

# **EDUCATION ACT 2002**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS AND SCHEDULES**

#### **Part 11 – Miscellaneous and General**

##### **General duties of LEAs and governing bodies**

###### *Sections 175 and 176*

###### *Section 175: Duties of LEAs and governing bodies in relation to the welfare of children*

332. This section imposes a duty on LEAs, the governing bodies of maintained schools, and the governing bodies of FE institutions to make arrangements in regard to the welfare of children. LEAs must make arrangements to ensure that their functions in the capacity of an LEA are exercised with a view to safeguarding and promoting the welfare of children (i.e. persons under 18 years of age). Similarly governing bodies must make arrangements to ensure that their functions relating to the conduct of the school, or institution, are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school, or who are receiving education or training at the institution. All the bodies concerned must have regard to any guidance issued by the Secretary of State, in regard to England, or the NAW, in regard to Wales, in deciding what arrangements they must make to comply with their duty.

###### *Section 176: Consultation with pupils*

333. This section is designed to encourage greater participation by children and young people in decision-making within schools. It places a duty on LEAs and the governing bodies of maintained schools, in the exercise of their functions, to have regard to any guidance (in England from the Secretary of State, in Wales from the NAW) about consultation with pupils in taking decisions affecting them. Any guidance issued must provide for pupils' views to be considered in the light of their age and understanding.

##### **Education and training outside schools**

###### *Sections 177 to 178*

334. These sections reflect the fact that education is increasingly being delivered in more than one setting, particularly in respect of vocational training in the workplace

###### *Section 177: Meaning of “secondary education”*

335. The definition of “secondary education” in section 2 of the EA 96 includes education received partly at a school and partly at another institution, such as a FE college. This section extends that definition to include education or training which is provided partly at any other kind of establishment. That would ensure that mixed education provided partly at a school and partly at, for instance, a workplace is treated as secondary

education. The section also amends the definition of secondary education so as to make it clear that it includes vocational, social, physical and recreational training. In this respect the definition of secondary education is brought into line with the definition of FE. Additionally, the section provides for the Secretary of State, or the NAW, to modify certain aspects of the Education Acts to take account of the fact that some pupils may be undertaking part of their secondary education away from a school or college.

***Section 178: Training and education provided in the workplace for 14 to 16 year olds***

336. Section 5 of the LSA enables the LSC to fund education or training at an FE sector college for pupils in the final two years of compulsory schooling. This section extends that to enable the LSC in England to fund education or training for such students provided at the premises of an employer in England.
337. The section also extends the age range for Ofsted / Adult Learning Inspectorate (ALI) area inspections from 16-19 to 14-19 in England and Estyn area inspections from 16 plus to 14 plus in Wales. An area inspection is an examination of the provision of education in a specific locality which results in a report to the LSC. The ALI is a government body that inspects all publicly funded work-based training for people over 16.

***Section 179: Rights of entry in relation to inspections***

338. This section amends the right of entry for school inspectors, which is at present limited to the premises of schools, by extending it to include other premises where schools have arranged for educational provision to be made for pupils aged 14-16.

***Section 180: Inspections of LEAs: rights of entry etc.***

339. Section 40 of the EA 97 makes provision about the rights of entry of inspectors carrying out inspections of LEAs under section 38 of that Act and their rights to inspect documents. This section substitutes a section for the existing section and in doing so extends these new rights of entry and inspection.
340. Among the LEA functions which are subject to inspection under section 38 is the arranging of education otherwise than at school for children who, for whatever reason (such as illness, injury, behavioural problems or exclusion from school), would otherwise not receive suitable education. This duty is imposed by section 19 of the EA 96.
341. The existing section 40 limits the right of entry to premises of the LEA being inspected and schools maintained by that authority. The new section 40 provides for that right of entry to be extended to other premises (under section 19 of the EA 96) on which education is being provided under arrangements made by the LEA (other than private houses).
342. The right of entry is accompanied by rights to inspect and copy records and documents including, by virtue of section 42 of the SIA, computer records. These powers are to be backed up by an offence of wilfully obstructing an inspector who is seeking to exercise any of the rights granted by this section.

