



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 5

#### MISCELLANEOUS AND GENERAL

### CHAPTER 1

#### POWERS OF NATIONAL ASSEMBLY FOR WALES

#### **149 Powers of National Assembly for Wales**

- (1) In Part 1 of Schedule 5 to the Government of Wales Act 2006 (c. 32) (Assembly Measures), field 5 (education and training) is amended as follows.
- (2) After matter 5.4 insert—
  - “*Matter 5.4A* The regulation of—
    - (a) schools that are not maintained by local education authorities;
    - (b) relevant independent educational institutions.”
- (3) In matter 5.15 after “The inspection of—” insert—
  - “(za) schools;
  - (zb) relevant independent educational institutions;”.
- (4) In that matter, for paragraph (b) substitute—
  - “(b) pre-16 education or training, or post-16 education or training, provided otherwise than by institutions within paragraphs (za) to (a);”.
- (5) In matter 5.16 for “, any of the kinds of education, training or services mentioned in matter 5.15.” substitute “—
  - (a) pre-16 education or training;
  - (b) post-16 education or training;

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.”

(6) After the definition of “post-16 training” insert—

““pre-16 education or training” means education or training suitable to the requirements of persons who are of or below compulsory school age;

“relevant independent educational institution” means an institution other than a school which—

- (a) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
- (b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if—

- (a) it provides education for the person, and
- (b) the education does not amount to full-time education.”

## CHAPTER 2

### MISCELLANEOUS

#### *School admissions*

#### **150 Sixth form admissions etc**

After section 86 of the School Standards and Framework Act 1998 (c. 31) (parental preferences) insert—

#### **“86A Preferences relating to sixth-form education: local education authority arrangements**

- (1) A local education authority shall make arrangements for enabling—
- (a) a child in the authority's area to express a preference as to the school at which he wishes sixth form education to be provided for him in the exercise of the authority's functions,
  - (b) a parent of such a child to express a preference as to the school at which he wishes sixth form education to be so provided for his child,
  - (c) a relevant child to express a preference as to the school at which he wishes education other than sixth form education to be provided for him in the exercise of the authority's functions, and
  - (d) a parent of such a child to express a preference as to the school at which he wishes such education to be so provided for his child,
- and, in each case, for enabling the person expressing the preference to give reasons for his preference.

---

*Status:* Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

- (2) In subsection (1), “relevant child”, in relation to a local education authority and any education, means a child in the authority's area who—
  - (a) has ceased to be of compulsory school age, or
  - (b) will have ceased to be of compulsory school age before the education in question is provided for him.
- (3) Arrangements made under subsection (1) shall allow—
  - (a) a person who is to be able to express a preference under any of paragraphs (a) to (d) of that subsection to express preferences for more than one school;
  - (b) preferences to be expressed, in relation to a child, by both the child and a parent of his.
- (4) Where—
  - (a) the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, and
  - (b) a child (whether or not in the area of the authority maintaining the school) or his parent makes such an application,that person shall be regarded for the purposes of this Chapter as having expressed a preference for that school in accordance with arrangements made under subsection (1).

#### **86B Duty in relation to preferences expressed under section 86A: admission authorities of maintained schools**

- (1) Subject to subsections (2) and (4) and section 87, the admission authority for a maintained school shall comply with any preference expressed in accordance with arrangements made under section 86A(1).
- (2) The duty imposed by subsection (1) does not apply if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources.
- (3) Subsections (5) to (5B) of section 86 apply for the purpose of determining whether any prejudice should be taken to arise for the purposes of subsection (2), but with the substitution of references to that subsection for references to subsection (3)(a) of section 86.
- (4) The duty imposed by subsection (1) does not apply in a case where a preference is expressed in relation to sixth form education if—
  - (a) the relevant selection arrangements for the preferred school are wholly based on selection by reference to ability or aptitude, and
  - (b) compliance with the preference would be incompatible with selection under those arrangements.
- (5) Where the relevant selection arrangements for a school provide for all pupils selected under the arrangements to be selected by reference to ability or aptitude, those arrangements shall be taken for the purposes of subsection (4)
  - (a) to be wholly based on selection by reference to ability or aptitude whether or not they also provide for the use of additional criteria in circumstances where the number of children in a relevant age group who are assessed to be of the

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group.

- (6) In this section “the relevant selection arrangements”, in relation to a school, means—
- (a) the arrangements for admission to the school for sixth form education, or
  - (b) those arrangements and the arrangements for entry to the sixth form of children who have been admitted to the school.”

#### Commencement Information

**II** S. 150 in force at 26.1.2009 for E. by [S.I. 2008/3077](#), **art. 5(a)** (with **art. 6**)

### 151 Admission arrangements

- (1) The School Standards and Framework Act 1998 (c. 31) is amended as follows.
- (2) After section 88 insert— “ Admission arrangements: England ”
- (3) In section 88A (prohibition on interviews), in subsections (1) and (3), after “maintained school” insert “ in England ”.
- (4) After section 88A insert—

#### “88B Admission arrangements relating to children looked after by local authority

- (1) Regulations may require the admission authorities for maintained schools in England to include in their admission arrangements such provision relating to the admission of children who are looked after by a local authority in England as may be prescribed.
- (2) Regulations under subsection (1) may in particular include provision for securing that, subject to sections 86(3), 86B(2) and (4) and 87, such children are to be offered admission in preference to other children.

#### 88C Procedure for determining admission arrangements

- (1) The admission authority for a maintained school in England must, before the beginning of each school year, determine in accordance with this section the admission arrangements which are to apply for that year.
- (2) The admission authority must, before determining the admission arrangements that are to apply for a year, carry out such consultation about the proposed arrangements as may be prescribed.
- (3) Regulations under subsection (2) may in particular make provision—
  - (a) specifying persons who must be consulted, or who must be consulted about prescribed provisions of proposed arrangements;
  - (b) specifying provisions of proposed arrangements about which any such consultation is to be carried out;

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (c) specifying matters to which any such consultation is, or is not, to relate;
  - (d) as to the manner in which, and the time by which, any such consultation is to be carried out.
- (4) When the admission authority have determined the admission arrangements that are to apply for a year, they must notify the appropriate bodies of those admission arrangements.
- (5) Regulations may make provision—
- (a) as to the manner in which, and the time by which, any such notification is to be given;
  - (b) specifying cases in which subsection (4) does not apply.

### **88D Determination of admission numbers**

- (1) A determination under section 88C by the admission authority for a maintained school in England of the admission arrangements which are to apply for a school year must include a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year.
- (2) Such a determination under section 88C may also, if the school is one at which boarding accommodation is provided for pupils, include—
- (a) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year as boarders, and
  - (b) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year otherwise than as boarders.
- (3) Regulations may make provision about the making of any determination required by subsection (1), and may in particular require the admission authority for a maintained school to have regard, in making any such determination, to—
- (a) any prescribed method of calculation, and
  - (b) any other prescribed matter.
- (4) References in this section to the determination of any number include references to the determination of zero as that number.

