

CHILDREN, SCHOOLS AND FAMILIES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Children and Schools

Exceptional provision for ill or excluded children etc

Section 3: Exceptional provision of education in short stay schools or elsewhere

27. Section 19 of the EA 1996 imposes a duty on local authorities to make arrangements for securing suitable education for children who, because of exclusion from school, illness or for any other reason, may not receive such education if the arrangements are not made for them. Thus an authority has a duty to arrange education for every child of compulsory school age who, for some reason, cannot attend a mainstream or special school.
28. *Subsection (2)* of section 3 inserts a new subsection (1A) into section 19. This provides that in relation to England the duty to make arrangements for the provision of education under section 19(1) does not apply in the case of a child who will cease to be of compulsory school age within the next six weeks (ie a child in the final weeks of year 11 at school) and who does not have any further public examinations or assessments for public qualifications to complete. This amendment ensures that the duty to make arrangements for the provision of education does not apply in the case of a pupil who has effectively come to the end of his or her compulsory schooling by completing any public examinations etc taken at the end of that stage of a child's education (but who is technically still in the final weeks of compulsory schooling). This reflects the practice in maintained schools where equivalent pupils at a school are excused from attending after the completion of their public examinations etc.
29. *Subsections (3) and (4)* of the section replace the existing subsection (3A) of section 19 of the EA 1996 with new subsections (3A) and (3AA) and amend subsection (3B) of the section. The existing subsection (3A) requires local authorities in England to arrange suitable full-time education for excluded pupils. The amendments extend the requirement to arrange full-time education to all children in England who qualify under section 19(1). The existing provisions allow for regulations to prescribe exceptions from the duty to provide full-time education. There will continue to be exceptions but these will appear in the primary legislation rather than in subordinate legislation.
30. The new subsection (3A) (as inserted by section 3) requires a local authority in England to make arrangements for the provision of full-time education for children who fall under section 19(1) but allows for part-time education to be arranged in the case of a child falling within the new subsection (3AA). That subsection applies to children for whom the local authority considers that, for reasons which relate to their physical or mental health, it would not be in the child's best interests for full-time education to be provided. Where part-time education is considered appropriate it must be education arranged on such part time basis as the authority considers to be in the child's best interests. The new subsection (3A)(1)(b) will govern the local authority's decision only

*These notes refer to the Children, Schools and Families Act
2010 (c.26) which received Royal Assent on 8 April 2010*

as to the amount of provision to arrange for any child. The nature and type of any provision will still be governed by the requirement of 'suitability' in subsection (1) and (6) of section 19.

31. Examples of the types of situation in which it is envisaged a child might fall within the exception to full-time provision might be children with chronic illness, or disability after an accident or some other reason connected to their welfare.
32. Subsection (3B) of section 19 is amended by the section so as to alter the existing power to make regulations which determine the day from which education must be provided for a child in England, to include all arrangements under section 19(1) rather than just under subsection (3A) as previously. The current intention is to replicate the provisions of the existing regulations which provide for the duty to have effect from the 6th day.