



# Education Act 1997

## 1997 CHAPTER 44

### PART VI

#### INSPECTION OF <sup>[F1]</sup>LOCAL AUTHORITIES] AND SCHOOL INSPECTIONS

### CHAPTER I

#### INSPECTION OF <sup>[F1]</sup>LOCAL AUTHORITIES]

#### 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. 8(3)**

#### **38** Inspection of <sup>[F1]</sup>local authorities] .

(1) The Chief Inspector—

(a) may, and

(b) if requested to do so by the Secretary of State, shall,

arrange for any <sup>[F2]</sup>local authority] to be inspected under this section.

<sup>F3</sup>(2) . . . . .

<sup>[F4]</sup>(2A) An inspection of a <sup>[F2]</sup>local authority] in Wales under this section shall consist of a review of the way in which the authority are performing—

<sup>[F5]</sup>(a) any education function of theirs;]

(b) the functions conferred on them under <sup>[F6]</sup>section 25][<sup>[F7]</sup>of the Children Act 2004] so far as relating to education, training or youth support services (within the meaning of section 123 of the Learning and Skills Act 2000).]

(3) A request by the Secretary of State under this section may relate to one or more <sup>[F1]</sup>local authorities], and shall specify both—

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- (a) the [<sup>F2</sup>local authority] or authorities concerned, and  
 (b) the functions of theirs to which the inspection is to relate.
- (4) Before making any such request the Secretary of State shall consult the Chief Inspector as to the matters to be specified in the request in accordance with subsection (3).
- (5) Any inspection under this section shall be conducted—  
 (a) by one of Her Majesty’s Inspectors of Schools in <sup>F8</sup>... Wales, or  
 (b) by any additional inspector authorised under <sup>F9</sup>... [<sup>F10</sup>paragraph 2 of Schedule 2 to [<sup>F11</sup>the Education Act 2005]];  
 but he may be assisted by such other persons (whether or not members of the Chief Inspector’s staff) as the Chief Inspector thinks fit.
- (6) For the purposes of this section a [<sup>F2</sup>local authority] shall provide the Chief Inspector with such information as may be prescribed, and shall do so in such form and—  
 (a) within such period following a request made by the Chief Inspector in any prescribed circumstances, or  
 (b) at such other times,  
 as regulations may provide.
- (7) In this section and sections 39 to [<sup>F12</sup>41A] “the Chief Inspector” means—  
<sup>F13</sup>(a) .....  
 (b) in relation to a [<sup>F2</sup>local authority] in Wales, [<sup>F14</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru];  
 and in those sections references to “the inspector” in relation to an inspection under this section are references to the person conducting the inspection.

#### Textual Amendments

- F2** 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. 8(2)**
- F3** S. 38(2) repealed (1.4.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), Sch. 14 para. 22(2), **Sch. 18 Pt. 5**; S.I. 2007/935, art. 5(gg)(ii)
- F4** S. 38(2)(2A) substituted for s. 38(2) (1.4.2005 for E., 31.7.2008 for W.) by [Children Act 2004 \(c. 31\)](#), ss. 51, 67(7)(e); S.I. 2005/394, **art. 2(2)(e)**; S.I. 2008/1904, **art. 2**
- F5** S. 38(2A)(a) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 8(4)**
- F6** Words in s. 38(2A)(b) substituted (1.4.2016) by [Well-being of Future Generations \(Wales\) Act 2015 \(anaw 2\)](#), s. 56(2), **Sch. 4 para. 1**; S.I. 2016/86, art. 3
- F7** Words in s. 38(2A)(b) inserted (1.4.2008) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), **Sch. 2 para. 28**; S.I. 2008/17, art. 3(b)
- F8** Words in s. 38(5)(a) repealed (1.4.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), Sch. 14 para. 22(3)(a), **Sch. 18 Pt. 5**; S.I. 2007/935, art. 5(gg)(ii)
- F9** Words in s. 38(5)(b) repealed (1.4.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), Sch. 14 para. 22(3)(b), **Sch. 18 Pt. 5**; S.I. 2007/935, art. 5(gg)(ii)
- F10** Words in s. 38(5)(b) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 9 para. 11**; S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F11** Words in s. 38(5)(b) substituted (1.4.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), **Sch. 14 para. 22(3)(b)**; S.I. 2007/935, art. 5(gg)
- F12** Word in s. 38(7) substituted (1.4.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), **Sch. 14 para. 22(4)(a)**; S.I. 2007/935, art. 5(gg)