## **Allowances in respect of education or training**

### ***Sections 181 to 185***

#### ***Section 181 and 182: Allowances in respect of education or training; learning agreements***

343. These sections enable the Secretary of State or the NAW to make regulations which would entitle people to receive a regular maintenance allowance if they are taking part in secondary education, FE or training. Payments of this type would be similar to the system of Education Maintenance Allowances now being piloted in some parts of England. The current system of payments is on a discretionary basis.
344. Regulations may, in particular, provide for: the size of payments; income tests to determine eligibility; how long payments can be made for and the establishment of appeals mechanisms.
345. A learning agreement is defined as a document which sets out certain conditions which relating to attendance at a school, college or training centre; good conduct; and production of assignments. Regulations may make it a necessary condition for receiving a regular maintenance allowance that the student should have signed a learning agreement. The regulations could also require that maintenance payments are stopped if the student fails to comply with the terms of the agreement. The regulations would be able to prescribe both the form and content of learning agreements.

#### ***Sections 183 to 185: Transfer of functions relating to allowances under section 181; Delegation of functions relating to allowances; Supplementary provisions relating to transfer or delegation of functions***

346. These sections enable the Secretary of State to transfer any functions arising from regulations made under section 174 to the LSC, or to an LEA. Such functions might include the making of payments, assessment of eligibility and general administration of the scheme. The NAW will similarly be able to transfer functions to the NCETW, or to an LEA. If functions are transferred in this way, the Secretary of State or the NAW may issue binding directions about how the function is to be exercised.
347. Arrangements may also be made to delegate functions arising from regulations to any other person or body. The Secretary of State or the NAW may establish appeals mechanisms for decisions about transferring or delegating these functions. The section also enables the Secretary of State or the NAW to contribute towards the costs of any body exercising functions in relation to these maintenance payments.

## **Student Loans**

### ***Section 186***

#### ***Section 186: Student Loans***

348. This section gives the powers to set in place arrangements to pay off the student loans of any person who meets eligibility requirements to be specified in regulations. It provides the basis for the Government to implement plans to pay off, over time, loans (including any interest accrued) for new teachers in shortage subjects in schools maintained by LEAs, non-maintained special schools, CTCs, CCTAs, Academies, colleges in the FE sector, non-FE sector specialist colleges in receipt of funding from either the LSC or the NCETW, and Higher Education institutions that offer FE courses.
349. The section provides a power for the Secretary of State to reduce or pay off any outstanding student loans which a person who is eligible under the proposed scheme may have. The section gives the power to write off or repay any loans made to English or Welsh domiciled students under the Education (Student Loans) Act 1990 (mortgage

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

style loans) or the THEA (income-contingent loans). It also gives the power to repay loans received under any other arrangements, including loans entered into outside England and Wales.

350. The section gives the Secretary of State the power to determine that any functions under the relevant regulations should be exercised by another person or body on her behalf. It also provides that regulations made under this section should be made by the Secretary of State rather than by the NAW, as student support matters are not devolved to Wales.

## **Education Action Zones**

### *Section 187*

#### *Section 187 and Schedule 15: Education Action Zones*

351. This section introduces Schedule 15 which amends provisions of the SSFA relating to EAZs. It adds to the schools that are eligible to participate in EAZs, to include nursery schools, PRUs and independent schools. These additional types of schools can only participate in EAZs with the consent of the Secretary of State.
352. The Schedule inserts a new section (11A) into the SSFA to give an EAF (the corporate governing body) a limited power to amend its governing instrument with the consent of the Secretary of State. EAZ schools and the Secretary of State will still retain the right to appoint members onto the EAF.
353. The Schedule inserts new sections (11B and 11C) into the SSFA to enable an EAF to add or remove a school from the EAZ, subject to the consent of both the Secretary of State and the governing body of that school.
354. The Schedule requires the EAF to notify the Secretary of State of any amendments made to its governing instrument. This Schedule also requires the EAF to provide any member of the public with specific current information about the EAF, particularly the names of the EAZ schools and partners and individuals on the EAF.
355. The Schedule amends section 12(1) of the SSFA, which defines the objects for which EAFs are established. An additional broader educational object is added to allow other educational activities to be carried out subject to the consent of the Secretary of State. This allows EAZs to link closely to other programmes such as those designed to improve nursery education or improve access to HE.
356. The Schedule ensures that amendments which have previously been made to the instruments which establish and govern EAZs and their EAFs are preserved. The section allows for an EAF to include one or two representatives of the Secretary of State unless she chooses not to make an appointment.

