

*These notes refer to the Education Act 2005 (c.18)
which received Royal Assent on 7 April 2005*

EDUCATION ACT 2005

EXPLANATORY NOTES

COMMENTARY

Part 1: School Inspections and Other Inspections by School Inspectors

21. The following definitions are used in these notes in relation to Part 1:
- *SIA 1996* is the School Inspections Act 1996
 - *HMI* means Her Majesty's Inspectors of Schools
 - *The Assembly* means the National Assembly for Wales
 - *Estyn* is the office of Her Majesty's Chief Inspector of Education and Training in Wales

Chapter 1 – School Inspectors and School Inspections: England

Section 1: Her Majesty's Inspectorate of Schools in England

22. This section re-enacts section 1 of and Schedule 1 to SIA 1996 (which is repealed by section 60) without any changes. It establishes the office of Her Majesty's Chief Inspector of Schools (subsequently referred to as the Chief Inspector) as a Crown appointment, and provides for HMI to be members of the Chief Inspector's staff. It also sets out the terms of his appointment as being one of no more than five years in any one term, though a previous post-holder is not barred from reappointment.

Schedule 1: Her Majesty's Chief Inspector of Schools in England

23. [Schedule 1](#) to SIA 1996 is re-enacted with changes, giving the Chief Inspector the authority to appoint staff in addition to HMI. The Chief Inspector may also arrange for additional inspectors to assist him in carrying out his functions. [Paragraph 5](#) of Schedule 1 to the Act provides that, subject to the following exceptions, any of the functions of the Chief Inspector under this Act or any other Act may be fulfilled by: any HMI; any other member of his staff; or any additional inspector. The exceptions are that a report concluding that special measures are required must be personally authorised by the Chief Inspector or an HMI specifically authorised to do so and that an additional inspector cannot take part in an inspection unsupervised by an HMI unless he has previously conducted an inspection to the satisfaction of an HMI.
24. The Schedule also provides that the Secretary of State will determine the remuneration and pension of the Chief Inspector, with the approval of the Minister for the Civil Service.
25. [Paragraph 2](#) provides for the appointment of additional inspectors to assist the Chief Inspector, as at present. Additional inspectors with specific skills or knowledge for a particular setting will continue to be used. In addition, the Chief Inspector will use additional inspectors to fulfil his duties under section 5. Where the Chief Inspector engages additional inspectors either directly or through an inspection service provider

he must ensure that they have the necessary qualifications, experience and skills. He will fulfil this duty by publishing a statement of the qualifications and experience, standards and skills which such additional inspectors are required to have and shall ensure that any arrangements he makes with inspection service providers require that they ensure that additional inspectors meet the published requirements. Where using an inspection service provider he must also publish a list of names given to him by the inspection service provider of persons who may be used in future as additional inspectors. This will lead to an increase in the use of additional inspectors.

Section 2: Functions of Her Majesty's Chief Inspector of Schools in England

26. This section re-enacts section 2(1) to (6) of SIA 1996, with the exception of the duty on the Chief Inspector to maintain a register of inspectors and the regulatory duties related to the system of inspection by registered inspectors.
27. *Subsection (1)* adds four further elements to the matters listed in SIA 1996 section 2(1) about which the Chief Inspector must keep the Secretary of State informed. These are:
- i) the extent to which the education provided by schools in England meets the needs of the range of pupils (*subsection (1)(b)*);
 - ii) the contribution made by schools in England to the well-being of their pupils (*subsection (1)(f)*). Well-being is defined in section 11 having regard to the matters mentioned in section 10(2) of the Children Act 2004, namely:
 - a) physical and mental health and emotional well-being;
 - b) protection from harm and neglect;
 - c) education, training and recreation;
 - d) the contribution made by them to society;
 - e) social and economic well-being;
 - iii) the extent to which schools in England are developing rigorous internal procedures of self-evaluation; and
 - iv) the behaviour and attendance of pupils at schools in England.

Section 3: Annual and other reports to Secretary of State

28. This section re-enacts section 2(7) of SIA 1996 without any changes. It requires the Chief Inspector to make an annual report to the Secretary of State, who in turn must lay this report before Parliament. It gives the Chief Inspector authority to publish any report made by him under this section in whatever manner he sees fit.

Section 4: Powers of entry etc. for purposes of section 2

29. This section re-enacts section 2(8) to (10) of SIA 1996, updating some of the terms used but without any changes to the effect of the provisions in that section. It gives the Chief Inspector rights of entry to any school in England, and to other premises related to the education of pupils, to undertake the duties placed on him under section 2. It includes the right to inspect and take copies of relevant documentation. Under *subsection (3)* it is an offence intentionally to obstruct the Chief Inspector in carrying out his duties. *Subsection (4)* specifies the penalty for this offence.

Section 5: Duty to inspect certain schools at prescribed intervals

30. This section requires all schools previously covered by section 10 of SIA 1996 to be inspected at intervals to be prescribed in regulations. Section 10 of that Act requires the inspection of those schools to be carried out by a registered inspector; however

section 60 repeals the SIA 1996, thereby removing the requirement for registered inspectors in England. This section transfers the responsibility for inspecting every school in England to the Chief Inspector. By virtue of paragraph 5 of Schedule 1 the inspections and the exercise of any functions required in administering and delivering them may be carried out by HMI, any additional inspector or any other member of the Chief Inspector's staff in the name of the Chief Inspector.

31. *Subsection (5)* requires inspection reports to cover the same four areas currently covered by reports under section 10 of SIA 1996, with the addition, in subsection (5)(b), of how far the education provided meets the needs of the range of pupils and in subsection (5)(f) of the contribution made by the school to the well-being of its pupils.