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**F13** S. 38(7)(a) repealed (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 14 para. 22(4)(b), **Sch. 18 Pt. 5**; S.I. 2007/935, art. 5(gg)(ii)

**F14** Words in s. 38(7)(a) substituted (1.1.2001) by 2000 c. 21, s. 73(a); S.I. 2000/3230, art. 2, **Sch.**

**Modifications etc. (not altering text)**

**C1** S. 38 modified (31.8.2008) by Childcare Act 2006 (c. 21), ss. 28, 109(2); S.I. 2008/17, art. 2(a)

**C2** S. 38(5) applied (E.) (1.9.2005) by Children Act 2004 (Joint Area Reviews) Regulations 2005 (S.I. 2005/1973), reg. 1(1), **Sch. para. 2(a)**

**39 Reports of inspections under s. 38 and action plan by <sup>F2</sup>local authority]**

- (1) Where an inspection under section 38 has been completed, the inspector shall make a written report on the matters reviewed in the course of the inspection, and shall send copies of the report to—
  - (a) any <sup>F2</sup>local authority] to which the inspection relates; and
  - (b) the Secretary of State.
- (2) Where a <sup>F2</sup>local authority] receive a copy of a report under this section, they shall prepare a written statement of the action which they propose to take in the light of the report and the period within which they propose to take it.
- (3) The authority shall publish—
  - (a) the report, and
  - (b) the statement prepared under subsection (2),within such period, and in such manner, as may be prescribed.
- (4) The Chief Inspector may arrange for any report under this section to be published in such manner as he considers appropriate<sup>F15</sup>; and <sup>F16</sup>... [<sup>F17</sup>section 29(2) to (4) of <sup>F18</sup>the Education Act 2005]] shall apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in <sup>F19</sup>... [<sup>F20</sup>section 29(2)].]

**Textual Amendments**

**F2** 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. 8(2)**

**F15** Words in s. 39(4) inserted (1.10.1998) by 1998 c. 31, s. 134(3) (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch.1 Pt. I**

**F16** Words in s. 39(4) repealed (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 14 para. 23(a), **Sch. 18 Pt. 5**; S.I. 2007/935, art. 5(gg)(ii)

**F17** Words in s. 39(4) substituted (1.9.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 9 para. 12(a)**; S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1

**F18** Words in s. 39(4) substituted (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 14 para. 23(b)**; S.I. 2007/935, art. 5(gg)

**F19** Words in s. 39(4) repealed (1.4.2007) by Education and Inspections Act 2006 (c. 40), s. 188(3), Sch. 14 para. 23(c), **Sch. 18 Pt. 5**; S.I. 2007/935, art. 5(gg)(ii)

**F20** Words in s. 39(4) substituted (1.9.2005 for E., 1.9.2006 for W.) by Education Act 2005 (c. 18), s. 125(4), **Sch. 9 para. 12(b)**; S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1

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**Modifications etc. (not altering text)**

- C3** S. 39: functions of a local education authority made exercisable (E.) (1.4.2002) by authorised persons by [Contracting Out \(Local Education Authority Functions\) \(England\) Order 2002 \(S.I. 2002/928\)](#), art. 3, [Sch. 3\(j\)](#)

