Sch. 2 para. 11\(2\)](#)

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**F2** Words in s. 6(4) substituted (1.9.2022 for specified purposes, 1.9.2023 for specified purposes) by [The Curriculum and Assessment \(Wales\) Act 2021 \(Consequential Amendments\) \(Primary Legislation\) Regulations 2022 \(S.I. 2022/744\)](#), reg. 1(3), **Sch. 2 para. 6(3)**

## 7 Exemptions available to qualifying schools

- (1) Regulations may for the purposes of this section—
- (a) designate any curriculum provision or pay and conditions provision as attracting exemption as of right,
  - (b) designate any curriculum provision or pay and conditions provision as attracting discretionary exemption,
  - (c) designate modifications of any curriculum provision or pay and conditions provision as being available as of right, and
  - (d) designate modifications of any curriculum provision or pay and conditions provision as being available on a discretionary basis.
- (2) On the application of the governing body of a qualifying school, the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may by order—
- (a) provide that any pay and conditions provision which is designated under subsection (1)(a) or (b) and specified in the order is not to apply in relation to school teachers employed at the school,
  - (b) provide that any pay and conditions provision which is designated under subsection (1)(c) or (d) is to apply in relation to school teachers employed at the school with modifications which are specified in the order and fall within the modifications designated as being available as of right or available on a discretionary basis,
  - (c) provide that any curriculum provision which is designated under subsection (1)(a) or (b) and specified in the order is not to apply in relation to the school,
  - (d) provide that any curriculum provision which is designated under subsection (1)(c) or (d) is to apply in relation to the school with modifications which are specified in the order and fall within the modifications designated as being available as of right or available on a discretionary basis, or
  - (e) revoke or vary any order previously made under this subsection.
- (3) Where an application under subsection (2) by a qualifying school—
- (a) relates only to exemption from provisions that are designated under subsection (1)(a) as attracting exemption as of right or to modifications that fall within the modifications designated under subsection (1)(c) as being available as of right (or only to such exemption and such modifications), and
  - (b) does not relate to the revocation or variation of an order previously made under subsection (2),
- the Secretary of State or, as the case may be, the National Assembly for Wales shall make the order requested.
- (4) The Secretary of State or the National Assembly for Wales may from time to time give guidance as to the matters which the Secretary of State or the Assembly will take into account in determining whether to grant applications under subsection (2) which relate to—

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- (a) provisions which are designated under subsection (1)(b) as attracting discretionary exemption, or
- (b) modifications which fall within the modifications designated under subsection (1)(d) as being available on a discretionary basis.

<sup>F3</sup>(5) . . . . .

**Textual Amendments**

**F3** S. 7(5) omitted (30.9.2018) by virtue of [The Welsh Ministers \(Transfer of Functions\) Order 2018 \(S.I. 2018/644\)](#), arts. 1(2), **39(1)**

## 8 Applications for orders under section 7(2)

- (1) An application for the purposes of section 7(2) must be in such form, and contain such information, as may be required by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (2) Before making such an application, the governing body shall—
  - (a) consult the [<sup>F1</sup>local authority],
  - (b) where the application relates to a curriculum provision, consult the parents of registered pupils at the school,
  - (c) where the application relates to a pay and conditions provision, consult each school teacher employed at the school, and
  - (d) in any case, consult such other persons as appear to them to be appropriate, having regard to any guidance given from time to time by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (3) The Secretary of State or the National Assembly for Wales may with the consent of the applicant include in an order under section 7(2) provisions different from those requested in the application.

**Textual Amendments**

**F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**

## 9 Removal of exemptions

Where—

- (a) the Secretary of State or the National Assembly for Wales has made an order under subsection (2) of section 7 in relation to a school (“the exemption order”), and
- (b) since the making of the exemption order, the school has ceased to be a qualifying school,

the Secretary of State or the Assembly may, without any application by the governing body, make an order under that subsection which revokes the exemption order or varies the exemption order so as to restrict any exemption conferred by it.



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## 10 Determination of pay and conditions during and after exemption

- (1) Where an order under section 7(2) which relates to a pay and conditions provision is in force in relation to a school—
- (a) the governing body shall determine the remuneration and other conditions of employment of each school teacher employed at the school, to the extent that by virtue of the order the pay and conditions provisions do not apply to him,
  - (b) the [<sup>F1</sup>local authority] shall do anything necessary to give effect to the governing body's determination under paragraph (a), and
  - (c) pending a determination under paragraph (a), the terms on which a school teacher is employed at the school shall remain unchanged (irrespective of any new order under section 122 except so far as applying to him despite the effect of the order under section 7(2)).
- (2) The Secretary of State may make regulations about the application of section 122(2) where an order under section 7(2) is revoked or the exemption conferred by it is restricted.

### Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**

### Modifications etc. (not altering text)

- C1** S. 10(2): functions transferred (30.9.2018) by [The Welsh Ministers \(Transfer of Functions\) Order 2018 \(S.I. 2018/644\)](#), arts. 1(2), **39(2)**

## CHAPTER 3

### POWERS TO FORM COMPANIES ETC

VALID FROM 20/01/2003

## 11 Powers of governing bodies to form or invest in companies to provide services etc.

- (1) The governing body of a maintained school may form, or participate in forming, companies—
- (a) to provide services or facilities for any schools,
  - (b) to exercise relevant local education authority functions, or
  - (c) to make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons.
- (2) The governing body of a maintained school may, with a view to securing or facilitating—
- (a) the provision by a company of services or facilities for any schools,
  - (b) the exercise by a company of relevant local education authority functions, or
  - (c) the making by any person of arrangements of the kind referred to in subsection (1)(c),



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invest in the company which is to provide the services or facilities or exercise the functions or by which the arrangements are to be made or facilitated.

- (3) The governing body of a maintained school may form, or participate in forming, companies to purchase services or facilities for that school and other participating schools.
- (4) The governing body of a maintained school may, with a view to securing or facilitating the purchase by a company of services or facilities for that school and other participating schools, become a member of the company.
- (5) The governing body of a maintained school may provide staff to any company in relation to which they have exercised a power conferred by any of subsections (1) to (4).
- (6) Subsections (1) to (4) have effect subject to section 12.
- (7) In exercising the power conferred by subsection (5) the governing body of a maintained school shall have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (8) This section is without prejudice to any powers of the governing body of a maintained school exercisable otherwise than by virtue of this section.
- (9) In this section and section 12—
  - “company” means a company registered under the Companies Act 1985 (c. 6) as a company limited by shares or a company limited by guarantee;
  - “relevant local education authority functions”, in relation to a company, means any such functions of any local education authority as are or may become exercisable by the company in accordance with an authorisation given or direction made by virtue of any enactment;
  - “facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus;
  - “maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;
  - “participating school”, in relation to a company, means a school whose governing body is, or is to be, a member of the company.
- (10) References in this section and section 12 to investing in a company include references to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.

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#### Commencement Information

**I6** S. 11 partly in force; s. 11 not in force at Royal Assent, see s. 216; s. 11 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

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VALID FROM 20/01/2003

## 12 Limits on powers conferred by section 11

- (1) The governing body of a maintained school may not exercise any power conferred by any of subsections (1) to (4) of section 11 except—
  - (a) with the consent of the local education authority, and
  - (b) at a time when the school has a delegated budget (within the meaning of Part 2 of the School Standards and Framework Act 1998 (c. 31)).
- (2) A governing body—
  - (a) may not exercise any of those powers in relation to a company unless the company satisfies any applicable requirements of regulations under subsection (3), and
  - (b) may not, by virtue of section 11, remain a member of a company at any time when the company fails to satisfy any such requirements.
- (3) Regulations—
  - (a) shall provide that, except in such cases as may be prescribed, the company must be prohibited by its constitution from admitting to its membership any person who is not of a prescribed description, and
  - (b) may impose requirements with respect to—
    - (i) the constitution of the company, and
    - (ii) any other matter connected with the company’s affairs.
- (4) Without prejudice to the generality of paragraph (b) of subsection (3), regulations under that paragraph may require that the company be prohibited by its constitution from borrowing money, except with the consent of a prescribed person.
- (5) Regulations shall—
  - (a) provide that where one or more governing bodies have invested in a company by virtue of section 11, a local education authority shall be designated as the supervising authority for the company,
  - (b) specify the persons by whom and the manner in which the power of designation is, or is in specified circumstances, exercisable,
  - (c) make provision about the duties of a local education authority who are for the time being designated as the supervising authority for a company.
- (6) Regulations may also—
  - (a) require that where a local education authority are for the time being designated as the supervising authority for a company the company shall provide prescribed information relating to its financial affairs to them at such times and in such manner as may be prescribed,
  - (b) provide that in prescribed circumstances a local education authority who are for the time being so designated may direct any participating governing body to cease to be a member of the company or to take any other prescribed action in relation to the company, and
  - (c) prescribe the procedure for making such a direction.
- (7) In subsection (6)(b) “participating governing body”, in relation to a company, means any governing body of a maintained school who are a member of the company.

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(8) Regulations may restrict the circumstances in which a local education authority may refuse to give any consent applied for under subsection (1).

#### Commencement Information

**I7** S. 12 partly in force; s. 12 not in force at Royal Assent, see s. 216; s. 12 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

### 13 General powers of Secretary of State in relation to companies

- (1) The Secretary of State may, if he considers it expedient to do so for purposes connected with any function of his relating to education—
  - (a) form, or participate in forming, companies to carry on any activities which he considers likely to secure or facilitate the achievement of those purposes, or
  - (b) invest in any company which is to carry on such activities.
- (2) In this section “education” includes—
  - (a) vocational training (including the preparation of young people for employment in general), and
  - (b) social and physical training (including the promotion of the development of young children),but does not include higher education.
- (3) In this section “company” means a company within the meaning of the Companies Act 1985 (c. 6).
- (4) The reference in subsection (1) to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.
- (5) This section is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of this section.

## PART 2

### FINANCIAL ASSISTANCE FOR EDUCATION AND CHILDCARE

### 14 Power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare

- (1) The Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may give, or make arrangements for the giving of, financial assistance to any person for or in connection with any of the purposes mentioned in subsection (2).
- (2) Those purposes are—
  - (a) the provision, or proposed provision, in the United Kingdom or elsewhere, of education or of educational services;
  - (b) the provision, or proposed provision, in the United Kingdom or elsewhere, of childcare or of services related to childcare;

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- (c) enabling any person to undertake any course of education, or any course of higher education provided by an institution within the further education sector;
- (d) providing for a person's maintenance while he undertakes such a course;
- (e) the promotion of learning or research;
- (f) the promotion of the use of educational buildings or facilities for purposes other than those of education;
- (g) the provision of any form of training for teachers or for non-teaching staff;
- (h) the promotion of the recruitment or retention of teachers or non-teaching staff;
- (i) the remuneration of, or provision of other benefits to, teachers or non-teaching staff.

(3) In this section—

“education” includes—

- (a) vocational training (including the preparation of young people for employment in general), and
- (b) social and physical training (including the promotion of the development of young children),

but does not include higher education, and “educational” shall be construed accordingly;

“educational services” includes administrative, advisory, organisational, training or information services related to education;

“non-teaching staff” means persons who are not teachers but who—

- (a) are employed at, or otherwise engaged to work at, a school or an institution within the further education sector,
- (b) are employed by, or engaged to provide services for, a local education authority, or
- (c) are employed by any person in connection with the provision of education or childcare;

“teacher” does not include a teacher at an institution within the higher education sector.

#### Commencement Information

**I8** S. 14 wholly in force at 31.3.2003; s. 14 not in force at Royal Assent, see s. 216; s. 14 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [Sch.](#)); s. 14 in force for W. at 31.3.2003 by [S.I. 2002/3185](#), [art. 5](#), [Sch. Pt. II](#)

## 15 Forms of assistance under section 14

- (1) Financial assistance under section 14 may be given in any form.
- (2) Assistance may, in particular, be given by way of—
  - (a) grants,
  - (b) loans,
  - (c) guarantees,
  - (d) incurring expenditure on the provision of equipment for the benefit of the person assisted, or

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- (e) incurring other expenditure for the benefit of the person assisted.
- (3) Assistance given under section 14 to a local authority may not be given by way of loan or guarantee.

#### Commencement Information

**I9** S. 15 wholly in force at 31.3.2003; s. 15 not in force at Royal Assent, see s. 216; s. 15 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.) and in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II

### 16 Terms on which assistance under section 14 is given

- (1) Financial assistance under section 14 may be given on such terms as the Secretary of State (or, as the case may be, the National Assembly for Wales) considers appropriate.
- (2) The terms may, in particular, include provisions as to—
- (a) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State (or the National Assembly for Wales), and the manner in which that is to be done;
  - (b) the giving by the person receiving assistance of financial assistance to other persons on such terms as that person or the Secretary of State (or the Assembly) considers appropriate;
  - (c) circumstances in which any payments made by virtue of terms included by virtue of paragraph (b) are to be repaid, or otherwise made good, to the person receiving assistance from the Secretary of State (or the Assembly), and the manner in which that is to be done;
  - (d) the keeping, and making available for inspection, of accounts and other records.
- (3) The person receiving assistance must comply with the terms on which it is given, and compliance may be enforced by the Secretary of State (or, as the case may be, the National Assembly for Wales).
- (4) Section 15(2) applies to financial assistance required by virtue of subsection (2)(b) as it applies to financial assistance given under section 14.

#### Commencement Information

**I10** S. 16 wholly in force at 31.3.2003; s. 16 not in force at Royal Assent, see s. 216; s. 16 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.) and in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II

### 17 Delegation

- (1) Arrangements under section 14 may provide for assistance to be given, or other functions relating to assistance to be exercised, otherwise than by the Secretary of State or the National Assembly for Wales.
- (2) Arrangements under section 14 which so provide may make provision for the functions concerned to be so exercised—

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- (a) either wholly or to such extent as may be specified in the arrangements, and
  - (b) either generally or in such cases or circumstances as may be so specified,
- but shall not prevent the functions concerned from being exercised by the Secretary of State or, as the case may be, the National Assembly for Wales.

#### Commencement Information

- I11** S. 17 wholly in force at 31.3.2003; s. 17 not in force at Royal Assent, see s. 216; s. 17 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.) and in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II

VALID FROM 31/03/2003

#### 18 Repeal of specific grant-making powers

- (1) The following enactments (which confer on the Secretary of State or the National Assembly for Wales specific powers that are superseded by the power in section 14) shall cease to have effect—
- (a) section 4 of the Education Act 1967 (c. 3) (loans for capital expenditure for the purposes of colleges of education),
  - (b) section 1(1)(b) of the Education Act 1986 (c. 40) (grants to Further Education Unit),
  - (c) section 50(1)(b) of the Education (No. 2) Act 1986 (c. 61) (grants to facilitate training of persons other than teachers),
  - (d) section 210 of the Education Reform Act 1988 (c. 40) (grants to further education institutions for education of travellers and displaced persons),
  - (e) section 211 of that Act (grants in respect of special provision for immigrants),
  - (f) section 1 of the Nursery Education and Grant-Maintained Schools Act 1996 (c. 50) (arrangements for making grants in respect of nursery education),
  - (g) sections 486 to 488 and section 490 of the Education Act 1996 (c. 56) (which confer miscellaneous grant-making powers),
  - (h) section 491 of that Act (payment of school fees and expenses), and
  - (i) section 3 of the School Standards and Framework Act 1998 (c. 31) (payment of grant in connection with reductions in infant class sizes).
- (2) The power to pay grants under section 484 of the Education Act 1996 (education standards grants) shall be exercisable only in relation to Wales.

#### Commencement Information

- I12** S. 18 partly in force; s. 18 not in force at Royal Assent, see s. 216; s. 18(2) in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II

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## PART 3

### MAINTAINED SCHOOLS

#### CHAPTER 1

##### GOVERNMENT OF MAINTAINED SCHOOLS

### 19 Governing bodies

- (1) Each maintained school shall have a governing body, which shall be a body corporate constituted in accordance with regulations.
- (2) Regulations shall provide for a governing body to consist of—
  - (a) persons elected or appointed as parent governors,
  - (b) persons elected or appointed as staff governors,
  - (c) persons appointed as local education authority governors,
  - (d) except in the case of a voluntary aided school, persons appointed as community governors,
  - (e) in the case of a foundation school, a foundation special school or a voluntary school, persons appointed as foundation governors or partnership governors, and
  - (f) such other persons as may be prescribed.
- (3) Regulations may make provision as to—
  - (a) the number of governors, or of governors falling within any category,
  - (b) the person or persons by whom, and the manner in which, governors are to be elected or appointed,
  - (c) eligibility for election or appointment as governors of any category, or for voting in an election of such governors,
  - (d) the term of office of governors,
  - (e) resignation or removal from office of governors,
  - (f) the payment of allowances to governors,
  - (g) meetings and proceedings of governing bodies,
  - (h) the election by the governors of a chairman and vice chairman of the governing body,
  - (i) the establishment by a governing body of committees,
  - (j) the appointment of persons other than governors to serve on committees of governing bodies,
  - (k) the delegation of functions by governing bodies, and
  - (l) other matters relating to the constitution or procedure of governing bodies.
- (4) Regulations made by virtue of subsection (3)(a) must secure that the majority of the governors of a voluntary aided school are persons appointed as foundation governors.
- (5) Subsection (3)(k) has effect subject to the provisions of any scheme under section 48 of the School Standards and Framework Act 1998 (c. 31) (local education authorities' financial schemes) which relates to the school.



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- (6) Schedule 1 (which contains general provisions relating to the governing body as a body corporate) shall have effect.
- (7) In discharging any function conferred by regulations under this section, a local education authority or the governing body of a maintained school shall have regard to any guidance given from time to time—
  - (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the National Assembly for Wales.
- (8) Subsection (1) has effect subject to section 24; and regulations under this section may include provision with respect to the governing bodies of federations.

#### Commencement Information

**I13** S. 19(6) in force at 1.10.2002 for E. by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

VALID FROM 01/03/2003

## 20 Instruments of government

- (1) For every maintained school there shall be an instrument (known as the instrument of government) which determines the constitution of the governing body and other matters relating to the school.
- (2) Regulations shall make provision with respect to the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments.
- (3) Regulations under subsection (2) may require any person responsible for the making, review or variation of an instrument of government to have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (4) Subsection (1) has effect subject to section 24; and regulations under subsection (2) may include provision with respect to instruments of government for federations.
- (5) The governing body of a maintained school shall not conduct the school under a name other than the one for the time being set out in the school's instrument of government.

VALID FROM 01/03/2003

## 21 General responsibility for conduct of school

- (1) Subject to any other statutory provision, the conduct of a maintained school shall be under the direction of the school's governing body.
- (2) The governing body shall conduct the school with a view to promoting high standards of educational achievement at the school.
- (3) Regulations may—

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- (a) set out terms of reference for governing bodies of maintained schools,
  - (b) define the respective roles and responsibilities in relation to the conduct of a maintained school (whether generally or with respect to particular matters) of—
    - (i) the local education authority,
    - (ii) the governing body, and
    - (iii) the head teacher, and
  - (c) confer functions on governing bodies and head teachers of such schools.
- (4) The governing body of a maintained school shall, in discharging their functions, comply with—
- (a) the instrument of government, and
  - (b) (subject to any other statutory provision) any trust deed relating to the school.

VALID FROM 01/09/2003

## 22 Training and support of governors

The local education authority shall—

- (a) (to the extent that they are not otherwise required to secure the provision of such information) secure that every governor is provided, free of charge, with such information as they consider appropriate in connection with the discharge of his functions as governor, and
- (b) secure that there is made available to every governor, free of charge, such training as they consider necessary for the effective discharge of those functions.

### Commencement Information

**I14** S. 22 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

VALID FROM 01/03/2003

## 23 Clerk to the governing body

Regulations may make provision—

- (a) requiring the appointment of a clerk to the governing body of a maintained school and authorising or requiring the appointment of clerks to committees of the governing body;
- (b) prescribing the body by whom any such appointment is to be made and any restrictions or other requirements relating to any such appointment;
- (c) as to the dismissal of any such clerk and the procedure to be followed in connection with his dismissal;
- (d) authorising the governing body or a committee of the governing body, where the clerk fails to attend a meeting of theirs, to appoint one of their number to act as clerk for the purposes of the meeting.

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VALID FROM 01/04/2003

## 24 Federations of schools

- (1) In prescribed cases, the governing bodies—
  - (a) of two or more maintained schools,
  - (b) of an existing federation and of one or more maintained schools, or
  - (c) of two or more existing federations,
 may, after complying with prescribed conditions and in accordance with prescribed procedure, provide for their respective schools to be federated for the purposes of this Chapter.
- (2) In this Chapter “federation” means a group of schools that are federated by virtue of this section, and “federated school” means a school forming part of a federation.
- (3) Where any schools are federated by virtue of this section, they shall—
  - (a) have a single governing body constituted under a single instrument of government, and
  - (b) in prescribed cases, be treated as a single school for the purposes of such enactments as may be prescribed, other than any enactment contained in Chapter 2 of Part 2 of the School Standards and Framework Act 1998 (c. 31) (establishment, alteration or discontinuance of schools) or in Part 3 of that Act (school admissions).
- (4) Regulations may make provision—
  - (a) as to the dissolution of governing bodies on the formation of a federation,
  - (b) enabling the governing body of a federation to continue in existence as a body corporate when one or more schools join or leave the federation,
  - (c) as to the circumstances in which and manner in which a federation may be dissolved, or one or more schools may leave a federation,
  - (d) enabling the governing body of a federation that is dissolved to be replaced either by governing bodies for each of the constituent schools or by governing bodies which include the governing body of a new federation,
  - (e) as to the transition from one governing body to another,
  - (f) as to the transfer of property, rights and liabilities between governing bodies, or between local education authorities and governing bodies, and
  - (g) as to such other matters relating to federations, federated schools or the formation or dissolution of federations as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (5) Regulations made by virtue of subsection (4)(f) in relation to the transfer of property, rights and liabilities may—
  - (a) provide for prescribed matters to be determined by the Secretary of State or the National Assembly for Wales,
  - (b) apply with modifications any provision of Schedule 10 to the Education Reform Act 1988 (c. 40) (supplementary provisions with respect to transfers under that Act), or
  - (c) make provision equivalent to that made by any provision of that Schedule.
- (6) In any enactment—

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- (a) any reference to the governing body or governors of a school is to be construed, in relation to a federated school, as a reference to the governing body or governors of the federation, and
- (b) any reference to the instrument of government of a school is to be construed, in relation to a federated school, as a reference to the instrument of government of the federation.

VALID FROM 01/04/2003

## 25 Federations: supplementary provisions

- (1) Regulations may make provision modifying any provision contained in—
  - (a) Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (c. 31) (intervention in schools causing concern), or
  - (b) sections 49 to 51 of, and Schedule 15 to, that Act (financial delegation), in the application of the provision to federated schools or their governing bodies.
- (2) The modifications that may be made by virtue of subsection (1) include, in particular, modifications—
  - (a) enabling powers conferred by the provisions referred to in that subsection to be exercised in relation to all the schools in a federation even though the circumstances by reference to which the powers are exercisable exist only in relation to one or more of those schools, and
  - (b) requiring the apportionment of any costs or expenses incurred by the governing body of a federation.
- (3) If regulations made by virtue of section 24 allow the formation of a federation comprising schools within different categories, the regulations may make provision modifying any enactment which relates to schools within a particular category, or to the governing bodies of schools within a particular category, in the application of the enactment to schools forming part of such a federation or to the governing bodies of such federations.
- (4) In subsection (3) references to categories of maintained schools are references to the categories set out in section 20(1) of the School Standards and Framework Act 1998.

VALID FROM 01/03/2003

## 26 Collaboration between schools

Regulations may—

- (a) enable the governing bodies of two or more maintained schools to arrange for any of their functions to be discharged jointly or by a joint committee of theirs,
- (b) provide for the appointment by two or more governing bodies of a joint committee of those governing bodies for the purposes of discharging any functions in pursuance of any such arrangements, and

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- (c) provide that any enactment relating to those functions or the governing bodies by whom they are to be discharged is to have effect subject to all necessary modifications in its application in relation to those functions and the governing bodies by whom they are to be discharged.

## 27 Power of governing body to provide community facilities etc.

- (1) The governing body of a maintained school shall have power to provide any facilities or services whose provision furthers any charitable purpose for the benefit of—
- (a) pupils at the school or their families, or
  - (b) people who live or work in the locality in which the school is situated.
- (2) The power under subsection (1) includes, in particular, power for a governing body to—
- (a) incur expenditure,
  - (b) enter into arrangements or agreements with any person,
  - (c) co-operate with, or facilitate or co-ordinate the activities of, any person, and
  - (d) provide staff, goods, services and accommodation to any person.
- (3) Subject to the provisions of Chapter 3 of Part 6 of the Education Act 1996 (c. 56) (charges in connection with education), a governing body may charge for any services or facilities provided under this section.
- (4) This section has effect subject to section 28.

### Modifications etc. (not altering text)

**C2** S. 27 modified (E.) (temp. from 2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), **reg. 3(1)**; s. 27 modified (E.) (temp. from 1.10.2002) by [S.I. 2002/2316](#), **reg. 3(1)**

### Commencement Information

**I15** S. 27 partly in force; s. 27 not in force at Royal Assent, see s. 216; s. 27 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), **art. 4** (as amended by [S.I. 2002/2018](#), **arts. 2-4**)

## 28 Limits on power to provide community facilities etc.

- (1) Section 27(1) does not enable a governing body to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in—
- (a) the school's instrument of government, or
  - (b) any scheme under section 48 of the School Standards and Framework Act 1998 (c. 31) (local education authorities' financial schemes) which relates to the school.
- (2) Regulations may make provision preventing governing bodies from doing, by virtue of section 27(1), anything which is specified, or is of a description specified, in the regulations.
- (3) A governing body shall exercise the power conferred by section 27(1) only if and to the extent that they are satisfied that anything which they propose to do will not to

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a significant extent interfere with the performance of any duty imposed on them by section 21(2) or by any other provision of the Education Acts.

- (4) Before exercising the power under section 27(1) a governing body—
- (a) shall consult—
    - (i) the local education authority,
    - (ii) the staff of the school, and
    - (iii) the parents of registered pupils of the school,
  - (b) where the proposed exercise of the power would affect registered pupils of the school and the governing body consider it appropriate in view of their age and understanding to consult all or some of them, shall consult the registered pupils or such of them as the governing body consider it appropriate to consult, and
  - (c) shall consult such other persons as the governing body consider appropriate.
- (5) In exercising the power under section 27(1) or consulting under subsection (4), a governing body shall have regard—
- (a) to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales, and
  - (b) to any advice given to them from time to time by the local education authority.

**Modifications etc. (not altering text)**

**C3** S. 28(3) modified (E.) (temp. from 2.9.2002) by [The Education Act 2002 \(Transitional Provisions etc.\) \(England\) Regulations 2002 \(S.I. 2002/2113\)](#), [reg. 3\(2\)](#)

**Commencement Information**

**I16** S. 28 partly in force; s. 28 not in force at Royal Assent, see s. 216; s. 28 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#) (as amended by [S.I. 2002/2018](#), [arts. 2-4](#))

VALID FROM 01/09/2003

**29 Additional functions of governing body**

- (1) The governing body of a maintained school shall—
- (a) establish procedures for dealing with all complaints relating to the school or to the provision of facilities or services under section 27, other than complaints falling to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of a statutory provision other than this section, and
  - (b) publicise the procedures so established.
- (2) In establishing or publicising procedures under subsection (1), the governing body shall have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (3) The governing body of a maintained school may require pupils in attendance at the school to attend at any place outside the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school.

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- (4) In subsection (3) “maintained school” does not include a maintained nursery school.
- (5) The governing body and head teacher of—
- (a) a community or voluntary controlled school,
  - (b) a community special school, or
  - (c) a maintained nursery school,
- shall comply with any direction given to them by the local education authority concerning the health and safety of persons on the school’s premises or taking part in any school activities elsewhere.

#### Commencement Information

**I17** S. 29 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

**I18** S. 29 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

### 30 Governors’ reports and other information

- (1) Once in every school year the governing body of a maintained school shall prepare a report (a “governors’ report”) dealing with such matters, and otherwise complying with such requirements, as may be specified in regulations.
- (2) Regulations may—
  - (a) impose requirements on the governing body of a maintained school with respect to—
    - (i) the giving of copies of a governors’ report to such persons as may be prescribed, and
    - (ii) making such copies available for inspection at the school;
  - (b) make provision for—
    - (i) enabling the governing body to determine the language or languages in which a governors’ report is to be produced and the form or forms in which it is to be produced;
    - (ii) requiring them to comply with any direction given by the local education authority with respect to any additional language to be used or with respect to any additional form in which the report is to be produced;
  - (c) enable the governors’ report to be combined with any other document whose preparation by the governing body is required by or under any enactment.
- (3) The governing body of a maintained school shall provide the local education authority with such reports in connection with the discharge of the functions of the governing body as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of the authority’s functions.
- (4) The head teacher of a maintained school shall provide the governing body or (as the case may be) the local education authority with such reports in connection with the discharge of his functions as the governing body or the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.



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- (5) Where a requirement under subsection (4) is imposed on the head teacher by the authority—
- (a) the authority shall notify the governing body of that requirement, and
  - (b) the head teacher shall give the governing body a copy of any report made by him in complying with it.

**Modifications etc. (not altering text)**

- C4** S. 30 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), **reg. 3(1)**

**Commencement Information**

- I19** S. 30 partly in force; s. 30 not in force at Royal Assent, see s. 216; s. 30 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), **art. 3** (with transitional provisions and savings in [art. 4](#), [Sch.](#))

PROSPECTIVE

**31 Control of school premises**

Regulations may make provision relating to the control by the governing body of a maintained school of the occupation and use of school premises.

VALID FROM 01/09/2003

**32 Responsibility for fixing dates of terms and holidays and times of sessions**

- (1) In the case of a community, voluntary controlled or community special school or a maintained nursery school—
- (a) the local education authority shall determine the dates when the school terms and holidays are to begin and end, and
  - (b) the governing body shall determine the times of the school sessions.
- (2) In the case of a foundation, voluntary aided or foundation special school the governing body shall determine—
- (a) the dates and times when the school terms and holidays are to begin and end, and
  - (b) the times of the school sessions.
- (3) Regulations may make provision—
- (a) as to the procedure to be followed where the governing body of a school within subsection (1) propose to make any change in the time of the school sessions;
  - (b) as to the implementation of any such proposal;
  - (c) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school.

**Status:** Point in time view as at 19/12/2002. This version of this Act contains provisions that are not valid for this point in time.  
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- (4) In this section “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.

### Commencement Information

**I20** S. 32 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

VALID FROM 01/03/2003

### 33 Annual parents’ meetings

- (1) Once in every school year the governing body of a maintained school shall hold a meeting (an “annual parents’ meeting”) which is open to—
- (a) all parents of registered pupils at the school,
  - (b) the head teacher, and
  - (c) such other persons as the governing body may invite.
- (2) The purpose of the meeting is to provide an opportunity for discussion of the manner in which the school has been, and is to be, conducted, and of any other matters relating to the school raised by parents of registered pupils.
- (3) Regulations may make provision as to circumstances in which a governing body are to be exempt from the obligation imposed by subsection (1).