### **88E Variation of admission arrangements**

- (1) Subsection (2) applies where an admission authority—
- (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but
  - (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined.
- (2) The authority must—
- (a) refer their proposed variations to the adjudicator, and
  - (b) notify the appropriate bodies of the proposed variations.

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) Subsection (2)(a) does not apply in a case where the authority's proposed variations fall within any description of variations prescribed for the purposes of this subsection.
- (4) Where the local education authority are the admission authority for a community or voluntary controlled school, they must consult the governing body before making any reference under subsection (2)(a).
- (5) On a reference under subsection (2)(a), the adjudicator must consider whether the admission arrangements should have effect with the proposed variations until the end of the school year in question.
- (6) If the adjudicator determines—
  - (a) that the arrangements should so have effect, or
  - (b) that they should so have effect subject to such modification of those variations as the adjudicator may determine,
 the arrangements are to have effect accordingly as from the date of the adjudicator's determination.
- (7) Where the adjudicator makes a determination under subsection (6), the admission authority must notify the appropriate bodies of the variations subject to which the arrangements are to have effect.
- (8) Regulations may make provision—
  - (a) as to the manner in which, and the time by which, any such notification is to be given;
  - (b) specifying cases in which subsection (7) does not apply.
- (9) Regulations may make provision—
  - (a) specifying matters which are, or are not, to constitute major changes in circumstances for the purposes of subsection (1)(b);
  - (b) authorising an admission authority, where they have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, to vary those arrangements to such extent or in such circumstances as may be prescribed;
  - (c) for the application of any of the requirements of, or imposed under, subsections (2) to (8) to variations proposed to be made by virtue of paragraph (b), or to any prescribed description of such variations, as if they were variations proposed to be made under subsection (1).

### **88F Sections 88C to 88E: supplementary**

- (1) Regulations may make provision—
  - (a) requiring an admission authority who have made a determination of a prescribed description under section 88C to publish such information relating to the determination (including information as to the authority's reasons for making the determination) as may be prescribed;
  - (b) as to such other matters connected with the procedure for determining or varying admission arrangements under sections 88C to 88E as the Secretary of State considers appropriate.

---

*Status:* Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
*Changes to legislation:* Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

- (2) The power under paragraph (a) of subsection (1) to require an admission authority to publish information includes power to require them to publish it—
  - (a) by giving a notice containing the information to prescribed persons, or
  - (b) in any other prescribed manner.
- (3) In sections 88C and 88E, the “appropriate bodies”, in relation to an admission authority, means—
  - (a) whichever of the governing body and the local education authority are not the admission authority,
  - (b) the admission authorities for all other maintained schools in the relevant area or for such class of schools as may be prescribed;
  - (c) the governing bodies for all community and voluntary controlled schools in the relevant area (so far as not falling within paragraph (a) or (b)),
  - (d) the admission authorities for maintained schools in England of any prescribed description,
  - (e) in the case of a foundation or voluntary school which has a religious character for the purposes of Part 2, such body or person representing the religion or religious denomination in question as may be prescribed,
  - (f) the admission forum for the area of the local education authority in which the school is situated, and
  - (g) such other persons as may be prescribed.
- (4) In subsection (3), “the relevant area” means—
  - (a) the area of the local education authority in which the school in question is situated, or
  - (b) if regulations so provide, such other area in England (whether more or less extensive than the area of the local education authority) as may be determined by or in accordance with the regulations.

### **88G Power to restrict alteration of admission arrangements following establishment or expansion**

- (1) Subsection (2) applies in relation to a maintained school in England where—
  - (a) proposals for the establishment of, or the making of a prescribed alteration to, the school have been published under Part 2 of the Education and Inspections Act 2006 or under section 113A of, or Schedule 7 to, the Learning and Skills Act 2000,
  - (b) in the case of proposals for the making of a prescribed alteration to the school, the proposals are for an increase in the number of pupils that may be admitted to the school or for an enlargement of the premises,
  - (c) the proposals fall to be implemented (with or without modifications), and
  - (d) prescribed conditions are satisfied.
- (2) Regulations may provide that, where this subsection applies in relation to a maintained school—
  - (a) the admission arrangements for the initial period and each of a prescribed number of school years following that period are to be the

---

*Status:* Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

- arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified), and
- (b) those arrangements may not be varied by the admission authority for the school except—
- (i) to comply with any duty imposed on them by regulations under section 88B, or
  - (ii) in accordance with regulations under subsection (5).
- (3) Regulations under subsection (2) may exclude or modify any provision of section 88C, 88E or 88F in its application to cases to which the regulations apply.
- (4) Regulations under subsection (2) may provide that in cases to which the regulations apply the admission arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified) are to be treated for the purposes of section 86(5) to (5B) as having been determined by the admission authority under section 88C.
- (5) Regulations may prescribe circumstances in which an admission authority may refer to the adjudicator proposals to vary admission arrangements in cases to which regulations under subsection (2) apply.
- (6) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (5).
- (7) In this section—
- “initial period” means—
- (a) in relation to a maintained school which is being established, the period beginning with the day on which the school opens and ending with the beginning of the first school term to begin after the following July;
  - (b) in relation to a maintained school which is increasing the number of pupils that may be admitted to the school or enlarging its premises, the period beginning with the first day on which additional pupils may be admitted or (as the case may be) the enlarged premises are in use and ending with the beginning of the first school term to begin after the following July;
- “prescribed alteration” means an alteration prescribed for the purposes of section 18 of the Education and Inspections Act 2006.

### **88H Reference of objections to adjudicator**

- (1) This section applies where admission arrangements have been determined by an admission authority for a maintained school in England under section 88C.
- (2) Where—
- (a) an appropriate person wishes to make an objection about the admission arrangements, and
  - (b) the objection does not fall within any description of objections prescribed for the purposes of this paragraph,
- that person may refer the objection to the adjudicator.
- (3) Where—



---

*Status:* Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

- (a) a parent of a prescribed description wishes to make an objection about the admission arrangements, and
  - (b) the objection falls within any description of objections prescribed for the purposes of this paragraph,that person may refer the objection to the adjudicator.
- (4) On a reference under subsection (2) or (3) the adjudicator must decide whether, and (if so) to what extent, the objection should be upheld.
- (5) Regulations may make provision—
  - (a) as to any conditions which must be satisfied before—
    - (i) an objection can be referred to the adjudicator under subsection (2) or (3), or
    - (ii) the adjudicator is required to determine an objection referred to him under subsection (3);
  - (b) as to circumstances in which the adjudicator is not required to determine an objection under subsection (4);
  - (c) prescribing the steps which may be taken by an admission authority where an objection has been referred to the adjudicator under subsection (2) or (3) but has not yet been determined.
  - (d) prohibiting or restricting the reference under subsection (2) or (3), within such period following a decision by the adjudicator under this section as may be prescribed, of any objection raising the same (or substantially the same) issues in relation to the admission arrangements of the school in question.
- (6) In subsection (2), “appropriate person” means—
  - (a) a body or person within any of paragraphs (a) to (f) of section 88F(3); or
  - (b) any person prescribed for the purposes of this subsection.