**[<sup>F21</sup>40 Inspector’s rights of entry etc.**

- (1) This section applies where a [<sup>F2</sup>local authority] are inspected under section 38.
- (2) The inspector, and any person assisting him, shall have at all reasonable times a right of entry to—
  - (a) the premises of the [<sup>F2</sup>local authority],
  - (b) the premises of any school maintained by the authority, and
  - (c) any other premises at which relevant section 19 [<sup>F22</sup>or 19A] education is provided, other than premises which are or form part of a private dwelling house but are not a school.
- (3) The inspector, and any person assisting him, shall also have at all reasonable times a right to inspect and take copies of—
  - (a) any records kept by, and any other documents containing information relating to, the [<sup>F2</sup>local authority] or any school maintained by the authority, and
  - (b) any records kept by a person who provides relevant section 19 [<sup>F23</sup>or 19A] education that relate to the provision of that education, and any other documents containing information that so relates;
 which he considers relevant to the exercise of his functions.
- (4) [<sup>F24</sup>Section 58 of the Education Act 2005] (inspection of computer records) shall apply for the purposes of subsection (3) as it applies for the purposes of Part 1 of that Act.
- (5) Without prejudice to subsections (2) and (3), the [<sup>F2</sup>local authority] and the governing body of any school maintained by the authority—
  - (a) shall give the inspector and any person assisting him, all assistance in connection with the exercise of his functions which they are reasonably able to give, and
  - (b) shall secure that all such assistance is also given by persons who work at the school.
- (6) It shall be an offence wilfully to obstruct the inspector or any person assisting him in the exercise of his functions in relation to the inspection.
- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) In this section—
 

“document” and “records” each include information recorded in any form; and

“relevant section 19 [<sup>F25</sup>or 19A] education” means education provided to a child by virtue of arrangements made by the [<sup>F2</sup>local authority] under section 19 [<sup>F25</sup>or 19A] of the Education Act 1996 (exceptional provision of education at schools or otherwise).]

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#### Textual Amendments

- F2** 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. 8(2)**
- F21** S. 40 substituted (1.10.2002 except in relation to W. and 19.12.2002 otherwise) by [Education Act 2002 \(c. 32\)](#), **ss. 180, 216**, (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), **art. 3**; [S.I. 2002/3185](#), **art. 4**
- F22** Words in s. 40(2)(c) inserted (1.9.2022 for specified purposes, 1.9.2023 for specified purposes) by [The Curriculum and Assessment \(Wales\) Act 2021 \(Consequential Amendments\) \(Primary Legislation\) Regulations 2022 \(S.I. 2022/744\)](#), reg. 1(3), **Sch. 2 para. 3(6)(a)**
- F23** Words in s. 40(3)(b) inserted (1.9.2022 for specified purposes, 1.9.2023 for specified purposes) by [The Curriculum and Assessment \(Wales\) Act 2021 \(Consequential Amendments\) \(Primary Legislation\) Regulations 2022 \(S.I. 2022/744\)](#), reg. 1(3), **Sch. 2 para. 3(6)(b)**
- F24** Words in s. 40(4) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 9 para. 13**; [S.I. 2005/2034](#), art. 4; [S.I. 2006/1338](#), art. 3, Sch. 1
- F25** Words in s. 40(8) inserted (1.9.2022 for specified purposes, 1.9.2023 for specified purposes) by [The Curriculum and Assessment \(Wales\) Act 2021 \(Consequential Amendments\) \(Primary Legislation\) Regulations 2022 \(S.I. 2022/744\)](#), reg. 1(3), **Sch. 2 para. 3(6)(c)**

#### Modifications etc. (not altering text)

- C4** S. 40(2)(3)(5)-(7) applied (E.) (1.9.2005) by [Children Act 2004 \(Joint Area Reviews\) Regulations 2005 \(S.I. 2005/1973\)](#), reg. 1(1), **Sch. para. 2(a)**

### <sup>F26</sup> 41 Inspections involving collaboration of Audit Commission.

#### Textual Amendments

- F26** S. 41 repealed (1.4.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), Sch. 14 para. 24, **Sch. 18 Pt. 5**; [S.I. 2007/935](#), art. 5(gg)(ii)