VALID FROM 01/04/2003

### 34 Arrangements for government of new schools

- (1) Where proposals for the establishment of a maintained school fall to be implemented under any enactment, the local education authority shall make arrangements providing for the constitution of a temporary governing body for the school.
- (2) Once constituted in accordance with arrangements made under subsection (1), the temporary governing body shall continue in existence until such time as the governing body are constituted for the school under an instrument of government.
- (3) The local education authority shall secure that the governing body are so constituted before such date as may be determined in accordance with regulations.
- (4) The requirement for there to be an instrument of government for a school (imposed by section 20) shall take effect in relation to a school falling within subsection (1) above as from the date determined under subsection (3).
- (5) Regulations may make provision with respect to—
- (a) the making and termination of arrangements for the constitution of temporary governing bodies, including such arrangements made in anticipation of proposals falling to be implemented as mentioned in subsection (1),

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- (b) the constitution, meetings and proceedings of temporary governing bodies, the payment of allowances to temporary governors, and the appointment of clerks to such bodies,
  - (c) the exercise by a temporary governing body before the school opening date of the powers conferred by section 27,
  - (d) the transition from a temporary governing body to a governing body constituted under an instrument of government, and
  - (e) such other matters relating to temporary governing bodies as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (6) Regulations under subsection (5) may, in connection with any matters falling within that subsection—
- (a) modify any provision made under any of sections 19, 20 or 23 or by Schedule 1;
  - (b) apply any such provision with or without modifications;
  - (c) make provision corresponding or similar to any such provision.
- (7) Subject to subsection (8), the temporary governing body of a school shall be treated for the purposes of the Education Acts as if they were the governing body during the period—
- (a) beginning with the school opening date, and
  - (b) ending with the time when the governing body are constituted for the school under an instrument of government;
- and for the purposes of section 30(3) of this Act and sections 495 to 498 of the Education Act 1996 (c. 56) (general default powers of the Secretary of State) the temporary governing body of a school shall also be so treated at any time falling before the school opening date.
- (8) Despite subsection (7), nothing in any of the following provisions, namely—
- (a) section 20(1),
  - (b) (subject to any regulations made under subsection (5)) Schedule 1, or
  - (c) (subject to any regulations made under subsection (5)) regulations made under section 19, 20 or 23,
- applies to any temporary governing body.
- (9) In this section “school opening date”, in relation to a new maintained school, means the date when the school first admits pupils.

VALID FROM 01/04/2003

### **35 Staffing of community, voluntary controlled, community special and maintained nursery schools**

- (1) This section applies to—
- (a) community schools,
  - (b) voluntary controlled schools,
  - (c) community special schools, and
  - (d) maintained nursery schools.

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- (2) Any teacher or other member of staff who is appointed to work under a contract of employment at a school to which this section applies is to be employed by the local education authority.
- (3) The teaching staff of any school to which this section applies shall include—
  - (a) a person appointed as head teacher, or
  - (b) a person appointed to carry out the functions of the head teacher of the school—
    - (i) pending the appointment of a head teacher, or
    - (ii) in the absence of the head teacher.
- (4) Regulations may make further provision with respect to the staffing of schools to which this section applies.
- (5) Regulations under subsection (4) may, in particular—
  - (a) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff,
  - (b) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment,
  - (c) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of—
    - (i) the provision of facilities and services under section 27, or
    - (ii) any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body, and
  - (d) confer functions on local education authorities, governing bodies and head teachers.
- (6) In relation to teachers at a voluntary controlled school who are reserved teachers within the meaning of section 58 of the School Standards and Framework Act 1998 (c. 31) (appointment and dismissal of certain teachers at schools with a religious character), regulations under subsection (4) shall have effect subject to the provisions of that section.
- (7) If at any time a school to which this section applies does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998—
  - (a) regulations under subsection (4) shall not apply, and
  - (b) the provisions of Part 1 of Schedule 2 shall apply instead.
- (8) In discharging any function conferred by regulations under subsection (4), a local education authority or the governing body or head teacher of a maintained school shall have regard to any guidance given from time to time—
  - (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the National Assembly for Wales.

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VALID FROM 01/04/2003

### **36 Staffing of foundation, voluntary aided and foundation special schools**

- (1) This section applies to—
  - (a) foundation schools,
  - (b) voluntary aided schools, and
  - (c) foundation special schools.
- (2) Except as provided by regulations under subsection (4), any teacher or other member of staff who is appointed to work under a contract of employment at a school to which this section applies is to be employed by the governing body of the school.
- (3) The teaching staff of any school to which this section applies shall include—
  - (a) a person appointed as head teacher, or
  - (b) a person appointed to carry out the functions of the head teacher of the school—
    - (i) pending the appointment of a head teacher, or
    - (ii) in the absence of the head teacher.
- (4) Regulations may make further provision with respect to the staffing of schools to which this section applies.
- (5) Regulations under subsection (4) may, in particular—
  - (a) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff,
  - (b) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment,
  - (c) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of—
    - (i) the provision of facilities and services under section 27, or
    - (ii) any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body,
  - (d) enable teachers and other staff to be employed by the local education authority in prescribed cases, and
  - (e) confer functions on local education authorities, governing bodies and head teachers.
- (6) Regulations under subsection (4) shall have effect subject to section 58 of the School Standards and Framework Act 1998 (c. 31) (appointment and dismissal of certain teachers at schools with a religious character).
- (7) If at any time a school to which this section applies does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998, regulations under subsection (4) shall have effect subject to the provisions of Part 2 of Schedule 2.
- (8) In discharging any function conferred by regulations under subsection (4), a local education authority or the governing body or head teacher of a maintained school shall have regard to any guidance given from time to time—

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- (a) in relation to England, by the Secretary of State, or
- (b) in relation to Wales, by the National Assembly for Wales.

### **37 Payments in respect of dismissal, etc.**

- (1) It shall be for the governing body of a maintained school to determine—
  - (a) whether any payment should be made by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school, and
  - (b) the amount of any such payment.
- (2) Subsection (1) does not, however, apply in relation to a payment which the local education authority are required to make—
  - (a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned, or
  - (b) under any statutory provision.
- (3) The local education authority—
  - (a) shall take such steps as may be required for giving effect to any determination of the governing body under subsection (1), and
  - (b) shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.
- (4) Subject to subsection (7), costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school's budget share for one or more financial years except in so far as the authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met.
- (5) Subject to subsection (7), costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.
- (6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996 (c. 18).
- (7) Where a local education authority incur costs—
  - (a) in respect of any premature retirement of any member of the staff of a maintained school who is employed for community purposes, or
  - (b) in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school who is employed for those purposes,
 they shall recover those costs from the governing body except in so far as the authority agree with the governing body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.

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- (8) Any amount payable by virtue of subsection (7) by the governing body of a maintained school to the local education authority shall not be met by the governing body out of the school's budget share for any financial year.
- (9) Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the preceding provisions of this section shall apply separately to each part of the payment or costs.
- (10) Regulations may make provision with respect to the recovery from governing bodies of amounts payable by virtue of subsection (7).
- (11) Subsections (1) to (6) do not apply to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998 (c. 31).
- (12) In this section “community purposes” means the purposes of the provision of facilities or services under section 27.

**Modifications etc. (not altering text)**

- C5** S. 37 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), **reg. 3(1)**

**Commencement Information**

- I21** S. 37 in force at 1.10.2002 for E. by [S.I. 2002/2439](#), **art. 3** (with transitional provisions and savings in [art. 4, Sch.](#))

VALID FROM 01/10/2003

**38 Communication with schools**

- (1) In considering whether to issue any guidance or other circular to the governing bodies or head teachers of maintained schools in the exercise of functions relating to education, the Secretary of State and the National Assembly for Wales shall have regard to—
  - (a) the desirability of providing information about good educational practice, while recognising the professional expertise of teachers,
  - (b) the benefits that are expected to result from the issue of the guidance or other circular, and
  - (c) the desirability of avoiding—
    - (i) the sending of excessive material to governing bodies or head teachers, and
    - (ii) the imposition of excessive administrative burdens on governing bodies or head teachers.
- (2) In pursuance of the duty in subsection (1) the Secretary of State shall in respect of each academic year—
  - (a) prepare a report listing—



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- (i) documents sent by him during the year to all governing bodies of maintained schools in England or to all head teachers of such schools, and
  - (ii) documents (not falling within sub-paragraph (i)) sent by him during the year to all governing bodies of maintained schools in England of a particular kind or to all head teachers of such schools of a particular kind, and
- (b) lay a copy of the report before each House of Parliament, and include within it comparative statistics in respect of each of the two preceding academic years on documents falling within this subsection sent out by him.
- (3) In pursuance of the duty in subsection (1) the National Assembly for Wales shall in respect of each academic year prepare and publish a report listing—
- (a) documents sent by the Assembly during the year to all governing bodies of maintained schools in Wales or to all head teachers of such schools, and
  - (b) documents (not falling within paragraph (a)) sent by the Assembly during the year to all governing bodies of maintained schools in Wales of a particular kind or to all head teachers of such schools of a particular kind.
- (4) The documents referred to in subsections (2) and (3) do not include any document sent by the Secretary of State or the National Assembly for Wales—
- (a) otherwise than in the exercise of functions relating to education, or
  - (b) at the request of the person to whom it is sent.
- (5) Each document issued by the Secretary of State or the National Assembly for Wales and falling within subsection (2)(a)(i) or (ii) or (3)(a) or (b) shall list within it previous relevant documents issued by the Secretary of State or the National Assembly for Wales and shall state clearly those documents which are superseded by the current document.
- (6) Each document issued by the Secretary of State or the National Assembly for Wales and falling within subsection (2)(a)(i) or (ii) or (3)(a) or (b) shall state clearly the persons for whom any advice and guidance is intended.
- (7) In this section “academic year” means a period beginning with 1st August and ending with the next 31st July.

### 39 Interpretation of Chapter 1

(1) In this Chapter—

“budget share” has the same meaning as in Part 2 of the School Standards and Framework Act 1998 (c. 31);

“federation” and “federated school” have the meaning given by section 24;

“maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;

“maintained nursery school” means a nursery school which is maintained by a local education authority and is not a special school;

“statutory provision” means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).

(2) In this Chapter—

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- (a) references to a school having a delegated budget are references to the governing body of the school being entitled to manage the school's budget share, and
- (b) where a school has a delegated budget the governing body are accordingly said to have a right to a delegated budget.

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**Commencement Information**

**I22** S. 39 partly in force; s. 39 not in force at Royal Assent, see s. 216; s. 39(2) and the definition of "budget share" in s. 39(1) in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

#### **40 Amendments of Part 2 of School Standards and Framework Act 1998**

Schedule 3 (which contains amendments of Part 2 of the School Standards and Framework Act 1998 relating to the power conferred by section 27 and to the engagement of staff otherwise than as employees) shall have effect.

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**Commencement Information**

**I23** S. 40 partly in force; s. 40 not in force at Royal Assent, see s. 216; s. 40 in force for certain purposes for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#)

## **CHAPTER 2**

### **FINANCING OF MAINTAINED SCHOOLS**

#### *Determination of budgets*

#### **41 Determination of specified budgets of LEA**

(1) After section 45 of the School Standards and Framework Act 1998 there is inserted—

**“45A Determination of specified budgets of LEA**

- (1) For the purposes of this Part, a local education authority's "LEA budget" for a financial year is the amount appropriated by the authority for meeting all expenditure by the authority in that year of a class or description prescribed for the purposes of this subsection.
- (2) For the purposes of this Part, a local education authority's "schools budget" for a financial year is the amount appropriated by the authority for meeting all expenditure by the authority in that year of a class or description prescribed for the purposes of this subsection (which may include expenditure incurred otherwise than in respect of schools).
- (3) For the purposes of this Part, a local education authority's "individual schools budget" for a financial year is the amount remaining after deducting from the authority's schools budget for that year such planned expenditure by the

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authority in respect of that year as they may determine should be so deducted in accordance with regulations.

- (4) Regulations under subsection (3) may—
- (a) prescribe classes or descriptions of expenditure which are authorised or required to be deducted from an authority's schools budget;
  - (b) provide, in relation to any prescribed class or description of expenditure specified in the regulations, that such expenditure may only be deducted subject to either or both of the following, namely—
    - (i) such limit or limits (however framed) as may be specified by or determined in accordance with the regulations, and
    - (ii) such other conditions as may be so specified or determined.
- (5) Before the end of January in any financial year, a local education authority shall—
- (a) determine the proposed amount of their schools budget for the following financial year, and
  - (b) give notice of their determination to the Secretary of State and to the governing body of every school maintained by the authority.”
- (2) In section 45 of that Act (maintained schools to have budget shares), in subsection (1) for “46” there is substituted “ 45A ”.
- (3) Section 46 of that Act (determination of LEA's local schools budget and individual schools budget) shall cease to have effect.

**Modifications etc. (not altering text)**

**C6** S. 41(2) modified (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 4](#)

**Commencement Information**

**I24** S. 41 partly in force; s. 41 not in force at Royal Assent, see s. 216; s. 41(1)(3) in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

**42 Power of Secretary of State to set minimum schools budget**

After section 45A of the School Standards and Framework Act 1998 (c. 31) there is inserted—

**“45B Power of Secretary of State to set minimum schools budget for LEA**

- (1) If it appears to the Secretary of State that, in all the circumstances, the amount proposed in a notice under section 45A(5) as a local education authority's schools budget for a financial year is inadequate, the Secretary of State may, within the period of fourteen days beginning with the day on which the notice was given, give the authority a notice under subsection (4) or (5).
- (2) If at the end of January in any financial year a local education authority have failed to give the Secretary of State a notice under section 45A(5) in relation to their schools budget for the following financial year, the Secretary of State

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may, at any time after the end of that January, give the authority a notice under subsection (4) or (5).

- (3) In this section and section 45C “the year under consideration” means the financial year to which the notice under section 45A(5) relates or, in a case falling within subsection (2), the financial year in relation to which such a notice ought to have been given.
- (4) A notice under this subsection is a notice determining the minimum amount of the authority’s schools budget for the year under consideration.
- (5) A notice under this subsection is a notice which—
  - (a) specifies the amount which the Secretary of State would have determined as the minimum amount of the authority’s schools budget for the year under consideration if he had acted under subsection (4), and
  - (b) states the Secretary of State’s intention to determine the minimum amount of the authority’s schools budget for the following financial year.
- (6) A notice under subsection (4) or (5) must include a statement of the Secretary of State’s reasons for giving the notice.
- (7) The Secretary of State may act under different subsections in relation to different authorities.

#### **45C Effect of notice under section 45B(4)**

- (1) The local education authority may, within the period of fourteen days beginning with the date of a notice under section 45B(4), give the Secretary of State notice of their objection to his determination, giving reasons for their objection.
- (2) Where the local education authority have given notice of their objection under subsection (1), the notice under section 45B(4) shall cease to have effect, but the Secretary of State may by order prescribe the minimum amount of the authority’s schools budget for the year under consideration.
- (3) The amount prescribed under subsection (2) must not be greater than the amount specified in the notice under section 45B(4).
- (4) An order under subsection (2) may relate to two or more authorities.
- (5) No order under subsection (2) may be made in relation to one or more authorities in England unless a draft of the order has been laid before and approved by a resolution of the House of Commons.
- (6) Where—
  - (a) a notice under section 45B(4) has been given to a local education authority and no notice of objection has been given during the period specified in subsection (1), or
  - (b) an order has been made under subsection (2),the local education authority shall determine a schools budget for the year under consideration which is not less than the amount specified in relation to the authority in the notice or order.”

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### Commencement Information

**I25** S. 42 partly in force; s. 42 not in force at Royal Assent, see s. 216; s. 42 in force for E. at 1.10.2002 by S.I. 2002/2439, **art. 3** (with transitional provisions and savings in **art. 4, Sch.**)

## 43 Schools forums

After section 47 of the School Standards and Framework Act 1998 (c. 31) there is inserted—

### *“Schools forums*

#### **47A Schools forums**

- (1) Every local education authority shall in accordance with regulations establish for their area before such date as may be prescribed a body, to be known as a schools forum, representing the governing bodies and head teachers of schools maintained by the authority and, if the authority so determine, also representing such bodies as the authority may from time to time in accordance with regulations determine.
- (2) Subsection (1) does not apply in relation to the Common Council of the City of London or the Council of the Isles of Scilly.
- (3) The purpose of a schools forum is to advise the relevant authority on such matters relating to the authority’s schools budget as may be prescribed by regulations under section 45A(3) or by regulations under this subsection.
- (4) Regulations under section 45A(3) or under subsection (3) may include provision requiring a relevant authority to have regard to advice given by their schools forum, or requiring a relevant authority to consult their schools forum in relation to prescribed matters or before taking prescribed decisions.
- (5) Regulations may make provision as to the constitution, meetings and proceedings of a schools forum.
- (6) Regulations made by virtue of subsection (5) may include provision enabling the Secretary of State in prescribed circumstances to remove from membership of a schools forum any non-schools member.
- (7) Regulations may make provision with respect to expenses of a schools forum.
- (8) Except as provided by regulations, the expenses of a schools forum shall be defrayed by the relevant authority.
- (9) In this section—
  - “non-schools member”, in relation to a schools forum, means a member other than a schools member;
  - “relevant authority”, in relation to a schools forum, means the local education authority by whom the forum is established;
  - “schools member”, in relation to a schools forum, means a member elected to represent governing bodies or head teachers of schools maintained by the relevant authority.”

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### Commencement Information

**I26** S. 43 partly in force; s. 43 not in force at Royal Assent, see s. 216; s. 43 in force for E. at 2.9.2002 by S.I. 2002/2002, art. 4

VALID FROM 01/04/2003

## *Accounts and financial statements*

### **44 Accounts of maintained schools**

- (1) Regulations may require the governing body of a maintained school—
  - (a) to keep prescribed accounts and prescribed records in relation to the accounts,
  - (b) to prepare prescribed financial statements or reports,
  - (c) to comply with prescribed conditions with respect to audit, and
  - (d) to send copies of the accounts, together with such financial statements or reports as may be prescribed, to the local education authority.
- (2) The regulations may—
  - (a) impose on the governing body requirements relating to—
    - (i) resources held by the governing body, and
    - (ii) other resources whose application is controlled by the governing body, and
  - (b) provide that for the purposes of the regulations any resources which, although not held by the governing body, appear to the local education authority to be available for the purposes of the school or for the purposes of the maintenance of any part of the school premises are to be taken to fall within paragraph (a)(ii) unless the governing body satisfy the local education authority that the governing body do not control the application of those resources.
- (3) For the purposes of subsection (2), any powers exercisable by the head teacher are to be taken to be exercisable by the governing body.
- (4) The Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may require a local education authority to give him or it copies of accounts or other documents received by the authority from a governing body in accordance with regulations under this section.
- (5) The regulations may prescribe the form or manner in which, the period by reference to which, and the time within which, anything required by the regulations must be done.
- (6) The Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may—
  - (a) publish information provided in accordance with regulations under this section in such form and manner as he or it considers appropriate,

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- (b) make arrangements for such information to be published in such form and manner, and by such persons, as he or it may specify for the purposes of this section, and
- (c) make regulations requiring local education authorities to publish prescribed categories of such information, together with such supplementary information as may be prescribed, in such form and manner as may be prescribed.

(7) In this section “maintained school” has the same meaning as in Chapter 1.

#### **45 Financial statements**

- (1) Section 52 of the School Standards and Framework Act 1998 (c. 31) (financial statements by local education authority) is amended as follows.
- (2) In subsection (2), the word “and” at the end of paragraph (b) is omitted and after paragraph (c) there is inserted “and
  - (d) accountable resources held, received or expended in the year by any person in relation to a school maintained by the authority.”
- (3) After subsection (2) there is inserted—

“(2A) In subsection (2)(d), “accountable resources”, in relation to a maintained school, means any resources which are not provided by the local education authority but in respect of which an obligation is imposed on the governing body of the school by virtue of regulations under section 44 of the Education Act 2002 (accounts of maintained schools).”

## **CHAPTER 3**

### ADMISSIONS, EXCLUSIONS AND ATTENDANCE

#### *Admission arrangements*

VALID FROM 20/01/2003

#### **46 Admission forums**

After section 85 of the School Standards and Framework Act 1998 there is inserted—

*“Admission forums*

##### **85A Admission forums**

- (1) A local education authority shall in accordance with regulations establish for their area a body, to be known as an admission forum, for the purpose of—



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- (a) advising the authority on such matters connected with the exercise of the authority's functions under this Chapter as may be prescribed, and
  - (b) advising the admission authorities for maintained schools in the area for which the forum is established on—
    - (i) such matters connected with the determination of admission arrangements, and
    - (ii) such other matters connected with the admission of pupils, as may be prescribed.
- (2) The authority may establish sub-committees of the forum.
- (3) Regulations may make provision—
- (a) as to the constitution, meetings and proceedings of an admission forum and of any such sub-committee,
  - (b) as to the manner in which advice is to be given by a forum, and
  - (c) as to the establishment by local education authorities of joint admission forums.
- (4) The bodies mentioned in paragraphs (a) and (b) of subsection (1) shall have regard, in carrying out their functions, to any relevant advice given to them by an admission forum under that subsection.
- (5) The local education authority shall make arrangements for the forum (and any sub-committee established under subsection (2)) to be provided with accommodation and with such services as the authority consider appropriate.”

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#### Commencement Information

**I27** S. 46 partly in force; s. 46 not in force at Royal Assent, see s. 216; s. 46 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

## 47 Admission numbers

- (1) For section 86(5) of the School Standards and Framework Act 1998 (c. 31) (no prejudice for the purposes of subsection (3)(a) to be taken to arise from the admission of a number of pupils not exceeding the relevant standard number or the admission number, whichever is greater) there is substituted—
- “(5) No prejudice shall be taken to arise for the purposes of subsection (3)(a) from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed the number determined under section 89 as the number of pupils in that age group that it is intended to admit to the school in that year; but this subsection does not apply if the conditions set out in subsection (5A) are met in relation to the school and the school year.
- (5A) Those conditions are—
- (a) that the school is one at which boarding accommodation is provided for pupils; and

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- (b) that the determination under section 89 by the admission authority of the admission arrangements which are to apply for that year includes the determinations mentioned in paragraphs (a) and (b) of section 89A(2).
- (5B) Where the conditions set out in subsection (5A) are met in relation to a maintained school and a school year, no prejudice shall be taken to arise for the purposes of subsection (3)(a) from either of the following—
- (a) the admission to the school in that year as boarders of a number of pupils in a relevant age group which does not exceed the number determined under section 89 as the number of pupils in that age group that it is intended to admit to the school in that year as boarders;
  - (b) the admission to the school in that year otherwise than as boarders of a number of pupils in a relevant age group which does not exceed the number determined under section 89 as the number of pupils in that age group that it is intended to admit to the school in that year otherwise than as boarders.”
- (2) After section 89 of that Act there is inserted—

**“89A Determination of admission numbers**

- (1) A determination under section 89 by the admission authority for a maintained school of the admission arrangements which are to apply for a school year shall include a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year.
- (2) Such a determination under section 89 may also, if the school is one at which boarding accommodation is provided for pupils, include—
  - (a) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year as boarders, and
  - (b) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year otherwise than as boarders.
- (3) Regulations may make provision about the making of any determination required by subsection (1), and may in particular require the admission authority for a maintained school to have regard, in making any such determination, to—
  - (a) any prescribed method of calculation, and
  - (b) any other prescribed matter.
- (4) References in this section to the determination of any number include references to the determination of zero as that number.”

**Commencement Information**

**I28** S. 47 partly in force; s. 47 not in force at Royal Assent, see s. 216; s. 47 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

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## 48 Co-ordination of admission arrangements

After section 89A of the School Standards and Framework Act 1998 (c. 31) there is inserted—

### “89B Co-ordination of admission arrangements

- (1) Regulations may require a local education authority—
  - (a) to formulate, for any academic year in relation to which prescribed conditions are satisfied, a qualifying scheme for co-ordinating the arrangements for the admission of pupils to maintained schools in their area, and
  - (b) to take prescribed action with a view to securing the adoption of the scheme by themselves and each governing body who are the admission authority for a maintained school in their area.
- (2) Subject to subsection (3), the Secretary of State may make, in relation to the area of a local education authority and an academic year, a scheme for co-ordinating the arrangements, or assisting in the co-ordination of the arrangements, for the admission of pupils to maintained schools in that area.
- (3) A scheme may not be made under subsection (2) in relation to a local education authority and an academic year if, before the prescribed date in the year preceding the year in which that academic year commences—
  - (a) a scheme formulated by the local education authority in accordance with subsection (1) is adopted in the prescribed manner by the persons mentioned in paragraph (b) of that subsection, and
  - (b) the authority provide the Secretary of State with a copy of the scheme and inform him that the scheme has been so adopted.
- (4) The Secretary of State may by regulations require local education authorities to provide other local education authorities with such information as may be required by them in connection with the exercise of any of their functions under this Chapter.
- (5) Regulations may provide—
  - (a) that each local education authority shall secure that, subject to such exceptions as may be prescribed, no decision made by any admission authority for a maintained school in their area to offer or refuse a child admission to the school shall be communicated to the parent of the child except on a single day, designated by the local education authority, in each year, or
  - (b) that, subject to such exceptions as may be prescribed, a decision made by the admission authority for a maintained school to offer or refuse a child admission to the school shall not be communicated to the parent of the child except on a prescribed day.
- (6) In this section—

“academic year” means a period commencing with 1st August and ending with the next 31st July;

“qualifying scheme” means a scheme that meets prescribed requirements.

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### **89C Further provision about schemes adopted or made by virtue of section 89B**

- (1) Regulations may make provision about the contents of schemes under section 89B(2), including provision about the duties that may be imposed by such schemes on—
  - (a) local education authorities, and
  - (b) the admission authorities for maintained schools.
- (2) Regulations may provide that where a local education authority or the governing body of a maintained school have, in such manner as may be prescribed, adopted a scheme formulated by a local education authority for the purpose mentioned in section 89B(1)(a), sections 496 and 497 of the Education Act 1996 shall apply as if any obligations imposed on the local education authority or governing body under the scheme were duties imposed on them by that Act.
- (3) Regulations may provide that where any decision as to whether a child is to be granted or refused admission to a maintained school falls to be made in prescribed circumstances, the decision shall, if a scheme adopted or made by virtue of this section so provides, be made by the local education authority regardless of whether they are the admission authority for the school.
- (4) Before proposing a scheme for adoption under section 89B(1) a local education authority shall comply with such requirements as to consultation as may be prescribed.
- (5) Regulations under subsection (4) may in particular require consultations to be undertaken with a view to securing that the arrangements for the admission of pupils to maintained schools in the areas of different local education authorities are, so far as is reasonably practicable, compatible with each other.
- (6) Before making a scheme under section 89B(2) in relation to the area of any local education authority, the Secretary of State shall consult—
  - (a) the local education authority, and
  - (b) any governing body who are the admission authority for a school which appears to the Secretary of State to be a school to which the scheme will apply.
- (7) A scheme made under section 89B(2) may be varied or revoked by the Secretary of State.”

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#### **Commencement Information**

**129** S. 48 partly in force; s. 48 not in force at Royal Assent, see s. 216; s. 48 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

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## 49 Repeal of power to make certain special arrangements for preserving religious character

Section 91 of the School Standards and Framework Act 1998 (c. 31) (special arrangements to preserve religious character of foundation or voluntary aided school) shall cease to have effect.

### Commencement Information

**I30** S. 49 wholly in force at 19.12.2002; s. 49 not in force at Royal Assent, see s. 216; s. 49 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.) and in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I (with transitional provisions and savings in art. 7)

VALID FROM 20/01/2003

## 50 Admission appeals

In section 94 of the School Standards and Framework Act 1998 (appeal arrangements: general) for subsection (5) there is substituted—

“(5) An appeal pursuant to any arrangements made under this section shall be to an appeal panel constituted in accordance with regulations.

(5A) Regulations may make provision about the making of appeals pursuant to such arrangements, including provision—

- (a) as to the procedure on such appeals,
- (b) for the payment by the local education authority of allowances to members of an appeal panel, and
- (c) as to the grounds on which an appeal panel may, in the case of an appeal to which subsection (5B) applies, determine that a place is to be offered to the child concerned.

(5B) This subsection applies to any appeal against a decision made on the ground that prejudice of the kind referred to in section 86(3)(a) would arise as mentioned in subsection (4) of that section.

(5C) Regulations made by virtue of subsection (5A)(b) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an appeal panel.”

### Commencement Information

**I31** S. 50 partly in force; s. 50 not in force at Royal Assent, see s. 216; s. 50 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch. para. 3)

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## 51 Further amendments relating to admission arrangements

Schedule 4 (which contains further amendments relating to admission arrangements) shall have effect.

### Commencement Information

**I32** S. 51 partly in force; s. 51 not in force at Royal Assent, see s. 216; s. 51 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in Sch.) and in force for E. insofar as not already in force at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

### *Exclusion of pupils*

## 52 Exclusion of pupils

- (1) The head teacher of a maintained school may exclude a pupil from the school for a fixed period or permanently.
- (2) The teacher in charge of a pupil referral unit may exclude a pupil from the unit for a fixed period or permanently.
- (3) Regulations shall make provision—
  - (a) requiring prescribed persons to be given prescribed information relating to any exclusion under subsection (1) or (2),
  - (b) requiring the responsible body, in prescribed cases, to consider whether the pupil should be reinstated,
  - (c) requiring the local education authority to make arrangements for enabling a prescribed person to appeal, in any prescribed case, to a panel constituted in accordance with the regulations against any decision of the responsible body not to reinstate a pupil, and
  - (d) as to the procedure on appeals.
- (4) Regulations under this section may also make provision—
  - (a) for the payment by the local education authority of allowances to members of a panel constituted in accordance with the regulations,
  - (b) requiring a person or body exercising functions under subsection (1) or (2) or under the regulations to have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales,
  - (c) requiring local education authorities to give prescribed information to the Secretary of State or the Assembly, as the case may be, and
  - (d) in relation to any other matter relating to the exercise of the powers conferred by subsections (1) and (2).
- (5) In subsection (3), “the responsible body” means—
  - (a) in relation to exclusion from a maintained school, the governing body of the school, and
  - (b) in relation to exclusion from a pupil referral unit, such person as may be prescribed;

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and, in relation to any time when no responsible body is prescribed in relation to permanent exclusion from a pupil referral unit, subsection (3) shall have effect in relation to such an exclusion with the omission of paragraph (b) and as if the decision referred to in paragraph (c) were the decision of the teacher in charge of the unit permanently to exclude the pupil.

