

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 8 – Teachers

Misconduct etc.

Sections 142 to 144

Section 142: Prohibition from teaching etc.

283. This section re-enacts and modifies the Secretary of State's power in section 218(6) of the ERA to prohibit or restrict the employment of teachers and workers with children. The Secretary of State and, in Wales, the Secretary of State and the NAW acting concurrently continue to have power to make directions prohibiting a person from: providing education at a school, FE institution or LEA; taking part in the management of an independent school; or carrying out work, in relation to schools, FE institutions or LEAs, that brings the person regularly into contact with children aged under 18 years (the current provision refers to persons aged under 19). The section provides the Secretary of State and the NAW with the power to prevent a person from working for a company exercising functions on behalf of a local education authority, a person working for a contractor and a person working voluntarily.
284. The Secretary of State and the NAW can prohibit or restrict someone's employment on the grounds of his misconduct, that he is unsuitable to work with children, that he is included permanently on the list of people considered unsuitable to work with children that is kept by the Secretary of State for Health under the Protection of Children Act 1999 (POCA), or on medical grounds. The Secretary of State and the NAW will also have power to direct that a person may not take part in the management of an independent school on grounds of that person's professional incompetence. The power to make directions on educational grounds is to be repealed. The Secretary of State and the NAW will have power to revoke or vary a direction except where a direction was given on the grounds that a person is unsuitable to work with children and that person claims he is no longer unsuitable. Provision is made for the procedure for making directions and the grounds on which a person may seek to have a direction revoked or varied to be set out in regulations. The section also provides for the enforcement of this duty.

Section 143: Directions under section 142: contractor, agency, etc

285. This section imposes a duty on bodies such as employment agencies or businesses, contractors, or voluntary organisations, that provide or employ individuals to do work that is within section 142 (2) or (3) not to arrange for an individual who is subject to a direction under section 142 to carry out any work that would contravene that direction. Such organisations will have to ensure that any person they propose to provide or employ to do such work is not subject to a direction that would prevent him or her from undertaking the work in question. If the Secretary of State or NAW think that such

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

a body is likely to fail to comply with the duty they may issue a direction to secure compliance. Such a direction may require the body to take or refrain from taking steps specified in the direction. The direction may be enforced by the S/S or NAW by a mandatory order

Section 144: Directions under section 142: appeal

286. This section partially re-enacts section 218A of the ERA to allow a person who is subject to a direction under section 142 to appeal against a decision to make a direction or not to revoke or vary a direction. It provides for appeals to be heard by the Tribunal established under section 9 of the POCA. The section also allows a person who is subject to a direction on the grounds that he is unsuitable to work with children to apply to the Tribunal for a review of the direction. The Secretary of State or the NAW may make regulations preventing an appeal being made on the grounds that the person did not commit an offence of which he has been convicted. Regulations may also set out the circumstances in which the Tribunal will allow an appeal or grant an application for a review and the powers available to the Tribunal on allowing an appeal or granting a review.

Sections 132 to 140: general

Sections 145 and 146

Section 145: Specification of qualification

287. Regulations made in relation to teachers' qualifications may refer to initial teacher training (ITT) courses at accredited institutions and may confer a discretion on the Teacher Training Agency or Higher Education Funding Council for Wales, or other specified persons or bodies. The regulations may also impose a duty on the Teacher Training Agency. The Secretary of State has to consult the GTC about changes to the content of initial teacher training.

Section 146: Repeal of sections 218 and 218A of the Education Reform Act 1988

288. This section repeals sections 218 and 218A of the ERA.