

*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 3 – Maintained Schools

Chapter 3 – Admissions, exclusions and attendance

Admission arrangements

Sections 46 to 51

128. The following sections introduce a number of changes to the current legal framework that instructs LEAs and school governing bodies on how they should operate their school admission arrangements. Guidelines for England are set out in the School Admissions Code of Practice and the School Admission Appeals Code of Practice, in force since April 1999 and September 1999 respectively. Revised versions of these Codes, to reflect the legislative changes, will be issued in January 2003. Guidelines for Wales are set out in corresponding Codes of Practice, which will also be revised.

Section 46: Admission forums

129. This section amends the SSFA by inserting a new section 85A to require LEAs, through regulations, to establish advisory bodies, to be known as admission forums, to discuss and advise on local school admission issues including proposed admission arrangements. It also inserts a new section 85B to require admission forums to advise Academies about local admission arrangements, and requires the governing body of an Academy to have regard to the advice given by the forum. There is provision for LEAs to establish such admissions forums jointly with one or more neighbouring LEAs. This provision replaces the current guidance from the Secretary of State and the NAW in the Codes of Practice on School Admissions that recommends voluntary bodies for this purpose. There will be a requirement on admission forums to advise Academies, as well as maintained schools, and for Academies to have regard to such advice (see section 66).

Section 47: Admission numbers

130. This section, together with the relevant repeals, removes the requirement for a school to have a standard number (relating to an age group in which pupils are normally admitted to the school) as regards the number of pupils who are to be admitted in any particular school year. It inserts a new section 89A into the SSFA, under which admission authorities will have to consider, amongst other factors, the current capacity of the school (as determined under a new formula which is being introduced) when setting an admission number. Section 86(5) of the SSFA is amended so that prejudice to efficient education or the efficient use of resources may not be taken to arise (and, therefore, the duty to comply with parental preference will apply) until such time as an admission authority has admitted the number of pupils it has determined to admit in the year in question. This section also inserts new provisions into the SSFA which allow admission authorities for schools which provide boarding accommodation to have separate admission numbers for their day and boarding places respectively. Under these,

day place applicants are to be considered separately from boarding applicants, and vice versa.

Section 48: Co-ordination of admission arrangements

131. This section amends the SSFA by inserting new sections 89B and 89C which allow regulations to be made requiring LEAs to co-ordinate, for their areas, school admission arrangements as between themselves and those maintained schools which are responsible for their own admissions. The effect is that LEAs must attempt to negotiate agreement between all maintained schools in their area for a co-ordinated application process for local parents. Each LEA will be responsible for the administration of the co-ordinated arrangements. Regulations may also require that all parents in an LEA's area are made an offer of a school place on the same day. If an LEA and other admission authorities are unable to agree a scheme, the Secretary of State, or (in Wales) the NAW, will have the power to impose one. The NAW will have the same regulation-making power in relation to Wales.

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

132. This section repeals section 91 of the SSFA which allows foundation or voluntary aided faith schools to make special arrangements to preserve their religious character.

Section 50: Admission Appeals

133. This section amends section 94 of the SSFA to reflect the repeal of Schedule 24, relating to admission appeals, which will be replaced by regulations.
134. Admission appeal panels consider parents' appeals against the decision of an LEA or governing body (where it is the admission authority for a school) to refuse their child a place. The current provisions that govern arrangements by LEAs and schools for such appeals, and their operation, will in future be prescribed by regulations.

Section 51: Further amendments relating to admission arrangements

135. This section introduces Schedule 4 which contains a number of other amendments to statutory provisions relating to school admission arrangements, as follows.
136. The definition of "appeal panel" in section 84(6) of the SSFA is amended to reflect the substitution of the provisions of Schedule 24 by regulations.
137. Section 86 of the SSFA is further amended to clarify that a parent may express more than one preference for the school they wish their child to attend, to which the duty to comply placed on LEAs and governing bodies by subsection (2) will apply. Provision is also made to clarify that this duty also applies in relation to preferences expressed for a school's sixth form.
138. Section 87, which removes the requirement from LEAs and school governing bodies to comply with a parent's request to admit their child if he or she has been permanently excluded from two or more schools, is amended. The effect is that a child is not to be regarded as having been permanently excluded from a school for the purposes of section 87 if, had it been practical to do so, either a governing body reviewing the head teacher's decision to exclude or an exclusion panel hearing an appeal against the governing body's refusal to direct reinstatement, would have directed that the child be reinstated.
139. Section 89 of the SSFA, which sets out the procedure for determining admission arrangements annually, is amended. The main change is to provide governing bodies of community and voluntary controlled schools with a right to be consulted about the admission arrangements which admission authorities for other schools in their areas propose to make. This, in turn, will give such governing bodies the right to refer

objections about proposed admissions arrangements to the Schools Adjudicator, or the NAW, to the extent permitted by regulations. Admission authorities may also be required to publish their proposals in certain circumstances, such as where they intend to admit fewer pupils than the school has capacity for (as calculated under a formula); this is for the purpose of enabling (by regulations) groups of ten or more parents to refer an objection to the Schools Adjudicator about the proposed admission number.