- (6) Regulations made by virtue of subsection (4)(a) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (c. 70) (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of a panel constituted in accordance with regulations under this section.
- (7) Regulations shall make provision enabling a prescribed person, in any prescribed case, to appeal to a panel constituted in accordance with the regulations against any decision made after 31st August 1994 under paragraph 7 of Schedule 1 to the Education Act 1996 (c. 56), or any enactment repealed by that Act, in relation to the permanent exclusion of a pupil from a pupil referral unit; and the provision that may be made by regulations made by virtue of this subsection in relation to any such decision includes any provision that could after the commencement of subsections (2) to (4) be made in relation to a decision falling within subsection (3)(c).
- (8) Regulations under this section which—
- (a) relate to exclusions from pupil referral units (whether before or after the passing of this Act), and
  - (b) are made before the repeal by this Act of the existing enactments is fully in force,
- may provide for any provision made by or under the existing enactments to have effect in relation to exclusions from pupil referral units with such modifications as may be prescribed.
- (9) In subsection (8) “the existing enactments” means sections 64(2) and (3) and 65 to 67 of, and Schedule 18 to, the School Standards and Framework Act 1998 (c. 31).
- (10) In this section “exclude”, in relation to the exclusion of a child from a school or pupil referral unit, means exclude on disciplinary grounds (and “exclusion” shall be construed accordingly).
- (11) In this section “maintained school” has the same meaning as in Chapter 1.

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**Modifications etc. (not altering text)**

- C7** S. 52 modified (E.) (temp. from 20.1.2003) by [The Education Act 2002 \(Modification of Provisions\) \(No. 2\) \(England\) Regulations 2002 \(S.I. 2002/2953\)](#), [reg. 5](#)

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**Commencement Information**

- I33** S. 52 partly in force; s. 52(7)-(11) in force at Royal Assent, see s. 216(1); s. 52(1)-(6) in force for E. at 20.1.2003 by [S.I. 2002/2952](#), [art. 2](#) (with savings and transitional provisions in [art. 3](#), [Sch. para. 4](#))



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VALID FROM 01/06/2004

*Attendance targets*

**53 Attendance targets**

- (1) Section 63 of the School Standards and Framework Act 1998 (power to make regulations for targets relating to unauthorised absences) is amended as follows.
- (2) In subsections (1) and (3), the word “unauthorised” is omitted.
- (3) After subsection (3) there is inserted—
  - “(3A) Provision made by regulations under this section may relate to—
    - (a) absences which are authorised pursuant to regulations under section 434 of the Education Act 1996, or
    - (b) absences which are not so authorised, or
    - (c) both.”
- (4) In subsection (4), the definition of “unauthorised absence” is omitted.

**PART 4**

POWERS OF INTERVENTION

*Schools causing concern*

**54 Duty to notify where inspection shows school causing concern**

After section 16 of the School Inspections Act 1996 (c. 57) there is inserted—

**“16A Duty to notify where inspection shows school causing concern**

- (1) Subsection (2) applies in relation to a school falling within section 11(2) where—
  - (a) following an inspection of the school under Part 1 by a member of the Inspectorate, that member has informed the Chief Inspector of his opinion—
    - (i) that the school has serious weaknesses, or
    - (ii) that special measures are required to be taken in relation to the school,
  - (b) following an inspection of the school under Part 1 by a registered inspector, the Chief Inspector has been notified in writing by the inspector of the inspector’s opinion that the school has serious weaknesses, or
  - (c) the Chief Inspector agrees with the opinion of a registered inspector, expressed in a draft report submitted to the Chief Inspector under section 13(2), that special measures are required to be taken in relation to the school.

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- (2) Where this subsection applies, the Chief Inspector shall without delay give the Secretary of State a notice in writing stating that the case falls within paragraph (a), (b) or (c) of subsection (1).
- (3) On receiving a notice under subsection (2), the Secretary of State shall without delay give the local education authority a notice in writing stating that he has been informed by the Chief Inspector that the case falls within paragraph (a), (b) or (c) of subsection (1).
- (4) For the purposes of this section a school has serious weaknesses if, although giving its pupils in general an acceptable standard of education, it has significant weaknesses in one or more areas of its activities.”

#### Commencement Information

**I34** S. 54 wholly in force at 19.12.2002; s. 54 not in force at Royal Assent, see s. 216; s. 54 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#) and in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

## 55 Cases in which powers of intervention exercisable

- (1) In section 15 of the School Standards and Framework Act 1998 (c. 31) (cases in which LEA may exercise powers of intervention) for subsection (4) there is substituted—

“(4) This section applies to a maintained school by virtue of this subsection if—

- (a) following an inspection of the school under Part 1 of the School Inspections Act 1996, the Chief Inspector has given the Secretary of State a notice under subsection (2) of section 16A of that Act in a case falling within subsection (1)(a) or (b) of that section (schools having serious weaknesses), and
- (b) where any subsequent inspection of the school has been made under Part 1 of that Act, the notice has not been superseded by—
  - (i) the person making the subsequent inspection making a report stating that in his opinion the school no longer has serious weaknesses, or
  - (ii) the Chief Inspector giving the Secretary of State a notice under subsection (2) of section 16A of that Act in a case falling within subsection (1)(c) of that section (schools requiring special measures).”

- (2) For subsection (6) of that section there is substituted—

“(6) This section applies to a maintained school by virtue of this subsection if—

- (a) following an inspection of the school under Part 1 of the School Inspections Act 1996, the Chief Inspector has given the Secretary of State a notice under subsection (2) of section 16A of that Act in a case falling within subsection (1)(c) of that section (schools requiring special measures), and
- (b) where any subsequent report of an inspection of the school has been made under Part 1 of that Act, the person making it did not state that in his opinion special measures were not required to be taken in relation to the school.”

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#### Commencement Information

**I35** S. 55 wholly in force at 19.12.2002; s. 55 not in force at Royal Assent, see s. 216; s. 55 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#) and in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

### 56 Power of Secretary of State to appoint additional governors or direct closure

(1) In section 18 of the School Standards and Framework Act 1998 (c. 31) (power of Secretary of State to appoint additional governors) for subsection (1) there is substituted—

“(1) If at any time section 15 applies to a maintained school by virtue of either of the following provisions of that section, namely—

(a) subsection (4) (school with serious weaknesses), or

(b) subsection (6) (school requiring special measures),

the Secretary of State may appoint such number of additional governors as he thinks fit; and he may nominate one of those governors to be the chairman of the governing body in place of any person who has been elected as chairman of that body.”

(2) In section 19 of that Act (power of Secretary of State to direct closure of school) for subsection (1) there is substituted—

“(1) If at any time section 15 applies to a maintained school by virtue of either of the following provisions of that section, namely—

(a) subsection (4) (school with serious weaknesses), or

(b) subsection (6) (school requiring special measures),

the Secretary of State may give a direction to the local education authority requiring the school to be discontinued on a date specified in the direction.”

(3) Schedule 5 (which contains amendments consequential on the provisions of section 55 and this section) shall have effect.

#### Commencement Information

**I36** S. 56 wholly in force at 19.12.2002; s. 56 not in force at Royal Assent, see s. 216; s. 56 in force for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#) and in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

### 57 Power of LEA to provide for governing body to consist of interim executive members

(1) In section 14(2) of the School Standards and Framework Act 1998 (which lists the intervention powers of local education authorities), before the “and” at the end of paragraph (a) there is inserted—

“(aa) section 16A (power to provide for governing body to consist of interim executive members);”.

(2) After section 16 of that Act there is inserted—

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### **“16A Power of LEA to provide for governing body to consist of interim executive members**

- (1) If at any time this section applies to a maintained school in accordance with section 14(1), then (subject to subsections (2) and (3)) the local education authority may, with the consent of the Secretary of State, give the governing body a notice in writing stating that, as from a date specified in the notice, the governing body are to be constituted in accordance with Schedule 1A (governing bodies consisting of interim executive members).
- (2) Where this section so applies in the case of a school falling within section 15(4) (school with serious weaknesses) or section 15(6) (school requiring special measures), the power conferred by subsection (1) above is exercisable only if the following conditions are satisfied, namely—
  - (a) the Secretary of State has given the local education authority a notice under section 16A(3) of the School Inspections Act 1996, and
  - (b) a period of not less than ten days has elapsed since the date of the notice.
- (3) The Secretary of State may in respect of any particular school determine that subsection (2)(b) shall have effect as if the reference to ten days were to such shorter period as he may determine.
- (4) Before exercising the power conferred by subsection (1), the local education authority shall consult—
  - (a) the governing body of the school,
  - (b) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
  - (c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.”

#### **Commencement Information**

**I37** S. 57 partly in force; s. 57 not in force at Royal Assent, see s. 216; s. 57 in force for E. at 2.9.2002 by S.I. 2002/2002, [art. 4](#)

### **58 Power of Secretary of State to provide for governing body to consist of interim executive members**

After section 18 of the School Standards and Framework Act 1998 (c. 31) there is inserted—

#### **“18A Power of Secretary of State to provide for governing body to consist of interim executive members**

- (1) If at any time section 15 applies to a maintained school by virtue of either of the following provisions of that section, namely—
  - (a) subsection (4) (school with serious weaknesses), or
  - (b) subsection (6) (school requiring special measures),

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the Secretary of State may give the governing body a notice in writing stating that, as from the date specified in the notice, the governing body are to be constituted in accordance with Schedule 1A (governing bodies consisting of interim executive members).

- (2) Before exercising the power conferred by subsection (1), the Secretary of State shall consult—
- (a) the local education authority,
  - (b) the governing body of the school,
  - (c) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
  - (d) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.
- (3) The Secretary of State is not obliged to consult the persons mentioned in subsection (2)(b), (c) and (d) if the local education authority have consulted them under subsection (4) of section 16A in relation to a proposed notice under subsection (1) of that section.”

**Commencement Information**

**I38** S. 58 partly in force; s. 58 not in force at Royal Assent, see s. 216; s. 58 in force for E. at 2.9.2002 by [S.I. 2002/2002, art. 4](#)

**59 Governing bodies consisting of interim executive members**

- (1) After section 19 of the School Standards and Framework Act 1998 (c. 31) there is inserted—

*“Governing bodies consisting of interim executive members*

**19A Governing bodies consisting of interim executive members**

The provisions of Schedule 1A shall have effect in relation to any school in respect of which a notice has been given—

- (a) under section 16A(1), by the local education authority, or
- (b) under section 18A(1), by the Secretary of State.”

- (2) After Schedule 1 to that Act there is inserted, as Schedule 1A, the Schedule set out as Schedule 6 to this Act.

**Commencement Information**

**I39** S. 59 partly in force; s. 59 not in force at Royal Assent, see s. 216; s. 59 in force for E. at 2.9.2002 by [S.I. 2002/2002, art. 4](#)

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### *Local education authorities*

## **60 Powers of Secretary of State to secure proper performance of LEA's functions**

(1) Section 497A of the Education Act 1996 (c. 56) (power to secure proper performance of functions of local education authority) is amended as follows.

(2) For subsection (1) there is substituted—

“(1) This section applies to a local education authority’s functions under this Act and to other functions (of whatever nature) which are conferred on them in their capacity as a local education authority.”

(3) In subsection (2), for “(3) or (4)” there is substituted “ (4), (4A) or (4B) ”.

(4) After subsection (2) there is inserted—

“(2A) The Secretary of State may also exercise his powers under subsection (4), (4A) or (4B) where—

- (a) he has given a previous direction under subsection (4), (4A) or (4B) in relation to a local education authority in respect of any function to which this section applies, and
- (b) he is satisfied that it is likely that if no further direction were given under subsection (4), (4A) or (4B) on the expiry or revocation of the previous direction the authority would fail in any respect to perform that function to an adequate standard (or at all).”

(5) Subsection (3) is omitted.

(6) For subsection (4) there is substituted—

“(4) The Secretary of State may under this subsection give the authority or an officer of the authority such directions as the Secretary of State thinks expedient for the purpose of securing that the function is performed on behalf of the authority by such person as is specified in the direction; and such directions may require that any contract or other arrangement made by the authority with that person contains such terms and conditions as may be so specified.”

(7) After subsection (4) there is inserted—

“(4A) The Secretary of State may under this subsection direct that the function shall be exercised by the Secretary of State or a person nominated by him and that the authority shall comply with any instructions of the Secretary of State or his nominee in relation to the exercise of the function.

(4B) The Secretary of State may under this subsection (whether or not he exercises the power conferred by subsection (4) or (4A) in relation to any function) give the authority or an officer of the authority such other directions as the Secretary of State thinks expedient for the purpose of securing that the function is performed to an adequate standard.”

(8) For subsection (5) there is substituted—

“(5) Where the Secretary of State considers it expedient that—

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- (a) in the case of directions given under subsection (4), the person specified in the directions, or
- (b) in the case of directions given under subsection (4A), the Secretary of State or a person nominated by him,

should perform other functions to which this section applies in addition to the function to which subsection (2) or (2A) applies, the directions under subsection (4) or (4A) may relate to the performance of those other functions as well; and in considering whether it is expedient that that person should perform any such additional functions, the Secretary of State may have regard to financial considerations.”

(9) In subsection (6), for paragraph (b) there is substituted—

“(b) have effect for a period specified in the direction unless revoked earlier by the Secretary of State.”

(10) In subsection (7), for “(3) or (4)” there is substituted “ (4), (4A) or (4B) ”.

#### Commencement Information

**I40** S. 60 partly in force; s. 60 not in force at Royal Assent, see s. 216; s. 60 in force for E. at 26.7.2002 by [S.I. 2002/2002, art. 3](#)

## 61 Power to secure proper performance: duty of authority where directions contemplated

After section 497A of the Education Act 1996 (c. 56) there is inserted—

### “497AA Power to secure proper performance: duty of authority where directions contemplated

Where, in relation to any function to which section 497A applies, the Secretary of State—

- (a) is satisfied as mentioned in subsection (2) or (2A)(b) of that section, and
- (b) has notified the local education authority that he is so satisfied and that he is contemplating the giving of directions under subsection (4) or (4A) of that section,

the authority shall give the Secretary of State, and any person authorised by him for the purposes of this section, all such assistance, in connection with the proposed exercise of the function by the Secretary of State or another person in pursuance of directions, as they are reasonably able to give.”

#### Commencement Information

**I41** S. 61 partly in force; s. 61 not in force at Royal Assent, see s. 216; s. 61 in force for E. at 26.7.2002 by [S.I. 2002/2002, art. 3](#)

## 62 Power to secure proper performance: further provisions

(1) Section 497B of the Education Act 1996 is amended as follows.



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- (2) In subsection (1), for the words from “section 497A(4)” to “those directions” there is substituted “ section 497A(4) or (4A) to a local education authority or to an officer of such an authority, the specified person ”.
- (3) After that subsection there is inserted—
- “(1A) In this section “the specified person” means—
- (a) in relation to directions under section 497A(4), the person specified in the directions, and
  - (b) in relation to directions under section 497A(4A), the Secretary of State or the person nominated by him.”

#### Commencement Information

**I42** S. 62 partly in force; s. 62 not in force at Royal Assent, see s. 216; s. 62 in force for E. at 1.10.2002 by S.I. 2002/2439, [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

### 63 Power to require LEA to obtain advisory services

- (1) This section applies where—
- (a) in relation to one or more schools maintained by a local education authority, section 15 of the School Standards and Framework Act 1998 (c. 31) (cases where local education authority may exercise powers of intervention) applies by virtue of either of the following provisions of that section—
    - (i) subsection (4) (school with serious weaknesses), or
    - (ii) subsection (6) (school requiring special measures), and
  - (b) it appears to the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) that the local education authority—
    - (i) have not been effective or are unlikely to be effective in eliminating deficiencies in the conduct of that school or those schools,
    - (ii) are unlikely to be effective in eliminating deficiencies in the conduct of other schools which may in the future fall within paragraph (a), or
    - (iii) maintain a disproportionate number of schools falling within that paragraph.
- (2) The Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may direct the local education authority to enter into a contract or other arrangement with a person specified in the direction, or a person falling within a class so specified, for the provision to the authority or the governing body of any school maintained by them (or both), of specified services of an advisory nature.
- (3) The direction may require the contract or other arrangement to contain specified terms and conditions.
- (4) In this section “school” means a maintained school within the meaning of Chapter 2 of Part 1 of the School Standards and Framework Act 1998 (c. 31).
- (5) Any direction given under this section shall be enforceable, on an application made on behalf of the Secretary of State or, as the case may be, of the National Assembly for Wales, by a mandatory order.

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### Commencement Information

**I43** S. 63 partly in force; s. 63 not in force at Royal Assent, see s. 216; s. 63 in force for E. at 1.10.2002 by S.I. 2002/2439, **art. 3** (with transitional provisions and savings in **art. 4, Sch.**)

## 64 Provisions supplementary to section 63

- (1) Where section 63 applies in relation to a local education authority and the Secretary of State or the National Assembly for Wales has notified the authority that he or it is contemplating the giving of a direction under that section, the authority shall give the Secretary of State or the Assembly, and any person authorised by the Secretary of State or the Assembly for the purposes of this subsection, such assistance, in connection with the proposed contract or other arrangement, as the authority are reasonably able to give.
- (2) Where a direction under section 63 is given to a local education authority, the relevant person shall be entitled, for the purposes of providing the advisory services, to exercise the powers conferred by subsections (3) to (6).
- (3) The relevant person shall have at all reasonable times—
  - (a) a right of entry to the premises of the authority, and
  - (b) a right to inspect, and take copies of, any records or other documents kept by the authority, and any other documents containing information relating to the authority, which he considers relevant to the provision of the advisory services.
- (4) Section 497B(3) of the Education Act 1996 (c. 56) (right of access to computers etc) applies in relation to the exercise by the relevant person of the right conferred by subsection (3) as it applies to the exercise by the specified person (within the meaning of that section) of the right conferred by section 497B(2) of that Act.
- (5) Without prejudice to subsection (3), the authority shall give the relevant person all assistance in connection with the provision of the advisory services which they are reasonably able to give.
- (6) Subsection (3) applies in relation to any school maintained by the authority as it applies in relation to the authority; and without prejudice to that subsection (as it so applies)—
  - (a) the governing body of any such school shall give the relevant person all assistance in connection with the provision of the advisory services which they are reasonably able to give, and
  - (b) the governing body of any such school and the authority shall secure that all such assistance is also given by persons who work at the school.
- (7) In this section—
 

“the advisory services” means the services to be provided in pursuance of the direction under section 63;

“documents” and “records” each include information recorded in any form;

“the relevant person” means—

  - (a) the person specified under section 63(2), or
  - (b) where the direction specifies a class of persons, the person with whom the local education authority enter into the contract or other arrangement required by the direction,

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and includes any person assisting that person in the provision of the advisory services.

#### Commencement Information

**I44** S. 64 partly in force; s. 64 not in force at Royal Assent, see s. 216; s. 64 in force for E. at 1.10.2002 by S.I. 2002/2439, **art. 3** (with transitional provisions and savings in **art. 4, Sch.**)

## PART 5

### SCHOOL ORGANISATION

#### *Academies and city colleges*

#### 65 Academies

(1) In the Education Act 1996 (c. 56), for section 482 (city technology colleges, city colleges for the technology of the arts and city academies) there is substituted—

##### “482 Academies

- (1) The Secretary of State may enter into an agreement with any person under which—
  - (a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2) and such other characteristics as are specified in the agreement, and
  - (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings.
- (2) The characteristics mentioned above are that the school—
  - (a) has a curriculum satisfying the requirements of section 78 of the Education Act 2002, but with an emphasis on a particular subject area, or particular subject areas, specified in the agreement, and
  - (b) provides education for pupils of different abilities who are wholly or mainly drawn from the area in which the school is situated.
- (3) Before entering into an agreement under this section, the Secretary of State must consult the following about the establishment of the school—
  - (a) the local education authority in whose area the school is to be situated; and
  - (b) if the Secretary of State thinks a significant proportion of the pupils at the school is likely to be resident within the area of another local education authority, that authority.
- (4) An agreement under this section shall make any payments by the Secretary of State dependent on the fulfilment of—
  - (a) conditions and requirements imposed for the purpose of securing that no charge is made in respect of admission to (or attendance at)

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- the school or, subject to such exceptions as may be specified in the agreement, in respect of education provided at the school, and
- (b) such other conditions and requirements in relation to the school as are specified in the agreement.
- (5) A school to which an agreement under this section relates shall be known as an Academy.
- (6) Schedule 35A (which makes provision about land in relation to Academies) has effect.”
- (2) In section 483 of that Act (financial provisions), in subsection (3) (agreements shall include provision for capital repayment), for “shall” there is substituted “ may ”.
- (3) Schedule 7 (which inserts a new Schedule into the Education Act 1996 (c. 56) to make provision about land in relation to Academies, and makes other supplementary provision about Academies) shall have effect.

VALID FROM 20/01/2003

## 66 Arrangements for admission of pupils to Academies

After section 85A of the School Standards and Framework Act 1998 (c. 31) there is inserted—

### “85B Functions of admission forums in relation to Academies

- (1) Regulations may authorise or require an admission forum established by a local education authority under section 85A to give advice to the governing body of any Academy in the authority’s area on any matter corresponding to a matter prescribed under subsection (1)(b) of that section.
- (2) The governing body of an Academy shall have regard, in conducting the Academy, to any relevant advice given to them by an admission forum by virtue of subsection (1).”

### Commencement Information

**I45** S. 66 partly in force; s. 66 not in force at Royal Assent, see s. 216; s. 66 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

## 67 Conversion of city academies into Academies

Where a school is known immediately before the coming into force of section 65 as a city academy—

- (a) the agreement made in relation to that school under section 482 of the Education Act 1996 as it had effect at the time the agreement was made shall for all purposes be regarded as having been made under that section as substituted by section 65, and
- (b) accordingly, the school shall be known as an Academy.

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## 68 City colleges

- (1) This section applies to a school which is known immediately before the coming into force of section 65 as a city technology college or city college for the technology of the arts.
- (2) If the proprietor of the school and the Secretary of State so agree—
  - (a) the agreement made in relation to the school under section 482 of the Education Act 1996 (c. 56) as it had effect at the time the agreement was made shall for all purposes be regarded as having been made under that section as substituted by section 65, and
  - (b) accordingly, the school shall be known as an Academy.
- (3) Subject to subsection (2), the agreement made in relation to the school under section 482 of the Education Act 1996 as it had effect at the time the agreement was made is not affected by anything in section 65.

## 69 Uniform statutory trusts

In section 557 of the Education Act 1996 (uniform statutory trusts), in the definition of “relevant school” in subsection (10), after “means a relevant school” there is inserted “, Academy, city technology college or city college for the technology of the arts, ”.

VALID FROM 01/04/2003

### *Proposals to establish, alter or discontinue schools*

VALID FROM 01/06/2003

## 70 Proposals for additional secondary schools

- (1) A local education authority in England may publish a notice under this section inviting proposals for the establishment of any school falling within subsection (2) as an additional secondary school.
- (2) The following schools fall within this subsection—
  - (a) a community school;
  - (b) a foundation school;
  - (c) a voluntary school;
  - (d) an Academy.
- (3) A notice under this section must—
  - (a) identify a possible site for the school,
  - (b) specify a date, being a date after the prescribed interval, by which proposals must be submitted,
  - (c) specify such other matters as may be prescribed, and
  - (d) be published in the prescribed manner.
- (4) Proposals made pursuant to a notice under this section must—
  - (a) contain the prescribed information, and

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- (b) be submitted to the local education authority before the date specified in the notice.
- (5) After the date specified in a notice published by a local education authority under this section the authority—
  - (a) shall publish under this section any proposals submitted pursuant to the notice in accordance with subsection (4), and
  - (b) may publish under this section proposals of their own for the establishment of a community or foundation school as an additional secondary school.
- (6) Regulations may prescribe—
  - (a) the manner in which proposals under this section must be published, and
  - (b) the information which proposals within subsection (5)(b) must contain.
- (7) For the purposes of this section, a school is “additional” if it does not replace a secondary school falling within subsection (2) which has been or is to be discontinued; and in determining for the purposes of this section whether one school replaces another regard shall be had to any guidance given from time to time by the Secretary of State.
- (8) For the purposes of this section “secondary school” does not include —
  - (a) a middle school, or
  - (b) a school which provides education suitable only to the requirements of persons above compulsory school age.
- (9) Schedule 8 (which makes provision in relation to the consideration, approval and implementation of proposals published under this section) shall have effect.

VALID FROM 01/06/2003

## **71 Duty of LEAs to secure proposals**

- (1) The Secretary of State may give a direction to a local education authority in England under this section where he is of the opinion that the provision for primary or secondary education—
  - (a) in the area of the authority, or
  - (b) in any part of that area,
 is, or is likely to become, insufficient.
- (2) Where a direction is given to a local education authority under this section, the authority shall, within the time specified in the direction, do either or both of the following as the authority think fit—
  - (a) exercise their powers under section 28, 29 or 31 of the School Standards and Framework Act 1998 (c. 31) to publish proposals for the establishment, alteration or discontinuance of schools;
  - (b) exercise their power under section 70(1) (notice inviting proposals for establishment of additional secondary schools).
- (3) A local education authority shall comply with a direction under this section—

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- (a) with a view to securing that provision is made for such additional number of pupils in the area, or in any such part of the area, as may be specified in the direction, and
  - (b) applying such principles as may be specified in the direction.
- (4) Where the Secretary of State has given a direction to a local education authority under this section and—
- (a) the authority has not complied with the direction within the time specified in it, or
  - (b) the authority has complied with it, but the Secretary of State is not satisfied that the provision referred to in subsection (3)(a) will be secured,
- the Secretary of State may make any such proposals as might have been made by the authority under subsection (2)(a) or, by virtue of subsection (2)(b), under section 70(5)(b).
- (5) Proposals made by the Secretary of State under subsection (4) shall—
- (a) contain the prescribed information,
  - (b) be published by the Secretary of State in the prescribed manner, and
  - (c) be sent by the Secretary of State to the school organisation committee for the area to which they relate.
- (6) Paragraph 4 of Schedule 7 to the School Standards and Framework Act 1998 applies in relation to this section as follows—
- (a) sub-paragraphs (1) to (5) apply in relation to a direction given under this section, in relation to the whole or part of the area of a local education authority, as they apply in relation to an order made under paragraph 2(2) or 3(2) of that Schedule, in relation to the area of such an authority;
  - (b) sub-paragraphs (6) and (7) apply in relation to proposals made by a local education authority in the exercise, pursuant to such a direction, of their powers under section 28, 29 or 31 of that Act, as they apply in relation to the proposals referred to in those sub-paragraphs.
- (7) Paragraphs 7 to 10 and 16 of that Schedule apply in relation to proposals made by the Secretary of State under subsection (4) as they apply to proposals published under paragraph 5 of that Schedule, but as if—
- (a) the reference in paragraph 9(2) to the order under paragraph 2(2) or 3(2) were a reference to the direction under this section, and
  - (b) the reference in paragraph 16(2) to paragraph 5(3) were a reference to subsection (5)(c) of this section.

## 72 Proposals relating to sixth forms

- (1) After section 113 of the Learning and Skills Act 2000 (c. 21) there is inserted—

### “113A Restructuring of sixth-form education

- (1) The Learning and Skills Council for England may make proposals under this section—
- (a) with a view to meeting recommendations made in the report of an area inspection under section 65,
  - (b) with a view to promoting one or more of the relevant objectives, or



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- (c) if—
  - (i) they are made in addition to proposals relating to education or training other than in schools, and
  - (ii) the combined proposals are made with a view to promoting one or more of the relevant objectives.
- (2) The National Council for Education and Training for Wales may make proposals under this section—
  - (a) with a view to meeting recommendations made in the report of an area inspection under section 83,
  - (b) with a view to promoting one or more of the relevant objectives, or
  - (c) if—
    - (i) they are made in addition to proposals relating to education or training other than in schools, and
    - (ii) the combined proposals are made with a view to promoting one or more of the relevant objectives.
- (3) For the purposes of this section, the following are “relevant objectives”—
  - (a) an improvement in the educational or training achievements of persons who are above compulsory school age but below the age of 19;
  - (b) an increase in the number of such persons who participate in education or training suitable to the requirements of such persons;
  - (c) an expansion of the range of educational or training opportunities suitable to the requirements of such persons.
- (4) Proposals under this section are proposals for one or more of the following—
  - (a) the establishment by a local education authority of one or more new community, foundation, community special or foundation special schools to provide secondary education suitable to the requirements of persons who are above compulsory school age but below the age of 19 (and no other secondary education);
  - (b) an alteration to one or more maintained schools which relates to the provision of secondary education suitable to the requirements of such persons and is of a description prescribed by regulations;
  - (c) the discontinuance of one or more maintained schools which provide secondary education suitable to the requirements of such persons (and no other secondary education).
- (5) Proposals under this section are to be published and submitted to the relevant authority, which shall—
  - (a) approve them, with or without modification or subject to the occurrence of any event, or
  - (b) reject them.
- (6) Schedule 7A (implementation of proposals) has effect.
- (7) In exercising any function conferred by or under this section, the Learning and Skills Council for England and the National Council for Education and Training for Wales must have regard to any guidance given from time to time by the relevant authority.

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- (8) Proposals under this section may be made either alone or in addition to proposals under section 51 of the Further and Higher Education Act 1992 (c. 13) (proposals for further education corporations).
- (9) Regulations may make provision about proposals under this section and may in particular make provision about—
- (a) the information to be included in, or provided in relation to, the proposals;
  - (b) publication of the proposals;
  - (c) consultation on the proposals (before or after publication);
  - (d) the making of objections to or comments on the proposals;
  - (e) withdrawal or modification of the proposals;
  - (f) approval of the proposals by the relevant authority.
- (10) For the purposes of sections 496 and 497 of the Education Act 1996 (c. 56) (powers to prevent unreasonable exercise of functions and general default powers), the provisions of this section and Schedule 7A shall be treated as if they were provisions of that Act.
- (11) For the purposes of this section and Schedule 7A—
- “alteration” means an alteration of whatever nature, including the transfer of the school to a new site but excluding any change—
    - (a) in the religious character of the school, or
    - (b) whereby the school would acquire or lose a religious character;
  - “maintained school” means a community, foundation or voluntary school or a community or foundation special school;
  - “regulations” means—
    - (a) in relation to proposals by the Learning and Skills Council for England, regulations made by the Secretary of State, and
    - (b) in relation to proposals by the National Council for Education and Training for Wales, regulations made by the National Assembly for Wales;
  - “relevant authority” means—
    - (a) in relation to the Learning and Skills Council for England, the Secretary of State; and
    - (b) in relation to the National Council for Education and Training for Wales, the National Assembly for Wales;
  - “secondary education” has the same meaning as in section 2 of the Education Act 1996.”
- (2) Schedule 9 (which inserts a new Schedule 7A into that Act) shall have effect.