## **School Inspections**

### *Section 188*

#### *Section 188: School Inspections and Schedule 16*

357. *Section 188* brings into effect Schedule 16 containing amendments to the SIA. The Schedule amends the duties of the Chief Inspectors for England and Wales to keep the Secretary of State and the NAW informed about schools. The duty in subsections 2(1)(c) and 5(1)(c) to advise about the efficiency of financial management is subsumed within a wider duty relating to management and leadership in schools. This amendment confirms the importance of high-quality leadership and management in the achieving and maintaining of high standards by schools.
358. The Schedule makes a similar amendment in the duty placed upon registered inspectors in respect of the scope of school inspections which they conduct under section 10. This

amendment reflects the coverage of management and leadership in school inspections and reports.

359. The Schedule amends section 12 to provide the Chief Inspectors with discretion to use a member of the Inspectorate (defined in section 46 as HMIs and additional inspectors), rather than a registered inspector, to carry out an inspection under section 10, where they consider it expedient to do so. The existing position is that the Chief Inspectors may only do this where it is not reasonably practicable to secure a suitable registered inspector to carry out the inspection. This power will be used to enable inspections under sections 2(2)(b) and 3(1) in England, and sections 5(2)(b) and 6(1) in Wales, to be combined with, or take the place of, section 10 inspections, thereby reducing the number of separate visits by inspectors to the schools concerned.
360. The Schedule amends the provisions relating to membership of the teams which assist registered inspectors in school inspections under section 10. In addition to inspectors enrolled on the lists maintained by the Chief Inspectors under paragraph 3A of Schedule 3, members of the Inspectorate will be able to act as team members where authorised by the relevant Chief Inspector. This amendment will enable more flexible use to be made of the expertise available for inspection work in schools and will enable some inspections to be combined with the result that the burden on schools concerned will be reduced.
361. The Schedule amends the provisions in section 16 specifying those to whom copies of school inspection reports must be sent by enabling that duty to be extended to other recipients by regulations. This amendment provides consistency with provisions in respect of schools' post-inspection action plans.
362. The Schedule amends the provisions in section 17 specifying those to whom copies of schools' post-inspection action plans must be sent. Copies will be required by the Chief Inspectors only in respect of schools for which the inspection report stated that special measures are required or that the school has serious weaknesses. This amendment will remove an administrative burden from other schools.
363. The Schedule amends paragraph 1 and 2(3) of Schedule 1 to require the Chief Inspector for England when appointing staff, and when arranging for the employment of additional inspectors, to obtain the approval of the Minister for the Civil Service, rather than the Treasury. This change ensures that this provision is consistent with the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995. The position in relation to Wales, where the requirement is to obtain approval from the NAW, remains unchanged.

## **Qualifications**

### ***Sections 189 and 190***

#### ***Section 189: Amendments of Part 5 of Education Act 1997***

364. This section introduces Schedule 17, which amends Part 5 of the EA 97.
365. The amendments extend the powers of the QCA and ACCAC so that their functions in relation to children below compulsory school age are brought into line with those for children of compulsory school age. They also extend the powers of the QCA and ACCAC in relation to qualifications.
366. The Schedule amends section 23 and 29 of the EA 97. The effect of the amendments is that QCA's and ACCAC's functions in relation to curriculum and assessment for those of compulsory school age are extended to children below compulsory school age.
367. The Schedule amends section 24(2) of the EA 97. The effect of the amendment is that the QCA and ACCAC can take into account in its criteria for accreditation of

qualifications the need to ensure that there are not an excessive number of qualifications in similar subject areas or serving similar functions.

