
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force in Wales on 19 December 2002 those provisions of the Education Act 2002 specified in Part I of the Schedule to this Order. It also brings into force on 31st March 2003 those provisions specified in Part II of the Schedule, and on 1st September 2003 those provisions specified in Part III of the Schedule. The Order also makes transitional provisions in relation to admission arrangements.

The effect of the provisions specified in Part I of the Schedule is as follows—

Section 49 repeals section 91 of the School Standards and Framework Act 1998 which allows a foundation or voluntary aided school which has a religious character to make special arrangements in its admission arrangements to preserve its religious character.

Sections 54 to 56 and Schedule 5 make provision in relation to schools causing concern. Section 54 inserts a new section 16A of the School Inspections Act 1996 which requires the Chief Inspector of Education and Training in Wales to notify the National Assembly for Wales (“the National Assembly”) where an inspector is of the opinion that a school has serious weaknesses or requires special measures. Section 55 amends section 15 of the School Standards and Framework Act 1998 (“the 1998 Act”) which sets out the cases where an LEA may use their powers of intervention. The amendments provide that section 15 of the 1998 Act applies to schools having serious weaknesses or requiring special measures when the National Assembly has been given notice under section 16A of the School Inspections Act 1996. Section 56 amends sections 18 and 19 of the 1998 Act so as to provide that the National Assembly’s powers to appoint additional governors and to direct an LEA to discontinue a school apply to schools having serious weaknesses as well as those requiring special measures. Schedule 5 makes amendments to the 1998 Act consequential on sections 55 and 56.

Section 75 and Schedule 10, paragraphs 1, 6, 11 and 15 amend Schedule 6 to the 1998 Act and Schedule 7 to the Learning and Skills Act 2000, so as to provide that proposals to establish, alter or discontinue schools, or proposals relating to inadequate sixth forms, which are approved conditionally by the National Assembly are not to be treated as rejected if the condition is not met, but are to be considered afresh.

Sections 97, 98, 99(1), 100 (except sub-sections (1)(b), (2)(b) and (5)), 101 (except sub-section (3)(b)), 103, 105 to 107, 108 (except sub-sections (1)(a), (2) and (6)), 109, 111 to 118 re-enact provisions in the Education Act 1996 relating to the National Curriculum, making provision for a separate National Curriculum for Wales. The provisions are brought into force save in relation to the new foundation stage and maintained nursery schools.

Section 131 re-enacts and updates section 49 of the Education (No. 2) Act 1986, and enables the National Assembly to make regulations requiring the appraisal of the performance of teachers.

Sections 132, 133, 134(1), (4) and (5), 135, 141 and 145 relate to teachers' qualifications. Section 132 enables the National Assembly to make regulations determining who is a qualified teacher and requires consultation with the General Teaching Council for Wales (“the Council”). Section 133 enables the National Assembly to set out in regulations the work which only qualified teachers or other specified persons can carry out. Section 134(1), (4) and (5) enables the National Assembly to make regulations requiring qualified teachers to be registered with the Council before carrying out specified work. Section 135 enables the National Assembly to make regulations requiring head teachers to be qualified teachers and requiring head teachers appointed after the date of commencement to hold a specified qualification. Section 141 enables the National Assembly to make

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regulations requiring teachers to satisfy conditions in relation to their health and physical capacity. Section 145 makes general provision in relation to the specification of qualifications or courses.

Section 148 and Schedule 12, paragraphs 2, 4(1), (3), 6 and 7 amend the Teaching and Higher Education Act 1998 in relation to the Council. The amendments provide for—

- the Council’s advisory functions to be extended;
- the Council to have regard to its expenditure on all its functions when setting the level of its fees; and
- the Council to be able to undertake activities to promote the standing of the teaching profession.

Section 151(2) allows the National Assembly to make an order specifying additional functions required to enable it to operate a childcare scheme under the Tax Credits Act 2002.

Section 152 and Schedule 13, paragraphs 1 to 3, 5, 6, 7(1), (3) and 8 amend the Children Act 1989, Part 10A and Schedule 9A, which make provision in relation to child minding and day care. The amendments relate to the consequences of a failure to consent to a check on a person’s suitability; the effect of suspension of registration; the power to prescribe additional determinations that can be the subject of an appeal; rights of entry for authorised inspectors; the power to make regulations waiving disqualification for registration. Consequential amendments are also made to the Police Act 1997 in relation to criminal record certificates and enhanced criminal record certificates.

Section 179(1), (4), (5) and (6) amends the School Inspections Act 1996 to extend an inspector’s right of entry to any premises where a school has arranged for education to be provided for pupils aged 14—16.