VALID FROM 01/06/2003

### 73 Proposals by governing bodies of community schools

In section 28 of the School Standards and Framework Act 1998 (c. 31) (proposals for establishment or alteration of schools), in subsection (2)(b) (requirement of publication where the governing body of a foundation or

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voluntary school propose to make a prescribed alteration to the school), after “foundation or voluntary school” there is inserted “, or of a community school maintained by a local education authority in England, ”.

#### 74 Proposals for establishment of federated school

(1) Proposals under—

- (a) section 28 or 31 of the School Standards and Framework Act 1998 (c. 31),
- (b) paragraph 5 of Schedule 7 to that Act,
- (c) section 113A of the Learning and Skills Act 2000 (c. 21), or
- (d) section 70 or 193 of this Act,

for the establishment of a new school may relate to the establishment of the school as a federated school.

(2) Regulations may make provision modifying any provision contained in—

- (a) section 28 or 31 of, or Schedule 6 or 7 to, the School Standards and Framework Act 1998,
- (b) section 113A of, or Schedule 7A to, the Learning and Skills Act 2000, or
- (c) section 70 of, or Schedule 8 to, this Act,

in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school.

(3) In this section “federated school” has the meaning given by section 24(2).

#### 75 Changes to existing procedures

Schedule 10 (which makes amendments to the School Standards and Framework Act 1998 and the Learning and Skills Act 2000 in respect of the procedures for the establishment, alteration and discontinuance of certain maintained schools) shall have effect.

#### Commencement Information

**146** S. 75 partly in force; s. 75 not in force at Royal Assent, see s. 216; s. 75 in force for certain purposes for W. at 19.12.2002 by S.I. 2002/3185, art. 4, **Sch. Pt. I**

## PART 6

### THE CURRICULUM IN ENGLAND

#### Modifications etc. (not altering text)

**C8** Pt. 6 modified (E.) (temp. from 1.10.2002) by [The Education Act 2002 \(Modification of Provisions\) \(England\) Regulations 2002 \(S.I. 2002/2316\)](#), **reg. 4**

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## Preliminary

### 76 Interpretation of Part 6

In this Part—

“assess” includes examine and test, and related expressions shall be construed accordingly;

“assessment arrangements” means—

- (a) in relation to the foundation stage, the arrangements for assessing pupils in respect of that stage for the purpose of ascertaining what they have achieved in relation to the early learning goals; and
- (b) in relation to a key stage, the arrangements for assessing pupils in respect of that stage for the purpose of ascertaining what they have achieved in relation to the attainment targets for that stage;

“attainment targets”, in relation to a key stage, means the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of that stage;

“early learning goals”, in relation to the foundation stage, has the meaning given by section 83(1);

“the foundation stage” has the meaning given by section 81;

“key stage”, or references to a particular key stage, shall be construed in accordance with section 82;

“maintained school” means—

- (a) any community, foundation or voluntary school maintained by a local education authority in England, or
- (b) except where otherwise stated, any community or foundation special school which is maintained by a local education authority in England and is not established in a hospital;

“maintained nursery school” means a nursery school which is maintained by a local education authority in England and is not a special school;

“programmes of study”, in relation to a key stage, means matters, skills and processes which are required to be taught to pupils of different abilities and maturities by the end of that stage;

“pupil” includes a child for whom funded nursery education is provided;

“school year”, in relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first school term to begin after the following July; and has a corresponding meaning in relation to the provision of funded nursery education otherwise than at a school.

### 77 Meaning of “nursery education” and related expressions

- (1) In this Part “nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere).
- (2) For the purposes of this Part, nursery education is “funded nursery education” in relation to a child if—
  - (a) it is provided in a maintained school or a maintained nursery school, or

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- (b) it is provided, by a person other than the governing body of any such school, under arrangements made with that person by a local education authority in England in pursuance of the duty imposed on the authority by section 118 of the School Standards and Framework Act 1998 (c. 31) and in consideration of financial assistance provided by the authority under those arrangements.
- (3) For the purposes of this Part, funded nursery education provided in relation to a child otherwise than at a maintained school or maintained nursery school is to be taken to be provided by the person with whom the arrangements referred to in subsection (2) (b) are made by the local education authority.

### *General duties in respect of the curriculum*

## 78 General requirements in relation to curriculum

- (1) The curriculum for a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
- (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and
  - (b) prepares pupils at the school for the opportunities, responsibilities and experiences of later life.
- (2) The curriculum for any funded nursery education provided otherwise than at a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
- (a) promotes the spiritual, moral, cultural, mental and physical development of the pupils for whom the funded nursery education is provided and of society, and
  - (b) prepares those pupils for the opportunities, responsibilities and experiences of later life.

### **Commencement Information**

**I47** S. 78 wholly in force at 1.10.2002; s. 78 not in force at Royal Assent, see s. 216; s. 78 in force for certain purposes at 26.7.2002 by S.I. 2002/2002, art. 2 and at 1.10.2002 insofar as not already in force by S.I. 2002/2439, art. 2 (with transitional provisions and savings in Sch.)

## 79 Duty to implement general requirements

- (1) The Secretary of State shall exercise his functions with a view to securing—
- (a) that the curriculum for every maintained school or maintained nursery school satisfies the requirements of section 78, and
  - (b) that the curriculum for any funded nursery education provided otherwise than at a maintained school or maintained nursery school satisfies the requirements of that section.
- (2) Every local education authority in England shall exercise their functions with a view to securing—
- (a) that the curriculum for every maintained school or maintained nursery school which they maintain satisfies the requirements of section 78, and

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- (b) that the curriculum for any funded nursery education provided, under arrangements made by them, otherwise than at a maintained school or maintained nursery school, satisfies the requirements of section 78.
- (3) The governing body and head teacher of every maintained school or maintained nursery school shall exercise their functions with a view to securing that the curriculum for the school satisfies the requirements of section 78.
- (4) The functions referred to in subsections (1) to (3) include in particular—
  - (a) functions conferred by this Part in relation to the National Curriculum for England, and
  - (b) except in relation to maintained nursery schools or the provision of funded nursery education otherwise than at a maintained school or maintained nursery school, functions relating to religious education and religious worship.
- (5) Any person providing funded nursery education under the arrangements mentioned in section 77(2)(b) shall secure that the curriculum for that funded nursery education satisfies the requirements of section 78.
- (6) In exercising any function which may affect the provision of sex education in maintained schools, every local education authority in England shall have regard to the guidance issued by the Secretary of State under section 403(1A) of the Education Act 1996 (c. 56).
- (7) Except to the extent provided in subsection (6), nothing in this section shall be taken to impose duties on a local education authority with regard to sex education.

## **80 Basic curriculum for every maintained school in England**

- (1) The curriculum for every maintained school in England shall comprise a basic curriculum which includes—
  - (a) provision for religious education for all registered pupils at the school (in accordance with such of the provisions of Schedule 19 to the School Standards and Framework Act 1998 (c. 31) as apply in relation to the school),
  - (b) a curriculum for all registered pupils at the school who have attained the age of three but are not over compulsory school age (known as “the National Curriculum for England”),
  - (c) in the case of a secondary school, provision for sex education for all registered pupils at the school, and
  - (d) in the case of a special school, provision for sex education for all registered pupils at the school who are provided with secondary education.
- (2) Subsection (1)(a) does not apply—
  - (a) in relation to a nursery class in a primary school, or
  - (b) in the case of a maintained special school (provision as to religious education in special schools being made by regulations under section 71(7) of the School Standards and Framework Act 1998).
- (3) The Secretary of State may by order—
  - (a) amend subsection (1) so as to add further requirements (otherwise than in relation to religious education or sex education),

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- (b) amend subsection (1)(b) by substituting for the reference to compulsory school age (or to any age specified there by virtue of this paragraph) a reference to such other age as may be specified in the order, and
- (c) amend any provision included in subsection (1) by virtue of paragraph (a) of this subsection.

### *The National Curriculum for England*

## **81 The foundation stage**

- (1) For the purposes of this Part, the foundation stage in relation to a pupil is the period beginning with the relevant time (as defined by subsection (2)) and ending at the same time as the school year in which he attains the age of five.
- (2) In subsection (1) “the relevant time” means—
  - (a) in the case of a child who is provided with funded nursery education before he attains the age of three, his third birthday,
  - (b) in the case of a child who is provided with funded nursery education after he attains that age, the time when he is first provided with such education, and
  - (c) in the case of a child who is not provided with any funded nursery education, the time when he first receives primary education other than nursery education.

## **82 The key stages**

- (1) For the purposes of this Part, the key stages in relation to a pupil are—
  - (a) the period beginning at the same time as the school year in which he attains the age of six and ending at the same time as the school year in which the majority of pupils in his class attain the age of seven (“the first key stage”),
  - (b) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of eleven (“the second key stage”),
  - (c) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of twelve and ending at the same time as the school year in which the majority of pupils in his class attain the age of fourteen (“the third key stage”), and
  - (d) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of fifteen and ending at the same time as the school year in which the majority of pupils in his class cease to be of compulsory school age (“the fourth key stage”).
- (2) The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that subsection (1) shall have effect as if any reference to the school year in which the majority of pupils in that pupil’s class attain a particular age were a reference to the school year in which that pupil attains that age.
- (3) If at any time, in the case of a pupil of compulsory school age, subsection (1) does not, apart from this subsection, apply to determine the period within which that time falls, that subsection shall have effect as if—



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- (a) in the case of paragraphs (a) to (c), any reference to the school year in which the majority of pupils in that pupil's class attain a particular age were a reference to the school year in which that pupil attains that age, and
  - (b) in the case of paragraph (d), the period were a period beginning at the same time as the school year in which he attains the age of fifteen and ending when he ceases to be of compulsory school age.
- (4) The Secretary of State may by order—
- (a) provide that, in relation to any subject specified in the order, subsection (1) shall have effect as if for the ages of seven and eight there specified there were substituted such other ages (less than eleven and twelve respectively) as may be specified in the order, or
  - (b) amend subsections (1) to (3).
- (5) In this section “class”, in relation to a particular pupil and a particular subject, means—
- (a) the teaching group in which he is regularly taught in that subject, or
  - (b) where there are two or more such groups, such one of them as may be designated by the head teacher of the school.

### **83 Curriculum requirements for foundation stage**

- (1) For the foundation stage, the National Curriculum for England shall comprise the areas of learning and may specify in relation to them—
- (a) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of the foundation stage (referred to in this Part as “the early learning goals”),
  - (b) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during the foundation stage (referred to in this Part as “educational programmes”), and
  - (c) assessment arrangements.
- (2) The following are the areas of learning for the foundation stage—
- (a) personal, social and emotional development,
  - (b) communication, language and literacy,
  - (c) mathematical development,
  - (d) knowledge and understanding of the world,
  - (e) physical development, and
  - (f) creative development.
- (3) The Secretary of State may by order amend subsection (2).

### **84 Curriculum requirements for first, second and third key stages**

- (1) For the first, second and third key stages, the National Curriculum for England shall comprise the core and other foundation subjects specified in subsections (2) and (3), and shall specify attainment targets, programmes of study and assessment arrangements in relation to each of those subjects for each of those stages.
- (2) The following are the core subjects for the first, second and third key stages—
- (a) mathematics,
  - (b) English, and

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- (c) science.
- (3) The following are the other foundation subjects for the first, second and third key stages—
  - (a) design and technology,
  - (b) information and communication technology,
  - (c) physical education,
  - (d) history,
  - (e) geography,
  - (f) art and design,
  - (g) music, and
  - (h) in relation to the third key stage—
    - (i) citizenship, and
    - (ii) a modern foreign language.
- (4) In this section “modern foreign language” means a modern foreign language specified in an order made by the Secretary of State or, if the order so provides, any modern foreign language.
- (5) An order under subsection (4) may—
  - (a) specify circumstances in which a language is not to be treated as a foundation subject, and
  - (b) provide for the determination under the order of any question arising as to whether a particular language is a modern foreign language.
- (6) The Secretary of State may by order amend subsections (2) to (5).

## **85 Curriculum requirements for fourth key stage**

- (1) For the fourth key stage, the National Curriculum for England shall comprise the core and other foundation subjects and specify attainment targets, programmes of study and assessment arrangements in relation to each of them.
- (2) The following are the core subjects for the fourth key stage—
  - (a) mathematics,
  - (b) English, and
  - (c) science,
- (3) The following are the other foundation subjects for the fourth key stage—
  - (a) design and technology,
  - (b) information and communication technology,
  - (c) physical education,
  - (d) citizenship, and
  - (e) a modern foreign language.
- (4) In this section “modern foreign language” means a modern foreign language specified in an order made by the Secretary of State or, if the order so provides, any modern foreign language.
- (5) An order under subsection (4) may—
  - (a) specify circumstances in which a language is not to be treated as a foundation subject, and

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- (b) provide for the determination under the order of any question arising as to whether a particular language is a modern foreign language.

## **86 Power to alter or remove requirements for fourth key stage**

The Secretary of State may by order—

- (a) amend any provision of section 85, or
- (b) provide that, while the order remains in force, that section is not to have effect.

## **87 Establishment of the National Curriculum for England by order**

- (1) The Secretary of State shall so exercise the powers conferred by subsections (2) and (3) as to—

- (a) establish a complete National Curriculum for England for the foundation stage as soon as is reasonably practicable, and
- (b) revise the National Curriculum for England for the foundation stage and the key stages whenever he considers it necessary or expedient to do so.

- (2) In respect of the foundation stage, the Secretary of State may by order specify in relation to the areas of learning—

- (a) such early learning goals,
- (b) such educational programmes, and
- (c) such assessment arrangements,

as he considers appropriate.

- (3) In respect of the first, second and third key stages and (subject to section 86) the fourth key stage, the Secretary of State may by order specify in relation to each of the foundation subjects—

- (a) such attainment targets,
- (b) such programmes of study, and
- (c) such assessment arrangements,

as he considers appropriate for that subject.

- (4) An order under subsection (2) or (3) may not require—

- (a) the allocation of any particular period or periods of time during the foundation stage or any key stage to the teaching of any educational programme or programme of study or any matter, skill or process forming part of it, or
- (b) the making in school timetables (or the timetables of any person providing funded nursery education) of provision of any particular kind for the periods to be allocated to such teaching during any such stage.

- (5) An order under subsection (2) or (3) may, instead of containing the provisions to be made, refer to provisions in a document published as specified in the order and direct that those provisions are to have effect or, as the case may be, are to have effect as amended by the order.

- (6) An order under subsection (2)(c) may confer or impose such functions on—

- (a) the governing body and head teacher of a maintained school or a maintained nursery school,
- (b) a person providing funded nursery education under the arrangements mentioned in section 77(2)(b),

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- (c) an early years development and childcare partnership, and
  - (d) a local education authority,
- as appear to the Secretary of State to be required.
- (7) An order under subsection (3)(c) may confer or impose such functions on—
- (a) the governing body and head teacher, and
  - (b) the local education authority,
- as appear to the Secretary of State to be required.
- (8) An order under subsection (2)(c) or (3)(c) may specify such assessment arrangements as may for the time being be made by a person specified in the order.
- (9) Provision shall be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and any such provision may be made by or under the order specifying the arrangements or (where the order specifies the person making the arrangements) in the arrangements themselves.
- (10) The duties that may be imposed by virtue of subsection (6) or (7) include, in relation to persons exercising any power in pursuance of provision made by virtue of subsection (9), the duty to permit them—
- (a) to enter premises of the school or, as the case may be, premises on which the funded nursery education is being provided,
  - (b) to observe implementation of the arrangements, and
  - (c) to inspect, and take copies of, documents and other articles.
- (11) An order under subsection (2)(c) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (6) or (7)) as appear to the Secretary of State to be expedient; and any provisions made under such an order shall, on being published as specified in the order, have effect for the purposes of this Part as if made by the order.

## **88 Implementation of the National Curriculum for England in schools**

In relation to any maintained school and any school year—

- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
- (b) the head teacher shall secure,

that the National Curriculum for England as subsisting at the beginning of that year is implemented.

## **89 Implementation in respect of nursery schools etc.**

(1) In relation to any maintained nursery school and any school year—

- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
- (b) the head teacher shall secure,

that the National Curriculum for England as subsisting at the beginning of that year (so far as it relates to the foundation stage) is implemented.

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- (2) In relation to any school year, any person providing funded nursery education under the arrangements mentioned in section 77(2)(b) shall secure that the National Curriculum for England as subsisting at the beginning of that year is implemented (so far as it relates to the foundation stage) in respect of the pupils for whom the funded nursery education is provided.
- (3) The local education authority with whom the arrangements mentioned in section 77(2)(b) are made and the early years development and childcare partnership for the area of the authority shall exercise their respective functions with a view to securing that any person (other than the governing body of a maintained school or maintained nursery school) who provides funded nursery education complies with the obligation imposed by subsection (2).

*The National Curriculum for England: special cases*

## 90 Development work and experiments

- (1) For the purpose of enabling development work or experiments to be carried out, the Secretary of State may direct in respect of a particular maintained school or maintained nursery school that, for such period as may be specified in the direction, the National Curriculum for England—
  - (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) A direction under subsection (1) may apply either generally or in such cases as may be specified in the direction.
- (3) In the case of a community, voluntary controlled or community special school or a maintained nursery school, a direction shall not be given under subsection (1) except on an application—
  - (a) by the governing body with the agreement of the local education authority,
  - (b) by the local education authority with the agreement of the governing body, or
  - (c) by the Qualifications and Curriculum Authority with the agreement of both the local education authority and the governing body.
- (4) In the case of a foundation, voluntary aided or foundation special school, a direction shall not be given under subsection (1) except on an application by the governing body or by the Qualifications and Curriculum Authority with the agreement of the governing body.
- (5) The Secretary of State may make it a condition of a direction under subsection (1) that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Secretary of State on any matters specified by him.
- (6) The Secretary of State may by a direction under this subsection vary or revoke a direction under subsection (1).

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## **91 Exceptions by regulations**

Regulations may provide that the National Curriculum for England, or such of the provisions of the National Curriculum for England as may be specified in the regulations—

- (a) shall not apply, or
- (b) shall apply with such modifications as may be specified in the regulations, in such cases or circumstances as may be specified in the regulations.

## **92 Pupils with statements of special educational needs**

The special educational provision for any pupil specified in a statement under section 324 of the Education Act 1996 (c. 56) of his special educational needs may include provision—

- (a) excluding the application of the National Curriculum for England, or
- (b) applying the National Curriculum for England with such modifications as may be specified in the statement.

## **93 Temporary exceptions for individual pupils**

- (1) Regulations may enable the head teacher of a maintained school or maintained nursery school, in such cases or circumstances and subject to such conditions as may be prescribed, to direct in respect of a registered pupil at the school that, for such period as may be specified in the direction (the “operative period” of the direction), the National Curriculum for England—
  - (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) The conditions prescribed by the regulations shall, in particular, limit the operative period that may be specified in a direction to a maximum period specified in the regulations.
- (3) Any maximum period specified (whether in relation to directions given under the regulations or in relation to directions given under the regulations in circumstances specified in the regulations) shall be either—
  - (a) a fixed period not exceeding six months, or
  - (b) a period determinable (in such manner as may be specified in the regulations) not later than six months from its beginning.
- (4) Any maximum period so specified may, without prejudice to the generality of section 210(7) (which provides that regulations under this Act may make different provision for different cases or circumstances etc.), differ according to whether or not the direction in question is given in respect of a period beginning—
  - (a) immediately after the end of the operative period of a previous direction, or
  - (b) within such period after the end of the operative period of a previous direction as may be specified in the regulations.
- (5) The regulations may enable the head teacher of a maintained school or maintained nursery school, in such cases or circumstances and subject to such conditions as may be prescribed—
  - (a) to revoke any direction given by him under the regulations, and
  - (b) to vary such a direction, except so as to extend its operative period.

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- (6) Before making any regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

#### **94 Information concerning directions under section 93**

- (1) Where a head teacher gives or varies a direction under regulations made under section 93, he shall, in such manner as may be prescribed, give the information mentioned in subsection (2)—
- (a) to the governing body, and
  - (b) to the local education authority by whom the school is maintained,
- and shall take such steps as may be prescribed to give that information also to a parent of the pupil concerned.
- (2) That information is—
- (a) the fact that he has taken the action in question, its effect and his reasons for taking it,
  - (b) the provision that is being or is to be made for the pupil's education during the operative period of the direction, and
  - (c) either a description of the manner in which he proposes to secure the full implementation of the National Curriculum for England in relation to the pupil after the end of that period, or an indication that he has the opinion mentioned in subsection (3).
- (3) That opinion is that the pupil has or probably has special educational needs by virtue of which the responsible authority would be required to determine the special educational provision that should be made for him (whether initially or on a review of any statement of his special educational needs which the authority are for the time being required under section 324 of the Education Act 1996 (c. 56) to maintain).
- (4) Where—
- (a) the head teacher of a maintained school or maintained nursery school includes an indication of any such opinion in information given under subsection (1), and
  - (b) the local education authority by whom the school is maintained are not the responsible authority in relation to the pupil in question,
- the head teacher shall also give that information, in such manner as may be prescribed, to the responsible authority.
- (5) Where the responsible authority receive information given to them under subsection (1) or (4) which includes an indication that the head teacher has the opinion mentioned in subsection (3), they shall consider whether any action on their part is required in the case of the pupil concerned under section 323 of the Education Act 1996 (c. 56) (assessment of special educational needs).
- (6) In this section “the responsible authority”, in relation to a pupil, means the local education authority responsible for him for the purposes of Part 4 of the Education Act 1996.

#### **95 Appeals against directions under section 93 etc.**

- (1) Where a head teacher—
- (a) gives, revokes or varies a direction under regulations made under section 93,



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- (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed by the regulations, by the parent of a registered pupil at the school, or
  - (c) following the making of such a request, fails within such period as may be prescribed by the regulations to give, revoke or vary such a direction in accordance with the request,
- the parent of the pupil concerned may appeal to the governing body.
- (2) On such an appeal, the governing body may—
    - (a) confirm the head teacher’s action, or
    - (b) direct the head teacher to take such action authorised by the regulations as they consider appropriate in the circumstances.
  - (3) The head teacher shall comply with any directions of the governing body given under subsection (2)(b).
  - (4) The governing body shall notify the appellant and the head teacher in writing of their decision on such an appeal.

#### *Supplementary provisions*

### **96 Procedure for making certain orders and regulations**

- (1) This section applies where the Secretary of State proposes to make—
  - (a) an order under section 82(4), 83(3), 84(6), 87(2)(a) or (b) or (3)(a) or (b), or
  - (b) regulations under section 91.
- (2) The Secretary of State shall refer the proposal to the Qualifications and Curriculum Authority (in this section referred to as “the Authority”) and shall give them directions as to the time within which they are to report to him.
- (3) The Authority shall give notice of the proposal—
  - (a) to such associations of local education authorities, bodies representing the interests of school governing bodies and organisations representing school teachers as appear to the Authority to be concerned, and
  - (b) to any other persons with whom consultation appears to the Authority to be desirable,

and shall give them a reasonable opportunity of submitting evidence and representations as to the issues arising.
- (4) The report of the Authority to the Secretary of State shall contain—
  - (a) a summary of the views expressed during the consultations,
  - (b) the Authority’s recommendations as to the proposal, and
  - (c) such other advice relating to the proposal as the Authority think fit.
- (5) The Authority shall, after submitting their report to the Secretary of State, arrange for the report to be published.
- (6) Where the Authority have reported to the Secretary of State, he shall publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education—
  - (a) a draft of the proposed order or regulations and any associated document, and

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- (b) a statement explaining his reasons for any failure to give effect to the recommendations of the Authority,  
and shall send copies of the documents mentioned in paragraphs (a) and (b) to the Authority and to each of the persons consulted by the Authority.
- (7) The Secretary of State shall allow a period of not less than one month for the submission of evidence and representations as to the issues arising.
- (8) When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications.

## PART 7

### THE CURRICULUM IN WALES

#### *Preliminary*

#### 97 Interpretation of Part 7

In this Part—

“assess” includes examine and test, and related expressions shall be construed accordingly;

“assessment arrangements” means—

- (a) in relation to the foundation stage, the arrangements for assessing pupils in respect of that stage for the purpose of ascertaining what they have achieved in relation to the desirable outcomes; and
- (b) in relation to a key stage, the arrangements for assessing pupils in respect of that stage for the purpose of ascertaining what they have achieved in relation to the attainment targets for that stage;

“attainment targets”, in relation to a key stage, means the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of that stage;

“desirable outcomes”, in relation to the foundation stage, has the meaning given by section 104;

“the foundation stage” has the meaning given by section 102;

“key stage”, or references to a particular key stage, shall be construed in accordance with section 103;

“maintained school” means—

- (a) any community, foundation or voluntary school maintained by a local education authority in Wales, or
- (b) except where otherwise stated, any community or foundation special school which is maintained by a local education authority in Wales and is not established in a hospital;

“maintained nursery school” means a nursery school which is maintained by a local education authority in Wales and is not a special school;

“programmes of study”, in relation to a key stage, means matters, skills and processes which are required to be taught to pupils of different abilities and maturities by the end of that stage;

“pupil” includes a child for whom funded nursery education is provided;

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“school year”, in relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first school term to begin after the following July; and has a corresponding meaning in relation to the provision of funded nursery education otherwise than at a school.

## 98 Meaning of “nursery education” and related expressions

- (1) In this Part “nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere).
- (2) For the purposes of this Part, nursery education is “funded nursery education” in relation to a child if—
  - (a) it is provided in a maintained school or a maintained nursery school, or
  - (b) it is provided, by a person other than the governing body of any such school, under arrangements made with that person by a local education authority in Wales in pursuance of the duty imposed on the authority by section 118 of the School Standards and Framework Act 1998 (c. 31) and in consideration of financial assistance provided by the authority under those arrangements.
- (3) For the purposes of this Part, funded nursery education provided in relation to a child otherwise than at a maintained school or maintained nursery school is to be taken to be provided by the person with whom the arrangements referred to in subsection (2) (b) are made by the local education authority.

### *General duties in respect of the curriculum*

## 99 General requirements in relation to curriculum

- (1) The curriculum for a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
  - (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and
  - (b) prepares pupils at the school for the opportunities, responsibilities and experiences of later life.
- (2) The curriculum for any funded nursery education provided otherwise than at a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
  - (a) promotes the spiritual, moral, cultural, mental and physical development of the pupils for whom the funded nursery education is provided and of society, and
  - (b) prepares those pupils for the opportunities, responsibilities and experiences of later life.

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### **Modifications etc. (not altering text)**

- C9** S. 99(1) modified (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 5\(1\)\(2\)](#)

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#### Commencement Information

**I48** S. 99(1) in force at 19.12.2002 by [S.I. 2002/3185](#), art. 4, **Sch. Pt. I**

### 100 Duty to implement general requirements

- (1) The National Assembly for Wales shall exercise its functions with a view to securing—
  - (a) that the curriculum for every maintained school or maintained nursery school satisfies the requirements of section 99, and
  - (b) that the curriculum for any funded nursery education provided otherwise than at a maintained school or maintained nursery school satisfies the requirements of that section.
- (2) Every local education authority in Wales shall exercise their functions with a view to securing—
  - (a) that the curriculum for every maintained school or maintained nursery school which they maintain satisfies the requirements of section 99, and
  - (b) that the curriculum for any funded nursery education provided, under arrangements made by them, otherwise than at a maintained school or maintained nursery school, satisfies the requirements of section 99.
- (3) The governing body and head teacher of every maintained school or maintained nursery school shall exercise their functions with a view to securing that the curriculum for the school satisfies the requirements of section 99.
- (4) The functions referred to in subsections (1) to (3) include in particular—
  - (a) functions conferred by this Part in relation to the National Curriculum for Wales, and
  - (b) except in relation to maintained nursery schools or the provision of funded nursery education otherwise than at a maintained school or maintained nursery school, functions relating to religious education and religious worship.
- (5) Any person providing funded nursery education under the arrangements mentioned in section 98(2)(b) shall secure that the curriculum for that funded nursery education satisfies the requirements of section 99.
- (6) In exercising any function which may affect the provision of sex education in maintained schools, every local education authority in Wales shall have regard to the guidance issued by the National Assembly for Wales under section 403(1A) of the Education Act 1996 (c. 56).
- (7) Except to the extent provided in subsection (6), nothing in this section shall be taken to impose duties on a local education authority with regard to sex education.
- (8) In exercising any function which may affect the provision in maintained schools of education of a kind required by virtue of an order under section 101(3)(a), a local education authority in Wales or the governing body of a maintained school shall have regard to any guidance from time to time given by the National Assembly for Wales.

#### Modifications etc. (not altering text)

**C10** S. 100 modified (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\)](#) ([Wales](#)) [Regulations 2002 \(S.I. 2002/3184\)](#), **reg. 5(1)(3)**

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**C11** S. 100(1)(a)(2)(a)(3) modified (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 5\(1\)\(2\)](#)

**Commencement Information**

**I49** S. 100(1)(a)(2)(a)(3)(4)(6)-(8) in force at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

**101 Basic curriculum for every maintained school in Wales**

- (1) The curriculum for every maintained school in Wales shall comprise a basic curriculum which includes—
- (a) provision for religious education for all registered pupils at the school (in accordance with such of the provisions of Schedule 19 to the School Standards and Framework Act 1998 (c. 31) as apply in relation to the school),
  - (b) a curriculum for all registered pupils at the school who have attained the age of three but are not over compulsory school age (known as “the National Curriculum for Wales”),
  - (c) in the case of a secondary school, provision for sex education for all registered pupils at the school, and
  - (d) in the case of a special school, provision for sex education for all registered pupils at the school who are provided with secondary education.
- (2) Subsection (1)(a) does not apply—
- (a) in relation to a nursery class in a primary school, or
  - (b) in the case of a maintained special school (provision as to religious education in special schools being made by regulations under section 71(7) of the School Standards and Framework Act 1998 (c. 31)).
- (3) The National Assembly for Wales may by order—
- (a) amend subsection (1) so as to add further requirements (otherwise than in relation to religious education or sex education),
  - (b) amend subsection (1)(b)—
    - (i) by substituting for the reference to the age of three (or to any age specified there by virtue of this sub-paragraph) a reference to such other age as may be specified in the order, or
    - (ii) by substituting for the reference to compulsory school age (or to any age specified there by virtue of this sub-paragraph) a reference to such other age as may be specified in the order, and
  - (c) amend any provision included in subsection (1) by virtue of paragraph (a) of this subsection.

**Modifications etc. (not altering text)**

**C12** S. 101 modified (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 5\(1\)\(4\)](#)

**Commencement Information**

**I50** S. 101 partly in force; s. 101 not in force at Royal Assent, see s. 216; s. 101 (except for s. 101(3)(b)) in force at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

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## The National Curriculum for Wales

VALID FROM 01/08/2008

### 102 The foundation stage

For the purposes of this Part, the foundation stage in relation to a pupil is such period as may be specified in an order made by the National Assembly for Wales.