Section 6: Duty to notify parents of section 5 inspection

32. This section re-enacts with modifications paragraph 6 of Schedule 3 to SIA 1996. The section carries forward the requirement for the governing body (or in certain circumstances the local education authority) or the proprietor of a school to take reasonable steps to notify all parents of all registered pupils at the school and such other persons as may be prescribed in regulations of the time of the inspection and to invite their views on matters relating to the school. It does not carry forward the further requirement that the school arrange a meeting between parents and the inspectors; this is likely to be impractical given the intention to reduce notice of inspections.

Section 7: Duty to have regard to views of certain persons

33. This section provides that in conducting a section 5 inspection the Chief Inspector must, among other things, have regard to the views of the head teacher; the governing body or proprietor; staff; pupils; parents; and any persons notified of the inspection, where those views are expressed.

Section 8: Inspection at discretion of Chief Inspector

34. This section replaces section 3(1) of SIA 1996 and gives the Chief Inspector the power to inspect any school at any time, even when not under a duty to do so under section 2(2)(b) or section 5. This allows the Chief Inspector to inspect any school where he may have cause for concern in respect of his general duty under section 2. It also enables the Chief Inspector to conduct inspections for a range of purposes, including monitoring visits by HMI to schools in special measures, visits to schools to aid him in keeping the Secretary of State informed under section 2, or to contribute to reports on, for example, the teaching in a single curriculum subject.

Section 9: Power of Chief Inspector to treat discretionary inspection as section 5 inspection

35. This section enables the Chief Inspector to treat an inspection conducted under his own power (section 8) or at the request of the Secretary of State (section 2(2)(b)) as though it were a section 5 inspection. This will mainly be used so that a school which is inspected, for whatever reason, under one of these other arrangements, does not have to have another inspection within the interval prescribed under section 5(1).
36. Where an inspection is deemed a section 5 inspection using this power, the section requires a written report to be made and the school to make the report available to parents in the usual way (see notes on section 6 and section 14).

Section 10: Power of entry etc. for purposes of inspection under section 5 or 8

37. This section replaces the powers of entry conferred by section 3(3) of, and paragraph 7 of Schedule 3 to, SIA 1996. It provides for rights of entry into schools and other premises for the Chief Inspector and those assisting him, such as HMI and additional inspectors. As in SIA 1996, the section provides that it is an offence, punishable by a

fine, intentionally to obstruct the Chief Inspector in the conduct of an inspection under section 5 or 8.

Section 11: Publication of inspection reports

38. This section allows the Chief Inspector to publish any inspection report, and to do so by electronic means.

Chapter 2 – Procedure for Inspections under Chapter 1

Section 13: Duties of Chief Inspector where school causes or has caused concern

39. This section covers circumstances where a school which has been inspected under section 5 is judged by the Chief Inspector to require either special measures or significant improvement (see notes on Chapter 5: schools causing concern); or cases where such a designation is already in place and the judgement is that it should be changed or removed. The section re-enacts section 14 of SIA 1996 as it applies to England, but reflecting the new significant improvement category, removing the requirement for inspectors to produce a summary of their inspection reports, and introducing a review procedure. The section also re-enacts section 16A of SIA 1996 as it applies to England, with changes to terminology as set out at section 44, and to the arrangements for notifying the local education authority when a maintained school receives a designation.
40. *Subsections (1), (2) and (3)* provide that where an inspection of a maintained school identifies that the school requires significant improvement or special measures, the Chief Inspector must send a draft of the report to the governing body in the case of a maintained school and to the proprietor in the case of any other school and to consider any comments made by them within a set period. If the Chief Inspector is still of the opinion that the school requires significant improvement or special measures he must inform the Secretary of State and the local education authority in the case of a maintained school or the proprietor in any other case of this immediately in writing. He must also state that opinion in a report of the inspection. Thus, in the case of maintained schools, the local education authority will in future receive such notification direct from the Chief Inspector, rather than as at present from the Secretary of State.
41. Under *subsection (4)*, where in the previous report of an inspection the school was designated as requiring special measures, but the Chief Inspector is now of the opinion that the school no longer requires special measures, he must state his opinion in a report. If he considers that a designation of significant improvement rather than special measures is appropriate, he must also state his opinion in the report, as required by subsection (3).
42. Under *subsection (5)*, in the case of a school already designated as requiring significant improvement, if the Chief Inspector is of the opinion that neither a significant improvement nor a special measures designation is required, he must state his opinion in the report.

Section 14: Destination of reports: maintained schools

43. This section re-enacts the elements of section 16 of SIA 1996 relating to the destination of reports for all maintained schools, as they apply to England, but removing the requirement for inspectors to send summary reports. It specifies the persons to whom the inspector must send a copy of an inspection report following either a section 5 inspection or following any inspection of a maintained school. The requirements in section 16 of SIA 1996 relating to special measures are now included as part of section 13 (see above).
44. *Subsection (4)* requires the appropriate authority (defined in section 18) to make a copy of all inspection reports it receives available for public inspection, to provide a copy to

anyone who asks for one, and to make arrangements for parents of pupils at the school to receive a copy of the report.

