

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

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 10 – Independent Schools

316. This Part enacts a new statutory regime for independent schools to replace the existing regime in Part 7 of the EA 96.

Chapter 1 – Regulation of independent schools **Sections 157-171**

Standards

Section 157

Section 157: Independent school standards

317. This section confers power on the Secretary of State (or, in Wales, the NAW) to prescribe standards which independent schools must meet in order to be, or to remain, registered.

Requirement of registration

Sections 158 and 159

Section 158: The registers

318. This section provides for the continuation of existing registers, kept by the Secretary of State and the NAW for England and Wales respectively.

Section 159: Unregistered schools

319. The section makes it an offence to operate an independent school which is not registered, and establishes a new power to enable HMI to enter premises where there is reasonable cause to believe that an unregistered independent school is operating illegally. The section specifies the penalties for conducting an unregistered school and obstructing HMI's right of entry.

Registration procedure

Sections 160 and 161

Sections 160 and 161: Applications for registration and Determination of applications for registration

320. **Section 160** sets out the information to be provided with an application for registration and provides for HMI to inspect. **Section 161** ensures that independent schools meet prescribed standards before registration.

Enforcement of prescribed standards after registration

Sections 162 to 167

Section 162: Changes to registered details

321. This section enables the registration authority to remove a school from the register when there has been a material change which has not been approved. It requires the proprietor of an independent school to notify the Secretary of State, or the NAW, of specified variations in the details of the school's registration so that the new provision can be approved, where appropriate, following an inspection.

Section 163: Power to inspect registered schools

322. Subsection (1) makes provision for inspections by registered inspectors, HMI and any 'approved body'. The Independent Schools Inspectorate (ISI) will be an 'approved body' for this purpose. In fact, the ISI already undertake inspections of independent schools in England in membership of associations affiliated to the Independent Schools Council. The section also requires reports to be made to the Secretary of State or the NAW for their publication.

Section 164: Inspections: supplementary

323. This section deals with a range of supplementary inspection issues including at subsection (9) provision for the introduction of charges by Ofsted or Estyn (the education and training inspectorate for Wales) for inspections of registered schools.

Section 165: Failure to meet standards

324. The section introduces a new regime for dealing with independent schools where standards are not being maintained. Subsection (2) refers specifically to a fast track arrangement when a school is failing to meet the required standards and there is a serious risk to pupils' welfare. In all other cases schools found not to be meeting the standards will be required to produce, and subsequently implement, an action plan to remedy the areas of concern.

Sections 166 and 167: Appeals and determination of appeals

325. Where action is taken against a school failing to meet the standards under section 165, provision is made in 166 for an appeal to a standing tribunal (the CST). An order or determination made by the Secretary of State will not take effect until the school has had an opportunity to lodge an appeal. The tribunal will, however, have the power to make an order for interim suspension under subsection (5) of this section if it considers there is a risk of serious harm occurring to pupils pending the determination of the appeal. Section 167 sets out the powers of the tribunal.

Supplementary

Sections 168 to 171

Section 168: Provision of information

326. This section reproduces the substance of the existing section 467 of the EA 96 regarding the provision of information about registered and provisionally registered schools but also creates a new offence of failing to provide the required information to be punishable by a fine.

Section 169: Unsuitable persons

327. The section empowers the Secretary of State or the NAW to remove an independent school from the Register, if the proprietor or any other person employed at the school is acting in contravention of a direction or order which prohibits them from working with children.

Sections 170 to 171: Service of notice etc. and Interpretation of Chapter 1

328. This section deals with the duties imposed on the Secretary of State or the NAW when giving notice of decisions, determinations or orders. Section 171 provides definitions for terms used in Chapter 1 of this Part.

Children with special educational needs

Sections 172 to 174

Section 172: Alteration to definition of “independent school”

329. The section amends the EA 96 to define a school as an independent school if it provides full time education for five or more pupils of compulsory school age or if it has just one pupil with a statement of SEN or who is looked after by a public authority and it is not a maintained school or a special school not so maintained.

Section 173: Right of access of LEA

330. Section 327 of the EA 96 provides that LEAs have access to certain schools to monitor provision made for children with SEN. This section adds independent schools to the list of establishments to which LEAs have a right of access.

Section 174: Consent to placement

331. Section 347 (5)(b) of the EA 96 provides for the Secretary of State, or the NAW, to give consent to placement at an independent school which does not have approval as being suitable to provide special education. This section adds the condition that the Secretary of State, or the NAW, must be satisfied that there is a place available at the school before considering or granting consent to the placing authority. It will be for the Local Authority as placing authority to demonstrate that there is a place.