

*These notes refer to the Education Act 2005 (c.18)  
which received Royal Assent on 7 April 2005*

# EDUCATION ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 1: School Inspections and Other Inspections by School Inspectors**

#### *Chapter 3 – School Inspectors and School Inspections: Wales*

#### *Section 19 and Schedule 2: Her Majesty’s Inspectorate of Education and Training in Wales*

53. This section and Schedule re-enact section 4 of, and Schedule 1 to, SIA 1996 and make provision for the appointment of Her Majesty’s Chief Inspector for Education and Training in Wales (the Chief Inspector) and for the appointment of HMI in Wales. Section 19 also sets out that the Chief Inspector may not be appointed for a term of more than five years, though a previous post holder is not barred from reappointment.
54. New provision is made in *subsections (6) and (7)*. Subsection (6) provides that where it considers that powers under *subsections (1), (2) and (4)(c)* should be exercised, the Assembly has a duty to give advice to the Secretary of State on a recommendation to Her Majesty on the appointment of the Chief Inspector or of HMI, or on removal of the Chief Inspector from office on grounds of incapacity or misconduct. At present there is no statutory requirement on any person to provide such advice, but as a matter of constitutional convention any recommendation is made by the Secretary of State. In practice any such recommendation is made relying upon advice from the Assembly’s First Minister. This practice is now reflected in this section.
55. Subsection (7) provides that it is for the Chief Inspector to determine the terms and conditions of appointment of Her Majesty’s Inspectors, subject to the approval of the Assembly. This brings the position of the Assembly in relation to HMI in Wales into line with its position in relation to the Chief Inspector’s other staff.

#### *Section 20: Functions of Chief Inspector*

56. This re-enacts section 5(1) to (6) and (11) of SIA 1996, as amended. It sets out the functions of the Chief Inspector and makes new provision extending the duty of the Chief Inspector to keep the Assembly informed about certain matters by adding the following:
- i) *subsection (1)(b)*: how far education provided by schools in Wales meets the needs of the range of pupils at those schools; and
  - ii) *subsection (1)(f)*: the contribution made by those schools to the well-being of those pupils.
57. The term “well-being” is defined in section 31 by reference to the matters mentioned in section 25(2) of the Children Act 2004.

***Section 21: Annual and other reports to the Assembly***

58. This section re-enacts section 5(7) of SIA 1996. It requires the Chief Inspector to make an annual report to the Assembly and provides for the report to be published by the Assembly. The Chief Inspector may also make other reports and may publish them.

***Section 22: Power of Assembly to establish advisory panel***

59. This section provides the Assembly with a new regulation-making power enabling it to establish a panel to advise the Assembly on any matter relating to the functions of the Chief Inspector.
60. The section allows the Assembly to make provision as to the establishment of the panel and its functions, including provision as to the appointment of members, remuneration and allowances, the preparation of reports and a requirement for the Chief Inspector for Wales and the panel to co-operate, for example by allowing access to the Chief Inspector's staff and papers.

***Section 23: Powers of entry etc. of Chief Inspector***

61. This section re-enacts and amends section 5(8) to (10) of SIA 1996. It sets out the Chief Inspector's rights of entry to schools and rights to inspect documents for the purposes of inspection and other functions under section 20. These rights extend to other premises used by any person in connection with making provision for pupils aged 15 or over (but who are still of compulsory school age) to receive part of their education. Paragraph 5 of Schedule 2 provides that these rights can be exercised by any HMI, any additional inspector or other member of the Chief Inspector's staff who is authorised by him. Under *subsection (3)* it is an offence intentionally to obstruct the Chief Inspector in carrying out his duties. *Subsection (4)* specifies the penalty for that offence.

***Section 24: Power of Chief Inspector to arrange for inspections***

62. This section re-enacts section 6 of SIA 1996. It enables the Chief Inspector to arrange for any school to be inspected by HMI, and for HMI to monitor an inspection being carried out by a registered inspector under section 28 (which re-enacts section 10 of SIA 1996).
63. The section also makes provision as to rights of entry and rights to inspect documents, and makes it an offence intentionally to obstruct the Chief Inspector in the exercise of any of his functions under this section.

***Section 25: Registration of inspectors in Wales***

64. This section re-enacts section 7 of SIA 1996 in its application to Wales. It requires any person inspecting a school under section 28 to be one of HMI or a registered inspector, and makes provision in relation to registration.
65. *Subsection (5)* makes new provision which allows the Chief Inspector to have regard, when deciding on an application for registration, to the extent to which he intends to use HMI or registered inspectors to carry out inspections under section 28 and to the extent to which there is a need for registered inspectors in any part of Wales. The Chief Inspector could therefore refuse to register an inspector if he considers there already exist sufficient registered inspectors in Wales to carry out school inspections, or because he intends to use HMI rather than registered inspectors for the purposes of carrying out school inspections under section 28.

***Section 26: Removal from register and imposition or variation of conditions***

66. This section re-enacts section 8(1) to (3) of SIA 1996 in its application to Wales. It sets out the conditions to be satisfied before the Chief Inspector can remove the name of an

inspector from the register, and before he can impose or vary conditions to which the registration of an inspector is subject.

***Section 27 and Schedule 3: Appeals in relation to registration***

67. These re-enact section 9 of, and Schedule 2 to, SIA 1996 in their application to Wales. They provide for a right of appeal to a tribunal constituted under section 27 in relation to a registration decision taken by the Chief Inspector, and make other provision in relation to such appeals and to the constitution, staffing and procedures of such a tribunal. New provision is made in *subsection (2)* to the effect that the tribunal must confirm a decision to refuse to renew a person's registration made on the ground of a reduced need or no need for registered inspectors in Wales if the tribunal is satisfied that the refusal was in fact on that ground.

***Section 28 and Schedule 4: Duty to arrange regular inspections of certain schools***

68. These re-enact section 10 of, and Schedule 3 to, SIA 1996 in their application to Wales. Section 28 lists those schools which are required to be inspected under that section at intervals to be prescribed in regulations made by the Assembly, and sets out those matters on which an inspector must report. Schedule 4 deals with arrangements for selection of inspectors; the composition of inspection teams; enrolment of persons who may act as inspection team members; training for inspections; meetings with parents of schools being inspected; rights of entry for the purposes of inspection; and replacement of an inspector during the course of an inspection.
69. New provision is made in *subsection (1)* of section 28 allowing inspections to be carried out by HMI or a registered inspector. This gives the Chief Inspector the discretion to choose whether to use a registered inspector or HMI.
70. *Subsection (5)* makes new provision extending the duty of any inspector conducting an inspection under this section to report on the following matters:
- i) *subsection (5)(b)*: how far the education provided in the school meets the needs of the range of pupils at the school; and
  - ii) *subsection (5)(f)*: the contribution made by the school to the well-being of those pupils.

***Section 29: Publication of inspection reports***

71. This section re-enacts section 42A of SIA 1996 in its application to Wales. It enables the Chief Inspector to determine the manner in which inspection reports are published.

***Section 30: Payment of fees into Consolidated Fund***

72. This section re-enacts section 43 of SIA 1996 in its application to Wales, requiring registration fees, enrolment fees and training fees to be paid into the Consolidated Fund unless a Treasury Receipts Direction under paragraph 4 of Schedule 6 to the Government of Wales Act 1998 requires otherwise.