### **88I Other functions of adjudicator relating to admission arrangements**

- (1) This section applies where admission arrangements have been determined by an admission authority for a maintained school in England under section 88C.
- (2) Where it appears to the Secretary of State that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements, the Secretary of State may refer the admission arrangements to the adjudicator.
- (3) Subsection (4) applies where—
  - (a) the Secretary of State refers the admission arrangements to the adjudicator under subsection (2), or
  - (b) the adjudicator receives a report under section 88P which, pursuant to regulations under subsection (5) of that section, states that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements.
- (4) The adjudicator must—
  - (a) consider the admission arrangements, and

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) decide whether they conform with those requirements and, if not, in what respect they do not.
- (5) Where it appears to the adjudicator that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements (and subsection (4) does not apply)—
  - (a) the adjudicator may consider the admission arrangements, and
  - (b) if the adjudicator considers the arrangements under paragraph (a), the adjudicator must decide whether they conform with those requirements and, if not, in what respect they do not.
- (6) Regulations may make provision prescribing the steps which may be taken by an admission authority where the adjudicator—
  - (a) is considering the authority's admission arrangements under subsection (4)(a) or (5)(a), but
  - (b) has not yet made a decision in the case under subsection (4)(b) or (5)(b) (as the case may be).

### **88J Changes to admission arrangements**

- (1) This section applies where the adjudicator is required to make a decision (“the primary decision”)—
  - (a) under section 88H(4) on whether to uphold an objection to admission arrangements, or
  - (b) under section 88I(4)(b) or (5)(b) on whether admission arrangements conform with the requirements relating to admission arrangements.
- (2) The adjudicator—
  - (a) must consider whether it would be appropriate for changes to be made to any aspect of the admission arrangements in consequence of the primary decision, and
  - (b) may consider whether it would be appropriate for any other changes to be made to any aspect of the admission arrangements.
- (3) Where the adjudicator decides under subsection (2) that it would be appropriate for changes to be made to the admission arrangements—
  - (a) that decision may specify the modifications that are to be made to the arrangements, and
  - (b) the admission authority must forthwith revise those arrangements in such a way as to give effect to that decision.
- (4) The adjudicator may—
  - (a) decide, in the case of any change required by subsection (3)(b), that it is to be a protected change for the purpose of section 88L, and
  - (b) where the adjudicator does so but considers that the change ought not to be protected for the number of years prescribed under subsection (2) of that section, decide that the change is to be protected only for such lesser number of school years as the adjudicator may specify.

---

**Status:** Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

### **88K Sections 88H to 88J: supplementary**

- (1) Subsection (2) applies to any decision of the adjudicator—
  - (a) under section 88H(4) on whether to uphold an objection to admission arrangements,
  - (b) under section 88I(4)(b) or (5)(b) on whether admission arrangements conform with the requirements relating to admission arrangements, or
  - (c) under section 88J(2) as to whether or not it would be appropriate for changes to be made to admission arrangements.
- (2) Any decision of the adjudicator to which this subsection applies is binding on—
  - (a) the admission authority in question, and
  - (b) all persons by whom an objection may be referred to the adjudicator under section 88H(2) or (3) in relation to the admission arrangements.
- (3) In the case of a decision mentioned in subsection (1)(a) or (b), the adjudicator must publish a report containing the following—
  - (a) the adjudicator's decision on the objection or (as the case may be) on whether the admission arrangements conform with the requirements relating to admission arrangements,
  - (b) the decision of the adjudicator under section 88J(2)(a), and any decision of the adjudicator under section 88J(2)(b), on whether it would be appropriate for changes to be made to the admission arrangements,
  - (c) any decision of the adjudicator—
    - (i) under section 88J(4)(a) that a change is to be a protected change for the purposes of section 88L, or
    - (ii) under section 88J(4)(b) that a change is to be protected only for such lesser number of school years as the adjudicator may specify, and
  - (d) the adjudicator's reasons for the decisions mentioned in paragraphs (a) to (c).
- (4) Regulations may make provision—
  - (a) requiring an admission authority for a maintained school in England to provide information which—
    - (i) falls within a prescribed description, and
    - (ii) is requested by the adjudicator for the purposes of the exercise by the adjudicator of functions under sections 88H to 88J or this section or of enabling the adjudicator to decide whether to exercise the power conferred by section 88I(5);
  - (b) as to the manner in which a report required to be published under subsection (3) is to be published;
  - (c) requiring such matters to be notified to such persons, and in such manner, as may be prescribed;
  - (d) prescribing circumstances in which an admission authority may revise the admission arrangements for their school in the light of any decision by the adjudicator relating to the admission arrangements for another school, and the procedure to be followed in such a case.

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (5) In sections 88I and 88J and this section “the requirements relating to admission arrangements” means the requirements imposed by or under this Part as to the content of admission arrangements for maintained schools in England.

### **88L Restriction on alteration of admission arrangements following adjudicator's decision**

- (1) This section applies where—
- (a) in accordance with section 88J(3)(b) the admissions authority for a maintained school in England have revised any provisions of admission arrangements for a school year, and
  - (b) the revisions include any protected change.
- (2) In this section—
- “protected change” means a change which the adjudicator has decided under section 88J(4)(a) is to be a protected change for the purposes of this section;
- “the protected provisions”, in relation to any admission arrangements, means provisions corresponding to—
- (a) provisions so far as implementing a protected change, or
  - (b) provisions so far as revised in accordance with regulations under subsection (6);
- “the required number” means such number as may be prescribed or such lesser number as is specified by the adjudicator under section 88J(4)(b) in relation to a particular protected change.
- (3) The admission authority for the school—
- (a) must incorporate the protected provisions in determining the admission arrangements for each of the required number of school years following the school year mentioned in subsection (1)(a), and
  - (b) may not vary those arrangements in such a way as to alter the protected provisions.
- (4) Subsection (3) does not apply to the extent that—
- (a) the admission authority are required to determine or vary their admission arrangements in a way which alters the protected provisions in order to comply with any duty imposed on them by regulations under section 88B, or
  - (b) the arrangements may be determined or varied in a way which alters those provisions in accordance with regulations under subsection (6).
- (5) Regulations may exclude or modify any provision of section 88C, 88E or 88F in its application to cases to which this section applies.
- (6) Regulations may prescribe circumstances in which, in a case where this section applies, an admission authority may refer to the adjudicator proposals to determine or vary their admission arrangements in a way which alters the protected provisions.
- (7) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (6).