Section 15: Measures to be taken by local education authority

45. This section re-enacts section 17(1) to (3) of SIA 1996, modified to reflect the new arrangements for the revised categories of schools causing concern defined in sections 44 and 46 and Schedule 5.
46. *Subsections (2) and (3)* place a duty on local education authorities to prepare a written statement of the action they propose to take, and the timetable for this action, when a school is judged to require special measures or significant improvement. The deadline for local education authorities to produce their action statements will be prescribed in regulations; the intention is that this will be 10 working days from the publication of the inspection report, but the Secretary of State may require a shorter period in urgent cases. Where the local education authority propose to take no action in response to the inspection report, their statement must set out their reasons for not doing so. The local education authority are required to send their statement to the Secretary of State, the Chief Inspector and the appointing body of foundation governors in the case of a voluntary-aided school.

Section 16: Destination of reports: non-maintained schools

47. This section re-enacts the elements of section 20 of SIA 1996 relating to the destination of reports for all non-maintained schools, as they apply to England, with the changes to terminology set out in section 44. This covers the distribution of reports of section 5 inspections for Academies, city technology colleges, city colleges for the technology of the arts and non-maintained special schools. These reports must be sent to the proprietor of the school. The requirements in section 20 of SIA 1996 relating to schools requiring special measures are now included as part of section 13 (see above).
48. *Subsection (2)* places a duty on the proprietor of a non-maintained special school to send a copy of the report to any local education authority which is paying fees for pupils at that school.
49. *Subsection (3)* requires the proprietor to make a copy of all inspection reports it receives available for public inspection, to provide a copy to anyone who asks for one, and to make arrangements for parents of pupils at the school to receive a copy of the report. This mirrors the duty in section 14 on the local education authority or other appropriate authority in relation to reports on maintained schools.

Section 17: Statement to be prepared by proprietor of school

50. This section specifies the action to be taken by the proprietor of a non-maintained school which requires special measures or significant improvement. Current requirements are set out in section 21 of SIA 1996. The proprietor is required to prepare a statement of the action he proposes to take and the timescale for this action when he is sent an inspection report that states the school requires special measures or significant improvement.
51. *Subsection (2)* provides for this statement of action to be prepared within a prescribed period, intended to be 10 working days from the date of publication of the inspection report (as for local education authorities under section 15) or such shorter period as the Secretary of State may direct in urgent cases.
52. *Subsections (3) and (4)* provide for copies of this statement to be sent to the Chief Inspector, to any other prescribed persons and, in the case of a non-maintained special school, to any local education authority which are paying fees for a pupil at the school.

Chapter 3 – School Inspectors and School Inspections: Wales

Section 19 and Schedule 2: Her Majesty’s Inspectorate of Education and Training in Wales

53. This section and Schedule re-enact section 4 of, and Schedule 1 to, SIA 1996 and make provision for the appointment of Her Majesty’s Chief Inspector for Education and Training in Wales (the Chief Inspector) and for the appointment of HMI in Wales. Section 19 also sets out that the Chief Inspector may not be appointed for a term of more than five years, though a previous post holder is not barred from reappointment.
54. New provision is made in *subsections (6) and (7)*. Subsection (6) provides that where it considers that powers under *subsections (1), (2) and (4)(c)* should be exercised, the Assembly has a duty to give advice to the Secretary of State on a recommendation to Her Majesty on the appointment of the Chief Inspector or of HMI, or on removal of the Chief Inspector from office on grounds of incapacity or misconduct. At present there is no statutory requirement on any person to provide such advice, but as a matter of constitutional convention any recommendation is made by the Secretary of State. In practice any such recommendation is made relying upon advice from the Assembly’s First Minister. This practice is now reflected in this section.
55. Subsection (7) provides that it is for the Chief Inspector to determine the terms and conditions of appointment of Her Majesty’s Inspectors, subject to the approval of the Assembly. This brings the position of the Assembly in relation to HMI in Wales into line with its position in relation to the Chief Inspector’s other staff.

Section 20: Functions of Chief Inspector

56. This re-enacts section 5(1) to (6) and (11) of SIA 1996, as amended. It sets out the functions of the Chief Inspector and makes new provision extending the duty of the Chief Inspector to keep the Assembly informed about certain matters by adding the following:
- i) *subsection (1)(b)*: how far education provided by schools in Wales meets the needs of the range of pupils at those schools; and
 - ii) *subsection (1)(f)*: the contribution made by those schools to the well-being of those pupils.
57. The term “well-being” is defined in section 31 by reference to the matters mentioned in section 25(2) of the Children Act 2004.

Section 21: Annual and other reports to the Assembly

58. This section re-enacts section 5(7) of SIA 1996. It requires the Chief Inspector to make an annual report to the Assembly and provides for the report to be published by the Assembly. The Chief Inspector may also make other reports and may publish them.

Section 22: Power of Assembly to establish advisory panel

59. This section provides the Assembly with a new regulation-making power enabling it to establish a panel to advise the Assembly on any matter relating to the functions of the Chief Inspector.
60. The section allows the Assembly to make provision as to the establishment of the panel and its functions, including provision as to the appointment of members, remuneration and allowances, the preparation of reports and a requirement for the Chief Inspector for Wales and the panel to co-operate, for example by allowing access to the Chief Inspector’s staff and papers.

Section 23: Powers of entry etc. of Chief Inspector

61. This section re-enacts and amends section 5(8) to (10) of SIA 1996. It sets out the Chief Inspector's rights of entry to schools and rights to inspect documents for the purposes of inspection and other functions under section 20. These rights extend to other premises used by any person in connection with making provision for pupils aged 15 or over (but who are still of compulsory school age) to receive part of their education. Paragraph 5 of Schedule 2 provides that these rights can be exercised by any HMI, any additional inspector or other member of the Chief Inspector's staff who is authorised by him. Under *subsection (3)* it is an offence intentionally to obstruct the Chief Inspector in carrying out his duties. *Subsection (4)* specifies the penalty for that offence.