368. The Schedule amends sections 26 and 32 of the EA 97 to strengthen QCA's and ACCAC's powers under sections 26(3) and 32(3) of the EA 97 by making it explicit that the Authorities can impose conditions after the accreditation of qualifications. It also substitutes new sections 26(4)(b) and 32(4)(b) to extend the purposes for which QCA and ACCAC have right of access to an awarding body's premises. The extension will enable QCA and ACCAC to examine and copy documents in support of their powers under sections 26(4)(a) and 32(4)(a), and, as required by sections 26(5) and 32(5), with the consent of the Secretary of State or the NAW, to limit the amount of examination fees charged by awarding bodies.
369. The Schedule also introduces new sections 26A and 32A which provide QCA and ACCAC with the power to direct awarding bodies that have failed to comply, or are at risk of failing to comply with a condition of accreditation that may impede the successful delivery of one or more qualifications by an awarding body (or consortium) or that puts at risk the interests of a learner who may be seeking to obtain a relevant qualification. The direction will be for the purpose of restoring compliance with the accreditation conditions and may be used when withdrawal of accreditation is not a viable option. It also amends section 58(6) of the EA 97 to extend QCA's power in this respect to Northern Ireland in relation to NVQs.

### ***Section 190: LEA functions: qualifications***

370. This section clarifies the legal position of LEAs in England and Wales to engage in the award or authentication of educational qualifications. It ensures that LEAs are able to develop, deliver and award qualifications and to charge a fee in respect of those services. The section also enables an LEA to make arrangements with other persons and form, participate in or be a member of a body corporate in order to exercise its powers in relation to educational qualifications. The section is intended to be clarificatory. The powers are therefore expressed always to have been within the powers of an LEA, and are without prejudice to its other powers.

## **Special Educational Needs: Wales**

### ***Sections 191 to 195***

#### ***Section 191: Regional provision for special educational needs in Wales***

371. There are currently 22 LEAs in Wales, all of which are relatively small in size. The largest has a pupil population of just over 50,000 while the smallest is around 10,000. All the authorities are experiencing difficulties in providing for the full range of children with SEN in terms of the provision required and / or the provision of support services. This section enables the NAW to direct an LEA in Wales, on behalf of a number of LEAs in Wales, to consider whether SEN of children might be arranged more effectively or efficiently by making regional provision. "Regional provision" may be provision of education by a school (a regional school) maintained by one authority for their children and children from other areas, or the provision of goods and services by one authority to other authorities or schools. The LEA must report its conclusions to the NAW. The NAW may issue guidance to LEAs in relation to these duties which those LEAs must have regard to.

#### ***Section 192: Directions to bring forward proposals to secure regional provision***

372. The section enables the NAW, by order, to direct an LEA or governing body to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools with a view to establishing a regional school providing for pupils with SEN. A direction may also require proposals to cover arrangements to be made for the provision

of education or goods and services by one authority on a regional basis. The school re-organisation element of such proposals is covered by existing statutory procedures set out in Schedule 6 to the SSFA. The NAW may make regulations setting out procedural requirements for proposals for the provision of education or goods / services.

***Section 193: Powers of Assembly to make proposals to secure regional provision***

373. This section enables the NAW itself to publish such proposals if it has made an order under section 192 and either no proposals have been made or the time allowed by the order for publication of proposals has elapsed. It also enables the NAW to make provision for the procedure to be followed for such proposals, which may build on existing procedures set out in Schedule 7 to the SSFA.

***Section 194: Welsh LEAs' powers to make regional provision***

374. This section amends provisions in the EA 96 to allow an LEA to establish a regional school or provide goods and services to support pupils with SEN in any part of Wales.

