

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

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 1 – Provision for New Legal Frameworks

Chapter 1 – Powers to facilitate innovation

Sections 1 to 5

Sections 1-5: Powers to facilitate innovation

53. These sections describe the purpose of this Chapter of the Act which is to facilitate experimental pilot projects in the education system, where the Secretary of State, or the NAW, believes innovation is likely to lead to improvement in educational standards.
54. These sections require that in forming an opinion as to whether a project may contribute to raising educational standards, the Secretary of State, or the NAW, shall have regard to the need for a school to have a balanced and broadly based curriculum and consider the likely effect of a project on all children who may be affected by it.
55. The sections allow the Secretary of State, or the NAW, to suspend legislative requirements and, if necessary, modify legislation or confer new powers. The power is limited to education legislation (both primary and secondary). The lifetime of the power is also limited. The power to make entirely new orders will be exercisable only for four years, after which time it is expected that the utility of the power will be reviewed and lessons learnt can be evaluated and disseminated.
56. No order may be made under these sections if it appears to the Secretary of State, or the NAW, that the proposed order would be likely to have a detrimental effect on the education of children with special educational needs.
57. The duration of any particular suspension or modification is restricted to three years in the first instance. This provides time for most innovative practices to be implemented and evaluated, while ensuring that pilots remain time limited.
58. The sections allow orders made under the power to be extended either in scope (both of bodies and functions) or time (subject to a maximum period of six years). It also enables the Secretary of State, or the NAW, to terminate any suspension or modification of legislation. This is to ensure that if it became clear that a specific innovative proposal was not going to deliver the anticipated benefits, the Secretary of State, or the NAW, would be able to reinstate the original legislation.
59. If any experiment under this power proves worthwhile and the Government is of the view that it should be made permanent, then it would need to consider amending the relevant statutory provisions. It could do so either by way of a Bill to amend the relevant legislation or by way of a Regulatory Reform Order under the [Regulatory Reform Act 2001 \(c.6\)](#).

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60. The sections provide that the effect of a temporary order under the new power may be disregarded for the purposes of section 1(4)(b) of the Regulatory Reform Act 2001 (which prevents the amendment, repeal or replacement of primary legislation through Regulatory Reform Orders within two years of substantive amendment of the relevant provisions). So the restriction in section 1(4)(b) of that Act will not prevent the making of permanent legislative provision in place of the temporary order.
61. The sections also enable the Secretary of State, or the NAW, to determine the application procedure, and specifically require EAZs and governing bodies of schools maintained by an LEA to consult the relevant LEA as well as requiring the body seeking an order under the power to consult with other appropriate bodies. It also allows the Secretary of State, or the NAW, to change – with the consent of the applicant – the content of the application.
62. Where the Secretary of State, or the NAW, have made an order under Section 2 they shall prepare a report and in the case of the Secretary of State lay that report before each House of Parliament or publish a report in the case of the NAW.

Chapter 2 – Exemptions related to school performance

Sections 6 to 10

Sections 6 to 10: Exemptions related to school performance

63. These sections enable any community, foundation, voluntary or special school that is of a prescribed description and satisfies prescribed criteria to apply for exemption from certain aspects of legislation covering the national curriculum and teachers' pay and conditions.
64. They enable the Secretary of State, or the NAW, to make regulations specifying the qualifying criteria that a school will be required to meet to be eligible to apply. The application will be to the Secretary of State, or the NAW, for an order to confirm the exemption. Some elements of the pay and conditions and curriculum requirements will be subject to exemption by right, whereas others will be subject to the Secretary of State's, or the NAW's, discretion. The areas in which exemption may apply by right and those in which it will only be available at the discretion of the Secretary of State, or the NAW, will also be set out in regulations.
65. The governing body of an eligible school will need to consult with appropriate parties, including the LEA, staff within the school and parents, on whether and how to apply. The exemption will apply until such time as the order is revoked or varied.
66. Revocation or variation can be by order without application if the school has ceased to be a qualifying school.

Chapter 3 – Powers to form companies etc.

Sections 11 to 13

Section 11: Powers of governing bodies to form or invest in companies to provide services etc.

67. This section provides a new enabling power so that the governing body of a school can form, or take part in forming, companies to purchase goods or provide services for other schools. Such a company could provide, or help with the provision of, facilities or services for schools. It could, for example, provide, or arrange the provision of, the financial, technical and legal advice that schools would normally have to arrange elsewhere, and it could also procure suppliers through the use of standard specifications and contracts.

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68. In addition, maintained schools may form companies to deliver services to any schools on behalf of an LEA, pursuant to a 'contracting out' order under the Deregulation and Contracting Out Act 1994, and/or to provide traded services to schools. The section requires companies to be registered under the Companies Act 1985 as companies limited either by shares or by guarantee.

Section 12: Limits on powers conferred by section 11

69. This section requires maintained schools wishing to form or join companies established for the purposes of section 11 to obtain the consent of their LEA. Regulations will set out the basis on which an LEA may refuse consent. Only schools with a delegated budget will be able to belong to such a company.
70. The section provides for regulations to deal with such matters as the constitution of the company and the effect of the delegated budget being withdrawn from a member school. Companies may not borrow money without consent.
71. Regulations will put in place arrangements for the financial monitoring of these companies and powers to address any financial mismanagement of the company.

Section 13: General powers of Secretary of State in relation to companies

72. This section provides for the Secretary of State to form, take part in forming, or invest in a company for purposes connected with her education functions.