Section 24: Power of Chief Inspector to arrange for inspections

62. This section re-enacts section 6 of SIA 1996. It enables the Chief Inspector to arrange for any school to be inspected by HMI, and for HMI to monitor an inspection being carried out by a registered inspector under section 28 (which re-enacts section 10 of SIA 1996).
63. The section also makes provision as to rights of entry and rights to inspect documents, and makes it an offence intentionally to obstruct the Chief Inspector in the exercise of any of his functions under this section.

Section 25: Registration of inspectors in Wales

64. This section re-enacts section 7 of SIA 1996 in its application to Wales. It requires any person inspecting a school under section 28 to be one of HMI or a registered inspector, and makes provision in relation to registration.
65. *Subsection (5)* makes new provision which allows the Chief Inspector to have regard, when deciding on an application for registration, to the extent to which he intends to use HMI or registered inspectors to carry out inspections under section 28 and to the extent to which there is a need for registered inspectors in any part of Wales. The Chief Inspector could therefore refuse to register an inspector if he considers there already exist sufficient registered inspectors in Wales to carry out school inspections, or because he intends to use HMI rather than registered inspectors for the purposes of carrying out school inspections under section 28.

Section 26: Removal from register and imposition or variation of conditions

66. This section re-enacts section 8(1) to (3) of SIA 1996 in its application to Wales. It sets out the conditions to be satisfied before the Chief Inspector can remove the name of an inspector from the register, and before he can impose or vary conditions to which the registration of an inspector is subject.

Section 27 and Schedule 3: Appeals in relation to registration

67. These re-enact section 9 of, and Schedule 2 to, SIA 1996 in their application to Wales. They provide for a right of appeal to a tribunal constituted under section 27 in relation to a registration decision taken by the Chief Inspector, and make other provision in relation to such appeals and to the constitution, staffing and procedures of such a tribunal. New provision is made in *subsection (2)* to the effect that the tribunal must confirm a decision to refuse to renew a person's registration made on the ground of a reduced need or no need for registered inspectors in Wales if the tribunal is satisfied that the refusal was in fact on that ground.

Section 28 and Schedule 4: Duty to arrange regular inspections of certain schools

68. These re-enact section 10 of, and Schedule 3 to, SIA 1996 in their application to Wales. Section 28 lists those schools which are required to be inspected under that section

at intervals to be prescribed in regulations made by the Assembly, and sets out those matters on which an inspector must report. Schedule 4 deals with arrangements for selection of inspectors; the composition of inspection teams; enrolment of persons who may act as inspection team members; training for inspections; meetings with parents of schools being inspected; rights of entry for the purposes of inspection; and replacement of an inspector during the course of an inspection.

69. New provision is made in *subsection (1)* of section 28 allowing inspections to be carried out by HMI or a registered inspector. This gives the Chief Inspector the discretion to choose whether to use a registered inspector or HMI.
70. *Subsection (5)* makes new provision extending the duty of any inspector conducting an inspection under this section to report on the following matters:
- i) *subsection (5)(b)*: how far the education provided in the school meets the needs of the range of pupils at the school; and
 - ii) *subsection (5)(f)*: the contribution made by the school to the well-being of those pupils.

Section 29: Publication of inspection reports

71. This section re-enacts section 42A of SIA 1996 in its application to Wales. It enables the Chief Inspector to determine the manner in which inspection reports are published.

Section 30: Payment of fees into Consolidated Fund

72. This section re-enacts section 43 of SIA 1996 in its application to Wales, requiring registration fees, enrolment fees and training fees to be paid into the Consolidated Fund unless a Treasury Receipts Direction under paragraph 4 of Schedule 6 to the Government of Wales Act 1998 requires otherwise.

Chapter 4 – Procedure for Inspections under Chapter 3

Section 32: Inspections by members of the Inspectorate

73. This section re-enacts section 12(3) and (4) of SIA 1996 in its application to Wales. It enables the Chief Inspector to treat an inspection by HMI under section 20(2)(b) or 24(1) as though it were an inspection under section 28.

Section 33: Duty to report on section 28 inspections

74. This section re-enacts section 13(1) of SIA 1996 in its application to Wales. It requires the making of a written report and summary report following completion of a school inspection under section 28.

Sections 32-33: Section 28 inspections by registered inspectors and reports of inspections by members of the Inspectorate

75. These sections re-enact with modifications section 13(2) to (8) and section 14 of SIA 1996 in their application to Wales, extending their application to schools requiring significant improvement in addition to schools requiring special measures. They set out the required procedure in relation to the report of an inspection carried out by a registered inspector or an HMI who is of the view that a school requires significant improvement or special measures.

Section 36: Timing of section 28 inspections by registered inspectors

76. This section re-enacts section 15 of SIA 1996 in its application to Wales. It requires a school inspection by a registered inspector to be carried out within a time specified in regulations made by the Assembly and for the period allowed for the making of an

inspection report to be specified in such regulations. It allows the Chief Inspector to extend those times and provides for the giving of notice of any extension.

Section 37: Duty to notify where inspection shows maintained school causing concern

77. This section re-enacts with modifications section 16A of SIA 1996 as it applies to Wales, with changes to terminology as set out at section 44, and to the arrangements for notifying the local education authority when a maintained school receives a designation. Where an inspection of a maintained school identifies that the school requires significant improvement or special measures, the Chief Inspector is required to inform the Assembly and the local education authority of this immediately in writing. Thus, the local education authority will in future receive such notification direct from the Chief Inspector, rather than as at present from the Assembly.