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

### **88M Co-ordination of admission arrangements**

- (1) Regulations may require a local education authority in England—
  - (a) to formulate, for any academic year in relation to which prescribed conditions are satisfied, a qualifying scheme for co-ordinating the arrangements for the admission of pupils to maintained schools in their area, and
  - (b) to take prescribed action with a view to securing the adoption of the scheme by themselves and each governing body who are the admission authority for a maintained school in their area.
- (2) Subject to subsection (3), the Secretary of State may make, in relation to the area of a local education authority in England and an academic year, a scheme for co-ordinating the arrangements, or assisting in the co-ordination of the arrangements, for the admission of pupils to maintained schools in that area.
- (3) A scheme may not be made under subsection (2) in relation to a local education authority and an academic year if, before the prescribed date in the year preceding the year in which that academic year commences—
  - (a) a scheme formulated by the local education authority in accordance with subsection (1) is adopted in the prescribed manner by the persons mentioned in paragraph (b) of that subsection, and
  - (b) the authority provide the Secretary of State with a copy of the scheme and inform the Secretary of State that the scheme has been so adopted.
- (4) Regulations may provide—
  - (a) that each local education authority in England must secure that, subject to such exceptions as may be prescribed, no decision made by any admission authority for a maintained school in their area to offer or refuse a child admission to the school is to be communicated to the parent of the child except on a single day, designated by the local education authority, in each year, or
  - (b) that, subject to such exceptions as may be prescribed, a decision made by the admission authority for a maintained school in England to offer or refuse a child admission to the school is not to be communicated to the parent of the child except on a prescribed day.
- (5) In this section
  - “academic year” means a period commencing with 1st August and ending with the next 31st July;
  - “qualifying scheme” means a scheme that meets prescribed requirements.
- (6) Nothing in this section applies in relation to arrangements for the admission to maintained schools of pupils—
  - (a) who—
    - (i) have ceased to be of compulsory school age, or
    - (ii) will have ceased to be of compulsory school age before education is provided for them at the school, or
  - (b) for the purpose of receiving sixth form education.

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

### **88N Further provision about schemes adopted or made by virtue of section 88M**

- (1) Regulations may make provision about the contents of schemes under section 88M(2), including provision about the duties that may be imposed by such schemes on—
  - (a) local education authorities in England, and
  - (b) the admission authorities for maintained schools in England.
- (2) Regulations may provide that where a local education authority in England or the governing body of a maintained school in England have, in such manner as may be prescribed, adopted a scheme formulated by a local education authority for the purpose mentioned in section 88M(1)(a), sections 496 and 497 of the Education Act 1996 are to apply as if any obligations imposed on the local education authority or governing body under the scheme were duties imposed on them by that Act.
- (3) Regulations may provide that where any decision as to whether a child is to be granted or refused admission to a maintained school in England falls to be made in prescribed circumstances, the decision must, if a scheme adopted or made by virtue of section 88M so provides, be made by the local education authority regardless of whether they are the admission authority for the school.
- (4) Where any decision as to whether a child is to be granted or refused admission to a maintained school is (by virtue of regulations under subsection (3)) made by the local education authority although they are not the admission authority, the governing body of the school must implement the decision.
- (5) Before proposing a scheme for adoption under section 88M(1) a local education authority must comply with such requirements as to consultation as may be prescribed.
- (6) Regulations under subsection (5) may in particular require consultations to be undertaken with a view to securing that the arrangements for the admission of pupils to maintained schools in the areas of different local education authorities are, so far as is reasonably practicable, compatible with each other.
- (7) Before making a scheme under section 88M(2) in relation to the area of any local education authority, the Secretary of State must consult—
  - (a) the local education authority, and
  - (b) any governing body who are the admission authority for a school which appears to the Secretary of State to be a school to which the scheme will apply.
- (8) A scheme made under section 88M(2) may be varied or revoked by the Secretary of State.

### **88O Sharing of information by local education authorities**

The Secretary of State may by regulations require local education authorities in England to provide other local education authorities with such information as may be required by them in connection with the exercise of any of their functions under this Chapter.

---

*Status:* Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
*Changes to legislation:* Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

### **88P Reports by local education authorities to adjudicator**

- (1) A local education authority in England must make such reports to the adjudicator about such matters connected with relevant school admissions as may be prescribed.
- (2) In subsection (1) “relevant school admissions”, in relation to a local education authority, means—
  - (a) the admission of pupils to relevant schools in the authority's area;
  - (b) the admission of pupils in the authority's area to other relevant schools;
  - (c) the entry to the sixth form of pupils who have been admitted to relevant schools in the authority's area; and
  - (d) the entry to the sixth form of pupils in the authority's area who have been admitted to other relevant schools.
- (3) In this section, “relevant school” means—
  - (a) a maintained school,
  - (b) an Academy,
  - (c) a city technology college, or
  - (d) a city college for the technology of the arts.
- (4) The matters which may be prescribed under subsection (1) in relation to a report by a local education authority include, in particular, matters relating to—
  - (a) the determination and operation of admission arrangements for maintained schools in the area of the local education authority;
  - (b) the determination and operation of arrangements for the admission of pupils to Academies, city technology colleges and city colleges for the technology of the arts in the area of the local education authority;
  - (c) the adoption and operation of any scheme, whether or not formulated by the local education authority and whether under section 88M or otherwise, for co-ordinating—
    - (i) the admission of pupils to relevant schools in their area,
    - (ii) the admission of pupils in their area to other relevant schools.
- (5) Regulations under subsection (1) may make provision as to—
  - (a) the time by which any report under that subsection must be made; and
  - (b) the form and content of any such report;and may, in particular, require a report to include a statement as to whether or not admission arrangements for maintained schools in the area of the local education authority conform with the requirements imposed by or under this Part as to the content of admission arrangements for maintained schools in England.

### **88Q Reports under section 88P: provision of information**

- (1) A relevant person must, on request, provide a local education authority in England with such information as the authority may reasonably require for the purpose of enabling the authority to fulfil their duties under section 88P.

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In subsection (1), “relevant person”, in relation to a local education authority, means—
- (a) an admission authority (other than the local education authority) for a maintained school in the area of the local education authority;
  - (b) the admission forum for the area of the local education authority;
  - (c) any member of an appeal panel constituted under section 94 by—
    - (i) the local education authority, or
    - (ii) the governing body of a foundation or voluntary aided school in the area of the local education authority;
  - (d) the proprietor of—
    - (i) an Academy,
    - (ii) a city technology college, or
    - (iii) a city college for the technology of the arts, in the area of the local education authority;
  - (e) any other local education authority in England;
  - (f) such other person as may be prescribed.”

#### Commencement Information

- I2** S. 151 partly in force; s. 151(1)(4) in force for certain purposes at 26.1.2009 see s. 173(2)(b)
- I3** S. 151(1)(4) in force at 2.12.2008 for specified purposes by [S.I. 2008/3077](#), [art. 2\(a\)](#)
- I4** S. 151(1)(4) in force at 26.1.2009 in so far as not already in force by [S.I. 2008/3077](#), [art. 4\(d\)](#)
- I5** S. 151(2)(3) in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(d\)](#)

## 152 Sixth form admissions etc: appeals

- (1) Section 94 of the School Standards and Framework Act 1998 (c. 31) (appeal arrangements: general) is amended as follows.
- (2) In subsection (1)—
- (a) for “the parent of a child” substitute “ the appropriate person ”;
  - (b) before paragraph (a) insert—
    - “(za) in a case where the local education authority are the admissions authority, any decision made by or on behalf of the authority refusing a child admission to a school,”;
  - (c) in paragraph (a)—
    - (i) for “any decision” substitute “ any other decision ”, and
    - (ii) for “the child” substitute “ a child ”;
  - (d) in paragraph (b), for “the child” substitute “ a child ”.
- (3) In subsection (1A), for “the parent of” substitute “ the appropriate person in relation to ”.
- (4) In subsection (2)—
- (a) for “the parent of a child” substitute “ the appropriate person ”;
  - (b) for “the child” substitute “ a child ”.
- (5) In subsection (2A), for “the parent of” substitute “ the appropriate person in relation to ”.