### 103 The key stages

- (1) For the purposes of this Part, the key stages in relation to a pupil are—
  - (a) the period beginning with his becoming of compulsory school age and ending at the same time as the school year in which the majority of pupils in his class attain the age of seven (“the first key stage”),
  - (b) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of eleven (“the second key stage”),
  - (c) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of twelve and ending at the same time as the school year in which the majority of pupils in his class attain the age of fourteen (“the third key stage”), and
  - (d) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of fifteen and ending at the same time as the school year in which the majority of pupils in his class cease to be of compulsory school age (“the fourth key stage”).
- (2) The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that subsection (1) shall have effect as if any reference to the school year in which the majority of pupils in that pupil’s class attain a particular age were a reference to the school year in which that pupil attains that age.
- (3) If at any time, in the case of a pupil of compulsory school age, subsection (1) does not, apart from this subsection, apply to determine the period within which that time falls, that subsection shall have effect as if—
  - (a) in the case of paragraphs (a) to (c), any reference to the school year in which the majority of pupils in that pupil’s class attain a particular age were a reference to the school year in which that pupil attains that age, and
  - (b) in the case of paragraph (d), the period were a period beginning at the same time as the school year in which he attains the age of fifteen and ending when he ceases to be of compulsory school age.
- (4) The National Assembly for Wales may by order—
  - (a) provide that, in relation to any subject specified in the order, subsection (1) shall have effect as if for the ages of seven and eight there specified there were substituted such other ages (less than eleven and twelve respectively) as may be specified in the order, or
  - (b) amend subsections (1) to (3).
- (5) In this section “class”, in relation to a particular pupil and a particular subject, means—

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- (a) the teaching group in which he is regularly taught in that subject, or
- (b) where there are two or more such groups, such one of them as may be designated by the head teacher of the school.

VALID FROM 01/08/2008

#### **104 Curriculum requirements for foundation stage**

For the foundation stage, the National Curriculum for Wales shall specify areas of learning, and may specify in relation to them—

- (a) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of the foundation stage (referred to in this Part as “desirable outcomes”),
- (b) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during the foundation stage (referred to in this Part as “educational programmes”), and
- (c) assessment arrangements.

#### **105 Curriculum requirements for first, second and third key stages**

- (1) For the first, second and third key stages, the National Curriculum for Wales shall comprise the core and other foundation subjects specified in subsections (2) and (3) and shall specify attainment targets, programmes of study and assessment arrangements in relation to each of those subjects for each stage.
- (2) The following are the core subjects for the first, second and third key stages—
  - (a) mathematics,
  - (b) English,
  - (c) science, and
  - (d) in relation to Welsh-speaking schools, Welsh.
- (3) The following are the other foundation subjects for the first, second and third key stages—
  - (a) technology,
  - (b) physical education,
  - (c) history,
  - (d) geography,
  - (e) art,
  - (f) music,
  - (g) Welsh, if the school is not a Welsh-speaking school, and
  - (h) in relation to the third key stage, a modern foreign language.
- (4) In this section “modern foreign language” means a modern foreign language specified in an order made by the National Assembly for Wales or, if the order so provides, any modern foreign language.
- (5) An order under subsection (4) may—
  - (a) specify circumstances in which a language is not to be treated as a foundation subject for the third key stage, and



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- (b) provide for the determination under the order of any question arising as to whether a particular language is a modern foreign language.
- (6) The National Assembly for Wales may by order amend subsections (2) to (5).
- (7) For the purposes of this section a school is Welsh-speaking if more than one half of the following subjects are taught (wholly or partly) in Welsh—
  - (a) religious education, and
  - (b) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school.
- (8) In this section “school” includes part of a school.

### **106 Curriculum requirements for fourth key stage**

- (1) For the fourth key stage, the National Curriculum for Wales shall comprise the core and other foundation subjects and specify attainment targets, programmes of study and assessment arrangements in relation to each of them.
- (2) The following are the core subjects for the fourth key stage—
  - (a) mathematics,
  - (b) English,
  - (c) science, and
  - (d) in relation to Welsh-speaking schools, Welsh.
- (3) The following are the other foundation subjects for the fourth key stage—
  - (a) physical education, and
  - (b) Welsh, if the school is not a Welsh-speaking school.
- (4) For the purposes of this section a school is Welsh-speaking if more than one half of the following subjects are taught (wholly or partly) in Welsh—
  - (a) religious education, and
  - (b) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school.
- (5) In this section “school” includes part of a school.

### **107 Power to alter or remove requirements for fourth key stage**

- The National Assembly for Wales may by order—
- (a) amend any provision of section 106, or
  - (b) provide that, while the order remains in force, that section is not to have effect.

### **108 Establishment of the National Curriculum for Wales by order**

- (1) The National Assembly for Wales shall so exercise the powers conferred by subsections (2) and (3) as to—
  - (a) establish a complete National Curriculum for Wales for the foundation stage as soon as is reasonably practicable, and
  - (b) revise the National Curriculum for Wales for the foundation stage and the key stages whenever the Assembly considers it necessary or expedient to do so.

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- (2) In respect of the foundation stage, the National Assembly for Wales—
- (a) shall by order specify the areas of learning, and
  - (b) may by order specify in relation to each of those areas—
    - (i) such desirable outcomes,
    - (ii) such educational programmes, and
    - (iii) such assessment arrangements,
 as the Assembly considers appropriate for that area.
- (3) In respect of the first, second and third key stages and (subject to section 107) the fourth key stage, the National Assembly for Wales may by order specify in relation to each of the foundation subjects—
- (a) such attainment targets,
  - (b) such programmes of study, and
  - (c) such assessment arrangements,
- as the Assembly considers appropriate for that subject.
- (4) An order under subsection (2) or (3) may not require—
- (a) the allocation of any particular period or periods of time during the foundation stage or any key stage to the teaching of any educational programme or programme of study or any matter, skill or process forming part of it, or
  - (b) the making in school timetables (or the timetables of any person providing funded nursery education) of provision of any particular kind for the periods to be allocated to such teaching during any such stage.
- (5) An order under subsection (2) or (3) may, instead of containing the provisions to be made, refer to provisions in a document published as specified in the order and direct that those provisions are to have effect or, as the case may be, are to have effect as amended by the order.
- (6) An order under subsection (2)(b)(iii) may confer or impose such functions on—
- (a) the governing body and head teacher of a maintained school or a maintained nursery school,
  - (b) a person providing funded nursery education under the arrangements mentioned in section 98(2)(b),
  - (c) an early years development and childcare partnership, and
  - (d) a local education authority,
- as appear to the National Assembly for Wales to be required.
- (7) An order under subsection (3)(c) may confer or impose such functions on—
- (a) the governing body and head teacher, and
  - (b) the local education authority,
- as appear to the National Assembly for Wales to be required.
- (8) An order under subsection (2)(b)(iii) or (3)(c) may specify such assessment arrangements as may for the time being be made by a person specified in the order.
- (9) Provision shall be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and any such provision may be made by or under the order specifying the arrangements or (where the order specifies the person making the arrangements) in the arrangements themselves.

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- (10) The duties that may be imposed by virtue of subsection (6) or (7) include, in relation to persons exercising any power in pursuance of provision made by virtue of subsection (9), the duty to permit them—
- (a) to enter premises of the school or, as the case may be, premises on which the funded nursery education is being provided,
  - (b) to observe implementation of the arrangements, and
  - (c) to inspect, and take copies of, documents and other articles.
- (11) An order under subsection (2)(b)(iii) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (6) or (7)) as appear to the National Assembly for Wales to be expedient; and any provisions made under such an order shall, on being published as specified in the order, have effect for the purposes of this Part as if made by the order.

**Modifications etc. (not altering text)**

**C13** S. 108 modified (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 5\(1\)\(5\)](#)

**Commencement Information**

**I51** S. 108(1)(b)(3)-(5)(7)-(11) in force at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

**109 Implementation of the National Curriculum for Wales in schools**

In relation to any maintained school and any school year—

- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
- (b) the head teacher shall secure,

that the National Curriculum for Wales as subsisting at the beginning of that year is implemented.

VALID FROM 05/05/2010

**110 Implementation in respect of nursery schools etc.**

(1) In relation to any maintained nursery school and any school year—

- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
- (b) the head teacher shall secure,

that the National Curriculum for Wales as subsisting at the beginning of that year (so far as it relates to the foundation stage) is implemented.

(2) In relation to any school year, any person providing funded nursery education under the arrangements mentioned in section 98(2)(b) shall secure that the National Curriculum for Wales as subsisting at the beginning of that year is implemented (so far as it relates to the foundation stage) in respect of the pupils for whom the funded nursery education is provided.

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- (3) The local education authority with whom the arrangements mentioned in section 98(2)(b) are made and the early years development and childcare partnership for the area of the authority shall exercise their respective functions with a view to securing that any person (other than the governing body of a maintained school or maintained nursery school) who provides funded nursery education complies with the obligation imposed by subsection (2).

*The National Curriculum for Wales: special cases*

## 111 Development work and experiments

- (1) For the purpose of enabling development work or experiments to be carried out, the National Assembly for Wales may direct in respect of a particular maintained school or maintained nursery school that, for such period as may be specified in the direction, the National Curriculum for Wales—
- (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) A direction under subsection (1) may apply either generally or in such cases as may be specified in the direction.
- (3) In the case of a community, voluntary controlled or community special school or a maintained nursery school, a direction shall not be given under subsection (1) except on an application—
- (a) by the governing body with the agreement of the local education authority,
  - (b) by the local education authority with the agreement of the governing body, or
  - (c) by the Qualifications, Curriculum and Assessment Authority for Wales with the agreement of both the local education authority and the governing body.
- (4) In the case of a foundation, voluntary aided or foundation special school, a direction shall not be given under subsection (1) except on an application by the governing body or by the Qualifications, Curriculum and Assessment Authority for Wales with the agreement of the governing body.
- (5) The National Assembly for Wales may make it a condition of a direction under subsection (1) that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Assembly on any matters specified by it.
- (6) The National Assembly for Wales may by a direction under this subsection vary or revoke a direction under subsection (1).

### **Modifications etc. (not altering text)**

- C14** S. 111(1) modified (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), **reg. 5(1)(2)**
- C15** S. 111(3) modified (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), **reg. 5(1)(2)**

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## 112 Exceptions by regulations

Regulations may provide that the National Curriculum for Wales, or such of the provisions of the National Curriculum for Wales as may be specified in the regulations—

- (a) shall not apply, or
- (b) shall apply with such modifications as may be specified in the regulations, in such cases or circumstances as may be specified in the regulations.

## 113 Pupils with statements of special educational needs

The special educational provision for any pupil specified in a statement under section 324 of the Education Act 1996 (c. 56) of his special educational needs may include provision—

- (a) excluding the application of the National Curriculum for Wales, or
- (b) applying the National Curriculum for Wales with such modifications as may be specified in the statement.

## 114 Temporary exceptions for individual pupils

- (1) Regulations may enable the head teacher of a maintained school or maintained nursery school, in such cases or circumstances and subject to such conditions as may be prescribed, to direct in respect of a registered pupil at the school that, for such period as may be specified in the direction (the “operative period” of the direction), the National Curriculum for Wales—
  - (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) The conditions prescribed by the regulations shall, in particular, limit the operative period that may be specified in a direction to a maximum period specified in the regulations.
- (3) Any maximum period specified (whether in relation to directions given under the regulations or in relation to directions given under the regulations in circumstances specified in the regulations) shall be either—
  - (a) a fixed period not exceeding six months, or
  - (b) a period determinable (in such manner as may be specified in the regulations) not later than six months from its beginning.
- (4) Any maximum period so specified may, without prejudice to the generality of section 210(7) (which provides that regulations under this Act may make different provision for different cases or circumstances etc.), differ according to whether or not the direction in question is given in respect of a period beginning—
  - (a) immediately after the end of the operative period of a previous direction, or
  - (b) within such period after the end of the operative period of a previous direction as may be specified in the regulations.
- (5) The regulations may enable the head teacher of a maintained school or maintained nursery school, in such cases or circumstances and subject to such conditions as may be prescribed—
  - (a) to revoke any direction given by him under the regulations, and
  - (b) to vary such a direction, except so as to extend its operative period.

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- (6) Before making any regulations under this section, the National Assembly for Wales shall consult with any persons with whom consultation appears to it to be desirable.

**Modifications etc. (not altering text)**

**C16** S. 114(1)(5) modified (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 5\(1\)\(2\)](#)

## 115 Information concerning directions under section 114

- (1) Where a head teacher gives or varies a direction under regulations made under section 114, he shall, in such manner as may be prescribed, give the information mentioned in subsection (2)—
- (a) to the governing body, and
  - (b) to the local education authority by whom the school is maintained,
- and shall take such steps as may be prescribed to give that information also to a parent of the pupil concerned.
- (2) That information is—
- (a) the fact that he has taken the action in question, its effect and his reasons for taking it,
  - (b) the provision that is being or is to be made for the pupil's education during the operative period of the direction, and
  - (c) either a description of the manner in which he proposes to secure the full implementation of the National Curriculum for Wales in relation to the pupil after the end of that period, or an indication that he has the opinion mentioned in subsection (3).
- (3) That opinion is that the pupil has or probably has special educational needs by virtue of which the responsible authority would be required to determine the special educational provision that should be made for him (whether initially or on a review of any statement of his special educational needs which the authority are for the time being required under section 324 of the Education Act 1996 (c. 56) to maintain).
- (4) Where—
- (a) the head teacher of a maintained school or maintained nursery school includes an indication of any such opinion in information given under subsection (1), and
  - (b) the local education authority by whom the school is maintained are not the responsible authority in relation to the pupil in question,
- the head teacher shall also give that information, in such manner as may be prescribed, to the responsible authority.
- (5) Where the responsible authority receive information given to them under subsection (1) or (4) which includes an indication that the head teacher has the opinion mentioned in subsection (3), they shall consider whether any action on their part is required in the case of the pupil concerned under section 323 of the Education Act 1996 (c. 56) (assessment of special educational needs).

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- (6) In this section “the responsible authority”, in relation to a pupil, means the local education authority responsible for him for the purposes of Part 4 of the Education Act 1996.

**Modifications etc. (not altering text)**

**C17** S. 115(4)(a) modified (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 5\(1\)\(2\)](#)

## **116 Appeals against directions under section 114 etc.**

- (1) Where a head teacher—
- (a) gives, revokes or varies a direction under regulations made under section 114,
  - (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed by the regulations, by the parent of a registered pupil at the school, or
  - (c) following the making of such a request, fails within such period as may be prescribed by the regulations to give, revoke or vary such a direction in accordance with the request,
- the parent of the pupil concerned may appeal to the governing body.
- (2) On such an appeal, the governing body may—
- (a) confirm the head teacher’s action, or
  - (b) direct the head teacher to take such action authorised by the regulations as they consider appropriate in the circumstances.
- (3) The head teacher shall comply with any directions of the governing body given under subsection (2)(b).
- (4) The governing body shall notify the appellant and the head teacher in writing of their decision on such an appeal.

### *Supplementary provisions*

## **117 Procedure for making certain orders and regulations**

Where the National Assembly for Wales proposes to make—

- (a) an order under section 103(4), 105(6), 108(2)(a) or (b)(i) or (ii) or (3)(a) or (b), or
- (b) regulations under section 112,

the Assembly shall make such arrangements for consultation about the proposals as the Assembly considers appropriate.

## **118 Programmes of research etc in relation to Wales**

The National Assembly for Wales may incur expenses in connection with the commissioning by the Assembly of such work, including programmes of research, development and dissemination, as it may require to be carried out for the purpose of facilitating the discharge of any of the Assembly’s functions under sections 102 to 108.



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## PART 8

### TEACHERS

#### *Teachers' pay and conditions*

#### **119 School Teachers' Review Body**

- (1) The body established under section 1 of the School Teachers' Pay and Conditions Act 1991 (c. 49) (review body)—
  - (a) shall continue to exist, and
  - (b) shall be known as the School Teachers' Review Body.
- (2) The Prime Minister shall appoint the chairman of the Review Body.
- (3) The Secretary of State shall appoint other members of the Review Body.
- (4) Schedule 11 (which makes provision about the Review Body) shall have effect.

#### **120 Review Body: function**

- (1) The School Teachers' Review Body shall consider any matter which is referred to them by the Secretary of State and which relates to—
  - (a) the remuneration of school teachers, or
  - (b) other conditions of employment of school teachers which relate to their professional duties or working time.
- (2) In subsection (1) "school teacher" means a person who is a school teacher for the purposes of the Secretary of State's power under section 122 to make orders about remuneration and other conditions of employment.
- (3) Following consideration of a matter under subsection (1) the Review Body shall report to the Prime Minister and the Secretary of State in accordance with any direction of the Secretary of State about—
  - (a) a consideration to which they are to have particular regard,
  - (b) matter on which they are to make a recommendation, or
  - (c) the time within which they are to report.
- (4) Where the Prime Minister and the Secretary of State receive a report under subsection (3) they shall arrange for it to be published.
- (5) A direction under subsection (3) may be varied or revoked.

#### **Commencement Information**

**I52** S. 120 partly in force; s. 120 not in force at Royal Assent, see s. 216; s. 120(1)(3)-(5) in force at 1.10.2002 by S.I. 2002/2439, art. 2 (with transitional provisions and savings in Sch.)

#### **121 Consultation by Review Body**

- (1) Before reporting on a matter referred to them under section 120(1) the School Teachers' Review Body shall—

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- (a) notify each relevant body,
  - (b) give each relevant body an opportunity to submit evidence and make representations, and
  - (c) give the Secretary of State an opportunity to submit evidence and make representations.
- (2) In relation to a matter referred to the Review Body “relevant body” means such of the following as appear to the Review Body to be appropriate to consult about the matter—
- (a) associations of local education authorities,
  - (b) local education authorities,
  - (c) bodies representing the interests of governing bodies of schools, and
  - (d) bodies representing the interests of teachers.
- (3) The Review Body may—
- (a) determine the manner in which each relevant body is permitted to submit evidence or make representations, and
  - (b) may make different determinations in respect of different relevant bodies.

VALID FROM 01/08/2003

## 122 Power to prescribe pay and conditions

- (1) The Secretary of State may by order make provision for the determination of—
- (a) the remuneration of school teachers;
  - (b) other conditions of employment of school teachers which relate to their professional duties or working time.
- (2) Where an order under this section applies to a school teacher—
- (a) his remuneration shall be determined and paid in accordance with any provision of the order which applies to him,
  - (b) a provision of the order which relates to a condition of employment other than remuneration and which applies to him shall have effect as a term of his contract of employment, and
  - (c) a term of that contract shall have no effect in so far as it makes provision which is prohibited by the order or which is otherwise inconsistent with a provision of the order.
- (3) A person is a school teacher for the purposes of this section if—
- (a) he is a qualified teacher,
  - (b) he provides primary or secondary education under a contract of employment or for services,
  - (c) the other party to the contract is a local education authority or the governing body of a foundation, voluntary aided or foundation special school, and
  - (d) the contract requires him to carry out work of a kind which is specified by regulations under section 133(1).
- (4) A person is also a school teacher for the purposes of this section if he serves as the head teacher of a school maintained by a local education authority.
- (5) A person is also a school teacher for the purposes of this section if his case satisfies paragraphs (b), (c) and (d) of subsection (3) and—

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- (a) he possesses a prescribed qualification,
  - (b) he provides education of a prescribed kind or in prescribed circumstances (or both),
  - (c) he is undertaking training of a prescribed kind, or obtaining experience of a prescribed kind, with a view to becoming a qualified teacher,
  - (d) he is within a prescribed class of persons awaiting assessment for the purpose of becoming a qualified teacher, or
  - (e) he is within a prescribed class of persons awaiting the award of a qualification.
- (6) A person providing education in an establishment maintained by a local authority in the exercise of a social services function is not a school teacher for the purposes of this section.
- (7) In the application of subsection (2)—
- (a) it is immaterial whether someone other than the party mentioned in subsection (3)(c) provides or is responsible for providing all or part of a teacher’s remuneration,
  - (b) it is immaterial whether someone other than the party mentioned in subsection (3)(c) is treated wholly or partly as a teacher’s employer for some or all purposes by virtue of an enactment, and
  - (c) in relation to a person who provides education under a contract for services, a reference to his contract of employment is a reference to the contract for services.
- (8) In this section “prescribed” means prescribed by an order under this section.

**Modifications etc. (not altering text)**

**C18** S. 122(3)(d) excluded (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), **reg. 6(2)**

VALID FROM 01/08/2003

**123 Order under section 122: scope**

- (1) An order under section 122 may, in particular—
- (a) confer discretion on a local education authority or a governing body;
  - (b) confer a function (which may include the administration of a test or assessment, the exercise of a discretion or the exercise of a supervisory or appellate jurisdiction) on the Secretary of State or on a specified person who has agreed with the Secretary of State to perform that function;
  - (c) require a discretion or function conferred under paragraph (a) or (b) to be exercised having regard to guidance given by the Secretary of State or another specified person;
  - (d) make provision for the determination of a teacher’s remuneration by reference to any matter including, in particular, his qualifications, experience, duties, aptitude or previous salary;

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- (e) make provision for a right of appeal specified by or determined in accordance with the order;
  - (f) limit the aggregate amount of an allowance, or of a number of allowances, payable to teachers in a school;
  - (g) set a lower or upper limit on the number or proportion of teachers in a school who are paid on a specified scale;
  - (h) set a lower or upper limit on the number or proportion of teachers in a school who are paid a specified allowance;
  - (i) provide for special provisions to apply in relation to a description of school specified by or determined in accordance with the order;
  - (j) provide for the determination of a question of the interpretation or application of a provision of the order.
- (2) Provision under subsection (1)(e) or (j) may—
- (a) confer jurisdiction on a court, tribunal, person or body;
  - (b) provide for a matter to be settled by agreement between, or in a manner agreed between, teachers and local education authorities or teachers and governing bodies.
- (3) An order under section 122 may make retrospective provision, but not so as to—
- (a) reduce remuneration in respect of a period wholly or partly before the making of the order, or
  - (b) alter a condition of employment to the detriment of a teacher in respect of a period wholly or partly before the making of the order.
- (4) The Secretary of State may by order provide—
- (a) that a payment or entitlement of a specified kind is or is not to be treated as remuneration for the purpose of section 122(1);
  - (b) that a specified matter is or is not to be treated for that purpose as relating to the professional duties of school teachers;
  - (c) that a specified matter is or is not to be treated for that purpose as relating to the working time of school teachers.

VALID FROM 01/08/2003

#### **124 Order under section 122: supplemental**

- (1) An order under section 122 may—
- (a) make provision which applies generally or only in a specified case or in specified circumstances;
  - (b) make different provision for different cases or circumstances;
  - (c) make transitional provision.
- (2) An order under section 122 may make provision by reference to the exercise of another power under this Act.
- (3) An order under section 122 may make provision by reference to a document; and—
- (a) an order which makes provision by reference to a document must include provision about publication of the document, and

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- (b) a reference in this section to an order includes a reference to a document referred to by an order.

VALID FROM 01/08/2003

### 125 Reference to Review Body

- (1) An order under section 122 may make provision about a matter only if the Secretary of State has—
- (a) referred the matter to the School Teachers' Review Body under section 120, and
  - (b) considered their report.
- (2) But subsection (1) shall not apply—
- (a) to subsidiary provision, or
  - (b) in a case where the Secretary of State has consulted the chairman of the Review Body about disapplying that subsection.
- (3) Provision is subsidiary for the purpose of subsection (2)(a) if the Secretary of State thinks that it—
- (a) concerns only the criteria for entry into or exit from a particular class of teachers for purposes of remuneration,
  - (b) concerns only the criteria for moving from one scale of remuneration to another,
  - (c) concerns only the implementation or application of a system or principle on which the Review Body has reported,
  - (d) prescribes a matter for the purpose of section 122(5),
  - (e) is made under section 123(4), or
  - (f) is minor, consequential, temporary, transitional or designed to resolve an anomaly.
- (4) The Secretary of State may by order provide that provision of a specified kind (which may be described wholly or partly by reference to an opinion of the Secretary of State or another person)—
- (a) shall be subsidiary for the purpose of subsection (2)(a), or
  - (b) shall cease to be subsidiary for that purpose.
- (5) An order under subsection (4) may amend subsection (3).

VALID FROM 01/08/2003

### 126 Consultation by Secretary of State

The Secretary of State may not make an order under section 122 or 125(4)(a) unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the content of the order—

- (a) associations of local education authorities,
- (b) local education authorities,

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- (c) bodies representing the interests of governing bodies of schools, and
- (d) bodies representing the interests of teachers.

VALID FROM 01/08/2003

## 127 Guidance

- (1) The Secretary of State may issue guidance about the procedure to be followed in applying provision of an order under section 122.
- (2) The following shall have regard to guidance under subsection (1)—
  - (a) a local education authority, and
  - (b) the governing body of a school.
- (3) Where an employer fails to follow guidance under subsection (1)—
  - (a) the failure shall not give rise to civil liability, but
  - (b) a court or tribunal may take the failure into account in any proceedings.
- (4) The Secretary of State may not issue guidance under subsection (1) unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the nature of the guidance—
  - (a) associations of local education authorities,
  - (b) local education authorities,
  - (c) bodies representing the interests of governing bodies of schools, and
  - (d) bodies representing the interests of teachers.

VALID FROM 01/08/2003

## 128 Education action zone

- (1) This section applies to a school which forms part of an education action zone for the purposes of Chapter 3 of Part 1 of the School Standards and Framework Act 1998 (c. 31).
- (2) On the application of the governing body of a school, the Secretary of State may by order provide that section 122(2) shall not apply to any school teacher at the school.
- (3) Where an order under subsection (2) is in force in respect of a school—
  - (a) the governing body shall determine the remuneration and other conditions of employment of each school teacher at the school,
  - (b) the local education authority shall do anything necessary to give effect to the governing body's determination, and
  - (c) pending a determination under paragraph (a), the terms on which a school teacher works at the school shall remain unchanged (irrespective of any new order under section 122).
- (4) A governing body may not make an application under subsection (2) unless they have consulted each school teacher at the school.

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- (5) An application under subsection (2) must specify a date for commencement of the order sought; and—
- (a) the date specified must not precede the expiry of the period of three months beginning with the date on which the application is made, and
  - (b) an order made on the application must provide that it comes into force on the date specified in the application or on a later date which is agreed between the Secretary of State and the governing body and which is specified in the order.
- (6) The Secretary of State may make regulations about the application of section 122(2) where an order under subsection (2) above—
- (a) is revoked, or
  - (b) lapses (in whole or in part) because one or more schools to which the order relates cease to form part of an education action zone.
- (7) In this section “school teacher” has the same meaning as in section 122.

VALID FROM 01/08/2003

## 129 Transfer of employment

- (1) Section 122(2) shall not apply to a person if—
- (a) a maintained school is established in place of an independent school in pursuance of proposals published under section 28 or 31 of the School Standards and Framework Act 1998, and
  - (b) the person becomes a school teacher in the maintained school in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794).
- (2) But if the school teacher gives a notice in writing under this subsection to his new employer, section 122(2) shall apply to him in respect of the period beginning with—
- (a) a date specified in the notice,
  - (b) if no date is specified under paragraph (a), a date agreed between the teacher and the new employer, or
  - (c) if no date is specified under paragraph (a) or agreed under paragraph (b), the date on which the employer receives the notice.
- (3) Where the governing body of a foundation, voluntary aided or foundation special school receive a notice under subsection (2), they shall inform the local education authority.
- (4) In this section “school teacher” has the same meaning as in section 122.
- (5) In subsection (1) “maintained school” means—
- (a) a community school,
  - (b) a foundation school,
  - (c) a voluntary school,
  - (d) a community special school,
  - (e) a foundation special school, or



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(f) a maintained nursery school.

### 130 Repeal of School Teachers' Pay and Conditions Act 1991

The School Teachers' Pay and Conditions Act 1991 (c. 49) shall cease to have effect.

#### Commencement Information

**I53** S. 130 partly in force; s. 130 not in force at Royal Assent, see s. 216; s. 130 in force for certain purposes at 1.10.2002 by S.I. 2002/2439, art. 2 (with transitional provisions and savings in Sch.); Act repealed (1.10.2002) by Education Act 2002 (c. 32), ss. 130, 216(2), Sch. 22 Pt. 1; S.I. 2002/2439, art. 2

#### *School teachers' appraisal*

### 131 Appraisal

- (1) Regulations may require the appraisal of the performance of teachers—
  - (a) in a manner specified by the regulations, and
  - (b) at times specified by or determined in accordance with the regulations.
- (2) The regulations may impose a duty on—
  - (a) a local education authority;
  - (b) the governing body of a school or institution;
  - (c) the head teacher of a school or the principal of an institution.
- (3) The regulations may—
  - (a) require or permit an appraisal to be carried out in a manner which confers a discretion on a person specified by or chosen or determined in accordance with the regulations;
  - (b) permit a person on whom a duty is imposed under subsection (2) to delegate that duty in whole or in part.
- (4) The regulations may require or permit a person listed in subsection (2) to have regard to the results of an appraisal in the performance of a function specified by the regulations.
- (5) The results of an appraisal may be used in determining a teacher's remuneration.
- (6) Before making regulations under this section the Secretary of State shall consult such of the following as appear to him to be appropriate—
  - (a) associations of local education authorities in England,
  - (b) local education authorities in England,
  - (c) bodies representing the interests of governing bodies in England,
  - (d) bodies representing the interests of teachers in England, and
  - (e) the Learning and Skills Council for England.
- (7) Before making regulations under this section the National Assembly for Wales shall consult such of the following as appear to it to be appropriate—
  - (a) associations of local education authorities in Wales,
  - (b) local education authorities in Wales,



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- (c) bodies representing the interests of governing bodies in Wales,
  - (d) bodies representing the interests of teachers in Wales, and
  - (e) the National Council for Education and Training for Wales.
- (8) Section 49 of the Education (No. 2) Act 1986 (c. 61) (appraisal) shall cease to have effect.

#### Commencement Information

**I54** S. 131 wholly in force at 19.12.2002; s. 131 not in force at Royal Assent, see s. 216; s. 131 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.); s. 131 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

### *School teachers' qualifications*

#### 132 Qualified teacher status

- (1) A reference in the Education Acts to a “qualified teacher” is to a person who satisfies requirements specified in regulations.
- (2) A requirement of regulations under this section may relate to—
  - (a) the possession of a specified qualification or experience of a specified kind;
  - (b) participation in or completion of a specified programme or course of training;
  - (c) compliance with a specified condition;
  - (d) an exercise of discretion by the Secretary of State, the National Assembly for Wales or another specified person.
- (3) The Secretary of State shall consult the General Teaching Council for England before making regulations under this section which make provision by reference to—
  - (a) the content of a course or programme, or
  - (b) the standard of education or training provided through a course or programme.
- (4) The National Assembly for Wales shall consult the General Teaching Council for Wales before making regulations under this section which make provision by reference to—
  - (a) the content of a course or programme, or
  - (b) the standard of education or training provided through a course or programme.