Section 38: Destination of reports: maintained schools

78. This section re-enacts with modifications section 16 of SIA 1996 in its application to Wales. It requires school inspection reports and summaries to be made widely available to specified persons, and sets out who must receive a copy of a report and summary and in what circumstances. In addition to all reports following an inspection under section 28 and to other reports by HMI identifying a school as requiring special measures, this section applies to other reports by HMI identifying a school as requiring significant improvement.

Section 39: Statement to be prepared by appropriate authority

79. This section re-enacts with modifications section 17 of SIA 1996 in its application to Wales. It sets out the requirement on a school's governing body or, where the school does not have a delegated budget, on the local education authority, to prepare a written statement of action setting out the steps they propose to take in the light of a report of any inspection under section 28, or any other inspection by HMI stating that special measures are required. New provision is made requiring a statement of action to be prepared also after other HMI inspections where the report states that the school requires significant improvement. Regulations made by the Assembly will set out the periods for preparing a written statement and the periods for sending them to specified persons, including the Assembly.

Section 40: Statement to be prepared by local education authority

80. This section re-enacts with modifications section 18 of SIA 1996 in its application to Wales. It places a requirement on local education authorities to prepare a written statement of action they intend to take in the light of an inspection report for schools requiring special measures. New provision is made requiring a statement to be prepared where an inspection report states that a school requires significant improvement. Regulations made by the Assembly will set out the periods for preparing these written statements.

Section 41: Destination of reports: non-maintained schools

81. This section re-enacts with modifications section 20 of SIA 1996 in its application to Wales. It requires school inspection reports and summaries to be made widely available to specified persons, and sets out who must receive a copy of a report and summary and in what circumstances. In addition to all reports following an inspection under section 28 and to other reports by HMI identifying a school as requiring special measures, this section now applies to other reports by HMI identifying a school as requiring significant improvement.

Section 42: Statement to be prepared by proprietor of school

82. This section re-enacts with modifications section 21 of SIA 1996 in its application to Wales. It sets out the requirement on the proprietor to prepare a written statement of action setting out the steps he proposes to take in light of a report of any inspection under section 28, or any other inspection by HMI stating that a school requires special measures. New provision is made requiring a statement of action to be prepared after other HMI inspections where the report states that a school requires significant improvement. Regulations made by the Assembly will set out the periods for preparing these written statements and the periods for sending them to specified persons, including the Assembly.

Chapter 5 – Schools Causing Concern

Section 44: Categories of schools causing concern

83. This section defines the two statutory categories of schools causing concern: those which require special measures and those which require significant improvement.
84. *Subsection (1)* provides a revised definition of the existing special measures category, with a school's capacity to improve now to be taken into account in inspectors' judgements. The definition in section 13(9) of SIA 1996 is that 'special measures are required to be taken in relation to a school if the school is failing, or likely to fail, to give its pupils an acceptable standard of education'. Schools will no longer be regarded as requiring special measures merely because they are 'likely to fail'. Special measures will be required only if the school is failing to provide an acceptable standard of education and the capacity to secure the necessary improvement is not demonstrated.
85. *Subsection (2)* introduces a new category of a school requiring significant improvement. Schools which would previously have been judged to have serious weaknesses, as defined in section 15 of the School Standards and Framework Act 1998, inadequate sixth forms, as defined in paragraph 1(2) of Schedule 7 of the Learning and Skills Act 2000, or to be underachieving, as defined in Ofsted guidance, are expected to fall into this new category.

Section 45: Cases where Secretary of State or Assembly may direct closure of school

86. This section amends section 19 of the School Standards and Framework Act 1998, as amended by section 56 of the Education Act 2002; the amendment curtails the power of the Secretary of State or the Assembly to direct a local education authority to close a school which is causing concern. At present the Secretary of State or the Assembly has such power in relation to schools which require special measures or have serious weaknesses. In future, this power will apply only in relation to a school which is placed in special measures.

Section 46: Sixth forms requiring significant improvement

87. This section introduces Schedule 5, which sets out amendments to the Learning and Skills Act 2000 arising from the new category of significant improvement.

Schedule 5: Sixth forms requiring significant improvement

88. This Schedule amends section 113 of and Schedule 7 to the Learning and Skills Act 2000. It replaces the current categorisation of 'inadequate sixth form' with a 'sixth form requiring significant improvement'. This reflects the new significant improvement category introduced by section 44. *Paragraph 3(3)* defines the circumstances in which a school requires significant improvement in relation to its sixth form: if it is failing to give pupils over 16 an acceptable standard of education; or if its performance in relation to provision for such pupils is less than might reasonably be expected. Other provisions

in the Schedule continue existing arrangements in relation to sixth forms which give cause for concern, including the power of the Learning and Skills Council for England or the National Council for Education and Training for Wales to propose closure.

89. *Sub-paragraphs (11) to (14) of paragraph 3* provide for schools for 16-19 year old students in England and Wales to be judged to be causing concern following an inspection under section 5 and reflect the revised definition of special measures and the new category of significant improvement in section 44.

Chapter 6 – Other Inspections: England and Wales

Section 48: Inspection of religious education: England

90. This section re-enacts without modification section 23 of SIA 1996 in its application to England, providing for the separate inspection of denominational education and collective worship in schools designated under section 69(3) of the School Standards and Framework Act 1998 by the Secretary of State as having a religious character. It sets out that it is the responsibility of the governing body of a school, or in the case of a voluntary controlled school, the responsibility of the foundation governors, to arrange an inspection under this section. *Subsection (2)* provides that, in choosing the inspector, the governing body or foundation governors must consult any person prescribed in regulations in relation to the religion or religious denomination of that school. The section allows the Secretary of State to prescribe in regulations the intervals between such inspections.