***Section 195: The Special Educational Needs Tribunal for Wales***

375. This section introduces Schedule 18, which amends the EA 96 so that SEN appeals that would otherwise be made to the Special Educational Needs and Disability Tribunal (SENDIST) will instead be made to separate Tribunals in England and Wales. At present SEN appeals are made to the Special Educational Needs Tribunal (which becomes the SENDIST from September 2002), which covers both England and Wales. The amendments provide that where the LEA concerned is in England the appeal will be to the SENDIST, and where it is in Wales, to a new Special Educational Needs Tribunal for Wales.
376. Under the EA 96, regulations relating to the SENDIST are made by the Secretary of State. In accordance with Article 5 of the [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(SI 1999/672\)](#) they are made with the agreement of the NAW, so far as they relate to Wales. Paragraph 5 of Schedule 18 to the Act amends the EA 96 to give the regulation making power for the Special Educational Needs Tribunal for Wales to the NAW, who also take on the other tribunal functions of the Secretary of State in relation to the new Special Educational Needs Tribunal for Wales.
377. The regulations relating to the Special Educational Needs Tribunal deal with the procedure to be followed by the Tribunal when hearing cases. The existing regulations under section 336 of the EA 96 are the [Special Educational Needs Tribunal Regulations 2001 \(SI 2001/600\)](#). Regulations also provide for the timetable within which LEAs must comply with tribunal orders (made under section 336A of the EA 96), and the timetable for LEAs to comply with unopposed appeals treated as being determined as in favour of the appellant (made under section 326A of the EA 96). The functions exercised by the Secretary of State include the appointment of lay members of the Tribunal and the payment of the Tribunal's expenses.
378. [Paragraphs 7 to 11](#) of Schedule 18 amend the Disability Discrimination Act 1995 to allow disability discrimination claims brought by disabled pupils or prospective pupils against schools in Wales to be heard by the Special Educational Needs Tribunal for Wales, rather than the SENDIST. The procedures to be followed in hearing disability claims, or joint SEN and disability claims, will be set out in regulations to be made by the Secretary of State with the agreement of the NAW.

## **Other provisions relating only to Wales**

### ***Sections 196 to 198***

#### ***Section 196: Publication and provision of material***

379. This section provides powers over and above the existing, but limited, powers under section 537 of the EA 96.
380. This section allows the NAW to provide “qualifying material” to governing bodies and LEAs and to require them to provide it to specified persons or to publish it. “Qualifying material” is material which will help parents choose schools for their children, increase public awareness of the quality and standards of education and assist in assessing how well schools manage resources.
381. It is the intention that the qualifying material which LEAs and governing bodies will be required to publish or provide under this new power will be such as to enable parents and others to measure progress made by pupils while at the school (value-added), and that it may also take into account the socio-economic conditions of the area in which the school is located.

#### ***Section 197: Partnership agreements and statements***

382. This section enables the NAW to make regulations requiring any LEA in Wales to enter into a partnership agreement with the governing body of any school maintained by that authority. A partnership agreement will set out how an LEA and a governing body will carry out their functions in relation to a school.
383. The regulations may, for example, require the agreements to cover the procedures to establish agreed common objectives for pupils’ educational progress; the actions which the LEA will take to promote high standards in schools; the actions to be taken to support transition for pupils moving from a maintained primary school to a maintained secondary school.
384. If no agreement can be reached the LEA has the power to draw up a statement covering how it and the governing body are to discharge their functions. Both the LEA and governing body are under a duty to have regard to the agreement (or the LEA’s statement) in carrying out their functions.

#### ***Section 198: Transition from primary to secondary school***

385. This is a new power for the NAW to require the governing bodies of secondary schools and their feeder primary schools to draw up plans together to facilitate the transition of pupils from the one to the other. It includes a power for the NAW to specify in regulations the content and timing of the plans and to give guidance on matters such as the making of the plans or which schools are to be considered as “feeder schools”.

## **Provision of services**

### ***Sections 199 to 101***

#### ***Section 199 and Schedule 19: Transport for persons over compulsory school age***

386. These provisions are designed to give effect to improved planning, coherence and publicity of local transport policies for pupils of sixth form age.
387. The amendments give LEAs a co-ordinating role in developing policies with key partners to provide effective and efficient transport arrangements for post 16 students. Every LEA will draw up and publish a policy statement setting out the provision of, or support for, transport for students of 16-19 or those completing courses started whilst 16-19. The new section 509AB of the EA 96 contains new criteria that must be



considered in devising policies. These are that: no student is prevented from attending FE because of a lack of services or support, choice, costs and the need to travel beyond local LEA boundaries. The policy statement will include provision and support made by schools and FE colleges in the local area. Section 509AA(8) makes it clear that LEAs can make transport arrangements over and above those set out in the policy statement and so allows the LEA and its partners flexibility to respond to changing or unforeseen circumstances where particular cases occur that are not contained in their policy statement. Section 509AA(9) provides that the Secretary of State or the NAW can direct an LEA to make arrangements for transport which are not in the statement. Section 509AC contains definitions.