---

**Status:** Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

(6) After that subsection insert—

“(2B) In this section, “the appropriate person”, in relation to a child, means—

- (a) in the case of a decision about sixth form education for the child any of the following—
  - (i) the child;
  - (ii) a parent of his;
  - (iii) the child and a parent of his, acting jointly;(but subject to regulations made under subsection (5A));
- (b) in any other case, a parent of the child.”

(7) In subsection (5A), after paragraph (a) insert—

“(aa) in cases where separate appeals are made by a parent and a child against a decision about sixth form education for the child, for the appeals to be joined, or otherwise for securing that no more than one appeal against the decision is proceeded with;”.

(8) After subsection (6) insert—

“(6A) In this section, any reference to a decision about sixth form education for a child is a reference to a decision—

- (a) made in relation to a preference expressed in accordance with arrangements made under section 86A(1) as to where education should be provided for the child, or
- (b) refusing permission for the child to enter the sixth form of the school to which he has been admitted.”

#### Commencement Information

**I6** S. 152 in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(a) (with art. 6)

### 153 School admissions: supplementary

(1) After section 98 of the School Standards and Framework Act 1998 (c. 31) insert—

#### “98A Meaning of “sixth form education” etc

- (1) In this Chapter, “sixth form education” means secondary education suitable to the requirements of pupils who are over compulsory school age.
  - (2) References in this Chapter, in relation to a child who has been admitted to a school, to his entering the school's sixth form are to his being transferred to a class at the school in which sixth form education is provided from a class in which such education is not so provided.”
- (2) In relation to a code for school admissions issued under section 84(1) of the School Standards and Framework Act 1998 after the passing of this Act, the requirement to consult which is imposed by section 85(2) of that Act may be satisfied by consultation undertaken before the passing of this Act, even though the code takes account (to any extent) of any provision made by this Act.

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Commencement Information

**I7** S. 153 in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(a)

VALID FROM 30/03/2010

### *Maintained schools in England: behaviour and attendance etc*

#### **154 Power of governing body: educational provision for improving behaviour**

After section 29 of the Education Act 2002 (c. 32) insert—

##### **“29A Power of governing body in England: educational provision for improving behaviour**

- (1) The governing body of a maintained school in England may require any registered pupil to attend at any place outside the school premises for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil.
- (2) In subsection (1) “maintained school” does not include a maintained nursery school.
- (3) Regulations must make provision—
  - (a) requiring prescribed persons to be given prescribed information relating to the imposition of any requirement under subsection (1), and
  - (b) requiring the governing body of the school to keep under review the imposition of any such requirement.
- (4) Regulations under this section may also make provision—
  - (a) requiring a governing body exercising functions under subsection (1) or under the regulations to have regard to any guidance given from time to time by the Secretary of State,
  - (b) prohibiting a governing body from exercising the power conferred by subsection (1) in such a way that any pupil is required to receive educational provision outside the school premises for a greater number of days in a school year than is specified in the regulations,
  - (c) requiring the governing body to request prescribed persons to participate in any review of the imposition of a requirement under subsection (1),
  - (d) about the time within which the first review must be held and the intervals at which subsequent reviews must be held, and
  - (e) in relation to any other matter relating to the exercise of the power conferred by subsection (1).”

*Status:* Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
*Changes to legislation:* Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 01/09/2012

## **155 Application of s.444 of Education Act 1996 to alternative education provision**

(1) Section 444ZA of the Education Act 1996 (c. 56) (application of section 444 to alternative education provision) is amended as follows.

(2) After subsection (1) insert—

“(1A) Where—

- (a) a child of compulsory school age has been excluded for a fixed period on disciplinary grounds from a relevant school in England,
- (b) the child remains for the time being a registered pupil at the school,
- (c) the appropriate authority for the school has made arrangements under section 19 above or section 100 of the Education and Inspections Act 2006 for the provision of full-time education for the child otherwise than at the school or at the child's home during the period of exclusion, and
- (d) notice in writing of the arrangements has been given to the child's parent,

subsections (1) to (7) of section 444 have effect during that period as if the child were not a registered pupil at the school and as if the place at which the education is provided were a school and the child were a registered pupil at that school (so far as that would not otherwise be the case).

(1B) Where—

- (a) a child of compulsory school age who is a registered pupil at a relevant school in England is required by the appropriate authority for the school to attend at a place outside the school premises for the purpose of receiving any educational provision, and
- (b) notice in writing of the requirement has been given to the child's parent,

subsections (1) to (7) of section 444 have effect as if the place at which the child is required to attend were a school and the child were a registered pupil at that school (in addition to being a registered pupil at the school mentioned in paragraph (a)).

(1C) Subsection (1B) does not apply if—

- (a) the place at which the child is required to attend is another relevant school (whether in England or elsewhere), and
- (b) the child is a registered pupil at that other school.

(1D) In relation to a maintained school or a pupil referral unit—

- (a) references in subsection (1A) to exclusion are references to exclusion under section 52 of the Education Act 2002, and
- (b) the requirement referred to in subsection (1B) is a requirement imposed under section 29(3) or 29A(1) of that Act.”

(3) In subsection (2)(a), after “relevant school insert “ in Wales ”.

(4) In subsection (4)—

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) in paragraph (a), after “within subsection (1)” insert “ or (1A) ”;
  - (b) in paragraph (b), after “within subsection” insert “ (1B) or ”;
  - (c) in the words following that paragraph, after “(1)(b)” insert “ , (1A)(d), (1B)(b) ”.
- (5) In subsection (5), after “(1)(b)” insert “ , (1A)(d), (1B)(b) ”.
- (6) In subsection (6), after “subsection (1)” (in both places) insert “ or (1A) ”.
- (7) In subsection (7)—
- (a) after paragraph (a) insert—
    - “(aa) in relation to a place at which education is provided as mentioned in subsection (1A) of this section, means leave granted by any person authorised to do so by the appropriate authority for the school;”;
  - (b) in paragraph (b), after “subsection” insert “ (1B)(a) or ”.

*Maintained schools in England: assessment arrangements*

**156 National Curriculum for England: duty to implement assessment arrangements**

- (1) In section 88 of the Education Act 2002 (c. 32) (implementation of the National Curriculum for England in schools), in the existing provision (which becomes subsection (1)), at the end insert— “ This subsection does not apply in relation to assessment arrangements. ”
- (2) After that subsection insert—
- “(1A) In relation to any maintained school—
- (a) the local education authority and the governing body must exercise their functions with a view to securing, and
  - (b) the head teacher must secure,
- that the assessment arrangements specified for the time being in the National Curriculum for England are implemented.”