Section 49: Procedure for inspections under section 48

91. This section re-enacts procedures currently covered by Schedule 4 to SIA 1996. It allows the Secretary of State to prescribe in regulations the period within which an inspection under section 48 may be conducted. It also requires the person conducting the inspection to prepare a report in writing before the end of a period which is prescribed in regulations. *Subsection (4)* places a duty on the governing body to make the report available to members of the public and to ensure that all parents of registered pupils receive a copy of the report.

Section 50 and Schedule 6: Inspection of religious education: Wales

92. This section makes similar provision in relation to Wales to that made by section 48 in relation to England. New provision is made requiring governing bodies or foundation governors, before they choose an inspector to conduct an inspection of denominational education and collective worship, to have regard to guidance provided by the relevant body for the faith group to which the school belongs. These bodies will be set out in regulations made by the Assembly. The Schedule makes provision in relation to the procedure for, and conduct of, such inspections, and in relation to the preparation of inspection reports and action plans.

Section 51: Power of LEA to inspect maintained school for specific purpose

93. This section re-enacts without any changes section 25 of SIA 1996 giving local education authorities, for the specific purposes set out in *subsection (1)*, the power to conduct visits to inspect provision in schools which they maintain.

Section 52: Provision of inspection services by LEAs in Wales

94. This section re-enacts section 24 of SIA 1996 in its application to Wales. It enables a local education authority to provide a school inspection service for schools within their area. It allows the service to be provided for both maintained and non-maintained schools and requires local authorities to recover costs through charges on those using the service. It provides that the Assembly may by regulations make provision as to the making of tenders and keeping of accounts by local education authorities.

Section 53: Inspection of child minding, day care and nursery education

95. This section introduces Schedule 7, which sets out amendments relating to the inspection of child minding, day care for children, and nursery education.

Schedule 7: Inspection of child minding, day care and nursery education

96. This Schedule makes amendments to Part 10A of the Children Act 1989 which was inserted by the Care Standards Act 2000 (child minding and day care); and section 122 of, and Schedule 26 to, the School Standards and Framework Act 1998 (nursery education).
97. *Paragraph 1* expands the general duty of the Chief Inspector for England to keep the Secretary of State informed about child minding and day care provided in England. In addition to the quality and standards of child minding and day care, the Chief Inspector must also keep the Secretary of State informed about how far child minding and day care meet the needs of the range of children cared for, about the quality of the leadership and management of day care, and about the contribution made by child minding and day care to the well-being of the children for whom they are provided. Well-being is to be interpreted in accordance with section 10(2) of the Children Act 2004.
98. *Paragraph 2* removes the requirement on the Chief Inspector to maintain a register of early years child care inspectors in England.
99. *Paragraph 3* makes amendments as a consequence of the removal of the requirement to maintain a register of early years child care inspectors under paragraph 3. It places duties, formerly placed on registered inspectors, on the Chief Inspector in England to report as set out at paragraph 2. *Sub-paragraph (6)* inserts a new regulation-making power to require child minders and providers of day care to notify prescribed persons of an inspection.
100. *Paragraph 4* amends the provisions in section 79R of the Children Act 1989 placing the responsibility for the production and distribution of child minding and day care inspection reports on the Chief Inspector of schools in England. It removes the requirement for a report to be prepared within a prescribed period. Paragraph 4(4) makes provision for regulations to require child minders and providers of day care, to whom the Chief Inspector is already required to send a report, to make a copy of the report available to other persons as may be prescribed (this will cover parents); to provide a copy of the report to other persons as may be prescribed; and allows them to charge a fee for providing copies of the report in prescribed cases. Paragraph 4(5) removes a reference to SIA 1996 and substitutes it with a reference to this Act, enabling inspection reports to be published by electronic means.
101. *Paragraphs 5 and 6* amend sections 79T and 79U of the Children Act 1989, replacing references in those provisions to SIA 1996 with references to this Act for Wales and England respectively. In Wales, paragraph 5 enables the Chief Inspector for Wales to determine the manner in which inspection reports are published (see note to section 28). In England, paragraph 6 ensures that the rights of entry under the Children Act 1989 permit access to allow the inspection of computer records (see note to section 58).
102. *Paragraph 7* amends section 122 of the School Standards and Framework Act 1998, to reflect the retention of the requirement to keep a register of nursery inspectors in Wales but the removal of this requirement in England.
103. *Paragraph 9* amends the definition of ‘relevant nursery education’ (and associated expressions) for the purposes of Schedule 26 (Inspection of nursery education) of the School Standards and Framework Act 1998. The definition now includes nursery education provided under arrangements made in pursuance of the duty to secure sufficient provision of nursery education for their area under section 118 of the 1998 Act. This is in consequence of the removal of the duty on the local authority to prepare an early years and childcare development plan.

