

*These notes refer to the Education Act 2002 (c.32)
which received Royal Assent on 24 July 2002*

EDUCATION ACT 2002

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

4. The Education Act implements proposals set out in the White Paper “Schools – achieving success” (Cm 5230) published on 5 September 2001, in five related consultation papers published on the same day (“The Way Forward – a Modernised Framework for School Governance”, “Consultation on School Admissions”, “Consultation on Exclusion Appeals Panels”, “Changes to the Registration and Monitoring of Independent Schools”, “Better beginnings – Improving Quality and Increasing Provision in Early Years Education and Childcare”) and in a consultation paper issued on 21 September (“16-19 Organisation and Inspection: a Consultation Document”). Implementation in Wales will be guided by the principles set out in the National Assembly for Wales’ (NAW) consultation document “The Learning Country” (“Y wlad sy’n Dysgu”), published on 5 September 2001.

Territorial Coverage

5. Except for section 189 and Schedule 17, which amend provisions in the Education Act 1997 (EA 97) which extend to Northern Ireland as well as England and Wales, the Act will extend to England and Wales only. In general, the provisions have practical application both in England and Wales. There are however some provisions which because of their subject-matter relate only to England or only to Wales.

Part 1: Provision for New Legal Frameworks

6. This Part makes provision for new legal frameworks in order to support innovation and new forms of service delivery.

Chapter 1 of Part 1: Powers to facilitate innovation

7. This Chapter introduces a new power for the Secretary of State, or the NAW in Wales, to respond to an application by a qualifying body by issuing an order suspending or modifying legislation for a period of up to 3 years. The power is intended to enable innovative pilot projects to take place and may by order be either extended in time, provided that in total no such project lasts for more than 6 years, or be terminated. The powers set out in this Chapter will last for 4 years.

Chapter 2 of Part 1: Exemptions related to school performance

8. These provisions will allow, subject to regulations, greater autonomy for governing bodies of qualifying schools over certain elements of teachers’ pay and conditions and the national curriculum. The criteria to define qualifying schools, and the specific areas where greater flexibility will be permitted, including which flexibilities will apply by right and which by discretion, will be set out in regulations.

Chapter 3 of Part 1: Powers to form companies etc.

9. This Chapter enables the implementation of proposals outlined in the policy paper “The Role of the Local Education Authority in School Education” for new models of service delivery. It provides that a school may become a member of a company for the purposes of purchasing goods and providing services for schools and to exercise functions of an LEA, where the LEA chooses to contract them out pursuant to an order under the Deregulation and Contracting Out Act 1994. It also enables the Secretary of State to form or participate in forming companies for purposes connected with her functions relating to education.

Part 2: Financial Assistance for Education and Childcare

10. This Part makes arrangements for enabling the Secretary of State, or the NAW, to give financial assistance for education and childcare.
11. At present, the Secretary of State, or the NAW, has a wide variety of powers for making available funding or other forms of financial assistance for purposes connected with education or childcare. This Part repeals many of these powers and replaces them with a single broad power to fund education, childcare and related activities. The assistance may be given through grants, loans, guarantees and incurring expenditure for the benefit of the person assisted. The power to fund excludes higher education (HE), but includes all other forms of education.

Part 3: Maintained schools

12. **Part 3** makes provisions with respect to the government and financing of maintained schools, and admissions, exclusions and attendance.

Chapter 1 of Part 3: Government of Maintained Schools

13. This Chapter implements the Government’s consultation paper on school governance: “The Way Forward – A Modernised Framework for School Governance”.
14. The Chapter provides that every maintained school shall have a governing body responsible for the conduct of the school with, in accordance with the regulations, an established membership and instrument of government. Regulations will make provisions concerning the control and occupation of school premises by governing bodies. The Chapter introduces measures to enable more than one school to federate under a single governing body, if they so choose, and provided that they comply with prescribed procedures and conditions. In addition, the Secretary of State, or the NAW, may make regulations providing for governing bodies to collaborate by discharging functions jointly either through whole governing bodies or through joint committees.
15. Provision is made to enable governing bodies to provide community facilities or services for the benefit of their pupils, their pupils’ families and the wider community. It also provides for limits to be imposed on those powers. The Chapter also introduces measures requiring governors to produce an annual report; hold an annual parents’ meeting; and establish complaints procedures. This Chapter also provides for the staffing of maintained schools, repealing current arrangements and empowering the Secretary of State, or the NAW, to make regulations about the appointment, discipline, suspension and dismissal of staff.
16. The Chapter also provides that maintained nursery schools are to have governing bodies.

Chapter 2 of Part 3: Financing of Maintained Schools

17. This Chapter introduces components of a new system for funding LEAs and schools. It introduces new definitions of the ‘LEA budget’ for central functions and the ‘schools budget’ for expenditure on pupils. It requires LEAs to establish a schools forum in

accordance with regulations, to represent the views of schools with respect to the funding of schools in the area. It also provides a power for the Secretary of State, or the NAW, to set a minimum level for the schools budget.

18. In addition, the Chapter provides that the governing body of a maintained school may be required to keep prescribed accounts and records, prepare prescribed financial statements, comply with prescribed audit conditions and to send copies of accounts and financial statements to the Secretary of State or the NAW. Financial statements must also be prepared in relation to private funds.