PROSPECTIVE

*Maintained schools: pupils' views*

**157 Governing bodies of maintained schools to invite and consider pupils' views**

After section 29A of the Education Act 2002 insert—

**“29B Governing body to invite and consider pupils' views**

- (1) The governing body of a maintained school must invite the views of pupils about prescribed matters.
- (2) In exercising any of their functions relating to the conduct of the school, the governing body of a maintained school must consider any relevant views of

---

**Status:** Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

registered pupils at the school about matters prescribed under subsection (1) (whether expressed by virtue of that subsection or otherwise) and, in doing so, must have regard to the age and understanding of the pupils who expressed them.

- (3) For the purposes of subsection (1), a governing body invite the views of pupils about a matter if they invite the views of—
- (a) all registered pupils at the school,
  - (b) such of those pupils as appear to the governing body to be affected by the matter, or
  - (c) pupils appearing to the governing body to be representative of pupils within paragraph (a) or (b).
- (4) The following are the matters that may be prescribed under subsection (1)—
- (a) the exercise, or proposed exercise, of a function of the governing body of a maintained school relating to the conduct of the school;
  - (b) the exercise, or proposed exercise, of such a function in a particular way.
- (5) In discharging their duties under subsections (1) and (2), the governing body of a maintained school must have regard to any guidance given from time to time—
- (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the Welsh Ministers.
- (6) In this section, “prescribed” means—
- (a) in relation to England, prescribed by the Secretary of State;
  - (b) in relation to Wales, prescribed by the Welsh Ministers.
- (7) Nothing in this section affects any power or duty relating to consulting pupils which a governing body of a maintained school have otherwise than under this section.”

## 158 Consultation of pupils: existing functions

In section 176 of the Education Act 2002 (c. 32) (consultation with pupils), subsection (1) is amended as follows—

- (a) in paragraph (a) (duty of <sup>F1</sup>local authorities]), after “authority” insert “ in Wales ”;
- (b) omit paragraph (b) (duty of governing bodies);
- (c) for “the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales)” substitute “ the Welsh Ministers ”.

### Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 15(2)**

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 28/02/2009

### *External qualifications*

#### **159 Approved external qualifications: England**

- (1) Section 98 of the Learning and Skills Act 2000 (c. 21) (approved qualifications: England) is amended as follows.
- (2) After subsection (2) insert—
  - “(2A) A body may be designated under subsection (2)(b) in relation to the giving of approvals under—
    - (a) section 96,
    - (b) section 97, or
    - (c) both of those sections.”
- (3) Omit subsection (4) (which renders an approval given by a designated body ineffective unless the Secretary of State consents to the approval).

PROSPECTIVE

#### **160 Approved external qualifications: Wales**

- <sup>F2</sup>(1) .....
- <sup>F3</sup>(2) .....
- <sup>F4</sup>(3) .....

#### **Textual Amendments**

- F2** S. 160(1) omitted (21.9.2015) by virtue of [Qualifications Wales Act 2015 \(anaw 5\)](#), s. 60(2), [Sch. 4 para. 8](#); S.I. 2015/1687, art. 2 (with arts. 3-12)
- F3** S. 160(2) repealed (1.4.2010) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), s. 269(4), [Sch. 16 Pt. 2](#); S.I. 2010/303, art. 3, Sch. 2 (with arts. 1314) (as amended (30.3.2010) by S.I. 2010/1151, art. 22)
- F4** S. 160(3) omitted (21.9.2015) by virtue of [Qualifications Wales Act 2015 \(anaw 5\)](#), s. 60(2), [Sch. 4 para. 8](#); S.I. 2015/1687, art. 2 (with arts. 3-12)

#### **161 Functions of Qualifications and Curriculum Authority in England and Northern Ireland**

- (1) The Education Act 1997 (c. 44) is amended as follows.
- (2) Section 24 (functions of QCA in relation to external vocational and academic qualifications) is amended as follows.
- (3) In subsection (2)—
  - (a) for paragraph (f) substitute—

**Status:** Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- “(ea) to develop and publish criteria for the recognition of persons who, as outside persons, award or authenticate such qualifications or credits in respect of components of such qualifications;
      - (eb) to recognise, where they meet such criteria, any such persons who apply to be recognised;
      - (f) to develop and publish criteria for the accreditation of such qualifications where they are awarded or authenticated by persons recognised under paragraph (eb);”;
    - (b) after paragraph (g) insert—
      - “(ga) to develop and publish rules and procedures for dealing with the effect on the continued accreditation of such qualifications where any person awarding or authenticating them ceases to be recognised;”.
- (4) In subsection (4), for “(g)” substitute “ (ga) ”.
- (5) In subsection (7)—
  - (a) in paragraph (a), after “a qualification” insert “ or a credit in respect of a component of a qualification ” and after “the qualification” insert “ or component ”;
  - (b) in paragraph (b), after “a qualification” insert “ or a credit in respect of a component of a qualification ”.
- (6) Section 26 (supplementary provisions relating to discharge by QCA of their functions) is amended as follows.
- (7) In subsection (3), after “the Authority” insert “ recognise any person or ”.
- (8) In subsection (3A)—
  - (a) after “the Authority” insert “ recognise any person or ”;
  - (b) after “at the time of” insert “ recognition or of ”;
  - (c) after “conditions on” insert “ recognition or ”;
  - (d) after “continued” insert “ recognition or ”.
- (9) In subsection (4)(b)(i), for the words from “maintained” to “receiving the accreditation” substitute “ maintained by the recognised person in question in relation to the award or authentication of qualifications generally or in relation to the award or authentication of the qualification in question ”.
- (10) Section 26A (power of QCA to give directions) is amended as follows.
- (11) For subsection (1) substitute—
  - “(1) If it appears to the Qualifications and Curriculum Authority—
    - (a) that any recognised person has failed or is likely to fail to comply with any condition subject to which the recognition has effect, and
    - (b) that the failure—
      - (i) prejudices or would be likely to prejudice the proper award or authentication by that person of any accredited qualification, or
      - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain any

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

accredited qualification awarded or authenticated by that person,

the Authority may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the recognition has effect.

(1A) If it appears to the Authority—

- (a) that any person who awards or authenticates any accredited qualification has failed or is likely to fail to comply with any condition subject to which the accreditation has effect, and
- (b) that the failure—
  - (i) prejudices or would be likely to prejudice the proper award or authentication of the qualification, or
  - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification,

the Authority may direct the person mentioned in paragraph (a) to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect.”

(12) In subsection (2), for “the awarding body” substitute “ the recognised person or (as the case may be) the person mentioned in subsection (1A)(a) ”.

(13) After subsection (3) insert—

“(4) In this section—

“accredited qualification” means a qualification accredited by the Authority, and

“recognised person” means a person recognised by the Authority.

(5) In this section any reference to the award or authentication of any qualification by any person is a reference to its award or authentication by any person alone or jointly with others.”

VALID FROM 31/03/2009

## 162 Functions of Welsh Ministers etc

(1) The Education Act 1997 (c. 44) is amended as follows.

(2) Section 30 (functions in Wales in relation to external vocational and academic qualifications) is amended as follows.