104. *Paragraph 10* makes changes which reflect the different approaches in England and Wales outlined below (see notes to paragraphs 13 to 19). This paragraph also defines the term “well-being” in accordance with sections 10(2) (England) and 25(2) (Wales) of the Children Act 2004.
105. *Paragraph 11* expands the general duty, as set out in paragraph 3 of Schedule 26 to the School Standards and Framework Act 1998, of the Chief Inspector for England and the Chief Inspector for Wales to keep the Secretary of State and the Assembly respectively informed about relevant nursery education. In addition to the quality and standards of nursery education, and the spiritual, moral, social and cultural development of the children for whom nursery education is provided, both Chief Inspectors must also provide information about how far relevant nursery education meets the needs of the range of children for whom it is provided, about the quality of the leadership and management of nursery education, and about the contribution made by relevant nursery education to the well-being of the children for whom it is provided.
106. *Paragraph 12* makes changes to the nursery education inspection provisions in paragraphs 6 and 7 of Schedule 26 to the School Standards and Framework Act 1998. These changes are a consequence of the removal of the requirement on the Chief Inspector for England to establish and maintain a register of nursery education inspectors (see notes to paragraphs 13 to 19 below). It re-enacts paragraph 6 of Schedule 26 in relation to Wales, making provision for the Chief Inspector for Wales to secure the inspection of nursery education by HMI or registered nursery education inspectors. It also inserts a new regulation-making power to require the responsible person (to be prescribed) to notify prescribed persons of an inspection.
107. In relation to both England and Wales, this paragraph removes the references to inspections being carried out at any premises on which relevant nursery education is provided. The Chief Inspector will be able to inspect relevant nursery education without having to arrange an inspection visit to every set of premises.
108. *Paragraphs 13 to 19* remove the requirement on the Chief Inspector for England to establish and maintain a register of nursery education inspectors, but provide for the retention of this requirement in Wales. They make a number of consequential amendments to paragraphs 8, 9, 10, 11 and 12 of Schedule 26 to the School Standards and Framework Act 1998 to reflect this difference.
109. *Paragraph 20* amends the provisions in Schedule 26 of the School Standards and Framework Act 1998 in respect of nursery education inspection reports in England. These make the Chief Inspector responsible for the production and distribution of all reports and remove the requirement for a report to be prepared within a prescribed period. It makes provision requiring the Chief Inspector to send a copy of the report to the responsible person (which will be prescribed in regulations to cover those persons in receipt of funding from the local education authority for the provision of nursery education) and to other persons as may be prescribed. It also makes provision for regulations to require the responsible person (to whom the Chief Inspector is already required to send a report) to make a copy of the report available to other persons as may be prescribed (it is intended that this will cover parents); to provide a copy of the report to other persons as may be prescribed; and to allow them to charge a fee for providing copies of the report in prescribed cases.
110. *Paragraph 20* also re-enacts, in relation to Wales, the provisions of paragraph 13 of Schedule 26 to the School Standards and Framework Act 1998 which makes provision in relation to the reports of inspections. There is new provision (as in England) allowing regulations made by the Assembly to require prescribed persons, to whom the Chief Inspector for Wales is already required to send a report, to send a copy of the report to other specified persons.
111. Finally, paragraph 20 removes the reference to SIA 1996 and substitutes it with a reference to this Act, enabling inspection reports to be published by electronic means.

112. *Paragraph 21* amends paragraph 14 of Schedule 26 to the School Standards and Framework Act in respect of the provisions for the annual reports of Chief Inspectors in both England and Wales to include an account of the exercise of their functions in respect of nursery education inspection, consequent upon the new legal basis for such reports in this Act.
113. *Paragraphs 22 and 23* make consequential amendments to reflect the different provisions for nursery education in England and Wales, as outlined in the notes to paragraphs 13-19.
114. *Paragraph 24* makes further consequential amendments to paragraphs 16, 17 and 18 of the School Standards and Framework Act 1998 reflecting the different provisions for nursery education in England and Wales, as set out at paragraphs 13 to 19, and replaces a reference to section 42 of SIA 1996 which relates to the inspection of computer records with an equivalent reference in this Act.

Section 54: Inspection of independent schools

115. This section introduces Schedule 8, which contains consequential amendments of the Education Act 2002 relating to the inspection of independent schools.

Schedule 8: Amendments relating to inspection of independent schools

116. This Schedule contains a number of amendments to existing legislation, resulting from the removal of the category and responsibilities of 'registered inspectors' in England, which has a consequential impact on sections 163 and 164 of the Education Act 2002. This Schedule preserves the powers to inspect registered schools as currently set out in section 163 and rights of entry and related supplementary responsibilities in section 164. However, in amending these provisions, it also substitutes separate provisions for England and for Wales, to allow for the fact that in Wales, the role of registered inspector will continue, whereas in England it will cease.

Section 55: Inspection of careers services in Wales

117. This section makes new provision extending the remit of the Chief Inspector for Education and Training in Wales in relation to the inspection of careers services in Wales. Under section 8 of the Employment and Training Act 1973 the Assembly is under a duty to secure the provision of a careers service to certain persons receiving education, and under section 9 of that Act it has the power to provide careers services for others. The Assembly has made arrangements under section 10 of that Act to provide careers services in Wales. These are provided by a number of careers companies, limited by guarantee, which together make up Careers Wales. Although it is an all-age service its work is primarily directed towards provision of careers advice and guidance for young people and, in particular, young people aged 14-19 in education and making choices about learning and career options.
118. Careers services provided by the companies which form Careers Wales are currently inspected by the Chief Inspector for Education and Training in Wales under section 35 of the Teaching and Higher Education Act 1998. However these inspection arrangements are out of step with all other areas of inspection in Wales, particularly since the introduction of a new Common Inspection Framework from September 2004 by Estyn, and the existing legislation provides the Chief Inspector with only limited powers. In particular inspections of careers services can only be carried out at the Assembly's request.
119. The provisions in this section will ensure that careers services in Wales are subject to a similar system of inspection as other education and training within the Chief Inspector's remit.