***Section 200: Remission of charges relating to residential trips***

388. Section 457 of the EA 96 makes provision about charging for school activities. Subsection (4) provides for the remission of charges in respect of board and lodging for a pupil on a residential trip where that pupil's parent is in receipt of certain state benefits. The section amends that subsection so as to allow the Secretary of State (or the NAW) to prescribe additional benefits or tax credits that, the receipt of which, will enable the charges in question to be remitted. This flexibility is required to keep pace with changes to the tax credit and benefit system in the Tax Credit Act 2002, and to prevent children's entitlement to the remission of such charges being lost as a result of the changes.

***Section 201: LEA functions concerning school lunches, milk etc.***

389. This section replaces section 512 of the EA 96 with three new sections.
390. The new section 512 is along the lines of the existing provision but makes two changes:
- It enables the Secretary of State (or the NAW), by order, to set conditions that must be met before an LEA is required to provide school lunches. It is intended to use this power to restrict the entitlement to free lunches to those children who are required to attend over the lunch period. Those children who are currently entitled to free school lunches but would lose their entitlement as a result of this change will have their position protected by transitional provisions.
  - It extends free school lunch entitlement to eligible children of nursery age who receive education, funded by the LEA, in settings outside the maintained sector. This change will place those children whose parents receive entitling benefits, but who currently are not entitled to free school lunches because their education is provided in private or voluntary nursery settings on the same footing as children educated in the maintained sector.
391. The new section 512ZA requires an LEA to charge for any meals and milk provided, except as provided for by new section 512ZB. It also unifies the charging regime for pupils and persons who are no longer pupils because they have attained the age of 19 in one provision whereas they are currently dealt with separately.
392. The new section 512ZB makes the provision of free lunches conditional on a request for free lunches being made by, or on behalf of, a child. This brings the law into line with current practice and ensures that LEAs have legislative backing to resist requests for monetary compensation for the loss of free meals where no application has been made.
393. Section 512ZB also allows the Secretary of State (or the NAW) to prescribe additional benefits or tax credits, the receipt of which will entitle the parent of a child to request a free school lunch (and, where provision is made, free milk). This flexibility is required to keep pace with changes to the Tax Credit and Benefit System proposed within the new Tax Credit Act, and to prevent the loss of children's entitlement to free lunches (and, where provision is made, free milk) as a result of the changes.

## **Miscellaneous**

### ***Sections 202 to 209***

#### ***Section 202: Further education institutions: records***

394. **Section 202** enables the Secretary of State to make regulations concerning the retention and disclosure of educational records of FE institutions.

#### ***Section 203: Further education institution: hazardous material, etc.***

395. This section enables regulations to be made providing for the Secretary of State or the NAW to grant approval to FE institutions to obtain and use specified equipment or specified materials which might endanger a person's health or safety. This section re-enacts provisions in section 218(1)(e) of the ERA and similar provisions for schools are contained in section 546 of the EA 96. FE institutions who obtain approval for the use of radioactive substances or specified equipment under this provision will, like schools, be exempt from registration with the Environment Agency under the Radioactive Substances Act 1993.

#### ***Section 204: Baseline assessments***

396. This section removes the statutory requirement on schools to carry out baseline assessments of children. Statutory baseline assessment will be replaced by the foundation stage profile which will be completed at the end of the foundation stage for all children in government funded early years settings (see section 83 and for Wales section 104).

#### ***Section 206 and Schedule 20: Nuisance or disturbance on educational premises***

397. This Schedule amends section 547 of the EA 96 ('Nuisance or disturbance on school premises') to extend its provisions to non-maintained special schools, independent schools and LEA-maintained facilities providing instruction or leadership in sporting, recreational or outdoor activities, such as LEA outdoor education centres. Schedule 20 also amends the Further and Higher Education Act 1992 (FHEA) by inserting a new section, which re-enacts the provisions of section 40 of the Local Government (Miscellaneous Provisions) Act 1982 ('Nuisance and disturbance on educational premises') and extends those provisions to any institution within the FE sector. Section 40 of the Local Government (Miscellaneous Provisions) Act 1982 is consequentially repealed under Schedule 22.
398. These changes extend the scope of the existing provision. They also make a consequential extension of the powers of the police and persons authorised by the relevant bodies responsible for these educational institutions to remove trespassers believed to be committing the offence and to bring forward proceedings against them.