#### Modifications etc. (not altering text)

**C19** S. 132 amended (W.) (temp. from 19.12.2002) by The Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002 (S.I. 2002/3184), reg. 6(1)

#### Commencement Information

**I55** S. 132 partly in force; s. 132 not in force at Royal Assent, see s. 216; s. 132 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

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**Status:** Point in time view as at 19/12/2002. This version of this Act contains provisions that are not valid for this point in time.  
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### 133 Requirement to be qualified

- (1) Regulations may provide that specified work may not be carried out by a person in a school unless he—
  - (a) is a qualified teacher, or
  - (b) satisfies specified requirements.
- (2) Regulations specifying work for the purpose of this section may make provision by reference to—
  - (a) one or more specified activities, or
  - (b) the circumstances in which activities are carried out.
- (3) Provision by virtue of subsection (2) may, in particular, be made by reference to an activity specified in a document of the kind mentioned in section 124(3).
- (4) A requirement of regulations under this section may, in particular, relate to—
  - (a) the possession of a specified qualification or experience of a specified kind;
  - (b) participation in or completion of a specified programme or course of training;
  - (c) compliance with a specified condition;
  - (d) an exercise of discretion by the Secretary of State, the National Assembly for Wales, another specified person or another person of a specified description.
- (5) Regulations may limit the period of time during which work may be carried out by a person in reliance on subsection (1)(b).
- (6) In this section “school” means—
  - (a) a school maintained by a local education authority, or
  - (b) a special school not so maintained.

#### Commencement Information

**I56** S. 133 partly in force; s. 133 not in force at Royal Assent, see s. 216; s. 133 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

### 134 Requirement to be registered

- (1) Regulations may provide that specified work may be carried out in a school by a qualified teacher only if he is registered with full registration under section 3 of the Teaching and Higher Education Act 1998 (c. 30) (register maintained by General Teaching Council).
- (2) Regulations may provide that work may be carried out by a person in reliance on section 133(1)(b) only if he is registered with provisional registration under section 3 of the Teaching and Higher Education Act 1998.
- (3) Regulations may provide that a person may undertake a specified course of training with a view to becoming a qualified teacher only if he is registered with provisional registration under that section.
- (4) Regulations specifying work for the purpose of subsection (1) or (2) may make provision by reference to—
  - (a) one or more specified activities, or
  - (b) the circumstances in which activities are carried out.

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- (5) In this section “school” means—
- (a) a school maintained by a local education authority, or
  - (b) a special school not so maintained.

**Modifications etc. (not altering text)**

**C20** S. 134(1) amended (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 7](#)

**Commencement Information**

**I57** S. 134 partly in force; s. 134 not in force at Royal Assent, see [s. 216](#); [s. 134\(1\)\(4\)\(5\)](#) in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

### 135 Head teachers

- (1) Regulations may provide that a person may serve as the head teacher of a school only if he is a qualified teacher.
- (2) Regulations may provide that a person may serve as the head teacher of a school only if he has a specified qualification (in addition to any qualification required by virtue of subsection (1)).
- (3) A provision of regulations under subsection (2) shall not apply to a person who has been appointed as the head teacher of a school before the commencement of the provision.
- (4) Regulations under subsection (2) shall not prevent a person from carrying out the functions of the head teacher of a school—
  - (a) pending the appointment of a head teacher, or
  - (b) in the absence of the head teacher.
- (5) In this section “school” means—
  - (a) a school maintained by a local education authority, or
  - (b) a special school not so maintained.

**Commencement Information**

**I58** S. 135 partly in force; s. 135 not in force at Royal Assent, see [s. 216](#); [s. 135](#) in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

VALID FROM 01/09/2003

*Further education*

### 136 Provision of education

Regulations may—

- (a) prohibit the provision of education at a further education institution by a person who does not have a specified qualification;

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- (b) prohibit the provision of education at a further education institution by a person unless he is serving or has served a probationary period;
- (c) specify conditions to be complied with by or in respect of persons providing education at a further education institution.

### **137 Principals of further education institutions**

- (1) Regulations may provide that a person may serve as the principal of a further education institution only if he has a specified qualification.
- (2) Regulations under subsection (1) shall not prevent a person from serving as the principal of an institution while he is following a course or programme which—
  - (a) is of a kind specified in the regulations, and
  - (b) is designed to lead to the award of a qualification specified under subsection (1).
- (3) A provision of regulations under subsection (1) shall not apply to a person who has been appointed as the principal of an institution before the commencement of the provision.
- (4) Regulations under subsection (1) shall not prevent a person from carrying out the functions of the principal of an institution—
  - (a) pending the appointment of a principal, or
  - (b) in the absence of the principal.

### **138 Training in provision of further education**

- (1) This section applies to a course which is designed to lead to the award of a qualification specified under section 136 or 137(1).
- (2) The Secretary of State may by regulations—
  - (a) prohibit the provision by a further or higher education institution in England of a course to which this section applies without the approval of the Secretary of State;
  - (b) enable the Secretary of State to determine the number of persons who may undertake a specified course to which this section applies at a further or higher education institution in England;
  - (c) enable the Secretary of State to determine the number of persons in different categories who may undertake a specified course to which this section applies at a further or higher education institution in England.
- (3) The National Assembly for Wales may by regulations—
  - (a) prohibit the provision by a further or higher education institution in Wales of a course to which this section applies without the approval of the National Assembly;
  - (b) enable the National Assembly to determine the number of persons who may undertake a specified course to which this section applies at a further or higher education institution in Wales;
  - (c) enable the National Assembly to determine the number of persons in different categories who may undertake a specified course to which this section applies at a further or higher education institution in Wales.

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### **139 Wales: provision of higher education**

- (1) The National Assembly for Wales may by regulations—
  - (a) prohibit the provision by an institution to which this section applies of a course of higher education without the approval of the National Assembly;
  - (b) enable the National Assembly to determine the number of persons who may undertake a course of higher education at an institution to which this section applies;
  - (c) enable the National Assembly to determine the number of persons in different categories who may undertake a course of higher education at an institution to which this section applies.
- (2) This section applies to an institution in Wales which provides further or higher education and is within the further education sector.

### **140 Further education: general**

- (1) Regulations under any of sections 136 to 139 may provide that a specified provision of the regulations shall not apply where a specified condition (which may refer to the opinion of a specified person) is satisfied.
- (2) Regulations under any of sections 136 to 139 may impose a function on—
  - (a) a local education authority, or
  - (b) the governing body of a further or higher education institution.
- (3) In sections 136 to 139—
  - “education” includes vocational, social, physical and recreational training,
  - “further education institution” means an institution which—
    - (a) provides further education and is maintained by a local education authority, or
    - (b) is within the further education sector, and
  - “higher education institution” means an institution which—
    - (a) is within the higher education sector, and
    - (b) receives financial support under section 65 of the Further and Higher Education Act 1992 (c. 13) (administration of funds by higher education funding councils).

## *Health and fitness*

### **141 Health and fitness**

- (1) Regulations may provide that an activity to which this section applies may be carried out only by a person who satisfies specified conditions as to health or physical capacity.
- (2) This section applies to an activity of a prescribed kind performed in the course of the provision of education at—
  - (a) a school, or
  - (b) a further education institution.

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- (3) This section also applies to an activity of a prescribed kind performed in the course of the provision of education by a person—
- (a) otherwise than in a school or a further education institution, and
  - (b) under a contract of employment or for services where the other party is a local education authority or a person exercising a function relating to the provision of education on behalf of a local education authority.
- (4) This section also applies to an activity of a prescribed kind (other than the provision of education) where—
- (a) the activity is carried out by a person under a contract of employment or for services,
  - (b) the other party to the contract is a local education authority or the governing body of a school or a further education institution, and
  - (c) the activity regularly brings the person into contact with children.
- (5) In this section—
- “child” means a person who has not attained the age of 18 years,
  - “education” includes vocational, social, physical and recreational training,
  - “further education institution” has the meaning given by section 140, and
  - “school” means—
- (a) a school maintained by a local education authority, or
  - (b) a special school not so maintained.

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**Commencement Information**

**I59** S. 141 partly in force; s. 141 not in force at Royal Assent, see s. 216; s. 141 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

VALID FROM 31/03/2003

*Misconduct etc.*

**142 Prohibition from teaching, etc.**

- (1) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may direct that a person—
- (a) may not carry out work to which this section applies;
  - (b) may carry out work to which this section applies only in circumstances specified in the direction;
  - (c) may carry out work to which this section applies only if conditions specified in the direction are satisfied.
- (2) This section applies to—
- (a) providing education at a school,
  - (b) providing education at a further education institution,
  - (c) providing education under a contract of employment or for services where the other party to the contract is a local education authority or a person

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- exercising a function relating to the provision of education on behalf of a local education authority, and
- (d) taking part in the management of an independent school.
- (3) This section also applies to work of a kind which—
- (a) brings a person regularly into contact with children, and
  - (b) is carried out at the request of or with the consent of a relevant employer (whether or not under a contract).
- (4) A direction under this section may be given in respect of a person only—
- (a) on the grounds that the person is included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children Act 1999 (c. 14) (list of individuals considered unsuitable to work with children),
  - (b) on the grounds that the person is unsuitable to work with children,
  - (c) on grounds relating to the person’s misconduct,
  - (d) on grounds relating to the person’s health, or
  - (e) in the case of a direction given by virtue of subsection (2)(d), on grounds relating to the person’s professional incompetence (or on a ground mentioned in any of paragraphs (a) to (d)).
- (5) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations prescribe the procedure for giving a direction under this section (including provision about notification of persons who are subject to directions).
- (6) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may vary or revoke a direction under this section except in a case where—
- (a) the direction was given on the grounds that a person is unsuitable to work with children, and
  - (b) the person claims that he is no longer unsuitable to work with children.
- (7) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations prescribe the grounds on which a person subject to a direction under this section may seek to have it varied or revoked under subsection (6).
- (8) Where a person is subject to a direction under this section, a relevant employer shall not use the person to carry out work in contravention of the direction.
- (9) In this section—
- “child” means a person who has not attained the age of 18 years,
- “education” includes vocational, social, physical and recreational training,
- “further education institution” has the meaning given by section 140,
- “relevant employer” means—
- (a) local education authority,
  - (b) a person exercising a function relating to the provision of education on behalf of a local education authority,
  - (c) the proprietor of a school, or
  - (d) the governing body of a further education institution, and
- “school” includes an independent school.



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#### Modifications etc. (not altering text)

**C21** S. 142 modified (31.3.2003 for W. and otherwise prosp.) by [Teaching and Higher Education Act 1998 \(c. 30\)](#), [s. 15\(4\)](#) (as substituted by [Education Act 2002 \(c. 32\)](#), [ss. 215\(1\), 216](#), [Sch. 21](#) {para. 83} (with [ss. 210\(8\), 214\(4\)](#)); [S.I. 2002.3185](#), [art. 5](#), [Sch. {Pt. II}](#)

#### Commencement Information

**I60** S. 142 partly in force; [s. 142](#) not in force at Royal Assent, see [s. 216](#); [s. 142](#) in force for W. at 31.3.2003 by [S.I. 2002/3185](#), [art. 5](#), [Sch. Pt. II](#)

### 143 Directions under section 142: contractor, agency, etc.

- (1) A person shall not arrange for an individual who is subject to a direction under section 142 to carry out work in contravention of the direction.
- (2) If the Secretary of State thinks that a person is likely to fail to comply with the duty under this section in relation to work in England, the Secretary of State may direct the person to take or refrain from taking specified steps with a view to securing compliance with that duty.
- (3) If the National Assembly for Wales thinks that a person is likely to fail to comply with the duty under this section in relation to work in Wales, the National Assembly may direct the person to take or refrain from taking specified steps with a view to securing compliance with that duty.
- (4) A direction under subsection (2) shall be enforceable, on the application of the Secretary of State, by a mandatory order.
- (5) A direction under subsection (3) shall be enforceable, on the application of the National Assembly, by a mandatory order.

#### Commencement Information

**I61** S. 143 partly in force; [s. 143](#) not in force at Royal Assent, see [s. 216](#); [s. 143](#) in force for W. at 31.3.2003 by [S.I. 2002/3185](#), [art. 5](#), [Sch. Pt. II](#)

### 144 Directions under section 142: appeal

- (1) A person in respect of whom a direction has been given under section 142 may appeal to the Tribunal established under section 9 of the Protection of Children Act 1999 (c. 14)—
  - (a) against the decision to give the direction;
  - (b) against a decision not to vary or revoke the direction.
- (2) In a case to which subsection (3) applies, the Tribunal may, on an application for a review of a direction under section 142, revoke the direction.
- (3) This subsection applies to a case where—
  - (a) the direction was given on the grounds that the applicant is unsuitable to work with children,
  - (b) the applicant has obtained the leave of the Tribunal to apply for a review of the direction, and



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- (c) the Tribunal is satisfied that the applicant is no longer unsuitable to work with children.
- (4) The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations—
- (a) provide that the Tribunal may not entertain an appeal under this section in so far as the appellant’s case is inconsistent with his having been convicted of an offence;
  - (b) prescribe circumstances in which the Tribunal shall allow an appeal under this section;
  - (c) prescribe the powers available to the Tribunal on allowing an appeal under this section;
  - (d) prescribe circumstances in which the Tribunal shall grant an application for leave under this section;
  - (e) prescribe circumstances in which the Tribunal shall grant an application for a review under this section;
  - (f) prescribe the powers available to the Tribunal on revoking a direction.

#### Commencement Information

**I62** S. 144 partly in force; s. 144 not in force at Royal Assent, see s. 216; s. 144 in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, **Sch. Pt. II**

### *Sections 132 to 140: general*

#### **145 Specification of qualification or course**

- (1) A power under sections 132 to 140 to make provision by reference to a specified qualification, a specified course of education or training or a specified programme includes power to make provision—
  - (a) by reference to a class or description of qualification, course or programme;
  - (b) by reference to the institution, or class or description of institution, which awards the qualification or provides the course or programme;
  - (c) which confers discretion on the Secretary of State, the Teacher Training Agency, the General Teaching Council for England, the National Assembly for Wales, the Higher Education Funding Council for Wales, the General Teaching Council for Wales or another specified person.
- (2) A discretion under subsection (1)(c) may, in particular, refer to approval or accreditation of a qualification, course, programme or institution.
- (3) Regulations made by virtue of subsection (1) may impose a duty on the Teacher Training Agency or the Higher Education Funding Council for Wales.

#### Commencement Information

**I63** S. 145 partly in force; s. 145 not in force at Royal Assent, see s. 216; s. 145 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, **Sch. Pt. I**

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VALID FROM 31/03/2003

#### **146 Repeal of sections 218 and 218A of Education Reform Act 1988**

Sections 218 and 218A of the Education Reform Act 1988 (c. 40) (school and further and higher education regulations) shall cease to have effect.

#### **Commencement Information**

**I64** S. 146 partly in force; s. 146 not in force at Royal Assent, see s. 216; s. 146 in force for certain purposes for W. at 31.3.2003 by [S.I. 2002/3185](#), [art. 5](#), [Sch. Pt. II](#)

### *1999 Pay Document*

#### **147 Application of pay-scale**

- (1) This section—
  - (a) applies to the construction of paragraph 18 of the document referred to in article 3 of the Education (School Teachers' Pay and Conditions) (No. 2) Order 1999 (S.I. 1999/2160) (classroom teachers: criteria for position on pay spine) as it had effect from 1st September 1999 to 31st March 2000, and
  - (b) shall be treated as having come into force on 1st September 1999 (for all purposes including the calculation of pensions).
- (2) Where a person is awarded one or more points, he shall be paid the salary shown for the spine point which equates to the number of points awarded.
- (3) Where a person is not awarded a point, he shall be paid the salary shown for the lowest spine point.
- (4) In paragraph 18.1.1 (good honours degree)—
  - (a) paragraph (a) shall be ignored,
  - (b) paragraph (b) shall be treated as applying irrespective of the date of a person's appointment to his first post following qualification as a teacher, and
  - (c) in paragraph (c) the words "before 1st September has been employed as a qualified teacher and who" shall be ignored.

### *General Teaching Councils for England and Wales*

#### **148 The General Teaching Councils for England and Wales**

Schedule 12 (which contains amendments relating to the General Teaching Council for England and the General Teaching Council for Wales) shall have effect.

#### **Commencement Information**

**I65** S. 148 partly in force; s. 148 not in force at Royal Assent, see s. 216; s. 148 in force for certain purposes for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art.](#)

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4, Sch.); s. 148 in force for certain purposes for W. at 19.12.2002 by S.I. 2002/3185, art. 4, **Sch. Pt. I** and for certain further purposes for W. at 31.3.2003 by S.I. 2002/3185, art. 5, **Sch. Pt. II**

## PART 9

### CHILDCARE AND NURSERY EDUCATION

#### *Childcare*

#### 149 Duties of LEA in respect of childcare

- (1) After section 118 of the School Standards and Framework Act 1998 (c. 31) there is inserted—

**“118A Duties of LEA in respect of childcare**

- (1) A local education authority shall review annually the sufficiency of childcare provision for their area.
  - (2) In carrying out a review for the purposes of subsection (1), a local education authority—
    - (a) may have regard to any facilities which they expect to be available outside their area for providing childcare; and
    - (b) shall have regard to any guidance given from time to time by the Secretary of State.
  - (3) A local education authority shall also establish and maintain a service providing information to the public relating to the provision of childcare and related services in their area.
  - (4) In relation to the function, form and content of a service established and maintained under subsection (3), a local education authority shall have regard to any guidance given from time to time by the Secretary of State.”
- (2) Section 19(1) and (2) of the Children Act 1989 (c. 41) (duty of local authorities in England and Wales to conduct periodic reviews of child care) shall cease to have effect.

#### **Commencement Information**

**I66** S. 149 wholly in force at 31.3.2003; s. 149 not in force at Royal Assent, see s. 216; s. 149 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.) and in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, **Sch. Pt. II**

#### 150 Early years development and childcare partnerships and plans

- (1) In section 119(5) of the School Standards and Framework Act 1998 (c. 31) (functions of early years development partnerships), after paragraph (a) there is inserted—
- “(ab) in reviewing the sufficiency of childcare provision for the authority’s area for the purposes of section 118A, and”.

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- (2) In section 120 of that Act (early years development plans), in subsection (2) (content of plan), for paragraph (b) there is substituted—
- “(b) a statement which sets out the authority’s proposals for providing or promoting the provision of childcare for their area, and
  - (c) background and supporting statements.”
- (3) For subsections (3) and (4) of that section there is substituted—
- “(3) The statement mentioned in subsection (2)(a) must deal with such matters, and relate to such period, as may be determined by or in accordance with regulations.
  - (4) In relation to the form and content of the statements mentioned in subsection (2)(b) and (c) the authority shall have regard to any guidance given from time to time by the Secretary of State.”
- (4) In section 121 of that Act (approval, modification and review of statement of proposals)—
- (a) in subsection (1), the words “the authority’s statement of proposals” shall cease to have effect;
  - (b) in subsection (2), for “statement” (in each place it occurs) there is substituted “ plan ”;
  - (c) in subsection (3), for “statement” (where it first occurs) and for “proposals set out in the statement” there is substituted “ plan ”;
  - (d) in subsection (4), for “statement” (in both places it occurs) there is substituted “ plan ”;
  - (e) in subsection (5)—
    - (i) for “statement of proposals” and for “proposals” (in the second place it occurs) there is substituted “ plan ”;
    - (ii) for “their” there is substituted “ its ”; and
    - (iii) in paragraphs (a) and (b), for “statement” (in each place it occurs) there is substituted “ plan ”;
  - (f) in subsection (6)—
    - (i) for “statement of proposals”, and
    - (ii) in paragraph (b), for “statement”,there is substituted “ plan ”;
  - (g) in subsection (7), for “statement” there is substituted “ plan ”;
  - (h) in subsection (8)—
    - (i) for “statement of proposals” there is substituted “ plan ”;
    - (ii) in paragraph (a), for “statement” there is substituted “ plan ”; and
    - (iii) in paragraph (c), for “statement” and for “proposals” there is substituted “ plan ”; and
  - (i) in subsection (9), for “statement of proposals” (in both places it occurs) there is substituted “ plan ”.
- (5) Early years development partnerships are renamed “early years development and childcare partnerships” and early years development plans are renamed “early years development and childcare plans”; accordingly in Part 5 of that Act after “early years development” (in each place it occurs) there is inserted “ and childcare ”.

**Status:** Point in time view as at 19/12/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Education Act 2002 is up to date with all changes known to be in force on or before 22 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Commencement Information

**I67** S. 150 wholly in force at 31.3.2003; s. 150 not in force at Royal Assent, see s. 216; s. 150 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#)) and in force for W. at 31.3.2003 by [S.I. 2002/3185](#), [art. 5](#), [Sch. Pt. II](#)

### 151 Childcare functions of Her Majesty’s Chief Inspector and National Assembly for Wales

- (1) The Secretary of State may by order confer on Her Majesty’s Chief Inspector of Schools in England such additional functions specified in the order as the Secretary of State considers necessary or expedient to enable Her Majesty’s Chief Inspector to approve persons in accordance with criteria determined by or under a scheme made under the Tax Credits Act 2002 (c. 21) for the approval of persons who are to be regarded as providing child care for the purposes of working tax credit.
- (2) The National Assembly for Wales shall have any additional function specified in an order made by it which it considers necessary or expedient to enable it to approve persons as mentioned in subsection (1); but the order may only specify a function corresponding to a function which, by virtue of that subsection, is exercisable by Her Majesty’s Chief Inspector of Schools in England.

#### Commencement Information

**I68** S. 151 not in force at Royal Assent, see s. 216; s. 151(1) in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#)); s. 151(2) in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

### 152 Regulation of child minding and day care

Schedule 13 (which makes provision about the regulation of child minding and day care) shall have effect.

#### Commencement Information

**I69** S. 152 partly in force; s. 152 not in force at Royal Assent, see s. 216; s. 152 in force for certain purposes for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#); s. 152 in force for certain further purposes for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#)); s. 152 in force for certain purposes for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

### *Nursery education*

VALID FROM 01/04/2003

### 153 Powers of LEA in respect of funded nursery education

- (1) This section applies where a local education authority, in pursuance of the duty imposed on them by section 118 of the School Standards and Framework Act

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1998 (c. 31) (duty of LEA as respects availability of nursery education), makes arrangements with a person (other than the governing body of a maintained school) for the provision by that person of nursery education in consideration of financial assistance provided by the authority under the arrangements.

(2) The local education authority—

- (a) must, in making the arrangements, have regard to any guidance given from time to time by the Secretary of State, or (as respects local education authorities in Wales) the National Assembly for Wales, as to provision to be made in such arrangements in respect of the requirements to be met by the provider of the nursery education, and
- (b) must exercise their functions with a view to securing that the provider meets any requirements imposed on him by the arrangements.

(3) Subject to any guidance given under subsection (2)(a), the requirements imposed by the arrangements may, in particular, if any specified conditions are not satisfied, require the repayment of the whole or any part of any financial assistance provided by the local education authority under the arrangements.

(4) In this section—

“maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;

“nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere).

VALID FROM 01/06/2003

#### **154 Establishment or alteration of maintained nursery schools**

(1) Section 28 of the School Standards and Framework Act 1998 (c. 31) (procedure on proposals to establish, alter or discontinue schools) is amended as follows.

(2) In subsection (1) (local education authority to publish proposals to establish or alter certain schools), after paragraph (a) there is inserted—

“(aa) to establish a new maintained nursery school, or”.

(3) In that subsection, after paragraph (c) there is inserted “or

(d) in the case of a local education authority in Wales, to make any prescribed alteration to a maintained nursery school”.

#### **155 Inspection of nursery education**

Schedule 14 (which makes provision about the inspection of nursery education) shall have effect.

**Status:** Point in time view as at 19/12/2002. This version of this Act contains provisions that are not valid for this point in time.  
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#### Commencement Information

**I70** S. 155 partly in force; s. 155 not in force at Royal Assent, see s. 216; s. 155 in force for certain purposes for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#); s. 155 in force for certain further purposes for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

### 156 Meaning of “nursery school” and “primary education”

(1) In section 6(1) of the Education Act 1996 (c. 56) (meaning of “nursery school”), after “used” there is inserted “wholly or”.

(2) For section 2(1) of that Act there is substituted—

“(1) In this Act “primary education” means—

- (a) full-time or part-time education suitable to the requirements of children who have attained the age of two but are under compulsory school age;
- (b) full-time education suitable to the requirements of junior pupils of compulsory school age who have not attained the age of 10 years and six months; and
- (c) full-time education suitable to the requirements of junior pupils who have attained the age of 10 years and six months and whom it is expedient to educate together with junior pupils within paragraph (b).”

#### Commencement Information

**I71** S. 156 not in force at Royal Assent, see s. 216; s. 156 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#))

## PART 10

### INDEPENDENT SCHOOLS

VALID FROM 01/09/2003

#### CHAPTER 1

##### REGULATION OF INDEPENDENT SCHOOLS

###### *Standards*

### 157 Independent school standards

(1) For the purposes of this Chapter, regulations shall prescribe standards about the following matters—

- (a) the quality of education provided at independent schools;

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- (b) the spiritual, moral, social and cultural development of pupils at independent schools;
  - (c) the welfare, health and safety of pupils at independent schools;
  - (d) the suitability of proprietors of and staff at independent schools;
  - (e) the premises of and accommodation at independent schools;
  - (f) the provision of information by independent schools;
  - (g) the manner in which independent schools handle complaints.
- (2) In this Chapter, “independent school standards” means the standards for the time being prescribed under this section.

#### *Requirement of registration*

### **158 The registers**

- (1) There shall continue to be—
- (a) a register of independent schools in England, and
  - (b) a register of independent schools in Wales.
- (2) The register of independent schools in England shall be kept by the Secretary of State.
- (3) The register of independent schools in Wales shall be kept by the National Assembly for Wales.

### **159 Unregistered schools**

- (1) A person who conducts an independent school which is not a registered school is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
- (a) a fine not exceeding level 5 on the standard scale, or
  - (b) imprisonment for a term not exceeding six months,
- or to both.
- (3) No proceedings shall be instituted for an offence under subsection (1) except with the consent of the registration authority.
- (4) Where the Chief Inspector has reasonable cause to believe that an offence under subsection (1) is being committed on any premises, he may at any reasonable time—
- (a) enter and inspect the premises, and
  - (b) inspect and take copies of any records or other documents which he has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
- (5) Section 42 of the School Inspections Act 1996 (c. 57) (computer records) applies in relation to the inspection of records or other documents under subsection (4)(b).
- (6) It is an offence wilfully to obstruct the Chief Inspector in the exercise of his functions under subsection (4).
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.



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### *Registration procedure*

#### **160 Applications for registration**

- (1) An application to enter an independent school in the register must—
  - (a) contain the prescribed information, and
  - (b) be made to the registration authority by the proprietor of the school in the prescribed manner.
- (2) The information prescribed under subsection (1)(a) shall include information as to the following matters relating to the school—
  - (a) the age range of pupils;
  - (b) the maximum number of pupils;
  - (c) whether the school is for male or female pupils or both;
  - (d) whether the school provides accommodation for pupils;
  - (e) whether the school admits pupils with special educational needs.
- (3) Where the proprietor of an independent school makes an application to the registration authority under this section, the authority shall notify the Chief Inspector.
- (4) The Chief Inspector shall then inspect the school and report to the registration authority on the extent to which the independent school standards are met, and are likely to continue to be met, in relation to the school.

#### **161 Determination of applications for registration**

- (1) Where a school has been inspected under section 160, the registration authority shall, taking into account—
  - (a) the report of the Chief Inspector under that section, and
  - (b) any other evidence relating to the independent school standards,
 determine whether those standards are met, and are likely to continue to be met, in relation to the school.
- (2) The registration authority shall notify the proprietor of a school of any determination made by the authority under this section in relation to the school.
- (3) If the registration authority determines under this section that the independent school standards are met, and are likely to continue to be met, in relation to a school, the authority shall enter the school in the register.
- (4) An entry in the register for a school shall include —
  - (a) the name and address of the school,
  - (b) the name of the proprietor of the school, and
  - (c) the information supplied pursuant to section 160(2)(a) to (e).

### *Enforcement of standards after registration*

#### **162 Changes to registered details**

- (1) The registration authority may remove a school from the register if—
  - (a) there is a material change in relation to the school, and

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- (b) the change has not been approved under this section or section 167.
- (2) For the purposes of subsection (1), “material change”, in relation to a school, means—
- (a) a change of proprietor,
  - (b) a change of address, or
  - (c) a change to the school in respect of any of the matters referred to in section 160(2)(a) to (e).
- (3) Applications for approval under this section must be made in writing and, in the case of approval of a change of proprietor, must be made by the proposed new proprietor.
- (4) Where an application for approval is made under this section, the registration authority may require the Chief Inspector to—
- (a) inspect the school, and
  - (b) report to the authority on the extent to which, if the change is made, any relevant standard is likely to continue to be met in relation to the school.
- (5) In subsection (4), “relevant standard” means any of the independent schools standards specified by the authority for the purposes of that subsection.
- (6) The registration authority shall, where an application for approval is made under this section—
- (a) approve the change, if the condition in subsection (7) is satisfied, and
  - (b) in any other case, refuse to approve it.
- (7) The condition in this subsection is that the authority is satisfied that, taking into account—
- (a) any report under subsection (4), and
  - (b) any other evidence relating to the independent school standards, those standards will continue to be met in relation to the school.

### **163 Power to inspect registered schools**

- (1) The registration authority may at any time—
- (a) require the Chief Inspector to inspect any registered school, or to secure its inspection by one or more registered inspectors, or
  - (b) arrange for the inspection of any registered school by a body approved by the registration authority for the purposes of this subsection.
- (2) The inspection of a school under this section shall relate to—
- (a) such of the independent school standards as are, at the time of the inspection, specified by the authority for the purposes of this section in relation to any category of school into which that school falls, or
  - (b) if the authority so determines, such of the independent school standards as the authority may specify in relation to that school.
- (3) A person who conducts an inspection under this section shall—
- (a) make a report to the registration authority on the extent to which the school meets the standard or standards to which the inspection relates, and
  - (b) if the registration authority so requires, arrange for the publication of the report in the prescribed manner.

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- (4) A report published under subsection (3) is privileged for the purposes of the law of defamation unless the publication is shown to be made with malice (but without prejudice to any privilege subsisting apart from this subsection).

