

*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.