- 120. *Section 55* requires the Chief Inspector to inspect persons providing or arranging the provision of careers services in Wales at intervals which will be prescribed by regulations to be made by the Assembly.
- 121. *Subsection (2)* places a general duty on the Chief Inspector to keep the Assembly informed about the quality of the careers and related services provided in Wales.
- 122. *Subsection (4)* provides a power for the Assembly to make regulations governing the interval between the inspections of careers service providers.
- 123. *Subsection (5)* requires the Chief Inspector to provide the Assembly with such advice as requested on careers services in Wales, and, when asked to do so by the Assembly, to inspect any careers service provider.
- 124. *Subsection (6)* provides that the Chief Inspector may, of her own accord, give advice to the Assembly on matters relating to the provision of careers services or arrange for a careers services provider to be inspected at any time.

Section 56: Inspection of services related to careers services in Wales

- 125. This section makes new provision replacing that made under section 35A of the Teaching and Higher Education Act 1998 in relation to the inspection of education, training or advisory services provided by persons providing careers services, i.e. “related services” provided by careers companies in Wales. These related services are provided under arrangements made by the Assembly under section 2 of the Employment and Training Act 1973, or with the funding made available under section 12 (1) of the Industrial Development Act 1982.
- 126. *Subsection (2)* places a new general duty on the Chief Inspector for Education and Training for Wales to keep the Assembly informed about the quality of any such related services provided by persons providing careers services in Wales.
- 127. *Subsection (3)* requires the Chief Inspector to inspect these related services at intervals to be prescribed by regulations to be made by the Assembly.
- 128. *Subsection (4)* requires the Chief Inspector, when asked by the Assembly, to provide advice on the provision of these related services in Wales and to inspect any provider of these related services.
- 129. *Subsection (5)* provides that the Chief Inspector may, of his own accord, give advice to the Assembly on matters relating to the provision of these related services or arrange for the provider of any such services to be inspected at any time.

Section 57: Inspections under sections 55 and 56

- 130. This section makes new provision, setting out the procedures for inspections in Wales under sections 55 and 56. Such inspections have to be carried out by HMI or an additional inspector, in accordance with Assembly instructions or guidelines. Provision is made for rights of entry for inspectors, including rights to inspect records and documents and to take copies as required for the purposes of an inspection. *Subsection (5)* provides that it is an offence to obstruct an inspector or a person assisting him. *Subsections (7) and (8)* detail arrangements for the preparation of inspection reports.
- 131. *Subsections (9) and (10)* provide a new regulation-making power for the Assembly. In these regulations the Assembly will be able to require a person inspected under sections 55 or 56 to prepare a written statement in response to an inspection report, and to set out matters to be covered in the statement, the timescale for its preparation and publication arrangements.

Chapter 7 - Supplementary

Section 58: Inspection of computer records

132. This section re-enacts section 42 of SIA 1996 without change. It allows any person engaged in the activities within Part 1 of the Act reasonable access to computer records and associated materials and to inspect such records and materials.

Section 59: Combined reports

133. This section applies to inspections carried out under:
- i) this Part of the Act;
 - ii) Part 10A of the Children Act 1989 (child minding and day care for children);
 - iii) section 122 of, and Schedule 26 to, the School Standards and Framework Act 1998 (inspection of nursery education); and
 - iv) Chapter 1 of Part 10 of the Education Act 2002 (regulation of independent schools).
134. *Subsection (2)* allows for the reports of inspections carried out under two or more of the above mentioned provisions to be produced as a combined report. This provision gives the Chief Inspectors for England and Wales and others responsible for making inspection reports the flexibility to merge two or more reports into a single report.
135. *Subsection (3)* ensures that, where combined reports of different types of inspection are made, any legal requirements as to the publication or distribution of a report that apply to the different inspections apply equally to combined reports. *Subsection (4)* makes provision for the Chief Inspector for England (or for Wales) to publish combined reports in any manner he considers appropriate, but makes clear that this does not override any duties as to publication in other legislation.

Section 61: Further amendments relating to school inspection

136. This section introduces Schedule 9, setting out amendments to existing legislation as a consequence of the changes to categorisation of schools causing concern set out in section 44.

Schedule 9: Amendments relating to school inspections

137. This Schedule contains a number of amendments to existing legislation which are consequential on the new inspection provisions and the removal of the current categorisation of a school with serious weaknesses and the introduction of the new significant improvement category. At present the Secretary of State, the Assembly and local education authorities have intervention powers in relation to a school with serious weaknesses, enabling them to add additional governors, take back a school's delegated budget or to provide for a governing body to be replaced with an interim executive board; in addition, the Secretary of State or the Assembly has power to direct a local education authority to obtain advisory services. The Schedule enables these powers to be exercised in relation to the new significant improvement category.

Section 62: Power of Assembly to change inspection framework for Wales

138. This section provides a new order-making power giving the Assembly flexibility to make changes to primary legislation to adjust elements of the inspection system in Wales. This will enable the Assembly, should it so wish, to mirror the approach being taken forward in England, either in part or in full.
139. Provisions in relation to school inspection in Wales in this Act mainly re-enact existing provisions in SIA 1996, with minor amendments. In Wales, a new inspection system

*These notes refer to the Education Act 2005 (c.18)
which received Royal Assent on 7 April 2005*

was introduced under a Common Inspection Framework by Estyn, in September 2004. The Framework is underpinned by secondary legislation made by the Assembly. In addition, Estyn has issued guidance on notice of inspection, the role of self-evaluation and matching the scale of inspection to need.