## **165 Failure to meet standards**

- (1) This section applies where, taking into account—
- (a) a report under section 163 in respect of a registered school, or
  - (b) any other evidence in respect of a registered school,
- the registration authority is satisfied that any one or more of the independent school standards is or are not being met in relation to the school.
- (2) If the registration authority considers that there is a risk of serious harm to the welfare of pupils at the school, the authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (3) Where the registration authority does not make a determination under subsection (2), it shall serve a notice on the proprietor of the school—
- (a) identifying the standard or standards in question, and
  - (b) requiring the proprietor to submit an action plan to the authority before the date specified in the notice (or such later date as the authority may specify after service of the notice).
- (4) For the purposes of this section, an action plan is a plan specifying—
- (a) the steps that will be taken to meet a standard or standards, and
  - (b) the time by which each step will be taken.
- (5) Where an action plan is submitted in accordance with subsection (3) the registration authority may—
- (a) reject it, or
  - (b) approve it, with or without modifications.
- (6) Where an action plan is required under subsection (3) but is not submitted in accordance with that subsection, or is so submitted but rejected, the registration authority may—
- (a) determine that the school is to be removed from the register on such date after the appeal period as the authority may determine, or
  - (b) make an order under subsection (8).
- (7) Where an action plan has been approved under subsection (5), but any step specified in the plan is not taken by the date specified in the plan (whether as originally approved or as varied under paragraph (a)), the registration authority may—
- (a) substitute a later date for the taking of that step,
  - (b) make an order under subsection (8), or
  - (c) determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (8) An order under this subsection is an order requiring the proprietor of the school to do one or more of the following no later than such date after the appeal period as may be specified in the order—

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- (a) to cease using any part of the school premises for all purposes or purposes specified in the order;
  - (b) to close any part of the school’s operation;
  - (c) to cease to admit any new pupils, or new pupils of a description specified in the order.
- (9) If the proprietor of a school fails to comply with an order under subsection (8)—
- (a) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both, and
  - (b) the registration authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (10) Where the proprietor of a school in respect of which an order is made under subsection (8) applies to the registration authority for the order to be varied or revoked, the authority shall—
- (a) vary or revoke the order as requested in the application, if it is satisfied that it is appropriate to do so because of any change of circumstance, and
  - (b) in any other case, refuse to do so.
- (11) The variation or revocation of an order under subsection (10) shall take effect as from the date on which the proprietor of the school is notified of it.
- (12) Where the registration authority has made a determination under this section to remove a school from the register on a particular date and no appeal is made against the determination under section 166, the authority shall remove the school from the register on that date.
- (13) For the purposes of this Chapter, the “appeal period” in relation to a determination or order is the period within which an appeal against it may be made under section 166.

## 166 Appeals

- (1) The proprietor of a registered school may appeal to the tribunal established under section 9 of the Protection of Children Act 1999 (c. 14) against—
- (a) a refusal under section 162 to approve a material change,
  - (b) a determination under section 165 to remove the school from the register,
  - (c) an order under section 165(8) requiring the taking of specified action, or
  - (d) a refusal under section 165(10) to vary or revoke such an order.
- (2) An appeal under subsection (1) must be made within the period of 28 days beginning with the day on which notice of the refusal, determination or order is served on the proprietor.
- (3) Where an appeal is made under subsection (1)(b) against a determination under section 165—
- (a) if the appeal is withdrawn or otherwise disposed of before it is determined by the tribunal under section 167, the registration authority may remove the school from the register on such date after the appeal period as it may determine, and
  - (b) in any other case the registration authority may only remove the school pursuant to the determination in accordance with section 167.

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- (4) Where an appeal is made under subsection (1)(c) against an order under section 165(8), the order shall not have effect in relation to any time before the appeal is determined by the tribunal under section 167 or withdrawn or otherwise disposed of.
- (5) In the case of an appeal against a determination under section 165(2), if at any time the tribunal considers that there is a risk of serious harm occurring to the welfare of pupils before the determination of the appeal, it may by order provide that the school is to be regarded as not registered for the purposes of section 159 until the tribunal determines the appeal under section 167 (or revokes the order before so determining the appeal).

### **167 Determination of appeals**

- (1) This section applies where an appeal is made under section 166 to the tribunal established under section 9 of the Protection of Children Act 1999 (c. 14).
- (2) In the case of an appeal against a refusal under section 162 to approve a material change, the tribunal may—
  - (a) uphold the refusal to approve, or
  - (b) itself approve the change.
- (3) In the case of an appeal against a determination under section 165 to remove the school from the register, the tribunal may—
  - (a) uphold the determination, or
  - (b) revoke the determination.
- (4) Where under subsection (3)(a) the tribunal upholds a determination, the registration authority shall remove the school from the register on such date as the tribunal may specify or, if it does not specify a date, on such date as the registration authority may determine.
- (5) Where under subsection (3)(b) the tribunal revokes a determination, it may order the proprietor of the school to do one or more of the following by such time as may be specified in the order—
  - (a) to cease using any part of the school premises for all purposes or purposes specified in the order;
  - (b) to close any part of the school's operation;
  - (c) to cease to admit any new pupils, or new pupils of a description specified in the order.
- (6) In the case of an appeal against an order under section 165(8) requiring the taking of specified action, the tribunal may—
  - (a) uphold the order,
  - (b) vary the order, or
  - (c) strike down the order.
- (7) In the case of an appeal against a refusal under section 165(10) to vary or revoke an order under section 165(8), the tribunal may—
  - (a) uphold the refusal, or
  - (b) if in any case it is satisfied that it is appropriate to do so because of any change of circumstance after the making of the order—

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- (i) vary the order in such manner as it thinks fit, or
  - (ii) revoke the order.
- (8) The tribunal may, on the application of the proprietor of a registered school, vary or revoke any order made by it under subsection (5) in relation to the school where it is satisfied that it is appropriate to do so because of any change of circumstance.
- (9) If the proprietor of a school fails to comply with an order of the tribunal under subsection (5)—
- (a) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both, and
  - (b) the tribunal may, on the application of the registration authority, authorise the registration authority to remove the school from the register on such date as the tribunal may determine.

### *Supplementary*

#### **168 Provision of information**

- (1) Regulations may make provision for requiring the proprietor of a registered school to provide the registration authority, when the authority so requests, with such particulars relating to the school as may be prescribed.
- (2) Regulations under this section may in particular—
- (a) require the provision of such information as is required by the local authority for the purposes of determining whether the school is a children's home (within the meaning of the Care Standards Act 2000 (c. 14));
  - (b) provide for the registration authority to remove from the register any school in respect of which any requirement imposed by or under the regulations is not complied with;
  - (c) provide that a person who fails to comply with any specified provision of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **169 Unsuitable persons**

The registration authority may remove a registered school from the register where it is satisfied that any person who, in relation to the school, carries out any work to which section 142 applies—

- (a) is carrying out that work in contravention of a direction under that section, or
- (b) is subject to an order under section 28 or 29 of the Criminal Justice and Court Services Act 2000 (c. 43) (disqualification from working with children).

#### **170 Service of notice etc.**

- (1) The registration authority must serve on the proprietor of a registered school notice of—

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- (a) any decision made by the authority under section 162 in relation to the school;
  - (b) any determination or order made by the authority under section 165 in relation to the school;
  - (c) any decision made by the authority under subsection (10) of that section in relation to the school.
- (2) For the purposes of this Chapter, any notice, order or other document required to be given to or served on the proprietor of a registered school may be given to or served on him by delivering it to the registered address of the school.

## 171 Interpretation of Chapter 1

In this Chapter—

“appeal period” has the meaning given by section 165;

“Chief Inspector” means—

- (a) in relation to a school in England, Her Majesty’s Chief Inspector of Schools in England, and
- (b) in relation to a school in Wales, Her Majesty’s Chief Inspector of Education and Training in Wales;

“independent school standards” has the meaning given by section 157;

“the register” means—

- (a) in relation to a school in England, the register of independent schools in England, and
- (b) in relation to a school in Wales, the register of independent schools in Wales;

“registered” means entered in the register;

“registered inspector” means a person registered under section 7(1) or (2) of the School Inspections Act 1996 (c. 57);

“registration authority” means—

- (a) in relation to a school in England, the Secretary of State, and
- (b) in relation to a school in Wales, the National Assembly for Wales.

VALID FROM 01/09/2003

## CHAPTER 2

### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

## 172 Alteration to definition of “independent school”

For section 463 of the Education Act 1996 (c. 56) (meaning of “independent school”) there is substituted—



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### **“463 Meaning of “independent school”**

- (1) In this Act “independent school” means any school at which full-time education is provided for—
  - (a) five or more pupils of compulsory school age, or
  - (b) at least one pupil of that age for whom a statement is maintained under section 324, or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989),and which is not a school maintained by a local education authority or a special school not so maintained.
- (2) For the purposes of subsection (1)(a) and (b) it is immaterial if full-time education is also provided at the school for pupils under or over compulsory school age.”

#### **173 Right of access of LEA**

In section 327 of the Education Act 1996 (c. 56) (local education authority to have access to certain schools to monitor provision made for child with special educational needs), in subsection (1)(b) (schools to which section applies), at the end there is inserted “or at an independent school”.

#### **174 Consent to placement**

In section 347 of the Education Act 1996 (approval of independent schools as suitable to provide special education), in subsection (5)(b) (no child to be placed at an unapproved school unless the Secretary of State consents), after “Secretary of State” there is inserted “ is satisfied that there is a place available for the child at the school and ”.

## **PART 11**

### **MISCELLANEOUS AND GENERAL**

VALID FROM 01/09/2003

#### *General duties of LEAs and governing bodies*

VALID FROM 01/06/2004

#### **175 Duties of LEAs and governing bodies in relation to welfare of children**

- (1) A local education authority shall make arrangements for ensuring that the functions conferred on them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children.



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- (2) The governing body of a maintained school shall make arrangements for ensuring that their functions relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school.
- (3) The governing body of an institution within the further education sector shall make arrangements for ensuring that their functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution.
- (4) An authority or body mentioned in any of subsections (1) to (3) shall, in considering what arrangements are required to be made by them under that subsection, have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (5) In this section—
  - “child” means a person under the age of eighteen;
  - “governing body”, in relation to an institution within the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);
  - “maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school.

## 176 Consultation with pupils

- (1) It shall be the duty—
  - (a) of a local education authority, in the exercise of any of their schools functions, and
  - (b) of the governing body of a maintained school, in the exercise of any function relating to the conduct of the school,
 to have regard to any guidance given from time to time by the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) about consultation with pupils in connection with the taking of decisions affecting them.
- (2) Any guidance under this section must provide for a pupil’s views to be considered in the light of his age and understanding.
- (3) In this section—
  - “maintained school” means a community, foundation or voluntary school or a community or foundation special school;
  - “pupil” does not include a child who is being provided with nursery education (whether at a school or elsewhere);
  - “schools functions”, in relation to a local education authority, means functions relating to—
    - (a) maintained schools,
    - (b) pupil referral units, or
    - (c) the provision of education for children of compulsory school age otherwise than at school.

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### *Education and training outside schools*

#### **177 Meaning of “secondary education”**

- (1) Section 2 of the Education Act 1996 (c. 56) (definition of primary, secondary and further education) is amended as follows.
- (2) In subsection (2B) (which extends “secondary education” to include education received partly at a school and partly at another institution)—
  - (a) in paragraph (b), after “another institution” there is inserted “ or any other establishment ”, and
  - (b) after “other institution” there is inserted “ or establishment ”.
- (3) After subsection (6) there is inserted—

“(6A) In the context of the definitions of secondary education and further education, references in this section to education include vocational, social, physical and recreational training.”
- (4) The Education Acts shall have effect in their application to persons receiving secondary education within section 2(2B) of the Education Act 1996 (c. 56) with such modifications as may be specified in an order under this subsection.
- (5) The power to make an order under subsection (4) is exercisable—
  - (a) in relation to England, by the Secretary of State, and
  - (b) in relation to Wales, by the National Assembly for Wales.

#### **Commencement Information**

**I72** S. 177 partly in force; s. 177 not in force at Royal Assent, see s. 216; s. 177 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

#### **178 Training and education provided in the workplace for 14 to 16 year olds**

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows.
- (2) In section 5 (provision of financial resources)—
  - (a) after subsection (1)(e) there is inserted—

“(ea) persons providing or proposing to provide, wholly or partly at the premises of an employer, education or training that is suitable to the requirements of pupils who—

    - (i) have attained the age of 15 or will attain that age in the current school year, but
    - (ii) have not ceased to be of compulsory school age;”,

and
  - (b) after subsection (3) there is inserted—

“(4) For the purposes of subsection (1)(ea) “compulsory school age”, “pupil” and “school year” have the same meaning as in the Education Act 1996.”
- (3) In section 65 (area inspections in England)—

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- (a) in subsection (1)(a) for “16” there is substituted “ 15 ”, and
- (b) after subsection (9) there is inserted—

“(10) In subsection (1)(a) “persons who are aged 15” includes persons for whom education is being provided at a school who will attain that age in the current school year; and for this purpose “school” and “school year” have the same meaning as in the Education Act 1996.”

- (4) In section 83 (area inspections in Wales)—

- (a) in subsection (1)(a) for “16” there is substituted “ 15 ”, and
- (b) after subsection (10) there is inserted—

“(11) In subsection (1)(a) “persons who are aged 15” includes persons for whom education is being provided at a school who will attain that age in the current school year; and for this purpose “school” and “school year” have the same meaning as in the Education Act 1996.”

#### Commencement Information

**I73** S. 178 partly in force; s. 178 not in force at Royal Assent, see s. 216; s. 178(1)(2) in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.); s. 178(3) in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

## 179 Rights of entry in relation to inspections

- (1) The School Inspections Act 1996 (c. 57) is amended as follows.

- (2) In section 2 (functions of the Chief Inspector for England)—

- (a) after subsection (8) (rights of entry etc.) there is inserted—

“(8A) For the purposes of the exercise of any function conferred by or under this section the Chief Inspector for England shall have at all reasonable times—

- (a) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in England, any pupils who—
  - (i) are registered at the school, and
  - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,
 are provided with part of their education by any person (“the provider”);
- (b) a right of entry to any premises of the provider used in connection with the provision by him of that education; and
- (c) a right to inspect and take copies of—
  - (i) any records kept by the provider relating to the provision of that education, and
  - (ii) any other documents containing information so relating,

which the Chief Inspector requires for those purposes.”

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and

- (b) in subsection (9)(b) (which makes it an offence to obstruct the exercise by the Chief Inspector of his rights of entry), after “subsection (8)” there is inserted “ or (8A) ”.

(3) In section 3 (power of Chief Inspector for England to arrange for inspections), in subsection (3) (rights of entry etc.)—

(a) after paragraph (a) there is inserted—

- “(aa) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who—
  - (i) are registered at the school, and
  - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,are receiving part of their education from any person (“the provider”);
- (ab) a right of entry to any premises of the provider used in connection with the provision by him of that education;”

and

(b) after paragraph (b) there is inserted “and

- (c) a right to inspect and take copies of—
  - (i) any records kept by the provider relating to the provision of education for pupils registered at the school, and
  - (ii) any other documents containing information relating to the provision of such education by the provider,which the Inspector considers relevant to the discharge of his functions.”

(4) In section 5 (functions of the Chief Inspector for Wales)—

(a) after subsection (8) (rights of entry etc.) there is inserted—

“(8A) For the purposes of the exercise of any function conferred by or under this section the Chief Inspector for Wales shall have at all reasonable times—

- (a) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in Wales, any pupils who—
  - (i) are registered at the school, and
  - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,are provided with part of their education by any person (“the provider”);
- (b) a right of entry to any premises of the provider used in connection with the provision by him of that education; and
- (c) a right to inspect and take copies of—
  - (i) any records kept by the provider relating to the provision of that education, and

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- (ii) any other documents containing information so relating,
  - which the Chief Inspector requires for those purposes.”,
  - and
  - (b) in subsection (9)(b) (which makes it an offence to obstruct the exercise by the Chief Inspector of his rights of entry), after “subsection (8)” there is inserted “ or (8A) ”.
- (5) In section 6 (power of Chief Inspector for Wales to arrange for inspections), in subsection (3) (rights of entry etc.)—
- (a) after paragraph (a) there is inserted—
    - “(aa) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who—
      - (i) are registered at the school, and
      - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,
 are receiving part of their education from any person (“the provider”);
    - (ab) a right of entry to any premises of the provider used in connection with the provision by him of that education;”,
  - and
  - (b) after paragraph (b) there is inserted “and
    - (c) a right to inspect and take copies of—
      - (i) any records kept by the provider relating to the provision of education for pupils registered at the school, and
      - (ii) any other documents containing information relating to the provision of such education by the provider,
 which the Inspector considers relevant to the discharge of his functions.”
- (6) In Schedule 3 (inspections by registered inspectors under section 10), in paragraph 7 (rights of entry etc.), after sub-paragraph (2) there is inserted—
- “(3) A registered inspector conducting an inspection of a school, and the members of his inspection team, shall also have at all reasonable times—
    - (a) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by the school, any pupils who—
      - (i) are registered at the school, and
      - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,
 are receiving part of their education from any person (“the provider”);
    - (b) a right of entry to any premises of the provider used in connection with the provision by him of that education; and
    - (c) a right to inspect and take copies of—

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- (i) any records kept by the provider relating to the provision of that education, and
  - (ii) any other documents containing information so relating,
- which the inspector or (as the case may be) member of the team requires for the purposes of the inspection.”

#### Commencement Information

**I74** S. 179 partly in force; s. 179 not in force at Royal Assent, see s. 216; s. 179 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#)); s. 179(1)(4)(5)(6) in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

### 180 Inspections of LEAs: rights of entry etc.

For section 40 of the Education Act 1997 (c. 44) (inspector’s rights of entry etc.) there is substituted—

#### “40 Inspector’s rights of entry etc.

- (1) This section applies where a local education authority are inspected under section 38.
- (2) The inspector, and any person assisting him, shall have at all reasonable times a right of entry to—
  - (a) the premises of the local education authority,
  - (b) the premises of any school maintained by the authority, and
  - (c) any other premises at which relevant section 19 education is provided, other than premises which are or form part of a private dwelling house but are not a school.
- (3) The inspector, and any person assisting him, shall also have at all reasonable times a right to inspect and take copies of—
  - (a) any records kept by, and any other documents containing information relating to, the local education authority or any school maintained by the authority, and
  - (b) any records kept by a person who provides relevant section 19 education that relate to the provision of that education, and any other documents containing information that so relates;which he considers relevant to the exercise of his functions.
- (4) Section 42 of the School Inspections Act 1996 (inspection of computer records) shall apply for the purposes of subsection (3) as it applies for the purposes of Part 1 of that Act.
- (5) Without prejudice to subsections (2) and (3), the local education authority and the governing body of any school maintained by the authority—
  - (a) shall give the inspector and any person assisting him, all assistance in connection with the exercise of his functions which they are reasonably able to give, and
  - (b) shall secure that all such assistance is also given by persons who work at the school.

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- (6) It shall be an offence wilfully to obstruct the inspector or any person assisting him in the exercise of his functions in relation to the inspection.
- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) In this section—
- “document” and “records” each include information recorded in any form; and
- “relevant section 19 education” means education provided to a child by virtue of arrangements made by the local education authority under section 19 of the Education Act 1996 (exceptional provision of education at schools or otherwise).”

#### Commencement Information

**I75** S. 180 wholly in force at 19.12.2002; s. 180 not in force at Royal Assent, see s. 216; s. 180 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.); s. 180 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

VALID FROM 01/09/2003

### *Allowances in respect of education or training*

#### **181 Allowances in respect of education or training**

- (1) Regulations may make provision authorising or requiring the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) to pay an allowance to or in respect of any eligible person who is over compulsory school age, in connection with his undertaking education or training of a prescribed description.
- (2) The relevant education or training must not be higher education.
- (3) Regulations may, in particular, make provision—
- (a) for determining whether a person is an eligible person in relation to any allowance,
  - (b) prescribing information that must be supplied by or on behalf of any person before any allowance can be paid or continue to be paid to or in respect of him,
  - (c) prescribing the period by reference to which any allowance of a periodic nature is to be paid,
  - (d) prescribing the maximum allowance payable to or in respect of any person in respect of any period,
  - (e) prescribing the maximum period during which an allowance may be payable to or in respect of any person,
  - (f) where the amount of an allowance may vary to any extent according to a person’s circumstances, for determining, or providing for the determination by the Secretary of State or the National Assembly for Wales of, the amount required or authorised to be paid to or in respect of him,

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- (g) specifying whether any allowance in respect of any person is to be paid to him, to a parent of his or to any other person,
- (h) for any allowance under this section to be made available on such terms and conditions as may be prescribed, or determined under the regulations by the Secretary of State or the National Assembly for Wales, including terms and conditions requiring repayments to be made in circumstances so prescribed or determined,
- (i) requiring the payment of an allowance to be suspended or terminated in any such circumstances,
- (j) for appeals with respect to matters arising under the regulations (including provision for determining, or enabling the determination of, the procedure to be followed in connection with appeals),
- (k) imposing obligations on the governing body of any maintained school or institution within the further education sector in relation to cases where the school or institution is providing the education or training referred to in subsection (1).

(4) In this section and section 182—

“governing body”—

- (a) in relation to a pupil referral unit, means the local education authority who maintain the unit, and
- (b) in relation to an institution within the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);

“maintained school” means a community, foundation or voluntary school, a community or foundation special school or a pupil referral unit.

## **182 Learning agreements**

(1) For the purposes of this section, a “learning agreement” is a document which—

- (a) specifies conditions which—
  - (i) relate to the attendance or conduct of, or completion of assigned tasks by, a person to whom an allowance is or may become payable (in this section referred to as “the student”), and
  - (ii) are either prescribed by regulations or, if regulations so provide, determined in accordance with any prescribed requirements by the person providing the relevant education or training,
- (b) contains a declaration by the student relating to compliance with those conditions, and
- (c) deals with such other matters as may be prescribed.

(2) Regulations may require a learning agreement—

- (a) to be in the prescribed form, and
- (b) to be signed by the student and by or on behalf of such other persons as may be prescribed.

(3) Without prejudice to the generality of section 181(3)(h), regulations may provide—

- (a) that a person is not eligible to receive an allowance unless the person providing the relevant education or training holds a learning agreement signed by him, and



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- (b) that payment of an allowance is conditional on the person providing the relevant education or training from time to time determining that the student has complied with the learning agreement or has done so to a prescribed extent or in prescribed respects.
- (4) Regulations may—
  - (a) enable or require a learning agreement to specify targets relating to the attendance, conduct or attainments of the student, and
  - (b) enable or require the Secretary of State or the National Assembly for Wales, in any case where the person providing the relevant education or training determines that targets have been met, to make additional payments of allowance to or in respect of the student.
- (5) Without prejudice to the generality of section 181(3)(k), regulations may impose obligations relating to learning agreements on—
  - (a) the governing body of a maintained school, or
  - (b) the governing body of an institution within the further education sector.
- (6) Regulations may contain provision for determining the person by whom any relevant education or training is to be treated for the purposes of this section as being provided.
- (7) A learning agreement shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort.
- (8) In this section—
  - “allowance” means an allowance under section 181;
  - “relevant education or training” means the education or training referred to in that section.

### **183 Transfer of functions relating to allowances under section 181**

- (1) If the Secretary of State so determines, any function exercisable by him by virtue of regulations made by virtue of section 181 shall, to such extent as is specified in his determination, be exercisable instead by—
  - (a) the Learning and Skills Council for England, or
  - (b) local education authority.
- (2) If the National Assembly for Wales so determines, any function exercisable by the Assembly by virtue of regulations made by virtue of section 181 shall, to such extent as is specified in the Assembly’s determination, be exercisable instead by—
  - (a) the National Council for Education and Training for Wales, or
  - (b) a local education authority.
- (3) A body by whom any function is for the time being exercisable by virtue of subsection (1) or (2) shall comply with any directions given by the Secretary of State, or as the case may be the National Assembly for Wales, as to the exercise of that function.
- (4) Where any function is so exercisable by a local education authority, the function shall be taken to be a function of that authority—
  - (a) for the purposes of section 70 of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out of functions of local authorities),

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- (b) for the purposes of Part 2 of the 2000 Act (arrangements with respect to executives etc.), and
- (c) subject to the provisions of section 13 of the 2000 Act, for the purposes of section 101 of the Local Government Act 1972 (c. 70) (arrangements for discharge of functions by local authorities).

(5) In this section “the 2000 Act” means the Local Government Act 2000 (c. 22).

#### **184 Delegation of functions relating to allowances**

- (1) The Secretary of State or the National Assembly for Wales may make arrangements for any person or body specified in the arrangements to exercise on his or its behalf, to such extent as is so specified, any function exercisable by him or the Assembly by virtue of regulations made by virtue of section 181 (including any such function in relation to appeals).
- (2) Any arrangements made under subsection (1) shall not prevent the Secretary of State, or as the case may be the National Assembly for Wales, from exercising the function in question himself or itself.

#### **185 Supplementary provisions relating to transfer or delegation of functions**

- (1) The Secretary of State or the National Assembly for Wales may make provision for enabling appeals—
  - (a) to be made with respect to such matters arising out of the exercise by virtue of section 183(1) or (2) or 184(1) by any person or body of any function of the Secretary of State or the Assembly as he or it may determine, and
  - (b) to be so made to a person or body appointed for the purpose by the Secretary of State or the Assembly.
- (2) The Secretary of State or the National Assembly for Wales may pay to any body or person by whom any function of his, or as the case may be of the Assembly, is exercisable by virtue of section 183(1) or (2) or 184(1)—
  - (a) such amounts as the Secretary of State or the Assembly considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that body or person—
    - (i) in paying allowances under section 181, or
    - (ii) by way of administrative expenses,in, or in connection with, the exercise of that function;
  - (b) in a case where the function is exercisable by virtue of section 184(1), such remuneration as the Secretary of State or the Assembly may determine.
- (3) Any payment under subsection (2)(a) may be made subject to such terms and conditions as the Secretary of State or the National Assembly for Wales may determine; and any such conditions may in particular—
  - (a) require the provision of returns or other information before any such payment is made;
  - (b) relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid.

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- (4) The Secretary of State or the National Assembly for Wales may pay to any person or body appointed by him or it under subsection (1) such remuneration or administrative expenses (or both) as he or it may determine.
- (5) In relation to any function which, by virtue of section 183(1) or (2) or 184(1) is exercisable to a specified extent, references in section 183(3) and (4) and this section to the exercise of that function are accordingly to its exercise to that extent.

### *Student loans*

## **186 Student loans**

- (1) Regulations may make provision for—
- (a) the repayment by the Secretary of State of amounts payable in respect of loans mentioned in paragraph (a), (b) or (c) of subsection (2);
  - (b) reducing or extinguishing the amounts payable in respect of loans mentioned in paragraph (a) or (b) of subsection (2).
- (2) The loans are—
- (a) loans received under arrangements made under section 1 of the Education (Student Loans) Act 1990 (c. 6) by eligible persons who fulfil prescribed conditions;
  - (b) loans received under arrangements made under section 22 of the Teaching and Higher Education Act 1998 (c. 30) by eligible persons who fulfil prescribed conditions;
  - (c) loans received for educational purposes under such other arrangements as may be prescribed by the regulations, including arrangements made outside England and Wales, by eligible persons who fulfil prescribed conditions.
- (3) The regulations may, in particular, make provision—
- (a) for determining whether a person is eligible for the purposes of the regulations;
  - (b) prescribing the circumstances and manner in which, and the times at which, payments are to be made, or amounts are to be reduced or extinguished;
  - (c) allowing retrospective adjustments for the purposes of the regulations, including provision allowing the Secretary of State to require reimbursement of repayments, or to alter the amounts reduced or extinguished;
  - (d) for imposing on employers, or such other persons or bodies as may be prescribed, requirements with respect to information to be given to the Secretary of State;
  - (e) for the reimbursement by the Secretary of State of costs incurred by persons or bodies in complying with any such requirements;
  - (f) for appeals with respect to matters arising under the regulations (including provision for determining, or enabling the determination of the procedure to be followed in connection with the appeals).
- (4) The Secretary of State may make arrangements for any person or body specified in the arrangements to exercise on his behalf, to such extent as is so specified, any function exercisable by him by virtue of the regulations (including any such function in relation to appeals).

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- (5) Any arrangements made under subsection (4) shall not prevent the Secretary of State from exercising the function in question himself.
- (6) The Secretary of State may pay to any person or body by whom any function is exercisable by virtue of subsection (4) such amounts as he considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that person or body in, or in connection with, the exercise of that function.
- (7) Any payment under subsection (6) may be made subject to such terms and conditions as the Secretary of State may determine.
- (8) Such conditions may in particular—
- (a) require the provision of returns or other information before any such payment is made;
  - (b) relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid.
- (9) In this section—
- “prescribed” means prescribed by regulations;
  - “regulations” means regulations made under this section by the Secretary of State.

### *Education action zones*

#### **187 Education action zones**

Schedule 15 (which makes provision in relation to education action zones and Education Action Forums) shall have effect.

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##### **Commencement Information**

**I76** S. 187 partly in force; s. 187 not in force at Royal Assent, see s. 216; s. 187 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

### *School inspections*

#### **188 School inspections**

Schedule 16 (which contains amendments of the School Inspections Act 1996 (c. 57)) shall have effect.

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##### **Commencement Information**

**I77** S. 188 partly in force; s. 188 not in force at Royal Assent, see s. 216; s. 188 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

**Status:** Point in time view as at 19/12/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Education Act 2002 is up to date with all changes known to be in force on or before 22 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## *Qualifications*

### **189 Amendments of Part 5 of Education Act 1997**

Schedule 17 (which contains amendments of Part 5 of the Education Act 1997 (c. 44) relating to the Qualifications and Curriculum Authority and the Qualifications, Curriculum and Assessment Authority for Wales) shall have effect.

#### **Commencement Information**

**I78** S. 189 partly in force; s. 189 not in force at Royal Assent, see s. 216; s. 189 in force for certain purposes at 1.10.2002 by S.I. 2002/2439, art. 2 (with transitional provisions and savings in Sch.); s. 189 in force for certain further purposes at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

### **190 LEA functions: qualifications**

- (1) A local education authority may award or authenticate academic and vocational qualifications, and may in particular—
  - (a) devise and administer a qualification or a course leading to a qualification,
  - (b) register candidates,
  - (c) set, administer and moderate examinations or other assessments, and
  - (d) require the payment of fees in respect of the exercise of the power.
- (2) A local education authority may secure the exercise by any other person of such of the authority's powers under subsection (1) as the authority may specify.
- (3) A local education authority may exercise their powers under this section by forming, or participating in forming, or being a member of, a body corporate.
- (4) The powers under this section shall be regarded as always having been within the powers of a local education authority; and this section is without prejudice to the generality of the powers of a local education authority.

## *Special educational needs: Wales*

### **191 Regional provision for special educational needs in Wales**

- (1) When directed to do so by the National Assembly for Wales, the local education authorities in Wales (or such of them as may be specified in the direction) must consider whether they (or any of them) would be able to carry out their special education functions, in respect of children with the special educational needs specified in the direction, more efficiently or effectively if regional provision were made.
- (2) In this section—
 

“regional provision” means—

  - (a) provision of education for children from the areas of different local education authorities in Wales, at a school maintained by one of those authorities, or
  - (b) provision made by two or more local education authorities in Wales for goods or services to be supplied by one of the authorities—
    - (i) to the other or others, or

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(ii) to one or more governing bodies of schools maintained by the other authority or authorities;

“special education functions” means functions under Part 4 of the Education Act 1996 (c. 56) (special educational needs).