140. In addition, where the admission authority is a school's governing body, the new section 89(2A) allow for regulations to provide that the duty to consult may be disapplied in certain circumstances (for example, where their admission arrangements have not been the subject of previous objection to the Schools Adjudicator and remain unchanged).
141. Section 90 of the SSFA is amended to clarify that an objection about proposed admission arrangements can be referred to the Schools Adjudicator, or (in Wales) the NAW, by anyone in the local area who should have been consulted about them, even if they were not.
142. A new section 92 of the SSFA is substituted, enabling information requirements to be placed in regulations.
143. Section 94 is further amended to clarify that any refusal to transfer a pupil already admitted to a secondary school into that school's sixth form carries the right of appeal. Section 95 of the SSFA is amended to reflect the repeal of Schedule 25 in relation to the making and hearing of appeals by governing bodies of community and voluntary controlled schools against an LEA's decision (where it is the admission authority) to admit to that school a child who has been permanently excluded from two or more schools. The provision presently contained in Schedule 25 to the SSFA is now to be made by regulations.
144. Sections 96 and 97, which relate to the power LEAs have to direct a school to admit a child who has been refused admission to, or permanently excluded from, every other suitable school within a reasonable travelling distance of the child's home, are amended. They clarify that such a direction may only be given to a school for which the LEA is not the admission authority. They also clarify that where (following a referral) the Secretary of State, or the NAW, decides that the child should be admitted to a different school for which the LEA is the admission authority, the LEA must admit the child to that school.
145. Section 98 of the SSFA is amended to clarify which of the LEA or the governing body of a maintained school has responsibility for any decision relating to the admission of a child to a nursery class at such a school. Provision is also made for regulations to make such provision in relation to maintained nursery schools.
146. Section 3 of the Diocesan Boards of Education Measure 1991 is amended to require an admission authority for a Church of England school to consult the Diocesan Board about its proposed admission arrangements before going out to the statutory consultation with other admission authorities.

Exclusion of pupils

Section 52

Section 52: Exclusion of pupils

147. Subsections (1) and (2) of this section, which give head teachers of maintained schools power to exclude any pupil from the school on disciplinary grounds and gives the same power to teachers in charge of PRUs, re-enact the existing provisions in section 64(1) of the SSFA and paragraph 7 of Schedule 1 to the EA 96.

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148. The rest of the section provides for the procedures relating to the exclusion of pupils, including the arrangements for reviewing exclusions and appealing against decisions not to reinstate the pupil in question, to be set out in regulations. It is intended that the existing requirement for head teachers, governing bodies, LEAs and appeal panels to have regard to the Secretary of State's, or the NAW's, guidance relating to exclusion will be continued under those regulations.
149. Under the proposed regulations, the procedures for excluding a pupil from a maintained school other than a PRU will be largely unchanged. It is proposed, however, that regulations may provide for altering the constitution of the appeal panel; ensuring that, when reaching a decision, panels will be required to consider the interests of the whole school community, not just those of the excluded pupil; and for ensuring that defects in prior procedure will not alone constitute grounds for reinstating a pupil.
150. Regulations may also provide for changes to the number of days a fixed period exclusion must be before the governing body, through its discipline committee, is required to review it.
151. In relation to PRUs, the section provides the parent of a pupil permanently excluded from a PRU a right to appeal equivalent to that available to the parents of pupils excluded from maintained schools. The right will be given retrospectively to 1st September 1994, the date when PRUs were first recognised in statute.
152. The section also adds maintained nursery schools to the exclusions regime.

Attendance targets

Section 53

Section 53: Attendance targets

153. Section 63 of the SSFA enables the Secretary of State or the NAW to require school governing bodies to set school-level targets for unauthorised absence. Unauthorised absences are absences that have not been approved by the school. The section extends this power to include authorised absence and will therefore enable the Secretary of State, or the NAW, to require specified schools to set targets to reduce their overall level of absence.