Chapter 3 of Part 3: Admissions, Exclusions and Attendance

19. The Chapter makes a number of amendments to the provisions for admission to maintained schools. It requires LEAs to establish an admission forum to advise on local admissions issues. It repeals the requirement for schools to have a standard number. It also repeals the power that enables schools with a religious character to agree special arrangements with their LEA for preserving their character. It provides for the Secretary of State, or the NAW, to make regulations requiring LEAs to take action to secure an agreement between admission authorities in the area for co-ordinating admission arrangements. It introduces a power to make regulations with respect to admission appeals.
20. The Chapter further provides for the exclusion of a pupil from a maintained school, and for regulations to be made in relation to such exclusions, including the procedures to be followed, the arrangements for review of exclusions and appeals against decisions not to reinstate the pupil and adding pupil referral units (PRU) and nursery schools. Provision is also made for the Secretary of State, or the NAW, to require governing bodies to set school-level targets for authorised as well as unauthorised absence.

Part 4: Powers of Intervention

21. This Part extends the powers through which the Secretary of State, or the NAW, and LEAs may intervene in schools with serious weaknesses or requiring special measures. It introduces a new power to appoint an interim executive board (IEB); and a power for the Secretary of State or the NAW to involve an external partner in turning round a school in special measures or having serious weaknesses.
22. The Part also extends the powers of the Secretary of State, or the NAW, to intervene in weak LEAs.

Part 5: School Organisation

23. This Part makes provision about the setting up of new schools and the alteration and discontinuance of existing schools. The first group of sections provides for a new kind of school – the Academy. The second group of sections makes provision about how schools, chiefly maintained schools, can be established, altered or discontinued. There are changes in who can make proposals for alterations and in the procedures for dealing with proposals.

Part 6: The Curriculum in England

24. This Part makes provision for a National Curriculum in England, replacing sections 350 to 357 and 362 to 367 of the Education Act 1996 (EA 96), in England. It also re-enacts sections 351 and 352 but with amendments to reflect the incorporation of the foundation stage within the National Curriculum in England.
25. The Part introduces and provides for the areas of learning within the Foundation Stage. It also separates the first, second and third key stages in England from the fourth key stage and sets out that the National Curriculum shall comprise the attainment targets, programmes of study and assessment arrangements in relation to each key stage. It

provides that in relation to the fourth key stage, the Secretary of State may amend the subjects or abolish the Key Stage by order, and re-enacts the special cases provisions of the EA 96.

Part 7: The Curriculum in Wales

26. This Part separates out the National Curriculum for Wales from that for England. It closely mirrors Part 6, except that it provides for the period and content of the foundation stage to be set out in an order of the NAW and includes the Welsh language in the curriculum.

Part 8: Teachers

27. This Part makes provision for teachers' pay and conditions, appraisal, qualifications and provision about misconduct. It repeals the School Teachers' Pay and Conditions Act 1991 (STPCA) and replaces its provisions with a modernised framework, but continuing with the main outlines of the existing machinery. It replaces existing requirements for appraisal, and puts in place an updated requirement. It provides for teacher and headteacher qualifications in schools and lecturer and principal qualifications in further education (FE) colleges.

Part 9: Childcare and Nursery Education

28. This Part deals with childcare and nursery education. In particular it makes provision about the role of LEAs in childcare and nursery education and amends the inspection and registration regimes for childminding and day care and nursery education.

Part 10: Independent Schools

29. This Part introduces a new regulatory regime, under which independent schools will have to comply with prescribed standards before registration and at all times afterwards. There is also provision about children with special educational needs (SEN) at independent schools.

Part 11: Miscellaneous and General

30. This Part imposes a duty on LEAs, the governing bodies of both maintained schools and FE institutions to make arrangements in regard to the welfare of children. It also places a duty on LEAs and the governing bodies of maintained schools to have regard to any guidance from the Secretary of State or the NAW about consultation with pupils in decisions affecting them.
31. This Part contains provisions relating to education outside schools for 14-16 year olds.
32. Provision is made to enable the Secretary of State to repay the student loans of those defined by regulations as being eligible.
33. A number of minor amendments are made to Education Action Zones (EAZs), including an extension to the range of schools eligible to participate and a broadening of the objects of the Zones.
34. Amendments to inspection provisions include a broadening of the duties of inspectors to report on the management and leadership of schools and a power to enable a member of the Inspectorate to carry out inspections currently only deliverable by a registered inspector.
35. The powers of the Qualifications and Curriculum Authority (QCA) and the Qualifications, Curriculum and Assessment Authority for Wales (ACCAC) are extended. The powers of LEAs to award qualifications are clarified.

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36. Provision is made to enable regional provision to be made in Wales in respect of children with SEN. A Special Educational Needs Tribunal for Wales is established.
37. The NAW is given powers to require publication of certain information by schools and LEAs, and to make regulations requiring LEAs in Wales to enter into partnership agreements with schools maintained by them. Provision is also made for the NAW to require the governing bodies of primary and secondary schools to draw up plans together to facilitate the transition of pupils from one to the other.
38. Amendments are made to the provisions for transport for persons over compulsory school age, to ensure that LEAs develop, publish and implement policies meeting certain criteria. Changes are made to the provisions concerning school meals and milk, to ensure that children not yet of school age receiving funded nursery education may be eligible for free school meals and milk and that regulations can restrict entitlement to free school meals to children in attendance over the lunch period.
39. Provision is made making it an offence to create or permit nuisance or disturbance on the premises of a non-maintained special school, an independent school or certain LEA-maintained facilities, and any institution within the further education sector.
40. The role of the Secretary of State in settling recoupment disputes is ended (although it is retained for the NAW). A power is introduced for the Secretary of State to make payment to the chairmen of local learning and skills councils.