- (3) The authorities to whom a direction is given must report their conclusions to the Assembly not later than the time specified in the direction.
- (4) In discharging their duties under this section, local education authorities must have regard to any guidance given from time to time by the Assembly.

## **192 Directions to bring forward proposals to secure regional provision**

- (1) Where the National Assembly for Wales is of the opinion that two or more local education authorities in Wales (“Welsh authorities”) would be able to carry out their special education functions, in respect of a particular class of children, more effectively or efficiently if regional provision were made, the Assembly may exercise its powers under this section and section 193 with a view to securing that such provision is made.
- (2) The Assembly may, by order, do one or more of the following—
- (a) direct a Welsh authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools;
  - (b) direct the governing body of a foundation, voluntary or foundation special school maintained by a Welsh authority (a “relevant school”) to exercise their powers to make proposals for the alteration of their school;
  - (c) direct two or more Welsh authorities to make proposals for arrangements under which—
    - (i) provision for education is made by one of the authorities in respect of persons from the area (or areas) of the other authority (or authorities), and
    - (ii) provision is made for determining the payments to be made under the arrangements in respect of the provision of that education;
  - (d) direct two or more Welsh authorities to make proposals for arrangements that provide for one of those authorities to make to the other (or others) such supplies of goods or services as may be specified in the proposals on such terms (including terms as to payment) as may be so specified;
  - (e) direct a Welsh authority and the governing bodies of one or more relevant schools to make proposals for arrangements that provide for the authority to make to the governing bodies such supplies of goods or services as may be specified in the proposals, on such terms (including terms as to payment) as may be so specified;
- to secure that regional provision is made in relation to such class of children, from such areas, as may be specified in the order.
- (3) Where an order contains a direction under paragraph (c) of subsection (2) and also a direction under paragraph (a) or (b) of that subsection, the payments to which paragraph (c) refers may include an amount in respect of such costs connected with the establishment, alteration or discontinuance of the school in question as may be specified in the order.
- (4) An order under this section shall—

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- (a) require the proposals to be published not later than such date as is specified in the order, and
  - (b) require the body publishing the proposals to send a copy of the published proposals and such information in connection with those proposals as may be prescribed by the order, to the Assembly.
- (5) Proposals made in pursuance of an order containing a direction under subsection (2)(c) to (e) must contain such information and be published in such manner as is prescribed by regulations.
- (6) Regulations may, in respect of proposals made in pursuance of such an order, make provision for—
- (a) consultation on the proposals;
  - (b) the making of comments on or objections to the proposals;
  - (c) withdrawal of the proposals;
  - (d) modification of the proposals;
  - (e) approval of the proposals by the Assembly;
  - (f) implementation of the proposals by the body or bodies that made them.
- (7) Without prejudice to the generality of subsection (6), regulations under that subsection may include provision equivalent to that made by or under Part 2 of Schedule 6 to the School Standards and Framework Act 1998 (c. 31) in relation to proposals of the kind mentioned in subsection (2)(a) or (b).
- (8) Where proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of an order containing a direction under subsection (2) (b) are approved or, as the case may be, determined to be implemented under that Schedule, then, despite anything in Part 3 of that Schedule, the local education authority shall defray the cost of implementing the proposals.
- (9) In this section—
- “powers to make proposals for the establishment, alteration or discontinuance of schools” means all or any of the powers of the local education authority to publish proposals under section 28, 29 or 31 of the School Standards and Framework Act 1998;
  - “powers to make proposals for the alteration of their school”, in relation to the governing body of a foundation, voluntary or foundation special school, means their powers to publish proposals under section 28(2)(b) or 31(2)(a) of that Act;
  - “regional provision” has the same meaning as in section 191;
  - “special education functions” has the same meaning as in that section.

### **193 Powers of Assembly to make proposals to secure regional provision**

- (1) Where—
- (a) the National Assembly for Wales has made an order containing directions under section 192(2), and
  - (b) either—
    - (i) any proposals have been published in pursuance of the order, or
    - (ii) the time allowed under the order for the publication of the proposals has expired,



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the Assembly may make any such proposals as might have been made, in accordance with any direction contained in the order, by the body or bodies to which it was addressed.

- (2) Proposals under this section shall contain such information and be published in such manner as the Assembly thinks fit.
- (3) The Assembly shall send a copy of any proposals under this section to—
  - (a) each local education authority in Wales, and
  - (b) the governing body of each school to which the proposals relate.
- (4) Regulations may make provision about proposals under this section and, in particular, may make provision for—
  - (a) consultation on the proposals;
  - (b) the making of comments on or objections to the proposals;
  - (c) modification of the proposals;
  - (d) implementation of the proposals by the bodies to which they relate.
- (5) Without prejudice to the generality of subsection (4), regulations under that subsection may include provision which applies or reproduces (with or without modification) any provisions of Part 5 or paragraph 17 of Schedule 7 to the School Standards and Framework Act 1998 (c. 31) (procedure for dealing with proposals by the Assembly under that Schedule).
- (6) Where proposals made and adopted by the Assembly under this section have effect (by virtue of subsection (5)) as if they were proposals made by the governing body of a foundation, voluntary or foundation special school under their powers to make proposals for the alteration of their school, and approved by the Assembly, then, despite anything in Part 3 of Schedule 6 to that Act, the local education authority shall defray the cost of implementing the proposals.

#### **194 Welsh LEAs' powers to make regional provision**

- (1) In section 14 of the Education Act 1996 (c. 56) (functions in respect of provision of primary and secondary schools), after subsection (4) there is inserted—
  - “(4A) A local education authority for an area in Wales may secure that regional schools for providing—
    - (a) primary education, and
    - (b) education that is secondary education by virtue of section 2(2)(a),are available for Wales or any part of Wales that includes the area of the authority.
  - (4B) For this purpose a “regional school”, in relation to a local education authority, is a school maintained by that authority which provides education to meet both—
    - (a) the needs of pupils with particular special educational needs in their area, and
    - (b) the needs of such pupils in the rest, or any other part, of Wales, whether or not the institution also provides education suitable to the requirements of other pupils.”

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(2) In section 318 of that Act (provision of goods and services in connection with special educational needs)—

- (a) in subsection (3) after “authority” there is inserted “ in England ”, and
- (b) after subsection (3A) there is inserted—

“(3B) A local education authority in Wales may supply goods and services to any authority in Wales or other person (other than a governing body within subsection (1)) for the purpose of assisting them in making for a child any special educational provision which any learning difficulty of the child calls for.”

VALID FROM 31/03/2003

## 195 The Special Educational Needs Tribunal for Wales

Schedule 18 (the Special Educational Needs Tribunal for Wales) shall have effect.

### Commencement Information

**179** S. 195 partly in force; s. 195 not in force at Royal Assent, see s. 216; s. 195 in force for certain purposes at 31.3.2003 by S.I. 2002/3185, art. 5, **Sch. Pt. II** and for certain further purposes at 1.9.2003 by S.I. 2002/3185, art. 6, **Sch. Pt. III**

### *Other provisions relating only to Wales*

## 196 Publication and provision of material

- (1) A local education authority in Wales shall publish any qualifying material which the National Assembly for Wales provides to the authority for the purposes of this subsection.
- (2) A local education authority in Wales shall provide to such persons as the Assembly may specify any qualifying material which the Assembly provides to the authority for the purposes of this subsection.
- (3) The governing body of any school maintained by a local education authority in Wales shall provide to such persons as the Assembly may specify any qualifying material which the Assembly provides to the body for the purposes of this subsection.
- (4) For the purposes of this section, “qualifying material” is material the Assembly considers likely to—
  - (a) assist parents in choosing schools for their children,
  - (b) increase public awareness of the quality of education provided at schools, or a school, and of the educational standards achieved there, or
  - (c) assist in assessing the degree of efficiency with which the financial resources of schools, or a school, are managed.
- (5) No material published or provided under this section may name any individual to whom it relates.

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- (6) The publication or provision of material by a local education authority or governing body under this section shall be in such form and manner as may be prescribed.

VALID FROM 01/09/2003

## 197 Partnership agreements and statements

- (1) The National Assembly for Wales may by regulations require any local education authority in Wales to enter into a partnership agreement with the governing body of each school maintained by that authority, or each such school of a prescribed class.
- (2) For the purposes of this section, a partnership agreement is an agreement about how a local education authority and the governing body of a school are to discharge their respective functions in relation to the school as regards—
- such matters as may be prescribed, and
  - such other matters as the authority and the governing body may agree.
- (3) Where a local education authority fail to reach agreement with the governing body of a school for the purposes of subsection (1), the authority may draw up a statement setting out how they and the governing body are to discharge their respective functions in relation to the school as regards the matters prescribed under subsection (2)(a).
- (4) Regulations under this section may—
- require the parties to a partnership agreement to review the agreement, and
  - require a local education authority that has drawn up a statement under this section and the governing body to which that statement relates to review the statement,
- at such intervals, or in such circumstances, as may be prescribed.
- (5) Following a review of a partnership agreement, the parties may agree—
- not to change the agreement,
  - to amend the agreement in such a manner that it remains a partnership agreement, or
  - to replace the agreement with a new partnership agreement,
- but, where they fail to do so, subsection (3) applies as it applies where a local education authority and governing body fail to reach agreement for the purposes of subsection (1).
- (6) Following a review of a statement under subsection (3), the local education authority and governing body in question may agree to replace the statement with a partnership agreement, but, where they fail to do so, the authority may amend the statement or draw up a new one (provided the amended or replacement statement is one that could have been drawn up under subsection (3)).
- (7) Regulations under this section may make provision for the time by which a local education authority or governing body must comply with any requirement imposed on them by or under the preceding provisions of this section.
- (8) In the discharge of their functions in relation to a school maintained by a local education authority in Wales—

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- (a) the authority, and
  - (b) the governing body and head teacher of the school,
- must have regard to any partnership agreement or statement under this section which for the time being has effect in relation to the school.

VALID FROM 31/03/2004

### **198 Transition from primary to secondary school**

- (1) The National Assembly for Wales may require—
  - (a) the governing body of each secondary school maintained by a local education authority in Wales, or of each such secondary school belonging to a class specified in the requirement, and
  - (b) the governing body of each of its feeder primary schools maintained by such an authority,
 jointly, to draw up plans to facilitate the transition from primary school to secondary school of pupils at those primary schools who are admitted to the secondary school.
- (2) In determining whether, for the purposes of this section, a particular school is to be regarded as a feeder primary school, in relation to a particular secondary school, regard is to be had to any guidance given, from time to time, by the Assembly.
- (3) Regulations may—
  - (a) provide for the Assembly to determine any disputes as to whether a particular school is a feeder primary school of a particular secondary school for the purposes of this section; and
  - (b) make provision about plans under this section, including provision which specifies the period within which such plans are to be drawn up and provision about the content, review and amendment of such plans.
- (4) In carrying out any functions conferred on them by or under this section, governing bodies must have regard to any guidance given, from time to time, by the Assembly.
- (5) In the discharge of their functions under any enactment, the governing body of a school maintained by a local education authority in Wales, and the head teacher of that school, must have regard to any plans drawn up by the governing body under this section which for the time being have effect.

VALID FROM 20/01/2003

### *Provision of services*

### **199 Transport for persons over compulsory school age**

Schedule 19 (transport for persons over compulsory school age) shall have effect.

**Status:** Point in time view as at 19/12/2002. This version of this Act contains provisions that are not valid for this point in time.  
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### Commencement Information

**180** S. 199 partly in force; s. 199 not in force at Royal Assent, see s. 216; s. 199 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)

VALID FROM 31/03/2003

### 200 Remission of charges relating to residential trips

In section 457 of the Education Act 1996 (c. 56) (charges and remissions policies), in subsection (4) (entitlement to complete remission of charges in respect of board and lodging on a residential trip), for paragraph (b) there is substituted—

- “(b) the pupil’s parent is—
- (i) in receipt of income support,
  - (ii) in receipt of an income-based jobseeker’s allowance (payable under the Jobseekers Act 1995), or
  - (iii) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed,
- in respect of any period wholly or partly comprised in the time spent on the trip.”

### Commencement Information

**181** S. 200 partly in force; s. 200 not in force at Royal Assent, see s. 216; s. 200 in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II

VALID FROM 31/03/2003

### 201 LEA functions concerning school lunches, milk etc.

(1) For section 512 of the Education Act 1996 (provision of meals etc. at schools maintained by local education authorities) there is substituted—

#### “512 LEA functions concerning provision of meals, etc.

- (1) A local education authority may provide—
- (a) registered pupils at any school maintained by the authority,
  - (b) other persons who receive education at such a school, and
  - (c) children who receive relevant funded nursery education, with milk, meals and other refreshments.
- (2) Where provision is made under subsection (1), it shall be made—

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- (a) in a case within paragraph (a) or (b) of that subsection, either on the school premises or at any other place where education is being provided, and
  - (b) in a case within paragraph (c) of that subsection, at any place where education is being provided.
- (3) A local education authority shall exercise their power under subsection (1) to provide school lunches for any person within paragraph (a) or (c) of that subsection if—
- (a) any prescribed requirements are met,
  - (b) a request for the provision of school lunches has been made by or on behalf of that person to the authority, and
  - (c) either—
    - (i) that person is eligible for free lunches (within the meaning of section 512ZB(2)), or
    - (ii) in the case of a person within subsection (1)(a), it would not be unreasonable for the authority to provide the lunches.
- (4) Subject to section 114(2) of the School Standards and Framework Act 1998 (c. 31) (lunches provided by LEAs to meet nutritional standards), any school lunches provided by a local education authority pursuant to subsection (3) may take such form as the authority think fit.
- (5) A local education authority shall provide at any school maintained by them such facilities as they consider appropriate for the consumption of any meals or other refreshment brought to the school by registered pupils.
- (6) In this section—
- “prescribed” means prescribed by the Secretary of State by order;
  - “relevant funded nursery education”, in relation to a local education authority, means education provided by a person other than the governing body of a maintained school (within the meaning of section 20(7) of the School Standards and Framework Act 1998) or a maintained nursery school—
    - (a) under arrangements made with that person by the authority in pursuance of the duty imposed on the authority by section 118 of that Act (duty of LEA to secure sufficient nursery education), and
    - (b) in consideration of financial assistance provided by the authority under those arrangements;
  - “school lunch”—
    - (a) in relation to a pupil, means food made available for consumption by the pupil as his midday meal on a school day, and
    - (b) in relation to a child receiving relevant funded nursery education at an establishment other than a school, means food made available for consumption by the child as his midday meal on a day on which he receives that education,

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whether involving a set meal or the selection of items by him or otherwise;

and references, in relation to a local education authority, to a school maintained by the authority are to a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school or a pupil referral unit maintained by the authority.

#### **512ZA Duty to charge for meals etc.**

- (1) A local education authority shall charge for anything provided by them under subsection (1) or (3) of section 512.
- (2) A local education authority shall charge every person the same price for the same quantity of the same item.
- (3) This section is subject to section 512ZB.

#### **512ZB Provision of free school lunches and milk**

- (1) Where the local education authority provide a school lunch in accordance with section 512(3) to a person who is eligible for free lunches, the authority shall provide the meal free of charge.
- (2) For this purpose a person is eligible for free lunches if—
  - (a) he is within subsection (4), and
  - (b) a request that the school lunches be provided free of charge has been made by him or on his behalf to the authority.
- (3) Where a local education authority exercise their power under subsection (1) of section 512 to provide a person within paragraph (a) or (c) of that subsection with milk, the authority shall provide the milk free of charge if—
  - (a) the person is within subsection (4), and
  - (b) a request that the milk be provided free of charge has been made by him or on his behalf to the authority.
- (4) A person is within this subsection if—
  - (a) his parent is—
    - (i) in receipt of income support,
    - (ii) in receipt of an income-based jobseeker's allowance (payable under the Jobseekers Act 1995 (c. 18)),
    - (iii) in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999 (c. 33), or
    - (iv) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 (c. 21) or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed, or
  - (b) he, himself, is—
    - (i) in receipt of income support,
    - (ii) in receipt of an income-based jobseeker's allowance, or



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(iii) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 (c. 21) or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed.

(5) In this section “prescribed” and “school lunch” have the same meaning as in section 512.”

(2) In section 512A of that Act (transfer of functions under section 512 to governing bodies)—

(a) in subsection (2)—

(i) in paragraph (a) for “section 512(1A) and (1B)” there is substituted “section 512(3) and (4)”,

(ii) in paragraph (b) for “section 512(3)(a)” there is substituted “section 512ZB(1)”, and

(iii) in paragraph (c) for “section 512(3)(b)” there is substituted “section 512ZB(3)”, and

(b) in subsection (6) for “section 512(2)(b)” there is substituted “section 512ZA(2)”.

(3) In section 114 of the School Standards and Framework Act 1998 (c. 31) (nutritional standards for school lunches for pupils at schools maintained by local education authorities)—

(a) in subsection (1), after “lunches for” there is inserted “(a)” and after “authorities” there is inserted “, or

(b) other persons who are provided with school lunches free of charge in accordance with section 512ZB of the Education Act 1996;”,

(b) in subsection (2), after “a school” there is inserted “or for such other persons who are provided with school lunches free of charge”, and

(c) in subsection (3)(b), at the beginning there is inserted “in the case of lunches provided to registered pupils at schools maintained by local education authorities,”.

#### **Commencement Information**

**I82** S. 201 partly in force; s. 201 not in force at Royal Assent, see s. 216; s. 201(1) in force for certain purposes and s. 201(2)(3) in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II

### *Miscellaneous*

VALID FROM 01/08/2003

#### **202 Further education institutions: records**

(1) Regulations may make provision about the compilation, retention and disclosure of educational records of further education institutions.

**Status:** Point in time view as at 19/12/2002. This version of this Act contains provisions that are not valid for this point in time.  
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- (2) The regulations may, in particular, impose a function on—
  - (a) a local education authority, or
  - (b) the governing body of a further education institution.
- (3) The regulations may, in particular, make a duty to provide a copy of a record conditional on the payment of a charge which does not exceed the cost of providing the copy.
- (4) In this section “further education institution” has the same meaning as in section 140.

VALID FROM 01/08/2003

### **203 Further education institutions: hazardous material, etc.**

- (1) The Secretary of State may by regulations require the governing body of a further education institution in England to prevent the use in the institution of specified equipment or specified materials without the approval of the Secretary of State.
- (2) The Secretary of State may specify equipment or materials under this section only if he thinks the equipment or materials might endanger a person’s health or safety.
- (3) The National Assembly for Wales may by regulations require the governing body of a further education institution in Wales to prevent the use in the institution of specified equipment or specified materials without the approval of the Assembly.
- (4) The National Assembly for Wales may specify equipment or materials under this section only if it thinks the equipment or materials might endanger a person’s health or safety.
- (5) In this section “further education institution” means an institution within the further education sector.

### **204 Baseline assessments**

Chapter 1 of Part 4 of the Education Act 1997 (c. 44) (baseline assessments) shall cease to have effect.

#### **Commencement Information**

**183** S. 204 in force at 2.9.2002 for E. by [S.I. 2002/2002](#), [art. 4](#)

### **205 Application of Part 5 of Education Act 1996 to nursery education**

Section 410 of the Education Act 1996 (c. 56) (which excludes the application of Part 5 of that Act in relation to a nursery school or in relation to a nursery class at a primary school) shall cease to have effect.

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#### Commencement Information

**184** S. 205 partly in force; s. 205 not in force at Royal Assent, see s. 216; s. 205 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

## 206 Nuisance or disturbance on educational premises

Schedule 20 (nuisance or disturbance on educational premises) shall have effect.

#### Commencement Information

**185** S. 206 partly in force; s. 206 not in force at Royal Assent, see s. 216; s. 206 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

VALID FROM 01/04/2003

## 207 Recoupment: adjustment between local education authorities

- (1) Regulations may provide, in relation to cases where any provision for education to which this section applies is made by a local education authority (in this section referred to as “the providing authority”) in respect of a person who belongs to the area of another local education authority, for requiring or authorising the other authority (in this section referred to as the “home authority”) to pay to the providing authority—
  - (a) such amount as the authorities may agree, or
  - (b) failing agreement, such amount as may be determined by or under the regulations.
- (2) This section applies to primary education and secondary education.
- (3) The regulations may provide for the amounts payable by one authority to another—
  - (a) to reflect the whole or any part of the average costs incurred by local education authorities in the provision of education (whether in England and Wales as a whole or in any particular area or areas), and
  - (b) to be based on figures for average costs determined by such body or bodies representing local education authorities, or on such other figures relating to costs so incurred, as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (4) Regulations made under this section in relation to Wales by the National Assembly for Wales may provide for the amounts so payable, in such cases as may be specified in or determined in accordance with the regulations, to be such amounts as may be determined—
  - (a) where the providing authority and the home authority are both in Wales, by the National Assembly for Wales, or
  - (b) where the providing authority is in Wales and the home authority is in England, by the Assembly with the consent of the Secretary of State.

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- (5) Any dispute between local education authorities in Wales as to whether one of them is entitled to be paid any amount by another under the regulations shall be determined by the National Assembly for Wales.
- (6) Any dispute between a providing authority in Wales and a home authority in England as to whether the providing authority is entitled to be paid any amount by the home authority under the regulations shall be determined by the National Assembly for Wales with the consent of the Secretary of State.
- (7) In this section references to provision for education include provision of any benefits or services for which provision is made by or under this Act or any other enactment relating to education.

VALID FROM 01/04/2003

#### **208 Recoupment: special cases**

- (1) In section 493 of the Education Act 1996 (c. 56) (recoupment: cross-border provisions) for subsection (2) there is substituted—
  - “(2) Subsection (3) of section 207 of the Education Act 2002 (recoupment: adjustment between local education authorities) shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the reference to the National Assembly for Wales.
  - (2A) The regulations may provide for the amounts payable by one authority to another, in such cases as may be specified by or under the regulations, to be such amounts as may be determined by the Secretary of State.”
- (2) The function of making regulations under section 494 of the Education Act 1996 (recoupment: excluded pupils), so far as exercisable in relation to Wales, is hereby transferred to the National Assembly for Wales.
- (3) The function mentioned in subsection (2) is to be treated as having been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38); and, accordingly, the transfer may be revoked or varied by an Order in Council under that section.

VALID FROM 01/04/2003

#### **209 Paid chairmen for local learning and skills councils**

In Schedule 2 to the Learning and Skills Act 2000 (c. 21) (local learning and skills councils) for paragraph 4 there is substituted—

“**Salaries, allowances etc.**

4           The Council must pay—

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- (a) in respect of the chairman of a local council such salary and such travelling, subsistence and other allowances as the Secretary of State may determine, and
- (b) in respect of the other members of a local council such travelling, subsistence and other allowances as the Secretary of State may determine.”

### *General*

## **210 Orders and regulations**

- (1) Subject to subsection (2), any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Subsection (1) does not apply to any order under—
  - (a) section 165 or 192, or
  - (b) paragraph 3(6) or 5 of Schedule 1.
- (3) No order shall be made by the Secretary of State under—
  - (a) section 80(3),
  - (b) section 82(4)(b),
  - (c) section 83(3),
  - (d) section 84(6),
  - (e) section 86, or
  - (f) section 125(4),
 unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subject to subsections (5) and (6), a statutory instrument which contains any order or regulations made under this Act by the Secretary of State and is not subject to the requirement in subsection (3) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (4) does not apply to an order under—
  - (a) section 7(2),
  - (b) section 87(2)(c) or (3)(c),
  - (c) section 128(2), or
  - (d) section 216.
- (6) If an order under section 122 contains only provisions which in the opinion of the Secretary of State give effect without significant modification to recommendations of the School Teachers’ Review Body—
  - (a) the order shall contain a statement to that effect, and
  - (b) subsection (4) shall not apply.
- (7) Any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under this Act includes power—
  - (a) to make different provisions for different cases or areas,

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- (b) to make provision generally or only in relation to specific cases, and
  - (c) to make such incidental, supplemental, saving or transitional provisions as the Secretary of State or the Assembly thinks fit.
- (8) Nothing in this Act shall be regarded as affecting the generality of subsection (7).

## 211 Wales

- (1) Subsection (2) applies where—
- (a) this Act confers a function (in this section referred to as “the new function”) on the Secretary of State by amendment of another Act, and
  - (b) any functions under that Act have before the passing of this Act been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38) (transfer of Ministerial functions).
- (2) The new function, so far as exercisable in relation to Wales, is to be treated as having been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 and, accordingly, the transfer may be varied or revoked by an Order in Council under that section.
- (3) For the purposes of section 22 of the Government of Wales Act 1998, an Order in Council made by virtue of subsection (2) or section 208(3) is to be treated as if it were revoking or varying a previous Order in Council.
- (4) Subsection (2) does not apply in relation to the amendment made by section 208(1).

## 212 General interpretation

- (1) In this Act, unless the context otherwise requires—
- “contract of employment” has the meaning given by section 230(2) of the Employment Rights Act 1996 (c. 18);
  - “the local education authority”, in relation to a school maintained (or proposed to be maintained) by a local education authority, means that authority;
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made under this Act by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales).
- (2) Subject to subsection (4), the Education Act 1996 (c. 56) and the provisions of this Act specified in subsection (3) are to be construed as if those provisions were contained in that Act.
- (3) The provisions of this Act referred to in subsection (2) are—
- (a) Part 1 (provision for new legal frameworks),
  - (b) Part 2 (financial assistance for education and childcare),
  - (c) Part 3 (maintained schools),
  - (d) Part 5 (school organisation), except section 72 and Schedule 9,
  - (e) Parts 6 and 7 (the curriculum),
  - (f) in Part 8, sections 119 to 146,
  - (g) in Part 9, section 153,

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- (h) Part 10 (independent schools), and
  - (i) in this Part, sections 175 and 176, sections 181 to 185, sections 190 to 198 and section 207.
- (4) Where an expression is given for the purposes of any provision falling within subsection (3) a meaning different from that given to it for the purposes of the Education Act 1996 (c. 56), the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.
- (5) Unless the context otherwise requires, any reference in this Act or in any Act amended by this Act to a community, foundation or voluntary school or a community or foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998 (c. 31).

### **213 Financial provisions**

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums which by virtue of any other Act are payable out of money provided by Parliament.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

### **214 Transitional provisions etc.**

- (1) Regulations may at any time make such incidental, consequential, transitional or supplementary provision as appears to the Secretary of State, or as the case may be the National Assembly for Wales, to be necessary or expedient for the general purposes, or any particular purposes, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for any provision of this Act which comes into force before—
    - (i) another such provision has come into force, or
    - (ii) anything falling to be done under another such provision has been done,
 to have effect, until that other provision has come into force or (as the case may be) that thing has been done, with such modifications as are specified in the regulations;
  - (b) for amending, repealing or revoking (with or without savings) any statutory provision passed or made before the passing of this Act, for applying any such provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act.
- (3) The amendments that may be made under subsection (2)(b) shall be in addition (and without prejudice) to those made by any other provision of this Act.
- (4) Nothing in this Act shall be read as prejudicing the generality of subsection (1).
- (5) In this section “statutory provision” has the same meaning as in Chapter 1 of Part 3.



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## 215 Minor and consequential amendments and repeals

- (1) Schedule 21 (which contains minor and consequential amendments) shall have effect.
- (2) The enactments specified in the first column of Schedule 22 (which include spent provisions) are repealed to the extent specified in the second column.

### Commencement Information

**186** S. 215 partly in force; s. 215 not in force at Royal Assent, see s. 216; s. 215(2) in force for certain purposes for E. at 26.7.2002 by S.I. 2002/2002, art. 3; s. 215 in force for certain further purposes for E. at 2.9.2002 by S.I. 2002/2002, art. 4; s. 215 in force for certain purposes at 1.10.2002 by S.I. 2002/2439, arts. {2}, {3} (with transitional provisions and savings in Sch.); s. 215 in force for certain further purposes for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in art. 3, Sch.); s. 215(1) in force for certain purposes for W. and s. 215(2) in force for certain purposes at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I (with transitional provisions and savings in art. 7); s. 215 in force for certain purposes for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II; s. 215(2) in force for certain purposes at 1.9.2003 by S.I. 2002/3185, art. 6, Sch. Pt. III

## 216 Commencement

- (1) The following provisions shall come into force on the day on which this Act is passed—
  - section 13,
  - section 52(7) to (10),
  - section 147,
  - section 186,
  - section 190,
  - sections 210 to 214, and
  - this section and section 217.
- (2) The following provisions shall come into force in accordance with provision made by the Secretary of State by order—
  - sections 65 to 69 and Schedule 7,
  - section 70 and Schedule 8,
  - section 71,
  - section 73,
  - Part 6,
  - sections 119 to 130 and Schedule 11,
  - section 209,
  - paragraphs 1 to 4 and 9 of Schedule 17, and section 189 so far as relating to those paragraphs,
  - paragraphs 14, 17, 18, 56, 91 and 119 of Schedule 21, and section 215(1) so far as relating to those paragraphs, and
  - Part 1 of Schedule 22, and section 215(2) so far as relating to that Part.
- (3) The following provisions shall come into force in accordance with provision made by the National Assembly for Wales by order—
  - Part 7,
  - section 139,

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sections 191 to 198 and Schedule 18,  
 paragraphs 5 to 8 of Schedule 17, and section 189 so far as relating to those paragraphs, and  
 Part 2 of Schedule 22, and section 215(2) so far as relating to that Part.

- (4) Subject to subsections (1) to (3), this Act shall come into force—
- (a) except in relation to Wales, in accordance with provision made by the Secretary of State by order, and
  - (b) in relation to Wales, in accordance with provision made by the National Assembly for Wales by order.
- (5) An order under this section may—
- (a) make provision generally or for specified purposes only,
  - (b) make different provision for different purposes, and
  - (c) contain such transitional provisions and savings as the person making the order thinks fit.

#### **Subordinate Legislation Made**

- P1** S. 216(4) power partly exercised: different dates appointed for specified provisions and certain purposes by {S.I. 2002/2002}, arts. 2-4 (as amended by S.I. 2002/2018); s. 216(4) power partly exercised 1.10.2002 appointed for specified provisions and certain purposes by S.I. 2002/2439, arts. 2, 3 (with transitional and saving provisions in Sch.); s. 216(4) power partly exercised: 20.1.2003 appointed for specified provisions and certain purposes by {S.I. 2002/2952}, art. 2 (with transitional and saving provisions in Sch.); s. 216(4) power partly exercised: different dates appointed for specified provisions and certain purposes by {S.I. 2002/3185}, arts. 4-6, Sch. (with transitional provisions and savings in art. 7)

#### **217 Short title and extent**

- (1) This Act may be cited as the Education Act 2002.
- (2) This Act shall be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).
- (3) Any amendment or repeal in this Act has the same extent as the provision amended or repealed.
- (4) Except as provided by subsection (3), this Act extends to England and Wales only.

**Status:**

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