#### ***Sections 207 and 208: Recoupment: adjustment between LEAs and special cases***

399. Inter-authority recoupment occurs when a child is educated outside the LEA in which he or she lives. In these circumstances, the LEA providing the education is entitled to "recoup" the additional costs it faces, in making that provision, from the "home" LEA.
400. The effect of these sections is to remove the Secretary of State's role in settling disputes between LEAs in England about the amounts to be paid. Current arrangements are retained in relation to disputes between LEAs in Wales. The NAW intends to update the regulations applicable in relation to inter-authority arrangements. Any dispute relating to children who are educated in Wales but the responsibility of an LEA in England will be determined by the NAW, with the agreement of the Secretary of State in England. Where one LEA is in Scotland and the other in England, any dispute which arises will be determined by the Secretary of State.

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401. [Section 207](#) re-enacts, with amendments to give effect to the changes above, section 492 of the EA 96 and section 208 transfers to the NAW, so far as exercisable in relation to Wales, the power to make regulations under section 494. This relates to inter-authority recoupmnt in relation to pupils permanently excluded from a school maintained by one authority who are being provided with education at a school maintained by another authority.

### ***Section 209: Paid chairmen for local learning and skills councils***

402. [Section 209](#) provides for the LSC to pay the chairmen of local learning and skills councils. At present these chairmen are unpaid. The amount of their remuneration will be decided by the Secretary of State.

## **General**

### ***Sections 210 to 217***

#### ***Section 210: Orders and regulations***

403. This section contains general provisions about orders and regulations under the Act.
404. All orders or regulations under the Act are to be made by statutory instrument except for an order made by the Secretary of State or the NAW under paragraph 3(6) or 5 of Schedule 1, an order made by the Secretary of State or the NAW under section 165 in respect of a failure to meet standards in an independent school, or an order by the NAW under section 192 requiring proposals to secure regional provision.
405. In England, affirmative resolution procedure is required for an order adding to the basic curriculum (section 80(3)), altering the key stages or the core or foundation subjects (section 82(4)(b), 84(6) or 86), amending the areas of learning for the foundation stage (83(3)) or specifying subsidiary provision in respect of the STRB provisions (125(4)).
406. All other statutory instruments made by the Secretary of State have to follow the negative resolution procedure, apart from exemptions for schools related to performance, educational programmes under the National Curriculum, assessment arrangements in respect of all key stages, disapplication of pay and conditions orders for teachers in schools in Education Action Zones, or commencement orders, where no parliamentary procedure is required. In addition, if an order is made in respect of teachers' pay and conditions which gives effect, without significant modification, to recommendations of the STRB, no parliamentary procedure is required.

#### ***Section 211: Wales***

407. Most of the functions of the Secretary of State under education legislation have, so far as they relate to Wales, been transferred to the NAW by Order in Council under section 22 of the [Government of Wales Act 1998 \(c. 38\)](#). Textual amendments to reflect this have not been made to the legislation. The legislation, therefore, continues to refer to the Secretary of State only, but references to the Secretary of State have to be read, in relation to Wales, as references to the NAW.
408. Subsection (1) of this section ensures that where the Act confers a new function on the Secretary of State by amending another Act, this new function is exercisable in relation to Wales by the NAW, and references in the provisions concerned to the Secretary of State are read, in relation to Wales, as references to the NAW.
409. Subsection (2) of this section then ensures that, where functions under any Act have already been transferred by an Order in Council under section 22 of the Government of Wales Act 1998 and an amendment conferring further functions on the Secretary of State is made to that Act by the Act, any powers to vary or revoke the transfer of functions to the NAW also apply to the new functions conferred by the Act.

***Section 214: Transitional provisions etc.***

410. This enables regulations made under the Act to make such provision as appears to the Secretary of State or the NAW necessary or expedient for the general purposes, or any particular purpose or for giving full effect to the Act. In particular, they may make provision including modifications for any provision which comes into force before another provision comes into force, or before anything which has to be done under another provision has been done.
411. Regulations may also be made for amending, repealing or revoking a statutory provision passed before the Act is passed, for applying such provision, and for making savings from any amendment or repeal by the Act.