Section 180 amends the Education Act 1997 so as to extend the rights of entry of an inspector carrying out inspections under section 38 of that Act, to premises where education is being provided in accordance with an LEA’s arrangements for educating children otherwise than at school.

Section 188 and Schedule 16, paragraphs 4 to 9 amend the School Inspections Act 1996 so as

- to enable the Chief Inspector to use a member of the Inspectorate rather than a registered inspector to carry out an inspection under section 10 of that Act, if she considers it expedient to do so;
- to enable members of the Inspectorate to act as members of the teams assisting registered inspectors in school inspections;
- enable regulations to specify additional persons to whom copies of school inspection reports must be sent;
- require a copy of a school’s action plan to be sent to the Chief Inspector only where the school requires special measures or has serious weaknesses.

Section 189 and Schedule 17, paragraphs 5(1) — (4), (6) and 6 to 8 amend Part 5 of the Education Act 1997 so as to

- extend the functions of the Qualifications, Curriculum and Assessment Authority for Wales (“ACCAC”) in relation to curriculum and assessment to children below compulsory school age;
- enable ACCAC to take into account the need to ensure that the number of accredited qualifications in similar subject areas or serving similar functions is not excessive;
- enable ACCAC to impose conditions after it accredits qualifications;
- extend ACCAC’s rights of entry and inspection in connection with its power to limit the amount of fees that can be charged by awarding bodies;
- give ACCAC a power to direct awarding bodies that have failed, or are likely to fail, to comply with conditions of accreditation.

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Sections 191 to 194 make provision in connection with regional provision for special educational needs. Section 191 enables the National Assembly to direct LEAs to consider whether they could make special educational needs provision more effectively by regional provision. Section 192 enables the National Assembly to direct an LEA or governing body to make proposals in connection with the establishment of a regional school providing for children with special educational needs, or with the arrangements for the provision of education or goods and services on a regional basis. Section 193 enables the National Assembly to make proposals to secure regional provision. Section 194 makes consequential amendments to the Education Act 1996.

Section 196 requires an LEA to publish information provided to it by the National Assembly, or to provide such information to specified persons.

Section 215 and Schedules 21 and 22 make minor and consequential amendments and repeals.

The effect of the provisions specified in Part II of the Schedule is as follows:—

Sections 14 to 17 and 18(2) enable the National Assembly to give financial assistance to any person for educational purposes, education related purposes and for purposes related to childcare.

Sections 142 to 144 and 146 make provision in relation to misconduct. Section 142 enables the National Assembly, concurrently with the Secretary of State, to make directions prohibiting a person from working in schools, further education institutions or local education authorities on the grounds of misconduct, health, unsuitability to work with children, or in relation to independent schools, on the grounds of professional incompetence. Section 143 imposes duties on organisations, such as supply agencies, not to arrange for a person subject to a direction to carry out work which would contravene it. Section 144 provides for rights of appeal against the making of directions. Section 146 is commenced only so as to repeal provisions of sections 218 and 218A of the Education Reform Act 1988 relating to misconduct.

Section 148 and Schedule 12, paragraph 12(1) and (2) amend the Teaching and Higher Education Act 1998 so as to enable the Council to attach conditions to suspension orders it makes in disciplinary proceedings.

Sections 149 and 150 amend sections 118 to 121 of the 1998 Act so as to require LEAs to carry out annual reviews of childcare provision, to establish a childcare information service, and so as to include childcare in the early years development plans and partnerships.

Section 195 and Schedule 18, paragraphs 1, 4, 5, 7, 8, 13 to 15 amend the Education Act 1996 so as to provide for a separate Special Educational Needs Tribunal for Wales. These provisions are commenced in April 2003 only for the purposes of establishing the new Tribunal, but not so as to confer any functions on the Tribunal.

Section 200 amends section 457 of the Education Act 1996 so as to enable the National Assembly to prescribe benefits or tax credits in connection with the remission of charges relating to residential trips.

Section 201 makes provision in relation to school lunches. It substitutes new sections 512, 512ZA and 512ZB of the Education Act 1996 and makes other consequential amendments. The new provisions set out LEAs' powers to provide meals, milk and other refreshments at schools, introduce a new power for the National Assembly to specify requirements to be met before an LEA is required to provide school lunches and require an LEA to charge for meals, milk and refreshments save where a person is eligible for free meals.

Section 215 and Schedules 21 and 22 make minor and consequential amendments and repeals.

The effect of the provisions specified in Part III of the Schedule is as follows:—

Section 195 and Schedule 18, paragraphs 2, 3, 6, 8, 9 to 12 and 16 to 18 provide for the establishment of a separate Special Educational Needs Tribunal for Wales, so that it will hear special educational needs appeals from September 2003. The Tribunal will also hear disability discrimination claims.

Section 215(2) and Schedule 22 provide for repeals.