(3) In subsection (1)—

- (a) the existing paragraphs (i) to (vi) are re-numbered as paragraphs (a) to (f);
- (b) for paragraph (d) (as re-numbered) substitute—

“(ca) to develop and publish criteria for the recognition of persons who, as outside persons, award or authenticate such qualifications or credits in respect of components of such qualifications;

(cb) to recognise, where they meet such criteria, any such persons who apply to be recognised;



*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (d) to develop and publish criteria for the accreditation of such qualifications where they are awarded or authenticated by persons recognised under paragraph (cb);”;
- (c) after paragraph (e) (as re-numbered) insert—
  - “(ea) to develop and publish rules and procedures for dealing with the effect on the continued accreditation of such qualifications where any person awarding or authenticating them ceases to be recognised;”.
- (4) For subsections (1B) and (1C) substitute—
  - “(1B) The following functions are exercisable solely by the Welsh Ministers—
    - (a) the functions set out in paragraphs (ca) and (cb) of subsection (1); and
    - (b) the functions set out in the other paragraphs of that subsection so far as they relate to external qualifications other than National Vocational Qualifications.
  - (1C) The functions set out in those other paragraphs so far as they relate to National Vocations Qualifications are exercisable as follows—
    - (a) the functions set out in paragraphs (a) to (c), (d) and (ea) of subsection (1) are exercisable concurrently by the Welsh Ministers and the Qualifications and Curriculum Authority; and
    - (b) the functions set out in paragraphs (e) and (f) of that subsection are exercisable solely by the Qualifications and Curriculum Authority.
  - (1D) Subsections (1B) and (1C) are subject to any exercise of the power conferred by subsection (2).”
- (5) After subsection (5) insert—
  - “(6) Subsection (7) of section 24 (interpretation of references to the award or authentication by outside persons of external qualifications or credits in respect of components of them) applies for the purposes of this section as it applies for the purposes of that section.”
- (6) Section 32 (supplementary provisions relating to discharge by Welsh Ministers of their functions) is amended as follows.
- (7) In subsection (3), before “accredits” insert “ recognises any person or ”.
- (8) In subsection (3A)—
  - (a) before “accredits” insert “ recognises any person or ”;
  - (b) after “at the time of” insert “ recognition or of ”;
  - (c) after “conditions on” insert “ recognition or ”;
  - (d) after “continued” insert “ recognition or ”.
- (9) In subsection (4)(b)(i), for the words from “maintained” to “receiving the accreditation” substitute “ maintained by the recognised person in question in relation to the award or authentication of qualifications generally or in relation to the award or authentication of the qualification in question ”.
- (10) For section 32A substitute—

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### **“32A Power of Welsh Ministers to give directions**

- (1) If it appears to the Welsh Ministers—
  - (a) that any recognised person has failed or is likely to fail to comply with any condition subject to which the recognition has effect, and
  - (b) that the failure—
    - (i) prejudices or would be likely to prejudice the proper award or authentication by that person of any qualification accredited by them or by the Qualifications and Curriculum Authority, or
    - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain any such qualification awarded or authenticated by that person,the Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the recognition has effect.
- (2) If it appears to the Welsh Ministers—
  - (a) that any recognised person who awards or authenticates any qualification accredited by them has failed or is likely to fail to comply with any condition subject to which the accreditation has effect, and
  - (b) that the failure—
    - (i) prejudices or would be likely to prejudice the proper award or authentication of the qualification, or
    - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification,the Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect.
- (3) It shall be the duty of the recognised person to comply with any direction under this section.
- (4) Any direction under this section is enforceable, on the application of the Welsh Ministers, by a mandatory order.
- (5) In this section “recognised person” means a person recognised by the Welsh Ministers.
- (6) In this section any reference to the award or authentication of any qualification by any person is a reference to its award or authentication by any person alone or jointly with others.”

**Status:** Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

PROSPECTIVE

**F5 163 Functions of Qualifications and Curriculum Authority in Northern Ireland in relation to vocational qualifications**

**Textual Amendments**

- F5** S. 163 repealed (1.4.2010 for E., 1.11.2010 for W.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), Sch. 16 Pt. 4; S.I. 2010/1151, art. 2, Sch. 1; S.I. 2010/2413, art. 2(b)(ii)(j)

*Inspections of teacher training*

**164 Inspections of teacher training in England: removal of duty to notify**

In section 18B(7) of the Education Act 1994 (c. 30) (period of notice to be given of inspections of teacher training), after “subsection (1)” insert “ of training provided by a training provider in Wales ”.

*Schools forums*

**165 Constitution of schools forums**

- (1) Section 47A of the School Standards and Framework Act 1998 (c. 31) (schools forums) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) Every local education authority must, in accordance with regulations, establish for their area a body to be known as a schools forum.”
- (3) After subsection (4) insert—
  - “(4A) Regulations must provide for a schools forum to include—
    - (a) members representing governing bodies of schools maintained by the relevant authority, and
    - (b) members representing head teachers of such schools.
  - “(4B) Regulations may provide for a schools forum to include—
    - (a) members representing such other persons—
      - (i) as may be prescribed, or
      - (ii) as the relevant authority may from time to time, in accordance with regulations, determine, and
    - (b) other members,and may make further provision as to the constitution of a schools forum.”
- (4) In subsection (5), omit “the constitution”.

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**18** S. 165 in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(b)

## CHAPTER 3

### GENERAL

#### 166 Orders and regulations

- (1) The following are to be made by statutory instrument—
  - (a) orders and regulations made by the Secretary of State or Lord Chancellor under this Act;
  - (b) orders made by the Welsh Ministers under section 173.
- (2) A statutory instrument containing—
  - (a) an order under section 3(5),
  - (b) regulations under section 5(1)(b),
  - (c) regulations under section 22(2) or 31(3), other than regulations for the purpose only of making provision within subsection (4),
  - (d) an order under section 56(9) or 58(3),
  - (e) regulations under section 61,
  - (f) an order under section 67,
  - (g) regulations under section 132(1), or
  - (h) regulations under section 170 which amend or repeal any provision of an Act, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing any other order or regulations under this Act, other than an order under section 173, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Provision contained in regulations under section 22(2) or 31(3) falls within this subsection if it substitutes, for an amount for the time being specified in such regulations, a smaller amount.
- (5) Before a draft of an instrument containing an order under section 67 is laid before either House of Parliament, the Secretary of State must consult the Welsh Ministers.
- (6) Any power of the Secretary of State or Lord Chancellor to make an order or regulations under this Act includes power—
  - (a) to make different provision for different cases, circumstances or areas,
  - (b) to make provision generally or in relation to specific cases, and
  - (c) to make such incidental, supplementary, transitional, transitory or saving provision as the Secretary of State or Lord Chancellor thinks fit.

#### 167 Functions to be exercisable by Welsh Ministers

- (1) Any function conferred on the Secretary of State by section 150, 152 or 165, so far as exercisable in relation to Wales, is to be taken to be transferred, immediately after

---

**Status:** Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

that section comes into force in relation to Wales, to the Welsh Ministers by an Order in Council under section 58 of the Government of Wales Act 2006 (c. 32).