### [<sup>F27</sup> 41A Inspections involving collaboration of Auditor General for Wales

- (1) If requested to do so by the Chief Inspector, the Auditor General for Wales may assist with any inspection under section 38 of a [<sup>F21</sup>local authority] in Wales; and subsections (2) to (5) below have effect where the Auditor General for Wales assists with any such inspection.
- (2) Section 40 shall apply to the Auditor General for Wales and to any authorised person as it applies to the inspector.
- (3) Any information obtained by virtue of section 40 by a person falling within one of the categories mentioned in subsection (4) may be disclosed for the purposes of the inspection, or the preparation or making of the report under section 39(1), to a person falling within the other category.
- (4) Those categories are—
  - (a) the Auditor General for Wales and any authorised person; and
  - (b) the inspector and any person assisting him.

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- (5) Any report prepared under section 39(1) shall be prepared by the inspector acting in conjunction with the Auditor General for Wales.
- (6) The Auditor General for Wales shall not provide assistance under this section unless, before he does so, the Chief Inspector has agreed to pay [<sup>F28</sup>the Wales Audit Office a fee, in accordance with a scheme for charging fees prepared under section 24 of the Public Audit (Wales) Act 2013 (which may not exceed the full cost incurred by the Auditor General in providing the assistance)].
- (7) In this section “authorised person” means a person authorised by the Auditor General for Wales for the purposes of this section.]

#### Textual Amendments

- F2** 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. 8(2)**
- F27** S. 41A inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), s. 73, **Sch. 2 para. 19**; S.I. 2005/558, art. 2, Sch. 1
- F28** Words in s. 41A(6) substituted (1.4.2014) by [Public Audit \(Wales\) Act 2013 \(anaw 3\)](#), s. 35(2), **Sch. 4 para. 4** (with Sch. 3 para. 3); S.I. 2013/1466, art. 3(1)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Pt. 6 Ch. 1 heading words inserted by [2022 asc 1 Sch. 4 para. 9\(2\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24(2)(ga) inserted by [2008 c. 25 s. 161\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 161(3)(4)(11)-(13) repealed (1.4.2010 for E., 1.11.2010 for W.) without ever being in force by 2009 c. 22, Sch. 16 Pt. 4; S.I. 2010/1151, art. 2, Sch. 1; S.I. 2010/2413, art. 2)
- s. 24(2B)-(2D) inserted by [2008 c. 25 s. 9](#) (This amendment not applied to legislation.gov.uk. S. 9 repealed (31.5.2013) without ever being in force by 2009 c. 22 Sch. 16 Pt. 4; S.I. 2013/975, art. 2(c))
- s. 26A(1)(1A) substituted for s. 26A(1) by [2008 c. 25 s. 161\(11\)](#) (This amendment not applied to legislation.gov.uk. S. 161(3)(4)(11)-(13) repealed (1.4.2010 for E., 1.11.2010 for W.) without ever being in force by 2009 c. 22, Sch. 16 Pt. 4; S.I. 2010/1151, art. 2, Sch. 1; S.I. 2010/2413, art. 2)
- s. 26A(4)(5) inserted by [2008 c. 25 s. 161\(13\)](#) (This amendment not applied to legislation.gov.uk. S. 161(3)(4)(11)-(13) repealed (1.4.2010 for E., 1.11.2010 for W.) without ever being in force by 2009 c. 22, Sch. 16 Pt. 4; S.I. 2010/1151, art. 2, Sch. 1; S.I. 2010/2413, art. 2)
- s. 38(2B) inserted by [2022 asc 1 Sch. 4 para. 9\(3\)\(b\)](#)
- s. 39(1)(b)(c) substituted for s. 39(1)(b) by [2022 asc 1 Sch. 4 para. 9\(4\)\(b\)](#)
- s. 43(2ZA)(2ZB) inserted by [2009 c. 22 s. 250\(2\)](#) (This amendment not applied to legislation.gov.uk. S. 250 omitted (1.9.2012) by virtue of 2011 c. 21, s. 29(9)(d); S.I. 2012/1087, art. 3)