***Section 215: Minor and consequential amendments and repeals***

412. **Section 215** introduces Schedule 21 which contains a number of minor amendments and a number of amendments consequential on other provisions of the Act.
413. **Paragraphs 13 and 16** of the Schedule repeal sections 23(4)(b), 39, 40, 41 and 42 of the FHEA which relate to the transfer of FE colleges from institutions maintained by LEAs to independent corporations financed by the Further Education Funding Councils now replaced by the LSC and the NCETW. They were introduced to provide new FE corporations with a safeguard against entering into unfair contracts with LEAs with whom they felt disadvantaged in negotiations for transfer of land. The provisions provided for the Secretary of State's, or the NAW's consent where the LEA was seeking to exclude the transfer of land, or were seeking to enter into a contract, with a third party, to the value of £50,000 or more which would bind the institution in the future. College governing bodies' experience means they are able to protect their own interests without the Secretary of State's, or the NAW's, support. Further, these provisions are considered to be obsolete given that there are no longer any LEA controlled institutions to which these sections apply.
414. **Paragraph 20** amends section 54(1) of the FHEA to correct an incorrect reference. **Paragraph 21** repeals section 60 of the FHEA which serves no useful purpose.
415. **Paragraphs 31 and 32** correct incorrect references in the Employment Rights Act 1996 to governors.
416. **The remainder of the paragraphs** make minor amendments consequential on the new provisions in the Act, as follows:
- to the Disability Discrimination Act 1995, Education Act 1994, EA 96, SIA, SSFA and Freedom of Information Act 2000 consequential to the requirement on nursery schools to have governing bodies, and the requirement for nursery schools to be treated like maintained schools for most purposes including the legislation relating to SEN;
  - to the Sex Discrimination Act 1975, EA 96, SIA, SSFA and LSA consequential to the changes to school organisation in the Act. In particular as there are now a number of statutory routes which affect school organisation it changes references to the various legislative references to statutory proposals about school organisation to a reference to "any enactment";
  - to the Local Government Acts 1972 and 1974, the Disability Discrimination Act 1995, Tribunals and Inquiries Act 1992, EA 96, SIA, and SSFA consequent to the changes made by Part 3 of the Act in respect of school governance, financing admissions and exclusions;
  - to the POCA consequent to the new right of the proprietor of an independent school to appeal to the tribunal established under that Act, and to the repeal and replacement of section 218 of ERA;

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

- to the Public Passenger Vehicles Act 1981 consequent on the amendments in schedule 19 of the Act to education transport provisions;
- to a range of education legislation consequent on the rationalisation of the grant making powers;
- to ERA, EA 96 consequent to the potential changes to KS4 made possible by section 86 of the Act;
- to the Children Act 1989, Police Act 1997, the Environmental Protection Act 1990, the Education Act 1994, the Further and Higher Education Act 1992, the Teaching and Higher Education Act 1998, the SSFA and Criminal Justice and Court Services Act 2000 consequent on the repeal and replacement of section 218 of the Education Reform Act 1988;
- to the FHE 92, EA 96, and SSFA consequent on the repeal and replacement of the STPCA 1991;
- to the Disability Discrimination Act, the Employment Rights Act, EA 96 and the SSFA consequent to the new provisions in the Act about governance;
- to the definition of pupil in EA 96 consequent on the new governing body powers to provide community facilities;
- to the EA 96, EA 97 consequent on the creation of separate National Curricula for England and Wales;
- to the LSA consequent on the changes to schools financing;
- to the THEA consequent on the new provisions about prohibition from teaching etc.

***Section 216: Commencement***

417. Substantive provisions dealing with five subjects will come into force on Royal Assent. These are the powers of the Secretary of State to form companies, exclusions from PRUs, application of pay scale, student loans and LEA functions relating to qualifications.
418. **Section 216** identifies the sections which only the Secretary of State may commence (either because they only apply to England or because they are matters such as teachers pay and conditions where delegated powers have not been devolved to the NAW). It also identifies the sections which only the NAW may commence (because they only apply in Wales). All other sections may be commenced by the Secretary of State in relation to England and the NAW in relation to Wales. Commencement Orders (which do not require any parliamentary procedure – see section 210(5)) may make general or specified provision, different provision for different purposes, and may contain transitional and savings provisions.