- (2) Nothing in Schedule 1 or 2, so far as relating to the substitution of references to the Welsh Ministers for references to the Secretary of State in sections 89 to 90 of the School Standards and Framework Act 1998 (c. 31), is to be taken to affect the application of those sections, or anything done under or for the purposes of those sections, in relation to Wales.

## 168 General interpretation

- (1) In this Act, unless the context otherwise requires—  
“prescribed” means prescribed by regulations;  
“regulations” means regulations made by the Secretary of State under this Act.
- (2) Subject to subsections (4) and (5), the Education Act 1996 (c. 56) and the provisions of this Act specified in subsection (3) are to be construed as if those provisions were contained in that Act.
- (3) The provisions of this Act referred to in subsection (2) are—  
(a) Part 1 (other than section 9 and sections 37 to 39);  
(b) Chapter 1 of Part 4;  
(c) section 148;  
(d) section 173(10).
- (4) Where an expression is given for the purposes of any provision falling within subsection (3) a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.
- (5) Sections 561 and 562 of the Education Act 1996 (Act not to apply to persons in service of the Crown or persons detained under order of a court) do not apply for the purposes of Part 1.
- (6) Unless the context otherwise requires, any reference in this Act to a community, foundation or voluntary school or a community or foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998 (c. 31).

## 169 Minor and consequential amendments, repeals and revocations

- (1) Schedule 1 has effect to make minor and consequential amendments.
- (2) The provisions mentioned in Schedule 2 are repealed or revoked to the extent specified.

### Commencement Information

- I9** S. 169 partly in force; s. 169 in force for certain purposes at Royal Assent see s. 173(1)(g)(h)
- I10** S. 169(1) in force at 2.12.2008 for specified purposes by S.I. 2008/3077, art. 2(b)
- I11** S. 169(1) in force at 2.12.2008 for specified purposes for E. by S.I. 2008/3077, art. 3(a)
- I12** S. 169(1) in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(c) (with art. 6)
- I13** S. 169(1) in force at 26.1.2009 for specified purposes by S.I. 2008/3077, art. 4(e)
- I14** S. 169(2) in force at 2.12.2008 for specified purposes by S.I. 2008/3077, art. 2(c)

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**I15** S. 169(2) in force at 26.1.2009 for specified purposes by S.I. 2008/3077, art. 4(f)

**I16** S. 169(2) in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(d) (with art. 6)

## **170 Power to make consequential and transitional provision etc.**

- (1) The Secretary of State may by regulations make—
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
 as the Secretary of State considers necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) Regulations under this section may in particular—
  - (a) provide for any provision of this Act which comes into force before another provision (of this or any other Act or in subordinate legislation) has come into force to have effect, until that other provision has come into force, with specified modifications;
  - (b) amend, repeal or revoke any provision of—
    - (i) an Act passed before or in the same Session as this Act, or
    - (ii) subordinate legislation made before the passing of this Act.
- (3) Nothing in this section limits the powers conferred by section 166(6)(c) or 173(8)(c).
- (4) The amendments that may be made by virtue of subsection (2)(b) are in addition to those that are made by any other provision of this Act.
- (5) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## **171 Financial provisions**

- (1) There are to be paid out of money provided by Parliament—
  - (a) any expenditure incurred by the Secretary of State or the Office for Standards in Education, Children's Services and Skills by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums which by virtue of any other Act are payable out of money provided by Parliament.
- (2) Any sums received by the Secretary of State or Her Majesty's Chief Inspector of Education, Children's Services and Skills by virtue of this Act are to be paid into the Consolidated Fund.

## **172 Extent**

- (1) Subject as follows, this Act extends to England and Wales only.
- (2) Sections 87 to 91 extend to England and Wales and Scotland.
- (3) The following provisions extend to England and Wales, Scotland and Northern Ireland—
  - (a) section 166;
  - (b) section 170;
  - (c) this section;
  - (d) sections 173 and 174.

---

**Status:** Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

- (4) Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.

### 173 Commencement

- (1) The following provisions of this Act come into force on the day on which it is passed—
- (a) section 80;
  - (b) section 156;
  - (c) sections 166 to 168;
  - (d) sections 170 to 172;
  - (e) this section;
  - (f) section 174;
  - (g) paragraphs 75 to 77 and 86 to 88 of Schedule 1 (and section 169 so far as relating to those paragraphs);
  - (h) the repeal in Schedule 2 relating to section 140 of the Learning and Skills Act 2000 (c. 21) (and section 169 so far as relating to that repeal).
- (2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) section 149;
  - (b) section 151(1) and (4), so far as relating to sections 88P and 88Q of the School Standards and Framework Act 1998 (c. 31);
  - (c) section 164.
- (3) The following provisions, so far as they apply in relation to Wales, come into force in accordance with provision made by the Welsh Ministers by order—
- (a) sections 150, 152 and 153;
  - (b) sections 157 and 158(b) and (c);
  - (c) sections 160 and 162;
  - (d) section 165;
  - (e) the following paragraphs of Schedule 1—
    - (i) paragraphs 54, 55, 59(7), 66 and 67, and, so far as relating to those paragraphs, paragraph 53, and
    - (ii) paragraph 79,(and section 169 so far as relating to those provisions);
  - (f) the repeals and revocations in Schedule 2 so far as relating to—
    - (i) sections 86 and 94 of the School Standards and Framework Act 1998,
    - (ii) section 99(4) of the Learning and Skills Act 2000,
    - (iii) section 176 of and Schedules 4 and 17 to the Education Act 2002 (c. 32),
    - (iv) paragraphs 19 and 20 of Schedule 1 to the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3239),(and section 169 so far as relating to those repeals and revocations).
- (4) Subject to subsections (1) to (3), the provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

---

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (5) Before making an order under subsection (4) containing provision for the coming into force of section 67, the Secretary of State must consult the Welsh Ministers.
- (6) Before making an order under subsection (4) containing provision for the coming into force of sections 87 to 91, the Secretary of State must consult the Scottish Ministers and the Welsh Ministers.
- (7) Before making an order under subsection (4) containing provision for the coming into force of section 161(4) or 163, the Secretary of State must consult the Department for Employment and Learning in Northern Ireland.
- (8) An order under this section may—
  - (a) make provision generally or for specified purposes only;
  - (b) make different provision for different purposes and in relation to different areas; and
  - (c) contain such transitory and transitional provisions and savings as the person making the order thinks fit.
- (9) An order under subsection (4) may provide for Part 1 to come into force with the substitution in sections 1(b) and 29(1)(b) of “the first anniversary of the date on which the person ceased to be of compulsory school age” for “the age of 18”.
- (10) The Secretary of State must—
  - (a) exercise the powers conferred by subsections (4) and (9) so as to secure that Part 1 is in force with those substitutions no later than the day after the day which is the school leaving date for 2013, and
  - (b) exercise the power conferred by subsection (4) so as to secure that Part 1 is in force without those substitutions no later than the day after the day which is the school leaving date for 2015,
 subject, in each case, to any provision made by virtue of subsection (8).

#### **174 Short title**

- (1) This Act may be cited as the Education and Skills Act 2008.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).



**Status:**

Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Education and Skills Act 2008, Part 5 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.